

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17926 of LT Propco LLC**, pursuant to 11 DCMR § 3104.1, for a special exception to locate parking spaces on a lot that is separate from the building that they are intended to serve in accordance with subsection 2116.5.<sup>1</sup> The relief is sought to permit the construction of a new one-story retail development on land bounded by Western Avenue, N.W., 44<sup>th</sup> Street, N.W. and Jenifer Street, N.W., and to use the existing surplus parking located on the existing Lord & Taylor parking lot at 4423 Harrison Street, N.W., in the C-3-A, C-2-A, R-5-B and R-2 Districts (Square 1660, Lot 811 and Square 1580, Lot 33).

**HEARING DATE:** June 23, 2009  
**DECISION DATE:** June 23, 2009 (Bench Decision)

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 7)

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) 3E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to

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<sup>1</sup> The application was brought under subsection 2116.5, while the advertised relief referenced subsections 2116.6 through 2116.9. Subsection 2116.5 incorporates by reference subsections 2116.6 through 2116.9. Subsection 2116.5 states:

Except as provided in § 2117.9, if approved by the Board of Zoning Adjustment pursuant to § 3104 for special exceptions, open parking spaces accessory to any building or structure may be located anywhere on the lot upon which the building or structure is located, or elsewhere, except in the case of a one-family dwelling, *in accordance with § § 2116.6 through 2116.9.* (11 DCMR § 2116.5). (emphasis added)

Because subsection 2116.5 incorporates by reference subsections 2116.6 through 2116.9, the Applicant, in satisfying the requirements of subsection 2116.5 thereby had to satisfy the requirements of subsections 2116.6 through 2116.9.

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this application. ANC 3E submitted a resolution in support of the application together with a voluntary agreement entered into between the ANC and the Applicant. The ANC's report indicates that the ANC voted to support the application, with conditions, at a duly scheduled meeting at which a quorum was present.<sup>2</sup> (Exhibit 29). The Office of Planning (OP) submitted a report in support of the relief sought. (Exhibit 28). At the hearing, the District Department of Transportation (DDOT) testified in support of the application, noting that the agency had met with the Applicant to discuss the loading docks and parking, among other matters. Mr. Chapman Todd, a resident who is an adjacent neighbor to the subject property, originally filed a request for party status (Exhibit 25); however, at the hearing, Mr. Todd withdrew his application for party status and testified as a proponent of the application. Mr. Todd indicated that his support was conditional insofar that he requested that the Board incorporate into its order several conditions contained in the voluntary agreement between the Applicant and ANC.<sup>3</sup> A letter of opposition was received from William Vigdor, a neighbor. (Exhibit 30).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under subsection 2116.5. 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 OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1 and subsection 2116.5, 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 § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 13 – Plans) be **GRANTED AS CONDITIONED:**

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<sup>2</sup> The Board waived its rules by consensus to accept the ANC's late filing of its report into the record so it could be given great weight.

<sup>3</sup> In its deliberations the Board conditioned its approval of the application on five conditions contained in section 5 of the ANC resolution and voluntary agreement as well as a sixth condition regarding a covenant running with the land.

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1. The Applicant shall install, maintain, and replace, as necessary, a six-foot high wood stockade fence along the entire length of the Lord & Taylor property to the rear of the houses from 4401 through 4447 Harrison Street, N.W.
2. The Applicant shall install, maintain, and replace, as necessary, the evergreen trees shown on the Landscape Plan, Sheet C-102, amended of the plans submitted with the Application, and these evergreen trees shall be between eight and ten feet in height upon installation.
3. The Applicant shall design the lighting of the parking deck and the surface parking lot behind the existing Lord & Taylor Store so all direct lighting is confined on the surface in accordance with District of Columbia law so as to avoid spillage onto the adjacent properties.
4. The Applicant shall restrict use of the loading docks including trash removal at the Lord & Taylor store and the new building to be built on the Homeplate Lot pursuant to District of Columbia law, which currently restricts that use to the daytime hours of 7:00 a.m. to 9:00 p.m.
5. The Applicant shall provide customers of the future stores on the Homeplate Lot with the same parking privileges as customers of the Lord & Taylor store.
6. As the parking area authorized by this Order provides parking spaces required by the Zoning Regulations, the Applicant shall record in the land records of the District of Columbia and file with the Zoning Administrator, an instrument in the form of a covenant which shall, in whatever detail is legally necessary, ensure the continued usage of the authorized parking area for such required parking, and allow for no other use.

**VOTE:** 3-0-2 (Peter G. May, Shane L. Dettman, Marc D. Loud to APPROVE.  
Two Mayoral appointees (vacant) not participating, not voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**  
Each concurring member approved the issuance of this order.

**ATTESTED BY:**

  
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**RICHARD S. NERO, JR.**  
Acting Director, Office of Zoning

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**FINAL DATE OF ORDER: June 30, 2009**

UNDER 11 DCMR 3125.9, "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 ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, 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

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BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



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As Acting Director of the Office of Zoning, I hereby certify and attest that on June 30, 2009, 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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**ATTESTED BY:**

A handwritten signature in black ink, appearing to read "R. Nero, Jr.", is written over a horizontal line.

**RICHARD S. NERO, JR.**  
**Acting Director, Office of Zoning**