

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**Application No. 18506 of Ontario Residential LLC**, as amended,\* pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the roof structure provisions under subsection 777.1 (subsections 411.2, 411.3 and 411.5), for the number, location, and varying height of the roof structures on the proposed building, a special exception from the requirement that all **compact spaces** be placed in groups of at least five contiguous spaces with access from the same aisle under § 2115.4,\* a variance from the off-street parking requirements under subsection 2101.1, and a variance from the loading berth and delivery space provisions under subsection 2201.1, to allow a mixed-use residential building with ground floor retail in the C-2-B District at premises 1700 Columbia Road, N.W. (Square 2565, Lot 52).

**HEARING DATE:** February 26, 2013  
**DECISION DATE:** February 26, 2013

BOARD OF ZONING ADJUSTMENT

District of Columbia

CASE NO. 18506

EXHIBIT NO. 34

**DECISION AND ORDER**

The applicant in this case is Ontario Residential LLC (“Applicant”). The application was filed by 1700 Columbia Road, LLC on November 26, 2012. The Property was subsequently sold to Ontario Residential LLC, which filed a pre-hearing application, complete with an updated agent authorization letter, on February 12, 2013. (Exhibits 1-9.) The caption has been revised to reflect the change in the Applicant’s identity.

The application sought a variance under 11 DCMR § 3103.1 from the parking requirements for retail uses and the loading requirements for the residential and retail uses in the C-2-B Zone District. At the hearing, the Applicant amended\* its request to add variance relief from the requirement that all compact spaces be placed in groups of at least five contiguous spaces with access from the same aisle.

The Applicant also requested special exception relief for the proposed roof structures, which exceed the permitted number, are of varying heights, and do not meet the setback requirement at one point.

The Board of Zoning Adjustment (“Board”) held a public hearing on February 26, 2013. Following the hearing, the Board closed the record and deliberated on the application. The Board voted 5-0 to grant the application for the variance and special exception relief, subject to conditions.

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Board of Zoning Adjustment

District of Columbia

CASE NO.18506

EXHIBIT NO.34

## PRELIMINARY MATTERS

Application. The application requested special exception relief pursuant to § 3104.1 of the Zoning Regulations (Title 11 DCMR) from the roof structure requirements of §§ 777, 411.2, 411.3, and 411.5; variance relief pursuant to § 3103.2 from the number and amount of required loading facilities (§ 2201.1); variance relief from the number of required parking spaces (§ 2101.1), and the requirement that all compact spaces be placed in groups of at least five contiguous spaces with access from the same aisle (§ 2115.4). (Exhibits 1, 3.)

Notice of Application and Notice of Public Hearing. By memoranda dated November 27, 2012, the Office of Zoning ("OZ") advised the D.C. Office of Planning ("OP"), the Zoning Administrator, the District of Columbia Department of Transportation ("DDOT"), the Councilmember for Ward 1, Advisory Neighborhood Commission ("ANC") 1C, the ANC within which the Property is situated, and the Single Member District Commissioner, ANC 1C06, of the application. (Exhibits 12-16.)

Pursuant to 11 DCMR § 3113.13, OZ mailed the Applicant, the owners of all property within 200 feet of the Property, and ANC 4A, notice of the February 26, 2013, hearing. Notice was also published in the *D.C. Register*. The Applicant's affidavits of posting and maintenance indicate that three zoning posters were posted beginning on February 7, 2013, in plain view of the public. (Exhibits 17-20.)

Requests for Party Status. ANC 1C was automatically a party in this proceeding. The Board granted party status to Adams Morgan for Reasonable Development ("AMFRD"), an unincorporated nonprofit association. (Exhibit 22.)

