

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



ZONING COMMISSION ORDER NO. 16660
Case No. 16660

Case No. 16660¹ of Montgomery Road I Limited Partnership, pursuant to 11 DCMR 3104.1, for a special exception under § 745 to use an existing property as an electronic equipment facility in a C-3-C District at 90 K Street, N.E. (Square 674, Lot 432) and a special exception under § 2110.1² to reduce the number of off-street parking requirement and to permit the temporary use of the remaining off-street parking spaces for non-habitable uses during the period of time of the use of the building as an electronic equipment facility.

HEARING DATE: December 18, 2000
DECISION DATE: December 18, 2000 (Bench Decision)

SUMMARY ORDER

The Zoning Commission (Commission) 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 the application is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to the application, did not file a written statement of issues and concerns

¹ The Application was originally filed with the Board of Zoning Adjustment pursuant to 11 DCMR 745 and processed under the notice of emergency ruling published in 47 DCR 9775-84 (December 8, 2000). After the Application was filed, the Zoning Commission modified § 745 providing that the Zoning Commission review special exception applications for Electronic Equipment Facilities under § 745. Therefore all procedural requirements of a Special Exception review by the Board of Zoning Adjustment will, in this case apply correspondingly to the Zoning Commission.

² The parking and loading relief requested were originally advertised as a variance. However, the regulations were revised subsequent to such advertisement to provide the Zoning Commission with special exception authority to reduce the parking requirement under Section 2110.1 and the loading requirement under Section 2202.3.

regarding the application. One Single Member District Commissioner filed a letter indicating that the ANC did not have a quorum of members present when it considered the application and therefore the ANC took no action on the application.

As directed by 11 DCMR 3119.2, the Commission required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to §§ 745 and 2110.1 and processed under the notice of emergency rulemaking in 47 DCR 9775-84 (December 8, 2000). No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party to this proceeding. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.

Based upon the record before the Commission, the Commission concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3104.1 and § 745 and 2110.1 of the Emergency Rulemaking, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission 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,

It is therefore **ORDERED** that the application is **GRANTED**, subject to the following **CONDITIONS**:

1. The exterior design of the building, as constructed, shall be in accordance with the perspective elevations marked as Sheets E-1 through E-13 of the plans dated September 9, 2000 filed with the application.
2. The streetscape surrounding the building shall be designed and constructed in accordance with the criteria contained in Exhibit E of the Applicant's Pre-Hearing Statement, dated and submitted December 4, 2000 (the "Pre-hearing Statement").
3. The interior spaces immediately adjacent to the exterior windows located in those elevations of the building fronting directly on a public street shall be illuminated during the evening hours up to at least 11:00 p.m., except and to the extent that governmental regulations would preclude or otherwise restrict such lighting or hours of operation of such illumination.
4. The building as constructed will contain two underground levels capable of accommodating no less than the number of parking spaces required to satisfy the provisions of § 2110.1 of the Emergency Rulemaking applicable to Electronic Equipment Facilities. Notwithstanding the foregoing, the Applicant may use all but 100 of the striped parking spaces located on those two underground levels for storage, technical support and other non-habitable purposes other than off-street parking. In the event that the demand for off-street parking spaces increases, whether due to the demands of the Electronic Equipment Facility use in the building or a change in the use of the building, then portions of the underground levels

shall be returned to off-street parking use as may be necessary to accommodate the off-street parking needs for the uses then in the building from time to time.

5. The building shall be designed and constructed to allow for the introduction of retail uses on the first floor along the 1st Street frontage of the building in those areas shown on the plan marked as Sheet A3.1 of Exhibit D of the Pre-Hearing Statement.
6. The building may be constructed in two phases pursuant to and in accordance with, and in reliance upon, this Order. Pursuant to § 3202.6 of the Zoning Regulations, approval of this application shall include approval of the entire building as proposed, regardless if it is subsequently constructed in phases
7. As shown on the plans included in Exhibit C of the Applicant's Pre-Hearing Statement, the design of the building and the building as constructed shall retain the ability to be readily adapted for office use in the future.
8. Exterior signage may only be located at the principal entrance of the building and no higher than the the pedestrian arcade.
9. The Applicant will make practicable and reasonable efforts to arrange for the employment of community residents in the construction of the building and the building's subsequent use as an Electronic Equipment Facility.
10. Any antennas located on the roof of the building shall be screened and not visible from the adjacent streets.

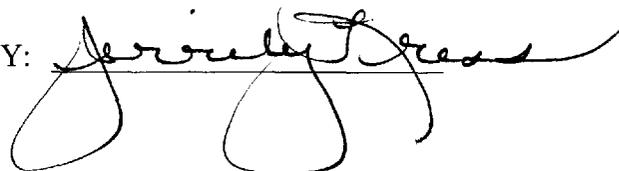
Pursuant to 11 DCMR 3101.6, the Commission has determined to waive the requirement of 11 DCMR 3125.3 that the Order of the Commission be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 5-0 (Commissioners Anthony J. Hood, Kwasi Holman, Herbert M. Franklin, John G. Parsons and Carol Mitten **to GRANT**)

BY ORDER OF THE ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Each concurring member has approved the issuance of this Decision and Order and has authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY:

A handwritten signature in black ink, appearing to read "Anthony J. Hood", written over a horizontal line.

Jerrily R. Kress, FAIA
Director
Office of Zoning

FINAL DATE OF ORDER: FEB -6 2001

PURSUANT TO D.C. CODE SEC. 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

PURSUANT TO 11 DCMR § 3130.1, THIS ORDER OF THE COMMISSION IS VALID FOR A PERIOD OF ONE YEAR, AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Office of Zoning

BZA APPLICATION NO. 16660

As Director of the Office of Zoning, I hereby certify that on FEB 6 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

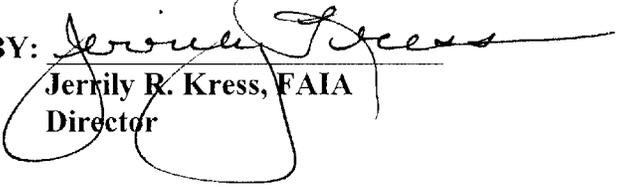
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ATTESTED BY:


Jerrily R. Kress, FAIA
Director