

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18145 of Dix Street Corridor Revitalization Partners, LLC, for a modification of the project approved by BZA Order No. 18037, pursuant to 11 DCMR §§ 3104.1, 3129.7 and 3103.2, for a special exception for the construction of a multi-family housing development under sections 353 (2516.4), and variances from the parking requirements under subsections 2101.1, 2115.1, 2115.4, and 2115.10, a variance from the requirement that each means of vehicular ingress or egress to any principal building shall be 25 feet in width under subsection 2516.6, and a variance from the building lot control requirements under subsection 2516.4, to allow the renovation and construction of a new residential building in the C-2-A and R-5-A Districts at premises 405-407 Dix Street, N.E., 400-414 Eastern Avenue, N.W., and 61st Street, N.E. (Square 5260, Lots 2, 17-19, 28 and 806).¹

DECISION TO HOLD HEARING

ON MODIFICATION:

September 21, 2010

HEARING DATE:

November 30, 2010

DECISION DATE:

November 30, 2010

SUMMARY ORDER

SELF CERTIFIED

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

Background

On March 9, 2010, the Board of Zoning Adjustment (“Board” or “BZA”) approved BZA Application No. 18037, subject to two conditions, with regard to a related application by the same Applicant and pertaining to the same property. The Order in that case was issued on March 16, 2010 and remains in force, and is incorporated by reference, to this Order.

¹ The application for modification was amended to include additional relief under § 2516.6.

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On July 16, 2010, the Applicant filed a Request for Modification of Approved Plans pursuant to § 3129 of the Zoning Regulations, seeking a minor modification of plans that were originally approved in Order No. 18037. (Exhibit 45, BZA Case No. 18037.)

In response to the request for minor modifications, the Office of Planning (“OP”) submitted a report, dated September 14, 2010, in support of the modifications. While indicating its support, OP also noted that the requested changes, such as the requests for an increase in the number of units and floor area ratio relief, would not typically be considered minor modifications. (Exhibit 46, BZA Case No. 18037.) The affected Advisory Neighborhood Commission (“ANC”), ANC 7C, submitted a report dated September 9, 2010, in support of the request for minor modifications. (Exhibit 47, BZA Case No. 18037.)

The Board considered the request for minor modifications at its Public Meeting on September 21, 2010. At that meeting, the Board determined that the request to modify approved plans did not meet the standards for a minor modification pursuant to § 3129 of the Zoning Regulations, as new relief that was not previously discussed was being requested, thereby changing the material facts on which the Board made its decision. Section 3129 authorizes the Board to grant minor modifications provided there are no changes in the material facts upon which the Board based its original approval of the application. In this case, the Board determined that the modifications requested required additional relief and thus changed the material facts on which it relied in granting the initial application. Pursuant to §§ 3129.7 and 3129.8, the Board ordered a hearing limited to the impact of the modification on the subject of the original application.

Application No. 18145

On September 14, 2010, the Applicant filed a new application, BZA Application 18145, in which the Applicant asked for a modification of the previously-approved plans in BZA No. 18037 as well as special exception relief for the construction of a multi-family housing development under §§ 353 (2516.4) of the Zoning Regulations, and variances from the parking requirements under §§ 2101.1, 2115.1, 2115.4, and 2115.10, a variance from the requirement that each means of vehicular ingress or egress to any principal building shall be 25 feet in width under subsection 2516.6, and a variance from the building lot control requirements under § 2516.4, to allow the renovation and construction of a new residential building in the C-2-A and R-5-A Districts. Among other modifications, the Applicant requested an increase of three in the number of units from what was approved in BZA Case No. 18037, that is, from 60 to 63 units, as well as requested to reshape one of the buildings in the project by widening the alley and to change the setbacks.

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 ANC 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. The ANC submitted a timely report, dated October 15, 2010, indicating that at a duly-noticed public meeting on October 14, 2010, at which a quorum was present, the ANC voted unanimously to support the application. (Exhibit 27.) OP submitted

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a report in support of the modification on November 30, 2010, (Exhibit 32), as a supplement to its earlier report dated September 14, 2010, which also was in support of the request. (Exhibit 46, BZA No. 18037.) The latter OP report noted changes to the site plan made at the request of the District Department of Fire and Emergency Services. Both reports were supportive of the application.

The Board received testimony in opposition to the application from Bernadette James, Kimberly Tolliver, and Teuoldi Mongisteab, all of whom are commercial tenants and operate businesses at the subject property. Ms. James and Ms. Tolliver operate a child development center for 200 children, and Mr. Mongisteab owns and operates the Skip Shop and Liquor Store at the subject property. Ms. James and Mr. Mongisteab's businesses would have to be relocated from the site and they stated that these relocations would create a hardship for them as the businesses' owners, as well as for the residents of the area who were their customers. While sympathetic, the Board noted that most of the issues they raised were not within the Board's purview, particularly as the underlying application had been approved and what was now before the Board was simply a modification of those already approved plans. The Board questioned the Applicant to ensure that they were speaking with any tenants with existing leases such as these witnesses to keep them informed of the plans for the development. The Applicant replied in the affirmative to the Board's inquiries.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1, 3103.2 and 3129.7, for a modification of approved plans and as well as special exception relief for the construction of a multi-family housing development under § 353 (§ 2516.4) of the Zoning Regulations, and variances from the parking requirements under §§ 2101.1, 2115.1, 2115.4, and 2115.10, a variance from the requirement that each means of vehicular ingress or egress to any principal building shall be 25 feet in width under § 2516.6, and a variance from the building lot control requirements under § 2516.4, to allow the renovation and construction of a new residential building in the C-2-A and R-5-A Districts.

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 §§ 3104.1, 3103.2 and 3129.7, 2101.1, 2115.1, 2115.4, 2516.6, and 2516.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty or an undue hardship 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.

Also, 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 §§ 3104.1, 353, and 2516.4, 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

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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.

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.

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. It is therefore **ORDERED** that this application (pursuant to Exhibits 12 and 13 – Architectural and Engineering Plans; Exhibit 28, Tab A – Revised Site Plans, and BZA Order No. 18037) be **GRANTED**.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Michael G. Turnbull, Nicole C. Sorg, Jeffrey L. Hinkle to APPROVE. The third Mayoral appointee (vacant) not present, nor voting.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER:

DEC 09 2010

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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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As Director of the Office of Zoning, I hereby certify and attest that on DEC 09 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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