

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of
Bozzuto Development Group

BZA Case Nos.: 17723/17723-A
ANC: 6C

2011 SEP 26 PM 2:11
BOARD OF ZONING ADJUSTMENT

STATEMENT OF THE APPLICANT

I.

Nature of Application

This is a request by the Bozzuto Development Group (the “**Applicant**”) for (i) modification to the previous approval under BZA Order Nos. 17723 and 17723-A (the “**Orders**”) and (ii) special exception relief under 11 DCMR § 411.11 from the strict requirements of 11 DCMR § 770.6(b) in order to allow construction of a residential building that incorporates the character-defining features of the existing building located at 460 New York Avenue, NW (Lot 828, Square 515N) (“**Property**”), in the District of Columbia. Previously, the Orders granted the approval (and extension) of variance relief pursuant to 11 DCMR § 3103.2 from the loading (§ 2201.1), parking (§ 2101.1), and lot occupancy (§ 772.1 and 2001.3) requirements of the Zoning Regulations. The project will conform to the Zoning Regulations in all other ways.

II.

Jurisdiction of the Board

The Board of Zoning Adjustment (“**BZA**”) has jurisdiction to grant the relief requested pursuant to 11 DCMR §§ 3129.1, et. seq. and 3104.1 of the Zoning Regulations.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18308
EXHIBIT NO. 3

DCDOCS\7058079.1

Board of Zoning Adjustment
District of Columbia
CASE NO.18308
EXHIBIT NO.3

III.

Information Regarding Project Modification and Property

A. Description of Project and Modification

As shown on the plans attached as Tab 3 to the package (the “**Plans**”), the Applicant proposes to construct a smaller project (“**Project**”) on the Property than that previously approved by the Board. Such downsizing resulted from the removal of two floors from the initially-approved plan. As in the prior-approved project, the Applicant is retaining the existing building and using it as a base for the addition (the “**Addition**”). The entirety of the building will be 108 feet, ten (10) inches tall, rather than 130 feet tall, as initially approved. The entire Project will have an FAR of 10.5, rather than 13.0 FAR, as initially approved. The Project will contain 63 residential units (rather than 84 residential units, as initially approved) in approximately 67,735.5 square feet of gross floor area (“**GFA**”), consisting of the existing 19,358 (approximate) square feet in the existing structure and the approximately 48,377.5 square feet of residential GFA that will be created by the additional eight (8) floors. The first and second floors of the warehouse will be converted into common and service areas for the residential building. As before, the typical floor plan will contain seven (7) residential units. The fourth through eleventh floors will contain 56 new apartments.

The Project will include approximately 36 parking spaces in a stacked mechanical parking system. Two levels of such parking spaces will be excavated and three levels will be located above grade. Previously, the Applicant proposed to excavate a parking garage which included 72 parking spaces and the use of vault space, however, only sixteen (16) of such spaces were located on private property.

B. Background

The Property is located in the Mount Vernon Triangle area of the City, on the south side of New York Avenue between 4th, 5th, and L Streets. The Property occupies the western triangular point of Square 515N that is formed by the convergence of New York Avenue and L Street, as depicted on page S1.0 of Tab 3 to this package. It measures approximately 6,451 square feet in land area. The Property is currently improved with an abandoned three-story warehouse building that occupies the entirety of the Property's lot ("**Building**").

The Property is not located in the Mount Vernon Square Historic District nor is the Building currently designated as a historic landmark listed in the D.C. Inventory of Historic Places or the National Registry of Historic Places. However, the Applicant has been advised by the Staff of the Historic Preservation Office ("**HPO**"): (i) that there is interest in the Building within the historic preservation community, and (ii) to preserve the Building and incorporate it into the Project. Accordingly, the Applicant essentially proposes a voluntary act of preservation in its plans as they retain and restore the facades of the Building and incorporate them into a quality residential development on the Property. The HPO Staff has been supportive of this approach. Since the Building is nonconforming, however, the development requires variance and special exception relief.