Motion for Postponement. On February 25, 2013, AMFRD filed a motion for postponement of the February 26, 2013 public hearing. (Exhibit 27.) AMFRD cited two reasons for the postponement: (i) the lack of a report from the Department of Housing and Community Development ("DHCD") in the record; and (ii) the need for additional time to review the proposed rear yard, including time for OP to coordinate and confer with the DC Department of Fire and Emergency Services ("FEMS") regarding the proposed driveway in the rear yard. At the public hearing on February 26, 2013, the Board denied the Motion for Postponement. In regard to the first issue, the need for a DHCD report, the Board notes that AMFRD cited § 725 as the basis for the requirement that it was necessary for OP to seek DHCD's input in this case. However, § 725 is only applicable when an application is made for certain special exception uses in the C-2 Zone District. The Applicant is not seeking such special exception use. Therefore, § 725 is not applicable in this case. In regard to the second issue, regarding the proposed rear yard, the Board determined that it was entirely appropriate to move forward with the case at the public hearing, it was not necessary to seek FEMS review of a standard zoning issue such as a required rear yard, and that AMFRD could present relevant information on this issue during the public hearing process. (Exhibit 27.)

**FINDINGS OF FACT**

1. **Applicant's Case.** The Applicant presented testimony and evidence from Jeffrey Parana, representative of the Applicant; Steven Fotiu, an expert in architecture; and Michael Workosky, an expert in traffic engineering. Their relevant testimony is reflected in the Findings of Fact that follow.
2. **ANC 1C:** In a letter dated February 7, 2013, the Chair of ANC 1C informed the Board that at a properly noticed public meeting held on February 6, 2013, and with a quorum present, the ANC passed a resolution supporting the granting of the special exception and variance relief requested. (Exhibit 23, Tab E.) The resolution concluded that the requested relief would be in harmony with the Zoning Regulations and would not adversely affect neighboring properties. It further found that the unique features of the property, including its shape and context, created practical difficulties in providing parking and loading. Finally, the resolution stated that the Applicant had agreed to propose a traffic demand management plan, a loading management plan, and additional conditions of approval to the Board. The Applicant in fact offered these conditions in Tab F of Exhibit 23 and confirmed at the hearing its agreement with those requirements. (Hearing Transcript of February 26, 2013 ("Transcript") at p. 222.)
3. **Parties and Persons in Support of Application.** Jessica Racine-White submitted a request for party status in support of the application on January 31, 2013. Ms. White owns several properties in the vicinity of the Property and supports the effect the Project will have on property values. Ms. White did not attend the public hearing; accordingly, the Board did not grant her party status but accepted her filing as a submission in support of the application. (Exhibit 21.)
4. **Parties and Persons in Opposition to the Application.** AMFRD filed a request for party status in opposition to the application on February 11, 2013. In written materials and in testimony at the public hearing, AMFRD representatives stated that the proposed project will adversely affect the light, air, land values, noise, and traffic of neighboring properties. (Exhibits 22, 27, 30; Transcript, pp. 223-23.)

**The Subject Property and the Surrounding Area**

5. The Property is located in the C-2-B Zone District in the Adams Morgan neighborhood of Ward 1 in Northwest D.C. The Property is irregularly shaped and has frontage along Columbia Road, NW and 17<sup>th</sup> Street, N.W. The Property does not have any alley access.
6. The Property is located among a number of retail uses that line Columbia Road and across the street from residential buildings that vary from three to seven stories in height. The properties located to the south of the Property in Square 2565 are comprised primarily of medium density apartment houses and row dwellings. H.D. Cooke Elementary School is also located to the south of the Property, at 2525 17<sup>th</sup> Street, N.W. (Exhibit 3.)

**The Applicant's Proposed Project**

7. The Applicant is proposing to redevelop the site with a six story mixed-use building. The building will include up to 9,500 square feet of retail space and approximately 65-85 residential units ("Project"). (Exhibits 3, 23, 31.)
8. The Project will provide 29 parking spaces. All of the parking spaces will be dedicated to residential use; accordingly, the Applicant only sought variance relief from the retail parking requirements. The Applicant proposed a Transportation Demand Management plan ("TDM") that included the following elements:
  - The Applicant will provide to each initial residential lessee or purchaser, either: (i) a SmarTrip card with a value of \$75; or (ii) a first year membership to Capital Bikeshare or a car sharing service (valued at \$75).<sup>1</sup>
  - The Applicant will coordinate with a car sharing service to determine the feasibility of locating car sharing vehicles in the adjacent public space. The final determination on whether and how many car sharing vehicles will be located in the adjacent public space will be made by the car sharing service and DDOT.
  - Significant bicycle parking will be provided on-site for both retail employees and residents. Bicycle parking for the retail employees will be provided on the ground floor. Bicycle parking for the residents will be provided on the ground floor or in the garage. New bike racks are also proposed along Columbia Road.
  - The Applicant will unbundle all costs related to the parking spaces from the sales price or lease amount of each residential unit.

