

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18516 of FP Perseus 53-713 LLC, pursuant to 11 DCMR § 3103.2, for a variance from the loading requirements under § 2201.1, and a variance from the court requirements under § 776, for a mixed-use project with office, retail and residential in the C-3-C District at premises 1005 1st Street, N.E. (Square 713, Lot 53).¹

HEARING DATE: March 12, 2013

DECISION DATE: March 12, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 6C, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a letter in support of the application, dated February 18, 2013, which indicated that at a duly noticed, regularly scheduled monthly meeting on February 13, 2013, with a quorum present, the ANC voted unanimously (6:0) to approve the application. (Exhibit 23).

The Office of Planning ("OP") submitted a timely report dated March 5, 2013, recommending approval of the requested areas of relief with conditions based on the Applicant's loading management plan. (Exhibit 27). The District Department of Transportation ("DDOT") submitted a letter of "no objection" to the record and indicated its agreement with the Applicant's loading management plan. (Exhibit 28.)

¹ The Applicant amended the application to withdraw a request for special exception relief from the roof structure setback requirements under §770.6(b) after the Zoning Administrator determined it was unnecessary. The caption has been amended accordingly.

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A letter of support was submitted for the record by Archstone Near Northeast LLC, which owns the parcel to the south of the property that is the subject of this application. (Exhibit 25D.) A letter of support was submitted for the record by Robin-Eve Jasper, President, NoMA Business Improvement District. (Exhibit 26.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary under § 3103.2, to establish the case for variances from the loading requirements under § 2201.1 and from the court requirements under § 776. 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 the Applicant has met the burden of proving 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 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 as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, 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 REVISED PLANS AT EXHIBIT 25A AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall ensure that the building's management designates a loading dock manager who will be responsible for coordinating with the vendors and tenants to schedule deliveries and who will be on duty during delivery hours.
2. The Applicant shall ensure that all tenants are required to schedule deliveries that utilize the loading dock -- defined here as any loading operation conducted using a truck 20' in length or larger. If a grocery store is included as the anchor retail tenant, the grocery store shall designate its own loading manager to coordinate with the building's dock manager.
3. The dock manager shall schedule deliveries in such a way that the deliveries do not exceed the dock's capacity. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock.
4. The dock manager shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular traffic from using the

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garage driveways except during those times when a truck is actively entering or exiting a loading berth.

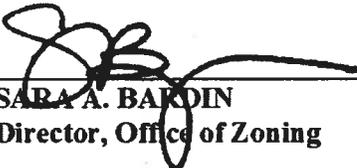
5. The loading dock shall be open seven days a week. The potential overlap of service vehicle traffic with parking garage traffic shall be monitored during peak periods and management measures shall be taken if necessary to reduce conflicts between truck and vehicular movements.
6. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 - Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
7. The dock manager shall be responsible for disseminating suggested truck routing maps like the one included as Figure 4 of the Applicant's February 23, 2013 traffic statement to the building's tenants and to drivers from delivery services that frequently utilize the Storey Park loading dock. The dock manager shall also distribute flyers and other written materials such as DDOT's Freight Management and Commercial Vehicle Operations document to drivers, as needed, to encourage compliance with idling laws. The dock manager shall also post these documents in a prominent location within the service area.

VOTE: **5-0-0** (Lloyd J. Jordan, Nicole C. Sorg, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood to Approve.)

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: March 14, 2013

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

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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.