The Property is located in the Downtown Development District ("**DD**")/C-2-C Zone, which permits multi-family residential uses as a matter-of-right and Housing Priority Area A of the DD Overlay. The maximum height is 130 feet based on the width of New York Avenue (130 feet). There is no maximum FAR in the DD/C-2-C Zone District if a project is devoted entirely to residential uses. The maximum lot occupancy for commercial uses in the DD/C-2-C Zone District is 100% while the maximum lot occupancy for residential uses is 80%.

C. Description of the Surrounding Area

The Property is surrounded by an area in flux, which includes vacant lots, projects under construction and recently completed projects. Immediately to the east of the Property is a project under development by Steuart Development and, further to the east, small scale commercial structures. To the south of the Property the City Vista project is revitalizing Square 515 with ground level retail and residential uses above. To the west of the Property is the reservation formed by the intersection of New York Avenue and L Street. To the north of the Property, across New York Avenue, the landmark Yale Steam Laundry property is being redeveloped with a condominium project that includes two tower elements.

The land to the north (the Yale Steam Laundry site), west, and south of the Property are also zoned DD/C-2-C. The properties to the north and northeast of the Property are zoned DD/R-5-B. The land to the far southeast of the Property is zoned C-3-C.

The 2006 Comprehensive Plan Generalized Land Use Map places the Property, as well as the remainder of Square 515N, all of Square 515 and several blocks to the south and southeast of the Property in the High-Density Commercial and High-Density Residential land use categories.

IV.

Description of Relief Requested

In order to construct the Project, the Applicant requires modification to the design approved for variance relief from the loading, parking, and lot occupancy requirements and new special exception relief from the penthouse setback requirements.

A. Description of Previous Variance Approval as it Relates to Modification

A brief overview of the previously-approved variances and their relation to the proposed modification are as follows:

- Loading Requirement – Applicant was granted relief from 11 DCMR § 2201.1 which requires one (1) loading berth of at least 30 feet deep, one (1) loading platform of at least 200 square feet, and one (1) loading space of at least twenty (20) feet deep, for a residential building containing 50 or more residential units. Since the Applicant is retaining the three street-facing facades of the existing Building (the fourth is the east party wall), the Project will still not be able to offer any loading facilities on the Property. This relief has not changed due to the modification.
- Parking Requirement – Applicant was granted relief from 11 DCMR § 2101.1 which requires one (1) parking space for each four (4) residential units. The Project will require sixteen (16) parking spaces (a decrease from the 21 parking spaces previously required). The Project will provide 36 parking spaces in a mechanical stacked system. Since such mechanical system does not meet the requirements for parking access, area, and other requirements of Section 2100, the Applicant still requires the variance from the parking requirements. Previously, the Applicant proposed 72 parking spaces, with all but sixteen (16) of them being non-legal due to their location in the vault space. Therefore, the Applicant is still providing a greater number of parking spaces than those required by the Zoning Regulations, but these spaces will still not be legal parking spaces.
- Lot Occupancy Requirement – Applicant was granted relief from 11 DCMR § 772.1 which requires that buildings containing residential uses occupy a maximum of 80% of a lot and from 11 DCMR § 2201.3 which states that

enlargements or additions may be made to structures if the structure conforms to percentage lot occupancy requirements. As before, the Project occupies its entire lot. However, the Project does so for two less floors since two floors have been removed from the Project. Therefore, the extent of this variance request is actually less due to the modification.

B. Special Exception from the Roof Setback Requirement

Pursuant to 11 DCMR § 770.6(b), a rooftop structure must be “set back from all exterior walls a distance at least equal to its height above the roof upon which it is located.” The Project’s new penthouse will be approximately eighteen (18) feet, six (6) inches tall and will be adequately set back from the exterior wall facing south (L Street); however, the roof structure will extend the penthouse to the edge of the Project on the west exterior walls and less than the required one to one setback on the northern wall, such that it does not meet the setback requirements. Since the building is constrained onto a small, irregularly shaped site, it will not be possible to set the roof structure back a compliant distance from the exterior walls.

