

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19206 of 1302 Pennsylvania Avenue SE, LLC, pursuant to 11 DCMR § 3103.2, for variances from the FAR requirements under § 771.2, the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, the nonconforming structure requirements under § 2001.3, and the off-street parking requirements under § 2101.1, to permit a third floor addition to an existing two-story, mixed-use building in the C-2-A District at premises 1300 Pennsylvania Avenue S.E. (Square 1043, Lot 122).

HEARING DATES: March 15, April 5, and April 26, 2016¹
DECISION DATE: April 26, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.) 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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report in support of the application, dated March 9, 2016, indicating that at a duly noticed and scheduled public meeting on March 8, 2016, at which a quorum was in attendance, the ANC voted 9-0-1 in support of the application. (Exhibit 30.) In its report, the ANC specifically noted that "the by-right FAR for a 3rd story addition would not be in keeping with the visual fabric of the neighborhood nor support citywide goals for providing additional housing."

The Office of Planning ("OP") submitted a timely report dated March 8, 2016, recommending approval of the variances from the off-street parking and nonconforming structure requirements, but recommending denial for the variances from the FAR, lot occupancy, and rear yard

¹ The hearing for this application was continued from March 15, 2016 and postponed, at the Applicant's request, from April 5, 2016. (Exhibit 36.)

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requirements. (Exhibit 28.) At the public hearing on March 15, 2016, the Board continued the proceedings and requested that the Applicant work with OP to address its concerns about the size and configuration of the third story addition. At the continued public hearing on April 26, 2016, OP testified that it changed its recommendation to support the variance for rear yard relief, but remains in opposition to the FAR and lot occupancy variances, despite supplemental information provided by the Applicant. The Board, however, was persuaded by the Applicant's supplemental information, including the illustrations of the alternative by-right configurations of the third floor addition. As mentioned by ANC 6B in its report, the Board also noted that these by-right configurations appeared to be out of character with the visual fabric of the street. In addition, the Board indicated that the practical difficulty of relocating the building core contributes to the Board's finding that the application meets the test for variance relief. Accordingly, the Board was not persuaded by OP's recommendation to deny variance relief for FAR and lot occupancy.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 29.)

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 area variances from the FAR requirements under § 771.2, the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, the nonconforming structure requirements under § 2001.3, and the off-street parking requirements under § 2101.1, to permit a third floor addition to an existing two-story, mixed-use building in the C-2-A District. 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 ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR §§ 771.2, 772.1, 774.1, 2001.3, and 2101.1, 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 a practical difficulty 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, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 37.**

VOTE: 3-0-2 (Marnique Y. Heath, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE; Anita Butani D'Souza and Zoning Commissioner member not participating.)

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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 2, 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, 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

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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.