

BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

OFFICE OF ZONING
2009 MAY 11 PM 2:36

APPLICATION OF AMERICAN INSTITUTE OF
ARCHITECTS AND THE AMERICAN ARCHITECTURAL
FOUNDATION FOR CONSOLIDATED REVIEW AND
APPROVAL OF A PLANNED UNIT DEVELOPMENT AND
ZONING MAP AMENDMENT

Case No. 08-27

REPORT OF ADVISORY NEIGHBORHOOD COMMISSION 2A

The Foggy Bottom and West End Advisory Neighborhood Commission ("ANC 2A") hereby opposes the Planned Unit Development ("PUD") and Zoning Map Amendment Application filed by the American Institute of Architects and the American Architectural Foundation (collectively "Applicant"). At its properly-noticed, regularly-scheduled monthly meeting on April 15, 2009, ANC 2A considered the above-cited PUD and Zoning Map Amendment Application and, with all six Commissioners present, the following resolution was approved by a unanimous vote by ANC 2A:

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC-2A) RESOLUTION ON AIA's APPLICATION (ZC Case No. 08-27)

* WHEREAS, the American Institute of Architects (AIA) and the American Architectural Foundation (collectively the Applicant) applied for consolidated review and 1-step approval of a Planned Unit Development (PUD) at 1735 & 1799 New York Avenue, NW for Lots 38 & 39 in Square 170 (the Subject Property) (ZC Case No. 08-27);

* WHEREAS, the Applicant also applied for an Amendment to the Zoning Map to upzone the Subject Property from SP-2 to C-3-C;

* WHEREAS, the Subject Property is located in the middle of a large SP-2 zone;

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District of Columbia

CASE NO. 08-27
EXHIBIT NO. 20

* WHEREAS, the Applicant will be maintaining the current building height (86' 8") of its office building, which was approved by the Board of Zoning Adjustment in 1970, and is proposing less floor area ratio (FAR) than used in its current complex (from 4.54 to 4.51);

* WHEREAS, the Applicant currently has a publicly-accessible retail store on its second floor and there is street-level retail in other SP-2 properties in the Foggy Bottom-West End community, such as at Columbia Plaza;

* WHEREAS, DC law provides, "Location of PUD Amenities. Require that a substantial part of the amenities proposed in Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact;"

* WHEREAS, the Applicant's proposed public benefits and community amenities package is inconsistent with DC law since it fails to include any amenities for the immediately-impacted Foggy Bottom-West End community.

* NOW THEREFORE, BE IT RESOLVED, for all of the reasons recited herein, that the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) opposes both the requested PUD and the requested Map Amendment for the Subject Property.

ADVISORY NEIGHBORHOOD COMMISSION 2A

ANC 2A Chair
2A04@anc.dc.gov

In support of its resolution, ANC 2A files the following report outlining its opposition to Applicant's Application for PUD status and the C-3-C zoning map amendment.

I. The Zoning Modifications Sought By Applicant Are Not Necessary for Applicant to Accomplish Its Objectives.

The modifications proposed by the Applicant are the sort that can be accommodated through existing procedures utilized by the Board of Zoning Adjustment ("BZA" or the "Board"). A special exception is authorized under D.C. Code § 6-641.07(g)(2) when, in the Board's judgment, the exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring

property. See also 11 DCMR § 3104.1. A variance may be granted under D.C. Code § 6-641.07(g)(3) when, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” strict adherence to the Zoning Regulations “would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property.” See also 11 DCMR § 3103.2.

The Applicant’s pre-hearing submission indicates that zoning relief would be required because of additions to the non-conforming roof structures, which are not permitted under 11 DCMR § 2001.3. The Applicant is requesting flexibility from the requirements of section 411 in order to have multiple roof structures (i.e., the existing roof structures approved by the BZA, the proposed roof configuration for the air intake structures, and the proposed hot water collectors). Relief is also sought from sections 770.6 and 411 to: construct the air intake structures on the main roof level that exceed the applicable height limit, deal with the fact that one of the three proposed air intake structures will be set back by less than a 1:1 ratio, and deal with the fact that these three roof structures will be of unequal height. See Applicant’s Pre-Hearing Submission, pp. 9-10.