In order to harmonize the roof structure into the Project, the Plans include an architectural element, the tower embellishment, which is attached to the mechanical roof structure. The resulting design is more aesthetically pleasing than separating the tower from the roof structure.

Accordingly, the Applicant requests a special exception from § 770.6(b) requiring a roof structure setback of a distance equal to its height. The Applicant included such relief request with its original application, but withdrew such request at the hearing so that it could instead utilize separated tower and roof structure elements in the design. However, due the removal of the below grade levels of the Project, certain mechanical systems that would otherwise be

located underground will instead be housed in the roof structure. Therefore, a larger roof structure is required on the Property and the relief is again required.

V.
Satisfaction of Standards Relief for Modification

Under 11 DCMR Section 3129, the requested modification to the plans approved by the BZA may be approved if such modification will not alter the Board's findings and conclusions upon which the Board's approval was based. Such is the case here since the standards for the requested variance relief remain satisfied.

In order to obtain area variance relief an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972).

A. The Property is Affected by Exceptional Conditions

The Property still meets the "exceptional conditions" element of the variance test. In order to retain the existing building emblematic of the history of the Property and the surrounding neighborhood, the Applicant must work within the constraints of the Building, including its relationship to the lot and the as-built condition. Such existing Building has an impact on the inclusion of loading facilities and parking in the Project. The Property also has an unusual and atypical lot configuration. As stated, the confluence of New York Avenue and L Street, creates a small and triangular lot shape that pinches the Property into a narrow point.

In addition, the Property has an atypical extent of street frontage and high-profile public access. Such characteristics make it difficult to construct a building that is fully-compliant with the Zoning Regulations since driveways and loading areas would alter a substantial part of the Building and the associated activities would adversely impact street life in this location. Such driveways would also run afoul of the Mount Vernon Triangle Overlay area requirements.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

As with the original approval, incorporating the warehouse into the Project requires working within the parameters of the existing Building. Combined with the odd configuration of the lot, these existing parameters create a large set of practical difficulties that arise from the unique and exceptional conditions of the Property. The result in this case is that it is difficult to provide fully-compliant loading and parking at the Property. Given the shape and small size of the Property and Building, it is also difficult to construct an efficient floor plate and therefore, it is difficult to build to a compliant lot occupancy.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan

The variances from the loading, parking space, and lot occupancy requirements still do not cause substantial detriment to the public good and or impair the intent, purpose, and integrity of the Zone Plan. There is still no adverse impact from these variances. The Project still furthers the goals and policies of the Zoning Regulations related to the reuse of existing structures and historic sites, since the renovation of existing historic buildings is highly-desired in the Regulations and Comprehensive Plan. In addition, the DD District was created to foster exactly this type of development. That is, the DD District was in part created to stimulate residential development on the Property and its vicinity and create an active and lively urban core.

Regarding the new mechanical parking system, such parking proposal will not negatively impact the Zone Plan of the District. Although the Project will not satisfy the “on site” zoning technicalities requiring all required parking spaces to be directly accessible by driveways, have dedicated paved areas for each space, and other similar requirements, in reality, the Project will maximize the parking capacity of the Project and will exceed the sixteen (16) parking space requirement in the Project. To require a full parking garage to provide the “on site” technicalities of the Zoning Regulations would require excavating a several level garage – a very expensive and inefficient task that might make the Project financially infeasible – or converting above-ground space to undesirable parking uses. Thus, the relief of the “on site” technicalities for the parking at the Project is in harmony with the “intent and purpose” of the parking regulations as applied to commercial buildings in the DD/C-2-C Zone District.

It should also be noted that the amount of relief requested for these three variances is still negligible and the relief has arguably improved for each variance as a result of the modification.

