

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19921 of Garfield Malcolm, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, under Subtitle D §§ 306.4 and 5201 from the rear addition requirements of Subtitle D § 306.3, under the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c), to permit an existing rear addition and to construct a rooftop access penthouse on an existing semi-detached principal dwelling unit in the R-3 Zone at premises 4414 9th Street N.W. (Square 3020, Lot 36).

HEARING DATE: February 13, 2019
DECISION DATE: February 13, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 43 (Final Revised); Exhibit 22 (Prior Revised); Exhibit 12 (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 this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 9, 2019, at which a quorum was present, the ANC voted 6-0-3 to support the application.

¹ The original application was amended to add special exception relief under the penthouse requirements of Subtitle C § 1500.4. (Exhibit 43.) The caption has been revised accordingly.

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(Exhibit 40.) ANC Commissioner for 4C07, Kim Varzi, appeared at the public hearing to testify in support of the application.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application, provided that the Applicant reduce the height of the penthouse to 10 feet. (Exhibit 46.) The Applicant did so and submitted revised plans to the record. The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 45.)

The Board received 19 letters of support from neighbors. (Exhibit 9.)

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 D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, under Subtitle D §§ 306.4 and 5201 from the rear addition requirements of Subtitle D § 306.3, under the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c). 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 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

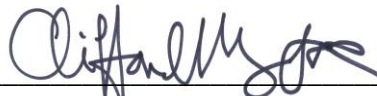
Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 44.**

VOTE: **5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, 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. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 15, 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.

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.