(Exhibits 23, 31.)

The Applicant also proposed a loading management plan that included the following elements:

- All loading associated with the building will be from Columbia Road in public space. The Applicant and DDOT will establish a 55-foot loading zone on Columbia Road. The Applicant will agree to a limitation on deliveries in the public space along Columbia Road between the hours of 7:00 a.m. to 4:00 p.m., Monday-Saturday.
- The Applicant shall designate a Loading Coordinator for the site to coordinate residential move-in/move-out. All residents shall be required to notify the Loading Coordinator of move-in/move-out dates.

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<sup>1</sup> At the public hearing, the Applicant agreed to modify this element of the TDM to require that each new residential lessee or purchaser will be provided a SmarTrip card or a one year membership to Capital Bikeshare or a car sharing service.

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- No truck idling shall be permitted.

(Exhibit 23, Tab C)

9. The proposed building will be 70 feet tall with a floor area ratio ("FAR") of 4.2, a lot occupancy of 74%, and a 15 foot rear yard. (Exhibits 23, 31.)
10. The Project does not include any loading facilities on-site, but intends to use a 55-foot loading space in public space on Columbia Road, NW, adjacent to the site, to meet the expected loading demand for the project. (Exhibits 23, 31.) The Applicant therefore needs a variance from the applicable loading requirements set forth in § 2201.1.
11. The Project includes 10 roof structures with heights between 10 feet and 18 feet, six inches. There is a minimum set back of 14 feet, eight inches for the 18 foot penthouse. The remaining penthouses are set back the requisite distance from the exterior walls of the building. (Exhibits 23, 31.)

**Office of Planning Report**

12. By a report dated February 19, 2013, supplemented by testimony at the public hearing, OP recommended approval of the special exception and variance relief requested in the application, subject to four conditions:
  - No retail parking spaces shall be provided.
  - All loading associated with the building shall be in Columbia Road public space, with delivery between the hours of 7:00 a.m. and 4:00 p.m., Monday through Saturday only.
  - The Applicant shall designate a Loading Coordinator to coordinate residential move-in/move-out, and residents shall be required to notify the Loading Coordinator of residential moves.
  - No truck idling shall be permitted. (Exhibit 26.)
13. The Applicant has agreed to OP's proposed conditions of approval.
14. OP noted that the triangular shape of the property and its lack of alley access was an exceptional condition that created a practical difficulty in complying with the parking requirements of the Zoning Regulations as the ramp would occupy almost the entire length of the property along the south side of the lot, reducing the size of the triangularly shaped garage. The OP report noted that the shape of the garage does not lend itself to an efficient utilization of space and results in an inefficient parking layout, areas that cannot be devoted to parking, and compact parking in groups of less than five contiguous spaces. The OP report noted that:

The required number of parking spaces for the residential portion of the building would be provided. Provision of bicycle parking within the building and within the public space of Columbia Road for the retail users of the building, in combination with the other transportation options available within the neighborhood, including Metrobus, Metrorail and car sharing, make the building easily accessible by means other than private automobile. (Exhibit 26, p. 4.)

