

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

Appeal of Advisory Neighborhood Commission 3D

BZA Appeal 19274

DCRA'S PRE-HEARING STATEMENT

Appellant alleges that the Zoning Administrator (the “ZA”) erred in issuing a letter dated March 24, 2016 to Washington Real Estate Investment Trust (the “Owner”) that confirmed the ZA’s determination that (the “**Determination Letter**”¹) a proposed redevelopment (the “**Project**”) of the Spring Valley Shopping Center (Square 1500, Lots 1-3) located in the C-2-A Zone District (the “**Property**”) was compliant with the Zoning Regulations. Appellant alleges that the ZA erred because (i) the Project does not fall under Section 2120 of the Zoning Regulations exempting historic resources from parking requirements because the Project includes a building not attached to an historic resource; (ii) the Project fails to retain the number of existing parking spaces as required by Section 2100.10(a) of the Zoning Regulations; and (iii) the Project does not provide bicycle parking.

Respondent, the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”), asserts that the ZA correctly issued the Determination Letter stating that the Project fully complied with the Zoning Regulations because (i) the Project does fall under Section 2120 as an addition attached to an existing building that is part of a complex of buildings that collectively constitute an historic resource; (ii) the Project provides more than the 64 existing parking spaces required to be retained by Section 2100.10(a); and (iii) the Project is not required to provide bicycle parking but has agreed to provide far more than would be required.

Therefore, DCRA respectfully requests that the Board affirm the ZA’s Determination Letter finding that the Project complies with the Zoning Regulations and deny this Appeal.

BACKGROUND

The existing conditions of the Property are shown on the Land Title Survey dated May 2, 2014 and the Existing Site Plan dated September 25, 2015 which are both included as

¹ BZA Appeal 19274, Exhibit 6 (Determination Letter).

attachments to the Determination Letter.² The Property currently has five principal buildings (not including a small one-story building on 49 Street, NW), three of which are attached (4872, 4866, and 4860 Massachusetts Avenue, NW), totaling approximately 75,265 square feet spread over three record lots. These five buildings were listed on the National Register of Historic Places (the “**National Register**”) as a single landmarked complex.³ The Project will consolidate these three existing records lots into a single record lot and add to the complex a new building attached to 4860 Massachusetts Avenue, N.W. (“**4860 Massachusetts**”) of approximately 15,159 square feet (the “**Addition**”).⁴

APPELLANTS’ ALLEGATIONS

Appellants allege that the ZA made the following errors in issuing the Determination Letter:

- 1) The Addition is not attached to an existing building and therefore does not fall under Section 2120.01 of the Zoning Regulations;
- 2) The Project fails to provide the number of parking spaces that Appellant argues should be the minimum provided; and
- 3) The Project provides no bicycle parking spaces in contradiction to District policy.

ARGUMENT

DCRA asserts that Appellant’s allegations are without merit and that Appellant has failed to meet its burden of proof to show that the ZA erred in determining that the Project complied with the Zoning Regulations. DCRA asserts that the ZA correctly reviewed the Project and that Appellant’s allegations are incorrect because

- Section 2120 does apply to the Project because the Addition is attached to 4860 Massachusetts.
- The Project proposed 65 parking spaces exceed the 64 existing legal parking spaces required to be retained under Section 2100.10(a). The eight remaining existing parking spaces are on public space without permission and in contravention of DDOT’s policy, as well as against the intent of Section 2116.4 of the Zoning Regulations that prohibit

² BZA Appeal 19274, Exhibit 6 (Determination Letter), at 5 and 6.

³ BZA Appeal 19274, Exhibit 8 (National Register Listing), at 4.

⁴ BZA Appeal 19274, Exhibit 6 (Determination Letter), at 5.

parking between a street lot line and the building façade or a line drawn therefrom and parallel to the closest street.

- Appellant’s reliance on plans that were prepared almost three decades ago for proposed renovations is misplaced as these plans were conceptual (and not plans submitted to the District) and have some inconsistencies that undermine their reliability.
- The Project is not required to provide bicycle parking spaces, but has agreed to provide at least eight bicycle parking spaces, far exceeding the two bicycle parking spaces that would potentially be required per Appellant’s interpretation.

