

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH Street, N.W.
Washington, D.C. 20001

Appeal of Adams Morgan for Reasonable Development

Appeal No. 188888

PRE-HEARING STATEMENT OF

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Appellant alleges that the Zoning Administrator (“ZA”) erred in approving a building permit for the construction of a mixed use building at 1700 Columbia Road, N.W., because the proposed development (1) fails to provide the required rear yard and (2) includes rooftop structures in violation of the zoning regulations. As will be explained, both arguments are without merit. Therefore, the Board of Zoning Adjustment (“Board”) should affirm the ZA’s decision.

FACTS

The project at issue in this case is explained in detail in the Board’s order in Case No. 18506, *Application of Ontario Residential LLC*, attached as **Exhibit A**. The development project is for a six-story mixed use building at 1700 Columbia Road, N.W. The property is zoned C-2-B.

In Case No. 18506, the property owner, Ontario Residential LLC (“Applicant”), filed an application with the Board requesting relief from various zoning requirements. In an order dated September 27, 2013, the Board granted the requested relief from various zoning requirements. Appellant, a party in that case, filed a motion for reconsideration, which the Board denied in an order dated January 8, 2014.¹ Appellant then appealed the Board’s decision to the D.C. Court of Appeals.

¹ BZA Case No. 18506-A (January 8, 2014).

The Court of Appeals affirmed the Board's order and grants of relief except for the special exception relief the Board granted from two zoning regulations pertaining to rooftop structures – subsection 411.3, requiring that all roof structures be contained in a single enclosure, and subsection 411.5, requiring that all walls enclosing roof structures be of a uniform height². The Court of Appeals vacated these two grants of relief and remanded these requests for special exception relief to the Board for reconsideration.³

Before the Board acted on the decision of the Court of Appeals, Applicant modified the roof structure to comply with the single enclosure and uniform height requirements of subsections 411.3 and 411.5. As a result, Applicant no longer needed relief from these zoning requirements as the modified rooftop structure is allowed as a matter of right.

The ZA analyzed the building permit with the revised roof structure and approved the project as compliant with all zoning requirements.

In response, Appellant launched three appeals of the revised project. First, Appellant filed a request for an immediate hearing in Case No. 18506 alleging that the Board was required to reconsider the application's request for relief from subsections 411.3 and 411.5 of the zoning regulations despite Applicant's modification to the roof structures to comply with these requirements. At a public meeting on November 18, 2014, the Board unanimously denied this motion as moot since Applicant's modifications removed the need for any additional zoning relief.⁴

Second, Appellant appealed the issuance of the building permit to the Office of Administrative Hearings ("OAH").⁵ In a Final Order dated December 8, 2014, Judge Mangan dismissed this appeal as baseless.

Third, Appellant filed this appeal with the Board, alleging that the building permit was wrongly issued because the project (1) fails to provide the required rear yard and (2) fails to comply with several zoning requirements for rooftop structures.

² Section 411 applies to this project because it is in a commercial zoning district and subsection 777.1 subjects all commercial zoning districts to Section 411.

³ *Adams Morgan for Reasonable Development v. District of Columbia Board of Zoning Adjustment*, No. 13-AA-1356 (D.C. June 5, 2014), attached as **Exhibit B**.

⁴ Transcript, November 18, 2014 Public Meeting, Board of Zoning Adjustment, pp. 10-11, attached as **Exhibit C**.

⁵ *Adams Morgan for Reasonable Development v. Department of Consumer and Regulatory Affairs*, Case No. 2014-DCRA-00050 (OAH December 8, 2014).

ARGUMENT

1. The project provides the required rear yard

Appellant asserts that the project's "garage structure and ramp occupies a large portion of the required rear yard" in violation of subsection 199.1, defining "rear yard", and subsection 774.1, prescribing a minimum fifteen foot (15 ft) rear yard for properties in the C-2-B zone. (Appellant's Appeal, December 30, 2014, at 1). Appellant's interpretation fails to incorporate all of the relevant provisions of the zoning regulations as regard required rear yards. As a result, Appellant's assertions are incorrect.

The definition of "rear yard" in subsection 199.1 of the zoning regulations specifies that the rear yard "shall be unoccupied, except as specifically authorized in this title [the zoning regulations]". Section 2503, "Structures in Required Open Spaces", contains these authorized exceptions:

- Subsection 2503.1 clarifies that "unoccupied" only applies to structures above grade: "Except for the structures and exceptions specified in this section, every part of a yard required under this title shall be open and unobstructed to the sky *from the ground up.*" (emphases added)
- Subsection 2503.2 extends this exception to include structures that are less than four feet (4 ft.) above grade: "a structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, *may occupy any yard required* under the provision of this title." (emphases added)
- Subsection 2503.2 also exempts railings required by the D.C. Construction Code from counting as obstructions in a required yard
- Subsections 2503.3 and 2503.4 exempt fences in compliance with the D.C. Construction Code and stairs leading to the entry story of a building, together with any railings required by the D.C. Construction Code from counting as obstructions in a required yard.

Thus the zoning regulations clarify that a required rear yard may in fact have multiple structures and still comply with the requirement that the required rear yard be "unoccupied."