It appears that these requests could be accomplished under the traditional BZA procedures. We note that the BZA determined in the 1970 decision, which permitted construction of the AIA Headquarters Building, that the property qualifies under the special exception and variance standards. There, the Board concluded that the “roof structures of this proposed office building will harmonize with the street frontage of the building in architectural

character, material, and color. The roof structures are in harmony with the purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of nearby and adjoining property.” *Appeal No. 10463, The American Institute of Architects, Inc.* (Dec. 30, 1970) at p. 3 (reprinted as Exhibit B in the Applicant’s pre-hearing submission).

With respect to the need for variance relief, the Board concluded that: “[D]ue to the shape of the property and the exceptional and extraordinary situation arising from the importance of preserving the historical Octagon House by providing adequate space behind it, a rear yard as required by the Zoning Regulations will result in peculiar and exceptional practical difficulties and exceptional and undue hardship upon the appellants. We are further of the opinion that light and air to adjoining properties will not be affected adversely by the erection of this building.” *Id.*

We note in particular that BZA relief as to roof structures is specifically allowed under section 411.11, when compliance with section 411 would be “impracticable because of operating difficulties, size of building lot, or other condition relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable.” Indeed, these cases may be so non-controversial that the BZA may grant relief as a bench decision. *E.g., Application No. 17729* (Mar. 11, 2008); *Application No. 16148* (Sept. 18, 1996).

Given the similarities between the issues in this case and the original 1970 case, as well as the fact that the proposed changes here are more modest in scale, the relief sought by the Applicant would presumably be judged by the same standards if the Applicant were to seek relief from the BZA. The situation here is plainly unique, given the development limitations on the

site owing to the need to preserve the Octagon House, and any proposed development on the site is thus subject to practical difficulties that are not the same as on other sites. See *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168, 1170-71 (D.C. 1990). There is thus no need to resort to the extraordinary step of proceeding via a PUD application. Indeed, we anticipate that if the Applicant were to proceed with this case before the BZA, ANC 2A would support the requested relief.

Moreover, under 11 DCMR § 502 on Special Purpose Accessory Uses, properties indeed can have an accessory use of a retail establishment, such as a bookstore, on their ground level. Section 502 discusses accessory uses in a residential apartment building or hotel, and it does not contain any comparable limitation on commercial uses for commercial property, such as the AIA headquarters. The bookstore that AIA seeks to place on the ground level of its headquarters, within the plaza area, would be an accessory to the AIA's primary mission as a trade association, providing educational services to architects and the general public. Thus, Applicant's admission that this bookstore will not be street-facing given its location facing the internal, walled plaza, would make the siting of this bookstore consistent with Section 502.3's treatment of accessory uses because this rule states that "[n]o part of the adjunct or the entrance to it shall be visible from the sidewalk." Hence, no zoning relief would be needed by Applicant to situate its bookstore on the ground level of its headquarters. Even if Applicant feels uncertain that the bookstore at ground level is a permitted use, Applicant could seek variance relief, which ANC 2A would likely support.

Moreover, Applicant makes the argument that the zoning modification it seeks [C-3-C] is appropriate because it is "more consistent with the Comprehensive Plan [than SP-2]," but ANC

2A notes that the current zoning of SP-2 is also “entirely consistent with the Comprehensive Plan” providing high-density commercial use, as well as the necessary buffer for specific historically-significant buildings; thus no zoning modification is necessary.

