

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17985 of National Indian Gaming Association, pursuant to 11 DCMR §§ 3104.1, 3103.2, and 1202, for a variance from the lot occupancy requirements under subsection 403.2, a variance from the rear yard requirements under section 404, a variance from the nonconforming structure requirements under subsection 2001.3, a variance from the driveway width requirements under subsection 2117.8(c)(2), and a special exception to allow the expansion of a building devoted to a non-profit organization use under section 217, in the CAP/R-4 District at premises 224 2nd Street, S.E. (Square 762, Lot 7).

HEARING DATE: November 3, 2009
DECISION DATE: November 3, 2009 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6)

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) 6B and to owners of property within 200 feet of the site. Pursuant to 11 DCMR § 217.5, the Board provided proper and timely notice to both the Commission on Fine Arts and the Historic Preservation Review Board. As this property is within the CAP overlay, the Board provided proper and timely notice to the Architect of the Capitol. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B filed a report, dated September 9, 2009, recommending approval of the application. The ANC's report was filed on a timely basis and met the requirements of section 3115.1 of the Zoning Regulations. (Exhibit 25). The Office of Planning (OP) submitted a timely report recommending conditional approval of the

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application. (Exhibit 30). The District Department of Transportation (DDOT) recommended conditional approval of the application.¹ (Exhibit 31). The record also contains favorable reports from the Architect of the Capitol (Exhibit 29), the Commission of Fine Arts, and the Historic Preservation Review Board staff, as well as 6 other letters of support. (Exhibit 28, tabs G, F, and H).

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 § 3103.2, for a variance from the lot occupancy requirements under subsection 403.2, a variance from the rear yard requirements under section 404, a variance from the nonconforming structure requirements under subsection 2001.3, and a variance from the driveway width requirements under subsection 2117.8(c)(2). Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403.2, 404, 2001.3, and 2117.8(c)(2), that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship 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 Map.

In addition, 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 and 1202, for special exception under section 217. 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, 1202, and 217, 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 be **GRANTED**

¹ DDOT's report was not timely, but the Board waived its rules and accepted it into the record.

**(pursuant to Exhibit 28, tab C – Architectural Plans and Drawings) AS
CONDITIONED:**

1. There shall be no more than four large events (defined as an event or meeting with more than 100 attendees on site at any one time) held per year on the site.
2. No more than 175 participants at a large event will be on site at any one time.
3. Evening events on the site shall conclude by 9:30 p.m.
4. When the Applicant contracts with a hotel for a block of rooms in conjunction with a large event, the Applicant shall include a requirement for the hotel to provide shuttle service to the site, for those hotels that are not within convenient walking distance.
5. The Applicant shall not rent out its garage parking spaces to persons not affiliated with NIGA.

VOTE: **3-0-2** (Shane L. Dettman, Meridith H. Moldenhauer, Michael G. Turnbull to APPROVE. Two Board members not present, nor voting.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

NOV 10 2009

FINAL DATE OF ORDER: _____

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.

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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, 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.

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As Director of the Office of Zoning, I hereby certify and attest that on NOV 10, 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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Director, Office of Zoning