

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19088 of Jose Ayala, as amended,¹ pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101, to allow the construction of a new four-story mixed use building in the C-2-A District at premises 3701 14th Street, N.W. (Square 2826, Lot 96).

HEARING DATES: October 27, 2015, January 26, 2016, and February 23, 2016²
DECISION DATE: February 23, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 41 (revised).)

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 owners of property within 200 feet of the site.

Advisory Neighborhood Commission (“ANC”) Notice. The site of this application is located within the jurisdiction of ANC 4C, and on the border with ANC 1A. A referral of the application’s filing was sent to ANC 4C (Exhibit 13); however, inadvertently, the Office of Zoning staff did not send a notice letter to ANC 4C.³ Notice of public hearing was sent to ANC 1A only. (Exhibit 18.) ANC 4C is automatically a party to this application, and both ANCs filed reports in the case.

¹ The Applicant amended the application to include a request for variance relief from the maximum lot occupancy requirements under § 772.1. (See Exhibit 41, Updated Zoning Self-certification.) The caption reflects the relief requested accordingly.

² The Application was postponed from the October 27, 2015 and January 26, 2016 hearing dates at the Applicant’s request. (Exhibits 25 and 39.)

³ While official notice was not sent to ANC 4C, the ANC apparently received notice by some method - curing the notice deficiency - as evidenced by the fact that the ANC held a meeting, voted, and filed a report in the case.

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District of Columbia

CASE NO.19088

EXHIBIT NO.54

BZA APPLICATION NO. 19088

PAGE NO. 2

ANC 4C Report. On February 22, 2016, ANC 4C filed a motion to waive the filing deadline to accept the ANC 4C report into the record. (Exhibit 51.) ANC 4C filed a resolution in the record dated February 10, 2016, noting that at a properly noticed public meeting on February 10, 2016, with a quorum present, the ANC voted 7-1 to support the application, as amended. (Exhibit 50.)

Testimony of Single Member District (“SMD”) Commissioner. At the hearing of February 23, 2016, the Commissioner for SMD 4C-01 testified in opposition to the application, mainly expressing concerns about the cumulative impact of development in the area on the aging infrastructure. The Board noted that DDOT will be assisting the Board in assessing such cumulative impacts once the data has been collected. The Board further noted that some of the concerns expressed will be reviewed at the permitting stage of the project.

ANC 1A Report. ANC 1A filed a report in the record dated February 11, 2016, noting that at a properly noticed public meeting held on February 10, 2016, with a quorum present, ANC 1A voted 12-0-0 to support the application, as amended. (Exhibit 43.)

The Office of Planning (“OP”) submitted a report in support of the application with the conditions referenced in the DDOT report. (Exhibit 45.)

The District Department of Transportation (“DDOT”) filed a report referencing the Applicant’s proffered conditions, and expressing no objection to the application. (Exhibit 46.) The conditions were adopted as part of the Board’s approval.

Four letters of support from neighbors were submitted to the record. (Exhibits 32, 44, 48, and 49.) Twelve letters of opposition from neighbors were submitted to the record. (Exhibits 26-31, and 33-38.)

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 variances from the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101.1, to allow the construction of a new four-story mixed use building in the C-2-A District. The only parties to the case were the ANCs and the Applicant. 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 averse 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 variances from §§ 772.1, 774.1, and 2101.1, the Applicant has met the burden of proving 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.

BZA APPLICATION NO. 19088

PAGE NO. 3

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 this application is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 40 - UPDATED ARCHITECTURAL PLANS AND ELEVATIONS, AND WITH THE FOLLOWING CONDITION:**

1. At the time of initial sale of each unit, the Applicant shall issue a one-time, one-year bikeshare or car share membership and a pre-loaded SmarTrip card worth \$60.

VOTE: **3-0-2** (Marcie I. Cohen, Marnique Y. Heath, Frederick L. Hill to APPROVE; Jeffrey L. Hinkle, not present, not voting; 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: February 29, 2016

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.

BZA APPLICATION NO. 19088

PAGE NO. 4

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.