

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18271 of Bricklayers Masons Helpers Building Union, pursuant to 11 DCMR § 3104.1, for a special exception from the minimum rear yard setback under § 1564.1, to permit additions to an existing building for use as a business trade school (128 students and eight staff), in the FT/C-3-A District at premises 5332 1st Place, N.E. (Square 3071, Lots 82 and 83).¹

HEARING DATES: November 15, 2011, January 24, 2012, and February 28, 2012
DECISION DATE: February 28, 2012

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated June 28, 2011, from the Zoning Administrator (“ZA”) which indicated that a review of the Applicant’s plans for proposed additions to an existing Auto Repair and Warehouse one-story to change it to a Business Trade School two-story structure would require Board of Zoning Adjustment (“Board” or “BZA”) review and approval. In the June 28th memorandum, the ZA recommended that the Applicant needed a special exception from § 2108.1, and variances from §§ 774.1, 775.5, and 776.1 and 776.2. (Exhibit 5.) Later, a revised memorandum, dated February 24, 2012, was issued by the ZA, changing his recommendation to that of a special exception from § 1564.1 to permit additions to an existing structure without meeting a minimum required rear yard setback and a

¹ The application was amended and the caption reflects those revisions. The original application, per the Zoning Administrator’s (“ZA”) initial referral letter of June 28, 2011, requested variance relief pursuant to §§ 774, 775.5, 776, and a special exception relief under § 2108.1. The Office of Planning came forward with a different recommendation for relief. The case was postponed from the public hearing sessions of November 15, 2011 and January 24, 2012, to allow additional time for the Applicant to refine the zoning relief needed. The ZA submitted a subsequent memorandum on February 24, 2012, which gave the ZA’s revised recommendation. (Exhibit 30.) In response to the ZA’s February 24th memorandum and the report from the Office of Planning, the Applicant submitted a revised burden of proof and amended the application. (See Exhibit 31.) Final revised plans were submitted at the public hearing on February 28, 2012, which eliminated the side yard altogether. (Exhibit 33.) The Applicant’s application, as revised, requested only a special exception pursuant to § 1564.1 for the minimum rear yard setback.

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variance from § 775.5 to permit additions to an existing structure without providing a required minimum side yard setback.² (Exhibit 30.)

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 the Applicant, Advisory Neighborhood Commission (“ANC”) 5A, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 5A, which is automatically a party to this application. ANC 5A did not submit a report nor did it attend the hearing and testify. However, at the hearing, the Applicant testified that after presenting the project at an ANC meeting, the ANC voted unanimously to approve the project.³

The Office of Planning (“OP”) provided a timely report dated November 8, 2011, in which it withheld its recommendation pending receipt of a determination of what relief was appropriate and needed, whether the two subject properties would be consolidated into one lot of record, details of the parking-sharing agreement between the Applicant and Dominion Church, and architectural elevations of the addition. At the hearing OP testified in support of the revised application. OP reviewed its findings in its November 8th report; explained how the Applicant met the special exception standard under § 1564.1; and stated that by removing the side yard in its current design, the Applicant no longer needed variance relief.

Also, the District’s Department of Transportation (“DDOT”) submitted a recommendation of “no objection” conditioned on the Applicant adopting transportation demand measures (“TDM”) and the Applicant’s redesign of the entrances to prevent the doors from opening into public space. (Exhibit 24.)

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 for a special exception under § 3104.1 from the strict application of the regulations pertaining to minimum rear yard setbacks under the Fort Totten Overlay District pursuant to § 1564.1. 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 OP report and testimony, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 1564.1, and 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.

² The Applicant amended the application in response to the ZA’s recommendations of February 24, 2012 and stated that it addressed the ZA’s concerns regarding the side yard issue by amending its proposed application to eliminate any side yards and thereby removing the need for variance relief pursuant to § 775.5. (Exhibit 32.)

³ As the ANC did not submit a report, there was no ANC report to which to give great weight.

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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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.

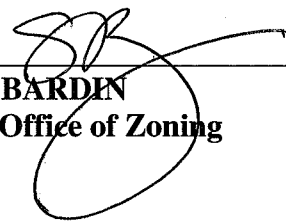
It is therefore **ORDERED** that the application is hereby **GRANTED (pursuant to Exhibits 33, Second Amended Site Plan)**.

VOTE: **5-0-0** (Meridith Moldenhauer, Marcie I. Cohen, Nicole C. Sorg, Lloyd L. Jordan, and Jeffrey L. Hinkle 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. BARDEN
Director, Office of Zoning

FINAL DATE OF ORDER: **MAR 07 2012**

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.

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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 MAR 07 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Pamela J. Bethel, Esq.
O'Riordan Bethel
1314 19th Street, N.W.
Washington, D.C. 20036-1602

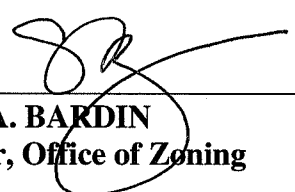
Chairperson
Advisory Neighborhood Commission 5A
1322 Irving Street, N.E.
Washington, D.C. 20017

Single Member District Commissioner 5A01
Advisory Neighborhood Commission 5A
32 Buchanan Street, N.E.
Washington, D.C. 20011

Hon. Kwame R. Brown, Chairman, on behalf of Ward 5 Councilmember
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Melinda Bolling, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov