

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19982 of Montello 1723 LLC, as amended¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and under Subtitle G §§ 409, 1200 and 1201 from the lot occupancy requirements of Subtitle G § 404.1 and the rear yard requirements of Subtitle G § 405.2, to construct a two-story addition and penthouse to an existing, one-story commercial building and convert it to an eight-unit apartment house in the MU-4 Zone at premises 1723 Montello Avenue, N.E. (Square 4052, Lot 180).

HEARING DATES: April 17, 2019²; May 22, 2019
DECISION DATE: May 22, 2019

DECISION AND ORDER

Montello 1723 LLC (the “**Applicant**”) filed an application with the Board of Zoning Adjustment (the “**Board**”) on January 31, 2019 for a special exception under Subtitle C § 703 of Title 11 of the DCMR (the “**Zoning Regulations**”, to which all references are made unless otherwise specified) for relief from the minimum parking requirements of Subtitle C § 701.5 and special exceptions pursuant to Subtitle G §§ 409, 1200, and 1201 from the lot occupancy requirements of Subtitle G § 404.1 and the rear yard requirements of Subtitle G § 405.2 (the “**Application**”), to construct a two-story addition and penthouse to an existing, one-story commercial building and convert it to an eight-unit apartment house in the MU-4 Zone at premises 1723 Montello Avenue, N.E. (Square 4052, Lot 180) (the “**Property**”). For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

Notice of Application and Notice of Public Hearing

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the April 17, 2019 hearing by a March 13, 2019 letter to the Applicant;

¹ The Applicant amended the application (Exhibit (“**Ex.**”) 50A) by removing the request for a variance from the nonconforming structure requirements of Subtitle C § 202.2 after discussions with OP and the Zoning Administrator. The Applicant also revised the number of units from seven to eight (Ex. 36).

² The hearing was postponed from April 17, 2019 to May 22, 2019 at the request of the Applicant.

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Advisory Neighborhood Commission (“ANC”) 5D, the ANC for the area within which the subject property is located, the single-member district ANC 5D02, and the Office of ANCs; the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”); the Councilmember for Ward 5, the Chairman of the Council, and the At-Large Councilmembers; and the owners of all property within 200 feet of the Property. (Ex. 16-28.) OZ also published notice of the April 17, 2019 public hearing in the *D.C. Register* on February 22, 2019 (66 DCR 2307) as well as through the calendar on OZ’s website.

2. Pursuant to Subtitle G § 1201.1(e) on May 17, 2019, OZ sent notice of the Application and the May 22, 2019 hearing to the District of Columbia Housing Authority (“DCHA”).

Party Status

3. The Applicant and ANC 5D were automatically parties in this proceeding per Subtitle Y § 403.5. No request for party status was filed.

The Property

4. The Property contains 1,278 sq. ft. of land area. (Ex. 41.)
5. The Property is rectangular and is bounded by Montello Avenue N.E. to the west and Simms Place N.E. to the south. (Ex. 48A.)
6. The Property borders a mixed-use row building to the north and an apartment house to the east. (Ex. 8.)
7. The surrounding neighborhood is comprised of residential and mixed-use row buildings. (Ex. 41.)
8. The Property is currently improved with a one-story vacant commercial building (the “**Building**”). (Ex. 8.)
9. The Building occupies 100% of the lot. (Ex. 8.)
10. The Building has no rear yard. (Ex. 8.)
11. The Property is located in the MU-4 Zone. (Ex. 8.)
12. The purpose and intent of the MU-4 Zone is to permit moderate density mixed-use development, including housing, with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)
13. The Property has a walk score of 83 according to WalkScore.com. (Ex. 8.)

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14. The Property is 16 feet from the Montello Avenue and Simms Place Metrobus stop, half a mile from the nearest Capital BikeShare station, eight-tenths of a mile from the H Street Streetcar, and nine-tenths of a mile from the nearest ZipCar location on Bladensburg Road and 14th Street, N.E. (Ex. 14.)

