

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18194 of Michael Iwanicki, pursuant to 11 DCMR § 3104.1, for a special exception for a rear deck addition to a one-family detached dwelling under section 223, not meeting the lot occupancy (section 403), and rear yard (section 404), requirements in the R-1-B District at premises 4508 Q Place, N.W. (Square 1367, Lot 60).

HEARING DATE: April 5, 2011

DECISION DATE: April 5, 2011

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 1, 2010, from the Zoning Administrator stating that Board of Zoning Adjustment (“Board” or “BZA”) approval was required for a “[s]pecial exception pursuant to § 223 for a Single Family Structure that does not comply with maximum lot occupancy § 403.1 and required rear yard § 404.1 (§ 3104.1).” (Exhibit 6.)

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”) 3D, and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D submitted a report, dated March 8, 2011, in opposition to the Applicant’s project. The ANC’s report indicated that at a duly noticed public meeting, the ANC voted to not support the application by a vote of 6:2. The Board noted that the ANC’s report did not note whether a quorum was present for this vote. Despite this, the Board, by consensus, waived the requirements of § 3115.1 of the Zoning Regulations and allowed the ANC’s report to be given great weight.

The ANC report indicated that its vote not to support the proposal arose over two issues. First, the ANC stated its concern about the potential negative impacts on privacy of the neighboring dwelling across the 16-foot-wide alley, indicating that the deck would “tower” over neighbors’ yards. In that regard, the ANC used the height of the supporting poles that were in place to

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surmise the height of the new deck. Second, while acknowledging that the Applicant had provided some letters of support from neighbors by the time of its vote, the ANC's report also cited the ANC's concern that, as of that meeting and vote, the Applicant had not obtained letters from certain neighbors, in particular those directly behind the Applicant's property who would be most impacted by the Applicant's project. (Exhibit 24.)

The Office of Planning ("OP") submitted a timely report dated March 29, 2011 indicating that it recommended approval of the application. (Exhibit 26.)

Letters of support were submitted to the record by neighbors David Buchanan, 1600 45th Street, N.W., Jeffrey Glassman, 4512 Q Place, N.W., and Alfonso Robles, 4510 Q Place, N.W., (Exhibit 23). In addition, letters of support were also submitted by neighbors Constance Kerwin, 1610 45th Street, N.W., Eric Greig, 4507 Q Street, N.W., Janet Mann and Tom Demuth, 4513 Q Street, N.W. (Exhibit 25, Tab 1.)

At the hearing the Applicant addressed the ANC's concerns, most notably by providing letters of support from virtually all the surrounding neighbors, including the ones who had just purchased the property directly behind the Applicant's property at 4507 Q Street, N.W., whose support the ANC had indicated was of most interest to the ANC. (Exhibits 23 and 25, Tab 1.) Also, the Applicant's pre-hearing statement as well as testimony at the hearing indicated that the height of the proposed deck would be only slightly higher (by approximately two feet) from the neighboring decks, due to the lower grade of the neighboring properties. The Applicant postulated that the deck would be located relative to all the neighboring properties so as not to have an adverse impact on those properties, which was further borne out by the letters of support from those neighboring property owners, none of whom voiced any objections to the Applicant's proposed deck. (See, Exhibit 25.)

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 special exception relief under § 223 (§§ 403 and 404) of the Zoning Regulations. At the hearing the Board took note of the ANC's concerns raised in its report and concluded that these concerns were addressed sufficiently by the Applicant's testimony and other submissions, most notably the letters of support from virtually all the surrounding neighbors, including the new purchasers of 4507 Q Street, N.W. 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 proof, pursuant to 11 DCMR §§ 3104.1 and 223 (§§ 403 and 404), 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.

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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 (pursuant to Exhibit 10) is hereby **GRANTED**.

VOTE: 4-0-1 (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Greg M. Selfridge to Approve; the third Mayoral appointee (vacant) neither participating, nor voting.)

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

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

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: APR 14 2011

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 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.

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As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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