

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18544 of Penn Avenue Partnership LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for a special exception from the roof structure provisions under § 411, a variance from the off-street parking provisions under § 2101, a variance from the size of parking space requirements under § 2115, and a variance from the loading requirements under § 2201, to allow a residential project in the C-2-A District at 1550 Pennsylvania Avenue, S.E. (Square 1077, Lot 130).

HEARING DATE: April 30, 2013

DECISION DATE: May 21, 2013

DECISION AND ORDER

The applicant in this case is Penn Avenue Partnership LLC (“Applicant”). The Applicant filed an application with the Board of Zoning Adjustment (“Board”) on February 12, 2013 regarding the development of a residential project located at 1550 Pennsylvania Avenue, S.E. (the “Property”). The Property is located in the C-2-A Zone District. The application sought variance relief under 11 DCMR § 3103.2 from § 2101 (§§ 2101.1 and 2115.2¹) regarding the parking spaces provided in the project and variance relief from the Section 2201 (§ 2201.1) regarding the loading facilities provided in the project. The Applicant also requested special exception relief for the proposed roof structure, which was of varying height.

The Board held a public hearing on April 30, 2013. At a public meeting on May 21, 2013, the Board voted 5-0 to grant the application for the variance and special exception relief, subject to conditions.

FINDINGS OF FACT

Preliminary Matters

1. Applicant. The application was filed by Penn Avenue Partnership LLC on February 12, 2013. (Exhibits 1-8.)

¹ The initial application also sought relief from § 2115.4, which requires that compact parking spaces be provided in groups of at least five contiguous spaces. In response to DDOT comments, the Applicant made modifications to the entrance to the parking garage and the layout of the parking garage which made relief from § 2115.4 no longer necessary.

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2. Application. The application requested special exception relief pursuant to § 3104.1 from the roof structure requirements of 411.5, which is made applicable to properties in Commercial Zones by § 777.1; variance relief pursuant to § 3103.2 from the number and amount of required loading facilities (§ 2201.1); variance relief from the number of required parking spaces (§ 2101.1), and variance relief from the requirement that a garage consist of at least 25 parking spaces in order to provide compact parking spaces (§ 2115.2). (Exhibits 4, 8.)
3. Notice of Application and Notice of Public Hearing. By memoranda dated February 13, 2013, the Office of Zoning ("OZ") advised the D.C. Office of Planning ("OP"), the Zoning Administrator, the District of Columbia Department of Transportation ("DDOT"), the Councilmember for Ward 6, Advisory Neighborhood Commission ("ANC") 6B, the ANC within which the Property is situated, and the Single Member District Commissioner, ANC 6B09, of the application. (Exhibits 12-18.)
4. Pursuant to 11 DCMR § 3113.13, OZ mailed the Applicant, the owners of all property within 200 feet of the Property, and ANC 6B, notice of the April 30, 2013, hearing. Notice was also published in the *D.C. Register*. The Applicant's affidavits of posting and maintenance indicate that three zoning posters were posted beginning on April 11, 2013, in plain view of the public. (Exhibits 17-20, 23.)
5. Request for Party Status. ANC 6B was automatically a party in this proceeding. Mohamed R. Badissy, a resident of 821 Kentucky Avenue, S.E., attempted to file a party status request with the Board on April 14, 2013. However, this Party Status request was not properly filed with OZ and was not officially accepted by the Board until the date of the public hearing. At the public hearing, the Board granted party status to Mr. Badissy. (Exhibit 31.)
6. Motion for Request for Additional Relief. On April 26, 2013, Mr. Badissy filed a motion requesting that the Applicant include a request for a variance from the rear yard requirements of § 774. At the public hearing on April 30, 2013, the Board heard testimony from the Applicant as to why the project did not require rear yard relief, and the Applicant submitted a document detailing how the rear yard was properly calculated so that no relief was necessary. The Board agreed with the Applicant that rear yard relief was not needed. (Exhibits 28, 33.)
7. Applicant's Case. The Applicant presented testimony and evidence from Greg Selfridge, representative of the Applicant and Steve Dickens, an expert in architecture. Their relevant testimony is reflected in the Findings of Fact that follow.
8. Post-Hearing Submissions. At the conclusion of the public hearing, the Board requested that the Applicant submit additional information regarding the amount of the roof structure that is devoted to accessory rooftop use; information as to whether the Property is eligible for Residential Permit Parking ("RPP") privileges; and any revisions to the plans which were necessary to address DDOT's concerns with the project. The Applicant was required to file this information by May 7, 2013, and all parties and District agencies were permitted to provide responses by May 14, 2013. The Applicant submitted the requested information on

