

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18078 of PMDP-GA LLC, on behalf of Central Union Mission, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the height requirements under § 770, a variance from the parking requirements under § 2101.1, a variance from the loading requirements under § 2201.1, a special exception to permit the development of a property in excess of 12,000 square feet within the Georgia Avenue Commercial Overlay under § 1330.1(b), a special exception from the design requirements of the Overlay under § 1330.2, and a special exception from the roof structure requirements under § 411.11 to construct a new 83-unit apartment building with ground-floor retail in the Georgia Avenue Commercial Overlay/C-3-A District at premises 3506 Georgia Avenue, N.W., 3510 Georgia Avenue, N.W., 3512 Georgia Avenue N.W., and 714 Newton Place, N.W. (Square 2895, Lots 825, 826, 830, and 831).

HEARING DATE: June 22, 2010
DECISION DATE: July 13, 2010

DECISION AND ORDER

This self-certified application was submitted on April 8, 2010 by PMDP-GA LLC on behalf of Central Union Mission (collectively, the “Applicant”). PMDP-GA LLC is the contract purchaser of the property, owned by Central Union Mission, which is the subject of the application (“subject property”). The application requests area variances from the height requirements under § 770.1, parking requirements under § 2101.1, and loading requirements under § 2201.1, as well as special exceptions from certain provisions of the Georgia Avenue Commercial (“GA”) overlay district and from roof structure requirements under § 411.11 to allow construction of a new 83-unit apartment building with ground-floor retail in the GA/C-3-A district at 3506 Georgia Avenue, N.W., 3510 Georgia Avenue, N.W., 3512 Georgia Avenue N.W., and 714 Newton Place, N.W. (Square 2895, Lots 825, 826, 830, and 831). Following a public hearing on June 22, 2010, the Board of Zoning Adjustment (the “Board”) voted on July 13, 2010 to grant the three area variances and the special exceptions from provisions of the GA overlay, and to deny the request for a special exception under § 411.11 concerning the proposed roof structure.

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PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 13, 2010, the Office of Zoning (“OZ”) provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located; and ANC Single Member District 1A08. Pursuant to 11 DCMR § 3112.14, on April 15, 2010, OZ mailed letters providing notice of the hearing to the Applicant, ANC 1A, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on April 16, 2010. (57 DCR 3260).

Party Status. The Applicant and ANC 1A were automatically parties in this proceeding. There were no additional requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony from Peter Siegel, the chief officer of Landex Corporation, one of the Applicant’s development partners; Scott Knudson, the project architect, who was qualified as an expert in architecture; and Christopher Kabatt, an engineer, who was qualified as an expert in traffic and parking. The Applicant described plans to construct a new affordable-housing development with ground-floor retail on a site at the intersection of Georgia Avenue and Newton Place, N.W. As proposed, the project requires the following zoning relief: area variances from the height, parking, and loading requirements; special exception relief from design requirements of the GA overlay to permit a ground-level floor-to-ceiling height of less than 14 feet and to allow construction not to extend to the property line; a special exception to construct a building in the GA overlay area on a lot with an area greater than 12,000 square feet; and a special exception to allow roof structures of unequal heights.

OP Report. By memorandum dated June 15, 2010, the OP recommended approval of the zoning relief requested by the Applicant, based on its conclusions that the application was in conformance with the criteria for granting the requested variances and special exceptions.

DDOT Report. By memorandum dated June 15, 2010, the DDOT stated its “conditional support” of the Applicant’s request for variances from parking and loading requirements. DDOT indicated its agreement with the Applicant’s projection of the number of trips that would be generated by the proposed development, and suggested that the Applicant could “further reduce the number of vehicle trips with its proposed [transportation demand management] strategies,” which will “assist the new residents and retail operator to take advantage of its prime location” near the Georgia Avenue-Petworth Metrorail station. (Exhibit 27). DDOT supported the Applicant’s proposal to provide fewer than 42 parking spaces at the site and indicated that the loading facilities planned by the Applicant would be sufficient for the building.

