

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



**Application No. 17933 of HSC Foundation**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the rear yard requirements under subsection 774.2, and a variance from the parking requirements under subsection 2101.1, to allow the renovation and expansion of a building for office use in the C-3-C District at premises 2013 H Street, N.W. (Square 101, Lot 874).

**HEARING DATE:** June 16, 2009

**DECISION DATE:** June 16, 2009

**DECISION AND ORDER**

This self-certified application was submitted on January 29, 2009 by the HSC Foundation (“Applicant”), owner of the property that is the subject of this application (“subject property”). The application requests special exception and variance relief necessary to permit the renovation of an existing row dwelling and carriage house and the addition, between them, of a new seven-story office building.

In Zoning Commission Order No. 08-19, the Zoning Commission granted the Applicant a map amendment to change the zoning of the subject property from R-5-D to C-3-C, facilitating the use of the subject property for office purposes and allowing increased density. *The HSC Foundation – Map Amendment at Square 101, Lot 874*, 56 DCR 2795 (2009). Exhibit No. 23, Attachment B.

The Board of Zoning Adjustment (“BZA” or “Board”) held a hearing on the application on June 16, 2009 and, at the conclusion of the hearing, voted 3-0-2 to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated February 2, 2009, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 2A, the ANC within which the subject property is located, Single Member District 2A01, and the Council Member for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and sent such notice to the Applicant, ANC 2A, and all owners of property within 200 feet of the subject property.

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Request for Party Status. ANC 2A was automatically a party to this case and submitted to the Board a copy of its resolution filed in Zoning Commission Case No. 08-19, wherein the Commission changed the zoning of the subject property. No ANC filing specifically addressing this application was received by the Board.

The West End Citizen's Association ("WECA") was granted opposition party status by the Board. Its representative testified against the granting of the parking variance, but stated that WECA took no position on the special exception relief requested.

Applicant's Case. A representative of the Applicant testified at the hearing, as did the Applicant's architect, transportation engineer, and land use planner. The latter three individuals were accepted as experts by the Board. The Applicant's representative introduced the project and each of the experts addressed relevant aspects of the special exception and variance tests.

Government Reports. The Office of Planning submitted a report to the Board on June 9, 2009 recommending approval of the application. OP addressed the provisions of the requested special exception, as well as the three prongs of the area variance test, and opined that they were all met. OP also noted that although the application had been referred to DDOT, that agency had not provided any comments. (Exhibit No. 24.)

ANC Report. As noted, ANC 2A did not submit a written report in direct response to the application filed. Instead, the ANC submitted to the Board a copy of the resolution it had filed with the Zoning Commission map amendment case noted above and drafted prior to the filing of this application. The only portion of that resolution that arguably relates to this case is the ANC statement that it "will oppose any proposed variance from the parking space requirements, when requested." (Exhibit No. 26.) The remainder of the resolution objected to the additional density that would result from the rezoning.

**FINDINGS OF FACT**

The subject property and the surrounding neighborhood

1. The subject property is located at address 2013 H Street, N.W., in a C-3-C zone district, in Square 101, Lot 874.
2. The property is a narrow lot, 36 feet wide, by approximately 150 feet long, with an area of approximately 5,373 square feet.
3. The property is developed with a three-story brick row dwelling at the front of the site, facing H Street, N.W., and a two-story brick carriage house at the rear of the site.
4. The row dwelling and carriage house were both constructed circa 1888.

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5. At the time of the hearing on this application, the creation of the “George Washington University Campus Historic District” was pending and the buildings on the subject property had been proposed as contributing buildings to the future Historic District.
6. The property is within the Foggy Bottom campus of George Washington University (“GWU”) and the surrounding neighborhood is comprised of commercial and institutional, mostly GWU, uses.
7. Immediately behind the property, to its north, is an 11-story commercial building; to the south, across H Street, is a landscaped open space which is part of GWU; to the east is a surface parking lot; and to the west is an undeveloped lot used as pedestrian access to the building to the north.
8. The properties to the north and east of the subject property are both zoned C-3-C.
9. GWU currently plans to construct a 90-foot building on the site of the surface parking lot immediately to the east of the property and a 65-foot building on part of the open space to the south of the property.

