

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17604 of NJA Associates LLC, pursuant to 11 DCMR 3104.1, for a special exception for a waiver of the rear yard requirements under subsection 774.2, to allow the construction of an office building at 1111 New Jersey Avenue, S.E. (Square 743-N, Lot 78), in the C-3-C zone.

HEARING DATE: May 8, 2007
DECISION DATE: May 8, 2007 (Bench Decision)

DECISION AND ORDER

On December 29, 2006, NJA Associates LLC (the owner or the applicant), filed an application with the Board of Zoning Adjustment (Board) pursuant to 11 DCMR § 3104.1 for special exception relief for a waiver of the rear yard requirements, to allow the construction of an office building in the C-3-C zone district. Following a public hearing on May 8, 2007, the Board voted to approve the application.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit F41, Tab I).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all entities owning property within 200 feet of the applicant's site, the Capital Hill Restoration Society, Advisory Neighborhood Commission (ANC 6D), and the Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 26).

ANC 6D The subject site is located within the area served by the Advisory Neighborhood Commission 6D (the ANC), which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on April 9, 2007, with a quorum present, the ANC voted to oppose the application (Exhibit 29).¹ The ANC

¹ The ANC report was untimely filed. However, the Board waived the filing requirement under 11 DCMR § 3115.1 to receive it into the record.

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did not participate in the public hearing. The specific concerns raised by the ANC will be discussed in the conclusions of law.

Requests for Party Status The Board received a request for party status in opposition from Mr. Maxwell Washington on behalf of the Saint Mathews Baptist Church (Exhibit 30). The Church is located to the immediate north of the property at 1105 New Jersey Avenue, SE. Mr. Washington attended the public hearing, but stated that he filed the party status request to obtain more information, and that he did not object to the project. He withdrew his request for party status at the public hearing, and stated that he was now a proponent of the application (T. p.71).

Other Persons/Entities in Opposition/Support No persons in opposition or support appeared at the hearing. However, the record contains letters in support from two property owners located across from the alley which abuts the subject property (Exhibit 27, Tab D). The applicant also submitted e-mail correspondence from the Capital Hill Restoration Society indicating its support of the project (Exhibit 34).

Office of Planning (OP) Report OP filed a report indicating that it recommended approval of the special exception (Exhibit 28). Matt Jessick, OP's representative, testified at the public hearing in support of the application.

The Applicant's Case The applicant was represented by the law firm of Holland and Knight, and offered testimony from Steven Sher, Director of Zoning and Land Use Services at the firm. Also available for Board questioning was: Robert Donahue for NJA Associates, and Siti Abdul Rahman, of WDG Architecture, the applicant's architect.

Closing of the Record The record was closed after the public hearing in accordance with § 3121.5 of the Regulations, except to allow submission of a plat showing the recorded subdivision for Lot 78 (where the subject property is located), and a revised "A-1-3" elevation sheet showing "office/retail" use on the ground floor of the proposed office building. The Board accepted these post-hearing filings (See, Subdivision Plat and Revised Sheet A-1.3 of Architectural Plans appended to Exhibit 35).

FINDINGS OF FACT

The Property

1. The subject property includes all of Lot 78 in Square 743-N. The Square is bounded by 1st Street on the west, L Street on the north, New Jersey Avenue on the east, and M Street on the south.

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2. Lot 78 consists of 10 combined lots, Lots 23, 44, 45, 46, 47, 57, 816, 817, 818, and 823. All of these lots were subdivided into a single record lot on December 26, 2006, as shown on the subdivision plat attached to Exhibit 35.
3. The site covers 16, 405 square feet of land area, and has approximately 157 feet of linear frontage along New Jersey Avenue, SE. It is currently improved with a surface parking lot that is leased to the US General Services Administration.

