

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18725-A on the Motion for Reconsideration and Rehearing of the Application of Rafael Romeu, pursuant to 11 DCMR § 3103.2, for a variance from lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, and a variance from the nonconforming structure requirements under § 2001.3, to allow the construction of a rear deck in the DC/R-4 District at premises 1536 T Street, N.W. (Square 191, Lot 98).

HEARING DATE: March 11, 2014
DECISION DATE: March 11, 2014
ORDER DATE: May 7, 2014
RECONSIDERATION
DECISION DATE: June 24, 2014

ORDER DENYING RECONSIDERATION AND REHEARING

By order dated May 7, 2014, the Board of Zoning Adjustment (the “Board”) granted the application of Rafael Romeu (the “Applicant”) submitted on December 30, 2013. The application requested variance relief from zoning requirements regarding lot occupancy, rear yard, and enlargement of a nonconforming structure to allow the construction of a rear deck in the DC/R-4 District at premises 1536 T Street, N.W. (Square 191, Lot 98) (“Subject Property”). After a public hearing on March 11, 2014, the Board granted the requested relief. The Board found that the Applicant’s detrimental reliance on the actions of the Department of Consumer and Regulatory Affairs (“DCRA”) constituted a unique zoning history, which contributed to the Subject Property’s exceptional condition. The Board noted in its written order that the Applicant relied in good faith on the assurances of a “DCRA zoning technician” and on the issuance of a DCRA building permit for the construction of the rear deck. The parties to the proceeding were the Applicant, Advisory Neighborhood Commission (“ANC”) 2B, and a consolidated party in opposition (the “Opposition Party”), including James Hill, Amir Afkhami, and Robert Uth.

On May 20, 2014, counsel for the Opposition Party filed a motion for reconsideration of the Board’s decision and rehearing of the case based on what it claimed to be new evidence. The evidence proffered by the Opposition Party was obtained from DCRA through a Freedom of Information Act (“FOIA”) request and showed that Jeannette Anderson, the DCRA employee on whose approval the Applicant initially relied, has the official job title of Engineering Technician and not Zoning Technician, as stated in the record and in the Board’s order. The Opposition

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Party also submitted the job description for Engineering Technician to support the allegation that Ms. Anderson's position does not require knowledge or familiarity with the zoning regulations. Based on this evidence, the Opposition Party argued that the Applicant's reliance on the assurances of Ms. Anderson was unreasonable, and therefore, the application should be reheard, reconsidered, and denied. The Opposition Party also raised the issue that the Applicant should have met with the Zoning Administrator ("ZA") and sought a Preliminary Design Review Meeting instead of relying on the other actions of DCRA. This procedure, the Opposition Party asserted, is widely used and costs "only \$65."

By letter dated May 28, 2014, counsel for the Applicant responded to the motion, arguing that the evidence submitted by the Opposition Party provides no new information and, further, provides no basis to rehear or reconsider the case. The Applicant noted that the Opposition Party did not challenge the Applicant's reliance on DCRA's issuance of a building permit, which would support a finding of detrimental reliance on its own. The Applicant also contended that the proffered job description does not support the Opposition Party's argument as to Ms. Anderson's qualifications, as the description contains references to the Engineering Technician's need to "determine compliance with zoning codes" and to "develop zoning analyses for ... architects ... to ensure compliance with the District of Columbia construction standards, specifications, and zoning codes." For these reasons, the Applicant requested that the Board deny the motion.

On May 29, 2014, the Opposition Party filed a response to the Applicant's letter. The Opposition Party argued that the position description does not demonstrate a need to be familiar with the zoning regulations and that, if such familiarity were required, it would be indicated in the description. The Opposition Party also noted that the Applicant did not address the option of meeting with the ZA as a means of obtaining reliable zoning advice.

The Board considered the matter at its public meeting on June 24, 2014 and voted to deny the motion.

CONCLUSIONS OF LAW

Pursuant to § 3126.2 of the Zoning Regulations, any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed within 10 days from the date of issuance of a final written order by the Board. In this case, the written order granting the application was issued on May 7, 2014 and the motion for reconsideration and rehearing was timely filed on May 20, 2014.

