

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



**Application No. 19061 of 1106 Montello LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the floor area ratio requirements under § 771.2, the lot occupancy requirements under § 772.1, the off-street parking requirements under § 2101.1, and the nonconforming structure requirements under § 2001.3, to convert an existing two-story masonry building into a four-story, six-unit apartment house with ground floor retail in the C-2-A District at premises 1140 Florida Avenue N.E. (Square 4070, Lot 84).

**HEARING DATE:** October 27, 2015

**DECISION DATE:** October 27, 2015

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 40 (revised).)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 5D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. Although there was no ANC 5D report on file at the time of the hearing, the Applicant submitted at the hearing a letter from ANC 5D's Secretary and Vice-Chair together with a Form 129 which indicated that at a regularly scheduled, duly noticed ANC meeting on October 13, 2015, at which a quorum was present, the ANC voted 4-3-0 in support of the application. The ANC requested that a condition be placed on the application stating that no Residential Permit Parking is permitted for the property. (Exhibit 36.)

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<sup>1</sup> The Applicant amended the application by lowering the number of units to six from the original request for seven, by removing a request for special exception from the green area ratio requirements under § 3405.1 in the revised plans and pre-hearing statement (Exhibits 29-30) and at the hearing, by adding a request for a variance from the nonconforming structure requirements under § 2001.3. The Board required the Applicant to submit a revised self-certification form and additional fees. (Exhibits 39 and 40.)

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The Office of Planning ("OP") submitted a timely report recommending approval of three of the four variances (§§ 772 – residential lot occupancy, 2001.3 – enlargements or additions to nonconforming structures, and 2101 – off-street parking spaces), subject to two conditions, but recommending denial of the request for floor area ratio ("FAR") relief. (Exhibit 34.) At the hearing, in response to the Applicant's supplemental information that was submitted, OP testified that the Applicant's economic arguments regarding FAR relief did not change its recommendation, but also noted that the project would not have a negative impact on the public good and that the height and massing of the proposed project is similar to other surrounding buildings. By its letter, dated September 8, 2015, the District Department of Transportation ("DDOT") submitted a timely report of "no objection" to the application with conditions. (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 variances from the floor area ratio requirements under § 771.2, the lot occupancy requirements under § 772.1, the off-street parking requirements under § 2101.1, and the nonconforming structure requirements under § 2001.3, to convert an existing two-story masonry building into a four-story, six-unit apartment house with ground floor retail in the C-2-A District. 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 adverse 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 the Applicant has met the burden of proving 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 requested 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 § 3125.3, 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 be **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 29 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide, as a one-time incentive, each initial purchaser a bicycle helmet, for a total of six (6) helmets).

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2. The Applicant shall issue a one-time, one-year bikeshare or car share membership as part of a move-in package for the first lessee or the initial owner of each residential unit.
3. The Applicant shall offer a preloaded \$10 SmarTrip card for each unit at the initial sale of units in the building.
4. The Applicant shall post all TDM commitments on-line for a one-year period. The source will also include links to CommuterConnections.com, goDCgo.com, WMATA Metrobus routes, DC Bicycle maps and other useful information in support of car-free urban living.
5. The Applicant shall install three long-term bicycle spaces within a secure room for use by tenants.

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this summary order.

**VOTE:**       **4-0-1** (Marnique Y. Heath, Anthony J. Hood, Frederick L. Hill, and Jeffrey L. Hinkle to Approve; the third Mayoral appointee 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:** December 3, 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 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.

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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 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.