

Appeal No. 19080 of Adams Morgan Neighbors for Action, pursuant to 11 DCMR §§ 3100 and 3101, from a June 5, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1410380, to allow the construction of a hotel in the RC/C-2-B District at premises 1770 Euclid Street N.W. (Square 2560, Lots 127, 872, and 875).

HEARING DATE: October 6, 2015

DECISION DATE: October 6, 2015

DECISION AND ORDER

This appeal was filed on July 9, 2015 with the Board of Zoning Adjustment ("Board"). The appeal challenged the decision of the Department of Consumer and Regulatory Affairs ("DCRA"), after review by the Zoning Administrator ("ZA"), to issue a building permit authorizing the construction of a hotel at 1770 Euclid Street, N.W. The Appellant claimed that the building did not have the 15-foot rear yard setback required in the C-2-B district, pursuant to 11 DCMR § 774.1. In the alternative, Appellant claimed that DCRA erred in issuing the building permit because the Reed-Cooke Overlay ("Overlay") District required the property to have a 25-foot rear yard setback, and that Owner Adams Morgan Hotel Owner, LLC, failed to obtain a special exception pursuant to 11 DCMR § 1403.1 for uses otherwise prohibited within the Overlay District. After allowing the parties an opportunity to be heard, the Board found no error in DCRA's decision to issue the permit and denied the appeal. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning ("OZ") scheduled a hearing on October 6, 2015. In accordance with 11 DCMR § 3112.13 and 3112.14, OZ mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission ("ANC") 1C (the ANC in which the subject property is located), the Owner, and DCRA.

Parties

The Appellant is Adams Morgan Neighbors For Action ("AMNFA"), an unincorporated non-profit citizens association created for the civic purpose to protect the personal and property interest of Adams Morgan residents, particularly as they relate to the Adams Morgan Hotel project. AMNFA member Cassandra Joseph spoke for the group at the proceedings.

DCRA appeared during the proceedings and was represented by Maximilian Tondro, assistant general counsel of DCRA.

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The owner of the subject property, Adams Morgan Hotel Owner, LLC ("Owner"), also appeared and was represented by its attorney Norman M. Glasgow, Jr. Owner is automatically a party under 11 DCMR § 3199.1.

FINDINGS OF FACT

The Property

1. The subject property is located at 1770 Euclid Street, N.W., ("Property"). It is a corner lot that abuts on three streets—Columbia Rd., N.W., on the northwest; Euclid St., N.W., on the north; and, Champlain St., N.W., on the east.
2. After numerous public hearings and extensive public debate, the Zoning Commission approved a Planned Unit Development ("PUD") and Zoning Map Amendment placing the Property to the RC/C-2-B zone district by Order No. 11-17, effective March 15, 2013. The approved PUD will redevelop the Property into a boutique hotel, incorporating the First Church of Christ, Scientist, building that was on the Property and vacant. A copy of Order No. 11-17 was entered into the record on this Appeal as Exhibit No. 15A.
3. Order No. 11-17, as approved by the Zoning Commission, required Owner to construct the PUD project consistent with the plans submitted to the Zoning Commission and entered in the record for Order No. 11-17 as Exhibit 195A. The full Exhibit 195A before the Zoning Commission was incorporated by reference into the record on this Appeal in the prehearing statements of Owner, Exhibits Nos. 15 and 20, and DCRA, Exhibit No. 21. Owner and DCRA also included copies of those portions of Exhibit 195A that were particularly relevant to the issues in this Appeal in Exhibits Nos. 15, 20 and 21.
4. In separate proceedings, by Order No. 12-17 the Zoning Commission amended the Overlay District to allow a hotel use at the site. The amendments ensured the preservation and adaptive reuse of the First Church of Christ, Scientist, building through a planned unit development process. A copy of Order No. 12-17 was entered into the record on this Appeal as Exhibit No. 15C.

