

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18987 of Pierce Investments LLC, as amended,¹ pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio requirements under § 771 and the rear yard requirements under § 774, to allow the construction of a five-story multi-family building containing 46 units in the C-2-A District at premises 1124 Florida Avenue N.E. (Square 4070, Lot 808).

HEARING DATE: June 9, 2015²
DECISION DATES: June 16 and July 14, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) The zoning relief requested was subsequently amended, based on revised plans filed by the Applicant. (Exhibits 32 and 38A.)

The Board of Zoning Adjustment (“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”) 5D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. On July 7, 2015, four ANC 5D Commissioners submitted a letter indicating that, on July 2, 2015, the ANC held a special meeting at which the Applicant presented revised plans and the four Commissioners voted to support the project, as revised. The letter also indicated that the Commissioners submitted this confirmation of their vote in an

¹ In addition to the relief captioned above, the Applicant’s original application requested a variance from the height requirements of § 770 and the loading requirements on § 2201. The Applicant removed the request for a loading variance in Exhibit 32 by reducing the number of units from 52 to 44. The Applicant further amended the application in Exhibit 38 to remove height variance request, based on the revised plans. The revised plans in Exhibits 38A and 38B also reduce the amount of rear yard and FAR relief requested. At the public hearing on June 9, 2015, the Applicant’s testimony indicated that there are 46 units. The caption has been revised accordingly.

² The hearing was originally scheduled for April 28, 2015, and postponed to June 9, 2015 at the Applicant’s request.

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abundance of caution and based on the understanding that the ANC 5D Chair had not submitted the official ANC resolution to the Board.³ (Exhibit 38C.)

The Office of Planning ("OP") submitted a timely report on June 2, 2015, recommending denial of the variances for height and floor area ratio ("FAR"), but expressed no opposition to the rear yard variance. (Exhibit 33.) OP testified at the public hearing, reiterating its support of the rear yard variance, but noting that it does not find a uniqueness that creates a practical difficulty as it related to the height and FAR variances. The District Department of Transportation ("DDOT") submitted a timely report on June 2, 2015, indicating that it had no objection to the Applicant's requests for variance relief. (Exhibit 34.) DDOT also testified in support at the public hearing.

At the public hearing, a nearby resident, Karen Ramsey, testified in opposition, noting that community members raised concerns regarding parking, remediation, and lack of notice for the community meetings. Ms. Ramsey also noted that, at prior community meetings, there was strong opposition to granting height and FAR variances. One nearby resident submitted a letter in opposition. (Exhibit 30.) The homeowner to the east of the property submitted a letter in support. (Exhibit 37.)

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 § 3103.2, for a variance from the floor area ratio requirements under § 771 and the rear yard requirements under § 774. 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 OP report filed in this case, the Board concludes that in seeking a variance from floor area ratio requirements under § 771 and the rear yard requirements under § 774, the Applicant has met the burden of proving under § 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 § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 38A AND 38B.**

³ Because this filing did not meet several of the regulatory requirements of 11 DCMR § 3115.1, it did not constitute a formal ANC report to which the Board would give "great weight." Nonetheless, the Board considered the ANC's support in its deliberations and in its decision to approve the relief requested.

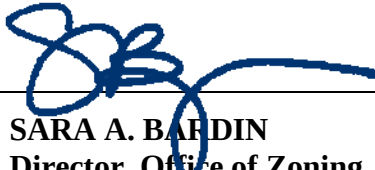
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VOTE: **3-1-1** (Jeffrey L. Hinkle, Marnique Y. Heath (by absentee ballot), and Robert E. Miller (by absentee ballot) to Approve; Lloyd J. Jordan to Deny;⁴ one Board seat vacant.)

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 23, 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.

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 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL 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

⁴ At the public meeting on July 14, 2015, Member Hinkle made a motion to approve the application, which Chairman Jordan seconded in order to move the motion forward, as no other members participating on the case were present at the public meeting. For once the motion was seconded and a vote was taken, Chairman Jordan voted to oppose the application.

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BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.