

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17798 of Primal Fitness, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a fitness center under subsection 330.5, in the R-4 District at premises 219 M Street, N.W. (Square 555, Lot 805).

HEARING DATE: July 22, 2008
DECISION DATE: August 1, 2008 and September 9, 2008

DECISION AND ORDER

This application was filed on March 11, 2008 by William D.C. Valentine and Raymond J. Valentine (collectively, "Applicant"), the owners of the property that is the subject of this application ("subject property"). The Applicant filed the application on behalf of Primal Fitness, Inc., the lessee of the building on the subject property. The self-certified application requested a use variance to allow the continuation of the use of the subject property as a fitness center, a use not permitted as of right in an R-4 zone district.

The Board heard the case on July 22, 2008 and, after requesting further information from the Applicant, set a decision date of August 1, 2008. At its public meeting on August 1, 2008, the Board decided to again ask for more information from the Applicant and set a new decision date for September 9, 2008. After deliberation on September 9th, the Board decided by a vote of 5-0-0 to grant the application for a term of nine months, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 14, 2008, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Department of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the subject property is located, Single Member District 6C02, and the Council Member for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and provided such notice to the Applicant, the ANC, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 6C was automatically a party to this case. The Board granted party status to one of the neighbors immediately adjacent to the subject property. The neighbor, Ms. Keys, operates a small grocery store in the building just to the east, which is separated from the subject property by an open area of approximately eight and one-half feet. Ms. Keys

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appeared as a party opponent and claimed that the fitness center use caused her property damage and physical and mental distress.

Applicant's Case. The Applicant, and the operator of the fitness center, Mr. Toorock, both testified at the hearing and explained the need for the use variance. The Applicant also entered into the record the report of a structural engineer/building inspector, who suggested measures to mitigate any negative impacts on the adjacent property of Ms. Keys.

Government Reports. The Office of Planning filed a report with the Board on July 15, 2008 recommending approval of the requested use variance. OP assessed the application in the context of the three prongs of the use variance test and determined that the application met all three.

ANC Report. ANC 6C filed a letter with the Board on July 16, 2008, stating that at a properly-noticed regularly-scheduled meeting with a quorum present, it had voted unanimously to delay consideration of the application to allow the Applicant time to address the neighbor's complaints. The ANC's letter expressed a desire that the Applicant report back to it at its September, 2008 meeting.

Persons in Support or Opposition. The immediately-adjacent neighbor to the west, filed a letter in support, claiming that the fitness center does not have any particularly objectionable impacts on him, even though his dwelling shares a party wall with the fitness center building.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 219 M Street, N.W., in the Mount Vernon Historic District and in an R-4 zone district.
2. The area of the property is 4,430 square feet, with a lot width of approximately 44 feet and a lot length of approximately 110 feet.
3. The subject property is improved with a large, two-story brick building constructed at the turn of the 19th century as a firehouse, which is a contributing building to the Mount Vernon Historic District.
4. The building was used as a firehouse until 1974 and has since been used solely for commercial uses, some of which could even be characterized as light industrial uses.
5. The building has never been used as a dwelling and was vacant for approximately ten years before the lessee herein began to use it, in October, 2007, as a fitness center or gym.
6. The building shares a party wall with a one-family dwelling immediately to the west.

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7. Between the firehouse building and the next building to its east, which houses the opponent's business, is an open area approximately 8.5 feet wide.
8. The firehouse building extends toward the rear alley a significant distance, approximately one-half the length of its lot, beyond the rear wall of the adjacent building to the east.
9. An eight-foot-tall, nine-inch thick, solid brick wall connects the rear portion of the adjacent building to the east to a part of the firehouse building that juts out toward the east.
10. The Applicant cut away a 4-inch-wide section of this wall in order to reduce the traveling of vibrations from the firehouse to the adjacent building to the east.
11. Behind the firehouse is a very small rear yard area which abuts a rear alley located at approximately a five foot higher grade than the rear yard.
12. The building does not provide a zoning-compliant parking space, but does have two driveways in its paved front yard area.
13. The D.C. Office of Tax and Revenue taxes the subject property at a commercial rate.

