

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 21058
Rupsha 2011, LLC
2424 Pomeroy Road SE, (Square 5873, Lots 104, 856, 857, 903, 932)

HEARING DATE: March 20, May 8, September 18, and October 23, 2024¹
DECISION DATE: October 23, 2024

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a detached three-story with cellar, 39-unit apartment house in the RA-1 zone:

- Special Exception under the new residential development standards of Subtitle U § 421, pursuant to Subtitle X § 901.2

The zoning relief requested in this case was self-certified. (Exhibit 11.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 8B, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "Board") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.²

ANC REPORT. The ANC report indicated that at a regularly scheduled, properly noticed public meeting on October 15, 2024, at which a quorum was present, the ANC voted to support the application with conditions. (Exhibit 75.) The ANC's recommendation was conditioned on the Applicant's agreement to proposed security measures. The Board did not adopt the proposed conditions, finding that as they were not applicable to the zoning relief. The Board notes that the Applicant has nonetheless agreed to abide by these conditions.

¹ The public hearing was postponed from the March 20th and May 8th public hearings as requested by ANC 8B and due to notice issues.

² Additional public hearing notice was sent prior to the September 18th, 2024 public hearing to an updated list of property owners within 200 feet that had not been included in the original hearing's public notice. See Exhibit 50.

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The ANC submitted a letter on May 8, 2024 requesting the Board delay their decision until after the ANC voted, and also noted several concerns with the project following the ANC's recent meeting with the community. (Exhibit 47.)

ANC 8B Chair Joseph Johnson testified at the September 18, 2024 public hearing.

OFFICE OF PLANNING (“OP”) REPORT. OP submitted three reports to the record:

- The original OP report, dated March 8, 2024, recommended approval with conditions. (Exhibit 22.)
- The first supplemental OP report, dated September 11, 2024, recommended approval with conditions. (Exhibit 62.)
- The second supplemental OP report, dated October 17, 2024) recommended approval with conditions. (Exhibit 74.) OP recommended that the Board adopt four conditions related to compliance with the proposed plans. The Board adopted Condition Nos. 1-3, however, did not adopt Condition No. 4 relating to tree preservation and coordination with DDOT Urban Forestry.

DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT submitted three reports to the record:

- The original DDOT report, dated March 7, 2024, requested additional information and was unable to provide a recommendation to the Board. (Exhibit 23.)
- The first supplemental DDOT report, dated April 26, 2024, remained unable to provide a recommendation. (Exhibit 42.)
- The second supplemental DDOT report, dated September 6, 2024, indicated that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 60.)

PERSONS IN OPPOSITION. The Board received 12 letters in opposition. (Exhibits 21 (Casey Trees), 26, 31, 32 (DC Dream Center), 33, 34, 56-59A, 66 (Pomeroy Gardens LP), and 67)).

Talana Williams and Jay Munyasya testified in opposition at the October 23 and September 18, 2024, public hearings. Walter Johnston spoke in opposition at the September 18, 2024, public hearing.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and

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- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception under the new residential development standards of Subtitle U § 421, pursuant to Subtitle X § 901.2

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 73 and Exhibit 19 (tree protection plan) of the record, as required under Subtitle Y §§ 604.9 and 604.10, subject to the following **CONDITIONS**:

1. Compliance with the proposed site and landscaping plans in the architectural plans on pages A06, A07, and A29 in Exhibit No. 73 is required, with the exception of modifications noted below;
2. Proposed retaining walls and foundation walls shall be consistent with the visual character shown in the submitted renderings at Exhibit No. 73, page A29;
3. Shown trash area shall be screened from all sides, as shown at Exhibit No. 73, page A29.

VOTE: 3-0-2

(Frederick L. Hill, Chrishaun S. Smith, and Anthony J. Hood to APPROVE; Lorna L. John, and Carl H. Blake not present, 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. LARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: October 29, 2024

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.

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PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED 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.

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.