ANC Report. By letter dated June 9, 2010, ANC 1A indicated that, at a properly noticed meeting on the same date, with a quorum present, the ANC voted 7-2-0 to recommend approval “for 5 of the 6 requested areas of relief, and/or with conditions.” (Exhibit 29). The ANC report

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indicated that “parking remains the primary concern for residents of ANC 1A.” (Exhibit 29). Its recommendation, “based on the sentiment of its constituents,” was “the approval of 5 of 6 areas of relief. (DCMR 1330.2, 3104.1, 1330.1(b), 3104.1, and 411.11). [The parking variance] should not be approved unless suitable mitigation/relief for the additional street parking that will incur is found.” (Exhibit 29). ANC 1A also indicated its preference for “all prior conditions approved with BZA Application 17717 be forwarded and attached to this application.”¹ (Exhibit 29).

Persons in support. The Board received letters in support of the application from Jim Graham, the Councilmember for Ward One, (Exhibit 31) and from the owner of property located one block from the subject property. (Exhibit 32). The letters commented favorably on the redevelopment of a site on Georgia Avenue and the provision of affordable housing, and stated that the provision of 29 parking spaces in the building would not cause adverse impacts in the neighborhood. (Exhibits 31 and 32).

Persons in opposition. The Board received a letter from residents of the Prasada Condominium, located across the street from the subject property at 739 Newton Place, who expressed “serious concerns” with the application. The letter stated that “the requested parking variance will place an undue burden on an already difficult parking situation.” Noting that the Applicant proposed to provide 29 parking spaces in a building with 83 apartments, the letter stated that the “already limited parking option cannot sustain such an increase in residents seeking parking.” Residents of the Prasada Condominium also contended that the Applicant’s “request to make the building solely low-income and affordable housing thwarts the efforts to revitalize the Georgia Avenue corridor.” (Exhibit 26).

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property comprises four contiguous lots located at the southwest corner of the intersection of Georgia Avenue and Newton Place, N.W. (Lots 825, 826, 830, and 831 in Square 2895). The total lot area of the subject property is 18,552 square feet.
2. The subject property fronts on Georgia Avenue for approximately 100 feet on the east and along Newton Place for approximately 185 feet on the north.
3. A public alley, 15 feet wide, runs along the western edge of the subject property from Newton Place south to Park Road.

¹ The Board previously granted a special exception to permit the development of the subject property in a case involving a plan to construct a mixed-use building with 37 residential units and office and retail uses. See Application No. 17717, order issued October 1, 2009. In that order, approval was granted subject to the condition that “The mixed-use development shall not include a Community-Based Residential Facility or Emergency Shelter.”

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4. The subject property is improved with three buildings – a one-story car wash, a two-story corner store, and a two-story, four-unit apartment building, all currently vacant – as well as surface parking lots.
5. The subject property is located approximately three blocks south of the Georgia Avenue-Petworth Metrorail station. A number of bus lines also provide public transit service in the vicinity. A car-sharing service parks two vehicles near the Metrorail station, and an additional two at another location approximately four blocks to the west of the subject property.
6. The subject property is located within the GA overlay district and is zoned GA/C-3-A.
7. Properties located across the alley to the west of the subject property are zoned R-4 and are used for residential purposes, primarily in two-story row dwellings. The property immediately south of the subject property is improved with a one-story building currently used as a liquor store; the block also includes a one-story bank building. Properties along Georgia Avenue are zoned GA/C-3-A in the vicinity of the subject property and to the north, where uses include a mixture of retail and institutional uses. The GA/C-2-A zone is mapped to the south, starting at Park Road. Areas to the east of Georgia Avenue are also zoned R-4.

The Applicant's Project

8. The Applicant proposes to demolish the buildings currently on the subject property and to construct a new apartment building containing approximately 83 one- and two-bedroom units, with approximately 2,315 square feet of space devoted to retail uses on the ground floor. The building will be L-shaped, with an interior courtyard and roof terrace available for use by the residents.
9. The seven-story building will have a height of 73 feet, four inches. The building will be stepped down at its northwest corner, near the residential properties located across the alley to the west.
10. The commercial space will be located in the southern portion of the project, and will be accessible from Georgia Avenue and from the rear of the building. The principal entrance to the residential portion of the project will be located at the corner of Georgia Avenue and Newton Place; four ground-floor units along Newton Place will have individual entrances from the street.
11. The lot occupancy of the proposed project will be 74%, where a maximum of 80% is permitted pursuant to § 2604.2, for a development in the GA/C-3-A zone that is subject to inclusionary zoning requirements. The project will have a floor area ratio ("FAR") of 4.8, the maximum permitted with the 20% bonus density provided pursuant to § 2604.1. The project will satisfy matter-of-right zoning requirements with respect to rear yard, side yard, and open courts.

