GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19796 of 3324 Sherman Avenue LLC, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the side yard requirements of Subtitle E § 307.4, and under the residential conversion requirements of Subtitle U § 320.2, to convert an existing flat to a three-unit apartment house in the RF-1 Zone at premises 3324 Sherman Avenue N.W. (Square 2841, Lot 864).

HEARING DATES: September 12, 2018 and October 3, 2018[2]
DECISION DATES: September 19, 2018 and October 3, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 5 (original), 11 (corrected), and 35 (revised).) 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") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report in support of the application. The ANC report indicated that at a

[1] The original self-certification form **(**Ex. 5**)** was corrected to reflect relief from Subtitle U § 320.2 before the case was advertised. (Ex. 11.) The Applicant subsequently amended the application to add side yard relief. (Ex. 35.) The Applicant later submitted a revised burden of proof noting that it also was seeking a waiver from the rear addition requirements of Subtitle U § 320.2(e), based on revised plans.

[2] The case was heard on September 12, 2018 and scheduled for decision on September 19, 2018; however, at its Public Meeting on September 19, 2018, the Board reopened the record and scheduled a further hearing for October 3, 2018 and ultimately decided the case after the conclusion of that hearing.

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duly noticed and scheduled public meeting on June 13, 2018, at which a quorum was present, the ANC voted 4-3-0 in support of the application. (Exhibit 15.) The Board, in response to some issues raised by neighbors, reopened the hearing to hear further testimony on October 3, 2018. Commissioner Boese testified in support of the application at the public hearing on October 3, 2018.

The Office of Planning ("OP") submitted a two timely reports. In its first report, dated August 31, 2018, OP recommended approval for side yard relief, but denial of relief from Subtitle U § 320.2. In its report, OP also recommended that the Applicant submit a shadow study and a more detailed site plan. (Exhibit 37.) In response, the Applicant submitted a solar study and revised plans. (Exhibits 39 and 40.) As a result, OP submitted a supplemental report dated September 10, 2018, recommending approval of all the relief, including residential conversion relief. (Exhibit 44.)

DDOT submitted a timely report indicating that it had no objection to the grant of the application with conditions. (Exhibit 34.)

Letters of support for the application were submitted to the record from 3328 Sherman Avenue, N.W. dated August 30, 2018, and Keith Carr of 3322 Sherman Avenue, N.W. (Exhibits 47, 54, and 59.)

A letter in opposition to the application was submitted to the record from Melanie Pirchner, owner of Unit 1, 3328 Sherman Avenue, N.W. and Natalie and Ethan Andrews, owners of Unit 2, 3328 Sherman Avenue, N.W.[3] (Exhibit 61.)

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 exceptions under Subtitle E § 5201 from the side yard requirements of Subtitle E § 307.4, and under the residential conversion requirements of Subtitle U § 320.2, to convert an existing flat to a three-unit apartment house in the RF-1 Zone. 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 5201 and 307.4, and Subtitle U § 320.2, 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.

[3] The Applicant responded to the letter of opposition from Ms. Pirchner and clarified the timeline of their interactions with the neighbors. (Exhibit 62.)

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 40 AND THE FOLLOWING CONDITION:**

1. Prior to the issuance of any building permit authorized by this Order, the Applicant shall obtain the issuance of a building permit for 3322 Sherman Avenue, N.W. to raze the chimney or otherwise comply with the requirements of Subtitle U § 320.2(f).

VOTE: **3-0-2** (Frederick L. Hill, Carlton E. Hart, and Lesylleé M. White to APPROVE; Lorna L. John and Peter G. May, 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: October 11, 2018

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.