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May 7, 2013. (Exhibit 36.) DDOT submitted its supplemental report on May 14, 2013. On May 13, 2013, Mr. Badissy submitted a motion to extend the period of time in which to file his comments on the post-hearing submissions. On May 21, 2013, Mr. Badissy filed a post-hearing submission which responded to the Applicant's May 7, 2013 submission. Mr. Badissy's May 21, 2013 submission reiterated the arguments that he made at the public hearing, the principal arguments being that the Applicant had failed to satisfy the exceptional condition and practical difficulty standards of the variance test regarding the number of parking spaces provided in the Project. Mr. Badissy's May 21, 2013 submission noted that if the BZA does decide to grant the variance, it should only do so in return for withholding RPP rights from future tenants of the project.

9. ANC 6B. On April 9, 2013, at a properly noticed public meeting, ANC 6B voted 9-0 to support of the application. The ANC submitted a letter dated April 16, 2013, along with a Memorandum of Understanding signed by the Applicant and neighboring property owners most affected by the project, memorializing its support and noting that the proposed project's impact on light, air, and privacy will be negligible. (Exhibit 26.)
10. Organization and Persons in Support of Application. The Capitol Hill Restoration Society Zoning Committee ("Committee") submitted a letter, dated April 29, 2013, into the record supporting the application. The Committee determined that the Applicant complied with the test for variance relief and voted unanimously to support the requested variances. The Committee also found that the building will not affect the light and air or privacy and use and enjoyment of neighboring properties. The Committee voted unanimously to support the application. Shannon Welch, who lives at 829 Kentucky Avenue, S.E., testified in support of the application at the public hearing. Ms. Welch noted the Applicant's willingness to work with her and her neighbors to address their concerns. (Exhibit 29; Tr. of April 30, 2013 public hearing, p. 94-96.)
11. Party in Opposition to the Application. Mohamed R. Badissy filed a request for party status in opposition to the application and was granted Party Status at the Public Hearing on April 30, 2013. In written materials and in testimony at the public hearing, Mr. Badissy stated that the Applicant failed to satisfy the relevant variance standards, including a showing of exceptionality and practical difficulty. Mr. Badissy also testified as to the appropriateness and necessity of the BZA imposing RPP restrictions on the future tenants of the building. (Exhibit 31; Tr. p. 97-102.)
12. Person in Opposition to the Application. The Board received a letter from Sid Iyer, a resident of 807 Kentucky Avenue, S.E., which noted his objection to the request for relief from the off-street parking requirements. Mr. Iyer stated that there is a significant shortage of off-street parking spaces along Kentucky Avenue. Mr. Iyer did not present any testimony at the public hearing. (Exhibit 21.)

The Subject Property and the Surrounding Area

13. The Property is located in the C-2-A Zone District in Ward 6. The Property is irregularly shaped and has frontage along Pennsylvania Avenue, S.E., Kentucky Avenue, S.E., and Barney Circle. The grade of the Property drops off north to south and west to east. The west end of the Property is approximately six feet higher than the east end of the Property. (Exhibit 4.)
14. A 10-foot wide alley (known as “Freedom Way”) borders the Property to the north. The Property is the last property before Pennsylvania Avenue enters Barney Circle and crosses over the Anacostia River on the John Phillip Sousa Bridge, or conversely, the first property that one passes along Pennsylvania Avenue after crossing the bridge, as one heads towards the Capitol Hill neighborhood and Downtown. The Property is located approximately two blocks from the Potomac Avenue Metro Station. Three-story row dwellings are found adjacent to the property on Pennsylvania Avenue and 2½-story row dwellings are found along Kentucky Avenue, S.E. across the alley from the Property. (Exhibit 4.)