The Zoning at the Property

4. The property is zoned C-3-C, and also falls within the Capitol South Transferable Development Rights (“TDR”) Receiving Zone. *See*, 11 DCMR 1709.18. It is not located within any historic district and is not located in the DC Inventory of Historic Sites (Exhibit 27).
5. The C-3 District is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District. *See*, 11 DCMR 740.1. It allows medium-high density office, retail, housing, and mixed-use development. 11 DCMR 740.8.
6. Within the Capitol South TDR Receiving Zone (on properties that have purchased transferable development rights), buildings may be constructed to the height limits established by the Act to Regulate the Height of Buildings in the District of Columbia, D.C. Code §§ 6-601.01 to 6-601.09. *See*, 11 DCMR § 1709.21. Because the property has frontage along New Jersey Avenue, which is 160 feet in width, a building on the site may be constructed to a maximum height of 130 feet. Any building that is allowed to be constructed to a height of 130 feet may have an overall density of 10.0 floor area ratio (“FAR”) if a sufficient amount of transferable development rights have been purchased. *See*, 11 DCMR 1709.21.

The Surrounding Area

7. The property is located between the St. Matthew’s Baptist Church on the north and the Navy Yard Metrorail station to the south. The entrance to the Navy Yard Metro Station is located on a lot immediately south of the site, at the corner of the New Jersey Avenue and M Street intersection (Exhibit 28).
8. The site is separated from the western half of Square 743-N by a public alley that is approximately fourteen feet in width (Exhibit 27).

9. The general surrounding area is currently experiencing substantial development, including a 12-story office building west of the site (100 M Street, SE), and a 13-story residential building just northwest of the site (1100 First Street, SE). A large office building completed in 2003 (1100 New Jersey Avenue, SE) is located directly across the street from the property. Although much of the surrounding property is currently vacant or underutilized, the area is quickly becoming a magnet for both public and private investment due to its proximity to the Anacostia Waterfront, the Southeast Federal Center, and the Washington Nationals Baseball Stadium that is now under construction (Exhibits 27, 28)

The Proposed Project

10. The applicant proposes to construct an 11-story office building with a main entrance fronting onto New Jersey Avenue and backing onto the public alley. The proposed building will have an overall density of 10.00 FAR, will rise to a maximum height of 130 feet, and will contain approximately 164,060 square feet of gross floor area² (Exhibit 27).

Orientation to Nearby Buildings

11. The proposed office building will be sufficiently removed from the anticipated residential building at 1100 First Street. Plans for the residential building include a large courtyard and two elevated gardens which will separate it from the proposed office building (Exhibit 28). The residential building will also be set back approximately five feet from the public alley. As a result, the proposed office building will be about 100 feet away from the main tower (the “wings”) of the residential building (T. p. 86).

12. The proposed office building will also be sufficiently removed from the anticipated office building at 100 M Street. The existing 14 foot-wide alley will provide adequate distance for sufficient light and privacy between the two buildings, both of which are proposed for office use only. Although the rear yard of the proposed office building will measure only seven feet in depth, the minimum distance between the rear wall of that building and the office building across the alley will range between fourteen and thirty feet. The rear wall of the proposed building is located approximately 14 feet from the northeast corner of the 100 M Street building. The rest of the 100 M Street building is separated from the alley by a small wedge-shaped lot that has little potential for future development (Exhibit 27).

² The Board assumes that the applicant has or will have purchased the amount of transferable development rights to allow this height and density.

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13. The rear wall of the proposed building will not directly face the rear walls of the nearby office building (T., p. 85). The rear elevation of the proposed office building runs parallel to New Jersey Avenue and the public alley through the square. The north façade of the building across the alley, on the other hand, will be nearly perpendicular to the rear wall of the proposed building, thus minimizing visual penetration into the office windows of both buildings (Exhibit 27).

14. There will be no habitable rooms in either the proposed office building or the office building located directly across the alley. Moreover, visual penetration into the windows along the north side of the adjacent office building will be minimized by the relative orientation of the two buildings.

15. The average distance between the proposed building and the windows of the residential units will be nearly 100 feet, and will provide more separation than a rear yard that complies with the strict requirements of the Zoning Regulations (Exhibit 27).

