

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18685 of Polinger, Shannon & Luchs pursuant to 11 DCMR § 3104 for a special exception under § 411.11 of the Zoning Regulations to the requirements of § 411.6, and for a variance under § 3103 from the requirements of § 770.6(d) to permit the installation of solar panels on a commercial office building in the C-3-C District at premises 1200 First Street, N.E. (Square 672, Lot 856).

HEARING DATES: April 8, 2014; May 20, 2014

DECISION DATES: September 9, 2014, November 5, 2014, and December 16, 2014

DECISION AND ORDER

This self-certified application was submitted on October 16, 2013, by Horace Willis, the engineer for the proposed project, on behalf of Polinger, Shannon & Luchs (the “Applicant”), the owner of the property that is the subject of the application. The application requests a special exception under § 411.11 of the Zoning Regulations and a variance from § 770.6(d) to allow the addition of solar panels on the rooftop of a commercial office building in the C-3-C District at 1200 First Street, N.E. (Square 672, Lot 856) (the “Subject Property”). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 17, 2013, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the subject property is located; and Single Member District/ANC 6C06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on October 28, 2013, providing notice of the hearing to the Applicant, ANC 6C, and the owners of all property within 200 feet of the subject property. Notice of the hearing was published in the *D.C. Register* on November 1, 2013 (60 DCR 15221).

Party Status. The Applicant and ANC 6C were automatically parties to this proceeding. No other persons requested party status.

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Applicant's Case. The Applicant provided evidence and testimony describing the proposed project - to install solar panels on the rooftop of the commercial office building located on the Subject Property. (Ex. 28.) The Applicant asserted that the application satisfied all the requirements for special exception and variance relief. The Applicant stated that the District Department of the Environment ("DDOE") desired to install the solar panels to demonstrate leadership in energy and environmental design, contribute to the District's renewable portfolio standard, and support the local clean energy economy. Following the Board's April 8, 2014, hearing on the application, the Applicant submitted revised plans for the installation which decreased the height of the plans originally submitted from 18 feet, six inches to four feet. (Ex. 31.)

OP Report. By memorandum dated December 31, 2013, OP stated that, while supportive of the proposed solar panels in concept, there was insufficient information for OP to address how the panels would meet the criteria for special exception. (Ex. 22.) OP also expressed concern that the panels might not comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (26 Stat. 452, D.C. Official Code § 6-601.01 *et seq.*) ("Act"). On March 25, 2014, OP submitted a second report in which it stated that it had consulted with the Zoning Administrator to ensure that the solar panels would comply with the Act and concluded that this would not be an issue. (Ex. 29.) OP recommended approval of the requested special exception and variance relief. With respect to the Applicant's request for relief from enclosure requirements, OP stated that the proposed solar panels must be exposed to sunlight in order to properly function. With respect to the request for a variance from height requirements, OP stated that the size of the mechanical penthouse leaves the minimum required setback from the edges of the building, which are not wide enough to accommodate the proposed solar panels. Further, OP stated that the narrow shape of the building and the resulting narrow penthouse limit the possible locations of the solar panels. Thus, OP stated, the most viable options for positioning the panels is either on top of the penthouse or to the south of it. Therefore, OP found an exceptional situation prohibiting DDOE from complying with its mission and Sustainable DC Plan and exhibiting leadership by demonstrating the use of solar technology in a commercial setting. Further, OP stated that, because the panels would meet setback requirements, they would not be visible from the street and would cause neither substantial detriment to the public good nor substantial harm to the Zoning Regulations.

DDOT Report. By memorandum dated December 11, 2013, DDOT indicated no objection to approval of the special exception and variance. (Ex. 21.)

ANC Report. By letter dated May 20, 2014, ANC 6C indicated that it discussed the application at its regularly scheduled, properly noticed meeting on May 14, 2014, and with a quorum present, voted 6-0-0 to place the application on the consent calendar. (Ex. 32.) The ANC stated that this indicated full support for the application.

Persons in support. A representative of DDOE, a tenant of the Subject Property, testified in support of the application at the April 8, 2014, hearing.

