

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



**Application No. 18639 of New Vision Properties LLC**, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing one-family row dwelling under § 223, not meeting the lot area (§ 401), lot occupancy (§ 403), court (§ 406), minimum rear yard setback (§ 404), and nonconforming structure (§ 2001.3) requirements in the R-4 District at premises 229 12th Street, S.E. (Square 990, Lot 817).<sup>1</sup>

**HEARING DATE:** October 22, 2013

**DECISION DATE:** October 22, 2013

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum, dated June 12, 2012, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a “[s]pecial exception pursuant to § 223.1 for a two-story rear addition that does not comply with § 403.2 maximum lot occupancy, and § 406.1 required open court, and § 2001.3 expansion of a nonconforming structure. (§ 3104.1).” (Exhibit 2.)

The Board of Zoning Adjustment (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") 6B, 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 6B, which is automatically a party to this application. ANC 6B submitted a letter dated October 17, 2013, in support of the application on October 21, 2013 and requested that the Board allow it into the record. The Board waived the timeliness rules and allowed the ANC’s report into the record. The ANC report indicated that at a duly noticed, regularly scheduled monthly meeting on October 8, 2013, with a quorum present, the ANC voted unanimously (10:0:0) to approve the application. (Exhibit 27.)

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<sup>1</sup> The Applicant amended the application by adding relief from the rear yard setback requirements under § 404. (Exhibit 25.)

**BZA APPLICATION NO. 18639**  
**PAGE NO. 2**

The Office of Planning ("OP") submitted a timely report dated October 15, 2013, recommending approval of the application. (Exhibit 26.) The District Department of Transportation ("DDOT") submitted a letter of "no objection" to the record. (Exhibit 21.)

John Smeltzer and Catherine A. Flanagan, owners of 227 12<sup>th</sup> Street, S.E. and who are the adjacent neighbors to the north of the Applicant, (the "Neighbors"), filed a request to be a party in opposition. (Exhibit 22.) At the hearing, Mr. Smeltzer appeared and withdrew his party status request and requested that the Board accept into the record a memorandum of understanding ("MOU") (Exhibit 30) between the Applicant and the Neighbors based on changes the Applicant had made to the project. The Board granted that request and granted the Applicant's request for flexibility in allowing for final changes in the materials used and placement of windows.

The Capitol Hill Restoration Society submitted a letter of support, citing an agreement that was reached with the Applicant and the neighbors. (Exhibit 29.)

Another neighbor, Matthew Chalifoux, 231 12<sup>th</sup> Street, S.E., testified in support of the application.

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 special exception pursuant to § 3104.1 from the strict application of the regulations to allow an addition to an existing one-family row dwelling under § 223, not meeting the lot area (§ 401), lot occupancy (§ 403), court (§ 406), minimum rear yard setback (§ 404), and nonconforming structure (§ 2001.3) requirements in the R-4 District. 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 concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, 401, 403, 404, 406, and 2001.3, 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 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 REVISED PLANS AT EXHIBIT 25 AND THE FOLLOWING CONDITION:**

1. The Applicant shall be granted flexibility to modify the materials and placement of windows facing the court area to meet historic preservation requirements.

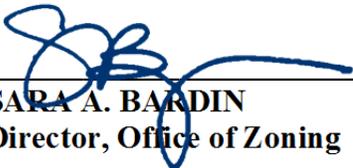
**BZA APPLICATION NO. 18639**  
**PAGE NO. 3**

**VOTE:**       **3-0-2** (Lloyd J. Jordan, Peter G. May, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen, not present or voting, and one Board seat vacant.)

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

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

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** November 1, 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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY

**BZA APPLICATION NO. 18639**  
**PAGE NO. 4**

BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.