The Surrounding Neighborhood

14. The firehouse is one of seven buildings located at a point where a short strip of M Street, N.W. angles off New York Avenue, N.W. Five of these buildings, to the east of the property, front directly on New York Avenue, while the firehouse and the building to its west essentially front on both M Street and New York Avenue.
15. All seven buildings are zoned R-4, but only one is used solely as a residence; the others contain commercial, office, or institutional uses.
16. New York Avenue is a major, six-lane thoroughfare which carries a high traffic volume, including large trucks and buses.
17. Other than the seven buildings fronting on New York Avenue, Square 555, in which the property is located, contains several row dwellings and two churches.
18. The surrounding area is characterized by mostly row dwellings, although across New York Avenue are located multifamily dwellings and institutional uses.
19. Approximately one block to the west of the property is the intersection of New York Avenue and New Jersey Avenue, another major thoroughfare, with the entrance to Interstate 395 approximately one-quarter of a mile away.

The Proposed Use

20. The lessee uses the firehouse building for his two businesses, Primal Fitness and American

Parkour Company. The former is a physical fitness training facility, and the latter is an internet-based business consisting of an on-line retailer and community website promoting the sport of parkour.¹

21. Primal Fitness is a gym specializing in an extreme work-out system, which requires strenuous weightlifting and body-building, including the lifting, and dropping, of heavy weights.
22. Weight training classes had been held in the front, first floor room, but the dropping of weights above 95 pounds has been moved exclusively to the rear of the facility to try to reduce noise and vibrations reaching adjacent buildings.
23. Primal Fitness layers two sets of ¾ inch padding over a third rubber pad on the concrete floors in the areas being used for gym purposes.
24. Primal Fitness also provides instruction in the sport of parkour to its clients, who jog through the neighborhood and use other local facilities during their workouts.
25. Applicant's clients include law enforcement officers, fire fighters and other community members.
26. The two businesses on the subject property – Primal Fitness and American Parkour Company – are integrated and share office space, staff, and a small t-shirt storage and production area.
27. There is a total of four staff people on the premises, only one of whom drives a car to the site. Mr. Toorock arrives by bicycle or motorcycle, either of which is parked inside the building. Two other staff members use public transportation.
28. Primal Fitness is open from 6:30 a.m. to 8:00 p.m. each day.
29. Currently, Primal Fitness holds six class sessions a day, with an average of four to seven clients in each. The maximum number of class participants in a single class would be 20.

The Variance Test

Exceptional condition

30. The subject property presents an exceptional condition in that the firehouse building, although currently situated in an R-4 zone district, was never used for, and was never intended to be used for, a residential use.

¹The sport of parkour turns the world into an obstacle course which its participants navigate in order to achieve greater agility and fitness. The OP report (Exhibit No. 21) quotes a January 13, 2008 Washington Post article on Mr. Toorock's teaching of parkour and defines the sport as "the art of moving through the world quickly, efficiently, elegantly, and playfully."

31. The exterior and internal layout of the building on the subject property reflect its past *raison d'être* as a firehouse. Its façade displays two large garage entrances suitable for vehicles, but no pedestrian-sized entrance. The interior is mainly composed of expansive, undivided spaces without demising walls. The building sits on a 6-8 inch thick solid concrete floor and has no functioning kitchen facilities and only one staircase, at the rear, leading to the second floor.
32. The first floor is also slightly sloped, with the front of the building approximately 6 to 8 inches lower than the rear. This was done to facilitate the draining of water from the fire equipment out the front of the building and to the street.
33. The subject property is also exceptional in that, although in an R-4 zone, it is set among other commercial uses and fronts on a very busy major street.²