FINDINGS OF FACT

1. The Subject Property is a rectangular lot located on the west side of the street at 1200 First Street, N.E., between Patterson Street, N.E. and M Street, N.E. (Square 672, Lot 856).¹
2. The Subject Property is zoned C-3-C. The surrounding area contains a mix of office, residential, hotel, and retail uses.
3. The Subject Property is improved with a 12-story commercial office building (“Subject Building”). The Subject Building is 130 feet in height and has a mechanical penthouse that is an additional 18 feet in height.
4. The Subject Property is relatively long and narrow and therefore the office building improvement is similarly long and narrow.
5. The size and shape of the lot results in a mechanical penthouse that occupies much of the roof area of the building.
6. DDOE, which is a tenant of the Subject Building, desires to install two solar panels on top of the Subject Building’s mechanical penthouse and a third, smaller panel on the roof to the south of the penthouse.
7. The Applicant initially proposed to install the solar panels to stand at a height of approximately 18 feet, six inches above the penthouse roof. In its Prehearing Statement, the Applicant proposed a plan for panels with a reduced height ranging from seven to eight feet. Following the Board’s April 8, 2014 hearing on the application, the Applicant submitted a Supplemental Filing, offering to further reduce the height of the panels to four feet by reducing the degree of tilt at which the panels would stand.
8. Reducing the panels’ height from seven feet to four feet requires adjusting the degree of the panels’ tilt from 15 percent to five percent. This reduces the energy generated by the panels by 4,263 kilowatt hours (“kWh”) annually, from 67,880 kWh to 63,617 kWh.
9. The panels are to be mounted on an aluminum space frame lattice structure anchored to the concrete penthouse roof. The alternative mounting structure — a ballasted panel array system — would not be as tall as the space frame structure, but its weight would compromise the penthouse roof’s structural integrity.
10. Under § 411.6 of the Zoning Regulations, rooftop mechanical equipment must be fully enclosed. Because the solar panels would be installed on top of and to the south of the penthouse, relief under § 411.11 is required.

¹ The initial application identified the Subject Property as Lot 849. However, in its Supplemental Filing, the Applicant stated that the Subject Property is actually Lot 856. (Exhibit 28 at 1, n.1.)

11. Solar panels must be exposed in order to properly function. Enclosing the panels would block sunlight exposure and render the panels inoperative.
12. Subsection 770.6(d) limits the height of mechanical equipment penthouses to 18 feet, six inches above the roof upon which it is located and, further, prohibits mechanical equipment from extending above this height. Because the solar panels would exceed the permitted height, a variance is required.
13. DDOE desires to install the solar panels to further its mission to promote environmental sustainability in the District. The installed panels would demonstrate its leadership in energy and Environmental design, contribute to the District of Columbia's Renewable Portfolio Standard solar carve-out, and support DC-based green jobs in the local clean energy economy.
14. The solar panel installation is a pilot program for the retrofit of a commercial green roof with solar panels as well as a pilot program for the permitting, interconnection, and installation of solar panels on a building of this size and height. The panels also will serve as a practical and interactive educational tool.
15. The Subject Building's mechanical penthouse occupies much of the roof. Because of the height of the penthouse, the available open areas to the north, west, and east of it have limited sun exposure, thus inhibiting the functionality of any solar panels installed in those areas. The only remaining workable space to locate solar panels would be either in the limited area to the south of the penthouse or on top of it.
16. Pursuant to § 400.7 (b), the penthouse including the panels would be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located and therefore the panels would have a minimal visual impact.
17. This neighborhood is densely developed with distinctively designed taller structures, ensuring that the proposed solar panels are not a feature of the building.
18. The C-3 District is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District. (11 DCMR § 740.1.) C-3 Districts provide substantial amounts of employment, housing, and mixed uses and permit medium-high density development, including office, retail housing, and mixed-use development, and they shall be compact in area. (*Id.* § 740.2, § 740.8.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a special exception under § 411.11 of the Zoning Regulations and an area variance under § 3103 to mount solar panels on the roof of a penthouse roof structure on the

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Subject Building. The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where it will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property, subject to specific conditions. (D.C. Official Code § 6-641.07(g)(2); *see also* 11 DCMR § 3104.1.) Section 8 of the Zoning Act also authorizes the Board to grant variances from the Zoning Regulations in the following circumstances:

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 any [zoning] regulation . . . would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property . . . provided [variance] 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

(11 DCMR § 3103.2; *see also* D.C. Official Code § 6-641.07(g)(3).)

Variances are classified as area variances or use variances. (11 DCMR § 3103.3.) An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located. (*Id.* § 3103.4.) The Applicant seeks an area variance because it requests a deviation from the “[r]equirements that affect the size, location, and placement of buildings and other structures such as height” (*Id.* § 3103.5(a).)

The proposed solar panel installation does not meet § 411.6 of the Zoning Regulations, which requires that rooftop mechanical equipment be fully enclosed. Accordingly, the Applicant seeks a special exception under § 411.11. The proposed installation also exceeds the height permitted for mechanical equipment under § 770.6(d). Thus, the Applicant seeks an area variance from this requirement. The Board addresses each form of relief in turn and finds that the Applicant has met its burden under both standards.

Special Exception Under § 411.11.

Section 411 of the Zoning Regulations provides regulations governing roof structures. Pursuant to § 411.11 the Board may grant special exception relief from several of the requirements including the requirement of § 411.6 that rooftop mechanical equipment be fully enclosed. Subsection 411.11 allows the Board to grant such special exception relief when compliance would be “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” In granting relief under § 411.11,

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the Board must ensure that the intent and purpose of the Zoning Regulations are not materially impaired by the structure and that the light and air of adjacent buildings are not adversely affected. (11 DCMR § 411.11.)

The Board finds that requiring full compliance with § 411.6 would be unduly restrictive and unreasonable. Solar panels require exposure to sunlight in order to function. Enclosing the proposed solar panels would block sunlight exposure and render the panels inoperable, thus defeating the purpose of the installation.

