

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18293 of Nesar Nusraty, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the closed court requirements under section 406, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a second story rear addition to a flat (two-unit dwelling), in the R-4 District at premises 1819 10th Street, N.W. (Square 362, Lot 212).

HEARING DATE: January 17, 2012

DECISION DATE: January 17, 2012

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated January 21, 2012, from the Zoning Administrator stating that a review of plans and the Applicant's application for a second story rear addition indicates that Board of Zoning Adjustment ("BZA" or "Board) approval is needed for variances from 11 DCMR §403.2, to allow a second story rear addition for a structure that exceeds the maximum allowable lot occupancy; from § 406.1, to allow a second story rear addition for a structure that does not provide the minimum required width and area for a closed court; and from § 2001.3, to allow a second story rear addition for a nonconforming structure that does not comply with the lot occupancy requirements in the R-4 Zone District. (Exhibit 4.)

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 the Applicant, Advisory Neighborhood Commission ("ANC") 1B, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B did not submit a report, nor were they present at the hearing. The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 26.) Letters of support were submitted to the record from neighbors Wendy Kim, 1817 10th Street, N.W. (Exhibit 8) and Mary Nelson, 943 Westminster Street, N.W. (Exhibit 7).

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the lot occupancy requirements under § 403; the closed court requirements under § 406; and the nonconforming structure provisions under § 2001.3, to allow a second story rear

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addition to a flat (two-unit dwelling). 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 adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the OP report filed in this case¹, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for variances under §§ 403, 406, and 2001.3, 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 requested 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

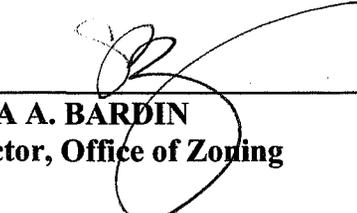
It is therefore **ORDERED** that the application is hereby **GRANTED (pursuant to Exhibit 9, Plans)**.

VOTE: 5-0-0 (Meridith H. Moldenhauer, Marcie I. Cohen, Nicole C. Sorg, Lloyd L. Jordan, and Jeffrey L. Hinkle, 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: **JAN 26 2012**

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 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

¹ The Applicant's architect testified at the hearing that the ANC had met and approved the project. He also indicated that the Westminster Neighborhood Association had reviewed and approved the project. However, no written report from the ANC was received, nor did the ANC attend the hearing. Consequently, as the ANC did not file a written report nor attend the hearing, there was no ANC position to which to give great weight.

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REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. 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.

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As Director of the Office of Zoning, I hereby certify and attest that on January 26, 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Nesar Nusraty
11018 Gainsborough Road
Potomac, MD 20854

Joel Heisey
1516 12th Street, N.W.
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Advisory Neighborhood Commission 1B
2000 14th Street N.W., Suite 100B
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Single Member District Commissioner 1B02
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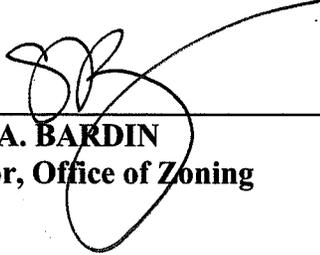
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ATTESTED BY:



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Director, Office of Zoning