Applicant highlights certain elements of the Comprehensive Plan that Applicant feels are “substantially” advanced by the project; however, this is not the case for most of the provisions outlined – mainly given the fact that the AIA headquarters and plaza are already in existence. For example, Applicant cites a policy to “promote active street life through the design of buildings, streets, and public spaces.” Instead, the bookstore that Applicant touts as the crux of its proposal to “promote an active street life” will be tucked within the existing AIA plaza, set back significantly from 18th Street, and only accessible by a set of stairs from New York Avenue. Therefore, Applicant is only going to “animate and enliven” an internal plaza, which the Applicant also characterizes as a “shaded, relatively secluded setting.” See Applicant’s Pre-Hearing Submission, p. 5. It is debatable whether an architectural bookstore will draw large enough crowds of architectural book enthusiasts to “animate and enliven” the internal plaza area any more than the lunch crowds that currently visit this respite, especially given the fact the Octagon Museum, which could be a potential “draw” for tourists and residents alike, is currently open “by appointment only,” and there is no known plan to open the museum to regular hours.

Moreover, the Applicant fails to address provisions of the Comprehensive Plan that argue in favor of denying a PUD and upzoning on this site. For example, the District of Columbia Comprehensive Plan Future Land Use Map states:

“This is not a zoning map. . . . By definition, this map is to be interpreted broadly. . . .

Zoning of any given area should be guided by this map, interpreted in conjunction with

the text of the Comprehensive Plan including the citywide and area elements as well as approved Small Area Plans. . . . ***Designation of an area with a particular land use category does not necessarily mean that the most intense zoning district described in the land use definitions is automatically permitted.*** A range of densities and intensities applies within each category, and the use of different zone districts within each category should reinforce this range.” (Emphasis added.)

Additionally, the following policies of the Comprehensive Citywide Elements support the ANC 2A’s stated positions:

Policy Land Use-2.3.4: Transitional and Buffer Zone Districts: Maintain mixed use zone districts which serve as transitional or buffer areas between residential and commercial districts. . . . Zoning regulations for these areas (which currently include the SP-1 and SP-2 zones) should ensure that development is harmonious with its surroundings, achieves appropriate height and density transitions, and protects neighborhood character.

Policy Land Use-2.4.6: Scale and Design of New Commercial Uses: Ensure that new uses within commercial districts are developed at a height, mass, scale and design that is appropriate and compatible with surrounding areas.

Policy Environmental-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff: Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse. . . .

Policy Urban Design-2.1.3: Downtown Edges: Establish and maintain scale and density transitions between Downtown and adjacent lower density neighborhoods. Use variations in height, massing, and architectural quality to ensure that the fine-grained pattern of adjacent neighborhoods is protected.

Policy Urban Design-2.2.1: Neighborhood Character and Identity: Strengthen the defining visual qualities of Washington’s neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context.

Policy Historic Policy-2.5.6: Historic Open Space: Retain landscaped yards, gardens, estate grounds, and other significant areas of green space associated with historic landmarks whenever possible. If development is permitted, retain sufficient open space to protect the setting of the

historic landmark and the integrity of the historic property. . . .

The above policies indicate that the Comprehensive Plan envisions a balancing of neighborhood preservation with development goals, and this supports the ANC 2A's position that Applicant's project should be accomplished with the minimal amount of disruption to the existing neighborhood and the current SP-2 zoning buffer. Upzoning to C-3-C has the potential for substantial development inconsistent with these policies and amelioration of the existing buffer.

II. Complete Disregard of the SP-2 Zoning and Its Intent Specific to this Property

Applicant's request to remove the SP-2 zoning buffer is in direct contradiction to the fundamental purpose of this zoning type, including the opinion of the BZA allowing the Headquarters in the first place. Allowing the Applicant to obtain C-3-C zoning will violate the policy behind SP-2 zoning and will overturn the careful work of the BZA in 1970. Notably, 11 DCMR § 500.3 states:

"The SP district (Special Purpose) is designed to preserve and protect areas adjacent to commercial districts that contain a mix of row houses, apartments, offices, and institutions at a medium to high density, *including buildings of historic and architectural merit.*" (Emphasis added.)

