

**BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

**APPLICATION OF
3636 WOODNER, LP and
ROCK CREEK PLAZA-WOODNER, LP**

**BZA APPLICATION NO. 19270
SQUARE 2624, LOTS 831-833
ANC 1D02
HEARING DATE: JULY 12, 2016**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 3636 Woodner, LP and Rock Creek Plaza-Woodner, LP (together, the “Applicant”), in support of its application to the Board of Zoning Adjustment (“BZA” or “Board”) for the following special exception and variance from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3104.1 and 3103.2: (i) special exception relief under 11 DCMR § 354 to permit a new gym/fitness center as a commercial adjunct and a small increase in the total floor area devoted to adjuncts in an existing apartment house; and (ii) an area variance from 11 DCMR § 354.5 to permit a sign indicating the existence of the proposed gym/fitness center that is visible from the outside of the apartment house in the R-5-D District at 3636 16th Street, N.W. (Square 2624, Lots 831, 832, and 833) (the "Site").

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception and variance relief requested herein pursuant to 11 DCMR §§ 3104 and 3103.

III. **BACKGROUND**

A. Description of the Site

The Site consists of Lots 831, 832, and 833 in Square 2624, and has a total land area of approximately 168,156 square feet. Square 2624 is bounded by 16th Street, N.W. to the east, Oak Street, N.W. and private property to the southwest, and Rock Creek Park to the north and northwest. The Site is presently improved with the Woodner Apartments building, which was erected in 1952-1953. The building now is comprised of approximately 1,124 apartment units and 297 accessory parking spaces. The building is situated between 16th Street, N.W. and Rock Creek Park, with the main residential entrance and lobby facing 16th Street, but setback from the street line. The building rises eight stories on 16th Street and 13 stories on Rock Creek Park. As shown on the Zoning Map attached hereto as Exhibit A, the Site is located in the R-5-D District.

The commercial adjunct¹ space was included in the building's program since the time it was constructed, first as a matter-of-right for the hotel use, and then as a special exception approved by the Board in 1977 when the building was renovated and converted entirely to apartment house use. Pursuant to BZA Order No. 12675, attached hereto as Exhibit B, the Board approved the following commercial adjunct uses: “[d]entist’s and [d]octor’s office, grocery store, drugstore, beauty salon, clothes boutique, bridge club, party room, coffee shop and a restaurant.” See BZA Order No. 12675, Finding of Fact (“FF”) No. 7. Conditions to approval of the commercial adjunct space included the following:

¹ Commercial adjuncts are defined by the Zoning Regulations as “retail and service establishments customarily incidental and subordinate to hotel use, such as restaurant, dining room, cocktail lounge, coffee shop, dry cleaning, laundry, pressing or tailoring establishment, florist shop, barber shop, beauty parlor, cigar or news stand, and other similar uses.” 11 DCMR § 199.1.

1. Uses limited to the main floor of the building and below;
2. No direct entrance permitted from the outside of the building;
3. No part of an adjunct or entrance permitted from a sidewalk;
4. No sign or display permitted to be visible from the outside of the building; and
5. No advertising of the uses of adjuncts in newspapers or fliers.

The building's commercial adjunct space is currently occupied by a hair salon, dry cleaner, video store, market, ballroom, and offices (doctor, dentist, tax preparer, and architect). A café, caterer, and child care space are also located in the commercial adjunct space but are presently not in operation. Pursuant to BZA Order No. 12676, 29,000 square feet of the building is permitted to be occupied by commercial adjunct uses.

B. Project Description

As shown on the architectural plans and elevations (the "Plans") attached hereto as Exhibit C, the Applicant proposes to undertake interior renovations to the existing apartment house, which will result in the increase of permitted commercial adjunct space to approximately 35,000 square feet. The Applicant also proposes to establish a gym/fitness facility in the building as a commercial adjunct, which requires special exception approval since this type of commercial adjunct use was not originally approved in BZA Order No. 12676. The renovations do not result in any increases to the overall building footprint.

The gym/fitness center will occupy approximately 15,762 square feet of the building, within the 35,000 square feet contemplated for commercial adjunct use, and will be located on the ground floor and on one level below the ground floor. All renovations will be undertaken within the building, such that density will not be added to the Site. The renovations will not result in the increase or decrease in the number of residential units or required parking or loading spaces.

In addition to interior renovations, the Applicant also intends to install a sign adjacent to the building's side entrance near the proposed gym/fitness facility. The signage will face 16th Street and will state the name of the proposed gym/fitness facility. The Applicant intends to obtain a commercial gym tenant that will offer gym memberships to tenants of the building and to the general public. The Applicant notes that if it did not invite non-residents to use the gym/fitness facility, and maintained membership for building residents only, then it would not need to seek relief from the Board at all.