A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. (11 DCMR § 3126.4.) The Board will not consider a request for rehearing unless new evidence is submitted that could not reasonably have been presented at the original hearing. (11 DCMR § 3126.6.)

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With its motion for reconsideration and rehearing, the Opposition Party introduced evidence that the official job title of Jeannette Anderson is Engineering Technician, and not Zoning Technician as represented in the record and in the Board's order. The evidence presented by the Opposition Party was obtained by FOIA request, which could have been requested and made available at the time of the hearing. In any event, the Board finds that the evidence does not merit reconsideration or rehearing of the case.

In granting the original application, the Board found that the Applicant had, in good faith, detrimentally relied on the assurances of DCRA. These assurances took two forms: the opinion of the aforementioned DCRA employee and the issuance of a building permit. It is well settled that "good faith detrimental reliance on zoning actions" constitutes unique zoning history and contributes to the exceptional condition of the property. *See Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097-98 (D.C. 1979). When determining whether good faith, detrimental reliance occurred in this case, the proper consideration is not whether Ms. Anderson's job description demonstrates that she was, in fact, qualified to give zoning advice. Rather, the Board must consider whether Ms. Anderson represented herself as being authorized to provide zoning advice such that the Applicant relied on her approval in good faith. The evidence presented by the Opposition Party does not dispute that Ms. Anderson represented herself as a person authorized to undertake zoning reviews, nor does it dispute that the Applicant relied in good faith upon Ms. Anderson's representation. The mere fact that her title was incorrectly reflected in the record and the Board's order is therefore immaterial.

Nonetheless, as to the requirements of the Engineering Technician position, the Board concurs with the Applicant that the evidence proffered by the Party in Opposition undermines its argument. Despite "zoning" being absent from the position title, the requirements of Ms. Anderson's role include the need to "determine compliance with zoning codes" and to "develop zoning analyses for ... architects ... to ensure compliance with the District of Columbia construction standards, specifications, and zoning codes." The Board finds that these requirements demonstrate a need for the employee to be familiar with the zoning code in order to determine issues of compliance. In any event, the Applicant's reliance on Ms. Anderson's approval is secondary to his reliance on the building permit issued by DCRA, which would, on its own, support the Board's finding of good faith detrimental reliance. *See e.g. Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 753 (D.C. 2011) (Holding that the Applicants' reliance on the issuance of a DCRA building permit was reasonable, as they had no reason to believe they were not acting in accordance with the zoning regulations); *Application No. 18570 of 1845 North Capitol Street NE LLC* (2013) (Finding that the Applicant's reliance on a DCRA building permit, which was subsequently revoked, gave rise to an exceptional condition to justify granting variance relief.)

In its motion and response letter, the Opposition Party mentions that the Applicant should have sought out the opinion of the Zoning Administrator himself, noting that the process is widely used and not costly. The alternative means an applicant could pursue to ensure compliance with the zoning regulations are not relevant to the Board's considerations here. In *Oakland*

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Condominium, 22 A.3d at 753, the petitioner put forth a similar argument, claiming that the applicant was not sufficiently diligent in his efforts to ensure zoning compliance, and therefore, could not invoke reliance on a building permit as an exceptional condition. The Court rejected this argument, holding that the proper consideration is whether the applicant “had relied in good faith on the actions of city officials.” *Id.* at 753-54. As previously discussed, this is the standard by which the Board made its finding that the Applicant’s reliance on DCRA’s actions contributed to the exceptional condition of the property. Therefore, the Board finds no reason to revisit the issue.


Accordingly, it is **ORDERED** that the **Motion for Reconsideration and Rehearing** is **DENIED**.

VOTE: **3-0-2** (Jeffrey L. Hinkle, Lloyd J. Jordan, and Anthony J. Hood (by absentee ballot) to Deny; S. Kathryn Allen not present, not voting, and Marnique Y. Heath not having heard the case, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 15, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.