15. Thus, the OP report concluded that relief from the parking requirements would not result in a detriment to the public good and that no substantial harm to the Zoning Regulations would result from the reduction in parking. (*Id.*)
16. In regard to the request for loading relief, OP noted the narrow roadway width of 17<sup>th</sup> Street (30 feet), the desire of DDOT to not have vehicular access to the building from Columbia Road (a busy commercial corridor), and the existence of on-street parking on both sides of 17<sup>th</sup> Street as unique attributes that created a practical difficulty in complying with the loading requirements of the Zoning Regulations. OP concluded that there would be no substantial detriment to the public good in granting the loading relief with the adoption of the proposed conditions regarding the loading space on Columbia Road, the hours the loading space could be used, the establishment of the Loading Coordinator, and the prohibition on truck idling. (*Id.*)
17. OP also concluded that granting the roof structure special exception relief would be consistent with the Zoning Regulations and Zoning Maps and that the proposal would not tend to adversely affect the use of neighboring properties. Specifically, it found that a matter-of-right roof structure could exceed the proposed structures in both height and density; accordingly, the proposed roof structures minimized the impact on neighboring property owners since their size was minimized. (*Id.*)

#### **Department of Transportation Report**

18. DDOT, by its report dated February 19, 2013, supported the application subject to three conditions:
  - Provide one bicycle parking space for every two units;
  - Reduce the width of the curb cut along 17<sup>th</sup> Street from 24 feet to 20 feet; and
  - Install 16 bike spaces (eight inverted U-racks) on the street for public use. (Exhibit 25.)
19. The Applicant has agreed to DDOT's proposed conditions of approval.

#### ***Special Exception Relief – Roof Structures***

20. In this case, the Applicant seeks relief pursuant to § 411.11, from § 777.1, which applies the

roof structure requirements of § 411 to Commercial Zones. The Applicant seeks specific relief from §§ 411.2, 411.3, and 411.5. Subsection 411.2 requires that all penthouses are subject to the provisions of § 770.6 (which requires a 1:1 setback from all exterior walls). Subsection 411.3 requires that all penthouses and mechanical equipment be placed in a single enclosure. Subsection 411.5 requires penthouses to consist of a uniform height. (Exhibits 3, 23.)

21. The Project requires roof structure relief for multiple roof structures of varying heights, one of which is not set back from the exterior wall the requisite distance (§§ 411.2, 411.3, and 411.5).
22. The Project provides 11 stair structures that provide direct access to the roof from private units and one elevator override and mechanical penthouse. The configuration of these roof structures results in a total of 10 roof structures. (Exhibit 23.)
23. The stair structures are approximately 10 feet in height while the elevator override is approximately 18 feet tall. Each of the stair structures is set back from the exterior walls at least one foot for every foot of height. The elevator override, however, is set back approximately 14 feet, eight inches, which does not satisfy the roof structure set back requirement. (Exhibits 23, 31.)
24. The reduced setback is at the rear of the building, which is set back an additional depth of 15 feet from the rear lot line. The combined effect of the set back of the building at grade and the set back of the roof structure on the roof, reduces the visual impact of the proposed elevator overrun from neighboring properties. (*Id.*)
25. The Project also provides the stair structures at a lower height than the elevator overrun in an effort to minimize any impact the stairs may have on neighboring properties. Though the Zoning Regulations require a penthouse to be of uniform height, the intent of the Zoning Regulations is to reduce impacts of development on neighboring property. In this instance, the desired result is better achieved by providing varying heights for the rooftop structures. Reducing the height of the stairs ensures that they will have less of an impact on neighboring property owners than if they were the same height as the elevator overrun, as otherwise required by the Zoning Regulations. (Exhibits 3, 23, 31.)
26. Finally, providing multiple roof structures enables private access to the roof, creating a distinct space that will contribute to the vibrancy of the building and create a new plane of passive activity along Columbia Road. (*Id.*)
27. Due to the siting of the building on the Property and the location and treatment of the proposed penthouse structures, these structures will have a minimal effect, if any, on the light and air of neighboring properties. (*Id.*)

