DRAFT

Application No. 16729 of Wayne Place Senior Living Limited Partnership, Inc., pursuant to 11 DCMR Section 3103.1 to allow a new senior living apartment complex under Section 353.1; and pursuant to Section 3103.2 for variances from the floor area ratio ("FAR") requirements of Section 402, the lot occupancy requirements of Section 403, and the story limitation requirements of Section 400 in an R-5-A District at 114-124 Wayne Place, S.E. (Square 6118, Lots 42 and 43).

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2001 SEP 21 P 4:39

Hearing Dates: July 17, 2001
September 4, 2001
Decision Dates: September 4, 2001 (Bench Decision)

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Section 3113.2

PROCEDURAL HISTORY

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 8C, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning for review and report. Councilwoman Sandy Allen, the representative to the District of Columbia City Council for Ward 8, submitted a letter in support of the project to the record. The District of Columbia Department of Housing and Community Development also submitted a letter of support to the record.

A hearing was on the subject application on July 17, 2001. Pursuant to Section 3106.2, the only parties to the application were the Applicant and ANC 8C.

At the hearing on the application, the Board heard testimony from the parties to the case, including two representatives of the Applicant, John J. Spiegel of Greenman Pedersen-Inc. and Bruce Kennett, an architect with Torti-Gallas CHK, and Ms. Mary Cuthbert, Chairperson of ANC 8C. Two other members of ANC 8C, R. Calvin Lockridge, the Vice-Chair, and Barbara Kemp, the Secretary, did not testify but accompanied Ms. Cuthbert during her presentation of the ANC report. Ms. Alethea Campbell, a member of the Ward 8 Mini-Commission of the D.C. Commission on Aging testified as a witness in support of the ANC report. Ms. Virginia L. Major, the Commissioner for the Single Member District 8C-07, testified as a witness neither in favor nor opposition to the report. The Board waived the requirements of Section 3114.4 in order to accept the late filing of the Office of Planning Report, which recommended approval of the application.

Case No. 16729
Exhibit No. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.16729
EXHIBIT NO.47

As directed by 11 DCMR Section 3119.2, the Board required the applicant to satisfy the burden of proving the elements, that are necessary to establish the case for a special exception pursuant to Section 3104.1, and 353.1 and, pursuant to Section 3103.2, for variances from the strict application of the requirements of 11 DCMR Sections 400, 402, and 403 of the Regulations. No person or entity appeared at the public hearing in opposition to the application. Accordingly, a decision, by the Board to grant the application would not be adverse to any party.

After the presentation of the Applicant's case at the public hearing and the testimony of the parties and witnesses, the Board approved the application by a vote of 5-0-0 (Carol J. Mitten, David Levy, W. Geoffrey H. Griffis, Sheila Cross Reid, and Anne M. Renshaw, to approve). The order approving the application was entered on August 6, 2001 and became final upon its filing in the record and service upon the parties to the subject application.

Following the hearing on the matter, the Board received letters dated July 26, 2001 and August 5, 2001 from Virginia L. Major, including as an attachment a letter dated August 1, 2001 from Darryl G. Gorman, Senior Deputy Corporation Counsel. In light of the issues raised in the letters, the Office of Zoning provided the Board of Zoning Adjustment with copies of the letters for its review and deliberation at its September 4, 2001 public hearing.

At the September 4, 2001 public hearing, the Board voted 5-0-0 in each instance to approve the following motions:

1) A motion to waive the requirements of Section 3126.7 of the Zoning Regulations in order to allow the Board to reconsider, on its own motion, the final decision in the record (Anne Renshaw, Geoffrey Griffis; David Levy, Carol Mitten by proxy, and Sheila Cross Reid, to approve);

2) A motion to reconsider and vacate the order dated August 6, 2001 (Geoffrey Griffis, Sheila Cross Reid, David Levy, Carol Mitten by proxy, and Anne Renshaw, to approve);

3) A motion to reopen the record to include the letters from Virginia L. Major dated July 26, 2001 and August 5, 2001 and including as an attachment a letter dated August 1, 2001 from Darryl G. Gorman, Senior Deputy Corporation Counsel; a letter dated August 9, 2001 from Jerrily R. Kress, Director of the Office of Zoning; a letter dated August 15, 2001 from Mary C. Cuthbert, Chairperson of ANC 8C; and a letter dated August 24, 2001 from the law firm of Holland & Knight on behalf of the Applicant; and

4) A motion granting the application on the record before the Board at the July 17, 2001 public hearing. (Geoffrey Griffis, David Levy, Carol Mitten by Proxy, Sheila Cross Reid, and Anne Renshaw, to approve).

CONCLUSION

Based upon the record before the Board at the July 17, 2001 hearing and the Office of Planning reports filed in this case, the Board concludes that the Applicant met its burden of proof pursuant to 11 DCMR Sections 3104, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. This decision is being made without regard to the ANC report in support of the Project. The internal procedure of the ANC action, in issuing its report, was challenged by a member of the ANC. The Board also concludes that the Applicant has met its burden of proof pursuant to 11 DCMR Sections 3103.2 that there exists an extraordinary or exceptional situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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. It is therefore ordered that the application be GRANTED:

VOTE: 5-0-0 (Geoffrey Griffis, David Levy, Carol Mitten by Proxy, Sheila Cross Reid, and Anne Renshaw)

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

Each concurring member has approved the issuance of this Order.

DRAFT

ATTESTED BY_____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER:_____

PURSUANT TO 11 DCMR 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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 PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THIS APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.