

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19217 of MR 608 T Contract LLC, et al., as amended¹, pursuant to 11 DCMR § 3103.2, for a variance from the loading requirements under § 2201, to permit the construction of a seven-story mixed-use building in the ARTS/C-2-B District at premises 608, 610, 614, and 618 T Street, N.W. (Square 441, Lots 32, 33, 35, and 852).

HEARING DATE: March 15, 2016

DECISION DATE: March 15, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2, for variances from the loading requirements under § 2201, and the height requirements under § 2604.2. (Exhibit 5.) Subsequently, the Applicant indicated in its Prehearing Statement that a variance from the height requirements under § 2604.2 is no longer required, based on revised plans that conform to the regulations. (Exhibit 30.)

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") 6E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report indicating that at its regularly scheduled and properly noticed public meeting of October 6, 2015, at which a quorum was in attendance, ANC 6E voted 6-0-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report recommending approval of the amended relief. (Exhibit 31.) OP also testified in support of the application at the public hearing. By its letter, dated September 8, 2015, the District Department of Transportation ("DDOT") submitted a timely report of "no objection" to the application with conditions. (Exhibit 32.) After receiving DDOT's proposed conditions, the Applicant provided a response, offering amended conditions more specifically focused on the relief requested. (Exhibit 37.) DDOT confirmed that it concurred with the Applicant's proposed conditions (Exhibit 36.) The Board adopted the conditions, as revised, as part of its order.

¹ The original applicant included a self-certified request for variances from the loading requirements under § 2201, and the height requirements under § 2604.2. (Exhibit 5.) Based on revised plans, submitted as Exhibits 30C1 – 30C3, the Applicant withdrew its request for the height variance in its Prehearing Statement. (Exhibit 30.) The caption has been revised accordingly.

At the public hearing, Thomas Hart, property owner of 631 T Street, N.W., and Tina Boyd, property owner of 618 T Street, N.W., testified in support of the application.

Benjamin Mizer, the neighbor to the east of the property, submitted a letter in opposition to the application. (Exhibit 27.) The Board requested that the Applicant to respond to Mr. Mizer's concerns, and the Applicant noted the concerns similar to the ones raised by Mr. Mizer were contemplated in the Development Agreement, submitted to the record as Exhibit 30E. The Applicant also noted that it submitted shadow studies to the record to demonstrate that the impact on light would be minor and would not be caused by the loading relief requested. (Exhibits 30D1 and 30D2.)

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 a variance from the loading requirements under § 2201, to permit the construction of a seven-story mixed-use building in the ARTS/C-2-B District. The only parties to the case were the ANC and the Applicant. 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 and 2201 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 requirement 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 this application be **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBITS 30C1 – 30C3 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall have flexibility to modify the interior layout and design of the project, provided that the modifications do not change the approved relief or require additional zoning relief.
2. The Applicant shall provide a loading management plan, which will be detailed during the public space permitting process.
3. The Applicant shall provide bicycle parking/storage facilities that meet or exceed the zoning requirements, including secure parking locations located in the garage for residents.

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4. The Applicant shall provide six additional short-term bicycle parking spaces, which will be located in Public Space, to supplement the short-term bicycle parking that presently exists in the Plaza. The Applicant shall work with DDOT during permitting to determine the exact location of the bike parking.
5. The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase for the majority of the units.
6. The Applicant shall identify a Transportation Demand Management (“TDM”) leader for planning, construction, and operations. The TDM leader shall work with residents in the building to distribute and market various transportation alternatives and options.
7. The Applicant shall install a screen displaying real-time transportation schedules and information in the residential lobby of the building.

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

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

VOTE: **4-0-1** (Marnique Y. Heath, Marcie I. Cohen, Frederick L. Hill, and Jeffrey L. Hinkle to Approve; 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.

FINAL DATE OF ORDER: March 17, 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.

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.

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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.