

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18412 of Be the Change, on behalf of the District of Columbia, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the court width and area requirements under section 776, a variance from the off-street parking requirements under subsection 2101.1, variances from the loading berth depth and service/delivery space requirements under subsection 2201.1, or in the alternative, a variance to provide no loading berth, loading platform, or service/delivery space as required under subsection 2201.1, and a special exception from the roof structure setback requirements under subsections 411.11 and 770.6, to allow the construction of a new building with residential, retail, and office uses in the C-3-C District at premises 1005 North Capitol Street, N.E. (Square 674, Lot 439).¹

HEARING DATE: October 2, 2012

DECISION DATE: October 2, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6 and 27.)

The Board of Zoning Adjustment (the "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 Commission ("ANC") 6C, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted two letters in support of the application. The first letter dated July 16, 2012 indicated that at a duly noticed, regularly scheduled monthly meeting of ANC 6C with a quorum of commissioners present, the ANC voted unanimously (6:0:0) to support the application.

¹ The Applicant amended its application at the public hearing to withdraw the requested special exception from the rear yard requirements under § 774.2. The caption has been amended to reflect that change in relief. Also, the Applicant amended the application to request variances under subsection 2201.1 in the alternative to allow no loading berth or service/delivery space if the Applicant's application to DDOT for a curb cut is not approved. (Exhibit 27.) The submitted plans show the two alternatives. (Exhibit 30.) The caption has been amended to reflect that change as well.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone (202) 727-6311

Facsimile (202) 727-6072

E-Mail dcoz@dc.gov

Web Site www.dcoz.dc.gov

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18412

EXHIBIT NO. 47

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(Exhibit 25.) Subsequently, the ANC submitted a second report dated September 17, 2012 indicating the ANC voted a second time at a regularly scheduled, duly noticed meeting at which a quorum was present by a vote of 7:0:0 in support of the revised application and plans. (Exhibit 29.)

The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 32.) The District Department of Housing and Community Development also submitted a letter in support of the application. (Exhibit 26.) In addition, the District Department of Transportation ("DDOT") submitted a report recommending approval of the application, subject to the submission of additional information from the Applicant.² (Exhibit 33.) The Applicant submitted the requested additional information to DDOT and to the Board. A letter of support for the application was submitted by Cheryl Cort on behalf of the Coalition for Smarter Growth. (Exhibit 36.)

St. Phillip's Baptist Church (the "Church"), which is located to the immediate south of the site, submitted a request for party status. (Exhibit 31.) However, the Church withdrew its request for party status based upon the Applicant's execution of a Memorandum of Understanding included as Exhibit 41 in the record of this case. (Exhibit 40.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the court width and area requirements under § 776, the off-street parking requirements under § 2101.1, and the loading berth, service/delivery space, and loading platform requirements under § 2201.1.

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 the variance relief that 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 requested 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.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board also required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1 for a special exception under § 411.11 for relief from §§ 411.11 and 770.6. No parties appeared at the public hearing in opposition to the application. 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 ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11

² The Board waived the timeliness requirements and permitted DDOT's report into the record.

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DCMR § 3104.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, 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.

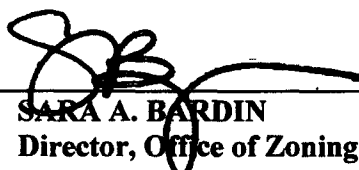
It is therefore **ORDERED** that the application is hereby **GRANTED** (pursuant to **Exhibit 30, Attachment C - Plans**). The Applicant shall have the flexibility to develop the project to include either: (a) a 30 foot loading berth and 200 square foot loading platform as shown on Sheet A1.1 of the Plans included with Exhibit 30, or in the alternative, (b) no loading berth, loading platform, or service/delivery space as shown on Sheet A1.1a of the Plans included with Exhibit 30.

VOTE: **3-0-2** (Lloyd L. Jordan, Michael G. Turnbull, and Jeffrey L. Hinkle, to Approve; Nicole C. Sorg, not participating, not voting³; third Mayoral appointee vacant.)

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: October 11, 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

³ Board Member Sorg recused herself from these proceedings to avoid the appearance of a conflict as her firm is the architect on the project.

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.