

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19026 of 1300 H Street NE LLC, as amended,¹ pursuant to 11 DCMR §§ 3103.2 and 3104.1 for a variance from the off-street parking requirements under § 2101.1 and special exceptions from the H Street Neighborhood Commercial Overlay requirements under 11 DCMR §§ 1320.4(f), 1324.1 and 1325.1, to construct a new four-story mixed-use building with ground floor retail containing 36 residential dwelling units in the HS-A/C-2-A District at premises 1300 H Street, N.E. (Square 1026, Lots 97 - 103).

HEARING DATE: July 7, 2015

DECISION DATE: July 7, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 14.) The zoning relief requested was subsequently amended, based on revised plans filed by the Applicant. (Exhibit 29.)

The Board of Zoning Adjustment (“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”) 6A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report indicating that at its regularly scheduled and properly noticed public meeting of June 11, 2015, at which a quorum was in attendance, ANC 6A voted 6-0 to support the application, with two conditions. (Exhibit 29J.) The ANC’s letter noted that the ANC supports the off-street parking variance only on the condition that: (i) a

¹ The Applicant’s original application requested a special exception from the roof structure requirements of 11 DCMR §§ 411.5 and 770.6 to provide a roof structure with enclosing walls of unequal heights. In its prehearing statement (Exhibit 29), the Applicant withdrew the special exception request for the roof structure relief and provided revised architectural drawings (Exhibit 29C) that show roof structure that does not require zoning relief. The caption has been revised accordingly.

BZA APPLICATION NO. 19026
PAGE NO. 2

covenant be recorded in the Land Records of the District of Columbia requiring that each lease or contract for sale of a residential unit prohibit the tenant or owner of the unit from obtaining a residential parking permit ("RPP"), and (ii) the Applicant for all purposes treat the building as fronting on H Street, N.E., including assigning or causing the District to assign an H Street, N.E. address to the building and each of its units. The Board accepted the first condition, requiring the Applicant to record the RPP restriction as a covenant against the property in the Land Records of the District of Columbia. The Board did not adopt the second proffered condition, opining that it was outside of the Board's jurisdiction.

The Office of Planning ("OP") submitted a timely report on June 29, 2015, recommending approval of the application, (Exhibit 30,) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report on June 30, 2015, indicating that it had no objection to the Applicant's requests for variance and special exception relief, provided that the Applicant modify its transportation demand management ("TDM") proffer regarding non-auto transportation incentives. (Exhibit 31.) The Board adopted the recommendation made by DDOT, as reflected in Condition No. 2 of this order.

At the public hearing, a nearby resident, Claude Labbe, testified in opposition, raising concerns about off-street parking in the neighborhood. Mr. Labbe also expressed general support of the development of the property. The Board acknowledged the validity of these parking concerns, but noted that the TDM measures adopted as conditions are intended to address and mitigate potential impacts.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the off-street parking requirements under § 2101.1. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2101.1, the Applicant has met the burden of proving under § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty 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.

Special Exception Relief

BZA APPLICATION NO. 19026
PAGE NO. 3

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions from 1320.4(f), 1324.1 and 1325.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 1320.4(f), 1324.1 and 1325.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29C, AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide 27 long-term bicycle parking spaces and provide a bicycle repair facility in the secure long-term bicycle parking storage room.
2. The Applicant shall provide one of the following non-auto transportation incentives annually for the first five years that the building is open to each new resident and each new retail employee. If the building is developed as a rental building, the incentive shall be provided to all lessees. If the building is developed as a condominium, the Applicant or homeowners' association shall offer to each new purchaser of a unit the incentive annually:
 - a. \$100.00 SmarTrip card,
 - b. Annual Capital Bikeshare membership, or
 - c. Annual car-share membership.
3. The Applicant shall provide information on carpool matching services.
4. The Applicant shall provide a non-auto transportation guide that will include comprehensive transportation information promoting walking, cycling, and transit, and links to CommuterConnections.com and goDCgo.com.
5. The Applicant shall prohibit owners and/or tenants from obtaining a Residential Parking Pass ("RPP") or a Visitor Parking Pass ("VPP") from the District Department of Motor Vehicles. If the units are offered for-sale, a provision in the condominium declaration and a non-amendable provision of the bylaws shall include consent and authorization to the

BZA APPLICATION NO. 19026
PAGE NO. 4

Condominium Board to police and enforce this prohibition for the life of the project. If the units are offered for lease, a provision in the lease of each residential unit shall be included. The restriction will be recorded as a covenant against the property in the Land Records of the District of Columbia prohibiting any owner or lessee of the property from obtaining an RPP or VPP for the life of the project.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE; one Board seat vacant.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 15, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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

BZA APPLICATION NO. 19026
PAGE NO. 5

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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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.