

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18847 of The Warrenton Group, pursuant to 11 DCMR § 3103.2 for a variance from the off-street parking requirements under § 2101.1, to allow the construction of a new six-story mixed-use building with retail and residential uses in the GA/C-3-A District at 3619 Georgia Avenue, N.W. (Square 3032, Lot 803).

HEARING DATE: November 5, 2014
DECISION DATE: November 5, 2014

ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit 5).

FINDINGS OF FACT

The Board of Zoning Adjustment ("Board" or "BZA") 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") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application.

ANC 1A submitted a resolution in opposition to the application (Exhibits 27 and 34), which indicated that at its duly noticed October 8, 2014 meeting, at which a quorum was present, the ANC voted 6-2-0 to oppose the parking variance. The ANC found that the application met the first two prongs of the variance test and that development of the site would benefit the community in general. However, the ANC voted against the application based on the belief that the development would negatively impact on-street parking availability in the surrounding area and the ANC. The ANC questioned the enforceability of restrictive covenants precluding building residents from obtaining a residential parking permit ("RPP") from the D.C. Department of Motor Vehicles ("DMV"), and also stated that nearby blocks not participating in the RPP program would allow residents to circumvent BZA-imposed restrictions. Finally, the ANC stated that the Applicant should have combined multiple tax lots into a new, larger lot capable of

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Board of Zoning Adjustment

District of Columbia

CASE NO.18847

EXHIBIT NO.39

BZA APPLICATION NO. 18847**PAGE NO. 2**

meeting zoning requirements and/or developed the site as a planned unit development (“PUD”) with public amenities.

The Office of Planning (“OP”) submitted a timely report on October 27, 2014 (Exhibit 31), recommending approval of the application and testified in support of the application at the hearing. The District Department of Transportation (“DDOT”) submitted a timely report on October 29, 2014 (Exhibit 32), indicating its support for the parking relief requested with the condition that the Applicant implement additional and modified transportation demand management (“TDM”) measures. DDOT testified in support of the application at the public hearing.

At the public hearing, Marcus Hedrick submitted a letter (Exhibit 37) and testified on behalf of the Park View United Neighborhood Coalition (“UNC”) in opposition to the application. Mr. Hedrick stated that the parking variance would place additional strain on street parking, and he questioned whether the Applicant’s proposed TDM strategies would be sufficient to provide long-term parking mitigation.

The Board received one letter from an adjacent resident at 770 Princeton Place, N.W. expressing concerns about the impact of the proposal on his property’s exposure to sunlight (Exhibit 35). No person or organization applied for party status. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

CONCLUSIONS OF LAW

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 pursuant to § 3103.2 for an area variance from § 2101.1. Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from § 2101.1, the Applicant has met the burden of proof 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.

The Board is also required to give great weight to issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d).) The Board finds that the Applicant adequately modified its TDM measures to ensure that there will be no detrimental impact to the availability of on-street parking in the area. The Board finds that the RPP restrictions will be imposed either through a mandatory lease provision with penalty of lease termination, or within condominium bylaws, public offering statements, purchase agreements, and deeds. The RPP restrictions will also be recorded as a covenant against the property among the Land Records of the District of Columbia prohibiting any lessee or owner of the property from obtaining an RPP for the building. The Board finds that the RPP restrictions are enforceable and will adequately prevent building residents from parking in the public space surrounding the site to the extent restricted by

BZA APPLICATION NO. 18847

PAGE NO. 3

the applicable RPP regulations. The Board finds that the additional TDM measures incorporate DDOT's recommendations and will adequately provide a long-term solution to mitigating parking impacts in the neighborhood. Furthermore, the Board finds that the Applicant is not required to combine lots or pursue development as a PUD. Therefore, the Board finds that the project meets the third prong of the variance test such that relief can be granted without substantial detriment to the public good. Accordingly, the Board finds that the Applicant's revised TDM measures adequately address the issues and concerns raised by ANC 1A in its written report.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof. It is therefore **ORDERED** that this application is **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 30-C, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall include in its residential leases a provision that prohibits tenants from obtaining a Residential Parking Permit ("RPP") for the Property from the D.C. Department of Motor Vehicles ("DMV"), under penalty of lease termination.
2. The Applicant shall obtain written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant any and all records of that tenant requesting or receiving an RPP for the Property.
3. The Applicant shall monitor tenant compliance with the RPP lease restriction by requesting from the DMV, every six months, any and all records of residential tenants requesting or receiving RPPs for the Property, and shall provide annually to Advisory Neighborhood Commission 1A and the Park View United Neighborhood Coalition the results of its inquiries.
4. Prior to obtaining a certificate of occupancy for the approved building, the Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any lessee or owner of the Property from obtaining an RPP for the building.
5. If the building is developed as a condominium, the Applicant shall include in the condominium bylaws, public offering statement, purchase agreement, and deeds a provision prohibiting unit owners from obtaining an RPP for the Property from the DMV, and shall also include a provision allowing the DMV to release to the Home Owners Association ("HOA") any and all records of those owners requesting or receiving an RPP for the Property. The bylaws shall include a provision that makes it a violation of the HOA rules and/or bylaws for a resident of the Property to obtain an RPP.
6. For the first ten years that the building is open, the Applicant shall offer the choice of either an annual Capital Bikeshare or an annual car share membership for each new tenant. If the lease duration is shorter than one year, the memberships may be reduced to match the duration of the lease. If the building is developed as a condominium, the Applicant or HOA

BZA APPLICATION NO. 18847

PAGE NO. 4

shall offer each new purchaser of a unit the choice of either an annual Capital Bikeshare or an annual car share membership.

7. The Applicant shall provide, as a one-time incentive, up to five bicycle helmets for distribution to new residents.
8. The Applicant or HOA shall provide a preloaded \$50 SmarTrip card for each new tenant/owner at the initial lease or sale of units in the building.
9. The Applicant shall install a TransitScreen in the lobby to keep residents and visitors informed regarding available transportation choices and provide real-time transportation updates.
10. The Applicant shall provide at least nine long-term bicycle parking spaces. The Applicant shall install at least six short-term bicycle parking spaces in public space, subject to DDOT approval.
11. The Applicant shall provide a bicycle repair facility (a basic fix-it station with tools and air pump securely attached to a stand that includes the tools necessary to perform basic bicycle repairs and maintenance) within or adjacent to the long-term bicycle storage area.
12. The Applicant shall post all TDM commitments on-line. The Applicant shall also provide each initial resident with links to CommuterConnections.com, goDCgo.com, WMATA Metrobus routes, and DC Bicycle maps.
13. The Applicant shall designate a member of the building's management or operations staff as the site's TDM Leader. The TDM Leader shall be responsible for advertising and building awareness of TDM programs to residents; making materials related to local transportation information available to residents at move-in; monitoring residents' compliance with the RPP restrictions; enforcing the TDM measures for the building; and serving as a liaison for residents seeking transportation and/or parking options at or near the building.

VOTE: 3-0-2 (Lloyd J. Jordan, Marnique Y. Heath, and Michael G. Turnbull to Approve;
S. Kathryn Allen and Jeffrey L. Hinkle not present, not voting.)

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. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 9, 2015

BZA APPLICATION NO. 18847

PAGE NO. 5

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

BZA APPLICATION NO. 18847

PAGE NO. 6

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