

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 20144
BZA Order No. 20144(1)
David Barth and Lisa Kays
1832 15th Street, N.W. (Square 191, Lot 56)

ORDER ON REQUEST TO EXTINGUISH
BZA ORDER NO. 20144

Pursuant to notice, at its July 28, 2021, public meeting, the Board of Zoning Adjustment (the “**Board**”) considered a request (the “**Request**”) from Michael Kiefer and Stephanie Migdail, the current owners (“**Current Owner**”) of Lot 56 in Square 191, with an address of 1832 15th Street, N.W. (the “**Property**”) to

- Extinguish BZA Order No. 20144 (the “**Order**”)

by which the Board had granted the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified):

- Special exception from the rear wall extension requirements of Subtitle E § 205.4 pursuant to Subtitle E §§ 205.5 and 5201;
- Special exception from the nonconforming structure requirements of Subtitle C § 202.2 pursuant to Subtitle E § 5201.1(f);
- Special exception from the accessory building rear yard requirements of Subtitle E § 5004.1 pursuant to Subtitle E §§ 5007 and 5201; and
- Special exception from the lot occupancy requirements of Subtitle E § 404.1 pursuant to Subtitle E § 5201;

to construct a two-story rear addition with a basement (the “**Addition**”) to an existing, attached principal dwelling unit, and a second-story addition to a detached accessory building on the Property in the RF-2 Zone. For the reasons explained below, the Board voted to **APPROVE** the Request and **EXTINGUISH** the Order.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties in this proceeding pursuant to Subtitle Y § 403.5:
 - The Current Owners, as the successors-in-title to David Barth and Lisa Kays, the preceding owners of the Property (the “**Order Applicant**”), which they sold to the Current Owners by an April 29, 2021, deed recorded on the Land Records as Document 2021065060 (Ex. 107C); and

- Advisory Neighborhood Commission (“ANC”) 2B, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Y § 101.8.
2. At its October 16, 2019, public meeting, the Board granted party status in opposition to the following:
- Taylor and Sarah Nickel, the owners of 1834 15th Street, N.W., the property abutting the north of the Property (the “**North Abutters**”); and
 - Peter and Brittany Bepler, the owners of 1830 15th Street, N.W., the property abutting the south of the Property (the “**South Abutters**”).

NOTICE

3. The Current Owners served notice of the Request on the parties and the Office of Planning (“OP”) on June 15, 2021, as attested by the Certificate of Service included with the Request. (Ex. 107.)

II. THE REQUEST

4. The Current Owners requested that the Board extinguish the Order because:
- The North Abutters appealed the Order to the District of Columbia Court of Appeals as Case Number 21-AA-0119 (the “**Appeal**”);
 - The Current Owners have not built, nor have any interest in building, the Addition for which the Order’s relief was required; and
 - To resolve the Appeal, the Current Owners entered into an agreement with the North Abutters to request the Board to extinguish the Order with the North Abutters then dismissing the Appeal.
5. The Current Owners stated that the North Abutters had consented to the Request.

III. RESPONSES TO THE REQUEST

OP

6. OP did not file a response to the Request.

ANC 2B

7. ANC 2B did file a response to the Request.

PARTIES IN OPPOSITION

8. Neither the North nor South Abutters filed a response to the Request.

CONCLUSIONS OF LAW

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
- *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*

- *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
 - *Complies with the special conditions specified in the Zoning Regulations.*
2. The Board concludes that since the Addition has not been built, extinguishing the Order would not make the Property non-compliant with the Zoning Regulations based on the Property's RF-2 zoning.
 3. The Board concludes that the Current Owner, as the successor-in-title to the Order Applicant, has the rights and responsibilities accruing to the Property, including the right to construct the Addition, as well as to allow the Order to expire by not filing for an application for a building permit to construct the Addition within two years of the Order's effective date of January 27, 2021.
 4. The Board concludes that extinguishing the Order would be consistent with the Zoning Regulations because:
 - The Current Owner has no intention to construct the Addition, but instead to develop the Property under the matter-of-right development standards applicable to the Property; and
 - Extinguishing the order will promote judicial efficiency by allowing for the dismissal of the Appeal by mutual consent of the parties.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

5. The Board must give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8) *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
6. Since OP did not file a response to the Request, the Board has nothing to which it can give great weight.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

7. The Board must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); see Subtitle Y § 406.2) To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

8. Since ANC 2B did not file a written report in response to the Request, the Board has nothing to which it can give great weight.

DECISION

Based on the case record and the Findings of Fact and Conclusions of Law, the Board concludes that the Current Owner has satisfied the burden of proof for the requested relief and therefore **APPROVES** the Request to:

- Extinguish BZA Order No. 20144, which shall have no further force or effect.

VOTE (July 28, 2021) 4-0-1

(Lorna L. John, Chrishaun Smith, Carl Blake, and Michael G. Turnbull 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: August 5, 2021

PURSUANT TO 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.

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.