



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Stephen Cochran, AICP, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** February 7, 2012

**SUBJECT:** BZA Case No. 18308, Modification Request for Approved Project at 460 New York Avenue, NW -- governed by BZA Orders 17723 and 17723-A Square 515 N, Lot 828

### I. OFFICE OF PLANNING (OP) RECOMMENDATION

The Office of Planning (OP) recommends Board of Zoning Adjustment (BZA) approve the following modifications and new relief, pursuant to §§ 3129.1 and 3104.1, for a proposed residential building at 460 New York Avenue, NW that was previously granted relief in BZA Order 17723 and extended to March 28, 2012 in Order 17723-A.

- Modified Variance from § 2001.3, Expansion of Non-conforming Structure
  - (No expansion permitted; 50, 313 square feet proposed [rather than approved 64,505 square feet])
- Modified Variance from § 2101.1, Minimum Off-Street Parking
  - (16 required; 0 compliant spaces proposed)

OP cannot yet recommend that the Board approve the following:

- New Variance from § 2116.12, Setback of Parking Spaces from Property Line
  - (No above-grade parking space permitted within 20 feet of property line abutting a public street; spaces within 20 feet of north and south property lines proposed)/
  - The applicant added this request in its January 31, 2012 filing.

The applicant's January 31, 2012 filing no longer includes the following requests:

- The previous request is withdrawn for a new special exception from §§ 400.7 (b) and 411's requirements for roof structure setback. Because the entire building, inclusive of what had been the penthouse, is below the Height Act limit, the former roof structure is now being considered a top story containing both communal recreation space and mechanical equipment and is not subject to setback requirements;
- The previous request is withdrawn for a new variance from § 2117.4's requirements for direct access to required parking from the abutting public street. Such relief would not be needed if the Board approves the requested relief from all required parking.

### II. BACKGROUND

In Order 17723 the Board approved the granting of the variances from the following zoning regulations variances to enable the applicant to construct a 13-story, 130-foot high, 13.0 FAR, 84-unit residential building:



- § 2001.3 –expansion of a non-conforming structure
- § 2101.1 – number of required parking spaces
- § 2201.1 – loading
- § 772 – lot occupancy.

The variances would enable the addition of 10 stories atop a three-story concrete-frame warehouse, the provision of no loading facilities, and the construction of 16 conforming parking spaces, rather than the 21 required by § 2101.1. The project pre-dates the effective date of the Inclusionary Zoning regulations.

**III. APPLICATION IN BRIEF**

Before seeking a second extension, the applicant is requesting approval of modifications that would reduce the building’s height by one story, change the roof structure, and substantially change the parking arrangements.

With the requested modified and new relief, as updated on January 31, 2012, the project would result in the retention of the existing 100% lot occupancy, three-story warehouse and the addition of 9 stories atop it, for a project totaling 10.3 FAR and 66,537 gross square feet. The 12 story building would include 63 apartments and would rise 129’2” inclusive of a top story with mechanical and communal recreation facilities. While there would be no zoning-compliant parking spaces, the applicant would locate 34 mechanical parking spaces on the first floor and basement. Garage access from be from I Street. There would be no loading facilities. The front entrance would face public park at the prow of New York Avenue and I Streets, NW.

**IV. AREA AND SITE DESCRIPTION**

<b>Applicant:</b> Bozuto Development Group		<b>Legal Description:</b> Square 515 N, Lot 828	
<b>Address:</b> 460 New York Avenue, NW		<b>Ward:</b> 6	<b>ANC:</b> 6C
<b>Zoning:</b> DD/ C-2-C	<b>Com Plan</b> HD-Comm./HD-Res	<b>Historic Preservation:</b> not in historic district; building neither designated nor deemed eligible	
<b>Lot Features</b>	Level, essentially triangular lot of 6,451 square feet with existing 3-story, 100% lot occupancy warehouse building that would be retained and expanded upon. Front I Street (S), NY Avenue (N) a public park at the point where these streets meet (W) and a newly constructed 13-story apartment building, on the east.		
<b>Adjacent Properties</b>	<u>North:</u> NY Avenue, historic structures and recent 130- high apartments. <u>East:</u> New 130’ high apartment building nearing completion. <u>South:</u> I Street and City Vista residences and Safeway. <u>West:</u> Recently renovated, National Park Service small passive park.		
<b>Neighborhood Character</b>	Newer, high density housing with some retail, remnant vacant lots from older industrial incarnation, and 2 to 5 story historic residences, primarily north of NY Avenue in Shaw.		