Undue hardship

34. The location of the subject property in a commercial strip of buildings on a heavily-travelled thoroughfare, as well as interior aspects of the building itself, militate against using it for a permitted residential use.
35. It would be prohibitively expensive, with an initial estimate of \$500,000, to convert the firehouse building to residential use.
36. The open interior layout of the building would make it difficult to establish within it some of the non-residential uses permitted in this R-4 zone. *See*, 11 DCMR § 330.5.
37. The lack of rear alley access, parking, and a suitable drop-off/pick-up area militate against the establishment of any of the permitted non-residential uses permitted in the R-4 zone. *See, Id.*

Public good and zone plan

38. The dropping of heavy weights in the front room of the firehouse building caused vibrations which contributed to the cracking of plaster on the interior western wall of the adjacent building to the east. The Applicant has subsequently moved this activity to the rear of the building.
39. Cracks in the plaster of the interior western wall of the adjacent building do not reach, or affect, its ceiling.
40. The existence of the open area between the firehouse building and the adjacent building to the east, and the cutting of the brick wall connecting the rear portions of the two buildings,

²Based partly on these factors, in January, 2000, the Board granted a use variance to permit commercial use of the building at the corner of M St, N.W. and New Jersey Ave., N.W., just one building to the west of the subject property. *See*, Board of Zoning Adjustment Case No. 16543, January 19, 2000.

dampen vibrations reaching the latter building.

41. The Applicant hired a structural engineer to investigate adverse impacts on neighboring property related to vibrations. The structural engineer recommended corrective and preventative measures, some of which Applicant has implemented and others which he has agreed to implement.
42. The Applicant has agreed to repair cracks in the plaster of the interior western wall of the adjacent building to the east, and has also agreed to place vibration sensors at the sites of the cracks which will be monitored for one year.
43. One of the gym exercises which caused the most noise and vibrations, tire flipping, has been eliminated entirely.
44. The floor padding used by Primal Fitness and the moving of heavy-weight-dropping exercises to the rear of the building will dampen any vibrations caused by the gym use.

CONCLUSIONS OF LAW

Use Variance Standard

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting a use variance, therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in an "undue hardship" upon the Applicant. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The District of Columbia Court of Appeals ("DCCA") has interpreted "undue hardship" to mean that a property cannot be put to any use for which it can be reasonably adapted. *See, Palmer v.*

D.C. Bd. of Zoning Adjustment, 287 A.2d 535, 542 (D.C. 1972). (“A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.”) *See also, Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) (“[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may be reasonably adapted.”) In this case, there are no other permitted uses for which the property can be “reasonably” adapted.

Variance Test

The firehouse building itself provides the subject property with the exceptional condition necessary to meet the first prong of the variance test. The building was constructed as, and intended for use as, a firehouse, which is a matter of right use in all residence zones, 11 DCMR § 201.2 (u). It was so used for many, many years. The building was never intended to be used as a residence(s) and indeed has never been so used. The interior of the building precludes such residential use without substantial, and prohibitively expensive, changes. Nor is the exterior of the building appropriate for residential use, and this would be difficult to change because of the status of the building as contributing to the Mount Vernon Historic District. Further, the location of the building among other commercial uses and on a major thoroughfare carrying heavy traffic, militates against a residential use.

The application also meets the undue hardship prong of the use variance test. Not only is the firehouse building inappropriate for residential use, but it also would be difficult, if not impossible, to adapt the building for a non-residential use permitted in this R-4 zone. *See*, 11 DCMR §§ 330.5 and 330.6. All of the uses listed in subsections 330.5(d) through (i) and in § 330.6 require parking, which is neither available at the property nor required because of the firehouse building’s historic status. Some of the uses listed, such as a child/elderly development center, would likely need a safe area for drop-of and pick-up of patrons, which is also unavailable at the property. Even if parking were not an obstacle, most of the uses permitted, such as a dormitory, community-based residential facility, or a rooming house, would require such extensive rehabilitation of the interior of the firehouse building that the Board concludes that the building is not “reasonably” adaptable for such uses.