VI.

The Application Meets the Requirements for Special Exception Relief Under §§ 3104.1 and 411.11 of the Zoning Regulations

This application also seeks special exception relief pursuant to 11 DCMR § 3104.1 and § 411.11 from the penthouse setback requirement set forth in 11 DCMR § 770.6(b) because the penthouse structure is not sufficiently set back from the exterior wall facing New York Avenue and the adjacent public reservation area. In order to obtain relief, the proposed special exception must be “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and must not “tend to affect adversely” the “use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” *Id.* § 3104.1. The Zoning Regulations further provide, however, that:

[w]here impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the ... location, design, number, and all other aspects of such structure ... even if such structures do not meet the normal setback requirements ...; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

Id. § 411.11.

A. The Requested Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare of the District. Id. § 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted, and must be designed to encourage the stability of districts and of land values. Id. § 101.2.

Permitting the roof structure special exception is “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps,” since there will be no perceptible loss of amenities (light, air, privacy, and off-street service functions) as a result of such special exception – given that the roof structure at the proposed location would face the adjacent public reservation and New York Avenue, NW. Further, the Property is located in a high-density commercial Zone District and in the Central Employment Area (“CEA”).

The setback of the roof structure in accordance with 11 DCMR § 770.6(b) would also have an adverse effect to the design of the Project. Since the Project faces a prominent intersection, the Applicant proposes to celebrate and highlight the angular edge of the Project –

and to reduce the complexities of the roof structure. The penthouse as proposed will be exposed to a great deal of traffic on New York Avenue and the Applicant believes this condition should be as attractive as possible. As a result, the proposed roof structure – as the combination of the mechanical roof structure and the tower element of the façade – would create a more attractive design rather than that which would be created by strict adherence to the Zoning Regulations. Thus, the “intent and purpose” of the chapter as applied to roof structures in the C-2-C Zone District – to prevent unsightly penthouses – will be fulfilled and the design of the site will actually be enhanced.

B. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

The reduced setback from the edge of the Project will not adversely affect neighboring properties. As mentioned, the roof structure setback condition will face the intersection, and therefore will not impact any residential property. Granting this special exception will not negatively impact light and air or other conditions for adjacent structures, and thus will create no adverse effect on the “use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” The Project’s location and layout, as well as its proximity to neighboring buildings, makes it impossible to for the lack of a penthouse setback to create objectionable shadows. Further, the penthouse will be no taller than eighteen (18) feet, six (6) inches which is permitted by the Zoning Regulations.

The roof structure has been designed to fuse with the Project’s architectural embellishment to increase the sense of cohesion of the design and create a more aesthetically-pleasing gateway structure on New York Avenue. However, unlike the previous design, the Applicant cannot simply detach the tower embellishment element from the mechanical roof

structure to create a conforming roof structure setback. The roof structure is required to be in its proposed location due to the larger amount of mechanical equipment moved to the roof after the removal of the underground areas of the Project, such as generators and other back house equipment.

It is important to note that the Project actually advances the intent and goals of the Zone Plan for this area as defined in the Comprehensive Plan since it restores the historic warehouse on the site and delivers infill housing on a site in the CEA. The requested relief will not change the overall permitted density on the Property or the total size of development. The only effect will be that the Property will be developed with a more highly designed roof structure with a less than required setback.

C. The Application Meets the Requirements for Special Exception Relief under §§ 3104.1 and 411.11 of the Zoning Regulations

The Applicant meets the standards set forth in § 411.11 of the Zoning Regulations.

- i. Strict compliance with the roof structure setback requirement would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

The Property is affected by several factors that make the full compliance with the roof setback requirements impracticable.