The Applicant's Proposed Project

15. The Applicant is proposing to redevelop the site with a five-story residential building (“Project”). The Project will be 50 feet tall with a floor area ratio of 3.0, and a lot occupancy of 72.6%. The design of the building effectively utilizes the change in grade of the Property as well as the irregularly shaped lot to create an attractive residential structure that will serve as a distinctive architectural marker at this key intersection. Freedom Way is currently only 10 feet wide and includes a sharp turn at the southern end, adjacent to the Property, which is difficult for vehicles to navigate. Residents of the neighborhood told the Applicant that people frequently head the wrong way (northbound) on Freedom Way in order to avoid this sharp turn. At the request of DDOT and the community, the building was pulled back from the lot lines along Freedom Way in order to allow for improved vehicular travel movements along Freedom Way. (Exhibits 4, 24, 36.)
16. The parking spaces provided in the Project are located at-grade along Freedom Way in the rear of the building, and in one below-grade level of parking. Access to the below-grade parking level in the building was originally proposed from the Kentucky Avenue right-of-way adjacent to the alley. In response to issues raised by DDOT, the Applicant pushed the entrance to the parking garage further back into the site, so that the entrance was solely from Freedom Way.
17. The application sought a variance of 11 parking spaces, based on the ultimate range of residential units included in the Project, and the ability to provide compact parking spaces in a parking garage with less than 25 parking spaces. The Applicant submitted a Comprehensive Transportation Review (“CTR”) which addressed the expected parking demand for the Project and the impacts that this Project will have on the surrounding streets and community. The CTR concluded that “the proposed development is expected to generate

little parking demand, based on land use, development density, transit availability and convenience, bicycle and pedestrian facility availability, and resident demographics.” The CTR also noted that “additional parking spaces are available on the street within a very short walk of the proposed development and thus should additional parked vehicles be generated by this development, there appears to be adequate on-street capacity to handle a modest increase.” (Exhibits 24, 36.)

18. The Applicant proposed a Transportation Demand Management plan (“TDM”) that included the following elements:

- The Applicant will provide to each residential lessee or purchaser, either: (i) a SmarTrip card with a value of \$75; or (ii) a first year membership to Capital Bikeshare or a car sharing service (valued at \$75);
- The Applicant will coordinate with a car sharing service to determine the feasibility of locating a car sharing vehicle in the adjacent public space. The final determination on whether and how many car sharing vehicles will be located in the adjacent public space will be made by the car sharing service and DDOT;
- Bicycle parking (28 bike parking spaces with inverted U racks) will be provided on-site. Bicycle parking for the residents will be provided on the ground floor or in the garage;
- The Applicant will unbundle all costs related to the parking spaces from the sales price or lease amount of each residential unit;
- The Applicant will designate a Loading Coordinator for the site to coordinate residential move-in/move-out. All residents shall be required to notify the Loading Coordinator of move-in/move-out dates;
- No truck idling will be permitted;
- The property website will include links to CommuterConnections.com and goDCgo.com;
- The building will manage parking to reflect the urban nature of the District of Columbia, with parking located on the alley and in an underground facility accessible off the alley; and
- During construction, the Applicant will maintain or coordinate relocation of any existing bus stops.

(Exhibit 36.)

19. The Applicant agreed to limit the number of RPP permits that the Project will be eligible to receive. The Applicant noted that since it was seeking a 25% reduction of the required number of parking spaces in the Project, it would work with DDOT to establish a program

where DDOT will limit the number of RPP permits that it issues for the Project, by 25% or, if necessary, include a prohibition from obtaining such permits in 25% of its residential lease agreements.

