

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18543 of Yves Balcer, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to a one-family detached dwelling under § 223, not meeting the rear yard (§ 404), and side yard (§ 405) requirements, in the R-1-A District at premises 5063 Overlook Road, N.W. (Square 1430, Lot 6).

HEARING DATE: April 30, 2013
DECISION DATE: May 21, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 14, 2012, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is needed for a special exception, pursuant to 11 DCMR §§ 3104.1 and 223.1. (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”) 3D and to owners of property within 200 feet of the site as well as to the Office of Planning (“OP”). 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 timely report opposing the application. That report, dated April 21, 2013, indicated that a properly noticed public meeting on April 3, 2013, at which a quorum was present at all times, the ANC voted 10:0:0 to oppose the application after hearing presentations from the Applicant and adjoining neighbors who opposed the project. Commissioner Nan Wells was designated as the ANC’s representative and authorized to speak on its behalf. The ANC expressed concern that the detached structure could be increased in height, up to 40 feet, once it has been connected to the main dwelling.¹ (Exhibit 30.)

¹ The objection and concerns raised by the opposing parties and ANC regarding what could happen to the detached structure, which is a pool house, have been addressed through a covenant agreed to with those neighbors and which

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

Board of Zoning Adjustment
District of Columbia
ZONING DIVISION
CASE NO. 18543
EXHIBIT NO. 44
CASE NO. 000018543
EXHIBIT NO.

BZA APPLICATION NO. 18543
PAGE NO. 2

Commissioner Wells is also an adjoining neighbor and part of a group of neighbors who opposed the project. During deliberations on May 21st and in response to the Board's inquiries as to where the ANC's position currently stood, given the withdrawal of opposition by all the opposing neighbors (including Commissioner Wells), the representative of the Applicant and the opposing neighbors testified on the record that it was their belief that the ANC would not continue to oppose the project in light of the withdrawal of all the opposing parties' objections due to agreement to the terms of the covenant that is referenced herein and where its execution and recordation with the Recorder of Deeds is made a condition in this Order.

The Office of Planning ("OP") submitted a timely report, dated April 23, 2013, and a supplemental report dated April 24, 2013, in support of the application. (Exhibits 26 and 34.)

The District Department of Transportation ("DDOT") submitted a letter dated March 4, 2013, with a recommendation of "no objection". (Exhibit 22.)

Two letters of support from nearby neighbors, Lloyd and Ann Hand, both of 3519 Overlook Lane, N.W., were submitted for the record. (Exhibit 27.)

There were four party status requests in opposition from neighbors L. Palmer Foret, 5069 Overlook Road, N.W.; Mari Tuna Foret, 5069 Overlook Road, N.W.; Gary B. Garofalo, 5132 Rockwood Parkway, N.W.; and Mark P. Leone, 5057 Overlook Road, N.W. (Exhibits 23, 24, 25, and 26.) On May 21st, the attorneys representing Mr. Garofalo and Mr. Leone submitted letters withdrawing their respective clients' opposition, each expressing that the proposed covenant, the execution and recordation of which are made a condition to this Order, would satisfy their clients' concerns and objections. (Exhibits 41 and 42.) Mr. Foret attended and testified, both on his own behalf and as the representative of the party-opponents, on the record as to his and the other party-opponents' withdrawal of their opposition now that there is an agreed-upon covenant.

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 (§§ 404 and 405) of the Zoning Regulations. No parties continued to appear at the public hearing in opposition to this application once the parties in opposition withdrew their opposition. 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 223 (§§ 404 and 405), that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and

shall be executed and recorded with the Recorder of Deeds pursuant to this Order before any building permit may be issued.

BZA APPLICATION NO. 18543
PAGE NO. 3

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 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, SUBJECT TO the revised plans at Exhibit 28 AND THE FOLLOWING CONDITION:**

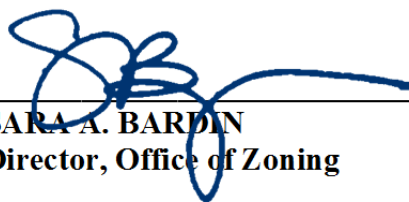
1. The DECLARATION OF COVENANTS AND RESTRICTIONS contained in Exhibit 40 in the record shall be executed and recorded with the Recorder of Deeds prior to any building permit being issued.

VOTE: 4-0-1 (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May to Approve; the third Mayoral appointee seat vacant.)

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:


SARA A. BARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: May 29, 2013

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

BZA APPLICATION NO. 18543
PAGE NO. 4

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 THEREOF, 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.