

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19089 of Nezam Yousefi, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the construction of a new five-story mixed use building containing 13 units in the C-3-C District at premises 8 P Street N.E. (Square 668, Lot 14).

HEARING DATE: November 10, 2015

DECISION DATE: November 10, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

On July 20, 2015, the Applicant filed a request for relief, accompanied by a memorandum, dated March 31, 2015, from the Zoning Administrator (“ZA”), which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a variance pursuant to 11 DCMR §§ 3103.2 and 2101.1 for nonconformance to the required residential parking spaces in the C-3-C District. (Exhibit 9.)¹

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 Advisory Neighborhood Commission (“ANC”) 5E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC did not submit a written report to the record. At the public hearing, the Applicant and the persons testifying in opposition indicated that the ANC voted to oppose the application after hearing the Applicant’s presentation at its public meeting on October 20, 2015. As ANC 5E did not submit its written report to the record, the Board could not afford great weight to its recommendation.

The Office of Planning (“OP”) submitted a timely report on November 3, 2015, recommending approval of the application, (Exhibit 39) and testified in support of the application at the hearing. The District Department of Transportation (“DDOT”) submitted a timely report on November 3, 2015, indicating that it had no objection to the Applicant’s request for variance relief, provided

¹ The Applicant also submitted an incomplete self-certification form to the record, noting that three parking spaces are required and no parking spaces will be provided. (Exhibits 5 and 15.)

BZA APPLICATION NO. 19089
PAGE NO. 2

that the Applicant install a minimum of one short-term bicycle rack in public space in front of the site. (Exhibit 40.) The Board did not adopt this condition as part of this order.

At the public hearing, Reverend Doctors Charles and Judy Farmer testified in opposition, raising concerns about the Applicant's failure to communicate his plans to neighbors, the height of the proposed development, the potential for damage during construction, and the Applicant's proposal to provide no off-street parking. Drs. Charles and Judy Farmer also submitted two letters in opposition to the record noting similar issues with the Applicant's proposal and indicating that the ANC voted to oppose the application. (Exhibits 31 and 38.) The Board acknowledged these concerns, but noted that the variance sought by the Applicant is for parking relief, therefore all other concerns raised are outside the Board's scope of review for this application. Further, the Board indicated that the Applicant proposes a robust Transportation Demand Management plan and noted that the Applicant has shown that DDOT would not support a curb cut that would be necessary to provide parking on-site.

In addition, the Applicant testified that he also presented before the Eckington Civic Association on October 28, 2015, and that the response was generally supportive;² however, Eckington Civic Association did not submit a letter to the record regarding this application.

Variance Relief

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 off-street parking requirements under § 2101.1. 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 11 DCMR § 2101.1, 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 32 AND 33.**

² The Applicant's testimony referred to the association as the "Eckington ANC," however, the adjacent property owners' submission under Exhibit 38 clarifies that this meeting was of the Eckington Civic Association and not of an ANC.

BZA APPLICATION NO. 19089
PAGE NO. 3

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill and Peter G. May to Approve; Jeffrey L. Hinkle, not participating or voting; the third Mayoral appointee 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: November 16, 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 BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

BZA APPLICATION NO. 19089
PAGE NO. 4

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.