

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18523 of Peter H. Bell, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 402, a variance from the lot occupancy requirements under § 403, a variance from the court requirements under § 406, and a variance from the nonconforming structure requirements under § 2001.3, to allow roof additions to an existing one-family row dwelling in the DC/R-5-B District at premises 1726 18th Street, N.W. (Square 133, Lot 133).

HEARING DATE: April 2, 2013

DECISION DATE: April 2, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 2B, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a written report that indicated that at its regularly scheduled, duly noticed meeting on March 13, 2013, ANC 2B, with a quorum present, voted 6:0 to adopt a resolution in support of the application on the condition that there will be no railing on the roof deck.¹ (Exhibit 24.)

¹ The ANC specifically noted that it did not consider, nor vote upon, historic preservation matters at this time until an application with the Historic Preservation Review Board ("HPRB") is filed. (Exhibit 24.)

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The Office of Planning ("OP") submitted a report, dated March 26, 2013, in which it expressed its support of the proposed application.² (Exhibit 25.) The District Department of Transportation ("DDOT") submitted a memorandum of "no objection" to the application. (Exhibit 23.)

At the hearing the Applicant submitted an email chain from four neighbors expressing their support of the application. (Exhibit 27.)

At the public hearing, the Board questioned the Applicant and his architect regarding the proposed roof structures and whether there would be a railing or not. The architect answered that no railing was in the plans submitted for the application before the Board. Also, he noted that the roof deck was designed with a five-foot setback from the parapet and that it was his opinion that no railing was required in those circumstances. He further testified that the storage area and other roof structures would be either not visible or minimally visible from the street. Upon the Board's questioning, he also indicated that while he had spoken with Historic Preservation staff, the Applicant had yet to file or appear for review of the project at the HPRB or at the permitting office at the Department of Consumer and Regulatory Affairs. In reply to Board members' questions regarding the ANC's position that it wished to see a condition regarding a railing, it was noted that the issue of whether a railing would be required was not a zoning requirement over which the Board has jurisdiction.

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 variances under § 3103.2 from the strict application of the floor area ratio requirements under § 402, the lot occupancy requirements under § 403, the court requirements under § 406, and the nonconforming structure requirements under § 2001.3. 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 ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for area variances under § 3103.2, 402, 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.

In its deliberations the Board noted that although it duly considered the ANC's request to condition the Board's approval on there being no railing on the roof deck, it was not persuaded to condition its approval because that requirement would be under other agencies' control and thereby outside of the Board's jurisdiction and control.

² The OP report notes that HPRB approval will be required prior to applying for building permits. (Exhibit 25.)

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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, SUBJECT** to the **APPROVED PLANS in Exhibit 9.**

VOTE: **5-0-0** (Lloyd L. Jordan, S. Kathryn Allen, Nicole C. Sorg, Jeffrey L. Hinkle, and Marcie I. Cohen³, 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: April 4, 2013

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 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

³ At the start of the public hearing, Marcie Cohen disclosed that although she knew the Applicant, she did not have any financial interests associated with him or this project and would participate based on the facts and the Zoning Regulations, unless there was an objection. No one objected to her participation.

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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.