

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19202 of Alon Eckhaus, as amended,¹ pursuant to 11 DCMR § 3104.1, for special exceptions from the penthouse requirements under §§ 411.5 and 411.18, and a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the side yard requirements under § 405.8, and the nonconforming structure requirements under § 2001.3, to construct a third-story addition to an existing flat in the R-4 District at premises 2803 Sherman Avenue, N.W. (Square 2886, Lot 335).

HEARING DATES: March 1, 2016, March 8, 2016, and March 22, 2016²
DECISION DATE: April 5, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was originally self-certified (Exhibits 6 and 8), but subsequent to the original filing, the Applicant amended the application (Exhibit 28, see footnote 1) and submitted a memorandum from the Zoning Administrator certifying the required relief. (Exhibits 30 and 32.³)

¹ The Applicant amended the application by requesting special exceptions to the penthouse requirements under §§ 411.5 and 411.18 in addition to requesting a special exception under § 223, as the Applicant initially sought and by submitting a Zoning Administrator letter in place of the original Self-Certification form. The Applicant indicated that the application was amended to reflect the new penthouse regulations under § 411.5 that went into effect on January 9, 2016. (Exhibit 28.) Initially, the application was filed as a self-certified application requesting special exceptions under § 223 for lot occupancy (§ 403), side yard (§ 405), court (§ 406), and non-conforming structure (§ 2001.3) relief. (See Zoning Self-Certification Form 135, Exhibits 6 and 8.) Subsequently, on February 24, 2016, the Applicant filed a Memorandum from the Zoning Administrator (“ZA”). The ZA indicated that the Applicant needed a special exception under § 223 for lot occupancy (§ 403), side yard (§ 405), and non-conforming structure (§ 2001.3) relief, and special exceptions under § 411.5 to allow a penthouse on the roof of a semi-detached dwelling, and § 411.18 to allow a penthouse, guard rail, and deck not meeting the roof setback requirements. The special exceptions for § 411 do not fall under § 223 and therefore require separate special exception relief. (Exhibits 30 and 32.) Also, the application was amended to remove the request for relief from the court provisions under § 406. The caption has been changed accordingly.

² This case was postponed from the hearings of March 1, 2016 and March 8, 2016 at the Applicant’s request. (Exhibits 26 and 35.)

³ Exhibits 30 and 32 are both Zoning Administrator memorandums with the same content; however, Exhibit 32 contains the Notes and Computations page and Exhibit 30 does not.

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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") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a report dated March 7, 2016, noting that at a properly noticed public meeting on March 3, 2016, with a quorum present, it voted 10-0-0 in support of the application. (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report dated March 1, 2016, recommending approval of the application with the amended relief (Exhibit 33) and testified in support of the application at the hearing.

DDOT submitted a timely report indicating that it had no objection to the application. (Exhibit 34.)

One letter in support was submitted to the record from an adjacent property owner. (Exhibit 25.)

At the hearing on March 22, 2016, the Board heard testimony in opposition from the adjacent neighbor at 2805 Sherman Avenue, N.W. That neighbor raised concerns about the proposed third floor addition blocking light and air to his property, and he noted the damage to his windows as a result of demolition that had taken place at the subject site. The Applicant made a commitment to repair the neighbor's windows, and at the end of the hearing, the Board held its decision in abeyance and requested that the Applicant submit a statement regarding the progress on the window repairs. The Applicant submitted a letter dated March 29, 2016 confirming his intent to repair the neighbor's windows and providing details of the progress toward the repairs. (Exhibit 38.) In its deliberations at the public meeting of April 5, 2016, the Board noted the Applicant's letter and its assurances and approved 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 special exception relief under §§ 3104.1, 411.5, 411.18, and 223 (§§ 403.2, 405.8, and 2001.3). The only parties to the application were the Applicant and the ANC which expressed support for the application. 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 averse 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, 411.5, 411.18, and 223 (§§ 403.2, 405.8, and 2001.3), that the requested relief can be granted, 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. It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29 – ARCHITECTURAL PLANS AND ELEVATIONS.**

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VOTE: **5-0-0** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, Anita Butani D'Souza⁴, and Anthony J. Hood (by absentee ballot) to APPROVE).

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 7, 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 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,

⁴ Board member Butani D'Souza read the record to participate in the decision in the case and announced that she had done so on the record at the deliberations.

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.