

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19101 of (Darryl) O.A. Sulekoiki, as amended¹, pursuant to 11 DCMR § 3103.2, for a variance from the required off-street parking requirements under § 2101.1, to construct eight flats on eight record lots in the R-4 District at premises 2112-2126 3rd Street N.E. (Square 3561, Lots 42-49).

HEARING DATES: December 15, 2015; January 12, February 9, March 8, April 5,
May 17, and July 12, 2016

DECISION DATE: July 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3 (original), 32 (revised), and 65 (updated).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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")

¹ The application initially was for a special exception from the Inclusionary Zoning ("IZ") requirements under § 2603, 2604, and 2606. (Exhibit 3.) The application was revised to add special exception relief under § 2117.9 to allow one parking space to be provided offsite. (Exhibits 32, 36, and 65.) The Applicant subsequently amended the application to request a variance from the off-street parking requirement for Lot 42 under § 2101.1 instead of the previously requested special exception parking relief. Also, the application was amended, as it related to IZ, to request a complete waiver from the provision of IZ on site and relief to comply with IZ requirements off-site under § 2607. (Exhibit 90.) At its meeting on July 12, 2016, the Board approved variance relief for parking (§ 2101.1), but denied relief to waive the IZ requirement or locate IZ units off-site. The Board also granted the Applicant's request to bifurcate the Order so that the variance relief approval could be issued as a Summary Order, while the denial of IZ relief would be a full order. After the Board's vote but before any order was issued, the Applicant withdrew its request for IZ relief. (Exhibit 99.) The caption has been revised to reflect this accordingly.

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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5E and to owners of property located 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. ANC 5E submitted a report, dated December 6, 2015, which only addressed the IZ request and was silent as to any parking relief. (Exhibit 34.)

The Office of Planning (“OP”) submitted a timely report dated January 5, 2016. In that report, OP indicated that it was not opposed to the request for relief for required parking. (Exhibit 38.) OP testified at the July 12, 2016 public hearing that the Applicant’s supplemental submissions did not change OP’s recommendation.²

The District Department of Transportation (“DDOT”) submitted a timely report dated November 3, 2015, that did not address parking at the property. (Exhibit 31.) DDOT submitted a supplemental report dated March 1, 2016, indicating it objected to the approval of the special exception from parking requirements under § 2117.9. (Exhibit 69.) DDOT subsequently submitted a second supplemental report dated July 5, 2016, which indicated that DDOT does not object to a parking variance of one space and would not object to the Applicant providing 13 parking spaces for the 16 dwelling units. (Exhibit 91.) Consistent with DDOT’s recommendation, the Board granted a variance under § 2101.1 for the required parking space for Lot 42.

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 the required off-street parking requirements under § 2101.1, to construct eight flats on eight record lots in the R-4 District. The only parties to the case were the ANC and the Applicant. While the ANC opposed the request for IZ relief, as noted, it did not comment on the request for parking relief. No parties appeared at the public hearing in opposition to the application for variance relief. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, OP did not address the request for a parking variance under § 2101.1. Consequently, the Board did not have any recommendation from OP regarding the parking variance from § 2101.1 to which it was required to give great weight. The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, the ANC’s report was silent regarding the request for parking relief under § 2101.1. Thus, the Board did not have an ANC recommendation regarding the variance relief to which the Board was required to give great weight.

² The Office of Planning was opposed to the request for IZ relief, but that relief was later withdrawn by the Applicant.

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Based upon the record before the Board, 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 for variance relief under § 2101.1 is hereby **GRANTED**.

VOTE: **3-0-2** (Marnique Y. Heath, Peter G. May, and Jeffrey L. Hinkle³, to APPROVE;
Anita Butani D'Souza and Frederick L. Hill, not participating.)

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: August 8, 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.

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

³ Board member Hinkle indicated that he had read the record in order to participate.

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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT
BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.