1. Section 2120 applies to the Addition because it is to be attached to 4860

Massachusetts

The Addition is attached to 4860 Massachusetts, the southeast wall of which abuts the northwest wall of the Addition, as can be seen in the Proposed Site Plan dated September 25, 2015 that is included as an attachment to the Determination Letter.⁵ The Historic Preservation Review Board (the “**HPRB**”), in reviewing the Project, focused on this connection between 4860 Massachusetts and the Addition, and requested that “the connection [of the Addition] to 4860 Massachusetts (the adjacent one story bank building) be restudied [by the Historic Preservation Office (“**HPO**”)] to provide a separation or otherwise ease the transition between them.”⁶ The July 2015 HPRB Staff Report (**Attachment A**) reported that the revisions incorporated into the Project created a “lighter, one-story connection [from the Addition] to 4860 Massachusetts” which was preferable to separating the buildings by a passageway. A subsequent HPRB Staff Report⁷ proposed two options, the first of which retained this connection between the Addition and 4860 Massachusetts and the second that proposed a passageway separating these buildings. At its October 22, 2015 meeting, the HPRB approved the revised Project and “expressed a preference for option 1 which called for the new building [the Addition] to abut the bank

⁵ BZA Appeal 19274, Exhibit 6 (Determination Letter), at 7.

⁶ HPRB Staff Report and Recommendation re: 4820-4874 Massachusetts Avenue and 4301 49th Street, N.W., HPA Number 15-252, for July 23, 2015 HPRB Meeting (**Attachment A**).

⁷ BZA Appeal 19274, Exhibit 25A (Exhibit A to Intervenor’s Pre-Hearing Statement) - HPRB Staff Report and Recommendation re: 4820-4874 Massachusetts Avenue and 4301 49th Street, N.W., HPA Number 15-252, for October 22, 2015 HPRB Meeting – at 5-6.

building [4860 Massachusetts] to the west”, with final approval delegated to HPO.⁸ The plans and elevations for the Project, particularly details 2 and 5 on Sheet A3.01, clearly show that the Addition is physically attached to 4860 Massachusetts.⁹

This conclusively rebuts Appellant’s allegation that the Addition is a “new unattached structure” that Section 2120.1 excludes from coverage by Section 2120. As “attached” and “unattached” are not defined in the Zoning Regulations, the definition in Webster’s Dictionary applies, which includes the concepts of “fastening,” “joining,” and “connecting”. As the plans and elevations show, and the HPRB reports confirm, the Addition is fastened, joined and connected to 4860 Massachusetts. The ZA therefore correctly determined that Section 2120 applied to the Addition. Appellant’s allegation is without merit and should be dismissed.

Since Section 2120 applies to the Addition and the Project, the size of the parking spaces provided may be reduced to eight feet by sixteen feet (8’ x 16’) clear of any obstructions or aisles per Section 2120.5.

2. The ZA correctly determined that the number of existing parking spaces on the Property is 72 and properly excluded from these 72 spaces the eight existing parking spaces that are located half on public space

Appellant alleges that the ZA erred in determining that the Project must only provide 64 parking spaces because Appellant asserts that the Property had at least 76 parking spaces and not the 72 currently existing spaces. The ZA relied on the site plan that showed the existing number of parking spaces as 72. Appellant relies on two parking layout plans¹⁰ to assert that the Property had 76+/- spaces in 1987, but it is unclear the purpose for which these parking plans were created and the accuracy of these plans, especially as these plans did not show the layout of the alleged existing 76+/- spaces, but instead showed conceptual plans for providing a different amount of parking on the site.

Furthermore, one of these plans does not show the eight spaces that are located half in public space along 49th Street, but instead show these spaces as wholly within the property line of the Property, while the other plan is unclear and difficult to read. This clearly contradicts Appellant’s

⁸ BZA Appeal 19274, Exhibit 25A (Exhibit A to Intervenor’s Pre-Hearing Statement) - HPRB Actions, October 22 and 29, 2015 Meetings - at 1-2.

⁹ BZA Appeal 19274, Exhibit 25B (Exhibit B to Intervenor’s Pre-Hearing Statement).

¹⁰ BZA Appeal 19274, Exhibit 23 (Attachment C to Appellant’s Pre-Hearing Statement), at 23 and 24 (please note that IZIS lists this as Exhibit 23, but the pdf downloaded is labeled Exhibit 25).

assertion that aerial photographs showed parking crossing public space and suggests that these parking plans were more conceptual plans than construction documents and not necessarily reliable as evidence of the preexisting parking layout. The ZA therefore reasonably relied on the existing parking layout of 72 spaces as a baseline.