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12. The building will be set back approximately nine feet from the property line along Georgia Avenue because of the existence of a building restriction line.
13. The ground-level floor-to-ceiling height of the proposed development will be 12 feet.
14. The roof structure proposed by the Applicant would include an elevator overrun 14 feet, four inches high, a stair enclosure nine feet high, and a mechanical penthouse 12 feet high. The Applicant testified that the roof structure was designed to “reduce unnecessary height” where possible.
15. The Applicant will remove existing curb cuts at the subject property, thereby creating space for the creation of two additional metered parking spaces on Georgia Avenue and three or four residential permit parking spaces on Newton Place.
16. The Applicant plans to implement a transportation demand management (“TDM”) strategy intended to minimize the number of vehicle trips generated by the proposed development. Elements of the TDM strategy include the following:
 - a) The project will provide 20 bicycle parking spaces in the garage, including 12 in a secured room for building residents, in addition to six bicycle spaces in public space at the street level;
 - b) The project will provide a shower in the exercise facility for the property management employees who bike to work, and plumbing will be installed in the retail space to permit installation of a shower upon tenant build-out;
 - c) The Applicant will provide a SmarTrip card with \$20 of Metro fare or a one-year membership in a car- or bicycle-sharing service per unit to initial residents who affirm that they do not own an automobile, and a SmarTrip card with \$60 of Metro fare to property management and retail employees at initial occupancy;
 - d) The Applicant will provide website hotlinks to CommuterConnections.com and goDCgo.com on the developer’s and the property management company’s websites;
 - e) The project will provide an on-site business center for residents, with copier, fax, and internet services;
 - f) The Applicant will designate a member of the property management as a point of contact responsible for coordinating and implementing TDM obligations; and
 - g) The Applicant will distribute alternative transportation information and brochures via lobby kiosks, welcome packets, and bulletin board.

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17. The proposed development will provide 29 parking spaces in a below-grade garage accessible from the public alley. A driveway ramp to the garage will be located along the southern property line of the site.
18. The project will provide one 30-foot loading berth and one 100-square-foot loading platform, which will also be located at the rear of the property, adjacent to the garage ramp and accessible from the alley. The building management will be responsible for scheduling vehicles involved in tenants' move-ins and move-outs, as well as deliveries, to avoid conflict with scheduled trash pick-ups.

Harmony with Zoning

19. The C-3 zone district is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) zone district, and is intended to provide substantial amounts of employment, housing, and mixed uses. *See* 11 DCMR §§ 740.1, 740.2. The C-3-A zone district permits medium-density development, with a density incentive for residential development within a general pattern of mixed-use development. 11 DCMR § 740.4.
20. Pursuant to § 1327.3, the purposes of the GA overlay district include to:
 - a) implement the goals and objectives of two recent plans, the Georgia Avenue–Petworth Metro Station Area and Corridor Plan, approved by the Council of the District of Columbia, and the Great Streets Framework Plan for 7th Street–Georgia Avenue, published by DDOT;
 - b) encourage additional residential uses along the Georgia Avenue corridor;
 - c) encourage improved commercial uses;
 - d) provide uniform building design standards;
 - e) set guidelines for development review through special exception proceedings; and
 - f) encourage vertically mixed uses (ground-floor commercial and residential above) within a quarter-mile of the Georgia Avenue–Petworth Metrorail station.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that

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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. *See* 11 DCMR § 3103.2.

The Applicant seeks area variances from zoning requirements pertaining to building height, parking, and loading. Generally, the maximum building height permitted in the C-3-A zone is 65 feet. 11 DCMR § 770.1. As a building in the GA overlay district that is subject to § 1328.9, which requires a floor-to ceiling height of 14 feet on the ground level, the Applicant's project is permitted an additional five feet of building height, for a maximum permitted building height of 70 feet. 11 DCMR § 1328.10. The Applicant requests variance relief to allow an additional three feet, four inches in building height, to allow construction of a building 73 feet, four inches in height. With regard to parking, the Zoning Regulations require one parking space for every two dwelling units in the building, or 42 spaces for the planned 83 units. 11 DCMR § 2101.1. The Applicant proposes to provide 29 spaces and requests variance relief to allow a reduction of 13 parking spaces from the zoning requirement. With regard to loading, pursuant to § 2201.1, the project is required to provide one 55-foot loading berth, one loading platform of 200 square feet, and one 20-foot delivery space. The Applicant proposes to provide one 30-foot berth and one 100-square-foot loading platform.

