

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19958 of NP 47 LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle E §§ 206.2 and 5203.3 from the rooftop architectural elements provisions of Subtitle E § 206.1, and pursuant to Subtitle X, Chapter 10, for area variances from the lot occupancy requirements of Subtitle E § 304 and non-conforming structure requirements of Subtitle C § 202, and a use variance under Subtitle U § 301 to reduce the number of existing residential units, reestablish the commercial use of the first floor, and remove an existing rear deck in an existing mixed-use building in the RF-1 Zone at the premises at 2021 4th Street, NW (Square 3082, Lot 26).

**HEARING DATE:** April 3, 2019  
**DECISION DATE:** April 3, 2019

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) 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") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 7, 2019, at which a quorum was present, the ANC voted 11-0-0 to support the application subject to the condition that commercial use be limited to operation hours of 7 a.m. to 10 p.m. (Exhibit 31.) The ANC also noted that it supports the Applicant's agreement to supply the LeDroit Park Civic Association with perennial flowers to be used tree boxes. Commissioner Patrick Nelson testified on behalf of the ANC in support of the application at the public hearing of April 3, 2019.

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Board of Zoning Adjustment  
District of Columbia  
CASE NO.19958  
EXHIBIT NO.43

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The Office of Planning (“OP”) submitted a timely report recommending approval of the use variance relief under Subtitle U § 301 and the special exception relief from Subtitle E § 206.1. (Exhibit 35.) However, OP recommended denial of the area variances from the lot occupancy requirements of Subtitle E § 304 and the non-conforming structure requirements of Subtitle C § 202, finding that the Applicant did not provide sufficient evidence that there exists an exceptional situation that would result in a practical difficulty on this property. The Board was not persuaded by OP’s recommendation to deny the area variance relief requested. The Board found that the Applicant provided sufficient evidence and testimony to demonstrate a confluence of factors that create an exceptional condition on the property, including the unusual shape of the lot, the unique configuration of the structure on the lot, and the condition of the structure. (Exhibit 40.) The Board concluded that these factors create a practical difficulty in restoring the structure. The Board concurs with OP’s finding that the proposal would cause no substantial detriment to the public good.

The District Department of Transportation submitted a timely report indicating that it had no objection to the application. (Exhibit 34.)

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 occupancy requirements of Subtitle E § 304 and non-conforming structure requirements of Subtitle C § 202 and a use variance under Subtitle U § 301.

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 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 with regard to the area variance and an undue hardship with regard to the use variances 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 E §§ 206.2 and 5203.3 from the rooftop architectural elements provisions of Subtitle E § 206.1.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested

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relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

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. Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33C AND THE FOLLOWING CONDITION:**

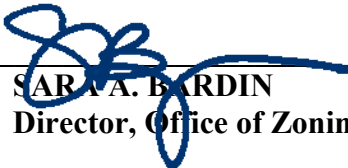
1. The commercial use hours of operation shall be limited to 7:00 a.m. to 10:00 p.m.

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Robert E. Miller to APPROVE.)

**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. BORDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** April 9, 2019

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

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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.

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.