20. The Project requires relief from the requirement to provide a 55-foot loading berth. The Applicant noted that given the size of the proposed residential units, it is unlikely that residents of the Project will be utilizing trucks that require a 55-foot loading berth. In addition, during the negotiation of the TDM with the adjacent neighbors, the Applicant consistently heard of the adjacent neighbor's desire to remove truck traffic from Freedom Way, given its narrow width and sharp turn at the southern end. Initially, the Project included a 30-foot loading berth and associated 100 square foot loading platform and a 20-foot service and delivery space. In response to comments received from DDOT and the Board, the Applicant made revisions to the plans which removed the proposed 30-foot loading berth. The Applicant noted that the removal of the 30-foot loading berth will not adversely impact any adjacent properties since this project does not include any retail uses, the loading demand will be predominantly related to residential move-ins/outs which will be monitored by the Loading Coordinator. The Applicant discussed the proposed removal of the 30-foot loading berth with the community representatives that signed the ANC sponsored MOU. Those community representatives support the proposed removal of the loading berth, as it is consistent with their desire to minimize the total number of trucks that utilize Freedom Way. The final plans for the Project submitted by the Applicant provide a 20-foot service and delivery space. (Exhibits 4, 24, 36.)
21. The Project includes a mechanical penthouse for the elevator overrun that is 18 feet, six inches in height. This height is also applied to other portions of the roof structure in order to provide space for taller mechanical equipment (freeing roof space below for vegetated green roofs and common roof decks). The remainder of the roof structure, at the northwest and southeast ends, is only 13 feet tall. In a post-hearing submission, the Applicant provided information to the Board which showed that the area of the vegetated green roof was maximized to help satisfy the project's requirements for stormwater retention and treatment and the accessory roof space in the roof structure is 20% of the area of the outdoor roof deck. (Exhibits 4, 24, 36.)

Special Exception Relief – Roof Structure

22. In this case, the Applicant seeks relief pursuant to § 411.11, from § 411.5, which applies to Commercial Zones by virtue of § 777.1. Subsection 411.5 requires penthouses to consist of a uniform height.
23. The Applicant is providing a shorter roof structure (only 13 feet tall) at the northwest and southeast ends of the building, in order to allow the roof structure height to step down in the direction of the lower-scaled row dwellings across the alley and across Kentucky Avenue. The step-down sculpts the massing of the roof structure and reduces its visual impact. Though the Zoning Regulations require a penthouse to be of uniform height, the concurs with

the Applicant that the intent of the Zoning Regulations, which is to reduce impacts of development on neighboring property, is better achieved by providing varying heights for the rooftop structure. Due to the siting of the building on the Property and the location and height of the proposed penthouse structure, the roof structure will have a minimal effect, if any, on the light and air of neighboring properties. (Exhibit 4.)

