

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 19080 of Adams Morgan Neighbors for Action, pursuant to 11 DCMR §§ 3100 and 3101, from a June 5, 2015 decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. B1410380 to allow the construction of a hotel in the RC/C-2-B District at premises 1770 Euclid Street, N.W. (Square 2560, Lots 127, 871, and 875¹)

HEARING DATE: October 6, 2015

DECISION DATE: October 6, 2015

DECISION AND ORDER

This appeal was filed on July 9, 2015 with the Board of Zoning Adjustment (“Board”) by the Appellant. The appeal challenged DCRA’s decision to issue a building permit authorizing the property owner to construct a hotel at the subject property. The Appellant alleged the building permit was issued in error for three reasons: (1) The proposed hotel does not comply with § 774.1 of the Zoning Regulations, which requires a 15-foot rear yard in the C-2-B zone; (2) The Owner failed to obtain a special exception under § 1403.1 of the Zoning Regulations to allow the hotel use, which is otherwise prohibited in the Reed-Cooke (RC) Overlay district; and (3) The Owner does not meet the special exception criterion under § 1403.1(d) to provide a 25-foot buffer between the property and the adjacent residential zone district. After reviewing the record and allowing the parties to be heard, the Board found that DCRA had not erred in issuing the building permit. Thus, the Board denied the appeal. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning (“OZ”) scheduled a hearing on October 6, 2015. In accordance with 11 DCMR §§ 3112.13 and 3112.14, OZ mailed notice of the hearing to the Appellant, the Advisory Neighborhood Commission (“ANC”) 1C (the ANC in which the subject property is located), the property owner, and DCRA. The ANC did not file a report.

¹ The three lots were later consolidated into Lot 139.

Parties

The Appellant is Adams Morgan Neighbors for Action (“AMNFA”), an unincorporated non-profit citizens association created for the civic purpose of protecting the personal and property interests of Adams Morgan residents. AMNFA member Cassandra Joseph represented the group during the proceedings.

As the owner of the subject property, the Adams Morgan Hotel Owner, LLC (the Owner), is automatically a party under 11 DCMR § 3199.1 and will hereafter be referred to as the Owner or the Hotel. The Owner was represented by Holland & Knight, Norman M. Glasgow, Esq. during the proceedings.

DCRA was represented by its Office of the General Counsel, Maximilian Tondro, Assistant General Counsel.

FINDINGS OF FACT

The Property and Abutting Streets

1. The subject property is located at 1770 Euclid Street, N.W., in the RC/C-2-B zone district.
2. A rear yard with a minimum depth of 15 feet is required for properties in a C-2-B zone. (11 DCMR § 774.1.)
3. The subject property is a corner lot that abuts three streets: Columbia Road on the northwest, Euclid Street on the north, and Champlain Street on the east. The property also abuts a public alley and a residential lot.
4. Columbia Road is 100 feet wide.
5. Euclid Street is 90 feet wide.
6. Champlain Street is 50 feet wide.

Zoning Commission Proceedings

7. The property was the subject of an application before the Zoning Commission for a Planned Unit Development (“PUD”) and Zoning Map amendment that rezoned the property from RC/C-2-B and R-5-B to RC/C-2-B, effective March 15, 2013. (Z.C. Order No. 11-17; Z.C. Order No. 11-17 was entered into the record of this appeal as Exhibit No. 15A.)
8. At the time of the PUD application the property was improved with, among other things, an abandoned building that had served as the First Church of Christ, Scientist. The approved PUD was to redevelop the property into a hotel, incorporating the preserved Church building on the site.

9. The PUD Order required the Owner to construct the project consistent with the plans submitted to the Zoning Commission and entered into the record as Exhibit No. 195A. (This exhibit was incorporated by reference into the record of this appeal before the Board in the Owner's Pre-Hearing Statement and DCRA's Pre-Hearing Statement.)
10. The approved plans do not show any rear yard at the property.
11. In a separate proceeding, the Zoning Commission adopted a text amendment to the RC Overlay to allow a hotel use at the property. (Z.C. Order No.12-17, March 15, 2013). Subsection 1401.4 of the RC Overlay was amended to expressly allow a PUD at the property that permitted the integration of the preserved Church building within a hotel use. (60 DCR 3635.)²

