

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19978 of 775 Fairmont Street NW LLC,¹ as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E §§ 5108 and 5204 from the rear yard requirements of Subtitle E § 5104.1, and the side yard requirements of Subtitle E § 5105.1, and pursuant to Subtitle X, Chapter 10, for an area variance from the height requirements of Subtitle E § 5102.1, the alley centerline setback requirements of Subtitle E § 5106.1, and the minimum pervious surface provisions of Subtitle E § 5107.1, to construct a second-story addition to an existing alley lot structure and convert it to a detached principal dwelling unit in the RF-1 Zone at premises 775 Fairmont Street, N.W. (Square 2885, Lot 862).

HEARING DATES: April 24, July 24, September 11, and December 11, 2019
DECISION DATE: December 11, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified). (Exhibit 45 (Revised)²; Exhibit 4 (Original).)

In advance of its decision, the Board requested clarification from the Applicant as to why relief was not sought from Subtitle C § 303.3(a)&(b), which requires that:

New alley record lots shall comply with the following:

- (a) *Have frontage along a public alley with a minimum alley width of twenty-four feet (24 ft.) and have from the alley access to a street through an alley or alleys not less than twenty-four feet (24 ft.) in width;*

¹ The property owner at the time of the application's filing was Robert Thorsen, who was listed as the applicant in the initial noticing of the case. On June 15, 2019, the applicant's agent updated the ownership information in the record and, accordingly, the owner and applicant was updated to 775 Fairmont Street NW LLC. (Exhibit 45.)

² The application originally requested relief from the height requirements of Subtitle E § 5102.1, the alley centerline setback requirements of Subtitle E § 5106.1, and the minimum pervious surface provisions of Subtitle E § 5107.1 as special exceptions. (Exhibit 4.) The Applicant revised and corrected the application to instead request these areas of relief as area variances. (Exhibit 45.)

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- (b) *Meet the lot area standards applicable under the title of the respective zone and, if no minimum lot area standard is provided, the alley lot shall be a minimum of eighteen hundred square feet (1,800 sq. ft.) of lot area; and*
- (c) *Where existing abutting alley record lots or alley tax lots created on or before May 12, 1958 are combined into a larger alley record lot, the subdivision need not comply with paragraphs (a) and (b) of this subsection.*

The Applicant filed a response, arguing that relief from these provisions is not required for this application. (Exhibit 62.)

The Board disagrees, and believes this relief is necessary, based on the evidence presented in the record of this proceeding. However, because the relief requested is self-certified, the Board determined that the issue was not a basis for denying the application and considered the merits of the relief requested. At the public hearing on December 11, 2019, the Applicant acknowledged that if the Zoning Administrator determines that additional zoning relief is required, the Applicant will need to return to the Board to request the necessary relief.

The Board wishes to be explicit that it is not granting this relief through this Order and encourages the Zoning Administrator to consider carefully whether this relief is required before issuing a building permit.

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 4, 2019, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibit 37.)

OP Report. The Office of Planning ("OP") submitted four reports recommending approval of the relief requested, but not opining on whether additional relief was needed. (Exhibits 36, 47, 58, and 63.) In a supplemental report, OP noted that "should relief be required to create a record lot, for purposes of obtaining building permits, the Applicant would have to come back before the Board to request the necessary relief." (Exhibit 47.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 35.)

Persons in Opposition. The Board received a letter in opposition signed by three neighbors. (Exhibit 42.)

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Prior Approvals. BZA Order No. 17928 granted use variance relief on the property to allow the establishment of office, artisan studio, metal and glass work establishment in 2009.

Variance Relief

The Applicant seeks relief under Subtitle X § 1002.1 for from the height requirements of Subtitle E § 5102.1, the alley centerline setback requirements of Subtitle E § 5106.1, and the minimum pervious surface provisions set forth under E § 5107.1.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations 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, in the case of an area variance, or an undue hardship, in the case of a use variance, 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

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E §§ 5108 and 5204 from the rear yard requirements of Subtitle E § 5104.1, and the side yard requirements of Subtitle E § 5105.1.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, 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 further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Expiration of Prior Use Variance Relief

Under Subtitle Y § 706.1(b), a use variance shall expire when it is discontinued for any reason for any period of three or more years occurring after October 8, 2010; except where governmental action impedes access to the premises. Under Subtitle Y § 706.1(c), a use variance shall expire if a certificate of occupancy for a different use is issued or if a residential use for which no certificate of occupancy is required is established.

In BZA Application No. 17928, the Board approved a use variance to allow the establishment of an office, artisan studio, metal and glass work. If the use variance has not already expired due to discontinuation under Subtitle Y § 706.1(b), the Board concludes that the previously-granted use

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variance will expire upon the issuance of a certificate of occupancy for a different use or the establishment of the residential use approved in this order under Subtitle Y § 706.1(c).

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 PLANS³ AT EXHIBIT 32.**

VOTE: 4-0-1 (Carlton E. Hart, Lorna L. John, Frederick L. Hill, and Michael G. Turnbull (by absentee vote) to APPROVE; 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: December 18, 2019

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.

³ Self-certification: In granting the certified relief, the Board 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.

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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.