

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19844 of Richard Gbolahan, as amended¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502.2, and pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the front setback requirements of Subtitle B § 315.1(c), the lot width and lot area requirements of Subtitle E § 201.1, and the side yard requirements of Subtitle E § 307.1, to construct a new flat in the RF-1 Zone at premises 1033 16th Street, N.E. (Square 4074, Lot 828).

HEARING DATES: November 7, 2018 and December 12, 2018²
DECISION DATE: December 12, 2018

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated July 9, 2018, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibit 9 (original).) The original ZA memo cited the relief as special exceptions for front setback, side yard, and penthouse. Two revised ZA memos were submitted to correct the relief. (Exhibits 43 and 44.) The final revised memo clarified that front setback and side yard relief are variances and added relief for lot area/width and penthouse setback. (Exhibit 44.)

The Board of Zoning Adjustment (“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”) 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is

¹ The Applicant amended the application (Exhibit 53) based on the revised Zoning Administrator memorandum (Exhibit 44), by adding to the original request a special exception for penthouse setback relief under Subtitle C § 1502.2 and variance relief from the lot width and lot area requirements of Subtitle E § 201.1, as well as changing the original request for special exceptions to one for variances for side yard relief under Subtitle E § 307.1 and front setback relief under Subtitle B § 315.1(c).

² On November 7, 2018, the Board continued the hearing to allow the Applicant an opportunity to revise the posting on the property to reflect the amended relief, and present the amended application to the ANC.

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automatically a party to this application. The ANC submitted two reports recommending approval of the application. The ANC's first report, dated November 1, 2018, stated that at a regularly scheduled, properly noticed public meeting on October 9, 2018, at which a quorum was present, the ANC voted 4-0-0 to support the application. (Exhibits 38 and 39.) After meeting with the Applicant on the amended application (as requested by the Board), ANC 5D filed another letter, dated December 11, 2018, expressing support for the amended relief. The ANC letter of December 11, 2018, indicated that at a properly noticed public meeting on November 13, 2018, at which a quorum was present, the ANC voted 5-0 in support of the amended application. (Exhibit 57.)

The Office of Planning ("OP") submitted timely reports and testified at the hearing, recommending approval of the application as originally submitted, and as amended. (Exhibit 34 – original; Exhibit 54 – supplemental.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 33.)

Six letters of support (Exhibit 35) and two letters of concern/opposition (Exhibits 41 and 42) were submitted into the record.

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 front setback requirements of Subtitle B § 315.1(c), the lot width and lot area requirements of Subtitle E § 201.1, and the side yard requirements of Subtitle E § 307.1, to construct a new flat in the RF-1 Zone. 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 averse 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 B § 315.1(c), and Subtitle E §§ 201.1 and 307.1, 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.

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 exceptions from the penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502.2. The only parties to the case were the ANC

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and the Applicant. 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 §§ 1500.4 and 1500.2, 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 51 – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter A. Shapiro to APPROVE).

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. BARDEN
Director, Office of Zoning

FINAL DATE OF ORDER: December 18, 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

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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.

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.