

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19659-A of The Federation of State Medical Boards, Inc., as amended, pursuant to 11 DCMR Subtitle X § 901.2 for a special exception under Subtitle U § 203.1(n) to allow use of an existing residential building as an office for a non-profit organization in the R-3 Zone at premises 2118 Leroy Place, N.W. (Square 2531, Lot 49).

HEARING DATES:	January 31 and February 21, 2018
DECISION DATE:	April 18, 2018
ORDER DATE:	October 30, 2018
DECISION DATE ON REMAND:	November 18, 2020

ORDER ON REMAND

By order issued October 30, 2018, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) approved this self-certified application subject to 14 conditions. Parties in this proceeding, in addition to the applicant, the Federation of State Medical Boards, Inc. (the “**Applicant**” or “**FSMB**”), were Advisory Neighborhood Commission (“**ANC**”) 2D, the Sheridan Kalorama Neighborhood Council (“**SKNC**”), and the Sheridan Kalorama Historical Association (“**SKHA**”). The latter two organizations (collectively, the “**parties in opposition**”) appealed the Board’s decision to the District of Columbia Court of Appeals, which remanded the case for the Board to give “great weight” to the recommendations of the Office of Planning (“**OP**”) with respect to FSMB’s staffing, meetings, and receptions. *See Sheridan Kalorama Historical Ass’n v. District of Columbia Bd. of Zoning Adjustment*, No. 18-AA-1260 (decided July 2, 2020). This Order on Remand supplements the Board’s original Decision and Order in this proceeding, addressing matters raised in the Court’s decision and making certain corrections to the conditions as stated in the original decision.

FINDINGS OF FACT

1. The Applicant proposed to allow as many as 20 persons working at the subject property. The Applicant’s original proposal of 25 persons working at the site was revised to 20, which the Applicant described as 15 permanent employees and the flexibility to five temporary workers such as interns and visiting employees. (*See Exhibit No. 151.*)
2. The Office of Planning recommended a condition of approval limiting the number of persons working at the subject property at 15.

BZA APPLICATION NO. 19659-A
ORDER ON REMAND
PAGE NO. 2

3. The Applicant has its principal offices in Texas but also maintains an office in Washington, D.C., where a meeting of the board of directors is held once per year (the “**annual meeting**”). The annual meeting is typically held in mid-February, lasting four days. The meeting is attended by the Applicant’s 15-member board of directors and support staff, approximately five people.
4. The Office of Planning recommended a condition of approval requiring that “[a]nnual meetings and events will not be held at the subject property and will be held off-site.” The Applicant initially objected to this recommendation as “restrictive” (*see* Exhibit No. 136) but later revised its proposal to preclude annual meetings at the subject property (*see* Exhibit No. 150). The Applicant also agreed to OP’s recommendation to implement a condition specifying that the building at the subject property would not be used “for any types of parties or similar events,” including fundraisers.
5. The Applicant proposed to hold meetings (known as “**committee meetings**”) periodically at the subject property. The committee meetings would be held during business hours as many as three times per quarter, with as many as 25 invitees at each meeting.
6. The Applicant also proposed to hold meetings (known as “**receptions**”) during the evening (5:00 to 8:00 p.m.) before a committee meeting. As proposed, the receptions would not occur more than once per quarter and could involve as many as 50 guests.
7. The Office of Planning recommended a condition of approval limiting the committee meetings to a maximum of three per quarter, mostly during business hours and with a maximum of 15 invitees. The OP recommendation would allow one of the three committee meetings per quarter to include a reception that would end by 8:00 p.m., subject to the limit of 15 invitees.
8. The Applicant’s building was previously used as a chancery and contained 27 offices and cubicles when the property was acquired by the Applicant in 2017.
9. The 2100 block of Leroy Place, N.W. is relatively narrow, providing a right of way that is 60 feet wide. One-way vehicular traffic (eastbound) is permitted.
10. Parking is permitted on the south side of Leroy Place in the vicinity of the subject property. The north side of the block contains numerous curb cuts providing vehicular access to parking spaces on properties on that side of the street.
11. By memorandum dated February 14, 2018, the District Department of Transportation (“**DDOT**”) reiterated its lack of objection to approval of the application, considering the Applicant’s revised proposal to allow 25 people working at the subject property.

BZA APPLICATION NO. 19659-A
ORDER ON REMAND
PAGE NO. 3

According to DDOT, “the limited options available for long-term on-street parking on Leroy Place ... will limit vehicular trip generation.” (Exhibit No. 145.)