IV. **THE APPLICANT MEETS THE TEST FOR** **SPECIAL EXCEPTION APPROVAL**

The Applicant seeks special exception approval pursuant to 11 DCMR §§ 354.1 and 3104.1 to permit a gym/fitness center as a commercial adjunct in the existing building at the Site.

A. Standard for Approving Special Exception Relief

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the zone plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia*

Bd. of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. Description of Special Exception Relief Requested

The Applicant seeks special exception approval pursuant to 11 DCMR §§ 354.1 and 3104.1. Subsection 354.1 permits as a special exception in the R-5 Districts, and subject to the provisions of 11 DCMR §§ 354.2 through 352.8, the sale of the following convenience commodities and services as accessory uses and appropriate adjuncts to an apartment house that are designed to serve tenants' daily living needs: (i) food, drugs, and sundries, and (ii) personal services. The gym/fitness center is within the personal services category. In this case, a variety of commercial adjunct uses were specifically approved in BZA Order No. 12627; however, since a gym/fitness center use was not specifically approved, the Applicant seeks a special exception pursuant to 11 DCMR § 354.1. The proposed gym/fitness center use complies with the regulatory requirements of 11 DCMR §§ 354.2 through 352.8 as follows:

354.2 The adjuncts authorized under this section shall be limited to the main floor of the building or below.

Complies. As shown on the architectural drawings, the proposed gym/fitness center will be located on the main floor of the building and on one floor immediately below the main floor.² Due to the Site's sloping topography, the main floor is located on the 5th level of the building, such that the gym/fitness center will be located on the 5th and 4th levels of the building.

² Pursuant to 11 DCMR § 199, "main floor" is defined as "the floor of the story in which the principal entrance of a building is located."

354.3 There shall be no direct entrance to the adjunct from the outside of the building.

Complies. As shown on the architectural drawings, the proposed gym/fitness center will not have a direct entrance from the outside of the building. The gym/fitness center will have an entrance from within the building only.

354.4 No part of the adjunct or the entrance to the adjunct shall be visible from a sidewalk.

Complies. The proposed gym/fitness center will be located entirely within the existing building and will not be visible from the sidewalk.

354.5 No sign or display indicating the existence of the adjunct shall be visible from the outside of the building.

Does not comply. As discussed below, the Applicant requests a variance from 11 DCMR § 354.5, since the Applicant proposes to provide a sign on the exterior of the building indicating the existence of the proposed gym/fitness center.

354.6 The center of the principal entrance of the apartment house shall be more than one-fourth (1/4) mile walking distance from the nearest principal business street frontage of any business district previously established and operating in a Commercial or Industrial District.

Complies. The Site is located more than a quarter mile walking distance from the 14th Street, N.W. corridor, which is the nearest principle business street frontage. The corner of 14th Street and Perry Place, N.W. is approximately 1,400 linear feet walking distance from the center of the main entrance of the building. The shortest walking route is north on 16th Street, east on Spring Place, east on Perry Place, to 14th Street frontage at Perry Place. This distance is more than the quarter mile (1,320 feet) limitation.

354.7 Subject to compliance with the provisions of § 354.6, these uses may also be permitted within an interior patio or other type of open ground level area; provided:

(a) Access to the adjunct shall be through the apartment building or buildings intended

to be served by the use; and

- (b) No part of the adjunct, the entrance to the adjunct, or any sign or display indicating the existence of the adjunct shall be visible from a public sidewalk.*

This section does not apply. The proposed commercial adjunct use will not be located within an interior patio or open ground level area.

354.8 The adjuncts authorized under this section are intended to supply tenants of the apartment house with commodities and services supplementary to those in established Commercial Districts, but in order to protect the value and stability of these Districts, the Board shall give consideration to the following:

- (a) The proximity of Commercial Districts to the adjuncts proposed;*
- (b) The adequacy and convenience of parking spaces existing in or for those Commercial Districts;*
- (c) The adequacy and scope of commodities and services provided within those Commercial Districts; and*
- (d) The size and character of the apartment house, since the tenants of the apartment house will be expected to furnish all or substantially all of the financial support of the requested adjunct.*

The proposed gym/fitness center will supply tenants of the apartment house with a service supplementary to those in established nearby Commercial Districts. The gym/fitness center is appropriate in this location, given the Site's distance to other Commercial Districts, the inconvenience of parking in those Districts, and the inadequate number of gym and fitness facilities in the surrounding area. The closest fitness centers to the Site include Higher Ground Fitness and Fit360 in Mount Pleasant, which are located approximately a half-mile walk from the Site and exclusively offer personal training and specialized classes. The next closest gym/fitness facility is the Washington Sports Club in Columbia Heights, which is located approximately 0.6 miles from the Site. Given that gym/fitness facilities are intended to be a convenient amenity within residential neighborhoods, traveling more than a half-mile to the gym is inconvenient. Moreover,

the existing building is one of the largest apartment houses in the District, such that the tenants will be able to furnish substantial financial support for the proposed gym/fitness facility.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