The Applicant’s proposal and the need for relief

10. The Applicant, a non-profit organization, proposes to retain and renovate portions of both the existing row dwelling and carriage house and to add a seven-story-plus-cellar addition connecting them.
11. The three pieces – row dwelling, carriage house, and central addition – would be integrated into one, unified building to house the Applicant’s headquarters offices.
12. The new building that would result from the Applicant’s proposal meets all the zoning parameters for the C-3-C district, except the requirements for a rear yard and for on-site parking.
13. The total area of the proposed building would be approximately 27,322 square feet, with a floor area ratio of 5.09. Design modifications may increase the area, but not beyond 30,000 square feet.
14. Section 774.1 of the Zoning Regulations would require a rear yard of 17 feet, 8 inches behind the proposed 84-foot, 10-inch high building.
15. The carriage house, which will be incorporated into the new building, is set back from the rear property line only 2 feet, 5 inches, necessitating a waiver of the rear yard requirement, as permitted by 11 DCMR § 774.2.
16. Section 2101.1 of the Zoning Regulations requires 13 on-site parking spaces for the proposed office use. As a result of design changes, the parking requirement may increase to

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14 spaces,<sup>1</sup> but none will be provided, necessitating a variance from the parking requirement.

Waiver/Special Exception with respect to rear yard requirements

17. The Board is authorized to waive the rear yard requirements in accordance with the special exception standards of § 3104, provided that the requirements of §§ 774.3 through 774.6 are met.
18. Abutting the rear lot line of the subject property is an unimproved open space, approximately 20 feet wide, and encumbered with a perpetual nonexclusive easement to allow vehicles and pedestrians to access the rear of the subject property and the property to its north.
19. Due to this 20-foot open space, and the 12-foot, 5-inch setback of the south wall of the 11-story building to the north of the property, the closest portion of that building is more than 30 feet from the rear lot line of the subject property.
20. The rear of the carriage house is 2 feet, 5 inches from the rear lot line, but the building addition, (*i.e.*, above the second floor) will be set back from that line 4 feet, 4 inches.
21. The lot occupancy of the proposed building will be approximately 86%, although 100% is permitted in this C-3-C zone district.
22. Neither the proposed building nor the building to its north contains any habitable rooms.
23. No loading facilities are required for the proposed building as it is less than 30,000 square feet in area. 11 DCMR § 2201.1.
24. Necessary delivery and trash removal functions will occur at the rear of the building in the area of the open space easement.
25. The proposed project will provide no parking and variance relief has been requested.

The parking variance

*Exceptional condition*

26. The subject property is long and narrow, resulting in a comparatively small street frontage.
27. The property is only one of a few sites in its area which has not been consolidated into a larger lot.

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<sup>1</sup>The Applicant's traffic expert states that 16 parking spaces are required, but the discrepancy – whether 13, 14, or 16 -- is not great and therefore does not significantly change the magnitude of the variance requested or its impact, if any, on the public good.

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28. The existing row dwelling and carriage house occupy a significant portion of the property's front and rear lot lines, reducing the area available for maneuvering and parking vehicles.
29. Both existing buildings have a high potential for historic designation and the Applicant has worked with the D.C. Historic Preservation Office to retain their historical nature.

*Practical difficulties*

30. At 36 feet wide, the property is not wide enough to accommodate the required 20-foot wide drive aisle and 13 (or 14) 9 x 19-foot parking spaces, whether on grade or below ground. 11 DCMR §§ 2117.5 & 2115.1. This remains true even if smaller compact spaces and angled parking, requiring only a 16-foot wide drive aisle, are used. 11 DCMR §§ 2117.6 & 2115.3.
31. It would also be infeasible for a project of this small footprint to provide multiple-level below-ground parking because there is no room for separate ingress and egress points.
32. Providing parking would likely result in the need to demolish parts of the buildings on the property, which the Applicant is working to keep intact due to their historic significance.