The Project's location and layout make it impossible to set the penthouse back from the rooftop edges by the required amount on the exterior wall at the northwest of the Property. Due to the small area of the Property, there is not sufficient roof area to both provide a roof structure for all necessary mechanical equipment, building systems, elevator overruns, and stair towers, along with compliant setbacks from the exterior walls. Such situation has been exacerbated by

the removal of the below grade space, which resulted in the relocation of generators and other mechanical systems to the roof. As a result of such roof structure size requirements and the small triangular shape of the Property, the building's core and mechanical equipment cannot be completely setback completely from all exterior walls.

- ii. Strict compliance with the roof structure setback requirement would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable

There is no practical way to push the roof structure further into the middle of the building without drastically altering the efficiency of the floor plates and significantly reducing the amount of mechanical systems in the Project. Since the Project will have an irregular shape, the development is already significantly limited in its ability to deliver efficient floor plates. The roof structures have already been located to create the most practical use of space. Once such core location is set, the placement of other systems on the roof will be dictated to disallow the compliant setbacks. To strictly adhere to the rooftop setback requirements would force the removal of mechanical systems core and service functions that would detract from the viability of the Project, or further expensive excavation would be required.

Further, since the building is not being constructed to its maximum zoning height allowable, it would be possible for the roof structure to be built into an additional "story" that is designed similarly to the building. However, in addition to being wasteful and unnecessary, the construction of such space would create an unnecessary maintenance burden. Further, and more importantly, the construction of such covered space would disallow the construction any outdoor recreation space on the roof for the residents of the Project. Clearly, such workaround would not be reasonable.

- iii. The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely

The requested relief would have no negative impact on the intent and purpose of the Zoning Regulations or the light and air of adjacent buildings, as described above.

VII.

Comprehensive Plan

The 2006 Comprehensive Plan's Generalized Land Use Map designates the Property for High-Density Commercial and High-Density Residential use. High-rise residential uses are the predominant use in the High-Density Residential land use category. High-rise commercial buildings are the predominant uses in the High-Density Commercial land use category. The High-Density Commercial land use designation is the business and retail heart of the District and metropolitan area, and includes a mix of employment, retail, office, cultural and entertainment centers. Accordingly, the Project is still consistent with this land use designation.

Further, the Project fosters the goals and policies stated in the Central Washington Element of the Comprehensive Plan, particularly Policy CW-1.1.1 which advocates creating vibrant neighborhoods and Policy CW-1.1.3 which promotes incentives for non-office development such as the proposed residential project. In addition, CW-1.1.4 encourages “the development of new high-density housing in Central Washington, particularly in the area north of Massachusetts Avenue and east of Mount Vernon Square.” The Property is in this target area. CW-1.1.4 continues:

A strong Downtown residential community can create pedestrian traffic, meet local housing needs, support local businesses in the evenings and on weekends, and increase neighborhood safety and security.

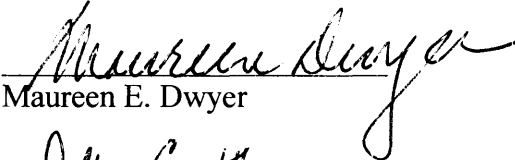
Going further, Policy CW-2.4.4 advocates developing Mount Vernon Triangle as a “high density residential neighborhood.” Clearly, the Project brings the desired residential building to the Mount Vernon Triangle area as described in the Comprehensive Plan. Regarding the restoration of the historic façades of the Building and their incorporation into the Project, Policy CW-1.2.2 promotes the preservation of Central Washington’s historic resources, buildings, and districts and the renovation and new construction sensitive to the character of the historic buildings. Under that section, adaptive reuse such as the Project is to be encouraged.

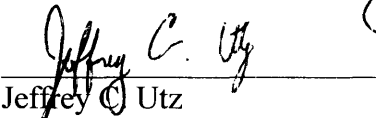
VIII.

Conclusion

For all of the above reasons, the Applicant is entitled to the modification to the approved plans and the roof structure special exception relief.

Respectfully submitted,


Maureen E. Dwyer


Jeffrey C. Utz

September 23, 2011