The Application

15. The Application proposes to renovate the Building, construct a two-story and penthouse addition for a total of three stories (the “**Addition**,” and collectively with the Building, the “**Project**”).
16. The Project will be used as an eight-unit apartment house and will participate in Inclusionary Zoning (“**IZ**”). (Ex. 8 and 36.)
17. The Application proposed to continue the Building’s existing 100% lot occupancy in the Addition, with all three floors at 100% lot occupancy. (Ex. 8.)
18. A maximum of 75% lot occupancy is permitted in the MU-4 Zone for buildings participating in IZ. (Subtitle G § 404.1.)
19. The Project will have no rear yard. (Ex. 8.)
20. A minimum rear yard of 15 feet is required in the MU-4 Zone. (Subtitle G § 405.2.)
21. The Application proposed to provide no parking on the Property due to the existing 100% lot occupancy of the Building. (Ex. 8.)
22. The Application’s proposed eight units would require a minimum of one parking space on the Property (Ex. 8.)
23. The Project is compliant with the MU-4 requirements for height and FAR. (Ex. 50A.)
24. None of the proposed apartment windows will be located within 40 feet directly in front of another building. (Ex. 12.)

Zoning Relief

25. The Application requested the following zoning relief:
 - a. A special exception under Subtitle G §§ 409 and 1200 from the maximum 75% lot occupancy permitted by Subtitle G § 404.1 to authorize providing 100% lot occupancy. (Ex. 8.)

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- b. A special exception under Subtitle G §§ 409 and 1201 from the required 15-foot rear yard required by Subtitle G § 405.2 to authorize providing no rear yard. (Ex. 8.)
- c. A special exception under Subtitle C § 703 from the one parking space required under minimum parking requirements of Subtitle C § 701.5. (Ex. 8.)

DDOT Report

- 26. DDOT submitted a report dated April 5, 2019 (the “**DDOT Report**”). (Ex. 40.)
- 27. The DDOT Report concluded that the Application would have only minor transportation impacts by reducing the availability of on-street public parking and increasing the number of vehicular, transit, pedestrian, and bicycle trips. The DDOT Report did not note any concerns regarding loading, additional parking or service issues.
- 28. To mitigate these potential minor negative impacts, DDOT recommended the implementation of a Traffic Demand Management Plan (the “**TDM Plan**”), including:
 - a. Providing new residents with a “Welcome Package” including information about available transit options.
 - b. Providing a one-year bikeshare membership to initial owners.
 - c. Installing a TransitScreen in the building to display real-time transportation information.

OP Report

- 29. OP submitted a report dated April 5, 2019 (the “**OP Report**”) recommending approval of the Application subject to the conditions proposed by TDM Plan in the DDOT Report. (Ex. 41.)
- 30. The OP Report concluded that the small size of the property, the lack of alley access, and the existing 100% lot occupancy of the Building, the Applicant would be unable to provide on-site parking on-site without losing at least one residential unit. (Ex. 41.)
- 31. The OP Report noted that the Applicant has also requested variance relief from Subtitle C § 202.2 to allow an addition to a non-conforming building but had subsequently informed OP of its intent to amend this relief to a special exception. OP discussed the relief with the Zoning Administrator who confirmed that no relief was required from Subtitle C § 202.2 in this case.
- 32. The OP Report noted that the windows in the second bedrooms of Units 4, 6, and 8 would be considered “at risk” under the Construction Codes. (Ex. 41.)