Variance – Parking and Loading

24. The Property is subject to an exceptional condition because it is an irregularly shaped lot compounded by sloping topography, and the location of the street and alley frontages. These factors create challenges in designing an efficient site plan for the building and the below-grade parking level. In addition, the Property is served by a rather narrow 10 foot alley, which limits the size of vehicles that can effectively and conveniently access the loading facilities provided in this project. (Exhibit 4.)
25. The layout of the Project is consistent with the Department of Transportation's policy of having all vehicles (passenger cars and delivery trucks) access the Property from an alley rather than curb cuts on Pennsylvania Avenue or Kentucky Avenue. Any large delivery trucks that need a 55 foot loading berth would face a series of very difficult and awkward turning movements in order to access the Property from the 10 foot alley. For these reasons, the Applicant is faced with a practical difficulty in satisfying the requirement to provide a 55 foot loading berth on the Property. (Exhibit 4.)
26. The Project will include one level of below-grade parking and will also provide parking spaces in the rear of the building adjacent to the alley at-grade. The Applicant is requesting relief of 11 parking spaces and the ability to provide compact parking spaces in a garage with less than 25 parking spaces. (Exhibits 4, 24.)
27. The efficiency of the proposed parking garage level suffers from several site-related factors. The driveway ramp, for example, comes off the alley as required by DDOT policy. However, since the alley is at the higher end of the site, the driveway ramp must be longer than if the entrance were elsewhere on the site. The dimensions of the lot are somewhat small relative to the required widths and lengths of ramps, aisles and parking spaces. The provision of compact spaces in the parking garage provides some alleviation from these factors, but the site dimensions combined with the irregular shape of the lot create a very inefficient below-grade parking garage. Thus, in order to satisfy the Zoning Regulations' requirement to provide 42 parking spaces for this project, it would be necessary to add a second level of below-grade parking or to expand the parking garage area into the eastern portion of the English Basement level. (Exhibit 24.)
28. Expansion into the eastern portion of the English Basement level, although possible, would be very inefficient. The odd shape of the lot and the need to design around core elements (such as the elevator, stairs, trash chute, etc.) results in the creation of very few spaces in a large area. The elevator, for example, needs to be more or less in the center of this space in

order to comply with the 1:1 setback at the roof level. This largely eliminates the possibility of an efficient double-loaded parking arrangement. Egress stairs could shift to locations different than at upper levels—indeed in larger buildings this is common—but in this small floor plate, it would offset a disproportionate amount of usable space. Also of note is the community approval of English Basement residential units in this area, noting that such dwellings are common in the neighborhood and provide additional “eyes on the street” at the ground level. (Exhibit 24.)

29. A second level of parking in this project is even more inefficient than the first level of parking with all of the constraints noted above. The slope of the ramp heading down to a second level would be significant and would reduce the number of parking spaces on the first level. In addition, the eastern end of the property has a relatively high water table and the elevator core is located in the middle of English basement level which further limits the number of potential parking spaces on that level. (Exhibit 24.)
30. Providing a second level of parking is also extremely expensive given the vertical sheeting and shoring required along the alley and extensive waterproofing that would be necessary. This significant cost of creating a second level of parking ultimately puts the financial viability of this project in jeopardy.
31. The request for parking relief will not have an adverse effect on neighboring properties. The Board agrees with the conclusion reached in the CTR prepared by the Applicant’s traffic engineer that “the proposed development is expected to generate little parking demand, based on land use, development density, transit availability and convenience, bicycle and pedestrian facility availability, and resident demographics.” In addition, the Applicant’s provision of 28 bicycle parking spaces on the Property and the implementation of the TDM (with the restriction on RPP permits) satisfies the test that granting the relief will not impair the intent, purpose, and integrity of the Zone Plan.

Office of Planning (OP) Report

32. By a report dated April 23, 2013, supplemented by testimony at the public hearing, OP recommended approval of the special exception and variance relief requested in the application. OP noted that the Property is irregularly shaped and sloped, the proposed site access is consistent with DDOT’s policy which requires access from an alley rather than via curb cuts on Pennsylvania Avenue or Kentucky Avenue, and the Property is constrained by the narrow width of the alley. OP concluded that these factors impact the site design and create a practical difficulty for the Applicant. (Exhibit 25.)
33. In regard to the request for relief from the number of required parking spaces, OP noted that the “site’s sloping topography, combined with the requirement to access the garage ramp from the alley (the higher end of the site), results in a longer driveway ramp than would otherwise be necessary.” OP also noted that a second level of parking would be necessary to meet the minimum parking requirement which would be very inefficient. OP concluded that

“the irregular shape of the lot, combined with the location of the Building’s core elements, precludes the Applicant from efficiently expanding the underground parking into the eastern portion of the English Basement level.” The OP Report noted that the Applicant worked with the surrounding community and the ANC 6B representative to create the TDM, that the Property is served by public transportation, including the Potomac Avenue Metro Station (two blocks away), and that alternative means of transportation such as bike, bus and Metrorail should mitigate the impact of the proposed reduction in the number of parking spaces. Thus, OP concluded that relief from the number of parking spaces provided in the Project would not result in a detriment to the public good and that no substantial harm to the Zoning Regulations would result from the reduction in parking. (Exhibit 25.)

