GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18878 of Alba 12th Street, LLC, pursuant to 11 DCMR § 3103.2, for variance relief from the requirements regarding floor-to-area ratio (§ 1706), rear yard (§ 774), and parking (§ 2101.1) to allow construction of an office building in the DD/C-2-C District at premises 1017 12th Street, N.W. (Square 316, Lot 821).

HEARING DATE: December 9, 2014
DECISION DATE: January 6, 2015

DECISION AND ORDER

On September 11, 2014, Alba 12th Street, LLC (the "Applicant"), the owner of 1017 12th Street, N.W. (Square 316, Lot 821) ("Subject Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. The application requests a variance from the requirements for floor-to-area ratio ("FAR") under § 1706 of the Zoning Regulations, rear yard under § 774, and parking under § 2101.1.[1] The Board held a public hearing on the application on December 9, 2014. On January 6, 2015, the Board voted to grant the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.1, the Office of Zoning sent notice of the hearing to: the Applicant; all individuals and entities owning property within 200 feet of the Subject Property; Advisory Neighborhood Commission ("ANC") 2F, the ANC serving the area in which the Subject Property is located; and the Office of Planning ("OP"). The Applicant posted notice of the application and hearing at the Subject Property and timely submitted an affidavit to the Board confirming the posting.

Party Status. The Applicant and ANC 2F were automatically parties to this proceeding.

[1] In its prehearing statement, Exhibit 28, the Applicant also sought a special exception under § 411.11 for the requirements for roof structures under § 770.6. However, the Applicant subsequently modified the proposed project and withdrew its request for that relief.

RG-1101 K LLC, which owns the property at 1101 K Street, N.W., adjacent to the Subject Property, requested party status on December 5, 2014. At the December 9, 2014 hearing, the Board denied that request as untimely because it was filed less than 14 days before the hearing. (*See* 11 DCMR § 3106.2.) Because there was evidence that the Applicant had contacted RG-1101 K LLC's property manager as early as January 6, 2014, regarding the proposed project, the Board found that there was not good cause to waive the 14-day filing deadline.

The Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP; Fred Hill testified on behalf of the Applicant; Tim Kearney testified on behalf of the Applicant's architect, Alliance Architecture; Demetri Koutrouvelis testified on behalf of the Applicant's real estate broker, Savills Studley Commercial Real Estate; and Lyle Jackson testified on behalf of the Applicant's financial broker, Aksoylu Properties, LLC.

ANC 2F. ANC 2F filed a letter and resolution dated November 10, 2014, indicating that, at a regularly scheduled and properly advertised meeting on November 5, 2014, at which a quorum was present, the ANC voted unanimously in support of the application. (Exhibit 26.)

OP Report. OP submitted a report dated December 2, 2014, recommending approval of the rear yard and parking relief and denial of the requested FAR. (Exhibit 29.) OP stated that the Applicant had established that the lot is subject to an exceptional situation in that it is exceptionally small — only 1,250 square feet in area — and cannot be combined with another lot because the remainder of Square 316 is already fully developed. OP further stated that the Applicant had demonstrated a practical difficulty in complying with parking and rear yard requirements. With respect to parking, OP stated that the shallowness of the site significantly impacts the ability of a vehicle to turn into the Subject Property and the impossibility of constructing a ramping system for below-grade parking. As to the 15-foot rear yard requirement, OP stated that providing such a rear yard would reduce the building depth to 37 feet, resulting in floors where core requirements would occupy between one-half and two-thirds of the floorplate. With respect to FAR, OP concluded that the Applicant demonstrated that the small lot size combined with the necessarily high core factor did pose challenges for developing a modern office building on the site. However, OP believed that the Applicant had not demonstrated a practical difficulty that would account for the full FAR relief requested. Although OP found that granting the relief requested for parking and rear yard requirements would not cause substantial detriment to the public good or substantial harm to the Zoning Regulations, OP concluded that granting FAR relief would. First, OP argues that a failure to prove the need for all of the FAR relief requested proves that the integrity of the Zoning Regulations will be impaired. OP further noted that the Applicant had not yet purchased the transferrable development rights ("TDRs") that would provide an additional 0.5 FAR for a by-right 8.5 FAR total and that its failure to do so undermined the TDR process.

