

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19841 of Habitat for Humanity of Washington D.C., as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 305.1 from the subdivision regulations of Subtitle C § 302.2, and pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the side yard requirements of Subtitle D §§ 307.1 and 307.4, to replace two detached dwelling units with 17 new semi-detached and detached dwelling units on a single record lot in the R-2 Zone at premises 900-914 55th Street N.E. (Square 5204, Lot 22).¹

HEARING DATES: October 24, 2018 and January 16, 2019²

DECISION DATE: January 16, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 41 (Revised); Exhibit 6 (Original).) 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 the initial application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 7C and to owners of property located within 200 feet of the site. Based on amendments to the relief requested, notice was also provided of the revised application in accordance with Subtitle Y § 402.1, except that the Board waived the requirement that revised notice be published in the *D.C. Register* at least 40 days in advance of the postponed hearing date. The site of this

¹ The Applicant amended the original application to add area variance relief from the side yard width requirements of Subtitle D § 307.1. (Exhibit 41.) At the public hearing, the Applicant requested additional area variance relief from the side yard requirements of Subtitle D § 307.4, as the Zoning Commission had not yet taken final action to remove that requirement at the time of the hearing. The caption has been revised accordingly.

² The hearing was originally scheduled for October 24, 2018 and postponed to January 16, 2019 at the Applicant's request.

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application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 10, 2019, at which a quorum was present, the ANC voted 6-1 to support the application. (Exhibit 65.)

The Office of Planning ("OP") submitted two reports for the record. OP was initially unable to make a recommendation and requested additional information from the Applicant. (Exhibit 37.) In a supplemental report, OP recommended approval of the revised plans and amended relief. (Exhibit 63.) The District Department of Transportation ("DDOT") also submitted two reports for the record. DDOT's initial report raised concerns about site access and circulation, recommending that the Applicant coordinate with DDOT on plan revisions. In a supplemental report, DDOT expressed no objection to the revised project, but proposed a condition regarding a surface easement over the private portion of the driveway from Hunt Place, N.E. to 55th Street, N.E. (Exhibit 60.) Rather than requiring the Applicant to record an easement, the Board adopted a condition requiring that the proposed private driveway remain open to public pedestrian and vehicular traffic.

One letter in opposition was submitted to the record by James White. (Exhibit 30.) Mr. White testified at the public hearing, raising concerns about construction impacts and traffic. Testimony was also given by Lynne Saffell raising concerns about the private driveway and by Mary Gaffney in support of the project.

Area 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 side yard requirements of Subtitle D §§ 307.1 and 307.4. The only parties to the case were the ANC and the Applicant. 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 ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle D §§ 307.1 and 307.4, 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.

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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 special exception under Subtitle C § 305.1 from the subdivision regulations of Subtitle C § 302.2. 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 OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C §§ 305.1 and 302.2, 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 § 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 58A AND WITH THE FOLLOWING CONDITION:**

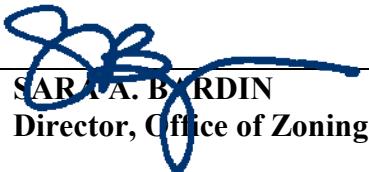
1. The 20-foot private driveway between Hunt Place, N.E. and 55th Street, N.E. shown on Sheet 6 of the Approved Plans shall remain open to public pedestrian and vehicular traffic.

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

FINAL DATE OF ORDER: January 17, 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 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.

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