

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19141 of Janis C. Gross, as amended¹, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, and the carport requirements under § 2300.8, to permit a detached carport structure in the R-2 District at premises 4608 Sargent Road, N.E. (Square 3916, Lot 8).

HEARING DATES: December 8, 2015, March 1, 2016, and April 26, 2016²
DECISION DATE: April 26, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 21, 2015, and a revised memorandum, dated February 24, 2016, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibits 8 (original) and 36 (revised).)

The Board of Zoning Adjustment (“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”) 5A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5A, which is automatically a party to this application. The ANC voted to recommend approval of the

¹ The application was amended to replace the original request for a special exception from the carport requirements under § 2300.8 with a request for variances from §§ 403.2 (lot occupancy) and 2300.8 (detached carport). See revised Zoning Administrator memo at Exhibit 36. The caption has been changed accordingly.

² This case was postponed from the public hearing of December 8, 2015, and continued from the public hearing of March 1, 2016 to April 26, 2016. At the public hearing on March 1, the Board heard testimony from the Applicant and the Office of Planning to clarify that variance relief is required, despite the information in the Zoning Administrator’s (“ZA”) original memo. The hearing was continued to allow the Applicant to submit a revised ZA memo and to repost notice on the property for the amended variance relief. The Applicant submitted a revised ZA memo (Exhibit 36) and an updated affidavit of posting (Exhibit 38).

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application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 18, 2014, at which a quorum was present, the ANC voted by 5-0-0 to support the application. (Exhibit 9.)

The Office of Planning ("OP") submitted two timely reports. In the first report, dated December 1, 2015, OP stated that it could not make a recommendation on the requested relief for a special exception under § 2300.8. That OP report indicated that OP found that the subject property is nonconforming for lot width, lot area, side yard and open court. The OP report stated that OP's review of the original application indicated that variance relief also appeared to be required for side yard, lot occupancy, and § 2001.3, (Nonconforming Structures), for the construction of the carport. OP's report also indicated that the maximum permitted lot occupancy within the R-2 zone, in which the subject property is located, is 40% and that the application proposes a lot occupancy of 54.2%, in excess of that permitted as a matter of right and in excess of the maximum 50% the Board may grant by special exception pursuant to § 223. In addition, OP stated that, pursuant to § 405, a minimum side yard of eight feet is required on one side of the carport, but not provided. OP indicated that it attempted to resolve this issue with the Applicant and the Zoning Administrator. (Exhibit 26.) OP filed a supplemental report dated February 16, 2016, recommending approval of the amended application for variance relief from § 403, Lot Occupancy (40% permitted; 54% proposed); and § 2300.8, Private Garages and Carports (carports required to be attached to the main structure, detached carport proposed). OP stated that since the initial filing, the Applicant revised the application to include a request for a variance from lot occupancy and that DCRA determined that variance relief from side yard and nonconforming structures (§ 2001.3) is not required, as was previously suggested by OP. (Exhibit 34.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 23.)

A letter of opposition from the adjacent neighbor was submitted to the record. (Exhibit 28.) The Applicant responded to the neighbor's letter at Exhibit 35. In response to concerns raised by the neighbor, the Applicant agreed to install a motion sensor light that would illuminate the carport.

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 pursuant to § 3103.2 for area variances from the lot occupancy requirements under § 403.2 and the carport requirements under § 2300.8, to permit a detached carport structure in the R-2 District. The only parties to the case were the ANC and the Applicant. 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 averse 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 in seeking variances from 11 DCMR §§ 403.2 and 2300.8, the Applicant has met the burden of proof under 11 DCMR § 3103.2, 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 relief can be

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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 requirement of 11 DCMR § 3125.5, 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, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.**

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Michael G. Turnbull, to APPROVE; Anita Butani D’Souza, 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: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 4, 2016

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

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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.