

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18113 of Jonathan M. Harwitz and Sandhya Mehta**, pursuant to 11 DCMR § 3104, for a special exception to allow an accessory apartment in an existing one-family detached dwelling under subsection 202.10, in the R-1-B District at premises 1407 Leegate Road, N.W. (Square 2769, Lot 42).

**HEARING DATES:** October 19, 2010 and November 9, 2010  
**DECISION DATE:** November 9, 2010

**DECISION AND ORDER**

This application was submitted on June 10, 2010, by Jonathan M. Harwitz and Sandhya Mehta, (“Applicants”), the owners of the property that is the subject of this application (“subject property”). The application requests special exception relief to permit an accessory apartment in the basement of the Applicants’ dwelling, a one-family detached dwelling in an R-1-B Zone District.

The Board of Zoning Adjustment (“Board”) scheduled a hearing on the application for October 19, 2010, but due to a very late posting of the property – on October 18, 2010 – re-scheduled the hearing for November 9, 2010. On November 9<sup>th</sup>, the hearing was held and at its conclusion, the Board voted 3-0-2 to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated June 15, 2010, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation, Advisory Neighborhood Commission (“ANC”) 4A, the ANC within which the subject property is located, Single Member District 4A02, and the Councilmember for Ward 4. Pursuant to 11 DCMR § 3113.13, OZ published notice of the

**BZA APPLICATION NO. 18113**  
**PAGE NO. 2**

hearing on the application in the *D.C. Register*, and on July 16, 2010, sent such notice to the Applicants, ANC 4A, and all owners of property within 200 feet of the subject property.

Request for Party Status. A neighbor, Ms. Jourdinia S. Brown, requested opposition party status. Ms. Brown lives across the street from the subject property and expressed concerns that allowing the requested accessory apartment could negatively affect the character of the neighborhood and the values of nearby properties. The Board granted her party status.

Applicants' Case. Both Mr. Harwitz and Ms. Mehta appeared and testified at the hearing. They explained their proposal and how they felt it met all the necessary special exception provisions.

Government Reports. OP filed a report with the Board on October 12, 2010, recommending approval of the application. The OP report sets forth each of the provisions of 11 DCMR § 202.10, and opines that each is met. The report also opines that the application likewise meets the standards of § 3104. OP expressed no reservations or concerns about the application. (Exhibit 25.)

ANC Report. ANC 4A submitted a report to the Board on October 4, 2010 recommending conditional approval of the application. The three conditions requested by the ANC are that no external changes be made to the subject dwelling, the "maximum period of time for this rental apartment is 2 years from date of approval by BZA," and that the Applicants will adhere to all laws and regulations. The ANC report goes on to state that the ANC considers this a "one-time emergency." (Exhibit 23.)

Persons in Support or Opposition. The Board received letters, e-mails, and petitions with signature lists both in support of, and in opposition to, the application. (*See, e.g.*, Exhibits 28 & 34.)

**FINDINGS OF FACT**

The subject property and the surrounding neighborhood

1. The subject property is located at address 1407 Leegate Road, N.W., Square 2769, Lot 42, in an R-1-B Zone District.
2. The subject lot encompasses an area of approximately 6,304 square feet.
3. The subject property sits at the rounded juncture of Leegate Road and 14th Street, N.W., and abuts a 16-foot-wide public alley along its northeastern property line.
4. The subject lot is developed with a one-story plus basement one-family detached dwelling, which is flanked by similar one-family detached dwellings.

**BZA APPLICATION NO. 18113**  
**PAGE NO. 3**

5. The subject dwelling has a gross floor area of 2,808 square feet and does not have a garage.
6. The surrounding neighborhood is comprised of one- and two-story one-family detached dwellings.

The Applicants' proposal meets all the applicable special exception provisions

7. The Applicants propose to devote part of the basement of the subject dwelling to use as an accessory rental apartment, necessitating special exception relief pursuant to 11 DCMR § 202.10.
8. The subject property has an area of more than 5,000 square feet, and the subject dwelling has an area of more than 2,000 square feet. (11 DCMR § 202.10(a)-(b).)
9. The accessory apartment will occupy approximately 18.84% of the gross floor area of the home. (11 DCMR § 202.10(c).)
10. No construction is necessary as the accessory apartment will exist within the subject dwelling's existing footprint, adding no lot occupancy or gross floor area. (11 DCMR § 202.10(d).)
11. The entrance to the accessory apartment is located at the rear of the dwelling and does not face a street. (11 DCMR § 202.10(e).)
12. The Applicants and their two children will continue to reside in the subject dwelling as their principal dwelling and will rent out the accessory apartment to no more than two people. (11 DCMR § 202.10(f)-(g).)
13. There is no home occupation being practiced at the subject dwelling. (11 DCMR § 202.10(h).)
14. Accessory apartments are permitted in this R-1-B Zone as long as they meet the applicable special exception criteria set forth at § 202.10 and § 3104.
15. The use of a portion of the dwelling's basement as an accessory apartment will not have any effect on the light, air, or privacy currently available to, or enjoyed by, neighboring properties.
16. The addition of one or two apartment dwellers to the subject property will not cause any undue noise.
17. If the apartment dweller(s) have a vehicle, the addition of one more vehicle in the neighborhood will not cause any significant impact on available on-street parking or on traffic.