The project provides the fifteen foot rear yard required by subsection 774.1, as can be seen in the architect's plan of the ground level of the project attached as **Exhibit D**. Exhibit D also illustrates that all structures identified in the required rear yard are less than four feet (4 ft.)

above grade and so compliant with the exception provided by subsection 2503.2. The garage is underground and the retaining wall supporting the roof over the access ramp to the garage is forty-two inches (42 in.) or three-and-a-half feet (3.5 ft.) high. These structures are therefore permitted under subsection 2503.2 and so compliant with the rear yard requirements of subsections 199.1 and 774.1, contrary to Appellant's assertion.

2. The project's rooftop structure, as modified, comply with the zoning regulations

Appellant alleges that the project's roof structure, as modified for the building permit, violates four provisions of Section 411 governing roof structures: 411.3, 411.5, 411.6 and 411.8. (Appellant's Appeal, December 30, 2014, at 2-3). Appellant is mistaken. The building permit approved the project as modified to comply with subsections 411.3 and 411.5. Subsections 411.6 and 411.8 do not apply to this project.

As illustrated in **Exhibit E**, the architect's plan for the roof structure, with the original plan on the left and the modified plan on the right, the modified roof structure, all of the roof structures are in a single continuous enclosure. This design therefore complies with subsection 411.3, which requires all roof structures be place in one enclosure.

As illustrated in **Exhibit F**, the architect's elevation for the roof structure, with the original elevation on the bottom and the modified elevation above, all of the enclosing walls are of a uniform height. This design therefore complies with subsection 411.5, which requires all enclosure walls be of a uniform height.

Subsection 411.6 only applies to roof structures "consisting solely of mechanical equipment". This provision does not apply to this project because the roof structure includes stairwells as well as mechanical equipment.

Subsection 411.8, requiring roof structures, and the area contained within enclosure walls, not exceed one-third of the total roof area, only applies to "those districts where there is a limitation on the number of stories". This provision does not apply to this project because it is in the C-2-B zone district which has no height limit by stories per subsection 770.1.

This roof structure, as provided in the building permit application, therefore complies with the requirements for rooftop structures of Sections 411 and 770 of the zoning regulations, contrary to Appellant's allegations.

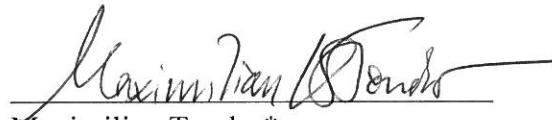
CONCLUSION

For the reasons stated above, the project complies with the zoning regulations despite Appellant's claims to the contrary. The project provides the required rear yard that is "unoccupied" except for structures specifically permitted by the zoning regulations in required open spaces. The project, with the modified roof structure provided in the building permit application, also complies with the rooftop structure requirements of the zoning regulations. These were the bases for the ZA's decision to approve the building permit for this project.

For these same reasons, DCRA therefore requests that the Board affirm the ZA's decision as correctly interpreting the zoning regulations as applied to this project.

Respectfully submitted,
CHARLES THOMAS
Interim General Counsel
Department of Consumer and Regulatory Affairs

Date: 1/8/2015


Maximilian Tondro*
Assistant General Counsel
Office of General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., Suite 5266
Washington, D.C. 20024
(202) 442-8403 (office)
(202) 442-9477 (fax)
maximilian.tondro@dc.gov

*Attorney for Department of
Consumer and Regulatory Affairs*

* Admitted to practice in Maryland. Practicing in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(4).

CERTIFICATE OF SERVICE

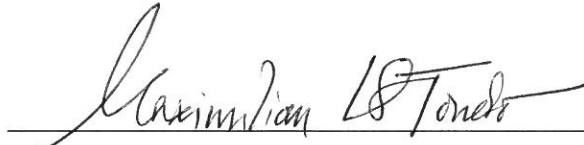
I hereby certify that on this 8th day of January 2015, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

Chris Otten
Adams Morgan for Reasonable Development
1830 Belmont Road, N.W.
Washington, D.C. 20009
admno4rd@gmail.com
chrisotten2@yahoo.com

Ontario Residential, LLC
c/o Christine Roddy, Esq.
Goulston & Storrs
1999 K Street, N.W., Suite 500
Washington, D.C. 20006
croddy@goulstonstorrs.com

Billy Simpson, Chair
Advisory Neighborhood Commission, ANC-1C
1C06@anc.dc.gov

Date: 1/8/2015



Maximilian Tondro

Pre-Hearing Statement of Department of Consumer and Regulatory Affairs

BZA Appeal No. 18888

Appeal of Adams Morgan for Reasonable Development

Exhibit A

BZA Case No. 18506, *Application of Ontario Residential, LLC*

Decision and Order, September 27, 2013

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

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.

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

ZONING COMMISSION

District of Columbia

CASE NO. order-18506

EXHIBIT NO.

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 17th 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 17th 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).¹
 - 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.

¹ 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.

BZA APPLICATION NO. 18506
PAGE NO. 5

- 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 17th 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 17th 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 17th 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 16th 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.