*No substantial detriment to the public good*

33. The subject property is located approximately three blocks from both the Foggy Bottom and Farragut West Metro Stations and is well-served by Metrobus routes.
34. At the time of the hearing, there were approximately 70 monthly parking leases available in parking garages within a three-block radius of the subject property. Exhibit No. 23, Attachment G.
35. Hourly/daily parking is also available in these garages and metered on-street parking is also available on H Street and 21<sup>st</sup> Street in the vicinity of the property. Exhibit No. 23, Attachment G.
36. The Applicant will provide complimentary Smartrip cards to each of its employees at initial occupancy.
37. The Applicant will also provide complimentary annual Smart Bike memberships to its employees at initial occupancy and will provide a showering and changing facility on-site.
38. The Applicant's current point-of-contact for dissemination of information concerning alternative transportation options will continue in this role for the Applicant, as well as for all tenants of the new building on the subject property.
39. The Applicant's proposed office use is a permitted use in this C-3-C zone and is harmonious with the institutional and commercial uses surrounding the subject property.

## **CONCLUSIONS OF LAW**

### Waiver/Special Exception relief

Pursuant to § 774.2 of the Zoning Regulations, the Board may waive the rear yard requirements for a C-3-C zone district in accordance with the requirements of § 3104 for special exceptions, provided certain standards, set forth in §§ 774.3 through 774.6, are met. In order to waive the rear yard requirements then, the Board must find that both the special exception test and the further standards are met.

Generally, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, “[t]he Board’s discretion ... is limited to determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

In order to comply with the rear yard requirement, the Applicant would likely have to demolish the carriage house, as it is currently set back 2 feet, 5 inches from the rear lot line of the subject property. This would result in the loss of a historically significant building, a result that can be avoided by incorporating the carriage house into the new project and granting the rear yard waiver.

The reduction of the size of the rear yard on the subject property will have no detrimental effect on Zoning Regulations, Zoning Maps, or on the use of neighboring property. A waiver of the rear yard in its entirety was clearly presumed compatible with the C-3-C zone district by the Zoning Commission when it enacted § 774.2 allowing for such a waiver pursuant to the special exception test. In this case, a small rear yard of 2 feet, 5 inches will be retained, abutting a 20-foot wide easement area. This easement is a perpetual easement, resulting in a permanent retention of 20 feet of open space behind the subject lot. With these 20 feet, plus the 2-foot, 5-inch rear yard, and the 12-foot, 5-inch setback of the building to the north of the subject lot, there is over 30 feet of open area between the closest portion of the building to the north and the property’s rear lot line. This open space permits the entrance of light and air and avoids an overcrowded look and feel.

The application must also comply with §§ 774.3 through 774.6.<sup>2</sup> Section 774.3 mandates that

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<sup>2</sup>Only §§ 774.3 and 774.5 had to be met by the Applicant in this case. Section 774.4 concerns habitable rooms, of which there are none involved in this application, and § 774.6 provides direction to the Board, not the Applicant.

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windows in the new building be sufficiently separated from those in other buildings to provide light and air and to protect privacy. As explained above, there is sufficient open space at the rear of the new building to provide light and air and protect privacy. The windows of the new construction will be set back from the rear lot line 4 feet, 4 inches, approximately 2 feet further away from the rear lot line than the carriage house, creating even more of a separation from the third floor up.

Section 774.5 requires that the new building provide for adequate off-street service functions, including loading and parking. No parking will be provided, and a variance has been requested. The building has no loading requirement under the Zoning Regulations because it is less than 30,000 square feet in area. 11 DCMR § 2201.1. The open area behind the building will, however, provide space for necessary office deliveries and trash removal.

The Board concludes that a reduction of the rear yard behind the subject building will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps. The reduced-size rear yard will also not adversely affect the use of neighboring property as there is sufficient open area behind the building to allow service functions and to protect light, air, and privacy.

Variance relief

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) (2001), 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 an area variance, therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variance will not substantially impair the public good or the intent or integrity of the Zone Plan and Regulations. The subject property is long and narrow with a concomitantly narrow street frontage. Development of the property is further complicated by the presence of a potentially historically significant building at either end. There is no surface space on the property to accommodate

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parking spaces and it is infeasible to provide below-grade parking, due to both the small size of the property and the possible negative effects on the existing buildings.