ANC Report

33. ANC 5D submitted a written report (the “**ANC Report**,” Ex. 56) stating that the Applicant had presented the Application to the surrounding neighborhood at an ANC Community meeting on May 14, 2019, having previously met with the ANC a total of seven times to discuss the Application. At that May 14, 2019 public meeting, which had been duly noticed and scheduled and at which a quorum was present, the ANC voted to conditionally support the Application, with two concerns. The ANC Report expressed the concern that the proposed units were “extremely and unreasonably small” and noted that in discussions with the Applicant, the ANC had requested that the number of units be reduced to allow for larger units. The ANC Report also expressed a concern that the three “at-risk” windows might not provide the required access for D.C. Fire and Emergency Medical Services (“**FEMS**”).
34. The ANC Report requested two conditions be imposed by the Board to address these concerns:
- a. Reduce the total number of units proposed for the lot in order to increase the square footage for the two and three-bedroom apartments.
 - b. Provide written documentation from the adjacent property owners (1210 Simms Place and 1211 Mt. Olivet Road, N.E.) stating their intent to sign covenants and/or easements to ensure that the three “at-risk” windows proposed for the Project would no longer be at-risk of closure and would have access for FEMS.
35. The ANC Report authorized Keisha Shropshire, Commissioner for 5D02, to testify at the May 22nd hearing on behalf of the ANC.

Persons in Support

36. The Board received three letters in support of the Application from residents of 1239 Simms Place N.E. (Ex. 30-32.) No persons testified in support at the hearing.

Persons in Opposition

37. The Board received two letters in opposition to the Application. (Ex. 33 and 39.)
38. Marcus Hendrick testified in opposition of the Application at the public hearing. (Ex. 57.) Mr. Hendrick raised concerns regarding the number and size of the proposed units.

Public Hearing

39. At the hearing on May 22, 2019, Commissioner Shropshire testified as to the ANC’s vote at the May 14th meeting, and the rationale for the requested conditions. Commissioner Shropshire stated for the record that the ANC would not be in support of the Application

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if the proposed conditions were not adopted. (BZA Public Hearing Transcript of May 22, 2019 (“Tr.”) at 27.)

40. Commissioner Shropshire reiterated that the ANC was concerned about what it believed were “extremely and unreasonably small” residential units. (Tr. at 22-23.) The Commissioner also explained that the ANC requested at multiple meetings that the Applicant reduce the number of units in order to increase the size of the units. (Tr. at 35-36.)
41. Commissioner Shropshire also raised the ANC’s concerns regarding the “at-risk” windows on the Project’s southeast side, adjacent to the neighboring apartment house. The ANC was concerned that these windows posed access problems for FEMS and that they were also at risk of being closed if the adjacent building ever expanded. (Tr. at 23.)
42. In response to the Commissioner’s testimony, OP testified that the Zoning Regulations do not include a specific density requirement for the number of units permitted in a multi-family dwelling in the MU-4 Zone other than the maximum Floor Area Ratio (“FAR”) requirements. OP further testified that unit size is governed by the Construction Codes Code and not the Zoning Regulations. (Tr. at 31.)
43. With regard to the “at-risk” windows, the Applicant testified that it intends to enter into a covenant with the adjacent property whereby, if the adjacent property ever expands the building the Applicant, or its successors in title, will close the “at-risk” windows. (Tr. at 37-38.) The Applicant further testified that they will provide notice of the presence of the “at-risk” windows in the residential leases and provide tenants of the affected units with additional notice periods and mitigation options in the event the windows ever are closed. (Tr. at 39-40.)

CONCLUSIONS OF LAW

Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:

- i. will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
- ii. will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
- iii. complies with the special conditions specified in the Zoning Regulations.

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For the relief requested by the Application, the “specific conditions” are those of Subtitle C § 703 and Subtitle G §§ 1200 and 1201.

Relief granted by the Board 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 relief requested are met. In reviewing an application for special exception relief, the Board’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Subtitle G §§ 409 and 1200 – Relief from Lot Occupancy Requirements of G § 404.1

To qualify for a special exception from the lot occupancy requirements of Subtitle G § 404.1 under Subtitle G §§ 409 and 1200, the Applicant must demonstrate that the Application satisfies the conditions of Subtitle G § 1200.4. Specifically, that the Application:

- (a) *Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;*
- (b) *Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps;*

Subtitle G § 1200.4(a): Harmony with the Zone and Zoning Regulations

The Board concludes that the proposed development is in harmony with the general purpose and intent of the MU-4 Zone. (Finding of Fact 12.) The surrounding uses are mostly residential in character and the proposed development would be more in keeping with the surrounding uses and a more productive use for the Property than the current underutilized lot and vacant Building.

