

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19684 of C&S Development, LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception pursuant to the inclusionary zoning dimensional modifications of Subtitle C § 1002.2, to subdivide the existing lot into three new lots and construct three flats in the RF-1 Zone at premises 2610 4th Street N.E. (Square 3551, Lot 801).

HEARING DATES: February 7, February 28, and March 28, 2018²
DECISION DATE: April 4, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 13 (original) and 50 (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") 5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC did not submit a report or participate in the hearing. The Applicant's agent testified on March 28, 2018 that although they had been in contact with the ANC, the ANC had removed or postponed the case from its docket multiple times.

¹ The original request included a request for special exception relief for rear addition under Subtitle E § 205.5 (Self-Certification, Exhibit 13), but that relief was withdrawn. (Revised Self-Certification, Exhibit 50.)

² This case was originally scheduled for a public hearing on February 7, 2018. That hearing was postponed at the Applicant's request to February 28 and March 28, 2018 in order to allow the Applicant to attend the ANC 5E March meeting. (Exhibit 37.) The Office of Planning supported the request to postpone. (Exhibit 32.) The case was heard on March 28, 2018 and scheduled for decision on April 4, 2018 to allow the Applicant to submit an amended application and revised plans.

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The Office of Planning (“OP”) submitted a report dated February 16, 2018, in which it recommended approval with conditions of the request for special exception of the Inclusionary Zoning (“IZ”) dimensional modifications to minimum lot width under Subtitle C § 1002.2, but denial of the request for rear addition relief under Subtitle E § 205.5. In response to OP’s recommendation, the Applicant revised the plans and amended the application to withdraw the request for rear addition relief, making OP’s objections moot.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 30.)

Two letters of support for the application from adjacent neighbors were submitted to the record. (Exhibits 36 and 40.)

A letter in opposition to the application from an Edgewood resident was submitted to the record. (Exhibit 29.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception pursuant to the inclusionary zoning dimensional modifications of Subtitle C § 1002.2, to subdivide the existing lot into three new lots and construct three flats in the RF-1 Zone. 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 adverse to any party.

The Board is required to give great weight to the recommendation of the Office of Planning (D.C. Official Code § 6-623.04 (2001).) Great weight means acknowledgement of the issues and concerns of the Office of Planning. As noted in this Order, OP recommended approval of the recommended approval with conditions of the request for special exception of the IZ dimensional modifications to minimum lot width under Subtitle C § 1002.2, but denial of the request for rear addition relief under Subtitle E § 205.5. In response to OP’s recommendation, the Applicant revised the plans and amended the application to withdraw the request for rear addition relief, rendering OP’s objections moot.

The Board is also required to give great weight to issues and concerns raised by the affected ANC (D.C. Official Code § 1-309.10(d).) ANC 5E did not submit a report or otherwise participate in the case. Thus, there was nothing to which to give great weight.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C § 1002.2, 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.

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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 REVISED PLANS AT EXHIBITS 46-47.**

VOTE: **4-0-1** (Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Robert E. Miller (by absentee ballot), to APPROVE; Frederick L. Hill, not participating.)

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 5, 2018

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.

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,

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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.