34. In regard to the request to provide compact parking spaces in a garage with less than 25 parking spaces, OP noted that the small size of the site creates a practical difficulty relative to the required widths and lengths of ramps, aisles, and parking spaces, thereby reducing the area that would normally be devoted to 9’ X 19’ parking spaces. Given the size of the lot, the Applicant would encounter practical difficulties if required to comply with the minimum parking space dimensions. OP noted that providing compact parking spaces would increase the efficiency of on-site parking and allow the development to provide on-site parking in a manner that would not negatively impact the use of adjacent properties. OP concluded that this proposed area of relief should not result in a substantial harm to the Zoning Regulations. (Exhibit 25.)
35. In regard to the request for loading relief, OP noted that the width of the alley limits the size of vehicles that could access the alley. OP supported the Applicant’s revisions to the design of the building which would improve navigation for vehicles travelling eastbound. OP concluded that granting the relief would not cause substantial detriment to the public good, as the TDM included requirements for a Loading Coordinator and all tenants would be required to notify the Loading Coordinator of move-in/move-out dates. (Exhibit 25.)
36. OP also concluded that the roof structure relief was consistent with the Zoning Regulations and Zoning Maps and that the proposal would not tend to adversely affect the use of neighboring properties. Specifically, OP noted that the requirement to provide a roof structure of a single height would increase the visibility of the roof structure, as it would be significantly larger and taller than what is proposed. OP also noted that the roof structure is sufficiently set back from the street frontages, reducing their visibility from the street level. OP concluded that the location and design of the rooftop structure should minimize its visual impact. (Exhibit 25.)

Department of Transportation Report

37. DDOT, by its report dated April 23, 2013, noted that it had no objection to the variance requests from parking or loading. The DDOT Report included the following findings: (i) the project will generate minimal new vehicle trips; (ii) curbside parking in the vicinity has excess capacity; (iii) the site has excellent access to alternative transportation modes,

including walking, biking and transit; (iv) future residents are likely to heavily utilize non-automobile modes of travel; and (v) long-term bike parking spaces may not be adequate. (Exhibit 27.)

38. The April 23, 2013 DDOT report noted four conditions of approval: (i) the Applicant should redesign the parking garage access such that public space on Kentucky Avenue is not utilized; (ii) the Applicant should demonstrate that the loading berth adequately accommodates a regulation 30 foot truck; (iii) the Applicant should increase the number of bicycle parking spaces from 28 to at least 41 to reflect a ratio of one long-term bike parking space for every two units, and to provide four inverted U-racks for short term public bike parking on the sidewalk in a location approved by DDOT; and (iv) as part of the TDM plan, the Applicant should offer a financial incentive to all new tenants instead of the initial occupants and limit the incentive to Capital Bikeshare membership or a subsidy to a car sharing service. (Exhibit 27.)
39. The Applicant's May 7, 2013 submission included a redesigned garage access point which removed the access point from the Kentucky Avenue public space and also removed the proposed 30 foot loading berth. The Applicant did not increase the number of bicycle parking spaces in the Project. The Applicant did modify its TDM to offer a financial incentive to all new tenants of the building, but did not limit that financial incentive to just Bikeshare and car sharing memberships. (Exhibit 36.)
40. In a report dated May 14, 2013, DDOT noted that the revised design for the garage access does not impact public space and that the revised design sufficiently addresses DDOT's concerns. The DDOT report also noted that the proposed design eliminates all off-street loading. The DDOT report concluded "Due to the limited loading needs of the site, the availability of curbside parking in the adjacent area, and the designation of a Loading Coordinator as part of the Applicant's Transportation Demand Management plan, DDOT has no objection to the Applicant's request for relief from on-site loading requirements."

