

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18977 of Weaver Prospect LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street loading requirements under § 2201, to allow the construction of a two-story commercial retail center in the C-2-A District at premises 3220 Prospect Street, N.W. (Square 1207, Lots 104, 838, and 839).

HEARING DATE: April 14, 2015
DECISION DATE: April 21, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report, dated April 3, 2015, indicating that at a duly noticed and scheduled public meeting on March 30, 2015, at which a quorum was in attendance, the ANC voted unanimously (8-0-0) in support of the application. The ANC's resolution stated that it endorsed the loading zone proposal #3 by the District Department of Transportation ("DDOT") and noted that proposal was also the choice of the Citizens Association of Georgetown ("CAG"). (Exhibit 31.)

The Office of Planning ("OP") submitted a timely report on April 7, 2015, recommending approval of the application (Exhibit 32) and testified in support of the application at the hearing. DDOT submitted a timely report indicating that it had no objection to the application with conditions. (Exhibit 34.)

Letters in support were submitted to the record from an adjacent property owner (Exhibit 33) and a nearby property owner. (Exhibit 37.)

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There were two party status requests in opposition to the application. The first party status request was from EastBanc, Inc. (Exhibit 26), but during the Board's public meeting on April 14, 2015, the Board noted that this party status request had been withdrawn as an agreement had been reached with the Applicant for the management of trash in the proposed development. (Exhibit 39.) The other party status request in opposition was from Clive Cookson (Exhibit 28), but at the public hearing on April 14, 2015, the Board, as a preliminary matter, denied this party status request in opposition because the motion was incomplete and authorization for the property owner's representative was not provided. Nonetheless, Mr. Cookson's representative provided testimony in opposition to the application at the hearing.

A letter was submitted by CAG, stating that CAG is generally supportive of the application, but voiced concerns about a lack of off-street loading. (Exhibit 29.) A representative from CAG testified at the public hearing, citing its general support and discussing its concerns regarding loading.

A letter in opposition from an adjacent property owner was submitted to the record. (Exhibit 35.)

During the hearing, the Board heard testimony in support from Robert Elliot, who is the owner of commercial properties across the street from the subject property to this application.

During the hearing, the Applicant proposed several modifications to DDOT's proposed conditions. The Applicant's proposed conditions were submitted to the record during the hearing. (Exhibit 40.) The Board discussed those proposed conditions and suggested several modifications. The Board then closed the hearing and the record, but asked the Applicant to submit a revised version of the proposed conditions¹ and to address the concerns of the adjacent neighbor as expressed in her letter at Exhibit 35 in the record. The Applicant submitted a post-hearing letter in response and addressed the Board's requests. (Exhibit 43.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for an area variance from 11 DCMR § 2201. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2201, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the 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.

¹ The Board accepted conditions 1-7 but struck conditions 8 and 9 because the Board found that the bike parking issues those conditions addressed were not sufficiently related to the loading relief being requested.

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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 25D AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall designate and maintain a loading coordinator responsible for mitigating the Project's loading impact on the community.
2. In consultation with the Advisory Neighborhood Commission and the Citizens Association of Georgetown, the Applicant must design a loading zone and corresponding street configuration along Prospect Street. Prior to the issuance of a certificate of occupancy, the Applicant shall install the loading zone and street configuration, as approved by DDOT.
3. No restaurant, or any other use that has a more intensive loading use, as determined by DDOT, shall be permitted on the Property for a period of three years after the effective date of this Order. After the three year period, to establish a use with a more intensive loading use, the Applicant shall submit a report to DDOT that analyzes the impacts of the loading operations of the Intensive Use and proposed mitigation of such impacts. If DDOT concludes there is an increased loading impact, the Applicant in consultation with the Advisory Neighborhood Commission and the Citizens Association of Georgetown, shall provide DDOT with a mitigation plan. The Applicant shall implement a mitigation plan approved by DDOT prior to issuance of a certificate of occupancy.
4. The Applicant shall include a trash room on the ground floor of the Project, which will remain reserved for the storage of trash generated by tenants of the Project, and must not be converted to any other use or operation.
5. The Applicant shall designate an additional 300 square feet of enclosed space in the Project to be used for trash storage in the event that the ground floor trash room is not sufficient to store the trash generated by tenants of the Project. The additional trash storage space must remain available for the life of the Project.
6. In the event any portion of the Project is leased to or operated by any restaurant, bar, or any other type of eating or drinking establishment, the Applicant shall require any operator of such eating or drinking establishment to construct and operate a refrigerated trash system for the management of wet refuse generated by such eating or drinking establishment.
7. No trash shall be stored outdoors in the required rear yard of the project.

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VOTE: **3-0-2** (Lloyd L. Jordan, Robert E. Miller, and Jeffrey L. Hinkle to APPROVE;
 Marnique Y. Heath, not present or participating; one Board seat vacant.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 27, 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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.