**V. ZONING REQUIREMENTS and REQUESTED RELIEF**

The following figures represent OP’s attempt to reconcile figures from the original application and the January 31, 2012 filing.

<b>Regulation</b>	<b><u>By-Right</u></b>	<b><u>Approved Project</u></b>	<b><u>Approved Relief</u></b>	<b><u>Revised Proposed Project</u></b>	<b><u>Modified or New Relief Request</u></b>
<b>§2001.3 Expansion Nonconforming Structure</b>	n/a	+ 64,505 square feet	<b>approved</b>	+ 50,313 square feet	<b>Modification</b> Decreased amount of relief

<b>Regulation</b>	<b><u>By-Right</u></b>	<b><u>Approved Project</u></b>	<b><u>Approved Relief</u></b>	<b><u>Revised Proposed Project</u></b>	<b><u>Modified or New Relief Request</u></b>
<b>GFA (sf)</b>	n/a	83,863 sf	n/a	66,537 sf	n/a
<b>FAR</b>	No limit (all-res. in DD)	13.0	n/a	10.3	Conforms
<b>Approx. # Units</b>	n/a	84	n/a	63	n/a
<b>IZ</b>	n/a	n/a	n/a	n/a	n/a
<b>§ 772.1 Lot Occupancy</b>	80%	100%	<b>20% Variance</b>	100%	Previously approved
<b>Height</b>	130'	130'	Conforms	129'2"	Conforms
<b>§§ 400.7b; 411 Roof Struct. Setback</b>	1:1 setback	1:1	Conforms	No roof structure	Conforms
<b>§ 2101.1 Vehicle Parking Spaces</b>	1: 4 units	16 legal (1:5 ratio) <u>56 vault</u> 72 total provided	<b>5-space Variance</b>	<b>16 required 0 legal provided</b> (34 mechanical)	<b>Expansion of previous variance</b>
<b>Bicycle parking</b>					
<b>§ 2116.12 Location of Parking</b>	No parking w/in 20' of prop. line abutting a street	Regulation did not exist; but parking was below-grade.	n/a	With full relief from required parking requested, applicant would locate optional spaces within restricted area	Complete relief to locate all parking within 20 feet of property line abutting public street
<b>§ 2201.1 Loading</b>	12'x55' berth; 12'x20' delivery; 200 sf platform	No loading	Complete Variance Relief	Same	Previously Approved

**Table 1: Zoning Requirements and Requested Relief**

**VI. OFFICE OF PLANNING ANALYSIS**

- A. Area Variances** (§ 2001.3: Expansion of Non-Conforming Structure; § 2101.1: Required Parking; § 2116.12, Location of Above-Grade Parking Within 20 Feet of a Property Line Adjacent to a Public Street )

- 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions? and**
- 2. Does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?**

The Board has previously accepted that the combination of the triangular shape and small size of the site, the existing building being built to all lot lines, and downtown housing requirement constitute exceptional conditions leading to practical difficulties in complying with regulations governing expansion of non-conforming buildings, residential lot occupancy, loading and parking. The applicant is now requesting an expansion in the degree of relief requested from required parking and has requested new relief from restrictions on the location of parking.

#### Continuation of Existing Relief

The BZA's previous relief for expansion of a non-conforming building, lot occupancy and loading continues to apply to the site through March 28, 2012. The applicant proposes no change in the approved degree of relief for lot occupancy and loading, and has reduced the square footage of the proposed expansion of a non-conforming structure.

