

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18595 of Eva R. Sanchez, pursuant to 11 DCMR § 3103.2, for a variance¹ from the definition of yard under § 199, to allow a rear deck addition to a row dwelling occupying more than 50% of the rear yard area in the R-4 District at premises 620 9th Street, N.E. (Square 913, Lot 846).

HEARING DATES: September 17, 2013, November 19, 2013, April 29, 2014
DISMISSAL DATE: April 29, 2014

DISMISSAL ORDER

This self-certified application was submitted on May 1, 2013 by Eva R. Sanchez (the “Applicant”), the owner of the property that is the subject of the application. The application requested variance relief from the definition of yard under § 199, to allow a rear deck addition to a row dwelling that would occupy more than 50% of the rear yard area in the R-4 District at premises 620 9th Street, N.E. (Square 913, Lot 846). Following a public hearing, as well as two continuances at which the Applicant failed to appear, the Board voted to dismiss the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 6, 2013, the Office of Zoning (“OZ”) provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6A, the ANC in which the subject property is located; and Single Member District/ANC 6A02. Pursuant to § 3113.13, the Office of Zoning mailed letters on May 16, 2013 providing notice of the hearing to the Applicant, ANC 6A, and the owners of all property within 200 feet of the subject property. Notice of hearing was published in the *D.C. Register* on May 17, 2013 at 60 DCR 6986.

Party Status. The Applicant and ANC 6A were automatically parties to this proceeding.

¹ Initially, the Zoning Administrator’s memorandum to the Applicant indicated that special exception relief was required; however, a revised memorandum from the Zoning Administrator explained that, instead, the Applicant must seek variance relief. (Exhibit 29.)

FINDINGS OF FACT

1. The property is a rectangular lot located on the west side of 9th Street, N.E. between G Street and F Street at 620 9th Street, N.E. (Square 913, Lot 846) (the “Subject Property”). The Subject Property has access to a six-foot wide rear alley.
2. The Subject Property is located within the R-4 Zone District.
3. The Subject Property is improved with a row dwelling that includes a landing at the rear of the property.
4. The existing dwelling is nonconforming, with a lot occupancy of 79%. In the R-4 District, the maximum lot occupancy permitted as a matter of right is 60%. (11 DCMR § 403.2.)
5. The Applicant proposed to remove the landing and to construct, in its place, an 84 square-foot wooden deck.
6. The proposed deck would measure 12 feet wide by seven feet deep, with a maximum height of three feet and 10 inches.
7. The Zoning Administrator (“ZA”) noted that the proposed addition would not add building area because the structure would be less than four feet in height and, therefore, would not contribute to lot occupancy.
8. The ZA also indicated that variance relief from the definition of yard under § 199.1 was necessary because the proposed addition would occupy more than 50% of the yard. The definition of yard provided in § 199.1 states that “[n]o building or structure shall occupy in excess of fifty percent (50%) of a yard required by [Title 11].”
9. At the Board’s public hearing on September 17, 2013, OP noted that relief from the definition of “yard” would not be necessary if the Applicant were to decrease the proposed depth of the deck by one foot. In response, the Applicant agreed that this was a desirable option and asked for further information about how to proceed after revising the plans.
10. The Board continued the matter in the event that the Applicant decided not to revise the plan and continued to pursue variance relief. The Board scheduled the continued public hearing for November 19, 2013.
11. The OZ staff testified that in advance of the November 19, 2013 public hearing, the Applicant communicated her intent to withdraw the application; however, no notice of withdrawal was filed in the record.

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12. The Applicant did not appear at the public hearing on November 19, 2013. Accordingly, the Board continued the hearing until December 17, 2013 and directed OZ staff to contact the Applicant to obtain an explanation for her failure to appear. The Board also indicated that, in the absence of an explanation, the application would be considered for dismissal at the public hearing on December 17, 2013.
13. By letter dated December 5, 2013, the Applicant requested a three month postponement of the hearing date. The Board granted the request and scheduled the continued public hearing for April 29, 2014.
14. The Applicant made no further filings and did not appear at the public hearing on April 29, 2014.

CONCLUSIONS OF LAW AND OPINION

The Board has “broad authority and reasonable latitude to perform its function,” including, when necessary, authority to dismiss an application for failure of the Applicant to prosecute her case. *See, e.g., Coumaris v. D.C. Alcoholic Beverage Control Board*, 660 A.2d 896, 903 (D.C. 1995). Further, pursuant to 11 DCMR § 3100.6, “the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.”

At the initial public hearing on September 17, 2013, the Board continued the matter after the Applicant expressed a desire to revise the design to eliminate the need for zoning relief. In advance of the continued hearing, OZ staff received communications from the Applicant indicating her intent to withdraw the application. The Board nonetheless provided additional opportunities for the Applicant to seek the requested relief, as no formal notice of withdrawal had been filed. The Applicant failed to appear at the hearing on November 19, 2013 and again on April 29, 2014, despite being given notice that the application would be considered for dismissal at the latter hearing. Further, the Applicant provided no explanation for her failure to appear, aside from the prior communications generally noting her intent to withdraw the application. Therefore, the Board exercises its authority to dismiss the application for failure to prosecute and for failure to appear without explanation, pursuant to § 3100.6 of the Board’s Rules of Practice and Procedure (Title 11 DCMR).

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.).) In this case, both the OP and the ANC reports addressed the merits of the application. (Exhibits 26 and 27.) Because the Board did not reach the merits of the application, OP’s recommendation and the ANC’s issues and concerns are not legally relevant. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993) (The ANC’s views as to whether a variance

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should be granted became irrelevant once the Board concluded that the use was permitted as a matter of right.)

Accordingly, it is **ORDERED** that the application is **DISMISSED**.

VOTE: **3-0-2** (Lloyd J. Jordan, Anthony J. Hood, and Marnique Y. Heath
to Dismiss; S. Kathryn Allen and Jeffrey L Hinkle not present,
not voting.)

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: August 21, 2014

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.