

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18018 of Shawn Ayize Sabater, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the floor area ratio requirements under subsection 771.2, and special exceptions from the zoning boundary line provisions under subsection 2514.2 and to allow required parking spaces to be located on another lot under subsection 2116.6¹, to allow an addition to an existing commercial building, in the C-2-A District at premises 2616 Georgia Avenue, N.W. (Square 2884, Lot 34).

HEARING DATE: January 19, 2010
DECISION DATE: January 19, 2010 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6).

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) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B filed a report, dated December 17, 2009, indicating that the ANC considered and voted unanimously to support the application at a regularly scheduled, duly noticed meeting on October 1, 2009 at which a quorum was present. (Exhibit 27). The Office of Planning (OP) filed a timely report recommending approval of the application. (Exhibit 30). Letters of support from Councilmember Jim Graham, who represents the Ward in which the subject property is located, as well as from Thomas

¹ The application was amended to add the relief under subsection 2116.6 to allow two of the four required parking spaces to be located nearby off-site, while the other two spaces remain on-site. (Exhibit 28).

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Kwesi Danda Smith, the Chair of ANC 1B and the Single Member District ANC Commissioner, and Darren R. Jones, President, Pleasant Plains Civic Association, were submitted for the record. (Exhibits 22 and 11).

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 a variance from the floor area ratio requirements under subsection 771.2. 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 the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 771.2, 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.

In addition, 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 § 3104.1, for special exception under 11 DCMR §§ 2514.2 and 2116.6. 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 §§ 3104.1, 2514.2 and 2116.6², 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 § 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 10 – Plans) be **GRANTED**.

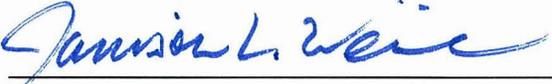
² With respect to the special exception from § 2116.6, the Board indicated that the ANC's report, because it failed to articulate the actual relief being requested under the Zoning Regulations and incorrectly alluded to an easement instead, could not be given great weight as to that one part of the application. Nevertheless, the Board acknowledged that this did not change the result and its approval of the entire application.

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VOTE: 3-0-2 (Marc D. Loud, Meridith H. Moldenhauer, Shane L. Dettman to APPROVE. Two other Board members (one vacant) not present, nor 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

FINAL DATE OF ORDER: JAN 22 2010

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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JAN 22 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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:


A handwritten signature in cursive script, reading "Jamison L. Weinbaum", is written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning