

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19121-A of The JBG Companies,¹ as amended,² pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, and a special exception from the roof structure setback requirements under §§ 411 and 777.1, to implement the second phase of a mixed-use development in the C-3-C District at premises Square 672, Lot 260 (Assessment and Taxation Lots 860-862).

HEARING DATE: December 1, 2015

DECISION DATE: December 1, 2015

CORRECTED SUMMARY ORDER³

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) The Applicant indicated in its Prehearing Statement (Exhibit 28) that the originally sought special exception relief related to roof structure height would no longer be required under the new regulations approved by the Zoning Commission in Case No. 14-13. Under the new regulations, however, the Applicant noted that a special exception would be required from the roof structure setback requirements of § 411.18(c)(3).

¹ The named Applicants to this case were 50 Patterson Office, L.L.C., 1250 First Street Office, L.L.C., and 51 N Residential, L.L.C., all of which are controlled by The JBG Companies.

² In the Applicant's Prehearing Statement (Exhibit 28), it noted that the originally sought special exception relief related to roof structure height would no longer be required under new regulations approved by the Zoning Commission in Case No. 14-13 and that, instead, a special exception from the new setback requirements would be required. At the public hearing, the Applicant indicated that it wished to amend the application to proceed under the newly approved regulations. The application was therefore amended to remove the request for special exception relief for enclosing walls of unequal height under § 411.5 and to include a request for special exception relief from the new setback requirements of § 411.18(c)(3). The caption has been amended accordingly.

³ The original summary order for this case incorrectly cited certain provisions of the new regulations based on a prior version of the text approved by the Zoning Commission in Case No. 14-13. This order has been issued to correct those discrepancies.

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At the public hearing, the Applicant clarified that it wished to amend its application to proceed under the newly approved regulations, although those regulations were not yet in effect, as a Notice of Final Rulemaking had not yet been published in the *D.C. Register*. The application was therefore amended to remove the request for special exception relief under § 411.5 and to instead include a request for special exception relief from the new setback requirements of § 411.18(c)(3). A Notice of Final Rulemaking for Z.C. Case No. 14-13 was published in the *D.C. Register* on January 8, 2016, and the new regulations went into effect on that date. (60 DCR 390.)

The Board of Zoning Adjustment ("Board") 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") 6C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C filed a report on November 24, 2015 indicating that at a regularly scheduled, duly noticed public meeting on November 12, 2015, with a quorum of Commissioners present, the ANC voted 4-0-0 to recommend approval of the application. (Exhibit 30.) The ANC indicated that it reviewed the changes included in the Applicant's prehearing statement and recommended approval of the application based on the revisions to the original application.

The Office of Planning ("OP") submitted a timely report on November 24, 2015, recommending approval of the application. (Exhibit 29.) During the public hearing of December 1, 2015, OP testified that it would support the amended request for relief under the newly approved regulations. The District Department of Transportation ("DDOT") submitted a timely report on November 24, 2015 indicating that it had no objection to the Applicant's requests for variance and special exception relief. (Exhibit 31.) DDOT requested that the Applicant unbundle the cost of office and residential parking from the lease of office space and residential units or purchase of residential units and, instead, set the parking price at market rate. The Applicant indicated at the public hearing that it would follow DDOT's recommendation.

A letter in support was submitted to the record from Robin-Eve Jasper on behalf of the NoMa Business Improvement District. (Exhibit 33.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR §§ 2101.1 and 2201.1, the Applicant has met the burden of proving under § 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.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception from the roof structure setback requirements under §§ 411 and 777.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411, and 777.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28C.**

VOTE: 3-0-2 (Marnique Y. Heath, Robert E. Miller, and Frederick L. Hill, to APPROVE; Jeffrey L. Hinkle not participating and one Board seat vacant.)

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 A. FARDIN
Director, Office of Zoning

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FINAL DATE OF ORDER: January 15, 2016

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.

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