

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19164 of Christopher J. Wright, as amended¹, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy requirements under § 403.2, the nonconforming open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, and a special exception from the rooftop architectural element requirements under § 400.24(a), to construct a three-story flat in the R-4 District at premises 17 U Street N.W. (Square 3117, Lot 3).

HEARING DATES: January 16, March 1, and April 12, 2016²
DECISION DATE: April 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original), 32 (revised), and 44 (final revised).)³ In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and

¹ The application was amended several times, first to add a special exception for height under § 400. (Exhibit 32). The case file also contains a memorandum from the Zoning Administrator that indicates that variances from § 400 (Height – number of stories), § 403.2 (Lot occupancy), § 406.1 (Open court), and § 2001.3 (Nonconforming structure) and special exception relief from § 400.23 (Height) and § 400.24 (Alteration of rooftop structures) were required. (Exhibit 40.) The final revised self-certification (Exhibit 44) amended the application and removed a request for variance relief from the height requirements under § 400 and added special exception relief under § 400.24 to what was previously requested. The Applicant also lowered the project from a four-story flat to a three-story flat. In addition, a request for rear yard relief was removed, per the advice of the Zoning Administrator's memorandum. The Applicant submitted revised architectural plans (Exhibit 45), Structural notes and sections (Exhibit 46), 1st and 2nd Floor Framing & Foundation Plans (Exhibit 47), and 3rd floor and roof framing plan and sections (Exhibit 48) together with a revised burden of proof statement (Exhibit 49.) The caption has been changed accordingly.

² This case was continued from the public hearings of January 26, 2016 and March 1, 2016.

³ The case file also has a memorandum from the Zoning Administrator that indicated the required relief. (Exhibit 40.)

BZA APPLICATION NO. 19164
PAGE NO. 2

independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a report in support of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 17, 2015, at which a quorum was present, the ANC voted by voice vote with no opposition to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted three timely reports. In the original report, dated January 19, 2016, OP stated that it could not make a recommendation on the application. In that report, OP indicated that while it had several discussions with the Applicant and the Zoning Administrator's staff, there were issues that remained to be resolved before a recommendation could be provided. (Exhibit 33.) OP filed a supplemental report dated February 23, 2016, recommending denial of the application for zoning relief from the R-4 requirements for building height and number of stories.⁴ (Exhibit 41.) After the Board's hearing on March 1, 2016, the Applicant submitted revised plans and amended the application so as to no longer request relief for height or number of stories. The Applicant also provided additional information regarding the property and the structural condition of the house, which allowed OP to better understand and evaluate the requested relief. In its final report dated April 5, 2016, OP indicated that it was recommending approval of variance relief from § 2001.3 for the expansion of an existing non-conforming structure (non-compliant in lot occupancy § 403 and open court § 406), § 406.1 to allow for the expansion of an existing nonconforming open court to allow for a third story expansion of an existing three-story structure, § 403.2 to permit construction of a rear spiral staircase in excess of the allowable lot occupancy percentage (proposed .35% increase), and for a special exception from § 400.24 (a) to allow for the alteration of an existing rooftop architectural element original to the building. OP noted in its report that the application is self-certified and not based on the Zoning Administrator's referral memo. (Exhibit 50.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 27.)

Variance Relief

⁴ The OP February supplemental report noted that the Applicant had revised the application and requested different relief. The report was based on OP's understanding of the application at that time and was based on the Zoning Administrator's determination of the relief needed. Based on that, OP stated that it could not support variances to expand an existing nonconforming house by adding a fourth story in the R-4 District. OP stated that the Applicant revised the plans in response to the Zoning Administrator's determination that the lower level would be considered a basement and therefore a story. According to the OP supplemental report, the revised plans would return the front grade return to its original level, resulting, in the lower level being less than four feet in height and considered a cellar and thus not a story. However, the report was based on the relief the Zoning Administrator originally determined was needed. (Exhibit 41.)

BZA APPLICATION NO. 19164
PAGE NO. 3

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, the nonconforming open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to construct a three-story flat in the R-4 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, 406.1, and 2001.3, 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 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.

Special Exception Relief

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 from the rooftop architectural element requirements under § 400.24(a) to construct a three-story flat in the R-4 District. 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 averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 400.24(a), 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 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. 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 REVISED PLANS AT EXHIBITS 45-48.**

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

BZA APPLICATION NO. 19164
PAGE NO. 4

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: April 20, 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 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

BZA APPLICATION NO. 19164
PAGE NO. 5

ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED.
VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.