The Board credits the Applicant's testimony that the subject property faces an exceptional situation by virtue of a confluence of factors, including a combination of regulatory requirements, construction efficiencies, and costs as well as the physical attributes of the subject property that create exceptional constraints on development of the site. The lot, while large, is relatively narrow. Its dimensions, along with the prohibition on building imposed on a portion of the site by its building restriction line, create constraints on the development of the site to the density permitted under its GA/C-3-A zoning classification. The Board credits the Applicant's testimony regarding the need to develop the subject property as an L-shaped building with a double-loaded corridor, which affects its design and layout and is complicated by the narrowness of the lot.

The strict application of the Zoning Regulations to the subject property would result in practical difficulties to the Applicant in light of requirements of the GA overlay district and inclusionary zoning provisions coupled with the development constraints presented by the lot. The Inclusionary Zoning provisions of Chapter 26 provide bonus density for inclusionary developments (*i.e.* projects subject to the inclusionary zoning requirements) and increase the maximum lot occupancy that would otherwise be permitted to facilitate the use of the bonus density. In this case, the maximum permitted FAR, including the bonus density, is 4.8, and the maximum building height is 70 feet. The Board credits the Applicant's testimony that, assuming an optimal floor-to-floor height of approximately nine feet, 10 inches, a project with 80% lot occupancy and 4.8 FAR would have six stories. However, the Applicant is unable to achieve 80% lot occupancy at the subject property due to the narrowness and shape of the lot, which limit the layout and orientation of the planned building. The Applicant therefore requests a height variance needed to allow construction of a seventh story on the planned building so as to permit

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full use of the bonus density. The Board credits the Applicant's testimony that an additional floor was needed to allow use of the bonus density provided under the Zoning Regulations to encourage the production of affordable housing.

The Board also credits the testimony of OP, in recommending approval of the requested area variances, that the Appellant's proposed building must be L-shaped as a result of design requirements of the GA overlay district and the corner location of the site. The L-shaped building and the need for double-loaded corridors limited the design opportunities available to the Applicant for layout and result in a maximum lot occupancy of 74%, with most of the rest of the site used as a ramp providing vehicular access to the below-grade garage. OP concurred in the Applicant's assessment that given the constraints imposed by the lot, a building height of 73 feet, four inches was required to add one floor to the building, so that the Applicant could utilize the bonus density granted through inclusionary zoning.

Approval of the requested height variance will not cause substantial detriment to the public good or impair the intent, purpose, or integrity of the zone plan. The minimal increase in building height – three feet, four inches – will not be apparent from the ground or create undue impacts on light and air, but will allow the construction of a seventh floor of affordable dwelling units, in keeping with the purposes of the GA overlay district. The building's height will be offset by a series of setbacks and by articulation of the façade, thereby reducing the overall scale and massing of the building.

The constraints arising from the lot dimensions, building design and orientation, and the building restriction line give rise to an exceptional condition underlying the Applicant's request for variance relief from parking and loading requirements. The Applicant is unable to provide a parking lot on the site, given the lot size and shape, and must locate the parking and loading facilities at the rear, accessible from the alley. The ramp to the garage must be located along the southern edge of the property, away from the intersection of the alley and Newton Place, and will reduce the area available to provide loading facilities. The Board credits the Applicant's testimony that various alternatives were considered in an attempt to increase the number of parking spaces provided on site, and that the proposed design, providing 29 parking spaces, was the optimal solution for the site, considering the high cost of constructing below-grade parking, particularly since multiple levels would require devoting a large amount of the underground space to ramps and drive aisles rather than to parking spaces. A reduction in the number of apartment units to conform to the parking requirement would limit the number of affordable housing units created at the site and would undermine the financial viability of the building.