Events Leading to the Issuance of the Permit

12. The Owner filed an application with DCRA for the issuance of a building permit at the property on or about July 30, 2014.
13. The Owner's representative met with the Zoning Administrator ("ZA") on or about May 19, 2015 to discuss the rear yard requirement for the PUD project. The analysis for this project entails a determination of the street frontage at the property, the location of the rear lot line, and the measurement of the rear yard depth.
14. The Zoning Regulations allow the property owner to select the "street frontage" of a property where a lot, such as this one, abuts more than one street. (11 DCMR §199.1.)
15. In a confirming email to the ZA dated May 20, 2015, the Owner wrote that it had selected Columbia Street as the street frontage for the development. (Owner's Pre-Hearing Statement, Ex. 15H.)
16. The email reasons that because the Columbia Road lot line is the front of the property, Champlain Street abuts the rear lot line. (Owner's Pre-Hearing Statement, Ex. 15H.)
17. The email explains further that, pursuant to § 774.11, in the case of a corner lot abutting three or more streets (such as this one), the depth of the rear yard may be measured from the centerline of the street abutting the lot at the rear of the building. Champlain Street is the street that abuts the rear lot line and, because it is 50 feet wide, the rear yard is measured from the centerline of Champlain street; i.e., the rear yard is deemed to be 25 feet wide, which exceeds the 15-foot minimum depth required. (Owner's Pre-Hearing Statement, Ex. 15H).
18. The ZA responded to the Owner's email, stating that he concurred with the Owner's analysis and conclusions. (Owner's Pre-Hearing Statement, Ex. 15H.)

² Prior to the amendment, the RC Overlay did not allow any hotel uses. (11 DCMR §1401.1(o).)

The Building Permit

19. DCRA issued Building Permit No. B1410380 to the Owner on June 5, 2015.

The Appeal

20. On July 9, 2015, the Appellant filed this appeal challenging DCRA's decision to issue the building permit.

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g) (1) (2008 Repl.), to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. The decision in this case is DCRA's issuance of the building permit. The alleged zoning errors were the ZA's determinations regarding rear yard setback requirements and special exception requirements under the RC Overlay, in particular the requirement for a 25-foot buffer. Therefore, this Order will refer to DCRA as the entity that issued the permit and the ZA as the person who made the interpretations complained of. As will be explained below, the Board concludes that the ZA did not err with respect to its determinations regarding the rear yard requirements or the special exception requirements.

The Property Complies with Rear Yard Setback Requirements

The subject property is located in the C-2-B zone district. (Finding of Fact 1.) Under §774.1 of the Zoning Regulations, the minimum required rear yard setback is 15 feet. The Board concludes that this requirement has been met, as set forth below in more detail.

Lot Frontage Selection

As explained in the Findings of Fact, the Owner selected Columbia Road as the front of the property. (Finding of Fact 14.) The Board agrees that this selection was permissible. Subsection 199.1 states that:

Where a lot abuts more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.
(11 DCMR §199.1.)

The property abuts three streets: Columbia Road, Euclid Street, and Champlain Street. (Finding of Fact 2.) Appellant claims that the selection of Columbia Road was not reasonable because there is minimal frontage on Columbia Road. However, the fact that the Columbia Road frontage is smaller than the Euclid Street frontage or the Champlain Street frontage is of no moment. The Zoning Regulations unambiguously – and without any restriction -- allow the Owner to select which street will be used to determine street frontage.

Appellant argues that the Owner should not be able to select Columbia Road as the front of the property for two additional reasons: (1) Under the approved PUD, Appellant claims it is clear that the main entrance to the proposed hotel building is at Euclid Street, not at Columbia Road; and (2) The Owner previously selected Euclid Street as the front of the building for the purpose of measuring building height, and Appellant claims the Owner should be bound by that selection. (Tr. October 6, 2015³, p. 99-100 and p.115-117, *See*, also written Testimony of UNITE HERE Local 25, Ex. 22.)

In response to Appellant's arguments, the ZA testified that the Owner's selection of street frontage is not tied to the location of the building entrance or the address of the property. (Tr. p. 111.) Nor, stated the ZA, is the selection of street frontage tied in any way to the measurement of building height; i.e. the ZA testified that "measuring the building height can occur on another street frontage besides the choice of the frontage for the frontage of the lot." (Tr., p. 112.) The Board believes this is a reasonable interpretation. The Board agrees with the position advanced by DCRA's counsel, that there is a distinction built into the Zoning Regulations between the determination of "street frontage" and the "front" of a building. Street frontage is used, among other things, to determine the rear lot line designation; whereas, building frontage is used to measure building height. (Tr., p. 126-127). As such, the fact that Euclid Street is the building front -- used to measure building height -- has no bearing on the selection of street frontage.

