

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



**Application No. 18815 of Amanda Bennett and Donald Graham**, pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio (§ 402), lot occupancy (§ 403), rear yard (§ 404), and nonconforming structure (§ 2001.3) requirements to allow a rear deck addition to a one-family row dwelling in the R-5-B District at premises 2028 Hillyer Place, N.W. (Square 93, Lot 92).

**HEARING DATES:** September 16, 2014, October 21, 2014, and November 18, 2014  
**DECISION DATES:** November 18, 2014 and January 6, 2015

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by two memorandums, the first dated May 28, 2014 and the other dated July 9, 2014, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for variance relief from §§ 2001.3, 403.2, 404.1, and 402.1. (Exhibits 8 and 28.)

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. The ANC submitted a timely report in support of the application. The ANC’s report indicated that at a regularly scheduled, duly noticed meeting held on August 13, 2014, with a quorum present, the ANC met and considered the application and voted 6-0 in support of the Applicant’s request for variance relief for increasing lot occupancy, floor area ratio, and an addition to an already non-conforming structure for the purpose of constructing a rear deck. (Exhibit 29.)

The Office of Planning (“OP”) submitted a timely report indicating that it could not support the application because it does not meet the first prong of the variance test. (Exhibit 33.)

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The Applicant submitted additional information to the record indicating how it would meet its burden of proof, specifically that the property is narrow, the main floor is seven feet above grade, and that an existing below-grade basement on an on-grade sewer manhole reduces the usable yard area. The Applicant also claimed that an on-grade deck would eliminate the existing parking space and be difficult to access from the main floor. In the supplemental filing, the Applicant provided additional information: First, the Applicant indicated that the storm water basin and manhole located in the rear yard are unique to the property and uncommon in the surrounding area. Second, due to the presence of the drain in the rear yard, the Applicant must allow adequate clearance (about four feet) above the manhole in order to allow for maintenance and repair. Accordingly, the Applicant stated that it faces a practical difficulty in that any rear addition must be higher than four feet and therefore would contribute to lot occupancy. Additionally, the Applicant stated that reducing the size of the addition so as not to cover the drain would result in a deck that extends less than five feet, which the Applicant considers impractical. (Exhibits 31 and 38.)

The District's Department of Transportation ("DDOT") submitted a timely report indicating it had no objection to the application. (Exhibit 32.) Four letters of support for the application from neighbors were submitted for the record. (Exhibit 34.)

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 (§ 402), lot occupancy (§ 403), rear yard (§ 404), and nonconforming structure (§ 2001.3) requirements to allow a rear deck addition to a one-family row dwelling in the 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.

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 variances under §§ 402, 403, 404, and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty or undue hardship 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 AND REVISED PLANS AT EXHIBITS 9, 25, 26, AND 27, AND THE FOLLOWING CONDITION:**

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1. The Applicant shall install on-site light fixtures that orient the lighting downward.

**VOTE:**       **4-0-1** (Lloyd L. Jordan, Marnique Y. Heath<sup>1</sup>, Jeffrey L. Hinkle (by absentee vote), and Michael G. Turnbull to APPROVE; S. Kathryn Allen, not participating or 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:**

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

**FINAL DATE OF ORDER:** January 9, 2015

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.

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<sup>1</sup> Board member Heath participated in the vote, having reviewed the record in the case.

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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 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.