

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19780 of 79 81 U Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the side yard requirements of Subtitle E § 307.3, to construct two new flats in the RF-1 Zone at premises 79-81 U Street N.W. (Square 3117, Lots 69 and 68).

HEARING DATE: June 27, 2018

DECISION DATE: June 27, 2018

SUMMARY ORDER

SELF-CERTIFIED

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") 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 submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on May 15, 2018, at which a quorum was present, the ANC voted 8-0-0 in support of the application. (Exhibit 35.)

The Office of Planning ("OP") submitted a report, recommending approval of the application. (Exhibit 36.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 31.)

A letter of support from a neighbor was submitted to the record. (Exhibit 30.)

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Meridith Moldenhauer testified on behalf of the adjacent neighbor, 2003 1st Street LLC, in opposition. Ms. Moldenhauer, representing the adjacent neighbor of the property (2003 1st Street LLC), appeared to make a verbal request for party status and to waive the deadline for filing the request, as no written request had been made at that time. She explained that she had been retained that morning (and showed written authorization) and that the neighbor did not file a timely request because he did not receive proper notice of the hearing date. Based on testimony from the Applicant rebutting the contention that notice was deficient, the Board denied the request to waive the filing deadline, and thereby denied the verbal party status request.¹

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 an area variance from the side yard requirements of Subtitle E § 307.3, to construct two new flats in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. Because the request to file a late party status request was denied, 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 OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle E § 307.3, 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.

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 14.**

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

¹ Counsel for 2003 1st Street LLC raised two alleged notice defects and asked that the hearing be postponed. First, she raised the issue that the letter mailed to the adjacent neighbor's address contained the incorrect name, based on the Office of Tax and Revenue's records and the neighbor's recent purchase of the property. The returned letter is under Exhibit 32, which notes that it was returned to sender because the property is vacant. Counsel for the neighbor also showed an image, said to be taken that morning, showing that the notice sign was not posted on the property. The record also contains an affidavit of posting from the Applicant (Exhibit 37) and an affidavit of maintenance (Exhibit 38), indicating that the sign was posted June 12, 2018 and maintained after that date. Under Subtitle Y § 402.11, the Board considered the alleged notice defects and determined to continue with the hearing.

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. FARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 29, 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, 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

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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.