12. The DDOT report noted that the subject property can be accessed by walking, bicycle, and transit. The subject property is less than two blocks from a Capital Bikeshare station and less than a half-mile from a Metrorail station and several bus stops, with no gaps in the sidewalks between the subject property and the access points to the various transit options.
13. DDOT’s lack of objection to approval of the application was conditioned on the provision of three bicycle parking spaces at the subject property. The Board adopted a condition of approval requiring the provision of three bicycle spaces. (Condition No. 12.)
14. The 2100 block of Leroy Place N.W. is primarily residential in character but also contains institutional uses such as nonprofit offices, chanceries, a place of worship, and a cultural center. A hotel is located at the corner of Leroy Place and Connecticut Avenue. The Board previously approved a nonprofit office use, with up to 35 employees and without any large meetings or conferences permitted on site, in the same block at 2110 Leroy Place. *See* Application No. 15555 (order issued June 24, 1992); *affirmed, French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995).

CONCLUSIONS OF LAW AND DECISION

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) to give great weight to the recommendations of the Office of Planning. The Court of Appeals has held that this requirement means that the Board must consider OP’s views and provide a reasoned basis for any disagreement with them. *See Glenbrook Rd. Assn. v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992).

In this case, the Office of Planning recommended approval of the application subject to a number of conditions. The Board adopted most of the conditions as proposed by OP, finding them necessary to ensure that approval of the requested special exception would satisfy applicable requirements, especially with respect to avoiding the creation of adverse impacts on the use of neighboring properties. In a few instances – concerning the number of persons permitted on site as staff or invitees of various meetings related to the nonprofit office use – the Board approved some different limits than those recommended by OP. For the reasons discussed in this Order on Remand, the Board did not agree with all of the restrictions recommended by OP but concluded in some cases that other limits were appropriate, as reflected in the 14 conditions of approval adopted by the Board in this proceeding.

BZA APPLICATION NO. 19659-A
ORDER ON REMAND
PAGE NO. 4

With regard to staffing, the Board notes that the Applicant requested approval for 20 persons working at the subject property, while OP recommended a maximum of 15, consistent with the Applicant's initial proposal. The Board adopted a condition limiting the number of persons working on-site to 18.

The OP supplemental report stated OP's view that "the Applicant's proposed cap of 25 staff is excessive given the location, the size of the building, and the Applicant's indication that there are currently eight (8) staff members in the existing DC office and they are expected to grow to ten (10) staff." The Board did not rely on the size of the building at the subject property or on the Applicant's current or proposed staffing levels in its determination that the proposed use, as conditioned, would not tend to create adverse impacts on the use of neighboring properties. *See National Black Child Development Institute, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687 (D.C. 1984) (Board may impose restrictive conditions regulating the use of property, but not personal conditions regulating the owner's business conduct; a condition limiting the number of employees, which does regulate the use of property, should relate to substantial evidence in the record as a whole regarding traffic, parking, and availability of public transport, and not depend merely on the owner's current number of employees). While the Board was not persuaded by the Applicant that a cap of 20 was appropriate, the Board also did not agree with OP's conclusion that the number of people working at the subject property must be limited to 15. The Board notes that the subject property is located on a narrow street characterized by traffic and parking challenges. However, the Board did not find a need to limit staffing at the building to 15 in light of the availability of other, non-vehicular means to access the property, especially considering DDOT's lack of objection to approval with 25 staff and the other conditions of approval adopted in this proceeding that would limit traffic and parking impacts of the proposed nonprofit office use at the site.

With regard to meetings, the Board agreed with OP's recommendation that approval of the requested special exception should not entail permission to hold annual meetings, fundraisers, or other large events at the subject property, or to allow use of the Applicant's building by other persons or entities for events unrelated to the nonprofit office use. *See Condition No. 8.*

The Board agreed with OP and the Applicant that some small meetings attendant to the nonprofit office use could be held periodically at the subject property without causing adverse impacts on the use of neighboring properties. These meetings would be conducted in compliance with the conditions of approval limiting hours of operation of the nonprofit office use as well as restrictions on parking, deliveries, and loading.

The Board accepted OP's recommendation to limit the number of committee meetings to three per quarter. However, the Board was not persuaded that the number of invitees at each committee meeting should be limited to 15, as recommended by OP; instead, the Board agreed with the Applicant that as many as 25 invitees could be permitted without creating a likelihood of adverse impacts. The committee meetings are unlikely to generate any adverse impacts other than

BZA APPLICATION NO. 19659-A
ORDER ON REMAND
PAGE NO. 5

potentially those related to traffic and parking when a larger number of people occasionally travel to the site. However, the Board does not find that the committee meetings, held during business hours and subject to limits on parking, loading, and deliveries, are likely to adversely affect the use of neighboring properties.