From this subtotal of 72 parking spaces, the ZA then correctly subtracted the eight parking spaces that intruded into the public space right-of-way along 49th Street for half of the length of each parking space (contrary to Appellant’s description as “slight” intrusions¹¹), because the ZA determined that these were not legal parking spaces because no public space permit had been obtained to authorize their projection into public space. The ZA recognized that Department of Transportation policy prohibits parking within the public space right-of-way, which was confirmed by an email communication from DDOT to the Property Owner/Intervenor’s Counsel.¹² Moreover, these eight spaces violate the intent of Section 2116.4 of the Zoning Regulations that bars parking between a street and a building façade, although since the buildings along 49th Street are built to the street lot line, Section 2116.4 does not directly apply to these eight parking spaces that cross the street lot line. Therefore the ZA correctly subtracted from the 72 parking space baseline these eight existing parking spaces along 49th Street that are half located on public space as illegal spaces not recognized by the Zoning Regulations. The ZA thus determined that the Project must retain at least 64 parking spaces to comply with Section 2100.10(a). Since the Project provides 65 parking spaces, the ZA correctly determined that the Project complied with the parking requirements of the Zoning Regulations.

Appellant also alleges that the ZA “ignores the requirements of Section 2116.9 which requires that all parking spaces be functional and usable”. However, Section 2116.9 does not apply to the ZA, but authorizes the Board to impose conditions for special exception relief. Therefore this allegation is erroneous and should be dismissed.

3. No bicycle parking is required for the Project under Section 2119.2 because no parking is required under Section 2101.1 due to the application of Section 2120

¹¹ BZA Appeal 19274, not yet entered into the IZIS record – Letter from Appellant to Board Chair dated June 27, 2016, at 4.

¹² BZA Appeal 19274, Exhibit 25C (Exhibit C to Intervenor’s Pre-Hearing Statement) – June 24, 2016 email from Ryan Westrom, DDOT Senior Transportation Planner/Engineer.

Section 2119.2 requires bicycle parking spaces equal to at least five percent (5%) of the number of parking spaces required under Section 2101.1. The Project is exempted from Section 2101.1 because the existing buildings only have to retain the parking required under Section 2100.10(a) and the Addition is exempted under Section 2120.3. However, even if Section 2120 were not to apply, only the Addition would be required to provide parking under Section 2101.1, with at most two (2) bicycle parking spaces required. Nevertheless, the Permit Holder has committed to housing at least eight (8) bicycle parking spaces on site, which would comply with Section 2119.2's requirement as if the Project was required under Section 2101.1 to provide 160 parking spaces, far more than have ever been located on the Property.

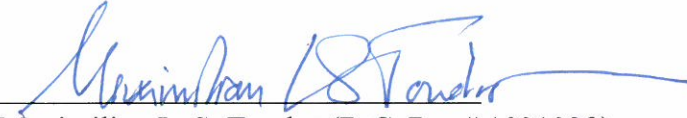
Therefore this allegation by Appellant is also without merit and should be dismissed.

CONCLUSION

For the reasons stated above, DCRA asserts that the allegations stated in the Appeal are without merit and that the Appeal fails to meet Appellant's burden of proof to show that the ZA erred in issuing the Determination Letter. DCRA therefore respectfully requests that the Board affirm that the ZA correctly applied the Zoning Regulations to evaluate the Project and issue the Determination Letter, and that the Board therefore deny this Appeal.

Respectfully submitted,
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Date: July 1, 2016


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ATTACHMENT A

HPO Staff Report for HPRB Meeting of July 23, 2015

**HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION**

Property Address:	4820-4874 Massachusetts Avenue and 4301 49th Street, NW	X	Agenda Consent Calendar
Landmark/District:	Square 1500 (part of Spring Valley Shopping Center)		
Meeting Date:	July 23, 2015	X	Concept Review Alteration
H.P.A. Number:	15-252	X	New Construction
Staff Reviewer:	Steve Callcott		Demolition
		X	Subdivision

The applicant, Washington Real Estate Investment Trust, with plans prepared by Bonstra/ Haresign Architects, seeks on-going conceptual review for construction of a two-story retail and office building on Square 1500, a landmarked complex of retail buildings.