The Building Permit

5. Owner filed an application with DCRA for the issuance of a building permit at the Property on July 30, 2014, to undertake work at the site consistent with the aforementioned plans.
6. DCRA routed the application to the appropriate offices and agencies, including to the ZA, for review and approval. After review, Permit No. B1410380 was issued on June 5, 2015.

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The Appeal

7. On July 9, 2015, Appellant filed this appeal challenging DCRA's decision to issue the building permit. The Appellant claimed that the building did not have the 15-foot rear yard setback required in the C-2-B district, pursuant to 11 DCMR § 774.1. In the alternative, Appellant claimed that DCRA erred in issuing the building permit because the Overlay District required the property to have a 25-foot rear yard setback, and that Owner failed to obtain a special exception pursuant to 11 DCMR § 1403.1 for uses otherwise prohibited in the Overlay District.

Evidence Adduced at the Hearing

8. In her testimony, Appellant disputed the approval of the PUD, generally, arguing that that the hotel did not comply with the requirements of the Overlay District. Specifically with respect to the rear yard setback, Appellant disputed that the rear of the building was Champlain St., N.W. Instead, Appellant asserted that, because the main entrance of the hotel will be on Euclid St., N.W., that should also be considered the front of the building for purposes of determining compliance with the rear yard requirements. The rear of the building, according to Appellant, should then be the point directly opposite to the hotel entrance. That point is "face on line" with the Property, and, therefore, Appellant argues, does not meet the rear yard requirement. Additionally, because that point abuts a residential zone, Appellant argued it did not comply with the Overlay District. Appellant further argued that the Zoning Regulations did not permit the Owner to select Columbia Road, N.W., as the front of the Property for the purposes of calculating the rear yard, but then select Euclid St., N.W., as the front of the building for purposes of measuring the building height.
9. DCRA's representative testified that when a property, like the subject property abuts three streets, the Zoning Regulations permit an Owner to select which abutting street to use as the front for purposes of calculating the rear yard. In this case, the Owner chose Columbia Road, N.W., as the front, which makes Champlain St., N.W., the rear. Consistent with the Zoning Regulations, the rear yard is properly measured starting at the center line of Champlain Street, N.W., to the rear lot line. The street right of way of Champlain Street, N.W., is 50 feet. The distance from the center line of the street to the Property line is 25 feet—10 feet in excess of the rear yard required. Additionally, DCRA explained that the Zoning Commission had approved a Text Amendment to the Overlay District specifically approving a hotel use of the Property. *See* Exhibit 15C. DCRA further noted that the Zoning Commission reviewed this PUD extensively and approved the site plans for which the building permit was issued. As a result, no rear yard relief was necessary, and DCRA, after review, properly issued the building permit.
10. The Board credits the ZA's testimony that the Zoning Regulations permit an applicant, like Owner in this case, to choose a street frontage for purposes of calculating the rear yard setback, regardless of where the building entrance may be. Additionally, the ZA testified that the Zoning Regulations permit the building height to be calculated from another street frontage.

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11. The Owner's representative testified that the plans submitted to DCRA were extensively reviewed and approved by the Zoning Commission. For the reasons stated by DCRA, as reflected in the approved site plans, the rear yard complied fully with the Zoning Regulations. The Owner further pointed to the Text Amendment approved by the Zoning Commission amending the Overlay District to explicitly permit the hotel use approved by the PUD.
12. John Boardman, Executive Secretary-Treasurer of United Here Local 25, an organization representing hotel workers in the D.C. metropolitan area submitted a prepared statement in support of Appellant. Mr. Boardman was not present at the hearing. The Board permitted United Here Local 25 employee, Ian Elder, to read the statement into the record. The statement disputed that the Zoning Regulations permitted Owner to select Columbia Road, N.W., as the front of the Property for the purposes of calculating the rear yard, but then select Euclid St., N.W., as the front of the building for purposes of measuring the height. Mr. Boardman further asserted that it was unreasonable to identify Columbia Rd., N.W., as the front of the Property for purposes of calculating the rear yard setback because Columbia Rd., N.W., abuts the smallest portion of the Property in comparison to those portions abutted by Euclid St., N.W., and Champlain St., N.W.