Granting the relief will not materially impair the intent and purpose of Zoning Regulations or adversely affect the light and air of adjacent buildings. The penthouse and the panels meet the 1:1 setback requirement of 400.7 (b) thereby reducing the visual impact of the structure. The neighborhood is densely developed with distinctively designed taller structures, ensuring that the proposed solar panels are not a feature of the building. Finally, the solar panels on top of the mechanical penthouse would only be slightly taller than adjacent buildings and therefore would have negligible impact on light and air.

Area Variance.

The District of Columbia Court of Appeals has read the Zoning Act and Regulations to impose a three-part test for granting an area variance. The Applicant “must show that (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Fleischman v. D.C. Bd. of Zoning Adjustment*, 27 A.3d 554, 560 (D.C. 2011) (quoting *Wash. Canoe Club v. D.C. Zoning Comm’n*, 779 A.2d 995, 1000 (D.C. 2005)).

A. Exceptional Situation or Condition.

The Board finds that the installation of the solar panels is needed to permit DDOE to carry out its mission to promote environmental sustainability in the District. As noted in the findings of facts, the installation of the solar panels is a pilot program for the retrofit of a commercial green roof with solar panels as well as a pilot program for the permitting, interconnection, and installation of solar panels on a building of this size and height. The panels also will serve as a practical and interactive educational tool.

The District of Columbia Court of Appeals has recognized that the needs of a public service use can constitute an exceptional situation.

[W]hen a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site, then the Board of Zoning Adjustment does not err in

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considering the needs of the organization as possible “other extraordinary and exceptional situation or condition of a particular piece of property.”

Monaco v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1091, 1099 (D.C. 1979).

The Court of Appeals later noted that:

The need to expand does not, however, automatically exempt a public service organization from all zoning requirements. Where a public service organization applies for an area variance in accordance with *Monaco*, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.

Draude v. District of Columbia Bd. of Zoning Adjustment, 527 A.2d 1242, 1256 (D.C. 1987).

This principle logically extends to the circumstance here, where DDOE happens to be the tenant of a building that because of its size, height, and green roof is particularly suitable to serve as a test case for the installation of solar panels on an existing building. Further, it will allow DDOE to use the solar as an educational tool. There are no other DDOE facilities that allow for this unique opportunity. The fact that DDOE is a tenant, and not the owner, of the Subject Property does not alter this analysis.

B. Practical Difficulties.

Compliance with the height limitation would result in a practical difficulty. Due to the size and height of the mechanical penthouse, the only workable space for a solar installation around the penthouse is to the south of it, where there is only room for a smaller panel. The only place left to install the two larger panels proposed by the Applicant is on top of the penthouse. Absent variance relief, the Applicant would be restricted to installing only one smaller solar panel to the south of the mechanical penthouse. The Board finds this restriction to be unnecessarily burdensome in this case.

Further, the Applicant has made a concerted effort to lower the height of the proposed installation by reducing the tilt of the panels, thereby reducing the severity of the variance requested. The Applicant originally proposed to install panels with a height of 18 feet, six inches, but revised its plan to install the panels at a height of four feet, which reduced the amount of energy the panels will generate. Requiring a further reduction in height would be unnecessarily burdensome in this case and would further reduce the amount of energy the panels would generate. The Board does not believe further height reduction is possible through the use of a ballasted panel array system. The Board accepts the conclusion of the project’s engineer that the weight of the ballasted system would compromise the structural integrity of the penthouse roof.

C. Effect on the Public Good and the Zone Plan.

Lastly, the proposed project will have no substantial detrimental effect on the public good, nor will it substantially impair the intent, purpose, and integrity of the zone plan. As stated above, the proposed solar panels will comply with setback requirements and are only slightly higher than the existing penthouse, thereby resulting in minimal impact on adjacent properties. Further, the installation will not impair the purpose of the C-3-C District to accommodate major business and employment centers in a medium-high density context.

Great Weight.

In deciding to grant or deny an application for zoning relief, the Board must give “great weight” to the issues and concerns that the affected ANC raises in its written report, as required by § 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)). Here, ANC 6C indicated full support for the proposed solar panel installation and the Board finds that advice to be persuasive under the circumstances.

The Board is also required to give “great weight” to OP’s recommendation regarding the application. (D.C. Official Code § 6-623.04.) The Board must demonstrate in its findings that it considered OP’s views and must provide a reasoned basis for any disagreement with it. *Glenbrook Rd. Ass’n v. D.C. Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted). In this case, OP recommended approval of the requested special exception and variance relief in its Second Report. For the reasons stated above, the Board agrees with OP’s recommendation.

For all these reasons, the Board finds that the Applicant has satisfied the requirements for a special exception under § 411.11 and a variance from § 770.6(d) of the Zoning Regulations.

Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28, AS MODIFIED BY EXHIBIT 31.**

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, Marnique Y. Heath to Approve; Peter G. May, Jeffrey L. Hinkle to Deny.)

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: July 24, 2015

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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.

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