Off-Street Service Functions

16. The project will include a three-level underground parking garage which will be accessed from New Jersey Avenue. The garage will provide a total of 114 parking spaces, 75 of which will be counted towards the off-street parking requirements (Exhibit 12 and 27).

17. The proposed building will also include two loading berths and a separate service and delivery space. These facilities will be accessed from the public alley and will comply with all applicable requirements under Chapter 22 of the Zoning Regulations (See, Exhibits 12 and 27).

Requirements for the Rear Yard

18. Section 774.1 of the Regulation requires a rear yard of 2 ½ inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall. Where, as here, a lot abuts an alley, the rear yard may be measured from the center line of the alley under § 774.9 of the Regulations. Thus, the 130 foot high building is required to provide a minimum rear yard setback of 25 feet 10 inches. (Exhibits 27, 28).

Requirements for Off-Street Service Functions

19. **Parking** Section 2101 of the Zoning Regulations calls for office buildings in a C-3-C zone to provide one parking space for every 1,800 square feet of floor area in excess of 2,000 square feet. *See* Parking Schedule at § 2101. However, § 2104.1 allows for a 25% reduction for a non-residential building located within a radius of 800 feet of a metro rail station entrance. As such, the building is required to have a minimum of 68 parking spaces. In addition, the parking must be “adequate” under § 774.5 of the Regulations (Exhibit 28).

20. **Loading Berths** Section 2202.1 of the Zoning Regulations states that office buildings of 100,000 to 200,000 gross square feet are required to provide a minimum of 2 loading berths, of 30 foot depth, 2 loading platforms at 100 square feet, and one service/delivery loading space at 20 feet depth. The loading berths and other off-street service functions must also be “adequate” under § 774.5 of the Regulations.

The Application

21. Because the applicant proposes to construct the building along the alley, up to its western lot line, it is seeking a special exception under § 774 of the Regulations to waive the rear yard requirement (Exhibit 27). No other zoning relief is requested (Exhibit 2).

22. The OP referred the application to the DC Department of Transportation (DDOT) for review. However, DDOT presented no comments for the Board’s consideration (Exhibit 28).

The Impact of the Proposed Project

23. The Board credits OP’s findings that: (a) The fourteen foot wide alley will provide ample distance to allow sufficient light and air to the buildings surrounding the proposed office building and will protect the privacy of building occupants; (b) A large courtyard off the nearby residential building will provide nearly 100 feet of setback space between it and the proposed office building, protecting the privacy of building occupants and allowing sufficient light and air for both buildings; (c) Impacts on the light and privacy of the two-story church located north of the site will be minimized due to the relative orientation of the two buildings and the window placement at the office building; and (d) According to the plans submitted, the application meets the parking requirements and the minimum square footage requirements for off-street service functions. (Exhibit 28).

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24. The requested relief from the rear yard requirement will allow the applicant to reduce the number of stories in the proposed building from twelve to eleven, in order to provide more floor-to-ceiling height on each floor. The ground floor will have a clear floor-to-ceiling height of fourteen feet and will be capable of accommodating retail uses (Exhibit 27). The revised elevation sheet submitted by the applicant indicates that the ground floor of the building will contain “retail/office” uses (Exhibit 35).

CONCLUSIONS OF LAW

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR for special exception relief pursuant to 11 DCMR § 774.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are met. First, the requested special exception must “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” 11 DCMR § 3104.1. Second, it must “not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map” 11 DCMR § 3104.1. The Board finds that waiver of the rear yard requirements will not be contrary to the purpose or intent of the Zoning Regulations nor will it adversely affect the surrounding neighborhood.

The requested reduction in the depth of the required rear yard will not have any adverse effect on neighboring properties. As noted above, the Board has received letters of support from the owners of properties at 100 M Street and 1100 First Street (See, Exhibit 27, Tab D). Because these property owners would be most directly affected by a reduction in the depth of the proposed building’s rear yard, their support for the project strongly suggests that the requested special exception relief will not have any adverse impact on the use or enjoyment of any adjacent properties.

