

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17580 of Macy Development, LLC, pursuant to 11 DCMR § 3103.2 for a variance from the requirements to provide residential recreation space under § 773 of the Zoning Regulations, to allow construction of an eight unit residential condominium building at the premises known as 284 15th Street, SE (Square 1073, Lot 803).

HEARING DATE: March 20, 2007
DECISION DATE: May 1, 2007

DECISION AND ORDER

The application was submitted on or about November 7, 2006 by Macy Development, LLC (the applicant) seeking a variance from the residential recreation requirement then applicable to its property. A public hearing was held by the Board of Zoning Adjustment (“Board”) on March 20, 2007. Soon thereafter, on April 6, 2007, the Zoning Commission’s repeal of the residential requirement became effective. The Zoning Regulations provide that a project may be constructed in accordance with the zoning regulations in place on the day its building permit is issued, 11 DCMR § 3202.4. Since those regulations no longer include the requirement for which relief was requested, the Board voted on May 1, 2007 to dismiss the application as moot.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified, pursuant to § 3113.2 (Exhibit 3).

The application The applicant seeks a variance from the requirement under § 773 that 20% of the gross floor area at the project be dedicated to residential recreation space.

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all entities owning property within 200 feet of the applicant’s site, the Advisory Neighborhood Commission (ANC) 6B, and the Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 25).

ANC 6B The subject site is located within the area served by Advisory Neighborhood Commission 6B, which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on February 20, 2007, with a quorum present, the ANC voted to approve the variance from the residential recreation requirement.

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Requests for Party Status The Board received requests for party status from three neighbors: Michael Young (Exhibit 21), Jennifer Solomon (Exhibit 23), and Michael Washington (Exhibit 24) (the Neighbors). The Board determined the Neighbors were more uniquely affected than members of the general public and granted their requests. Hearing no objections, the Board also directed the Neighbors to present their case in opposition as a single party.

Other Persons in Support/Opposition No other persons appeared at the hearing in support or in opposition to the application. However, the Board received a letter in support of the variance from the Capitol Hill Restoration Society, which noted the pending proposal to repeal the residential recreation requirement (Exhibit 19).

OP Report OP's report indicated that the application meets the test for a variance, and also noted that the residential recreation requirement would soon be eliminated (Exhibit 26). Although the report was prepared by Douglas Wood, testimony in support of the application was presented by Joel Lawson.

FINDINGS OF FACT

The Property

1. The site is located at 284 15th Street, SE, on the northeast corner of 15th and C Streets, SE. The lot is 34.33 feet wide along 15th Street and 90 feet long along C Street, with a lot area of 3,090 square feet.
2. A public alley is located to the east and separates the site from a fire station. A two and one-half story row home is to the north of the site.
3. The site is located in the C-2-A zone. This zone district is "designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside the central core". See, 11 DCMR § 720.2. It also permits entirely residential buildings and was designed as a low and medium density residential area. See, 11 DCMR § 720.3.

The Proposed Project

4. The applicant proposes to build an eight unit condominium building which will be a maximum of 50 feet in height. The proposal provides four parking spaces below ground with access via the public alley. No recreation space is proposed.
5. The site was formerly used as a gas station. In anticipation of the proposed development, the applicant razed the one story structure on the site, and expended significant financial resources to remediate the soil.

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The Residential Recreation Requirement

6. Requirements for the provision of recreation space were added to the Zoning Regulations in the 1970s. The amount of such space required varied from zone to zone, ranging from five percent (5%) to twenty percent (20%) of the total gross floor area. However, in response to requests from the Zoning Commission, this Board, and the public, OP initiated a rulemaking to amend these requirements to be more in line with current standards and expectations. *See*, Z.C. Order No. 05-02.

7. The Zoning Commission considered various proposals. However, ultimately, the Commission took proposed action following a public hearing on November 6, 2006 to repeal the residential recreation requirements in their entirety, and took final action to repeal the requirements at its January 8, 2007 public meeting. *See*, 11 DCMR § 3027.1, and 11 DCMR § 3028.¹

8. The rulemaking repealing the residential recreation requirement became effective on April 6, 2007, when the Commission's Notice of Final Rulemaking and Order was published in the *D.C. Register*. *See*, 11 DCMR 3028.9.

CONCLUSIONS OF LAW

The Applicable Law

As outlined above, the residential recreation requirements were in effect at the time the application was filed and at the time the hearing was held. However, the requirements were not in effect at the time the Board held its decision meeting on May 1, 2007. Since this development may be constructed in accordance with the zoning regulations in place on the day its building permit is issued, 11 DCMR § 3202.4, and since those regulations no longer include the residential requirement from which a variance was sought, the applicant no longer needs the relief applied for.

The Variance Application is Moot

The Board's Rules of Procedure provide that the Board shall not consider moot questions. 11 DCMR § 3100.7. A case is moot when the legal issues presented are no longer "live" or when the parties lack a legally cognizable interest in the outcome. *Cropp v. Williams*, 841 A.2d 328 (D.C. 2004), citing *Murphy v. Hunt*, 455 U.S. 478 (1982). Clearly, the legal issues here are no longer "live" as the request for zoning relief is no longer necessary.

Therefore, for the reasons stated, the Board concludes that the application is moot and the motion to dismiss the application is hereby **GRANTED**.

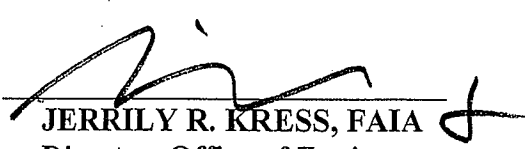
¹ Procedures governing rulemakings are set forth in Chapter 30 of the Zoning Regulations. The Final Rulemaking in Z.C. Case No. 05-02 also details the history of the text amendment repealing the residential recreation requirements.

VOTE: **3-0-2** (Curtis L. Etherly, Jr., John A. Mann, II, and Michael G. Turnbull (by absentee ballot) in favor of the motion to grant, Ruthanne G. Miller and Marc D. Loud, not voting, not having participated in the case)

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this Order:

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: **JAN 04 2008**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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As Director of the Office of Zoning, I hereby certify and attest that on **JANUARY 4, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Macy Development, LLC
Attn: Topher Cushman
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Capitol Heights, Maryland 20743

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Chairperson
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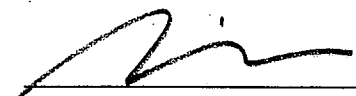
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TWR