

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18028 of United Unions Inc., pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow retail and service uses under section 518¹, and variances to allow an addition to a nonconforming office building exceeding the allowable floor area ratio limitations under subsections 531.1 and 2001.3, in the SP-2 District at premises 1750 New York Avenue, N.W. (Square 171, Lot 33).

HEARING DATE: February 23, 2010
DECISION DATE: February 23, 2010

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5).

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) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. The ANC filed a report, dated January 27, 2010, indicating that the ANC voted unanimously in support of the application on January 20, 2010, at a duly-noticed, regularly-scheduled meeting at which a quorum was present. (Exhibit 22). Additionally, the ANC testified at the hearing in support of the project. The Office of Planning (OP) submitted a timely report recommending approval of the application.

¹ Section 518 is a newly promulgated regulation pursuant to Zoning Commission Case No. 09-11. The Zoning Commission took final action approving the text amendment on January 11, 2010. The Zoning Commission Order and Notice of Final Rulemaking was published in the *D.C. Register* on February 5, 2010, whereupon it also became effective.

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(Exhibit 25).² The District Department of Transportation (DDOT) submitted a report indicating DDOT's conditional support of the project.³ (Exhibit 27).

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 variances to allow an addition to a nonconforming office building exceeding the allowable floor area ratio limitations under subsections 531.1 and 2001.3. 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, 531.1, and 2001.3, 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, for special exception under section 518. 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 518, 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

² OP indicated that the building is located across the street from the White House and subject to review by the Commission of Fine Arts. It is located within the boundaries of the Shipstead-Luce Act. (*See*, Exhibit 24, Tab G).

³ DDOT requested certain conditions, namely, DDOT wanted the Applicant to provide some additional transportation related measures, such as a transportation impact study, a plan for managing the deliveries to the retail and service uses once these were completed, and provision for a minimum of 20 bicycle parking spaces and four bicycle racks inside the property for the use of the new employees. DDOT indicated that it reserved the right to refuse public space permits associated with this application and would prefer to see a landscaping improvement on the retaining wall facing 17th Street. At the hearing the Applicant acknowledged the DDOT requests and agreed to several of them. The Board declined to condition the order on DDOT's suggested conditions.

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conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** (pursuant to Exhibits 24 and 30 – Revised Plans) **SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The proposed new uses on or below the ground floor shall be limited exclusively to retail, service, and restaurant uses permitted in Sections 701.1 through 701.5 of the Zoning Regulations.
2. The Applicant is allowed the flexibility to refine the final design of the buildings (as shown on the approved plans in Exhibit 24 and as modified in Exhibit 30), subject to final approval by the Commission of Fine Arts, provided that the final design does not increase the approved floor area ratio of 5.51 or change any other approved zoning relief.

VOTE: **5-0-0** (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, Nicole C. Sorg, and Michael G. Turnbull to APPROVE.)

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

FINAL DATE OF ORDER: MAR 04 2010

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

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REVOCAION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

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 MAR 04 2010 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 "Jamison L. Weinbaum", written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning