

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19705-A of Madison Investments, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle K § 813 from the height requirements of Subtitle K § 803.3¹, and from the lot occupancy requirements of Subtitle K § 804.1, to construct a mixed use development in the ARTS-3 Zone at premises 2122 14th Street N.W. (Square 203, Lots 96, 809, 10, 1, and 805).

HEARING DATES: March 7, 2018 and April 11, 2018

DECISION DATE: April 11, 2018

CORRECTED SUMMARY ORDER²

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. 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 application for which additional or different zoning relief is needed.

The 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") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted two reports in this case. In its first report, ANC 1B recommended approval of height and lot occupancy relief and denial of setback relief by a vote of 9-0-1 at the ANC's duly noticed

¹ The special exception from the height requirements of Subtitle K § 803.3 includes relief from Total Height Including Penthouse (K § 803.3(a)) and 45° Setback from Residential Zones (K § 803.3(b)).

² This Order was revised to correct the typographical error of omitting Lot 805 from the premises that are the subject of the application. Lot 805 is cited in the Applicant's self-certification form submitted with the original application. (Exhibit 6.) No further revisions were made to this Order.

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Board of Zoning Adjustment
District of Columbia
CASE NO.19705
EXHIBIT NO.94

BZA APPLICATION NO. 19705-A
PAGE NO. 2

and regularly scheduled meeting of March 1, 2018, at which a quorum was present. The ANC report raised the following issues and concerns the ANC wanted the Board to consider:

- The scale of the project must be reduced to six floors (five floors and a penthouse);
- The project should step down or reduced in size as the elevation decreases from W to V Street;
- The proposed number of parking spots acceptable if the project is reduced in size to six floors.

(Exhibit 61.) At the Board's March 7, 2018 hearing, ANC Commissioner Ackerman testified on behalf of the ANC and on behalf of his Single Member District. Subsequently, the ANC submitted a second, revised report in support of all the relief, based on the Applicant's revised plans reducing the setback relief requested. That second ANC report indicated that at a duly noticed and regularly scheduled meeting of the ANC on April 5, 2018, at which a quorum was present, the ANC voted 12:0:0 to approve the application. (Exhibit 87.)

The Office of Planning ("OP") submitted two reports and testified at the hearings. In its first report dated February 23, 2018, OP recommended approval of height and lot occupancy relief and denial of setback relief. (Exhibit 43.) At the March 7, 2018 hearing, while OP testified in support of the height and lot occupancy relief, OP did not support the projection in the western setback area and recommended denial of the relief sought under Subtitle K § 803.3(b) (regarding projection into volume of 45-degree plane). The Board continued the proceedings for a limited scope hearing on April 11th to focus on the 45-degree setback issue. Subsequent to the March 7th hearing, the Applicant submitted a Supplemental Statement (Exhibit 83) and revised plans (Exhibit 83A) showing a reduced portion of the building within the 45-degree setback. Thereafter, OP submitted a supplemental report dated March 30, 2018, recommending approval of the application based on the revised plans. (Exhibit 85.)³

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 42.)

As a preliminary matter at the hearing on March 7, 2018, the Board considered a timely request for party status in opposition from LDP Acquisitions, LLC ("LDP") and, by motion, a request for dismissal of the BZA application on the ground that LDP was the contract purchaser of a portion of the property that the Applicant sought to develop. (Exhibits 39, 40.) Since only parties can file a motion, the Board first considered the party status request. In LDP's application for party status,

³ According to OP, the revised design would provide a visual step down confronting the adjacent residential development and would only result in "some" building penetration into the setback volume, instead of the original design with "extensive" building penetration into the setback volume. (Exhibit 85.) According to OP, the Applicant also changed the location of the ramp to the parking garage (from the alley to W Street). While OP does not support this change, it stated that it would defer to DDOT and Public Space review for a final evaluation of the vehicular access design. (Exhibit 85.) The Applicant stated that it will be presenting its curb cut application to the Public Space Committee on April 26, 2018, and that the ANC transportation subcommittee already voted to support the proposed curb cut. (Exhibit 83.)

BZA APPLICATION NO. 19705-A
PAGE NO. 3

LDP asserted contested issues pertaining solely to a contractual dispute with the owner of Lot 10 in Square 203, which is part of the subject application. The Board may grant party status to a person whose interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public. (11-Y DCMR 404.13.) LDP's request makes it clear that it has no position on the zoning action itself, just that it considers itself to be the contract purchaser. Whether it is or is not has no relevance to this proceeding. There is no dispute as to who the owner of the property currently is, and any owner may authorize any person to file an application on its behalf. Therefore, since LDP concedes it has no substantive objections to the application and the issues it seeks to raise are irrelevant to the proceeding, its request for party status was denied and, since LDP was not a party, its motion to dismiss was not considered.

At the hearing on March 7, 2018, the Board heard testimony in support from Cheryl Cort on behalf of the Coalition for Smarter Growth, Shannon Hiller on behalf of the board of The Hamilton, and Steve Gaudio. Also on March 7, 2018, the Board heard testimony in opposition from Ken Shapiro, Joseph Nicynski, Elizabeth Parra, and Dritan Nesho.

Thirty-four letters in support of the application from nearby business and property owners were submitted to the record. (Exhibits 34C, 68-75, 79, and 80.) A petition in opposition (Exhibit 37), four letters in opposition from residents of a nearby condo (Exhibits 44, 46, 50, 51), seven letters in opposition from neighbors (Exhibits 38, 63-67, 77), and one letter in opposition signed by four neighbors (Exhibit 78) were submitted to the record.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle K § 813 from the height requirements of Subtitle K § 803.3, and from the lot occupancy requirements of Subtitle K § 804.1, to construct a mixed use development in the ARTS-3 Zone. 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle K §§ 813, 803.3, and 804.1, 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

BZA APPLICATION NO. 19705-A
PAGE NO. 4

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBITS 83A1-83A14 AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall have flexibility to vary the vehicular parking spaces from the proposed 70 to between 65 and 75 spaces.
2. The Applicant shall have flexibility to vary the location of the proposed curb cut and driveway access to parking level pursuant to the pending Public Space Committee application.
3. The Applicant shall have flexibility to revise the interior floor plan of the ground floor and parking level to adjust the driveway access if necessary. In addition, the Applicant shall have flexibility to vary architectural design features of the building in accord with the design approved by Historic Preservation Review Board, provided that the overall height, mass, bulk, and number of stories in the building remain consistent with approved plans and any refinements do not result in new or increased areas of relief.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter A. Shapiro to APPROVE; Lorna L. John, not participating.)

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: April 2, 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 STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE

BZA APPLICATION NO. 19705-A
PAGE NO. 5

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.