Rear Lot Line Designation

Appellant also disputes the ZA's determination that Champlain Street abuts the property's rear lot line. (Ex. 17.) Appellant claims there is no street at the rear of the property; rather, Appellant claims a residential lot (Lot No. 809) abuts the rear of the property. Appellant explained it is a "common-sense conclusion" that the southern-most lot line be considered the rear lot line of the property. (Tr., p. 98.) However, Appellant's reasoning is incorrect.

The Board has established that the location of a rear yard derives from the location of the rear lot line⁴; the Board has also established a methodology for designating rear lot lines where a lot is oddly shaped or has more than four sides. *Appeal No. 18152 of Advisory Neighborhood Commission ID* (2012). By this methodology, the rear lot line is determined by drawing a line perpendicular to the chosen street frontage in the middle of the chosen street frontage, in this case, the middle of the Columbia Road street frontage. A line drawn in this manner intersects the eastern property line of the property (not the southern lot line), where it is bounded by Champlain Street.

Measurement of Rear Yard Depth

Subsection 774.11 of the Regulations dictates how the rear yard depth is measured in the case of a corner lot, such as the subject property. It provides in pertinent part:

³ Hereafter, all references to the transcript of the October 6, 2015 hearing will be designated "Tr.,".

⁴ The Zoning Regulations define "yard, rear" in part as "the yard between the rear line of a building or other structure and the rear lot line. (11 DCMR §199.1.)

In the case of [...] a corner lot abutting three (3) or more streets, the depth of the rear yard may be measured from the center line of the street abutting the lot at the rear of the building or other structure.

(11 DCMR §774.11.)

In essence, the development qualifies for § 774.11's option to use half of the street right of way at the rear of the property to comply with rear yard requirements.

As explained above, Champlain Street is the street abutting the rear lot line. It is 50 feet wide. (Finding of Fact 5.) Therefore, the center line of Champlain Street is located 25 feet from the rear lot line and the rear yard is deemed to be 25 feet under § 774.11. Thus, the rear yard requirement (of 15 feet) under § 774.1 is satisfied.

The Property Complies with the RC Overlay

Appellant also claims the permit was issued in error because the Owner failed to obtain a special exception to the use provisions of the Overlay under § 1403.1, and because the property violates § 1403.1(d) of the Overlay, which requires a 25-foot buffer from a residence district. Again, the Appellant is incorrect.

The special exception provisions of the Overlay do not apply to this development because the hotel use is a permitted use in the Overlay under §1401.4. It is true that hotel uses are generally prohibited in the Overlay. (11 DCMR §1401.1(o).) However, as outlined in the Findings of Fact, the Overlay provisions were amended in 2013 to include § 1401.4. (Finding of Fact 10.) Section 1401.4 provides in pertinent part:

Notwithstanding § 1401.1 [list of prohibited uses in the RC Overlay], the Zoning Commission may approve a planned unit development that *permits* a hotel use integrating the First Church Christ Scientist building on a new lot created by combining Lots 872, 875, and 127 of Square 2560... (emphasis supplied)

(11 DCMR § 1401.4.)

The Zoning Commission applied this provision when it approved the PUD application. Thus, the PUD is an approved hotel use in the Overlay and no special exception is required.

Since a special exception under § 1403 is not required, none of criteria for granting the exception, including the buffer described in §1403.1(d) apply to this development.

CONCLUSION

For reasons discussed above, it is hereby **ORDERED** that the appeal is **DENIED** in its entirety.

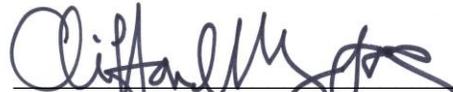
Vote taken on October 6, 2015

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VOTE: 3-0-2 (Marcie I. Cohen Frederick L. Hill, and Marnique Y. Heath, voting to Deny the appeal, affirming the Zoning Administrator; Jeffrey L. Hinkle being necessarily absent; and 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: August 12, 2016

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