Approval of the requested parking and loading variances will not cause substantial detriment to the public good or impair the intent, purpose, or integrity of the zone plan. The subject property is located near public transit and car-sharing facilities, the project will provide at least 20 bicycle parking spaces and related facilities for use by residents and employees, and the Applicant will implement a TDM strategy to reduce the number of vehicle trips generated by the proposed development. The proposed parking ratio – that is, the provision of 29 parking spaces for the 83 apartments in the planned building – will be consistent with the rates of car ownership in the

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immediate neighborhood, where census data indicates that 65% of renter-occupied households do not own a vehicle. With regard to loading, the Board notes that the retail use at the subject property does not generate a loading requirement under the Zoning Regulations, and concludes that the loading facilities proposed by the Applicant will be adequate to accommodate the size and type of delivery vehicles typically associated with residents in one- and two-bedroom rental apartments.

The Applicant also requests special exception relief related to a roof structure and to the requirements of the GA overlay district. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1.

With regard to the provisions of the GA overlay district, the Applicant seeks a special exception pursuant to § 1330.1(b) to allow the construction of a building on a lot greater than 12,000 square feet in land area, as the lot area of the subject property is 18,552 square feet. Based on the findings of fact, the Board finds that development of the Applicant's project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, including the GA overlay district, and will not tend to affect adversely the use of neighboring property. The Applicant's project will be consistent with the Zoning Regulations, including the purposes of the GA overlay district, as a mixed-use building near a Metrorail station that will increase the supply of affordable housing and retail space on Georgia Avenue.

Pursuant to § 1330.2, the Applicant seeks exceptions from two design requirements of the GA overlay; specifically, the requirement that at least 75% of a building's street wall at the street level must be constructed to the property line abutting the street right of way, that a building on a corner lot must be constructed to all property lines abutting public streets (§ 1328.2); and that the ground floor of each building must have a uniform minimum clear floor-to-ceiling height of 14 feet (§ 1328.9). Exceptions from the design requirements may be granted as a special exception provided that (a) the architectural design of the project will enhance the urban design features of its immediate vicinity; (b) vehicular access and egress will be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions; (c) parking and traffic conditions associated with the operation of a proposed use will not significantly affect adjacent or nearby residences; and (d) noise associated with the operation of a proposed use will not significantly affect adjacent or nearby residences. 11 DCMR § 1330.2.

Based on the findings of fact, the Board concludes that the requested exceptions will satisfy the criteria for approval. With regard to the location of the building's street wall, the Applicant is unable to construct the building's street wall along Georgia Avenue to the property line due to the prohibition on construction over a portion of the lot imposed by the building restriction line. A small part of the building's street wall will not be constructed to the property line along

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Newton Place in order to provide bays along the building's façade, an architectural feature that will enhance the urban design features of its immediate vicinity. With regard to the ground-floor ceiling height, the Board finds that the requested two-foot reduction will not compromise the quality of the planned retail space and will accommodate a uniform ceiling height on the ground floor of the building. While providing approximately 2,300 square feet of retail space, the majority of the ground floor will be devoted to residential use, which does not require a 14-foot ceiling. Approval of the requested exceptions will not create parking, traffic, or noise conditions that will significantly affect adjacent or nearby residences, but will improve pedestrian safety by eliminating existing curb cuts and providing vehicular access to the property from the rear alley.

Pursuant to § 411, all penthouses and mechanical equipment on the roof of a building must be placed in one enclosure, and the enclosing walls from roof level must be of equal height. *See* 11 DCMR §§ 411.3, 411.5. The Board may approve, as a special exception, a roof structure with varying heights where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, provided that the intent and purpose of the Zoning Regulations must not be materially impaired by the structure, and the light and air of adjacent buildings must not be affected adversely. 11 DCMR § 411.11.

In this case, the Applicant proposed a roof structure of two heights: an elevator penthouse 14 feet, four inches high and a stair enclosure eight feet, nine inches high. The Applicant testified that its proposal was "the better option," rather than having a uniform, higher height for the stair enclosure that "would result in an unnecessarily large penthouse." OP recommended approval of the requested special exception for the roof structure on grounds that construction of a screen wall around the penthouse to a uniform height of 14 feet, four inches "would be unreasonable, as it would result in a penthouse that would be more visible to more of the surrounding neighborhood."

