

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19910 of 5935 Colorado Ave Associates LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the new residential development requirements of Subtitle U § 421.1, and under Subtitle C § 1001.2(e)(3) for the inclusionary zoning bonus density adjustments of Subtitle C § 1002.2, and pursuant to 11 DCMR Subtitle X, Chapter 10 for area variances from the lot occupancy requirements of Subtitle F § 304.1, from the side yard requirements of Subtitle F § 306.1, and from the inclusionary zoning requirements of Subtitle C § 1005.1, to raze the existing building and construct a new five-unit apartment house in the RA-1 Zone at premises 5835 Colorado Avenue N.W. (Square 2937, Lot 832).¹

HEARING DATES: February 6 and March 6, 2019
DECISION DATE: March 20, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 40 (Final Revised); Exhibit 11 (Prior Revised); Exhibit 3 (Original).) 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 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.

¹ The original application was amended to add variance relief from the IZ proportionality requirements of Subtitle C § 1005.1, as well as special exception relief from the new residential development from Subtitle U § 421.1 and the IZ bonus density requirement of Subtitle C § 1001.2(e). The Applicant withdrew originally-requested variances from Subtitle F § 302.1 and Subtitle C § 1502.1 and also corrected the record to clarify that relief from the lot occupancy requirements of Subtitle F § 304.1 and side yard requirements of Subtitle F § 306.1 are variances, rather than special exceptions.

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The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 12, 2018, at which a quorum was present, the ANC voted 8-0-1 to support the application with conditions. (Exhibit 29.) The Board adopted the conditions proposed by the ANC as part of this Order.

The Office of Planning ("OP") submitted two reports recommending approval of the application. (Exhibits 44 and 49.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 30.)

The adjacent neighbor, Bella Jimenez testified at the public hearing of March 6, 2019 to raise concerns about the potential impacts of construction on her home. The Applicant filed a response to these concerns. (Exhibit 51.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for from the lot occupancy requirements of Subtitle F § 304.1, from the side yard requirements of Subtitle F § 306.1, and from the inclusionary zoning requirements of Subtitle C § 1005.1.

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 the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, 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.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the new residential development requirements of Subtitle U § 421.1, and under Subtitle C § 1001.2(e)(3) for the inclusionary zoning bonus density adjustments of Subtitle C § 1002.2.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board

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further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

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. Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 48, AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall reserve one unit in the building as an affordable unit for purchase or rent by a household making 80% or less of the Area Median Income (“AMI”) for at least 10 years.
2. The Applicant shall install permeable pavers for any driveway/parking pad, walkway, or patio surface to be installed.
3. The Applicant shall replace lead service line to property, if applicable.
4. During building construction, the Applicant shall not block the public alley at any time; shall perform construction only during permitted hours; shall promptly fix any damage caused to neighbors’ property by the construction crew, at the developer’s expense; and shall be available by phone and email to answer questions from neighbors.
5. The Applicant shall achieve the inclusionary set aside required for penthouse habitable space by providing a contribution to a housing trust fund consistent with all requirements of Subtitle C § 1006.10.

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; Lorna L. John 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: March 21, 2019

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PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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 SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, 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

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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.