

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18496 of Mid-Cities LLC, pursuant to 11 DCMR § 3104.1, for a special exception for the continued operation¹ of an accessory parking lot under section 214, in the R-1-B District at premises 4434 Connecticut Avenue, N.W. (Square 1971, Lots 831 and 832).

HEARING DATE: February 5, 2013

DECISION DATE: February 5, 2013

SUMMARY ORDER

SELF-CERTIFIED

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

The Board of Zoning Adjustment (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") 3F, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a timely letter and Form 129 in conditioned support of the application. The ANC letter indicated that at a duly noticed, regularly scheduled public meeting held on January 14, 2013 of ANC 3F with a quorum of commissioners present, the ANC voted unanimously (7:0) to support the application, subject to a five year term and a number of conditions. The ANC also indicated that it objected to a permanent re-approval of the special exception, as requested by the Applicant.² (Exhibits 21 and 22.) The ANC was present and testified at the public

¹ The land at the rear of 4434 Connecticut Avenue, N.W. has been used for accessory parking for the building on the property since the 1930s. Prior to 1958, no Board approval was required. The first Board of Zoning Adjustment approval for the accessory parking lot was granted in 1963. The most recent approval for this use was in Order No. 16061, dated August 8, 1995. That approval expired in 2002. (Exhibit 20.)

² The conditions proposed by both the ANC and the Office of Planning ("OP") were similar but for the duration of the term period. As OP indicated in its report, most of the proposed conditions were carried forward from the prior Board orders approving the use. (Exhibit 25.) The Applicant, in its prehearing statement, noted that the ANC had requested some conditions that were not included in the application, including a term of five years, a permanent bicycle rack, increased landscaping, replacement of the impervious surface with a pervious surface, and a request for two car-sharing spaces. The Applicant had requested permanent approval of the accessory parking lot and proposed

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hearing.

The Office of Planning ("OP") submitted a timely report in support of the application, with conditions including a recommendation for a seven year term. (Exhibit 25.) The District Department of Transportation ("DDOT") submitted a report recommending "no objection with conditions."³ (Exhibit 24.)

As directed by 11 DCMR § 3119.2, the Board 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 § 214. No parties appeared at the public hearing in opposition to the 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 ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, 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 requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE PLANS AT EXHIBIT 20**, and the **FOLLOWING CONDITIONS**:

1. Approval shall be for a period of seven years from the effective date of this order.
2. Fourteen parking spaces shall be provided on the site in accordance with the annotated plat of the site in Exhibit C of the Prehearing Statement of the Applicant dated January 22, 2013, and marked as Exhibit 20 in the record.
3. The hours of operation shall be from 8:00 a.m. to 9:00 p.m.

seven conditions, four of which addressed the new requests by the ANC, including replacing the existing impervious surface with a pervious surface by 2020. (Exhibit 20.) To coincide with the Applicant's stated timetable for completion of the replacement of the impervious surface with a pervious surface, OP (as well as DDOT) had recommended a seven year term. (Exhibit 25.) Thus, in its deliberations, the Board had to choose among the ANC's proposal of a five year term, OP's recommendation of a seven year term, and the Applicant's request for permanent approval, subject to the proposed conditions. After due consideration of each of these positions and the reasons provided by the parties, the Board imposed a seven year term on this approval, citing the coincidence of the timing for replacement of the impervious surface with the next renewal for the parking lot in 2020.

³ DDOT's recommendations for conditions, including one for a seven year term period, were contained within OP's proposed conditions.

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4. All areas devoted to driveways, access lanes, and parking areas shall be properly maintained. The existing impervious surface shall be replaced with a pervious surface that is acceptable to the District Department of Transportation, by 2020.
5. Bumper stops shall be maintained.
6. All parts of the lot shall be kept free of refuse or debris.
7. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
8. The Applicant shall install a permanent bicycle storage rack for at least four bicycles, as shown on Exhibit F of the Prehearing Statement of the Applicant, marked as Exhibit 20 in the record.
9. The Applicant shall provide landscaping, including the use of planter boxes, which shall be provided on site (totaling five percent of the surface parking area) per the plan as shown in Exhibit F of the Prehearing Statement of the Applicant, marked as Exhibit 20 in the record. The landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
10. The site includes an existing one-story garage of masonry construction. No other use shall be conducted from or upon the premises nor shall anything be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
11. No vehicular entrances or exists shall be within 40 feet of a street intersection as measured from the intersection of the curb lines extended.
12. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: **4-0-1** (Lloyd L. Jordan, Anthony J. Hood, Nicole C. Sorg, and Jeffrey L. Hinkle, to Approve; the third Mayoral appointee vacant.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 7, 2013

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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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS

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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.