

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19768 of CDDC 1735-1737 10th St NW LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and pursuant to Subtitle X, Chapter 10, for variances from the lot occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and the side yard requirements of Subtitle E § 307.1, to construct two new flats in the RF-1 Zone at premises 1735 and 1737 10th Street N.W. (Square 363, Lots 105 and 106).

HEARING DATE: June 27, 2018
DECISION DATE: July 18, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (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") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, 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 June 5, 2018, at which a quorum was present, the ANC voted 6-0-0 in support of the application. (Exhibit 44.)

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 35.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 28.) An email from Fire Protection at the Department of Consumer and Regulatory Affairs ("DCRA") confirming no objection to granting the application was submitted to the record. (Exhibit 49F.) At the Board's request, several Historic Preservation and Review Board ("HPRB") filings were submitted to the

BZA APPLICATION NO. 19768
PAGE NO. 2

record. (Exhibits 49A-49C.) By a vote of 9-0, HPRB approved the concept as compatible with the character of the property and the historic district, in concurrence with the ANC, with the condition that the Applicant change the material to the north elevation to brick, reduce the apparent height of the bays, and coordinate fenestration design with the Historic Preservation Office (“HPO”) staff. (Exhibit 49C.)

A letter of support for the application from the adjacent neighbor to the east of the subject property was submitted to the record. (Exhibit 37.) Also, a letter of support for the application from the president of the French Street Neighborhood Association was submitted to the record. (Exhibit 38.)

As a preliminary matter¹, the Board heard a Request for Party Status in opposition from an adjacent property owner, Timothy States, who resides at 948 S Street, N.W., and an accompanying Request to Waive the filing deadline. (Exhibits 36-36B.) Subtitle Y § 404.3 requires that a Request for Party Status that is to be considered at a public hearing be filed with the Board not less than 14 days prior to the public hearing. (11-Y DCMR § 404.3.) Mr. States’ Request for Party Status was submitted on June 19, 2018, less than 14 days before the public hearing of June 27, 2018. In his Request to Waive the filing deadline. Mr. States claimed that he should be exempt from the strict requirements of Subtitle Y § 404.3 because he “did not dutifully grasp” the 14-day deadline. (Exhibit 36A.) Mr. States and his attorney were provided an opportunity to testify and argue the Request for Party Status and for the Waiver of the filing deadline. (Transcript of June 27, 2018 (“Tr.”) at p. 68-99.)

The Applicant opposed the Request for Party Status and Waiver of the filing deadline, arguing that Mr. States failed to show good cause why the Board should waive the 14-day filing deadline and also claimed that waiving the deadline would prejudice the Applicant. (Exhibit 39; See, Tr. p. 68-99.) By consensus, the Board denied the request for waiver of the filing deadline for party status. (Tr. p. 99.) Mr. States was given leave to testify as a person in opposition. (Tr. p. 120-127.)

Written comments in opposition to the application were submitted by a resident of 10th Street and Mr. Timothy States. (Exhibits 42 and 43.) A petition in opposition to the application signed by 21 neighbors also was submitted to the record. (Exhibit 46.)

The Board completed its hearing procedures on June 27th, including receiving testimony in opposition to the application from Mr. States and Dr. Nea Maloo, an architect who teaches at Howard University with whom Mr. States had consulted (Tr. p. 127-136).

Variance Relief

¹ When the case was first called, neither Mr. States nor his attorney were present. Rather than presuming the Party Status application had been withdrawn due to their absence, which the Board was authorized to do, the Board delayed hearing the case to allow them additional time to appear. (Tr. p. 38-43.)

BZA APPLICATION NO. 19768
PAGE NO. 3

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 occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and the side yard requirements of Subtitle E § 307.1, to construct two new flats in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. As the Request for Party Status 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 an area variance from 11 DCMR Subtitle E §§ 304.1, 306.1, 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.

Special Exception Relief

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 under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5. 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.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle C § 701.5, 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 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 EXHIBIT 31.**

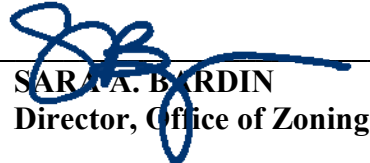
BZA APPLICATION NO. 19768
PAGE NO. 4

VOTE: **3-0-2** (Carlton E. Hart, Lesylleé M. White, and Robert E. Miller to APPROVE;
Frederick L. Hill, Lorna L. John, 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. BYRDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 30, 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

BZA APPLICATION NO. 19768
PAGE NO. 5

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.