***Variance – Parking and Loading***

28. The property is a landlocked parcel that does not have alley access, requiring all loading and parking to be accessed from one of the Property's two street frontages. (Exhibits 3, 26.)
29. The Property is a triangular lot, which limits the location of the required loading and the efficiency of the below-grade parking level. (*Id.*)
30. Due to pedestrian traffic, DDOT did not support a curb cut along Columbia Road to access loading. A curb cut along Columbia Road would break up the flow of pedestrian traffic, disrupt the flow of the retail, and it would create potential vehicular and pedestrian conflicts. Seventeenth Street, however, is only 50 feet wide, has two-way traffic, and has parallel parking on both sides of the roadway. The street has a functional width of 30 feet, making the roadway too narrow for trucks to access the loading dock. There is an existing loading space along Columbia Road that DDOT agreed to lengthen to 55 feet to accommodate the loading needs of the Project. (Exhibits 23, 25.)
31. The Applicant agreed to work with DDOT to provide all loading from the loading zone on Columbia Road. Although the required loading will not be provided on-site, it will be provided adjacent to the Project, minimizing any impacts resulting from the request for relief. (*Id.*)
32. The Applicant is providing 29 parking spaces in the project, fulfilling the residential parking requirement and is requesting relief from the required parking spaces for the retail uses, as well as relief from providing contiguous compact spaces. Due to the irregularly shaped lot and the space that is lost for ramps and aisle widths, the one below-grade parking level is very inefficient. In order to satisfy the Zoning Regulations' requirement to provide 37 parking spaces for this project, it would necessary to add a second level of below-grade parking. Providing this second level of parking would be inefficient, extremely expensive (putting the financial viability of the Project in question), and would also result in "over-parking" the Project, which is not supported by DDOT. (*Id.*)
33. The irregular shape of the lot and the resulting shape of the garage also make it challenging to provide the compact spaces in contiguous groups of five. In an effort to maximize the amount of parking provided in the garage, the Applicant is providing as many compact spaces as possible despite the fact they do not satisfy Section 2115.4. Granting a waiver from this requirement will not have an adverse impact on the community; on the contrary, it allows the Applicant to provide more on-site parking than it could otherwise accommodate in the garage. (*Id.*)
34. The request for parking relief will not have an adverse effect on neighboring properties. The Project is providing all of the required residential parking and seeks relief only for the retail parking requirement. The Property is ideally served by public transportation with

significant Metrobus service along Columbia Road and nearby 16<sup>th</sup> Street. The proximity to two Metro Stations (the red line station of Woodley Park-Zoo/Adams Morgan, and the green/yellow line station of Columbia Heights) is also likely to discourage vehicular traffic to the site. The Applicant is providing bicycle racks in public space for use by the public. Finally, the retail is located along a popular pedestrian strip. Each of these factors increases the likelihood that the patrons of the stores will either walk to the Property, take public transportation, or bike, rather than arriving by motor vehicle. (*Id.*)

## **CONCLUSIONS OF LAW AND OPINION**

### **Special Exception Relief**

The Applicant has requested special exception relief for the proposed roof structures, which exceed the permitted number, are of varying heights, and do not meet the setback requirement at one point. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.)

As noted, § 777.1 applies the roof structure requirement of § 411 to Commercial Zones. The Applicant seeks specific relief from § 411.2 which requires that all penthouses are subject to the provisions of § 770.6 (which requires a 1:1 setback from all exterior walls). The Applicant also seeks relief from § 411.3, which requires that all penthouses and mechanical equipment be placed in a single enclosure and § 411.5, which requires penthouses to consist of a uniform height.

Subsection 411.11 of the Zoning Regulations provides in part that

Where 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 Section 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. 11 DCMR § 411.11.

The Board finds that the requested roof structure relief will not adversely affect, or be objectionable to, the surrounding properties. The elevator penthouse is located such that there is a sufficient setback between the roof structure and the adjacent property line even if the structure is not set back the requisite distance from the exterior wall on the southern edge of the building.

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As noted in the OP report, “Although set back a distance less than its height from the edge of the south side of the building, its visibility would be minimized by the building’s set back of approximately fifty feet from the property in the vicinity of the elevator override.” To further mitigate the effects of the roof structures, the Applicant is reducing the height of the stairways in order to minimize their effect. Finally, the Applicant is providing multiple enclosures rather than a single enclosure in order to minimize the overall bulk of the roof structure, which, in turns minimizes their effect on neighboring properties. The roof plan minimizes both the height and bulk of the roof structures which serves as a positive feature for neighboring properties.