To meet the third prong of the variance test, the gym use must not be a substantial detriment to the public good and must not impair the intent and integrity of the zone plan and regulations. The Board concurs with the Office of Planning, to whom it affords great weight, that the adaptive reuse of this firehouse would not have a substantial detriment on the zone plan or the public good. The gym use proposed here is not out-of-scale with other non-residential uses that are permitted in this zone, but to which it would be difficult to adapt this building. Finally, the adaptation to this commercial use would not preclude the structure’s conversion at a later date to one of the permitted uses should that become feasible in the future. Accordingly, granting a use variance in this case would not impair the integrity of the zone plan.

The Board also concludes that the proposed use does not cause a substantial detriment to the public good. Because the firehouse is located on a commercial strip, with significant ambient noise from New York Avenue, its commercial activity will not disturb the neighborhood. In fact, the reuse of this property as a fitness center will add vibrancy and security to the neighborhood. The one concern of the Board is that any vibrations from weight dropping in Applicant's gym be minimized so as to avoid any adverse impacts upon neighboring property. While the dropping of weights on Applicant's property has resulted in vibrations and contributed to the cracking of plaster on the adjacent building to the east, Applicant has taken steps and made commitments since then to eliminate or mitigate any adverse impacts from the dropping of weights, as recommended by the structural engineer hired by the Applicant to investigate this concern. The Applicant will repair the plaster and Primal Fitness will significantly decrease the noise and vibrations by moving the weight-dropping exercises to the rear of the building. Other recent initiatives undertaken by the gym operator, such as adding extra absorbent padding and cutting a gap in the brick wall extending behind the adjacent building, will likely also reduce any vibrations reaching the adjacent building.

While the immediate neighbor to the east also claimed physical and mental distress from vibrations from the fitness center, no medical documentation was submitted in support of this claim. No other individuals, including patrons of her grocery store, submitted any objections. Based on the evidence in the record, the Board was not convinced of the nexus between the use and the claimed distress. Finally, this neighbor also found objectionable Primal Fitness' clients' jogging in the neighborhood. No other neighbors, including the ANC, complained of this activity, which may legally be engaged in by any resident.

Although the firehouse building has been at the site for approximately 100 years, its use by Primal Fitness is a relatively recent phenomenon. The gym use has existed at the site for approximately one year. Therefore, as with any new or recent use, it is somewhat difficult to be certain of future impacts on neighboring property. With this particular use, the Board cannot discount its potential effects on the operator of the adjacent building to the east, about which concerns have been raised. The Board will therefore set a term of nine months for the gym use, in order to allow the use to operate as conditioned below, while ensuring that the applicant/gym operator appears before the Board again to assess, with community input, what impacts the use is having on the neighborhood.

For all of the above reasons, the Board concludes that the Applicant has satisfied the burden of proof under § 3103.2 with respect to a use variance. Accordingly, it is **ORDERED** that the application be **GRANTED, SUBJECT to the following CONDITIONS:**

1. Weights or any object weighing over ninety-five (95) pounds may be dropped only in the rear room of the first floor of the firehouse building.
2. The Applicant, at its own expense, will install appropriate sensors/monitoring devices on the western wall of the adjacent building to the east of the property in order to detect any

adverse vibrational impact on this adjacent building. Any information or results obtained from these devices shall be monitored and compiled by the Applicant.

3. Six months from the final date of this order, the Applicant shall provide a report on the information/results obtained from the monitoring devices to the party opponent, Ms Keys, and to ANC 6C.
4. This order shall expire at the end of nine (9) months beginning on the final date of this order.

VOTE: 5-0-0 (Ruthanne G. Miller, Mary Oates Walker, Shane L. Dettman, Marc D. Loud and Michael G. Turnbull to grant)

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

Each concurring Board member has approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 23 2008

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, 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

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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.

LM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on DEC 23 2008, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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TWR