

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



**Application No. 18975 of scratch LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structures requirements under § 411, to allow no screening of proposed rooftop mechanical equipment for a proposed food manufacturing use in the C-M-1 District at premises 2619 Evarts Street, N.E. (Square 4348, Lot 4).

**HEARING DATE:** April 7, 2015

**DECISION DATE:** April 7, 2015

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

This application was accompanied by a memorandum, dated January 13, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 3.)

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 Advisory Neighborhood Commission (“ANC”) 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C. The ANC did not file a report or testify regarding this application. Nonetheless, the ANC commissioner representing Single Member District (“SMD”), ANC 5C02, in which the Applicant’s property and business are located, testified in support of the application. The SMD, in response to the Board’s questions, testified that the Applicant had not made a presentation to the full ANC, as the ANC’s regularly scheduled meeting was past when the ANC received notice of the application and there was no time in which to schedule a presentation by the Applicant. However, the SMD did meet with the Applicant, he testified that he could not see the roof structures from his two-story home and therefore had no objection to removing the screening requirement.

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<sup>1</sup> The Applicant initially requested a special exception from the rooftop enclosure requirements of § 411.3, to allow him to change the nature of the enclosure or screening for the rooftop equipment the Applicant had installed from that which had been approved under building permit B1502808 to an in-kind model that would be less expensive. (Exhibits 1 and 9.) Subsequently, the Applicant revised the request for relief to ask for permission not to install screening, since at the present time, without screening, the rooftop equipment is not visible at all, but if the Applicant were required to install screening, the screening would be visible. (Exhibit 23.) The caption has been changed accordingly.

The Office of Planning (“OP”) submitted a timely report and testified at the hearing in support of the relief requested. (Exhibit 25.) The District Department of Transportation (“DDOT”) filed a report expressing no objection to the approval of the application. (Exhibit 24.)

The owner of the adjacent property that shares a common wall with the Applicant’s property testified at the hearing. He stated that he was not opposed to the application regarding relief from the screening requirements of the rooftop equipment, but that he had a concern as to whether the shared wall between his and the Applicant’s property would be able to handle the added weight from the new pieces of rooftop equipment.

In response, the Applicant testified that he had hired a structural engineer who analyzed how best to install the new rooftop equipment while protecting the integrity of the existing structure, including the shared wall. At the engineer’s recommendation, the Applicant stated that he had two steel beams installed on which the equipment was placed for added support. The Board found that the neighbor’s concerns in this regard were not relevant to the zoning application, but rather a building code issue and advised him to speak to the Department of Consumer and Regulatory Affairs directly regarding his concerns so they could check if there was cause for concern.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 411. No parties appeared at the public hearing in opposition to this 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 OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11DCMR §§ 3104.1 and 411, 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 the accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 5 AND 23.**

**VOTE:**           **4-0-1** (Lloyd J. Jordan, Marnique H. Heath, and Jeffrey L. Hinkle and Michael G. Turnbull to APPROVE; 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:**

  
SARA ATBARDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** April 10, 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 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 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.