

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19055 of Valor Minnesota, LLC, as amended,¹ pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the minimum lot area requirements under § 401, the lot occupancy requirements under § 403, the rear yard requirements under § 404, and the side yard setback requirements under § 405, and a special exception from the minimum lot dimension requirements under § 2604.3, to construct 30 one-family attached and semi-detached dwellings in the R-2 District at premises 4409 Minnesota Avenue N.E. (Square 5097, Lot 846).

HEARING DATES: July 28, September 29, October 20, and November 17, 2015²
DECISION DATE: November 17, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (“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”) 7D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7D, which is automatically a party to this application.

At July 28, 2015 public hearing, ANC 7D Commissioner Dorothy Douglas testified in opposition to the application, but no written report from the ANC was filed at that time. The Board continued the hearing and requested that the Applicant work with the ANC and neighbors of the project to address their concerns. In advance of the continued public hearing on November 17, 2015, the Applicant’s supplemental submission included an ANC 7D report indicating that at a

¹ In its revised plans under Exhibit 39A, the Applicant reduced the number of proposed dwellings from 31 to 30. The caption has been revised accordingly.

² The continued hearing was postponed from September 29, 2015 and October 20, 2015, at the Applicant’s request. (Exhibits 37 and 40.)

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regularly scheduled, duly noticed public meeting on November 10, 2015, with a quorum of Commissioners present, the ANC voted 3-0-1 to recommend approval of the application. (Exhibit 43.) Commissioner Douglas also testified in support and submitted a letter during the hearing on November 17, 2015. (Exhibit 46.)

The Office of Planning ("OP") submitted a timely report on July 21, 2015, recommending approval of the variance for rear yard, but indicating that it is unable to support the other areas of relief requested. (Exhibit 28.) In its supplemental report dated September 15, 2015, OP analyzed additional information provided by the Applicant, but maintained its original recommendation. (Exhibit 36.) In a final report dated November 10, 2015, OP recommended approval of the application, based on the Applicant's revised plans and supplemental filings. (Exhibit 41).

The District Department of Transportation ("DDOT") submitted a timely report on July 21, 2015 indicating that it had no objection to the Applicant's requests for variance and special exception relief. (Exhibit 29.)

At the public hearing on July 28, 2015, several residents testified in opposition, raising questions and concerns about the design process and failure to engage with the neighborhood. Four letters in support were filed to the record under Exhibit 31.

Variance Relief

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 variances from the minimum lot area requirements under § 401, the lot occupancy requirements under § 403, the rear yard requirements under § 404, and the side yard setback requirements under § 405. 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 filed in this case, the Board concludes that in seeking a variance from 11 DCMR §§ 401, 403, 404, and 405, the Applicant has met the burden of proving under § 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.

Special Exception Relief

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 § 3104.1, for a special exception from the minimum lot dimension requirements under § 2604.3. No parties

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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 filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2604.3, 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 § 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. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 39A.**

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Michael G. Turnbull to APPROVE; Jeffrey L. Hinkle not participating or voting, and one Board seat vacant.)

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: November 23, 2015

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

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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 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.