GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18037 of Dix Street Corridor Revitalization Partners LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception under subsection 353.1, and for the construction of more than one structure on one record lot under subsection 2516.1, and for variance relief from the number of parking spaces required under subsection 2101.1, from the size of parking spaces required under subsection 2115.1, from the number of contiguous compact parking spaces required under subsection 2115.4, from the parking area requirements under subsection 2115.10, and from the building lot control requirements under subsection 2516.4, to allow the renovation and construction of residential buildings for a new multi-family housing development in the R-5-A and C-2-A Districts at premises 400-414 Eastern Avenue, N.E., 405 – 407 Dix Street, N.E. and 61st Street, N.E. (Square 5260, Lots 2, 17, 18, 19, 28, 800, and 806).

HEARING DATE: March 2, 2010
DECISION DATE: March 9, 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) 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. At the hearing the Applicant provided the Board with a partial copy of the ANC report, dated February 18, 2010. The ANC report indicated that the ANC voted unanimously in support of the application on February 18, 2010, at a duly-noticed,

regularly-scheduled meeting at which a quorum was present.[1] (Exhibit 36). The Office of Planning (OP) submitted a timely report[2] recommending approval of the application, subject to the Applicant providing additional information.[3] (Exhibit 28). The District Department of Transportation (DDOT) submitted a report indicating DDOT's conditional support of the project.[4] (Exhibit 31). There were letters of support from the Ward 7 Councilmember (Exhibit 29), the Washington Interfaith Network (Exhibit 37), and three residents (Exhibit 30).[5] Testimony in support of the application was heard from one of those residents, Ms. Dorrie Chatman. Testimony in opposition to the application due to the potential dislocation of tenants at the property was heard from Ms. James and Ms. Kimberly.[6]

Before the record closed, the Board requested that the Applicant submit supplemental information regarding the current leases for a portion of the property. The Applicant filed a supplemental filing to respond to the issues raised by the extant leases, which the Board accepted into the record because it was requested before the record closed.[7] (Exhibit 41).

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[1] The Board noted that the ANC report that was filed in this case did not have the 5th and final page of the submission which would have had the required signatures. Consequently, while acknowledging that the ANC was in support of the application, the Board was unable to give the ANC's report great weight.

[2] The Board noted in its deliberations that while OP's report is dated "February 23, 2009," it was filed on February 23, 2010.

[3] OP recommended approval subject to the Applicant providing additional information about landscaping and screening options for the proposed trash enclosures and additional information about the durability of the proposed vinyl siding. As to the request for additional information about the durability of the vinyl siding, the Board noted that the Applicant's submission of a lifetime limited warranty for the material it planned to use satisfied OP's concern. (Exhibit 32). The Applicant also provided some additional information about the trash enclosures. (Exhibit 34). Ultimately, the Board provided some flexibility to the Applicant as to the location and screening of trash enclosures in a condition in this order.

[4] DDOT requested the Applicant provide a transportation management plan (TMP) with certain provisions, including: 1) a one-time, complementary WMATA SmarTrip card with metro fare of $35 for new residents upon move-in, 2) a one-time membership fee subsidy in a car sharing service (i.e. Zipcar) for each residential unit, and 3) bicycle parking which equals 10% of vehicle parking and adequate bicycle storage facilities for all residents. DDOT indicated that it conditionally supported the application subject to the following conditions: 1) 40 or less parking spaces to accompany the 60 residential units, 2) a DDOT-approved site-specific TMP that will assist new residents with transportation choices, and 3) a safe means for trash removal to access the site. (Exhibit 31). In its deliberations the Board noted that the Applicant has indicated that it was ready to work with DDOT with regard to DDOT's issues.

[5] The Deputy Mayor for Planning and Economic Development submitted a letter of consent to include District-owned properties in the Application. (Exhibit 6).

[6] The testimony raised two issues about the ongoing tenancies at the property; that is, the leases allegedly gave the tenants an option to purchase (a right of first refusal) which was not properly extended to them and their ongoing businesses at the property would be dislocated. During its deliberations, the Board found that the issue of whether a right of first refusal existed and was or was not properly extended was not within its purview and did not relate to the relief requested by the Board. The Applicant addressed the issue of the potential dislocation of the tenants in its supplemental filing, which the Board requested. (Exhibit 41).

[7] In a supplemental filing, the Applicant responded to the issue of what would happen to the holders of two leases for a part of the subject property. The supplemental filing indicated that one part of the subject property is currently

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 from the number of parking spaces required under subsection 2101.1, from the size of parking spaces required under § 2115.1, from the number of contiguous compact sparking spaces required under § 2115.4, from the parking area requirements under § 2115.10, and from the building lot control requirements under § 2516.4. Based upon the record before the Board and having given great weight to the OP report[8] filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2101.1, 2115.1, 2115.4, 2115.10, and 2516.4, 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 a special exception under subsection 353.1, and for the construction of more than one structure on one record lot under subsection 2516.1. 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 353.1, and 2516.1, 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

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owned by the District of Columbia and another portion is owned by Francis and Sarah Fabrizio. The Applicant noted that it had contracted to purchase all of the subject property and proceeded with this application with the consent of both the District and the Fabrizios. The Applicant acknowledged that there are current tenancies pending on the subject property and further indicated that if it cannot reach an agreement to relocate the Tenants, then the Applicant would have to modify the BZA approval to remove the portion of the property encumbered by the lease(s) from the project. The Applicant further indicated that it has endeavored to assist the tenants in relocation nearby and will continue to do so. (Exhibit 41).

[8] The Board acknowledged the ANC's support, but could not give great weight to the report, as it was missing its signature page.

conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** (pursuant to Exhibits 12 and 13 – Architectural and Civil Engineering Plans) **SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall have flexibility to make minor modifications to the site plan for the installation of or other work related to utilities, provided the modification does not change the zoning relief that was approved.

2. The Applicant shall provide sufficient screening and landscaping for the trash enclosures and shall have flexibility to make modifications to the location of such trash receptacles resulting from consultation with the D.C. Office of Planning and the District Department of Transportation.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Marc D. Loud, and Konrad W. Schlater to APPROVE; one Board member not participating, 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
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 16 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 § 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.

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 INTRAFAMIILY 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.