The Applicant requests an area variance from 11 DCMR § 354.5, which prohibits a sign or display indicating the existence of an adjunct to be visible from outside of the building. In this case, the Applicant proposes to locate a sign indicating the existence of the proposed gym/fitness center on the outside of the building, facing 16th Street, NW.

A. Standard for Approving an Area Variance

Under D.C. Code §6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

B. The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). The unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990). In this case, the Site has an exceptionally large and irregularly shaped land area, which slopes from an elevation of approximately 170 feet at the front of the Site along 16th Street, to an elevation of approximately 130 feet at the rear of the Site along Rock Creek Park. As a result, the ground floor/lobby is located on the 5th floor of the building. Moreover, the Site is improved with a very large, pre-1958 apartment building with over 1,000 individual apartment units.

C. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner

The strict interpretation of 11 DCMR § 354.5 will result in a practical difficulty. Pursuant to 11 DCMR § 354.5, the Applicant is not permitted to incorporate any signage indicating the existence of a proposed gym/fitness center that is visible from outside of the building. However, establishment of a fitness center in the building necessarily requires some degree of notice to direct patrons to the gym/fitness facility at the Site. While the Applicant anticipates that many of the future gym members will be residents of the Woodner Apartments, some will be residents of the surrounding residential community. Without signage that is visible from the street, the individuals in the surrounding neighborhood would not as easily become aware of the gym/fitness facility's existence or its location within the building. Moreover, given the size and layout of the proposed

gym/fitness facility, it would be practically difficult for the Applicant to lease the space to a different type of tenant, resulting in unusable space in the building.

D. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. As shown on the architectural drawings, the Applicant proposes to install a sign that blends in well with the existing building's architectural motif, and does not include any invasive lighting or movements. The signage will face 16th Street and will simply state the name of the proposed gym. Thus, the proposed signage can be granted without harm to the public good or zone plan.

**VI.
COMMUNITY SUPPORT**

The Applicant has worked with the community and is pleased to have support for the project. On April 25, 2016, at its regularly scheduled, duly noticed Advisory Neighborhood Commission ("ANC") 1D meeting, with a quorum of commissioners present, ANC 1D voted unanimously (5-0-0) to support the application. The ANC's resolution and letter in support is included at Exhibit 20 of the BZA Record. The ANC noted in its report that the "fitness center will provide a welcome service to [the building's] over ,1000 residents. The nearest commercial district is a half-mile walk distant, so the residents of this apartment house, and its neighbors, will be best served by a facility within this building. Patronage of this fitness center will have no discernible effect on the adjacent properties." Moreover, the ANC noted that the "external sign would enhance the value of the fitness center to the residents of the apartment houses nearby... because the apartment house is very large, signage would not contradict its primary role as a residential area, and is not inconsistent with the Zoning Regulations."

VII.
COMMISSION OF FINE ARTS REVIEW

Due to the Site's location abutting Rock Creek Park, and pursuant to the Shipstead-Luce Act of 1930 (Public Law 71-231, Public Law 76-248), the project is subject to review and approval by the Commission of Fine Arts ("CFA"). On June 16, 2016, the CFA voted to approve the Applicant's concept application to make modifications to the side entrance of the existing building for the proposed fitness center, including the new sign. See SL 16-119. According to typical CFA procedure, the Applicant will return to the CFA with permit drawings and a permit application for final review and approval. The CFA's concept approval letter is attached hereto as Exhibit D.

VIII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

<u>Exhibit A:</u>	A portion of the Zoning Map showing the Site
<u>Exhibit B:</u>	BZA Order No. 12675
<u>Exhibit C:</u>	Architectural Plans and Elevations for the Project
<u>Exhibit D:</u>	CFA Concept Approval Letter
<u>Exhibit E:</u>	Outlines of Testimony
<u>Exhibit F:</u>	Resume of Expert Witness

IX.
WITNESSES

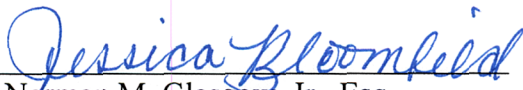
- A. Joe Milby, The Woodner Companies
- B. Josh Uhl, Toshiko Mori Architects, architects for the project

X.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for special exception approval and variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

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