Waiver of the rear yard requirements are permitted by special exception in the C-3-C zone, provided certain specified conditions are met. Under § 774.2 of the Zoning Regulations, the Board may allow a waiver of the rear yard requirements, subject to the standards in § 774.3 through § 774.6:

774.3 Apartment and office windows shall be separated from other buildings that contain facing windows a distance sufficient to provide light and air and to

protect the privacy of building occupants. This standard has been met. The proposed building will be sufficiently separated from nearby buildings to protect the light, air, and privacy of building occupants. (See, Findings of Fact 11-15).

774.4 In determining distances between windows in buildings facing each other, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to the rooms. The penetration into the windows of the office building at 100 M Street from the proposed building will be minimized by the relative orientation of the two buildings. (See, Findings of Fact 12, 13, and 14). As noted above, the residential units in the building at 1100 First Street will be separated from the rear wall of the proposed building by approximately 100 feet. (See, Finding of Fact 11).

774.5 The building plan shall include provisions for adequate off-street service functions, including parking and loading areas and access points. This condition has been met. The applicant proposes to provide 114 parking spaces, many more than the 68 spaces that are required. The Board agrees with OP that the off-street service functions will be adequate for the building plan (See, Findings of Fact 16, 17, and 23, and OP Report at Exhibit 28).

Great Weight to OP

The Board is required under D.C. Official Code § 6-623.04 to give “great weight” to OP recommendations. As set forth above, the Board found OP’s findings to be persuasive (Finding of Fact 23).

The ANC Issues and Concerns

The Board is also required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10), to give “great weight” to the issues and concerns raised in the affected ANC’s written recommendations. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC’s issues and concerns.

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The ANC raises two chief concerns: (1) the proposed extension of the building line will “cut the alley width by one half, reducing the light and sight, [and] diminishing the quality of life of people ... in the proposed residential [building].”; and , (2) the applicant has an “obligation to positively respond to the needs of the surrounding neighborhood” because he is “taking advantage of the construction boom in Near Southeast/Southwest”, and the “existing stakeholders in the community [should] derive some benefit” from the new growth. (Exhibit 29).

The Board concludes that the ANC’s first concern is not persuasive, and its second concern is not legally relevant.

Regarding the ANC’s first concern, the Board does not agree. First, the requested relief will in no way affect the width of the adjacent public alley, which will maintain its current width of 14 feet. Second, the Board does not agree that the proposed office building will reduce the “light and sight” at the anticipated residential building. As mentioned previously, the owner of that property supports the present request for relief. More importantly though, the Board has substantial evidence to conclude that the new building will be sufficiently set back from nearby buildings and will not interfere with the light and air of the buildings’ occupants.

Regarding the ANC’s second issue, this concern is not legally relevant, and is not entitled to great weight. The DC Court of Appeals has held that the written recommendations of the ANC are entitled to “great weight” only to the extent that they address issues and concerns that are legally relevant. *Bakers Local Union No. 118 v. DC BZA*, 437 A.2d 176 (D.C. 1981). In other words, the “ANC concerns must ‘relate to...the statutory criteria for granting a special exception.’” *Id.* (quoting *Friendship Neighborhood Coalition v. DC BZA*, 403 A.2d 291 (D.C. 1979)). Neither section 774 nor section 3104 requires the provision of a monetary or in-kind contribution to the community as a condition of special exception relief from the rear yard requirements. Because the applicant’s project is not legally required to include amenities to the community, the ANC’s concern over the absence of a monetary contribution is not entitled to great weight.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 774 to allow the proposed office building and rear yard waiver. The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the granting of the requested relief will not tend to adversely affect the use of neighboring property in accordance with the regulations and map.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is **GRANTED**.

VOTE: 5-0-0 (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc Loud, John A. Mann II, and Gregory Jeffries, in support of the motion to grant)

Vote taken on May 8, 2007

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
DIRECTOR, Office of Zoning

FINAL DATE OF ORDER: DEC 13 2007

UNDER 11 DCMR § 3135.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR

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ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., 9 (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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 13, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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