

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19237 of Wacap, LLC, 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 four-story residential addition containing four units above an existing restaurant in the C-2-A District at premises 3700 14th Street N.W. (Square 2692, Lot 43).

HEARING DATES: April 5, 2016 and April 19, 2016¹
DECISION DATES: April 26, 2016 and May 10, 2016²

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 7.) 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") 1A and 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 and borders on the boundary of ANC 1A; therefore, both ANCs are considered an "affected ANC." Both ANCs submitted a report. ANC 1A submitted a report in support of the application that

¹ This case was postponed from April 5, 2016 and heard on April 19, 2016.

² The case was scheduled for decision on April 26, 2016, but that was postponed to provide the Applicant additional time to submit a supplemental filing requested by the Board to show the height of the mechanical penthouse and to confirm that it meets the regulations. The Board waived the time limit for the submissions, based on the Applicant's request in Exhibit 38. The Applicant's supplemental filings included revised plans and confirmation that the plans meet the penthouse requirements. (Exhibits 40-41.)

BZA APPLICATION NO. 19237
PAGE NO. 2

indicated that at a regularly scheduled, properly noticed public meeting on March 9, 2016, at which a quorum was present, the ANC voted 9:0:1 to support the application. (Exhibit 25.) 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 6:2:0 to approve the application with conditions. (Exhibit 30.) The Board in its deliberations noted that many of the conditions ANC 4C sought dealt with construction matters and are therefore beyond the Board's jurisdiction, but to which the Applicant has nonetheless agreed, as noted in the ANC report. The Board's Chair identified two conditions that would be within the Board's purview and these were made part of this order. A letter in opposition was submitted to the record by the ANC SMD 4C01. (Exhibit 31.) The Commissioner for ANC SMD 4C01 also testified in opposition, raising concerns about the large number of conversions and developments increasing density in the neighborhood. (Exhibit 36.) A letter in support, subject to the ANC's conditions, was submitted to the record by ANC SMD 4C04. (Exhibit 34.)

The Office of Planning ("OP") submitted a timely report and testified in support of the application. (Exhibit 27.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application.³ (Exhibit 28.)

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 off-street parking requirements under § 2101.1, to allow the construction of a new four-story residential addition containing four units above an existing restaurant in the C-2-A District. The only parties to the case were the two ANCs 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 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.

³ DDOT raised several public space issues with regard to the proposed sidewalk café and trash storage that the Applicant will be expected to resolve separately from the zoning relief process.

BZA APPLICATION NO. 19237
PAGE NO. 3

It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 41 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall use permeable pavers instead of concrete in the rear of the property; and
2. The Applicant shall create an inviting atmosphere by ensuring the front of the retail space facing 14th Street is a majority of transparent glass.

VOTE: **5-0-0** (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Robert E. Miller 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 16, 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

BZA APPLICATION NO. 19237
PAGE NO. 4

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 THEREOF, 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.