The property, at 36 feet wide, is simply not wide enough to fit a zoning-compliant drive aisle and 13 or 14 parking spaces. The smallest parking space permitted by the Zoning Regulations is a compact space, which must be 8 feet wide by 16 feet long. 11 DCMR § 2115.3. Two of these small spaces, plus the required 20-foot drive aisle take up the entire 36-foot width of the property. 11 DCMR § 2117.6. Even with angled parking, and a permitted drive aisle width of 16 feet, there is still insufficient space on the property to provide the requisite parking. *Id.* Moreover, compact spaces must be placed in groups of at least five contiguous spaces, totaling 40 feet in width – impossible on this narrow 36-foot wide property. 11 DCMR § 2115.4.

A lack of parking on the property itself is mitigated by the large number of garages in the vicinity. The Applicant's traffic expert contacted 15 public parking garages, all within a three-block radius of the subject property. Nine of these offer monthly leases to the public, and approximately 70 of these leases were available at the time of the expert's survey, in May of 2009. Exhibit No. 23, Attachment G. Such monthly leases could be used by individuals who work at the subject property. Twelve of the surveyed garages offer hourly/daily parking for public use, which would accommodate visitors to the subject property. *Id.* There are also 79 metered on-street parking spaces within one or two blocks of the subject property. *Id.* All of these spaces more than accommodate the 14 spaces required for the new building on the property.

Not only is there sufficient parking in the immediate area, but the subject property is located approximately three blocks from two Metro Stations – Foggy Bottom and Farragut West. The property is also well served by Metrobus routes.

To further mitigate any impact of the lack of on-site parking, the Applicant has agreed to several transportation demand management strategies, set forth at Findings of Fact 36-38, and which are also conditions to this Order.

The Board concludes that the application meets all three prongs of the area variance test. The subject property's exceptional conditions render impossible, and certainly infeasible, the provision of the required parking. No substantial detriment to the public good or to the intent and integrity of the Zoning Regulations and Zoning Maps will occur because of the substantial amount of parking available in the area, the proximity to multiple forms of public transportation, and the mitigating steps to be taken by the Applicant.

Great weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these

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two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of the requested relief, and the Board agrees with this recommendation. ANC 2A, however, opposed the relief. The ANC filed a resolution with the Board which is actually an opposition to the map amendment which was before the Zoning Commission to change the subject property's zoning from R-5-D to C-3-C. Exhibit No. 26. This resolution was written before the present application was filed with the Board, but it predicts the ANC's future opposition to a parking variance request if such an application were made. However, the resolution does not explain the issues and concerns that would prompt the ANC's opposition. The remainder of the resolution concerns issues not germane to this application. In the absence of a written statement that set forth the relevant issues and concerns, there is nothing that the Board can give great weight to.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a waiver of the rear yard requirements in a C-3-C zone district, pursuant to §§ 3104 and 774.2, and for a variance from the parking requirement of § 2101.1, pursuant to 3103. Accordingly, it is **ORDERED** that the application, pursuant to Exhibit No. 23F, plans, is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Applicant will designate a person on-site to be responsible for coordinating and implementing transportation demand management obligations, such as disseminating information regarding public transportation and other alternative transportation choices, to both HSC employees and other tenants of the subject building.
2. At initial occupancy, the Applicant will provide each HSC employee with a complimentary \$60.00 SmartTrip Card for Metro use.
3. At initial occupancy, the Applicant will provide each HSC employee with one complimentary annual Smart Bike membership.
4. The Applicant shall provide, within the new building, an on-site shower and changing facility available for use by all building employees who bicycle to work.

**VOTE:**           **3-0-2**           (Marc D. Loud, Shane L. Dettman, Michael G. Turnbull, to  
APPROVE; two Board members (vacant seats) not participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**  
A majority of Board members has approved the issuance of this order.

ATTESTED BY:   
JAMISON L. WEINBAUM  
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 09 2009

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 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.

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 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**



**BZA APPLICATION NO. 17933**

As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 9, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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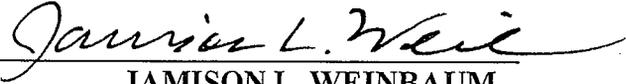
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