The Applicant proposed to hold a reception once per quarter, on an evening before a committee meeting, with as many as 50 invitees and lasting as late as 8:00 p.m. OP's recommendation would have allowed an evening reception as one of the three-per-quarter committee meetings (not in addition to those meetings) but would not have permitted any additional invitees, restricting the receptions to a maximum of 15 persons. The Board agreed with the Applicant with respect to the number of invitees and the duration of the reception. However, the Board did not agree with either the Applicant or OP that receptions should be permitted every quarter; that frequency could generate undue impacts relating to traffic and parking. Instead, the Board adopted a restriction limiting receptions to once per year.

The Office of Planning reports do not specify a rationale for OP's recommended limits except to state that the Applicant's proposal with respect to meetings "would not appear ... to adequately mitigate potential impacts of the use on the surrounding residential neighborhood." (Exhibit No. 153.) The Board agreed with the Applicant's proposal with respect to committee meetings – up to three per quarter with a maximum of 25 invitees – finding that the conditions of approval will adequately mitigate any adverse impacts potentially arising from those periodic events. The Board was not persuaded by the Applicant's assertion that a large reception should be permitted as often as once per quarter in addition to the committee meetings, or by OP's recommendation that any reception should be limited to 15 invitees. Instead, the Board determined to permit an evening reception once per year for up to 50 invitees. The Board notes that the subject property is in a relatively densely developed area, fronting on a relatively narrow street. However, any impacts associated with the Applicant's committee meetings, held during business hours, and receptions, limited to once per year, are not likely to create undue adverse impacts on the use of neighboring properties, especially considering that residential neighbors may host similar events as a matter of right, not subject to any conditions of approval restricting number of invitees, parking, loading, or deliveries.

The Board notes that the original order in this proceeding inadvertently specified that receptions could be held once per quarter, rather than the intended once per year. The conditions previously adopted by the Board are restated below, as revised to correct that error and to reflect that the conditions of approval govern the grant of a special exception under Subtitle U § 203.1(n) to allow use of an existing residential building as an office for a non-profit organization. *See, e.g., French*, 658 A.2d at 1029 (conditions imposed by the Board run with the land without regard to the identity of the person who owns or occupies the building).

Accordingly, it is **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9 –**

BZA APPLICATION NO. 19659-A
ORDER ON REMAND
PAGE NO. 6

ARCHITECTURAL PLANS AND ELEVATIONS¹ - AND WITH THE FOLLOWING CONDITIONS:

1. The proposed nonprofit office use shall be approved for a period of FIVE (5) YEARS, beginning on the date of issuance of the certificate of occupancy.
2. There shall be no expansion of the existing Building footprint, and other external alterations are subject to approval by the DC Historic Preservation Office.
3. The office hours of operation shall not exceed 8:00 a.m. to 6:00 p.m. Monday through Friday.
4. Staff and visitor parking shall be in nearby garages only and on-street parking shall not be allowed. The Applicant shall memorialize the restriction on street parking in the employee handbook. The Applicant may utilize the two spaces in its own garage, accessed from the rear of the property.
5. A maximum of 18 people may work on-site.
6. All deliveries shall be restricted to weekday office hours.
7. Loading shall be restricted to the alley.
8. Annual meeting and events shall not be held at the subject property and shall be held off-site. The Premises shall not be used for any types of parties or similar events. Fundraisers are also prohibited. The Applicant may hold a maximum of three committee meetings per quarter, not to exceed more than 25 invitees per meeting. The Applicant may hold a maximum of one reception per year to be held the night before a committee meeting. The reception shall end by 8:00 p.m. and shall not exceed 50 guests.
9. The Applicant and the ANC shall establish a neighborhood liaison to provide a forum for concerns and provide information about activities to property owners within 200 feet of the Subject Property, and the Applicant shall designate one of its executive officers as its liaison to the forum, which shall convene no less frequently than on a quarterly basis.

¹ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 1). In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. 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 such application that would require additional or different zoning relief from that is granted by this Order.

BZA APPLICATION NO. 19659-A
ORDER ON REMAND
PAGE NO. 7


10. The Applicant shall maintain security lighting in the rear of the Property. Exterior lighting and security equipment shall be consistent with the style customary to Sheridan-Kalorama and will be selected with the neighborhood liaison.
11. The Applicant shall maintain a 24-hour emergency response service and provide contact numbers to the ANC, neighborhood liaison, and to all neighbors within 200 feet of the Property.
12. The Applicant shall provide a covered space dedicated to parking for at least three bicycles.
13. No smoking shall be allowed anywhere on the Property, and employees will be subject to the smoking policies contained in the employee handbook.
14. The Applicant shall give notice and a copy of plans to the liaison, the ANC, the SKNC, the SKHA, and the two neighbors whose properties abut the site.

VOTE (November 18, 2020): 3-0-2 (Frederick Hill, Lorna John, and Peter May to APPROVE; Chrihaun Smith, not present, not voting; one Board seat vacant)

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 K. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 11, 2020

PURSUANT TO 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.