CONCLUSIONS OF LAW AND OPINION

Special Exception Relief

The Board is authorized to grant a special exception where, in its judgment, 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." (11 DCMR § 3104.1.) Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them.

Subsection 777.1 applies the roof structure requirement of § 411 to Commercial Zones. The Applicant seeks relief from § 411.5, which requires the closing walls of penthouses to be of equal height.

Subsection 411.11 of the Zoning Regulations provides in part that

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, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under Section 3104, the location, design, number, and all other aspects of such structure, even if such structures do not meet the normal setback requirements...; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

(11 DCMR § 411.11.)

The Applicant is providing a shorter roof structure at the northwest and southeast ends of the building, in order to allow the roof structure height to step down in the direction of the lower-scaled row dwellings across the alley and across Kentucky Avenue. The step-down sculpts the massing of the roof structure and reduces its visual impact. Though the Zoning Regulations require a penthouse to be of equal height, the Commission finds that the intent of the Zoning Regulations, which is to reduce impacts of development on neighboring property, is better achieved by providing varying heights for the rooftop structure.

The Board finds that the requested roof structure relief will not adversely affect, or be objectionable to, the surrounding properties. Portions of the elevator penthouse are 18 feet six inches tall and portions are 13 feet tall. In order to mitigate the appearance of the roof structure, the Applicant is reducing the height of a portion of the roof structure to 13 feet. The size of the roof structure is also appropriate for the accessible roof area. The roof plan and roof structure proposed in this Project minimizes both the height and bulk of the roof structures which serves as a positive feature for neighboring properties.

Variance Relief

The Applicant also seeks variances under 11 DCMR § 3103.1 from the number and amount of required loading facilities (§ 2201.1); the number of required parking spaces (§ 2101.1), and the prohibition against the use of compact car spaces in a garage with less than 25 parking spaces (§ 2115.2). The Board is authorized to grant variances from the strict application of the Zoning Regulations where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” (D.C. Official Code § 6-641.07(g) (3) (2001, 11 DCMR § 3103.2.) Relief can be granted only “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.” (D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.)

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As noted in § 3103.7:

The standard for granting a variance, as stated in § 3103.2 differs with respect to use and area variances as follows:

- (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103.2, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and
- (b) An applicant for a use variance must prove that as a result of the attributes of a specific piece of property described in § 3103.2, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.

The Applicant seeks area variances because it request permission “to deviate from ... [m]inimum parking or loading requirements to an extent greater than what may be permitted by special exception.” (11 DCMR § 3103.5 (b).) The application has satisfied each element for the variances sought.

As to the request for a variance from the requirement to provide a 55-foot loading berth, the Board finds that this property is irregularly shaped, has a sloping topography and is bound by three streets and a narrow ten foot alley. The shape and slope of the lot creates challenges in designing an efficient floor plan complete with a 55-foot loading berth. The narrow width of the alley and the one-way configuration of Kentucky Avenue make it impossible for trucks that would require a 55-foot loading berth to be able to access such a berth on the Property from Freedom Way.

The absence of a 55-foot loading berth will neither cause substantial detriment to the public good, nor substantially harm the Zone Plan. The Board notes the Applicant’s written and oral testimony that the surrounding community in fact wants to reduce the use of Freedom Way for trucks and loading of any kind. In addition, the Applicant has proposed conditions in its TDM which deal with how move-in/move-outs will occur and that no truck idling will be permitted.

As to the request to reduce its parking requirement by 11 spaces, the Board concludes that the Applicant is faced with a practical difficulty in providing the required number of parking spaces due to the irregularly shaped, sloped property, bound by a narrow alley which creates an inefficient parking layout and would require a costly second level of below-grade parking.

