

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18380 of Jemal's Wonder LLC, pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements of § 774 to allow for alterations and additions to an existing historic landmark building in the ARTS/C-2-B District at premises 641 S Street, N.W. (Square 441, Lot 848).¹

HEARING DATE: July 24, 2012
DECISION DATE: July 24, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commissions ("ANC") 1B, within which the subject property is located and to ANC 2C, which includes the property immediately across Wiltberger Street to the east, and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a timely report in support of the application,

¹ In its report to the Board, the Office of Planning advised that variance relief from § 2101.1 was not necessary since the number of spaces to be provided exceeded the minimum number of spaces required for the increase in the square footage over that which previously existed at the site. The Applicant consequently withdrew its request for a variance from § 2101.1. Further, the Applicant advised that it was revising its plans for the roof to put the two air handling units located on the west side of the building on the roof above the third floor into a single enclosure meeting the height and setback requirements. The Applicant consequently withdrew its request for a special exception under §§ 411 and 770.6. The application as amended therefore requires relief only from the rear yard requirements. The caption has been changed from that which was advertised to reflect the amendments to the application.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18380

EXHIBIT NO. 40

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indicating that at a regularly scheduled and duly noticed public meeting on June 7, 2012, at which a quorum was present, the ANC voted 7:0:0 to support the relief requested. (Exhibit 23.) ANC 2C both testified and submitted a report² in support of the application, noting concessions which Douglas Development had agreed to make for the benefit of the residents of the rowhouses on the east side of Wiltberger Street and for the community at large. (Exhibit 30.)

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 28.) The District Department of Transportation ("DDOT") submitted a report of "no objection" to the relief sought by the Applicant. (Exhibit 29.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for an area variance from § 774. No parties appeared at the public hearing in opposition to this application.³ Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from § 774, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law.

It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 26 - Plans, as revised by the Plans marked as Exhibit 38, and the following **CONDITIONS**:

- 1) The renovated Wonder Bread Building shall have no entrances to retail spaces directly across from the Wiltberger Street residences. The only retail entrances on the Wiltberger Street side of the Wonder Bread Building shall be located to the north of the alley at the north side of the residential row at the east side of the street. One retail entrance will

² ANC 2C requested a waiver from the Board's rules to allow the ANC's report to be submitted into the record. (Exhibit 31.) The Board granted the waiver.

³ Two persons originally requested status as a party in opposition to the application. Manna Inc./New Community Church withdrew its request prior to the hearing. (Exhibit 32.) Residents of Wiltberger (hereinafter "Residents") appeared at the hearing and stated that they were in support of the application subject to conditions of a Memorandum of Understanding which had been agreed to by the Applicant. After discussion with the Board, the Residents appeared as persons in support, not as a party.

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serve only as a valid street address and face the current vending cart warehouse on the east side of the street. One retail entrance, to be used for purposes for ingress and egress, will be located at the northeast corner of the Wonder Bread Building.

- 2) The retail entrances along Wiltberger Street and at the northeast corner of the Wonder Bread Building shall each contain vestibules in order to reduce the likelihood of sounds from inside these businesses being audible inside the Wiltberger Street residences.
- 3) Appropriate downlighting shall be installed above the entrances to these retail businesses to help make the block safer at night.
- 4) The Applicant shall consult with the Residents regarding downlighting on the facade of the Wonder Bread Building directly across from the Residents' homes to ensure that light does not shine into these rowhouses' windows at night.
- 5) The Applicant shall pay for the installation of triple-paned windows on the front facades of the Wiltberger rowhouses, further reducing the transmission of sound from the street to those homes.
- 6) The Applicant shall install security cameras around the Wonder Bread Building. In addition to installing security cameras, the Residents would encourage the Applicant to coordinate closely with the Metropolitan Police Department to monitor crime on Wiltberger Street and in the surrounding areas.
- 7) All service vehicles visits to the Wonder Bread Building (deliveries, trash removal, etc.) shall be accomplished from the alley between the Wonder Bread Building and Progression Place, to the west of the Wonder Bread Building. There shall be no vehicular entrances to the building from Wiltberger Street.
- 8) With respect to the office component of the Wonder Bread Building, the Applicant agrees that deliveries shall conform to the following schedule: Monday through Friday, no deliveries before 7:00 a.m.; Saturday, no deliveries before 9:00 a.m.; Sunday, no deliveries before noon.
- 9) The Applicant shall provide 27 parking spaces in the Wonder Bread Building on a single level below grade. Said parking shall be accessible only from the alley to the west of the Wonder Bread Building. In the event there are available parking spaces in the Wonder Bread Building not used by the office or retail users in the building, the Applicant shall offer the Residents a right of first refusal to rent up to seven parking spaces, with monthly rent to be paid at 50% of the then-prevailing market rate for parking in the immediate neighborhood.

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- 10) The Applicant shall place a dumpster on the loading dock accessible from the alley to the west of the Wonder Bread Building for the Residents to dispose of bagged trash, eliminating the need to have trash cans on the sidewalk in front of those homes. The Applicant shall pay for trash removal from the dumpster, since the Department of Public Works will not pick up trash from a commercial building.
- 11) The Applicant shall coordinate the installation of trees, planting strips, treeboxes, tree guards, and plantings with the District Department of Transportation and the developers of the adjacent Progression Place complex to ensure a consistent treatment of the public space on the 600 block of S Street, N.W.
- 12) The Applicant shall consult with the Residents as it relates to the retail space for lease located at the rear of the renovated Wonder Bread Building. In the event the space becomes available for lease, the Applicant shall consult the adjacent business owners and residents about the type of establishment that may occupy the space. The concerns regarding noise, foot traffic, and hours of operation shall be sought before finalizing leasing decisions.

VOTE: **5-0-0** (Lloyd J. Jordan, Nicole C. Sorg, Rashida Y.V. MacMurray, Jeffrey L. Hinkle, and Anthony J. Hood, to APPROVE with conditions.)

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

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

ATTESTED BY:



for

SARA A. BARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: August 3, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.