

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



**Application No. 17948 of Government of the District of Columbia**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to establish a community youth services center, in the former Merritt Public Middle School, in the R-2 and R-5-A Districts<sup>1</sup> at premises 5002 Hayes Street, N.E. (Square 5178, Lots 800, 805, 27, 28, 48, 49, 50, and 51).<sup>2</sup>

**HEARING DATE:** June 30, 2009  
**DECISION DATE:** June 30, 2009 (Bench Decision)

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4)

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) 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. The ANC submitted a report that indicated that the ANC was in support of the application. The ANC considered the matter at its duly noticed, regularly scheduled meeting on June 11, 2009 at which a quorum was present.<sup>3</sup> (Exhibit 21) The

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<sup>1</sup> The application was amended to reflect that a majority, but not all, of the subject property was rezoned from R-5-A to R-2, per Zoning Commission #08-22, effective June 26, 2009.

<sup>2</sup> The application was amended to eliminate a request for Special Exception relief under § 352 of the Zoning Regulations. The Board found that all of the proposed uses for the subject property were matter-of-right, and thereby did not require Special Exception relief, per Zoning Commission # 08-18 (January 26, 2009), by which § 201.1 of the Zoning Regulations was amended to allow for the re-use of former public school buildings located in residential zone districts for various uses.

<sup>3</sup> Despite an ambiguity in the report as to the results of any vote taken at the ANC meeting, the Board accepted the ANC's report and deemed it entitled to great weight.

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Office of Planning (OP) also submitted a report in support of the relief requested. (Exhibit 22)

Based upon the record before the Board, and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proving under 11 DCMR §§ 3103 and 2101.1 that there exists an exceptional or extraordinary condition or situation related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted 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 Zoning Map.<sup>4</sup>

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, as amended, (pursuant to Exhibit 9 – Plans) be **GRANTED**.

**VOTE:** 3-0-2 (Marc D. Loud, Michael G. Turnbull, Shane L. Dettman to APPROVE. Two other 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:



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

**FINAL DATE OF ORDER:** JUL 02 2009

<sup>4</sup> The Applicant amended the application to reduce the magnitude of the variance relief that was requested, per Zoning Commission #08-18 that amended subsection 2101.1 which was amended to add provisions to the schedule of off-street parking requirements for uses in former public school buildings authorized by 11 DCMR §§ 201.1(v) or 222. The amended schedule states that, in R Districts, “parking requirements will be those that apply in the most restrictive zone district in which the use is otherwise first permitted as a matter of right.” The most restrictive zone district in which the use for which variance relief was sought was determined to be the CR zone district. The Board found that 50 spaces were thus required under the Zoning Regulations; and, as the Applicant had 20 spaces, variance relief was needed for 30 of the 50 required spaces.

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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 BUILDING PERMITS OR CERTIFICATES 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 July 2, 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**