

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19205 of William Magrath and Susan Shen, as amended¹, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the rear yard requirements under § 404, and the nonconforming structure requirements under § 2001.3, to construct a rear deck to an existing one-family dwelling in the R-3 District at premises 1541 44th Street N.W. (Square 1327, Lot 40).

HEARING DATE: June 14, 2016²

DECISION DATE: June 14, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits ("Ex.") 6 (original) and 43 (revised).) 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") 3D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D filed a report, dated June 7, 2016, which indicated that at a properly noticed, regularly scheduled public meeting held on June 1, 2016, with a quorum of Commissioners present, the ANC voted 6-0-1 to support the application based on the revised plans. (Ex. 39-41.) In a prior report, the ANC

¹ The Applicant amended the application to add special exception relief from the nonconforming structure requirements under § 2001.3 at the Office of Planning's recommendation. The caption has been changed accordingly.

² This case was removed from the Expedited Review calendar of February 23, 2016 due to party status applications in opposition being filed. The hearing was scheduled and then postponed from the hearing dates of March 22, April 5, April 19, and May 24, 2016, at the request of the Applicant and the neighbors in opposition. (Exhibits 27, 28, and 34.) The case was heard on June 14, 2016.

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recommended removal of the case from the Expedited Review calendar and for the application to be denied based on the original plans. (Ex. 23.)

The Office of Planning ("OP") submitted a report indicating its support of the application. In its report OP recommended adding relief from §§ 406.1 (Courts) and 2001.3 (Nonconforming structures). (Ex. 25.) At the hearing on June 14, 2016, OP testified in support of the application at the public hearing and also testified that it no longer believed that relief for open courts is necessary based on the revised plans, but stated that it continued to believe that relief for nonconforming structures should be added. The District Department of Transportation ("DDOT") submitted a timely report of no objection to the application. (Ex. 26.)

Two requests for party status in opposition were submitted to the record from the Applicant's adjacent neighbors, the Szymkowiczs and the Schaumbers. (Ex. 21 and 29.) Based on testimony at the June 14, 2016 hearing from JP Szymkowicz and a filing from Alexandra Schaumber that they now support the application based on the revised plans, the Board denied both party status requests.

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 for a special exception under 11 DCMR §§ 223, 404, and 2001.3. 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 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, 223, 404, 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 the accordance with the Zoning Regulations and Map. Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 REVISED PLANS AT EXHIBITS 36-37.**

VOTE: **5-0-0** (Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, Marcie I. Cohen 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: June 23, 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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.