

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19368 of Lorenzo Wooten, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot width and area requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 307.1, to construct a new one-family dwelling on a vacant lot in the R-1-B Zone at premises 3156 Monroe Street N.E. (Square 4309, Lot 800).

HEARING DATE: November 2, 2016
DECISION DATE: November 2, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) 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") 5C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. (Exhibits 38 and 39.)

The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 19, 2016, at which a quorum was present, the ANC voted 5-0 to support the application, but listed six limitations related to construction issues based on the concerns of the Applicant's adjacent neighbor at 3158 Monroe Street, N.E., Ms. NaThanya Ferguson. The ANC's limitations included the following:

1. The Applicant shall add Ms. Ferguson to his Contractor/Builders' insurance policy to protect her against any damage done to her property.
2. The Applicant shall take measures to prevent any water runoff into Ms. Ferguson's basement.

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3. The Applicant shall monitor Ms. Ferguson's property for structural damage.
4. The Applicant shall ensure that any disturbance of Ms. Ferguson's property (such as landscaping) be returned to the approved project's pre-construction state.
5. Construction hours shall be between 8 a.m. and 4 p.m. Monday through Friday.
6. The Applicant shall establish a written agreement with Ms. Ferguson.

The Applicant testified that he would abide by the ANC's limitations and would continue to work with Ms. Ferguson and make best efforts to ensure that construction vehicles access the property from the alley and to address other construction-related concerns that arise.¹

The Office of Planning ("OP") submitted a timely report recommending approval of the side yard relief, but opining that variance relief for the lot area and width requirements was not required. (Exhibit 34.) During the public hearing, a representative from the Office of the Attorney General ("OAG") testified that variance relief for lot area and width requirements is needed in this case. Based on OAG's recommendation, OP provided testimony indicating that it would recommend approval of lot area and width relief, finding that the application has met the variance test for this aspect of the application as well. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the granting of the application. (Exhibit 32.)

Adjacent neighbor, Ms. NaThanya Ferguson, filed a letter to the record raising concerns regarding construction and privacy impacts. (Exhibit 35.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the lot width and area requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 307.1, to construct a new one-family dwelling on a vacant lot in the R-1-B Zone. The only parties to the case were the ANC and the Applicant. 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 Subtitle D §§ 302.1 and 307.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, 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.

¹ Because the limitations listed by the ANC are related to construction, they are outside the Board's jurisdiction and were therefore not adopted as conditions of the Order. Nonetheless, the Board has included the ANC's limitations in the text of the Order and notes that the Applicant has agreed to abide by those requirements.

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Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 36, AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall have minor flexibility to modify the window placement on the sides of the dwelling, based on his discussions with the owner of the property at 3158 Monroe Street, N.E.

VOTE: **3-0-2** (Frederick L. Hill, Anita Butani D'Souza, and Peter G. May, to APPROVE; Jeffrey L. Hinkle not participating and one Board seat vacant.)

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. BYRDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 15, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.