

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19230 of John B. Knotts and Richard H. Hiltner, pursuant to 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, and the parking requirements under § 2101.2, to permit the construction of a mixed-use project in the C-2-A District at premises 4424 Georgia Avenue N.W. (Square 2917, Lot 37).

HEARING DATES: March 29, April 26, and May 24, 2016¹
DECISION DATE: May 24, 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 33D (revised).) 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") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C also filed a report in support of the application, with conditions, which indicated that at a duly noticed and regularly scheduled meeting on April 13, 2016, at which a quorum was present, ANC 4C voted 6:3:0 to approve the application with conditions. (Exhibit 34.) ANC 4C Chair Hayworth testified in support of the application, but noted that the vote was split and that there was opposition in the community. The Applicant testified that it had agreed to the

¹ This case was postponed from March 29, 2016 and continued from April 26, 2016 to May 24, 2016. On April 26, the Board completed its hearing procedures, but requested supplemental filings and testimony from DDOT. The Board held a limited hearing on May 24, 2016.

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conditions and proffered language in its PowerPoint presentation for the May 24th public hearing. (Exhibit 48.) The Board accepted the proffered conditions, including restrictions on residents in the building from obtaining residential parking permits (“RPP”), as modified by the Board in its deliberations.

The single member district (“SMD”) representative for ANC4C01 testified at the May 24 hearing in opposition to the application and in opposition to the proposed RPP restriction. ANC SMD 4C01 also submitted three letters in opposition to the application. (Exhibits 35, 40, and 45.) In addition to the testimony in opposition from ANC SMD 4C01, there was testimony in opposition to the application at the April 26th hearing from Doyle Betters and Senait Abebaw. In addition to the letters in opposition from ANC SMD 4C01, there was a letter in opposition from Karen Feinstein. (Exhibit 38.) There were letters in support from three nearby residents. (Exhibits 28, 29, and 31.)

The Office of Planning (“OP”) submitted a timely report and testified in support of the application with conditions. (Exhibit 36.) The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application.² (Exhibit 37.)

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 area variances from the rear yard requirements under § 774.1, and the parking requirements under § 2101.2, to permit the construction of a mixed-use project in the C-2-A District. The only parties to the case was the ANC and the Applicant. No parties appeared at the public hearing in opposition to the 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 11 DCMR §§ 774.1 and 2101.2, 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.

² In its report, DDOT indicated that the Applicant would have to provide three long-term bicycle parking spaces and continue coordinating with DDOT with respect to public space issues.

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It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 30 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall install a TransitScreen.
2. The Applicant shall provide three long-term bicycle parking spaces on the property.
3. The Applicant shall either commit \$10,000 to establishing a nearby Capital Bikeshare dock or create space for a bikeshare dock to be located on the property.
4. The Applicant shall schedule and locate deliveries so as not to interfere or restrict parking on Allison Street.
5. The Applicant shall offer an annual car sharing or Capital Bikeshare membership for all new tenants for a period of five years.
6. Residents will be restricted from obtaining Residential Permit Parking (“RPP”) stickers:
 - (a) If the units are rentals, all residential leases shall include provisions that prohibit residents from obtaining RPP under penalty of fines and possible lease termination. If the units are owned as condominium, the condominium documents, public offering statement and bylaws shall include language restricting owners from obtaining RPP. Those documents shall state that an owner who violated the RPP restriction could be subject to fines, as well as potential notification to the mortgagor that could trigger default and/or condominium liens.
 - (b) Before obtaining a Certificate of Occupancy, the Applicant shall record a covenant against the property among the land records prohibiting any lessee or owner of residential units from obtaining an RPP.
 - (c) Condominium Documents and/or leases shall include written authorization from each unit owner or tenant that allows the Department of Motor Vehicles (“DMV”) to release to the condominium board and/or the Applicant any and all records of that owner/tenant requesting or receiving an RPP for the Property.
 - (d) The condominium board or the Applicant shall monitor owner/ tenant compliance with the RPP lease restriction by requesting from the DMV, every six months, any and all records of residential tenants requesting or receiving RPPs for the Property. Either the condominium board or the Applicant, as applicable, shall provide updates on the status of these FOIA requests semi-annually to the Single Member District representative for the Property to share with the other the ANC Commissioners.

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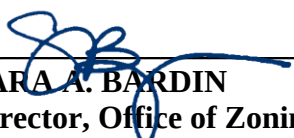
(e) Marketing for the sale or rental of the units in the Project, be it on the Project's marketing webpage, MRIS or written handouts, shall clearly identify that the Project is "car-free" and that potential owners and/or tenants are restricted from obtaining RPP.

VOTE: **5-0-0** (Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood to APPROVE.)

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: May 26, 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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL

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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.