

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18969 of Edward G. Fisher M.D., as amended¹, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions under § 320, to operate a non-profit organization on the second floor of an existing building in the R-3 District at premises 3536 Minnesota Avenue S.E. (Square 5419, Lot 22).

HEARING DATE: April 7, 2015

DECISION DATE: April 7, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. (Exhibits 7 and 40.)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 7F and to owners of property located within 200 feet of the site.² The site of this application is located within the jurisdiction of ANC 7F, which is automatically a party to this application. The ANC did not submit a report regarding the application. To questions posed by the Board, the Applicant testified that she tried to contact the ANC so as to present the application to the ANC, but that the contact information she had been provided for her single member district ("SMD") was incorrect. Eventually, she was able to contact the ANC's Chair who in turn provided the Applicant with the correct contact information for the SMD. The Applicant met with the SMD, but because the ANC's meeting had already occurred, she was unable to meet with the full ANC prior to the hearing on the application. The SMD submitted a letter in support of the application. (Exhibit 37.) Also, at the public hearing,

¹ The Applicant amended the application (Exhibit 33) by changing the original request for a special exception under § 217.1 to a use variance from § 320, based on a revised Zoning Administrator referral. (See, OP report, Exhibit 40.)

² The Applicant testified at the hearing that notice of the amended application for variance relief was provided through posting of the property. (Revised – Exhibit 26; Original – Exhibit 24.)

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the SMD from ANC 7D05, a neighboring ANC, testified in support of the application and confirmed that there had been difficulties in getting accurate contact information for some ANCs.

The Office of Planning (“OP”) submitted a timely report on March 31, 2015, recommending approval of the application, having reviewed the application as one for a use variance (Exhibit 40), and testified in support of the application, as amended, at the hearing. The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 36.)

In addition to the letter of support from the SMD, ANC 7F06, (Exhibit 37), there were also letters of support for the application from Dr. Sabine O’Hara, UDC College of Agriculture, Urban Sustainability and Environmental Sciences (Exhibit 38) and four neighbors. (Exhibit 25.)

The Board closed the record at the end of the hearing. 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 pursuant to § 3103.2 for a use variance from 11 DCMR § 320. 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 filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 320, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in 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 the application is hereby **GRANTED**.

VOTE: **4-0-1** (Lloyd L. Jordan, Michael G. Turnbull, Marnique Y. Heath, and Jeffrey L. Hinkle 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 8, 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.