This is the very purpose for which the BZA in 1970 invoked the SP-2 buffer for the AIA Headquarters. In its Order dated December 30, 1970, the BZA's final opinion noted "the shape of the property and the exceptional and extraordinary situation arising from the importance of preserving the historic Octagon House by providing adequate space behind it..." (See BZA Appeal No. 10463.) Because of such historic character and the need to preserve the historic

Octagon House, the BZA granted a variance from the rear yard requirement of the SP District so as to maintain the SP-2 buffer between the historic Octagon House and the adjoining commercial district—the very purpose of SP-2 zoning as stated in 11 DCMR § 500.3.

More generally, the ANC's objection to this Application reflects residents' concerns about the broader development permitted by upzoning in the larger Foggy Bottom and West End neighborhood by developers and the local university. As density increases, the associated problems of increased vehicular traffic, pedestrian traffic, and noise decrease the value of the residential element, of which there is some in the subject immediate neighborhood.

Governmental properties and the Corcoran Gallery of Art are listed by the Applicant as property owners within 200 feet of the subject site (see Exhibit C of Applicant's Pre-Hearing Submission), and the buffer of the AIA property will no longer be as valuable if the application is granted. Moreover, while each zoning proposal must be judged on its own merits, the very notion of the SP-2 "buffer" theory requires the Zoning Commission to consider the long-term effects of ultimately vitiating this "buffer" -- the precedent of a new C-3-C district that is not even adjacent to an existing C-3-C district, which will make it more likely that the next applicant in the area will argue for upzoning, yielding more intense development in our neighborhood. See Applicant's Pre-Hearing Submission, pp. 3 & 12.

III. If the Zoning Relief Sought by Applicant is Granted (Which ANC 2A Contends Should Not Occur), the Zoning Commission Must Require Applicant to Obtain Historic Designation and Continued Residence at its Headquarters, and Provide Amenities to the Community Consistent with a Gain Worth Over \$4 Million, as Conditions of Any PUD Order based on the Development Rights that are Achieved with C-3-C Zoning.

The Applicant proffers five major public benefits of the PUD; however, none represents a new benefit to the public, and the most significant benefit – which is environmental – mainly benefits the property owner.

- Retention of a highly-respected national nonprofit organization in DC is not guaranteed in any form;
- The exemplary/superior architecture represents a building constructed in 1970 as a work of the "Brutalist" architectural movement, and the proposed changes do not visibly affect this early construction; significant environmental proposals provide greater direct benefit to the Applicant (e.g., decreasing general operating costs), but they are far less quantifiable for the public. The ANC also notes the lack of a green, vegetative roof on the main roof and notes Commissioner May's observation on another "cool roof" proposal at the set-down meeting for this application:

COMMISSIONER MAY: "The roof plan, they make a big deal of the so-called cool roof. I mean, obviously there are some benefits to that, but a cool roof is no great innovation in my book. I mean, it's not that much more sophisticated than aluminized roof paint, which has been around forever." Transcript of Zoning Commission Meeting of Nov. 10, 2008, pp. 14-20, 51;

- Historic preservation protection is not currently in place for this structure and, and while the Applicant indicates that it intends to seek such designation, there is no statement as to when or how the Applicant will make such an attempt; and finally
- High-quality public open spaces are already in place at this property.

Most significantly, we estimate that the additional development rights granted by such a map amendment could provide for approximately 25,000 square feet for each of potentially four additional floors that could be developed on the Headquarters Building site, which is in the highest commercial rental district of Central Washington. At current market rates, that could generate annual revenues of approximately \$4 million.¹ Thus, while we believe that the Applicant has not established the need for a rezoning to C-3-C, we would ask if the Commission concludes otherwise that any order contain the following conditions:

- (1) The Applicant shall file an application with the Historic Preservation Review Board within 60 days after issuance of a Certificate of Occupancy for its headquarters building;
- (2) The Applicant shall continue to use the Headquarters Building as the Association's headquarters; and
- (3) The Applicant shall provide the Foggy Bottom and West End community with the necessary amenities commensurate with approval of a C-3-C PUD that would confer valuable new development rights to Applicant.

