

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19638 of BB&H Joint Venture, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 203.1(j) and pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the pervious paving requirement of Subtitle U § 203.1(j)(4), to permit the continued use of the property as an accessory parking lot in the MU-7 Zone at premises 4422 Connecticut Avenue N.W. (Square 1971, Lot 822).

HEARING DATES: December 13, 2017, January 24, 2018, and March 7, 2018²
DECISION DATE: March 7, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6 (original), 42 (first revised) and 46 (final revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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 Advisory Neighborhood Commission ("ANC") 3F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. The

¹ The application originally requested a special exception (Exhibit 6), but once it was identified by the Office of the Attorney General that the Applicant does not meet one of the special exception criteria related to pervious paving, i.e. that at least 80% of the parking surface shall be of pervious pavement, the application was amended to request variance relief from that requirement under Subtitle U § 203.1(j)(4). (Exhibit 46.)

² The hearing in this case was postponed from December 13, 2017, at the request of all the parties. (Exhibit 33.) The Board of Zoning Adjustment granted that request. (Exhibit 34.) The case was heard January 24, 2018 and continued to March 7, 2018.

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ANC submitted two timely reports in support of the application with conditions. The first ANC report dated January 16, 2018, indicated that at a duly noticed and scheduled public meeting on January 16, 2018, at which a quorum was present, the ANC voted 7-0-0 in support of the application subject to the existing conditions³ and a nine-year time limit. (Exhibit 42.) The ANC submitted a supplemental report dated February 20, 2018, in which the ANC indicated that at a duly noticed and scheduled public meeting on February 20, 2018, at which a quorum was present, the ANC voted 6-0-0 in support of approval of the amended relief, with the conditions included in its January 2018 resolution pertaining to the special exception and with an additional condition that the accessory parking lot be repaved with pervious paving within three years of the Board's approval. (Exhibit 48.)

The Office of Planning ("OP") submitted two timely reports, recommending conditioned approval of the application. OP's first report recommended approval of the special exception, with 12 conditions, including a nine-year term and a requirement that the existing parking lot be repaved with pervious paving within three years. (Exhibit 38.) OP's supplemental report recommended approval of the amended application with conditions. (Exhibit 49.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 35.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the pervious paving requirement of Subtitle U § 203.1(j)(4), to permit the continued use of the property as an accessory parking lot in the MU-7 Zone. 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 OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle U § 203.1(j)(4), the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, 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.

Special Exception Relief

³ This application is for the continued, conditioned use of the subject property as an accessory parking lot. The existing parking lot was established pursuant to BZA Order No. 16000 (1994) and renewed by the Board four other times, i.e. BZA Order Nos. 16541, 17200, 17875, and 18741.

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As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 203.1(j), to permit the continued use of the property as an accessory parking lot in the MU-7 Zone. No parties appeared at the public hearing in opposition to this 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, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 203.1(j), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of **NINE (9) YEARS** beginning on the date upon which the order became final.
2. There shall be no dumpsters in the accessory parking lot.
3. At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.
5. The parking space and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned as necessary.
6. An exterminator shall perform extermination services once a month, or as necessary, to control any rodents.

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7. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
8. The Applicant shall provide to the ANC and the residences within 200 feet, an annual report summarizing its compliance with the conditions.
9. Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.
10. The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.
11. The Applicant shall maintain a barrier along the north side of the accessory parking lot to limit ingress and egress into the accessory parking lot along its northern border.
12. The Applicant shall repave the existing parking lot with pervious paving within **THREE (3) YEARS** of the date of the order granting this application.

VOTE: **4-0-1** (Frederick L. Hill, Peter A. Shapiro, Lesylleé M. White, and Carlton E. Hart, to APPROVE; Lorna L. John, not participating or 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: March 12, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE A § 303, 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.