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g) to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. The Board's review of such decisions is not limited to the documents presented to the administrative decision-maker. Rather, the Board conducts a full evidentiary hearing where the parties may present and cross examine witnesses and introduce evidence. The Board has carefully considered the testimony and evidence that was presented in this case.

Property's Compliance With C-2-B District Rear Yard Requirements

Section 774.11 of the Zoning Regulations provides that

In the case of [...] a corner lot abutting three (3) or more streets, the depth of the rear yard may be measured from the center line of the street abutting the lot at the rear of the building or other structure.

Section 199.1 provides that

When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.

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The Board has previously established that the location of the rear yard derives from the location of the "rear lot line" and the "Zoning Regulations contemplate that any [rear lot] line should be drawn perpendicularly from its starting point [which is the middle of the chosen street frontage]...A rear lot line must be directly opposite the chosen street frontage." BZA Appeal No. 18152, at 7.

In this case, the subject property abuts three streets—Columbia Road, N.W., on the northwest; Euclid Street, N.W., on the north; and Champlain Street, N.W., on the east. Consistent with Section 199.1, Owner chose Columbia Road, N.W., as the front. A perpendicular line drawn from the Columbia Road, N.W., frontage, east ends in the Property line bounded by Champlain Street, N.W., thereby making Champlain St., N.W., the rear lot line. As a result, the Project's rear yard is derived from Champlain St., N.W. Consistent with Section 774.11, therefore, the Owner properly measured the rear yard as starting at the center line of Champlain Street, N.W. The street right of way of Champlain Street, N.W., is 50 feet. Therefore, 25-feet of the Champlain Street, N.W., right of way abutting the Property (from the center line to the Property) may be included in the calculation of the required rear yard. The Project, therefore, has a 25-foot rear yard—10 feet more than the 15-foot yard required by Section 774.1.

The Zoning Administrator's interpretation and construction of the Zoning Regulations is accorded great deference "unless clearly erroneous or inconsistent with the regulations." *See Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 968 (D.C. 2002); *Ass'n For Pres. of 1700 Block of N St., N.W. & Vicinity v. D.C. Bd. of Zoning Adjustment*, 384 A.2d 668, 671 (D.C. 1978). In this case, the Zoning Administrator's determination that the plans, as approved by the Zoning Commission, met the rear yard requirement for a C-2-B District was, therefore, consistent with the Zoning Regulations.

Reed-Cook Overlay District

The Overlay District was amended in February 2013 in proceedings separate from those related to the approval of the PUD. Those amendments specifically allow the hotel use approved by the PUD.

The General Provisions of the Overlay were amended to establish that a purpose of the Overlay was to "[e]nsure the preservation and adaptive reuse of the First Church of Christ Scientist building located on Lot 872 of Square 2560, through a planned unit development process." 11 DCMR § 1400.2(d); *see also* 11 DCMR § 1401.4 (permitting a hotel on the PUD site and allowing for restaurant and bar uses on the property); and § 1402.3(amending the Overlay's height and bulk requirements to accommodate the PUD). The PUD, therefore, is an approved use in the Overlay and no special exception under 11 DCMR § 1403.1 was required.

For reasons discussed above, it is hereby **ORDERED** that the **APPEAL** is **DENIED**.

Vote taken on October 6, 2015.

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VOTE: 3-0-0 (Marnique Y. Heath, Frederick L. Hill, Marcie Cohen to Deny; No other Board member (vacant) participating)

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

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

ATTESTED BY: _____
SARA BENJAMIN BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOME FINAL PURSUANT TO § 3125.6.

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As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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