

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19177 of 615 Upshur Street NW LLC¹, pursuant to 11 DCMR § 3104.1, for a special exception from the conversion to apartment house requirements pursuant to § 336, to permit the enlargement of a pre-1958 residential building into two-story, three-unit apartment house in the R-4 District at premises 615 Upshur Street N.W. (Square 3226, Lot 73).

HEARING DATES: February 9, March 15, March 22, and March 29, 2016²
DECISION DATE: March 29, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) 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 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") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC submitted a report recommending denial of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 13, 2016, at which a quorum was present, the ANC voted unanimously (10-0-0) to oppose the application, unless a construction

¹ This application was initially filed with the Applicant's name listed as Bailey Real Estate Holdings LLC, but was revised after a change in ownership. The caption has been changed accordingly.

² This case was postponed from the public hearing February 9, 2016 at the request of ANC 4C (Exhibit 29), from the March 15, 2016 hearing at the Applicant's request (Exhibit 38), and from the March 22, 2016 hearing at the request of both the Applicant and the ANC. (Exhibits 42 and 43.)

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management agreement is entered into between the Applicant and a majority of the adjoining neighbors and submitted to the Board. In that case, the resolution of opposition would be deemed null and void. (Exhibit 24.) At the March 29th hearing, the Single Member District ANC Commissioner testified that a construction management agreement was reached and accordingly, the ANC was now in support of the application. The agreement was submitted for the record during the hearing. (Exhibit 45.) The Board found that this satisfied the contingency in the ANC's report and considered the ANC not to be in opposition to the application.

The Board received three party status requests in opposition from Joseph C. Jackson (Exhibits 32, 33, 39, 40), Deborah Jansen (Exhibits 34 and 35), and Jeffrey Francisco (Exhibit 36). Christopher Jackson appeared at the hearing on March 29th to represent the individuals requesting party status and testified that all three were now in support of the project based on the construction management agreement reached with the Applicant. Mr. Jackson also indicated that they did not wish to withdraw their party status requests, but rather wished to apply for party status as proponents, rather than opponents. The Board granted the request of the party status proponents, as a consolidated party, and noted that Mr. Jackson would be their representative.

The Office of Planning ("OP") submitted a timely report recommending approval of the application with one condition. In its report, OP indicated its belief that roof structure relief under § 411.5 might be required based on the original plans. (Exhibit 25.) At the hearing on March 29, OP testified that the Applicant's revised plans under Exhibit 37 addressed its concerns and thus no additional relief would be needed and its proposed condition was no longer necessary.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 26.)

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 § 336. 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 336, 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.

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It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 37.**

VOTE: **4-0-1** (Marnique Y. Heath, Anita Butani D’Souza, Frederick L. Hill, and Robert E. Miller, to APPROVE; Jeffrey L. Hinkle, 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: April 1, 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

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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.