Subtitle G § 1200.4(b): No Adverse Effects

The Board also concludes that the proposed development will not have any adverse effects on the use of the neighboring properties. The existing building on the site is already at 100% lot occupancy and the proposed project will comply with the maximum IZ FAR and height requirements. (Finding of Fact 23.) The Board also notes that it will be similar in height to the surrounding buildings and will not obstruct any windows on the adjoining properties. (Finding of Fact 6.)

Based on the above, the Board concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle G §§ 409 and 1200 from the lot occupancy requirements of Subtitle G § 404.1.

Subtitle G §§ 409 and 1201 – Relief from the Rear Yard Requirements of G § 405.2

To qualify for a special exception from the minimum rear yard requirements of Subtitle G § 405.2 under Subtitle G §§ 409 and 1201, the Applicant must demonstrate that the Application satisfies the following conditions of Subtitle G § 1201.1:

- (a) *No apartment window shall be located within forty feet (40 ft.) directly in front of another building;*
- (b) *No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;*
- (c) *In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;*
- (d) *Provision shall be included for service functions, including parking and loading access and adequate loading area; and*
- (e) *Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if historic district or historic landmark is involved, the Historic Preservation Office.*

Subtitle G § 1201.1(a): Window Location

Based on the plans submitted by the Applicant, the Board concludes that the Application satisfies this criterion because no window would be located within forty feet directly in front of another building. (Finding of Fact 24.)

Subtitle G § 1201.1(b): Office Windows

The Board concludes that these requirements are not applicable because the proposed development is comprised solely of residential units. (Finding of Fact 16.)

Subtitle G § 1201.1(c): Sight Lines

The Board concludes that this requirement is not applicable because the proposed development is parallel to adjacent buildings. (Findings of Fact 5 and 6.)

Subtitle G § 1201.1(d): Parking and Loading

The Board concludes that this requirement is satisfied because no additional parking and loading are required because the proposed development is fewer than 50 dwelling units, as asserted by

OP. (Ex. 41, p.4.) Further, DDOT did not raise any concerns in its report regarding additional parking and loading requirements. (Finding of Fact 27.)

Subtitle G § 1201.1(e): District Agency Review

The Board concludes that this requirement was satisfied as Application was properly referred to all of the appropriate District agencies on March 13, 2019 and May 17, 2019. (Findings of Fact 1 and 2.)

The Board therefore concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle G §§ 409 and 1201.1 from the minimum rear yard requirements of Subtitle G § 405.2.

Subtitle C § 703 – Relief from Parking Requirements of Subtitle C § 701.5

To qualify for a special exception from the minimum parking requirements of Subtitle § 701.5 under Subtitle C § 703, the Applicant must demonstrate that the Application satisfies at least one of ten criteria of Subtitle C § 703.2, the criteria of Subtitle C §§ 703.3 and 703.4, and the general special exception criteria of Subtitle X § 901.

The Application asserted it satisfied the following three criteria of Subtitle C § 703.2:

- a) *Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8.*
- b) *The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities.*
- c) *Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces.*

Subtitle C § 703.3 - Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide and shall be proportionate to the reduction in parking demand demonstrated by the applicant” and

Subtitle C § 703.4 - Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment’s approval.

Subtitle C § 703.2: Parking Cannot Be Provided on Site

The Board concludes that the Application satisfies this requirement because it meets criteria (b) and (c). The Board concludes that the site is well served by alternate means of transportation thereby reducing the need for parking spaces (Subtitle C § 703.2(b)) and that the land use and

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transportation characteristics of the surrounding neighborhood minimize the need the required on-site parking spaces (Subtitle C § 703.2(c)). (Findings of Fact 13-14.)

Subtitle C § 703.3: Minimal Reduction

The Board concludes that the Applicant satisfied these requirements because the Applicant only requested relief from providing the one required parking space. (Finding of Fact 22.)