**Variance Relief**

The Applicant also seeks variance under 11 DCMR § 3103.1 from the parking requirement for retail uses and the loading requirements for residential and retail uses in the C-2-B Zone District as well as relief from the requirement that all compact spaces be placed in groups of at least five contiguous spaces with access from the same aisle. The Board is authorized to grant variances from the strict application of the Zoning Regulations where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” D.C. Official Code § 6-641.07(g) (3) (2001, 11 DCMR § 3103.2. The “exceptional situation or condition” of a property need not arise from the land and/or structures thereon, but can also arise from “subsequent events extraneous to the land.” *De Azcarate v. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978). Relief can be granted only “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.” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Since area variances are sought by the Applicant, the Applicant must comply with the three prong test: (1) that an exceptional situation results in a “practical difficulty” in complying with the Zoning Regulations; (2) the granting of the relief will not be substantial detriment to the public good; and (3) the granting of the variances will not substantially harm the Zone Plan.

The application has satisfied all three elements. As to the first prong the property is subject to an exceptional situation because it is triangular in shape, does not have alley access and has frontage on only two roadways, one of which is only 50 feet wide and the other being a pedestrian corridor. The shape of the lot creates challenges in designing an efficient floor plan complete with both loading and a below-grade garage. Since the Property does not have alley access, all loading and parking maneuvers would need to be accessed from a curb cut along one of the building’s two street frontages. DDOT does not support a curb cut on Columbia Road, thus, the curb cut would have to be provided on 17<sup>th</sup> Street. Seventeenth Street has an effective street

width of 30 feet, which makes it impossible for trucks to undertake the maneuvers necessary to access a loading dock. Accordingly, all loading will take place from a public loading zone on Columbia Road. This loading zone already exists and will be lengthened in order to accommodate the loading needs of the building. Providing loading in public space along Columbia Road is the least disruptive and most effective way to provide loading for the Project.

Given the sensitivity to providing a curb cut on Columbia Road, the parking garage will be accessed via a curb cut along 17<sup>th</sup> Street. The Board finds that the Applicant is faced with a practical difficulty in providing the required number of parking spaces due to the triangular shaped, land-locked property, which creates an inefficient parking layout and areas that cannot be devoted to parking. If another garage level were provided, the Project would provide too much parking, which DDOT discourages. In an effort to maximize the amount of parking provided in the garage, the Applicant is providing as many compact spaces as possible despite the fact they do not satisfy § 2115.4. The Applicant has proffered a TDM and loading management plan which will help mitigate any potential adverse impacts that may arise as a result of granting the requested parking and loading relief. Accordingly, the Board finds that the Applicant is providing enough parking for its residents and it will encourage those patronizing the retail stores to walk, bike, or take public transportation to the stores. For all of these reasons, the Board concludes that the Applicant has satisfied the enumerated standards for variance relief and that granting this variance relief will not impair the intent, purpose, and integrity of the zone plan.

#### **Issues Raised by the Party in Opposition**

The Board notes the various issues raised by AMFRD and finds that a majority of those issues are not relevant to the Board's scope of review in granting the relief requested by the Applicant. As discussed previously, the Board notes that AMFRD was incorrect in its assertion that § 725 of the Zoning Regulations required OP to seek input and analysis from other District agencies, including DHCD, FEMS, and the Department of the Environment ("DDOE"). Subsection 725 is only applicable when an applicant is seeking special exception approval (pursuant to §§ 726-734) for certain uses in the C-2 Zone District that are not permitted as a matter of right. The Applicant in this case is not requesting such special exception relief.

AMFRD also argued that § 774.4 of the Zoning Regulations required the Applicant to provide additional information to the Board. However, § 774.4 only applies when an applicant is seeking relief from the rear yard requirements. Since the Applicant is not seeking such relief, § 774.4 is not applicable in this case.

Finally, AMFRD cited numerous provisions of the Comprehensive Plan that they claimed this project was not consistent with. The Board noted that the proposed uses in the Project, the building height, and building mass were all permitted in the C-2-B Zone District as a matter of right. Therefore, it was not necessary for the Board to conduct further review of the Project's consistency with the Comprehensive Plan.