DDOT Report. By memorandum dated December 2, 2014, DDOT indicated that it "supports the lack of parking provision in this area due to the close proximity to transit, provided bicycle

storage, and the provision for vehicular parking need in the nearby garages," subject to the Applicant implementing Transportation Demand Management ("TDM") measures, as specified below. (Exhibit 30.)

Persons in Opposition. RG-1101 K LLC, represented by counsel, testified in opposition to the application, contending that the proposed project would block windows at its property, thereby impacting the light and air. 12th & L Street LTD, the owner of 1100 L Street, N.W., also filed a letter in opposition asserting that the proposed project would negatively affect the light and air available to its property.

FINDINGS OF FACT

The Subject Property and Surrounding Area.

1. The Subject Property is located at 1017 12th Street, N.W., Washington, D.C.

2. The Subject Property has approximately 25 feet of frontage along 12th Street, N.W. and a depth of approximately 50.5 feet, resulting in a lot area of approximately 1,262 square feet.

3. The Subject Property is located roughly two and a half blocks from the Walter E. Washington Convention Center and the CityCenterDC mixed-use development.

4. Square 316 is a small, split-zoned square bounded by L Street, N.W. to the north, 11th Street, N.W. to the east, K Street, N.W. to the south, and 12th Street, N.W. to the west.

5. Square 316 contains only three lots. In addition to the Subject Property there are two large, L-shaped lots, both of which have over 28,000 square feet of lot area. The two other lots contain large, roughly 10-story office buildings.

6. The Subject Property is located within the Downtown Development ("DD") Overlay and C-2-C Districts. The site is also located within a DD housing priority area.

7. The C-2-C District "is designed to serve commercial and residential functions similar to the C-2-A District, but with higher density residential and mixed uses." (11 DCMR § 720.9.)

8. The purpose of the DD Overlay is "to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected Downtown sectors." (11 DCMR § 1700.2.)

9. The Subject Property is presently improved with a vacant rowhouse used most recently for office use.

10. The Subject Property is not located within any historic district, and the existing building on

the Subject Property is not listed on the D.C. Inventory of Historic Sites.

The Applicant's Project and Zoning Requirements.

11. The Applicant proposes to replace a long vacant, underutilized structure with an office building.

12. The proposed office building will be nine stories tall, with a roof structure, and will retain much of the exterior of the existing structure.

13. The proposed development will also include covered and secure bicycle parking spaces.

14. The Applicant has proposed a TDM plan.

15. Under § 1706.4, a property within a housing priority area that is zoned DD/C-2-C is permitted a total FAR of 8.0, of which 4.5 FAR must be residential development that may be accounted for on site or through a combined lot development. Pursuant to § 1706.7(a)(1), this FAR limit can be increased by receiving up to 0.5 FAR worth of transferrable development rights "TDRs") from another DD housing priority area property.

16. The proposed project's total FAR is 9.62 FAR (9.0 FAR plus a roof structure of 0.62 FAR).

17. The permitted FAR, factoring in the roof structure, is 8.87 (8.0 FAR + 0.5 FAR TDR Bonus + 0.37 "bonus" for purposes of the roof structure).

18. Thus, the relief requested is 0.75 FAR (9.62 FAR proposed – 8.87 FAR permitted = 0.75 FAR deviation). Of that, 0.5 FAR is attributed to the building (9.0 FAR proposed – 8.5 FAR permitted) and 0.25 FAR is attributed to the roof structure (0.62 FAR proposed – 0.37 permitted).

19. Under § 774, the rear yard requirement is 15 feet.

20. The proposed structure, like the existing structure, has no rear yard. The Subject Property currently has a lot occupancy of 100%.

21. Absent relief from the rear yard requirement, the building's footprint would be required to be 25 feet by 35 feet, or 875 square feet.

22. Pursuant to § 2101.1, the parking requirement for an office use in the C-2-C District is one space for every 1,800 square feet above 2,000 square feet.

23. The proposed structure, devoted entirely to office use, requires six parking spaces.

Exceptional Circumstance.

24. The Subject Property is extremely small and very narrow, particularly relative to the other lots in Square 316 and other property located downtown.

25. The Subject Property is a "hold out" site from when the remainder of Square 316 was assembled to construct two large office buildings.

26. The Subject Property has remained vacant for approximately seven years.

27. The existing structure does not conform to the neighboring properties and is inconsistent with the Central Washington Area Element of the Comprehensive Plan.

Practical Difficulty.

