

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18506-A of Ontario Residential LLC, pursuant to 11 DCMR §§ 3104.1 and 3102.2 for a special exception from the roof structure provision under § 777.1 (§§ 411.2, 411.3 and 411.5), for the number, location, and varying height of the roof structures on the proposed building, a special exception from the requirement that all compact spaces be placed in groups of at least five contiguous spaces with access from the same aisle under § 2115.4, a variance from the off-street parking requirements under § 2101.1 and a variance from the loading berth and delivery space provisions under § 2201.1, to allow a mixed use residential building, with ground floor retail in the C-2-B District at premises 1700 Columbia Road, N.W. (Square 2565, Lot 52).

HEARING DATE: February 26, 2013
DECISION DATE: February 26, 2013
ORDER DATE: September 27, 2013
**RECONSIDERATION
DECISION DATE:** October 29, 2013

**ORDER DENYING
MOTION FOR RECONSIDERATION**

On September 27, 2013, the Board of Zoning Adjustment (“Board”) issued an order (“the Order”) granting with conditions the application of Ontario Residential LLC (the “Applicant”) for the zoning relief identified in the above caption. On October 9, 2013, Adams Morgan for Reasonable Development (“AMFRD”), a party to the initial proceeding, filed a motion for reconsideration (“The Motion”). (Exhibit 36.) On October 16, 2013 the Applicant filed a timely response to the Motion. (Exhibit 37.) For reasons explained below, the Board voted on October 29, 2013 to deny AMFRD’s motion for reconsideration.

“A motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.” (11 DCMR § 3126.4.) In this case, the Motion alleged that the Board erred in regards to two issues: (1) by not requiring the Applicant to apply for rear yard relief, and (2) by approving the roof structure zoning relief in excess of the Board’s authority and without evidence. The Board concurs with the Applicant that MFRD failed to show errors in the Board’s decision and denies the motion for reconsideration.

The Board did not err in not compelling the Applicant to seek rear yard relief.

AMFRD asserts that the required rear yard will be occupied by non-permitted structures and that the Board “abrogate[d] its authority in not requiring rear-yard relief review”. AMFRD first raised this issue as part of its request for a postponement of the hearing. The Board rejected the argument and denied the postponement noting that the Application was self-certified and therefore the Applicant assumed the risk of having its application for a building permit rejected should the requested relief prove to be inadequate. (February 26, 2013 Transcript pp. 153-154.) Notwithstanding the Board’s clear ruling, AMFRD continued to make this assertion throughout the hearing and again raises it here.

This Board “has consistently held that arguments asserting the need for additional zoning relief are irrelevant to its consideration of an application for special exception relief,” *Application No. 18263-B of Stephanie and John Lester*, p. 10 (2013). The self-certification form submitted in this case (Exhibit 4) stated that the minimum required rear yard depth of 15 feet will be provided. Should that prove to be incorrect “the most that can be said is that the applicant will need variance relief. That fact alone does not require the Board to deny a special exception. . . . Our inquiry is limited to the narrow question of whether the Applicant met its burden under the general and specific special exception criteria.” *Application No. 16974 of Tudor Place Foundation*, p. 14 (2004). *Accord Application No. 18250 of Raymundo B. Madrid* (2011); *Application No. 17537 of Victor Tabb* (2007) (“The question of whether an applicant should be requesting variance relief is not germane to the question of whether a special exception should be granted.”)

Thus, the Board properly rejected AMFRD’s assertion that the Application could not be heard until it was amended to add the rear yard relief. This is not to say that AMFRD may be without a remedy. Should a building permit be issued and AMFRD conclude that a compliant rear yard is not being provided, it may appeal that decision, assuming that it has the standing to do so. But its present assertion that rear yard relief is required is both irrelevant and premature.

The Board did not err in granting roof structure relief.

AMFRD's motion argues that the grant of a special exception is a public benefit that "conveys" certain rights, including those found in the Americans with Disabilities Act (“ADA”). Contrary to AMFRD's position, the special exception standard does not give the Board the jurisdiction to adjudge an applicant's compliance with the ADA or any other statute. Similarly, the safety concerns raised by AMFRD are not germane to the Board's review of a special exception. The District of Columbia's Construction Code (Title 12 DCMR), which includes the Fire Safety Code, exists to assure that the proposed building will pose no safety hazards to the public or its residents. Those agencies responsible for Code compliance will review the construction plans submitted with the building permit application for consistency with the applicable provisions and will perform health and safety inspections before any certificate of occupancy issues.

AMFRD alleged that the applicant did not show that the construction of a conforming roof

BZA APPLICATION NO. 18506-A
PAGE NO. 3

structure would be “impracticable, unduly restrictive, prohibitively costly, or unreasonable” as required under § 411.11. The Board concurs with the Applicant’s view that this precise issue was discussed extensively during the public hearing and is sufficiently addressed in the Order.

Finally, the Board rejects AMFRD's contention that a light and air study was required in order for the Board to grant § 411.11 relief. Nothing in this subsection requires that such a study be conducted. The topic of light and air was discussed extensively by the Board, including the setback between the roof structure and the adjacent property line, as well as the height of the stairway and the enclosures. (Order, pp. 9-10.) There was clearly substantial evidence in the record for the Board to conclude that the light and air of adjacent buildings would not be unduly affected. If AMFRD felt that a light and air study would have been probative, it could have submitted one. But the absence of such a study in this case did not prevent that Applicant from meeting its burden of proof.

For the reasons stated above, it is ORDERED that the motion for reconsideration is DENIED.

VOTE: 4-0-1 (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle (by absentee ballot), and Peter G. May (by absentee ballot) voting to Deny the Motion for Reconsideration; one Board seat vacant).

BY ORDER OF THE D.C BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 8, 2014

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.