Property Description

Square 1500 contains a collection of commercial buildings developed by the W.C. & A.N. Miller Company between 1939 and 1951 to provide services to the company's surrounding residential developments. The five red brick buildings were designed in a Williamsburg-inspired Colonial Revival style, clustered to form a village-like neighborhood center.

Previous Review

At its April 30th meeting, the HRPB found the general concept for a two-story building in this location to be compatible with the character of the landmark, but that the proposal should be revised to more closely relate to the detailing and scale of the complex. The Board asked that the connection to 4860 Massachusetts (the adjacent one story bank building) be restudied to provide a separation or otherwise ease the transition between the new construction and existing building.

Revised Proposal

Revisions include reductions in the building's width and height, with the decreased width of the building resulting in a corresponding increase in the width of the paseo. Compositionally, the design has been simplified by the elimination of one of the two gables; the remaining gable now extends the full depth of the building to the rear elevation. The apparent size of the building has been further reduced by stepping the height down to a one-story element as it abuts the bank.

On the front elevation, the number of storefronts has been reduced from four to three, and their height, width, proportions and detailing revised; the openings are now proposed to be capped with canvas awnings. The windows on the second floor have been reduced in size and scale, rendered as multi-light, double hung sash windows. All window and door trim would be white rather than the dark gray/black shown previously. The same proportional and detail changes to the openings have been made to the paseo and rear elevations; on the rear, the trellises over the doors have been replaced with canvas awnings.

The site plan has been revised to provide a more rational and efficient parking lot. On 49th Street, the parking has been pulled out of the public space and a redundant curb cut would be removed to

allow for a wider continuous greensward. The wider paseo has been developed to terminate in an open area within the block that could be used for additional planting or a children's play area, and a continuous pedestrian path has been provided that links Fordham to the paseo, across the rear elevations of the Massachusetts Avenue buildings, and extending out to 49th Street, obviating the need for pedestrians to walk through the parking lot. The revised parking lot plan also creates locations for trees to be planted in interstitial spaces.

The applicants also seek conceptual review of a lot combination subdivision to combine the site's three lots into one. Currently, 4820 Massachusetts Avenue (Crate and Barrel) occupies one lot, 4301 49th Street occupies a second lot, and 4860 Massachusetts Avenue (the bank), 4866 (the gas station) and 4872-74 (Le Pain Quotidien) collectively occupy a third lot. The subdivision would combine these three lots together.

Evaluation

While the dimensional and proportional changes are individually modest, they collectively result in a proposal that is substantially more compatible with the character of the landmark. The reductions in the building's height and width, the stepping of the mass down to a single story to abut the bank building, and the revised proportions and smaller scale of elements results in a building that is more deferential and harmonious with the existing buildings. The revised designs for the storefronts and second story windows, the detailing of the brick and precast, and the revisions to the roofline are less generic and industrial and more specifically tailored to the design qualities inherent in the landmark complex.

The lighter, one-story connection to 4860 achieves the goal of providing a more compatible transition between the two buildings while also reducing the mass, frontage and apparent size of the new building. In maintaining a connection, albeit a lighter one, the design avoids the creation of a redundant and potentially uninviting passageway that would result by disconnecting the two buildings entirely, with the blank party wall of the bank on one side and little opportunity for ground level fenestration and activation on the opposing wall of the new construction.

As encouraged in the previous report and by the Board, the site plan has been further developed to enhance and improve the aesthetic qualities of the parking lot and to provide safer pedestrian circulation through the site. The improvements of the public space fronting 49th Street, the wider paseo and plaza area at its terminus, the continuous dedicated walkway, and the planting of trees within the parking lot will all enhance and improve upon the "village-like" environment cited in the designation.

The proposed subdivision will not change the boundaries of the landmark, and will unite three lots that have historically been associated with each and which are designated as a single landmark. The subdivision will have no effect on the property's designation or the Board's review authority.

Recommendation

The HPO recommends that the Board find the revised concept design and the lot combination subdivision to be compatible with the character of the landmark and to delegate final approval to staff.

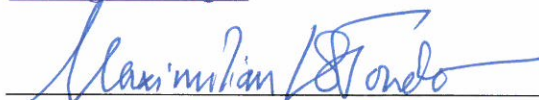
CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July 2016, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

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