

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19265 of Marc Ross, as amended,¹ pursuant to 11 DCMR §§ 3103.2, 3104.1, and 411, for a variance from the penthouse use requirements under § 411.5(b), and a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, and special exceptions from the rooftop structure requirements under § 400.24, the rooftop mechanical equipment requirements under § 411.5, the penthouse enclosing wall requirements under § 411.10, and the penthouse screening requirements under § 411.18, to construct a rear addition to an existing two-story, one-family dwelling in the R-4 District at premises 1018 9th Street, N.E. (Square 909, Lot 21).

HEARING DATES: May 24, 2016 and June 14, 2016
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 6 (original), 23 (1st revised), and 33 (2nd revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board") 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.

¹ The Applicant originally requested special exception relief under § 223 not meeting the lot occupancy requirements of § 403.2 and submitted a waiver of public hearing for Expedited Review. (Exhibit 6 - original self-certification and Exhibit 2 – Waiver of Public Hearing for Expedited Review.) The application was placed on the Expedited Review Calendar of the Public Meeting of May 24, 2016. On April 14, 2016, the Applicant amended the application, and, as a result of the amendment, the application was removed from the Expedited Review Calendar and scheduled for a public hearing on May 24, 2016. The Applicant added special exceptions under §§ 400.24 (rooftop structure), 411.5 (rooftop mechanical equipment), and 411.18 (penthouse screening). (See Exhibit 23 – revised self-certification.) The Applicant posted the property with the amended relief on April 28, 2016. (See Exhibit 28, affidavit of posting, dated April 28, 2016.) At the May 24th hearing, the Applicant further amended the application with additional relief recommended by the Office of Planning. The Board continued the hearing to June 14, 2016 to afford the Applicant an opportunity to submit a revised self-certification form and post the property with the revised relief for the required 15-day period. Per the Board's instruction, the Applicant filed a final revised self-certification form (Exhibit 33) and posted the property with the relief being requested. (Exhibit 34 - affidavit of posting). The caption has been amended accordingly.

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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”) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report noting that at a regularly scheduled and properly noticed meeting on May 12, 2016, with a quorum present, it voted 8 to 0 in support of the application “on the condition that the materials used on the front of the design be extended to all areas on the addition that are visible from the street.” (Exhibit 29.) At the hearing on June 14, 2016, the Board inquired about the Applicant’s view of the ANC’s condition, and the Applicant’s architect testified that the Applicant plans to meet the ANC’s condition.

The Office of Planning (“OP”) submitted a report on May 17, 2016 recommending approval of the application as first amended by the Applicant and noted that additional relief may be required in the form of a variance from § 411.5(b) for penthouse use and a special exception under § 411.10 related to penthouse enclosing walls. OP expressed its support for the application should it be further amended. (Exhibit 31.) As noted in footnote 1 herein, the Applicant amended the application to include the relief suggested by OP.

The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 27.)

At the time of the hearing, there were no letters filed in support of the application. However, the Applicant’s representative testified that he had several support letters, and the Board left the record open to allow submission of the letters in support. However, at the time of this written order, no letters had been filed.

Variance Relief:

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 § 3103.2, for a variance from § 411.5(b). The only parties to this case were the Applicant and ANC 6A which supported 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 ANC and OP reports filed in this case, the Board concludes that in seeking a variance from § 411.5(b), the Applicant has met the burden of proving 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.

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Special Exception Relief:

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 and 411, for special exception relief under §§ 223, 403.2, 400.24, 411.5, 411.10, and 411.18. 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 ANC and the OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411, 223, 403.2, 400.24, 411.5, 411.10, and 411.18, 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.

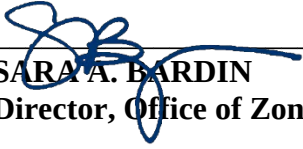
Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 30 – REVISED ARCHITECTURAL PLANS.**

VOTE: **5-0-0** (Marnique Y. Heath, Anita Butani D’Souza, Frederick L. Hill, Jeffrey L. Hinkle, and 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 summary order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 17, 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.

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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 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.