The Board was not persuaded that the Applicant satisfied its burden of proving that a roof structure of varying heights was necessary as the result of the nature of the site or other constraint on the development of the project. The Applicant's contention that a roof structure with a uniform height would be unnecessarily large does not address the standards for Board approval of a special exception under § 411.11. The roof structure provisions were enacted "to exercise a reasonable degree of architectural control upon roof structures in all districts." 11 DCMR § 411.1. The Board was not persuaded by the Applicant that any specific characteristic or condition relating to the building or surrounding area required approval of a deviation from the stated purpose of the Zoning Regulations.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). In this case, ANC 1A recommended approval "for 5 of the 6 requested areas of relief, and/or with conditions." The ANC's report apparently indicates its support for approval of the requested special exceptions, since the provisions listed by the ANC pertain to special exceptions generally (§ 3104.1) or allow

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grants of special exception relief for roof structures (§ 411.11), the construction of a building in the GA overlay district on a lot with an area of 12,000 square feet or larger (§ 1330.1(b)), and exceptions from the design requirements imposed by the GA overlay (§ 1330.2). Based on the findings of fact, and for the reasons discussed above, the Board concurs with respect to the special exception relief pertaining to requirements of the GA overlay district, but does not agree with ANC 1A that the Applicant satisfied the burden of proof for approval of the special exception related to the roof structure.

The ANC did not specify its position on each of the Applicant's variance requests, but expressed its opposition to approval of the requested parking variance, citing a need for "suitable mitigation/relief for the additional street parking" that the ANC believed would occur as a result. Based on the findings of fact, and for the reasons discussed above, the Board does not agree with the ANC that approval of the requested parking variance will in fact result in additional demand for street parking in the vicinity of the subject property or otherwise cause substantial detriment to the public good related to parking.

The ANC also urged the Board to readopt a condition that was previously approved in another proceeding concerning the subject property. The Board finds no basis for adoption of that condition in this proceeding, which involves a different applicant and a different development project from the prior case. The ANC did not identify any adverse impacts associated with the Applicant's project that would be mitigated through adoption of its proposed condition. *See, e.g., President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58 (D.C. 2003) (Implicit in the Board's power to grant special exceptions is authority to place reasonable conditions, supported by evidence, on such approval; Board may impose appropriate requirements so that, so far as reasonably possible, objectionable conditions would be avoided).

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for a special exception from the roof structure requirements under § 411.11, but has satisfied the burden of proof with respect to the requests for area variances from building height requirement under § 770 to allow a building height of 73 feet, four inches, from the parking requirements under § 2101.1 to allow provision of 29 parking spaces, and from the loading requirements under § 2201.1 to allow provision of a 30-foot loading berth and a loading platform of 100 square feet, as well as with respect to requests for special exception relief from provisions of the GA overlay district to permit the development of a lot with an area greater than 12,000 square feet, a nine-foot setback of the building's street wall from the property line along Georgia Avenue, and a two-foot reduction in the minimum floor-to-ceiling height on the ground floor to allow construction of a new 83-unit apartment building with ground-floor retail in the GA/C-3-A district at 3506 Georgia Avenue, N.W., 3510 Georgia Avenue, N.W., 3512 Georgia Avenue N.W., and 714 Newton Place, N.W. (Square 2895, Lots 825, 826, 830, and 831). Accordingly, it is therefore **ORDERED** that the application, pursuant to Exhibit No. 33, Revised Plans, is hereby **GRANTED** in part and **DENIED** in part.

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Pursuant to 11 DCMR § 3125.7 “approval of an application shall include approval of the plans submitted with such application for the construction of a building or structure ... unless the Board orders otherwise.” In this case, the Board disapproves the portion of the submitted plans showing a roof structure with two heights. No building permit may be issued for this project unless the roof plans comport with the requirements of 11 DCMR § 411.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Shane L. Dettman, Nicole C. Sorg, and Peter G. May voting to **Approve** the requests for area variances from requirements related to building height, parking, and loading; to **Approve** the requested special exceptions pertaining to the Georgia Avenue Commercial overlay district; but to **Deny** the request for a special exception under § 411.11 to allow a roof structure not of uniform height; one Board member (vacant) not participating)

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

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

FINAL DATE OF ORDER: OCT 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 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.

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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 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



BZA APPLICATION NO. 18078

OCT 04 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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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ATTESTED BY:


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