28. Whereas a typical newly constructed office building of this type has a core factor ranging from 15% to 18%, the proposed project's core factor is approximately 45%.

29. Testimony and submissions presented by the Applicant demonstrate a financial hardship associated with development of the Subject Property. Based on land cost, construction budget, and monthly payments for mortgage principal, interest, taxes, and insurance, the estimated capitalization rate[2] for the Subject Property is projected to be 3.2 for a matter-of-right development or 4.2 with the requested variance relief. A February 2013 survey conducted by the commercial real estate services firm CBRE Group, Inc., indicates that the capitalization rate for stabilized, value-added real estate in the District of Columbia typically ranges from 5.5 to 7.5, much higher than the rate projected for the Subject Property. (Exhibit 38.)

30. The Subject Property, as improved, has no rear yard.

31. Reducing the already small footprint of the existing building would exacerbate problems associated with the building's high core factor, which would exist for any development on the Subject Property.

32. Underground parking at the facility would be an extremely inefficient use of space at an exorbitant cost-per-space. The Applicant's turning radius diagram illustrates the impact of the shallowness and narrowness of the Property on the ability to provide an adequate turning radius and ramping system. (Exhibit 13.)

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[2] In the real estate industry, a capitalization rate (often referred to as a "cap rate") is the ratio of a property's annual net operating income to that property's underlying asset value, usually expressed as a percentage. For instance, if a property has an underlying value of $1,000,000 and it produces $100,000 in net income per year, the property has a capitalization rate of 0.10 or 10%.

33. The lot's shallow depth and narrow configuration make it impossible to construct an underground parking structure that could accommodate the required parking spaces, drive aisles, and access ramps.

34. Providing the required parking at grade also is not feasible, as it would require further reducing the already small footprint of the building.

No Detriment to the Public Good or Zone Plan

35. The proposed project revitalizes and adds to a long vacant, underutilized structure at the Subject Property with a productive use in a manner consistent with the surrounding properties on Square 316.

36. The impact of the project on adjacent properties will be minimal. (Exhibit 44.)

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3), 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 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.)

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). The Court of Appeals has held that the economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases. *Gilmartin*, 579 A.2d at 1170–71 (also stating that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration.").

The Applicant is seeking a variance from the zoning regulations regarding FAR under § 1706, rear yard under § 774, and parking under § 2101.1. The Board concludes that the Applicant has met its burden of proof for the requested area variances.

Exceptional Circumstance.

The Board concludes that, based on a confluence of factors, an exceptional circumstance exists at the Subject Property. The Subject Property is an extremely small size and very narrow, particularly for a lot located downtown. The Subject Property is a hold out site from when the remainder of Square 316 was assembled to construct two large office buildings. The Subject Property has remained vacant for approximately seven years. The existing structure does not conform to the neighboring properties and is inconsistent with the Central Washington Area Element of the Comprehensive Plan.

Practical Difficulty.

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the requirements regarding FAR, rear yard, and parking.

Due to the small size and narrowness of the Subject Property, the resulting high core factor, and the arrangement of other large office buildings on Square 316, strict application of the FAR requirement would result in a practical difficulty. The lot's dimensions result in an extremely inefficient structure and design difficulties. While a typical newly constructed office building of this type has a core factor ranging from between 15% to 18%, the core factor in this instance is roughly triple that at approximately 45%. Further, the Applicant has demonstrated the financial hardship associated with matter-of-right development through a detailed financial analysis and witness testimony.

Likewise, strict application of the rear yard requirement would result in a practical difficulty. Complete relief from the rear yard requirement is necessary to allow a financially feasible project. The existing property has no rear yard. The Applicant has demonstrated that a rear yard of any kind would further reduce the building's already small footprint and would exacerbate problems associated with the building's high core factor.

Lastly, strict application of the parking requirement would result in a practical difficulty. Underground parking at the facility would be an extremely inefficient use of space and would be at an exorbitant cost-per-space. The lot's shallow depth and narrow configuration make it impossible to construct an underground parking structure that could accommodate the required parking spaces, drive aisles, and access ramps. Providing the required parking at grade also is not feasible because it would require further reducing the already exceptionally small footprint of the building.

No Detriment to the Public Good or Zone Plan.

The Board concludes that the proposed project will not result in substantial detriment to the public good or substantial impairment of the intent, purpose, and integrity of the zone plan.

