

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18963 of Alexandra Freidberg, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the minimum court width requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to allow the enlargement of existing attic space into a full third story in the R-4 District at premises 72 Seaton Place N.W. (Square 3106, Lot 96).

HEARING DATE: Applicant waived right to a public hearing
DECISION DATE: April 7, 2015 (Expedited Review Calendar).

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board of Zoning Adjustment (“Board”) expedited review calendar for decision without hearing as a result of the applicant’s waiver of its right to a hearing.

The Board provided proper and timely notice of this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on March 17, 2015, at which a quorum was in attendance, ANC 5E voted 9-0-0 to support the application. (Exhibit 28.) The Office of Planning (“OP”) submitted a timely report and testified at the hearing in support of the application. (Exhibit 27.) The District Department of Transportation (“DDOT”) submitted a report expressing no objection to the approval of the application. (Exhibit 25.)

One neighbor filed a letter in support of the application. (Exhibit 22.) The adjacent property owner filed a letter indicating that she supports the application, provided that the Board notes for the record her concerns regarding potential damage to her property during construction and water runoff from the elevated common wall. (Exhibit 23.) The Board discussed the concerns raised in

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the letter during its deliberations and conditioned its approval of the application on the Applicant's commitment to work with neighbors to mitigate these concerns.

During the Board's deliberations, Zoning Commissioner Turnbull raised an additional concern regarding how the Applicant's proposal to raise her roof may cause adjacent structures' chimneys and vents to become noncompliant with building code. Though building code issues are outside of the Board's jurisdiction, Mr. Turnbull noted that the Applicant's proposal could more generally impact adjacent neighbors by requiring them to incur costs to come into compliance or risk being cited by the Department of Consumer and Regulatory Affairs ("DCRA"). Mr. Turnbull indicated that he was unsure whether neighbors were aware of this potential impact and raised the possibility of removing the application from the expedited review calendar to hold a public hearing.

In order to address this question, the Board invited the Applicant and the Applicant's counsel to give testimony on these issues. On the issue of timing, the Applicant testified that scheduling the application for a public hearing would cause hardship. She indicated that the proposed construction is a result of a fire that damaged the property and that her family is only able to secure temporary housing until July of 2015. Next, the Applicant's counsel addressed Mr. Turnbull's question regarding the impact of raising the Applicant's roof on adjacent properties. The Applicant's counsel testified that DCRA's practice in this case would not be to require neighbors to comply with the building code after the Applicant has raised the roof height. He indicated that DCRA would seek the consent of adjacent neighbors in advance, and that if neighbors do not agree to make changes that become necessary in light of the addition, DCRA would not permit the Applicant to go forward with the project. The Applicant also testified that, to the best of her knowledge, the chimneys on adjacent properties are not functional.

Based on the testimony of the Applicant and the Applicant's counsel, Mr. Turnbull was satisfied that the proposed addition would not place a burden on adjacent property owners with regard to building code compliance. Further, Mr. Turnbull proposed two conditions to ensure that any potential impacts are mitigated: first, that the Applicant shall work with neighbors on the issues raised during deliberations; and second, that any lighting shall be designed to cast downward on the deck, based on a recommendation from OP. The Board adopted both proposed conditions. Accordingly, Mr. Turnbull withdrew his concern, and the Board determined that a public hearing for this application was not necessary.

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.

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, 403.2, 406.1, and 2001.3. No parties appeared at the public meeting in

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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, 403.2, 406.1, and 2001.3, 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.

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 is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN THE RECORD AT EXHIBIT 8 AND WITH THE FOLLOWING CONDITIONS:**

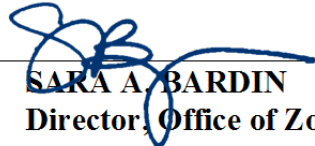
1. The Applicant shall work with neighbors to address issues raised on the record.
2. Any lighting on the rear deck shall be designed to cast light downward on the deck only, in order to minimize light spill onto adjacent properties.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; 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: April 9, 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.

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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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, 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.

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