Reducing the number of parking spaces will neither cause substantial detriment to the public good nor substantially harm the Zone Plan. The Board concurs with the conclusions of the Applicant’s traffic engineer that the “proposed development is expected to generate little parking demand, based on land use, development density, transit availability and convenience, bicycle and pedestrian facility availability, and resident demographics.” The Board also agrees with the Applicant’s traffic engineer that “additional parking spaces are available on the street within a

very short walk of the proposed development and thus should additional parked vehicles be generated by this development, there appears to be adequate on-street capacity to handle a modest increase.” The Applicant has proffered a TDM plan which will help mitigate any potential adverse impacts that may arise as a result of granting the requested parking relief. In addition, the Board notes the Applicant’s commitment to reduce, by 25%, the number of RPP permits that Project residents would ordinarily be eligible to receive. This is roughly equivalent to the reduction in parking granted and satisfies the condition of approval sought by the party in opposition.

Finally, the Board also finds that the Applicant met the variance test with respect to its request to provide compact parking spaces in a parking garage of less than 25 parking spaces. The Applicant has already demonstrated the exception conditions that make it practically difficult for it to provide the full number of parking spaces required and without this relief a further reduction would likely be needed. The Board agrees with the conclusions of the Office of Planning that providing compact parking spaces in this Project would increase the efficiency of on-site parking and will allow the Project to provide on-site parking in a manner that would not negatively impact the use of adjacent properties. Therefore this will not cause substantial detriment to the public good nor substantially harms the Zone Plan.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1- 309.10(d) and 6-623.04 (2001).) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. Both ANC 6B and the OP recommended approval of the Applicant’s special exception and variance requests. The Board agrees with the ANC's and OP’s recommendation of approval.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to an application for variance and special exception relief pursuant to §§ 3103, 411.11 and 3104, from the provisions of 411.5, 777, 2101 (2101.1 and 2115.2), and 2201 (2201.1) to construct a residential building on the Property. **THEREFORE**, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the **CONDITIONS** below. For the purposes of these conditions the term “Applicant” means the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an owner. The **CONDITIONS** are as follows:

1. Development of the Project shall be in accordance with the plans submitted as Exhibit 36 of the record.
2. Each residential lessee or purchaser shall be provided either: (i) a SmarTrip card with a value of \$75; or (ii) a first year membership to Capital Bikeshare or a car sharing service

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(valued at \$75).

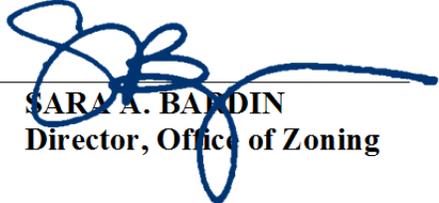
3. All costs related to the parking spaces shall be unbundled from the sales price or lease amount of each residential unit.
4. The Applicant shall designate a Transportation Management Coordinator who will expand internal marketing efforts for alternative transportation. The property website will include links to CommuterConnections.com and goDCgo.com. A Loading Coordinator will be designated to coordinate residential move-in/move-out, and residents shall be required to notify the Loading Coordinator of upcoming residential moves.
5. The Applicant shall coordinate with a car sharing service to determine the feasibility of locating a car sharing vehicle in the adjacent public space. The final determination on whether and how many car sharing vehicles will be located in the adjacent public space will be made by the car sharing service and DDOT.
6. There shall be at least 28 bike parking spaces in the Project and four inverted U-racks for short term bike parking on the adjacent sidewalk will be provided. Bicycle parking for the residents shall be provided on the ground floor or in the garage.
7. No truck idling shall be permitted.
8. During construction, the Applicant shall maintain or coordinate relocation of any existing bus stops.
9. The Applicant shall restrict residential parking permits to 25% less than what the building is eligible for by working with the Department of Transportation and, if necessary, provide in 25% of the residential lease agreements that the tenant may not apply for a permit.

VOTE: **4-0-1** (Lloyd J. Jordan, Jeffery L. Hinkle, S. Kathryn Allen, and Peter G. May to Approve; one Board seat vacant.)

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 20, 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.