IV. List of Witnesses include the following:

Eric Malinen, ANC 2A, Vice Chair
Florence Harmon, ANC 2A, Secretary
Elizabeth Elliott, Former ANC 2A Chair (2001-2003)
Barbara Kahlow, West End Citizens Association

¹ Undoubtedly, Applicant is pursuing PUD status and the C-3-C zoning map amendment so it can either vacate or sell the building or add an additional four stories (another 25,000 square feet each floor, which when multiplied times four and then multiplied by a conservative estimate of \$42 per square feet yields a gain worth \$ 4.2 million). The above restrictions—landmark designation, residency, and amenities—would ensure that the historic designation and necessary amenities are provided. However, Applicant could accomplish its purpose through SP-2/PUD status; the necessary FAR that Applicant will obtain with C-3-C is not necessary to its purpose.

All will speak to the specific concerns raised within this Report.

V. Conclusion

ANC 2A thus asks that the Application be denied and that the Applicant seek whatever relief it needs from the BZA.

If the Commission should be inclined to grant relief under the PUD regulations, it should limit development to that permitted under SP-2 districts. The SP-2 criteria satisfy AIA's professed needs, and the proposed amenities are extremely modest and are certainly not commensurate to warrant approval of a C-3-C zone that is potentially worth millions of dollars in new development.

Finally, if the requested rezoning is granted, the Commission should impose enforceable conditions to assure continued use of the site by AIA as its headquarters, an application for landmark status of the Headquarters Building, and additional amenities that would be commensurate with the valuable development rights being conferred.

ON BEHALF OF THE COMMISSION.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Malinen", with a stylized flourish at the end.

Eric Malinen, Vice Chairperson²
ANC 2A

² ANC 2A Chairperson, Armando Irizarry, is out of the country for an extended period; hence, the Vice Chairperson is, and has been, authorized to execute this document on behalf of the ANC 2A.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing report were served by first-class mail, postage prepaid, this 11th day of May, 2009 upon:

Paul Tummonds
Pillsbury Winthrop Shaw Pittman
2300 N Street, NW
Washington, DC 20037

Jennifer Steingasser
Deputy Director
Office of Planning
2000 14th Street, NW 4th Floor
Washington, DC 20009.

A handwritten signature in black ink, appearing to read 'J. Steingasser', is written over a horizontal line.

Cc: Paul Tummonds, Esquire
Harriet Tregoning, Office of Planning
Joy Howell
Barbara Kahlow

Attachments

DISTRICT OF COLUMBIA GOVERNMENT
FOGGY BOTTOM & WEST END ANC – 2A

c/o West End Library
1101 24th Street NW
Washington, DC 20037

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION
(ANC-2A) RESOLUTION ON AIA's Application (ZC Case No. 08-27)

* WHEREAS, the American Institute of Architects (AIA) and the American Architectural Foundation (collectively the Applicant) applied for consolidated review and 1-step approval of a Planned Unit Development (PUD) at 1735 & 1799 New York Avenue, NW for Lots 38 & 39 in Square 170 (the Subject Property) (ZC Case No. 08-27);

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ADVISORY NEIGHBORHOOD COMMISSION 2A



9 MAY '09

Eric Malinen

ANC 2A Vice Chair (signature permitted by ANC 2A bylaws; the Chair is out of the country)
2A05@anc.dc.gov

1799 New York Avenue NW

**Welcome to The Octagon
The Museum of
The American Architectural Foundation**

- Group tours of the Octagon are by **APPOINTMENT ONLY**.
- To schedule a group tour for ten or more persons, please call **202-638-3221**.
- The Octagon is not available for unscheduled individual tours.
- For deliveries and appointments, please ring the doorbell.