## **CONCLUSIONS OF LAW**

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicants also had to meet the requirements of § 202.10.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Section 202.10 sets forth eight provisions which an application must meet in order to fulfill the requirements to be granted a special exception for an accessory apartment. Subsection 202.10(i) allows for up to two of these provisions to be waived. As set forth in Findings of Fact 7-13, Application No. 18113 unquestionably meets all the provisions set forth in § 202.10, and has no need of a waiver.

Application No. 18113 also meets the requirements of § 3104.1 that it not adversely affect neighboring properties and that it be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The proposed basement apartment would house, at most, two people, not adding any significant population density to the neighborhood. The denizen(s) of the apartment may or may not have a vehicle, but if they do, the Board does not foresee any significant impact on traffic or parking. The Applicants will continue to reside in the dwelling, which will remain a residential use, as contemplated by the Zoning Regulations and Zoning Maps.

Many of the concerns raised by the opposition are inapposite. Recent increases in traffic congestion, pedestrian traffic, and/or "pollution," such as dogs urinating on lawns, have nothing to do with this application and appear to stem from nearby development, some of which is not even in the District, but in adjacent Montgomery County, Maryland. Nor does the Board see that this basement apartment can change the character of the neighborhood, deflate property values, or pose a security risk. The Applicants will continue to maintain their property, and, particularly with their two small children living in the dwelling, will carefully screen any tenants, eliminating any security concerns.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP was in support of granting the special exception, and the Board agrees with its position.

ANC 4A recommended approval of the application with three conditions. The first – that no external changes be made to the dwelling -- is met by the application. The third – adherence to applicable laws and regulations – is axiomatic and self-executing. The second ANC condition is a term limit of two years for the rental apartment use. The ANC also notes that if the special exception is granted, it should not set a precedent because the ANC considers it a "one-time emergency." (Exhibit 23.)

The Board parts company with the ANC concerning the term limit. This special exception is a residential use in a residential neighborhood, and is a *de minimus* change to the current one-family use of the dwelling that will have little or no effect on the neighborhood. The Board is not clear what "emergency" the ANC is specifically referring to, but the Board does agree with the ANC that the granting of this special exception does not set a precedent. The Board handles each case on its own facts and the granting of one special exception does not "lead" to the granting of another.

For all the reasons stated above, the Board concludes that the application satisfies the burden of proof for a special exception pursuant to §§ 3104 and 202.10 to allow an accessory apartment in a one-family detached dwelling. Accordingly, it is **ORDERED** that the application is **GRANTED**.

**VOTE:**           3-0-2           (Meridith H. Moldenhauer, Nicole C. Sorg, and Jeffrey L. Hinkle to Approve; No Zoning Commission member and no other Board member (vacant) participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members have approved the issuance of this order.

**ATTESTED BY:**   
**JAMISON L. WEINBAUM**  
Director, Office of Zoning

**FINAL DATE OF ORDER:** APR 04 2011

**BZA APPLICATION NO. 18113**  
**PAGE NO. 6**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



BZA APPLICATION NO. 18113

As Director of the Office of Zoning, I hereby certify and attest that on APR 04 2011, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Jonathan M. Harwitz & Sandhya Mehta  
1407 Leegate Road, N.W.  
Washington, D.C. 20012

Jourdinia S. Brown  
7820 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20012

Chairperson  
Advisory Neighborhood Commission 4A  
7600 Georgia Avenue, N.W., Suite 404  
Washington, D.C. 20012

Single Member District Commissioner 4A02  
Advisory Neighborhood Commission 4A  
1326 Hemlock Street, N.W.  
Washington, D.C. 20012

Muriel Bowser, Councilmember  
Ward Four  
1350 Pennsylvania Avenue, N.W., Suite 406  
Washington, D.C. 20004

Melinda Bolling, Esq.  
General Counsel  
Office of General Counsel  
Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, S.W., 5<sup>th</sup> Floor  
Washington, D.C. 20024

ATTESTED BY:   
JAMISON L. WEINBAUM  
Director, Office of Zoning

---

441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)