In regard to the relevant issues that AMFRD raised regarding this application, the Board believes that the approved roof structures are in fact smaller in size than what would be permitted as a matter of right, and thus, do not have an adverse impact on neighboring properties. The Board also notes that the elevator overrun is set back from the property line to such an extent that any impact it may have on neighboring properties is mitigated. In making its decision, the Board considered those factors that pertain to zoning issues including noise, light and air, and traffic. The Board notes that AMFRD did not put forth any evidence to suggest that the requested relief would have a negative impact on any of the above factors, nor did it provide any evidence that it would result in a decrease in land values.

**Great Weight**

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of OP. (D.C. Official Code §§ 1- 309.10(d) and 6-623.04 (2001).) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

ANC 1C recommended approval of the Applicant's special exception and variance requests subject to conditions. The Board agrees with the ANC's recommendation of approval. The Board is aware that the ANC's recommendation was based in part upon the Applicant's promise to propose the conditions attached to the ANC's resolution and in fact the Applicant did so. However, the Board concludes that some of these conditions are not aimed at mitigating potential adverse impacts of the zoning relief sought, but address issues that are not germane to the Board's consideration of this application. Accordingly, the Board only incorporates those conditions that pertain to the zoning relief requested by the Applicant, as noted below.

OP recommended conditional approval of the special exception and variance requests. OP recommended a list of four conditions, which the Board accepts as conditions of its approval. The Board concludes that all of OP's concerns are adequately recognized, addressed, and dealt with in the conditions to this Order.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to an application for variance and special exception relief pursuant to §§ 3103, 411.11 and 3104, from the provisions of §§ 411 (§§ 411.2, 411.3, 411.5), 777, 2101 (§§ 2101.1 and 2115.4), and 2201 (§ 2201.1) to construct a residential building with ground floor retail in the Adams Morgan neighborhood. **THEREFORE**, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the plans at Exhibit 23B, and subject to the following **CONDITIONS, NUMBERED 1 THROUGH 10**. For the purposes of these conditions the term "Applicant" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an owner.

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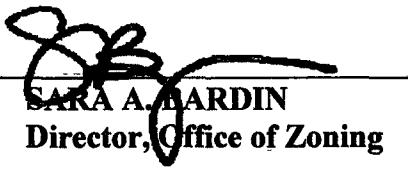
1. At least 29 parking spaces shall be dedicated to the residential tenants/unit owners and their guests. No retail parking spaces will be provided.
2. Each residential lessee or purchaser shall be provided either: (i) a SmarTrip card with a value of \$75; or (ii) a first year membership to Capital Bikeshare or a car sharing service (valued at \$75). The Applicant shall work with DDOT and the car sharing company to determine the feasibility of locating the vehicles in public space, with the final determination being made by DDOT and the car sharing company.
3. All costs related to the parking spaces will be unbundled from the sales price or lease amount of each residential unit.
4. All loading associated with the building shall be located in the Columbia Road public space, with deliveries limited to between 7:00 a.m. and 4:00 p.m., Monday through Saturday only.
5. A Loading Coordinator shall be designated to coordinate residential move-in/move-out, and residents shall be required to notify the Loading Coordinator of upcoming residential moves.
6. No truck idling shall be permitted when using the loading zone on Columbia Road.
7. One bicycle parking space shall be provided for every two residential units.
8. The Applicant shall work with DDOT in determining the width of the curb cut on 17<sup>th</sup> Street.
9. Subject to Public Space approval, the Applicant shall install 16 bike spaces (eight inverted U-racks) on the street for public use.
10. Subject to Public Space approval, the Applicant shall maintain the landscaping along Columbia Road adjacent to the Project.

**VOTE: 5-0-0** (Lloyd J. Jordan, Nicole C. Sorg, S. Kathryn Allen, Jeffrey L. Hinkle and Peter G. May to Approve; one Board seat vacant.)

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

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

**ATTESTED BY:**

  
SARA A. HARDIN

Director, Office of Zoning

**FINAL DATE OF ORDER: September 27, 2013**

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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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

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**PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.**