

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19249-A of Jennifer Wisdom, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 19249 approving variances from the limit on number of story requirements under § 400.1, the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the off-street parking requirements under § 2101.1, to construct a new one-family dwelling on an unimproved lot in the R-4 (now RF-1) District at premises 1850 5th Street N.W. (Square 3093, Lot 46).¹

Hearing Dates (19249):	May 24, 2016
Decision Date (19249):	May 24, 2016
Final Date of Order (19249):	May 31, 2016
Time Extension Decision:	May 23, 2018

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 19249

The Underlying BZA Order

On May 24, 2016, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for variances from the limit on number of story requirements under § 400.1, the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the off-street parking requirements under § 2101.1 under the 1958 Regulations, to construct a new one-family dwelling on an unimproved lot in the R-4 (now RF-1) District² at premises 1850 5th Street N.W. (Square 3093, Lot 46) (the "Subject Property"). The Application was granted on May 24, 2016, and the Board issued its written order, No. 19249 (the "Order") on May 31, 2016. Pursuant to 11 DCMR

¹ This and all other references to the relief granted in Order No. 19249 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application.

² The zone districts were renamed in the 2016 Zoning Regulations. Thus, the R-4 District is now the RF-1 District under the 2016 Regulations. This is reflected on the Zoning Map. This change in nomenclature has no effect on the vesting or validity of the original application.

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§ 3125.9 in the 1958 Zoning Regulations (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on May 31, 2016 and took effect ten days later. Under the Order and pursuant to § 3130.1 of the 1958 Regulations (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until May 31, 2018.

Motion to Extend

On April 19, 2018, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 19249. This request for extension is pursuant to Subtitle Y § 705 of the 2016 Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

In its request for a two-year extension, the Applicant stated that the time extension is needed to accommodate a delay in obtaining necessary financing for the improvements on the Subject Property due to a change in her employer as well as the ability to submit the required documents to DCRA for securing a building permit. The Applicant also noted that the Historic Preservation Office (“HPO”) provided a Staff Report and Recommendation for the Historic Preservation Review Board (“HPRB”) that stated “the HPO recommends that the Review Board renew, for a two-year term, the concept for a new 4-story brick rowhouse at 1850 5th Street NW and to delegate final approval to staff.”

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) an inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board’s order because of delays that are beyond the applicant’s reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control.

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. Pursuant to Subtitle Y § 705.1(a), the record reflects that the Applicant served the parties to the original application, including ANC 1B, as well as the Office of Planning. (Exhibit 4.) The parties were allowed at least 30 days to respond. ANC 1B did not submit a report or resolution regarding the time extension request, although the record reflects that the ANC was in support of the original application (Exhibit 3) and that the ANC had notice of the request for a time extension. (Exhibit 6.) The Office of Planning (“OP”) submitted a report, dated May 16, 2018, recommending approval of the request for the time extension. (Exhibit 8.)

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As required by Subtitle Y § 705.1(b), the Applicant demonstrated that there has been no substantial change in any of the material facts upon which the Board based its original approval in Order No. 19249. There have also been no substantive changes³ to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the application.

To meet the burden of proof for good cause required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding factors causing a delay in obtaining a building permit. The good cause basis for the request was the Applicant's inability to move forward with the project due to economic and market conditions beyond its control, pursuant to Subtitle Y § 705(c)(1). The Applicant states that since the issuance of the Order, the Applicant has been diligently working to obtain financing and to move forward to finalize her plans for improvements to the Subject Property. The Applicant is requesting this time extension because a change in the Property Owner's employment status has resulted in a delay in obtaining necessary financing for the improvements on the Subject Property. Also, that change in employment for the Property Owner and its impact on the ability to obtain financing has resulted in delays in applying for building permits. The Applicant also submitted an application with HPRB for a two-year term extension and noted that the HPO Staff Report recommended HPRB grant that renewal. A two-year extension will allow the Applicant the time necessary to obtain necessary financing and building permits. (Exhibit 4.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(1). The Board finds that the delay in the Applicant being able to secure financing as well as to obtain building permits because of the Property Owner's change in employment status constitutes good cause and is beyond the Applicant's reasonable control and that the Applicant demonstrated that she has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

Having given the written report of OP great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

³ Although the zone districts were renamed in the 2016 Zoning Regulations, this change in nomenclature does not constitute a substantive change as contemplated by Subtitle Y § 705.1(b), and has no effect on the vesting or validity of the original application.

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Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of a two-year time extension of Order No. 19249, which Order shall be valid until **May 31, 2020**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Michael G. Turnbull to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 24, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.