

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



**Application No. 18782 of Fenton 302/304 M St LLC**, pursuant to 11 DCMR § 3103.2, for area variances from the nonconforming structure (§ 2001.3), lot occupancy, (§ 403), rear yard (§ 404), and closed court (§ 406) requirements to allow a third floor addition to an existing one-family row dwelling in the DD/R-5-B District at 302 M Street, N.W. (Square 524, Lot 4).<sup>1</sup>

**HEARING DATES:** June 17, 2014<sup>2</sup> and June 24, 2014  
**DECISION DATE:** June 24, 2014 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 19C.)

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”) 6E, 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 6E, which is automatically a party to this application. ANC 6E submitted a letter in support of the application, indicating that at a duly noticed meeting on June 3, 2014, at which a quorum was present, the ANC voted unanimously (5 in favor, 0 opposed, and no abstentions), to support the request for variance relief. (Exhibit 23.) The Office of Planning (“OP”) submitted a timely report indicating that it did not recommend approval of the variance relief under §§ 403, 404, 406, and 2001.3, but that if the Board found that the Applicant met the variance test for the requested lot occupancy and § 2001.3 relief, OP did not have major concerns with the closed court or rear yard

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<sup>1</sup> The application, which originally was for a special exception under § 223, was amended to include variance relief under §§ 2001.3, 403, 404, and 406. (Exhibit 19.) The caption has been amended to reflect those changes. The application had been scheduled for expedited review under § 223 and at the Applicant’s request, this case was postponed for a public hearing on June 24, 2014 to hear the case for variance relief. (Exhibit 19.)

<sup>2</sup> The Applicant requested that the public hearing for the case be moved to June 24, 2014, so it could be heard with another case, BZA Case No. 18786, that was filed by the same Applicant and had the same counsel. BZA Case No. 18786 had been scheduled to be heard on June 24<sup>th</sup>. (Exhibit 19.) The Board granted the request and heard both cases together on June 24, 2014. The Board approved both cases under one motion and vote.

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relief requests. (Exhibit 22.) The District's Department of Transportation ("DDOT") also submitted a timely report indicating that DDOT had no objection to the application. (Exhibit 21.)

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 nonconforming structure (§ 2001.3), lot occupancy, (§ 403), rear yard (§ 404), and closed court (§ 406) requirements to allow a third floor addition to an existing one-family row dwelling in the DD/R-5-B 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 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 §§ 403, 404, 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, SUBJECT TO THE REVISED APPROVED PLANS AT EXHIBIT 19B.**

**VOTE:**       **4-0-1** (Lloyd L. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen, to approve; S. Kathryn Allen, and not present, not voting.)

**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:** June 26, 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.

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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.

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.