#### Modification of Existing Parking Relief and New Request for Parking-Related Relief

The Board has approved relief to provide only 16 of the otherwise required 21 parking spaces. The applicant had planned to supplement the conforming parking spaces with another 56 spaces in public vault space, for which DDOT approval would be required. There would have been four levels of underground parking spaces in the previous design.

§ 2101.1: The applicant is now requesting a modification to the relief from § 2101 in order to provide no conforming parking spaces, while providing 34 non-conforming spaces via a mechanical parking system. The ratio of non-conforming spaces would be 1 space: 1.75 dwelling units, well above the required 1space: 4 dwelling units.

§ 2116.12: *Except for parking accessory to a one-family dwelling, parking spaces provided within a structure shall be located at least twenty feet (20ft.) from all lot lines that abut public streets, unless the ceilings of all parking levels are at or below the grade of the adjacent public sidewalk at all points along the building frontage.*

This restriction applies to both required parking and non-required parking.

While the applicant has demonstrated that further study of site constraints with respect to ramping and excavation has established that exceptional conditions would lead to a practical difficulty in providing any of the fully-dimensioned and directly accessed parking spaces required by zoning, the applicant has not yet fully demonstrated the exceptional conditions and practical difficulty that would justify relief from complying with §2116.12.

In the previous design the applicant excavated four levels of ramped, below-grade parking – *albeit* with the justification of additional parking being accessible in vault space. In the proposed new design the applicant has chosen to expand the amount of mechanical and support functions that would be located in the basement, increase the amount of residential recreation space on the roof, and put what had formerly been below-grade parking onto the first floor, with part of the basement being used for the pit for the mechanical parking system. OP is not opposed to the parking proposal in general, but the applicant has not adequately demonstrated the exceptional conditions that lead to there being a practical difficulty in providing the desired (but no longer required) parking below grade, especially with a mechanical system that does not require extensive ramping. It has, therefore, not yet met these tests for justifying relief from requirement that no above grade parking spaces be located within 20 feet of street-adjacent property line. Should the applicant provide additional analyses, OP will provide an update as part of its public hearing testimony.

**3. Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?**

Continuation of Existing Relief:

The Board has already determined that relief can be granted without substantial detriment to the public good or the integrity of the zoning regulations with respect to a partial reduction in required parking, the elimination of all loading facilities, and permission to exceed the residential lot occupancy limit by 20%.

Modification of Existing Parking Relief and New Request for Parking-Related Relief.

§ 2101.1: The District Department of Transportation and ANC 6C are on record as supporting complete relief from required parking, thus indicating there would be no substantial detriment to the public good from granting this modified relief request. Neither DDOT nor the ANC noted that their findings were contingent on the applicant's providing the proposed 34 mechanical parking spaces.

The modified § 2101.1 relief would not substantially impair the integrity of the Zoning Regulations.

§ 2116.12: Although the applicant would be significantly improving the street-level presence of the building by re-opening bricked-in windows on the existing warehouse, the brick would be replaced by obscured glass on parts of the first floor, through which the lights and movement of the mechanical parking may be visible. § 2116.12's restrictions on parking location were only recently established and seek to avoid lining the outside of a building's first floor with the types of parking uses and obscured window designs that the applicant is proposing adjacent to New York Avenue and I Street. The applicant has not demonstrated that locating parking within 20 feet of the property line and building façade would not have a substantially negative impact on the public good, or on the integrity of the zoning regulations, particularly for required parking.

OP has encouraged the applicant to explore other solutions that would locate the mechanical parking entirely below grade and/or that would enliven the building's appearance on the ground floor and the pedestrian environment on New York Avenue and I Streets.

**VII. COMMENTS OF OTHER DISTRICT AGENCIES**

The Historic Preservation Office has not reviewed the project design. The existing building is neither historic nor considered eligible for historic designation. The site is not within an historic district.

The District Department of Transportation (DDOT) has no objections to the requested modifications and new relief.

**VIII. COMMUNITY COMMENTS**

The applicant states that ANC 6C gave unanimous support for the application, and the Mount Vernon Square Neighborhood Association voted to support the requests.