

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19789 of HIP E Street Partners, LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the inclusionary zoning bonus density requirements of Subtitle C § 1001.2 and the lot width and area requirements of Subtitle D § 302.1, and pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot occupancy requirements of Subtitle D § 302.1, the front setback requirements of Subtitle D § 305.1, and from the side yard requirements of Subtitle D § 307.4, to construct ten attached principal dwelling units in the R-3 Zone at premises 5101, 5103, and 5111 E Street S.E. (Square 5316, Lots 1, 2, and 810).

**HEARING DATES:** July 18, 2018 and July 25, 2018<sup>2</sup>  
**DECISION DATE:** July 25, 2018

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 7, (Original); Exhibit 34 (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") 7E and to owners of property located within 200 feet of the site. The site of this application is located

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<sup>1</sup> The Applicant amended the application (Exhibit 34) by adding to the original relief requested a variance from the front setback requirements of Subtitle D § 305.1, as well as adding special exceptions from the inclusionary zoning bonus density requirements of Subtitle C § 1001.2, and the lot width and area requirements of Subtitle D § 302.1; and by removing the reference to Subtitle D § 307.5 – a variance from the side yard requirements. The caption has been amended accordingly.

<sup>2</sup> The Board postponed this application from the public hearing of July 18, 2018 to that of July 25, 2018 to allow the Applicant to re-post notice to reflect the amended relief. The Board waived the requirement that the amended notice be re-published in the *D.C. Register* and mailed to neighbors within 200 feet.

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within the jurisdiction of ANC 7E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 10, 2018, at which a quorum was present, the ANC voted 4-1 to support the application. (Exhibit 42.) Also filed into the record is a letter from the Chair of ANC 7E, who is also the single member district member ANC 7E03, expressing the support of ANC 7E for the project including the front setback relief. (Exhibit 40.)

The Office of Planning ("OP") submitted a timely report dated July 6, 2018, recommending approval of the inclusionary zoning, side yard, and lot occupancy relief, but OP declined to make a recommendation for the front setback relief (Exhibit 37.) After the filing of this original OP report, the Applicant made a revision to the plans to provide a five-foot front setback for the rowhouses in Phase II of the project. At the hearing on July 18, 2018, OP testified as to its support for the front setback relief and, at the Board's request, submitted a Supplemental Report dated July 23, 2018 (Exhibit 45) noting the Applicant's revision and OP's support. At the July 25, 2018 hearing, OP testified that it is in support of all relief requested.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 36.)

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 variances from the lot occupancy requirements of Subtitle D § 302.1, the front setback requirements of Subtitle D § 305.1, and from the side yard requirements of Subtitle D § 307.4, to construct ten attached principal dwelling units in the R-3 Zone. The only parties to the case were 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 Subtitle D §§ 302.1, 305.1, and 307.4, 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 from the inclusionary zoning bonus density requirements of Subtitle

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C § 1001.2 and the lot width and area requirements of Subtitle D § 302.1, to construct ten attached principal dwelling units in the R-3 Zone. The only parties to the case were the ANC and the Applicant. 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.

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, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C § 1001.2, and Subtitle D § 302.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 39 – FINAL REVISED PLANS.**

**VOTE: 5-0-0** (Frederick L. Hill, Lesylleé M. White,<sup>3</sup> Lorna L. John, Carlton E. Hart, 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:** August 1, 2018

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.

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<sup>3</sup> Board member White read the record to participate in the application.

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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.

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.