

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19148 of Park View Condominium Ventures LLC, as amended¹, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403.2, for a 12-unit apartment building in the R-4 District at premises 525 Park Road N.W. (Square 3037, Lot 55).

HEARING DATES: December 22, 2015, February 9, 2016, February 23, 2016, March 29, 2016, April 12, 2016, and April 19, 2016²

DECISION DATES: April 12, 2016 and April 19, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5 – original self-certification; Exhibit 34 – revised self-certification.) In granting the certified relief, the Board of Zoning Adjustment ("Board") 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.

¹ The application was originally filed pursuant to 11 DCMR § 3104.1, for a special exception under § 337 for the expansion of an existing residential building into a 12-unit apartment building not meeting the requirements of § 330.7 in the R-4 District. However, on January 5, 2016, the Applicant filed a revised self-certification form changing the requested relief to a variance (See Self-Certification Form 135 at Exhibits 5 (original) and 34 (revised)), and the Applicant also filed a revised application. (See Application Form 120 at Exhibits 1 (original) and 35 (revised) filed on January 12, 2016.) The caption has been changed accordingly.

² There were multiple hearing postponements and continuances in the case. The hearing was continued from December 22, 2015 and February 9, 2016, then postponed from March 29, 2016 to April 12, 2016. (Exhibits 47 and 48.) On April 12, the Board heard the revised application, deliberated, and voted to approve this application; however, after realizing that the Board had not provided an opportunity for witnesses to testify in support or opposition at its prior hearing, the Board voted to rescind its vote and reopened the case for a further hearing on April 19, 2016. At the April 19th hearing, no one appeared to testify in support of or opposition to the application.

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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") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report, dated November 16, 2015, indicating that at a duly noticed and scheduled public meeting on November 12, 2015, at which a quorum was in attendance, the ANC voted 8-0-0 in support of the special exception application. (Exhibit 27.) ANC 1A's Chairman filed a letter dated January 27, 2016 addressing the fact that the application had been revised to request *variance* relief instead of a *special exception*, and that the BZA's hearing of February 9, 2016 would be one day before the ANC was to meet, and therefore the ANC would not meet in time to vote on the revised *variance* relief. However, The ANC Chairman's letter noted that the ANC was generally interested in "maintaining the architectural character of the surrounding community and respecting building setbacks to provide opportunities to increase the District's tree canopy" (Exhibit 38) and that these issues were discussed at their meeting in November. The letter noted the ANC's opinion that "the existing structure is inharmonious with the neighborhood and that the proposed development would have little negative impact on the community." (Exhibit 38.) Ultimately, the ANC Chairman stated that he was confident that the ANC would vote to support the project if given the opportunity to vote on it. Finally, on March 10, 2016, ANC 1A submitted an official supplemental report, noting that at a duly noticed public meeting on March 9, 2016, the ANC voted 11-0-0 to support the variance relief requested by the Applicant, noting the ANC's view that the proposed building will be compatible with the neighborhood. (Exhibit 45.)

The Office of Planning ("OP") submitted a report dated December 15, 2015 in which it indicated that OP was unable to make a recommendation because of the Applicant's need to comply with the recommendation of the Zoning Administrator and revise the application, changing the relief requested from a special exception to a variance, which had not been done at that time. (Exhibit 31.) Subsequent to the Applicant revising the application on January 12, 2016, at the February 10, 2016 hearing, OP testified that it could support the variance request based on the information provided by the Applicant. The Board encouraged the Applicant to work with OP and to strengthen the argument in support of their lot occupancy variance request³ prior to the next hearing. OP filed a letter dated March 22, 2016, noting the revised relief and expressing support for the Applicant's request for postponement of the March 24, 2016 hearing. (Exhibits 47 and 48 – Applicant's postponement request letter and motion respectively; Exhibit 46 – OP's letter in support of postponement.) OP filed a supplemental report, dated April 6, 2016, recommending approval of the amended relief – a variance from § 403.2. (Exhibit 51.) At the hearing of April 12, 2016, OP was not present in the hearing room to testify. However, the Board noted that the OP report was in the record. At the hearing of April 19, 2016, the Board only called for testimony from witnesses in support or opposition, but not for further testimony from OP.

³ The Applicant's counsel noted that OP recommended adding a variance from § 2001.3 non-conforming structures provision. However, the Applicant's position is that such relief is not needed because no nonconformity will be extended or increased.

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The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 30.)

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 § 403.2. The only parties to the case were the Applicant and the ANC which expressed support for the application. 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 a variance from § 403.2, 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.

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, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 32 - ARCHITECTURAL PLANS AND ELEVATIONS.**

Vote taken on April 12, 2016:

VOTE: 5-0-0 (Marnique Y. Heath, Frederick L. Hill, Robert E. Miller, Anita Butani D'Souza⁴, and Jeffrey L. Hinkle to APPROVE).

Vote taken on April 12, 2016:

VOTE: 5-0-0 (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Robert E. Miller to RESCIND the prior vote to approve, and REOPEN the record, and schedule the application for a continued hearing on April 19, 2016 to receive testimony from witnesses in support or opposition.)

Vote taken on April 19, 2016:

VOTE: 5-0-0 (Frederick L. Hill, Marnique Y. Heath, Anita Butani D'Souza, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE).

⁴ Board Member Butani D'Souza stated that she read the record to participate in the decision on this application.

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: April 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.

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.

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

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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.