

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18941 of Thomas and Patty Johnson, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the nonconforming structure requirements under § 2001.3, to construct a second story addition in the FH-TSP/R-1-A District at premises 3318 Fessenden Street, N.W. (Square 2033, Lot 2).¹

HEARING DATE: Applicant waived right to a public hearing²

DECISION DATE: February 24, 2015 (Expedited Review Calendar).

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

On December 15, 2014, the Applicant filed a request for special exception pursuant to §§ 3104.1 and 1518.3. (Exhibit 1.) The application was accompanied by a memorandum, dated December 9, 2014, from the Zoning Administrator (“ZA”), which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a special exception pursuant to 11 DCMR §§ 3104.1 and 1520.1 for a second story addition that does not comply with the aggregate side yard requirements of § 1518.3. (Exhibit 9.)

The application also was accompanied by a request to place the application on the expedited review calendar, pursuant to § 3118. (Exhibit 2.) Based on the ZA’s memorandum, however, the relief requested did not satisfy the eligibility standard, pursuant to § 3118.2, for expedited review. Accordingly, the case was scheduled for a public hearing on March 10, 2015. 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”) 3F, and to owners of property within 200 feet of the site.

The ZA subsequently provided a revised memorandum, dated January 7, 2015, which stated that the Board’s approval is required for a special exception pursuant to §§ 3104.1 and 223.1 for a second story addition that does not comply with a nonconforming aggregate side yard condition, as per 11 DCMR §§ 2001.3 and 1518.3. (Exhibit 21.)

¹ The application was amended after a revised Zoning Administrator referral was submitted (Exhibit 22) and the caption has been amended to reflect those changes accordingly.

² The application was first scheduled for a public hearing on March 10, 2015, but subsequently placed on the expedited review calendar of February 24, 2015.

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The Office of the Attorney General (“OAG”) advised the Board that it may grant special exception relief under § 223 exclusively for the requirements listed in that provision, which do not include § 1518.3. For requirements not listed in § 223, the OAG further advised that the Board may grant relief under § 223 only when the requirement at issue is implicated because the existing structure is nonconforming and therefore triggers the nonconforming structure requirements under § 2001.3. In this case, the Board found that the proposed addition would enlarge a nonconforming structure, but would not increase the nonconforming aspect of the aggregate side yard. Therefore, the Board granted relief in this case under § 223 for an addition not meeting the nonconforming structure requirements under § 2001.3, even though the existing nonconformity relates to the aggregate side yard requirements of § 1518.3.

As a result of the ZA’s revised memorandum and the Applicant’s waiver of its right to hearing, the application was amended and tentatively placed on the Board’s expedited review calendar for decision without hearing, pursuant to § 3118, for February 24, 2015.

The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on February 17, 2015, at which a quorum was in attendance, ANC 3F voted 5-0-0 to support the application. (Exhibit 32.) The Office of Planning (“OP”) submitted a timely report in support of the application. (Exhibit 33.) The District Department of Transportation (“DDOT”) submitted a report expressing no objection to the application. (Exhibit 30). Five letters in support from neighbors and a petition in support signed by 11 neighbors were also filed. (Exhibits 23-29, and 35.)

No objections to expedited calendar consideration were made by any person or entity entitled to do so by §§ 2118.6 and 2118.7. The matter was therefore called on the Board’s expedited calendar for the date referenced above and the Board voted to grant the application. Pursuant to § 3100.5, the Board waived the public notice requirements of § 3113.13(a), (b) and (d), finding that the applicant showed good cause and provided notice in other forms such that the waiver would not prejudice the rights of any party.³

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 a special exception under §§ 223 and 2001.3. No parties appeared at the public meeting in opposition to this 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 and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, and 2001.3, that the requested relief can be granted as being in harmony

³ The Applicant notified the ANC of the expedited review meeting date and posted the property with the expedited review date advertised.

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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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, 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 is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN THE RECORD AT EXHIBIT 7.**

VOTE: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood to APPROVE; Jeffrey L. Hinkle not participating, and 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: March 4, 2015

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.

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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.