

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18795 of Gerard Boquel and Lew Hages, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 772.1, a variance from the nonconforming lot occupancy requirements under § 2001.3, and a variance from the building on alley lots provisions under § 2507.3, to allow an alley dwelling in the DC/C-2-C District at premises 2123 Twining Court, N.W. (Square 68, Lots 807 and 808).¹

HEARING DATE: July 15, 2014
DECISION DATE: July 15, 2014 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.² (Exhibit 27.)

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”) 2B, 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 2B, which is automatically a party to this application. At the hearing the Applicant testified that the ANC had reviewed the project and voted to support it. The Applicant believed that the ANC had filed its report, but it was not in the record when the Board heard the case and deliberated on it. The Board gave leave for the record to remain open for the ANC’s report. Thus, the Applicant shared the ANC’s letter of June 16, 2014, in which the ANC indicated that at a regular, duly noticed meeting held on June 11, 2014, with a quorum present, the ANC met and considered the application and voted unanimously (7:0) to support it.

¹ The Applicant amended the application in its self-certification form by adding variance relief under § 2001.3 and removing the request for relief from § 2101.1, (Exhibit 27.).

² The Office of the Zoning Administrator (“OZA”) had issued a referral letter dated February 20, 2014 (Exhibit 9), but the Office of Planning in its report questioned the relief that the OZA cited as being required. (Exhibit 24.) Ultimately, the Applicant submitted a self-certification form, clarifying the relief requested. (Exhibit 27.)

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The Office of Planning (“OP”) submitted a timely report in which OP stated that it could not recommend approval of the area variance relief from § 2507.3, pursuant to § 3103.5, although it was supportive of the proposal in concept. At the hearing the Applicant presented witness testimony by the Applicant’s real estate agent regarding the issues raised by OP in its report. At the hearing OP’s representative stated that it found the Applicant’s witness’ testimony helpful in addressing the issues OP raised in its report and noted that the proposed residential use is compatible with the uses surrounding the property. Also, as to the requests for variance relief from §§ 772.1 and 2001.3, OP’s report indicated that it would support this variance relief should the BZA accept the request for relief from § 2507.3. (Exhibit 24.) The District’s Department of Transportation (“DDOT”) submitted a timely report indicating it had no objection to the application. (Exhibit 23.)

This project also came before the Historic Preservation Review Board (“HPRB”), as the property is both landmarked on the National Register of Historic Places and in the Dupont Circle Historic District. The HPRB review of the project was found to be consistent with the preservation act. (Exhibit 30.) At the public hearing, Board Member Turnbull requested confirmation that the Applicant’s submitted plans would reflect Option C in the HPRB report. Specifically, the BZA requested that the Applicant address how they responded to the two recommendations which were asked of them by the HPO staff and recommended to the HPRB. The first recommendation was that the applicants were encouraged “to develop a variation of Option C that pulls the proposed roof deck further in from the sides and pulled back from the outside wall to eliminate the projecting handrail”, and the other recommendation was “to consider the amount of roof removal such as a different type of HVAC system (e.g. ductless mini-split system).” The Board left the record open for the Applicant to submit their responses.

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 lot occupancy requirements under § 772.1, the nonconforming lot occupancy requirements under § 2001.3, and from the building on alley lots provisions under § 2507.3, to allow an alley dwelling in the DC/C-2-C 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 but for the two items it gave leave to have submitted: the ANC report and written confirmation that the plans were in conformance with Option C in the HPRB report. Based upon the record before the Board, and having given great weight to the OP report³ 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 §§ 772.1, 2001.3, and 2507.3, that there exists an exceptional or extraordinary situation or condition related to the

³ While the Board acknowledged the Applicant’s testimony that the ANC had reviewed the application at its June meeting and voted unanimously to support it, as the Board did not have the written report when it was deliberating on the case, it could not give it great weight. However, the Board gave leave for the ANC’s report to be submitted into the record.

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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 APPROVED PLANS AT EXHIBIT 7.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, S. Kathryn Allen, and Michael G. Turnbull to APPROVE; Lloyd L. Jordan, 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: July 16, 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.

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.

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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.