

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19737 of Fulcrum Properties Group, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from the use provisions of Subtitle U § 301.1, to use the existing two-story building for an office use in the RF-1 Zone at premises 500 13th Street S.E. (Square 1043, Lot 817).

HEARING DATE: April 25, 2018
DECISION DATE: April 25, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The 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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 10, 2018, at which a quorum was present, the ANC voted 8-0-1 to support the application. (Exhibit 93 (Resolution) and 94 (Report).) ANC Commissioner Daniel Ridge testified in support of the application at the public hearing on April 25, 2018, emphasizing the ANC's support for office use on both floors of the structure.

The Office of Planning ("OP") submitted a timely report recommending approval of use variance relief as to the first floor of the structure, but denial as to the second floor of the structure. (Exhibit 87.) Specifically, OP indicated that the Applicant had demonstrated an exceptional situation resulting in an undue hardship with regard to the first floor, noting that it was constructed as a commercial space including "limited separation between the building and the

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sidewalk, large commercial bay windows, and a corner-facing door.” (Exhibit 87.) These characteristics would create privacy concerns and make the space unattractive for potential residential buyers. With regard to the second floor, however, OP found that the Applicant did not demonstrate an exceptional situation resulting in an undue hardship, as “[u]nlike the first floor, the second floor has a fully constructed dwelling unit and a typical residential floor plan.” OP further recommended that allowing office use to replace the existing residential use on the second floor would be a substantial detriment to the public good and cause substantial harm to the zone plan because “[l]osing a residential unit is contrary to the character and zoning of the immediate neighborhood.” (Exhibit 87.) OP notes that the intent of the RF-1 Zone is to protect the existing housing stock and that commercial uses are intended to be restricted.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 84.)

Neighbors submitted 55 letters in support to the record. (Exhibits 30-82, 92, and 95.) In addition, Councilmember Charles Allen submitted a letter in support of the application. (Exhibit 88.) At the public hearing on April 25, 2018, Brian Rodgers, Walter Winston, David McKean, Sandra Moscoso, Darren Cole, Floyd Mills, and Ralph Garboushian testified in support of the application. The Capitol Hill Restoration Society submitted a letter in opposition to the application. (Exhibit 91.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for a use variance from the use provisions of Subtitle U § 301.1, to use the existing two-story building for an office use in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001)). Great weight means acknowledgement of the issues and concerns of the Office of Planning. In this case, OP recommended approval of the use variance with regard to the first floor of the property; however, OP recommended denial for relief on the second floor on the basis that the Applicant had not demonstrated: (1) that there is an exceptional circumstance causing an undue hardship of maintaining the second-floor residential use, and (2) that the removal of the existing residential use would not cause a substantial detriment to the public good and to the zone plan. The Board was persuaded by OP’s recommendation to approve use variance relief for the first floor, but was not persuaded by OP’s recommendation to deny relief for the second floor on these grounds.

First, the Board finds that the second floor of the building is affected by the same unique conditions as the first floor, such as the corner lot location with high commercial visibility, the commercial history of the lot, and the abutting commercial and industrial uses. As a result of these exceptional circumstances, the Applicant has been unable to successfully sell the second-

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floor units for residential purposes. As noted in the Applicant's testimony, the Subject Property has been on the market for almost a year and has been consistently on and off the market for three to four years, despite having being in above average condition and having a price per square foot below the median. (BZA Hearing Transcript of April 25, 2018 ("Tr.") at p. 233.) The Board also credits the written submission of realtor, A. Daniel Bouchard, who indicated that he became involved with the sale of the Subject Property in 2015. Mr. Bouchard indicates that, during this time, he received only one letter of intent for the property and that any potential buyers were not interested in the property for residential use. (Exhibit 86.) Mr. Bouchard further noted that the Subject Property is located in a desirable neighborhood, where homes are typically on the market for an average of 21 days, which makes the inability to find a prospective residential buyer all the more notable in this case. (Exhibit 86.) Given the evidence and testimony in the record, the Board finds that the Applicant has demonstrated that the second floor is constrained by exceptional conditions, such that retaining the residential use would cause an undue hardship.

In addition, the Board finds that converting the second-floor residential units into an office use would not cause a substantial detriment to the public good or to the zone plan. With regard to the public good, the Board was persuaded by the support of neighbors of the proposed project that the second floor office use would not have adverse impacts on the community. Further, because the office use is relocating from another location in the neighborhood, the Board finds that the proposed use and operations of the Subject Property would be harmonious with the surrounding area. (Tr. at 241.) Although OP expressed concern about the resulting loss of residential units, the Board was persuaded by the testimony of ANC Commissioner Daniel Ridge, noting that the ANC has been working with developers on the creation of hundreds of residential units in close proximity to the Subject Property, including affordable units. (Tr. at p. 265-66.) Though the Board considers loss of residential units to be a potential adverse impact of a proposed project, the evidence and testimony support the Board's finding that the loss of the existing residential use will not be a substantial detriment to the public good in this case. With regard to the zone plan, the Board considered the Applicant's testimony that the majority of the building faces E Street, S.E., which is predominantly commercial and industrial uses. (Tr. at 234.) The Board also notes that Square 1043 contains RF-1, MU-4, and PDR-1 Zones and was persuaded by the Applicant's argument that the proposed neighborhood-serving office use would create a low-impact transition to more intensive uses and Zones in the vicinity. (Tr. at 237-38.) For these reasons, the Board was not persuaded by OP's recommendation to deny the use variance relief for the second floor of the Subject Property.

The Board is also required to give "great weight" to issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d).) In this case ANC 6B voted 8-0-1 to support the application, raising no issues or concerns. (Exhibit 93 (Resolution) and 94 (Report).)

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a use variance from 11 DCMR Subtitle U § 301.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X §

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1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship 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.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.


It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

VOTE: 3-1-1 (Carlton E. Hart, Robert E. Miller, and Lesylleé M. White to APPROVE; Lorna L. John to DENY; Frederick L. Hill not present.)

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. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 11, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.