Subtitle C § 703.4: TDM Plan

The Board notes that DDOT accepted Applicant's TDM Plan and requested that elements of the TDM Plan be incorporated into the Board's decision as conditions. (Finding of Fact 28.)

Based on the above, the Board concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5.

General Special Exception Relief – Subtitle X § 901

The Application, in addition to meeting the specific conditions of the special exceptions from the lot occupancy, rear yard, and minimum parking requirements, must also meet the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties.

The Board concludes that granting the Application's requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Building meets the intent of the MU-4 Zone to permit moderate density mixed-use development as a four-story apartment building that meets the other development standards of the MU-4 Zone.

The Board concludes that granting the Application's requested special exceptions would not tend to adversely affect the use of neighboring properties because the existing Building has a 100% lot occupancy and no rear yard, the siting of the windows would mitigate any adverse impacts of the requested rear yard relief, and the TDM Plan would mitigate any adverse impacts of the requested parking relief.

“Great Weight” to the Recommendations of OP

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8.)

The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief, is persuasive and concurs with OP's recommendation that the Application be approved, subject to the conditions suggested by DDOT, as discussed above.

“Great Weight” to the Written Report of the ANC

The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 5D. (§ 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2.) To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).

The Board considered the concerns raised by the ANC Report and as reiterated in the testimony of Commissioner Shropshire. The ANC Report conditioned its support of the Application on the Board adopting both of the ANC's proposed conditions, as Commissioner Shropshire confirmed in her oral testimony at the public hearing. (Finding of Fact 40.)

The Board did not find the ANC's concerns about the number and size of the proposed units and the "at-risk" windows persuasive because these issues do not fall within the Board's authority to regulate. (Tr. at 54.) The Board instead found OP's testimony persuasive that the Construction Codes regulate unit size and at-risk windows and notes the Applicant's proposed mitigation efforts addressed the ANC's concerns regarding the “at-risk” windows. (Finding of Fact 44.) The Board concludes that its authority to impose conditions on a special exception is limited to mitigating potential adverse effects on adjacent properties, not on future residents of the Project. The Board therefore concludes that it cannot adopt the conditions proposed by the ANC Report as these are not legally relevant.

DECISION

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and under Subtitle G §§ 409, 1200 and 1201 from the lot occupancy requirements of Subtitle G § 404.1 and the rear yard requirements of Subtitle G § 405.2, to construct a two-story addition and penthouse to an existing, one-story commercial building and convert it to an eight-unit apartment house in the MU-4 Zone.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS³ AT EXHIBIT 48A AND WITH THE FOLLOWING CONDITION⁴:**

³ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 50A). In granting the requested self-certified relief subject to the plans submitted with the Application, the Board made 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

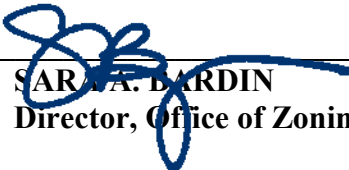
1. Applicant shall implement the TDM Plan including:
 - a. Providing each resident with a “Welcome Package” which will include information about the nearby transportation options – ride-sharing, car-sharing, metro and bike-shares.
 - b. Offering one-year bikeshare memberships (only for initial owners – not in perpetuity).
 - c. Installing a TransitScreen or similar device displaying real time transportation schedules, bike/car share options etc. located within .5 miles of the site.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Peter A. Shapiro to APPROVE).

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 A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 31, 2019

PURSUANT TO 11 DCMR 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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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

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 application that would require additional or different zoning relief from that is granted by this order.

⁴ At the May 22, 2019 hearing the Board orally adopted an additional condition which would have required the Applicant to include a provision in its leases notifying the tenants about the potential loss of “at-risk” windows in certain units. Upon further review by the Office of the Attorney General, this provision was found to be without legal basis and beyond the Board’s power to impose. It is therefore not included as a condition on this order.

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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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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 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 SUBTITLE A § 303, 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.