

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17934-A of Behzad Hosseinkhani, pursuant to 11 DCMR § 3103.2, for variances from the nonconforming structure provisions under subsection 2001.3, the lot occupancy requirements under subsection 403.2, and rear yard setback requirements under subsection 404.1, to allow a third story addition to an existing flat (two-family dwelling) in the R-4 District at premises 1721 4th Street, N.W. (Square 519, Lot 54).¹

HEARING DATE: July 28, 2009
DECISION DATES: October 6 and 27, 2009

CORRECTED SUMMARY ORDER²

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a letter, dated December 31, 2008, from the Zoning Administrator. (Exhibit 25)

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) 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C filed a report, indicating that with a quorum present, the ANC voted on July 21, 2009, to recommend approval of the application.³ (Exhibit 28). The ANC filed a subsequent report, dated October 5, 2009, after reviewing the revised plans, and indicated that the ANC, at a duly noticed meeting with a quorum present, voted to recommend approval of the application. (Exhibit 31). The Office of Planning

¹ The application was amended to include relief from the requirements of lot occupancy under subsection 403.2 and rear yard setback requirements under subsection 404.1. At the hearing the Board expressed some reservations concerning the Applicant's design and, in response, the Applicant submitted revised plans. Revised plans were filed and the Board's approval was based on those revised plans. (Exhibit 30).

² The order was revised to correct the Square number from 516 to 519.

³ The Board questioned whether the ANC had properly notified the community of the meeting and its consideration of the project. The ANC's first report was silent as to that issue.

(OP) submitted a report in support of the application. (Exhibit 21). M. Marie Maxwell testified in opposition to the application, both for herself and Mr. Grumbine. Both of them also submitted letters in opposition. (Exhibits 26 and 27). The record also contains one letter and a petition with 20 signatures in support of the application. (Exhibits 23 and 24).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, for variances from subsections 2001.3, 403.2, and 404.1. Based upon the record before the Board and having given great weight to the OP and ANC report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2001.3, 403.2, and 404.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship 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. No parties appeared at the public hearing in opposition to this application.⁴ Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 30 – Amended Plans) be **GRANTED**.

VOTE: 4-0-1 (Shane L. Dettman, Peter G. May, Marc D. Loud, Meridith H. Moldenhauer to APPROVE. No other Board members participating or 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:


JAMISON L. WEINBAUM

Director, Office of Zoning

NOV 18 2009

FINAL DATE OF ORDER: _____

⁴ Neither Ms. Maxwell nor Mr. Grumbine requested or were granted party status.

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UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, 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 PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY

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BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT
TO THIS ORDER.

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As Director of the Office of Zoning, I hereby certify and attest that on NOV 18, 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: 
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