

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19173 of Equity Trust Company, Custodian FBO, pursuant to 11 DCMR § 3104.1, for a special exception from the conversion to apartment house requirements pursuant to § 336, to permit the enlargement of a pre-1958 residential building into a three-unit apartment house in the R-4 District at premises 1264 Holbrook Terrace N.E. (Square 4055, Lot 840).¹

HEARING DATES: February 9, March 1, March 15, April 5, April 19, and May 17, 2016²
DECISION DATE: May 17, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Original – Exhibit 6; Revised – Exhibit 39.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. The ANC submitted a report indicating that, at its regularly scheduled and properly noticed public meeting of March 8, 2016, at which a quorum was in attendance, ANC 5D voted 7-0-0 to oppose the application. (Exhibits 33 and 34.) The concerns raised by the ANC included

¹ The Applicant submitted revised plans on March 9, 2016 that modified the original proposal to construct an eight-unit apartment house. (Exhibit 35.) The caption has been revised accordingly.

² The hearing for this case was postponed from February 9, 2016 (Exhibit 26), March 1, 2016 (Exhibit 27), March 15, 2016 (Exhibit 37) and April 5, 2016. (Exhibit 38.) The case was heard on April 19, 2016 and continued to May 17, 2016.

BZA APPLICATION NO. 19173
PAGE NO. 2

insufficient time to review the proposal and community concerns regarding the adverse impacts of building density and construction damage. ANC 5D02 Commissioner, Keisha Shropshire, testified in opposition at the public hearing on April 19, 2016. The Board continued the hearing to provide additional time for the ANC and community to review the plans and engage in discussions with the Applicant. The negotiations continued at the public hearing on May 17, 2016, at which time Commissioner Shropshire testified that an agreement had been reached with the Applicant. Commissioner Shropshire indicated that the ANC would reverse its position to one of support, based on that agreement. Commissioner Shropshire testified that the Applicant agreed to:

1. Provide a housing accommodation for the adjacent neighbor during the period of heaviest construction for a period not to exceed 30 days;
2. Install barriers around the property to prevent dust, debris, and sound from travelling onto adjacent properties during construction;
3. Accept liability for damages during construction, including agreement to:
 - a. Participate in a walk-through before and after construction to assess damages; and
 - b. Replace the adjoining neighbor's roof.

As indicated by Commissioner Shropshire and the Applicant's counsel, the agreement had not been signed at the time of the public hearing; however, the parties expected that the agreement would be memorialized in the near future.

The Office of Planning ("OP") submitted a timely report recommending approval of the application, based on revised plans. (Exhibit 32.) OP also testified in support of the application at the public hearings. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 28.)

The Board granted the request for party status in opposition of Vonetta Dumas, representing the Holbrook Terrace Alliance ("HTA" or "Opposition Party"). (Exhibit 29.) The Opposition Party raised concerns about the impacts of the proposed development at the public hearing on April 19, 2016 and presented three witnesses in opposition, Mary Purnell, Felicia Gray, and adjacent property owner Michael Mathis. The Board continued the hearing to allow for the HTA to participate in negotiations with the Applicant and ANC to address the Opposition Party's concerns about the project. At the public hearing on May 17, 2016, the representative of the Opposition Party testified that, after discussions with the Applicant and ANC, the proposed project would be a more favorable option than the possible by-right development, but she raised continued concerns regarding the side setback. Nonetheless, the HTA agreed to withdraw its party status in opposition, based on the agreement reached with the Applicant, as discussed in Commissioner Shropshire's testimony.

BZA APPLICATION NO. 19173
PAGE NO. 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 from the conversion to apartment house requirements pursuant to § 336, to permit the enlargement of a pre-1958 residential building into a three-unit apartment house in the R-4 District. Because the HTA withdrew its party status in opposition and the ANC reversed its position to one of support, no parties appeared at the public hearing 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 and 336, 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 § 3125.5, 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.

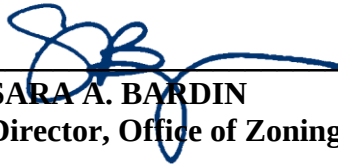
It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 51.**

VOTE: 4-0-1 (Frederick L. Hill, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller, to APPROVE; Anita Butani D'Souza not participating, 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: May 26, 2016

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

BZA APPLICATION NO. 19173
PAGE NO. 4

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.

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.