

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 17th 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 17th 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 17th 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. GARDIN
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.

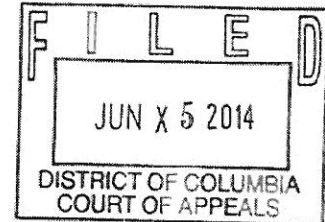
Pre-Hearing Statement of Department of Consumer and Regulatory Affairs

BZA Appeal No. 18888

Appeal of Adams Morgan for Reasonable Development

Exhibit B

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



**District of Columbia
Court of Appeals**

No. 13-AA-1356

ADAMS MORGAN FOR REASONABLE DEVELOPMENT,
Petitioner,

BZA 18506

v.

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
Respondent,

and

ONTARIO RESIDENTIAL, LLC,
Intervenor.

BEFORE: Glickman and Easterly, Associate Judges, and Nebeker, Senior Judge.

J U D G M E N T

On consideration of petitioner's motion for summary reversal or remand titled as a motion for summary disposition and the opposition thereto, petitioner's reply, the petition for review, and the record on appeal, and it further appearing that petitioner's motion only challenges the grant of the special exceptions granted for the roof structures, it is

ORDERED that the motion for summary reversal is granted to the extent that the Board of Zoning Adjustment failed to make any specific findings as to impracticability prior to granting the special exceptions to 11 DCMR § 411.3 and .5 permitting multiple roof enclosures at two separate heights. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Under 11 DCMR § 411.11, the Board of Zoning Adjustment was required to find that compliance with the single enclosure and height requirements under 11 DCMR §§ 411.3 and .5 is impracticable before granting special exceptions. Accordingly, we remand this case for further findings on these issues. *See generally Nat'l Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n.2 (D.C. 2000) (explaining that this court "must uphold

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decision made by the Board *if* they rationally flow from findings of fact supported by substantial evidence in the record as a whole”) (emphasis added). However, the Board of Zoning Adjustment was not required to find the proposed set-back, *see* 11 DCMR § 411.2 (§ 770.6), impracticable before granting a special exception. *See* 11 DCMR § 411.11 (requiring a finding of impracticability only for §§ 411.3-.6 before empowering the Board of Zoning Adjustment to grant a special exception). Because the Board of Zoning Adjustment properly considered the requirement of 11 DCMR § 3104, it need not make additional findings in this respect. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is vacated in part and remanded for further proceedings consistent with this judgment.

ENTERED BY DIRECTION OF THE COURT:


JULIO A. CASTILLO
Clerk of the Court

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