The proposed project replaces a long vacant, underutilized structure at the Subject Property with a productive use in a manner consistent with the surrounding properties on Square 316. The Subject Property, a hold out from when the remaining lots on the square were assembled for construction of large office buildings, remains as an odd outlier sandwiched between two very large, 10-story office buildings in the DD/C-2-C District. This unique circumstance does not establish a precedent or otherwise negatively impact the zone plan or public good. Due to the Subject Property's odd history and unique factors discussed above, there is little impact to the zone plan. RG-1101 K LLC, the owner of the adjacent property at 1101 K Street, N.W. provided testimony and written submissions in opposition to the proposed project, including an analysis of the rental revenue that it would lose due to the impact of the project on a portion of its window space. (Exhibit 43A.) While several windows are being covered in the office building at 1101 K Street, N.W., the Applicant has demonstrated through detailed evidence, both qualitative and quantitative, that the impact will not rise to the level of a substantial detriment to the adjacent property owners or the public good. Accordingly, the Board does not find the financial analysis submitted by RG-1101 K LLC to be persuasive.

Further, granting the requested parking relief would not result in a substantial detriment to the public good or zone plan, particularly in light of the Property's close proximity to the Metro Center Metrorail station. The Applicant will implement TDM measures, as detailed below, to promote the use of non-automotive transportation. Furthermore, the availability of a variety of transportation options, particularly bike-share and car-share services and Metrorail, reduces the need for the employees who will work at the Subject Property to commute by car.

Great Weight.

In deciding to grant or deny applications for zoning relief, the Board is required to give "great weight" to OP's recommendation. (D.C. Official Code § 6-623.04.) Pursuant to this statutory duty, 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. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted).

Here, OP stated that the Applicant had established that the lot is subject to an exceptional situation in that it is exceptionally small and cannot be combined with another lot. OP further agreed that the Applicant had demonstrated a practical difficulty in complying with parking and rear yard requirements. Although OP acknowledged a degree of practical difficulty in complying with the maximum permitted FAR, OP concluded that the Applicant had not demonstrated that all of the additional FAR was needed nor had the Applicant purchased TDRs to provide 0.5 FAR of the needed relief. OP also found that granting the relief requested for parking and rear yard requirements would not cause substantial detriment to the public good or substantial harm to the Zoning Regulations, but that granting FAR relief would. For the reasons discussed above, the Board finds OP's recommendation persuasive in so far as it recommends approval of relief for rear yard and parking, but unpersuasive as to the issue of FAR. Contrary to

the Office of Planning's contention, the Board finds that the Applicant has fully justified the degree of FAR relief requested. Further, the Board disagrees that granting FAR relief will result in detriment to the public good or impairment of the zone plan. OP's conclusion arises from its mistaken belief that the Applicant has failed to make its practical difficulty case in full. As noted, the Board has concluded otherwise. Further, OP's concern that the Applicant has not yet purchased TDRs is unfounded. In fact, the Applicant argument that the FAR relief is reasonable assumes that such TDRs will be purchased. (Exhibit 44, p. 9.) However, it is understandable that the Applicant would not want to purchase TDR (which alone would not result in a viable project) until it knew that the full FAR needed would be available.

The Board must also give "great weight" to the issues and concerns that the affected ANC raises in its written report. (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)).) In this case, the ANC voted unanimously in support of the application. To the extent that the ANC is recommending that the Board grant the application, the Board finds this advice to be persuasive.

CONCLUSION

For the reasons discussed above, the Board concludes that the Applicant has met the burden of proof for the requested variance relief.

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the **APPROVED FULL ARCHITECTURAL PLANS AT EXHIBIT 44A AND FAR DIAGRAM AT EXHIBIT 44B**, and the following **CONDITIONS:**

1. The Applicant shall install at least two short-term bicycle parking spaces in public space, conditional on DDOT approval of their location. The exact location of the short-term bicycle parking spaces will be determined during the public space permitting process;

2. The Applicant shall provide preloaded $50 SmarTrip cards for each employee who does not have them (one time per employee);

3. The Applicant shall provide a monthly stipend of reasonable amount for transit use for all employees who use transit;

4. The Applicant shall enroll in the SmartBenefits Transit Benefits Program; and

5. The Applicant shall specify a TDM Leader who will serve as a liaison for employees seeking transportation options near the building.

VOTE: **3-0-2** (Lloyd L. Jordan, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen and Marcie I. Cohen, not present, not voting)

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: September 9, 2015

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