

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18964 of 1220 Potomac Avenue SE, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the minimum number of required parking spaces provisions under § 2101.1, to construct an eight-unit apartment building in the R-5-B District at premises 1220 Potomac Avenue S.E. (Square 1021, Lot 40).

HEARING DATE: March 31, 2015

DECISION DATE: May 5, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 7.)

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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report, dated March 14, 2015, indicating that at a duly noticed and regularly scheduled public meeting on March 10, 2015, at which a quorum was in attendance, the ANC voted unanimously (8-0-0) in support of the application provided the Applicant incorporated measures to mitigate the effects of the parking relief sought, including restrictions to eligibility for the Residential Permit Parking ("RPP") program for all units in the building and Transportation Demand Management ("TDM") measures. The ANC report also stated that the ANC would withdraw its support if the TDM measures and RPP restrictions were not accepted by the Board. (Exhibit 24.)

The Office of Planning ("OP") submitted a timely report on March 24, 2015, recommending approval of the application (Exhibit 37) and testified in support of the application at the hearing. DDOT submitted a timely report indicating that it had no objection to the application provided

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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the Applicant installs a minimum of three secure bicycle parking spaces and modifies the TDM program to support a condominium or apartment use.¹ (Exhibit 39.)

A letter in support was submitted to the record from a neighbor. (Exhibit 29.)

There were two party status requests in opposition to the application. The first party status request was from Linda Green (Exhibit 22) and the other party status request in opposition was from Meina Banh and Gregg Orton (Exhibit 36), all of whom are neighbors to the subject property. As a preliminary matter at the Board's public meeting, the Board addressed the neighbors requesting party status in opposition and determined that the neighbors wished to provide testimony rather than cross-examine, introduce evidence, or otherwise participate as parties to the case. The Board also asked the Applicant to talk to the neighbors in opposition before the hearing was called to be heard. Then, at the beginning of the public hearing, the neighbors withdrew their opposition after the Applicant accepted their proposed conditions of mitigation, especially the restrictions on RPP. Thus, the Board did not grant party status.

The ANC Chair and Single Member District ("SMD") ANC 6B07 both testified at the public hearing. The ANC Chair presented the ANC's views in support and noted that the ANC's concerns were with having restrictions on RPP in the building and the TDM measures. Since the Applicant had agreed to those restrictions and conditions, the ANC remained in support. The SMD submitted his planned testimony in opposition which spoke of his concerns over a lack of proper outreach to the immediate neighbors by the Applicant (Exhibit 40), but at the public hearing, he said that as the Applicant had agreed to restrict RPP and to provide other TDM measures, as requested by the neighbors, he was now in support.

At the hearing Gary Peterson from the Capitol Hill Restoration Society testified in support of the application, but requested that the Board postpone the decision until after the Applicant presented its new plans to the Historic Preservation Review Board ("HPRB").² The Board noted that if HPRB required changes to the plans that affect the zoning regulations, the Applicant would have to come back before the Board. The Board scheduled the decision for May 5, 2015. At the March 31, 2015 hearing, the Board closed the record and accordingly, no post-hearing submissions were made.

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 an area variance from 11 DCMR § 2101.1. The only parties to the case were the ANC and the

¹ The project would be required, per 18 DCMR § 1214, to provide a minimum of three long-term bicycle parking spaces at a ratio of one parking space for every three dwelling units. Thus, there is no need for the Board to condition this order on what is otherwise required by regulation.

² There was discussion of the fact that these were not "new" plans and that the plans were not going to change from what was now before the Board, but that the HPRB had requested that the Applicant work with HPO staff to work through some exterior details, such as windows, and report back to the HPRB. (Transcript, March 31, 2015, p. 35-37.)

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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 in seeking a variance from 11 DCMR § 2101.1, the Applicant has met the burden of proof 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 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 § 3125.5, 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 APPROVED PLANS AT EXHIBITS 6A-6D AND THE FOLLOWING CONDITIONS:**

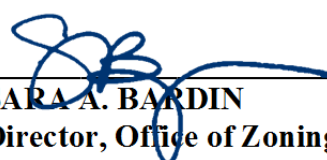
1. Residents of the building shall not obtain RPP. The Applicant shall record the restriction in a covenant to run with the land, include the restriction in the lease or condominium documents, and coordinate with the Department of Motor Vehicles ("DMV") to enforce the restriction.
2. The Applicant shall provide complimentary annual Bikeshare or carshare membership to initial residents.
3. The Applicant shall provide a SmarTrip of \$50 to each new resident.

VOTE: **4-0-1** (Lloyd L. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Anthony J. Hood, 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.

ATTESTED BY:


SARA A. BARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: May 11, 2015

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.

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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. 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.