

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19197 of Nicholas Rubenstein and Jenn Hsu, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, and the nonconforming structure requirements under § 2001.3, to renovate an existing one-story garage into a two-story, one-family dwelling in the R-4 District at premises 1317 Naylor Court N.W. (Square 367, Lot 863).

HEARING DATE: March 8, 2016
DECISION DATE: March 8, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

On November 16, 2015, the Applicant filed a request for relief, accompanied by a memorandum, dated October 23, 2015, from the Zoning Administrator (“ZA”), which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for variances from the lot occupancy requirements under § 403.2 and the nonconforming structure requirements under § 2001.3. (Exhibit 8.)

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”) 2F, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a report indicating that, at its regularly scheduled and properly noticed public meeting of December 2, 2015, at which a quorum was in attendance, ANC 2F voted 7-0-0 to support the application. (Exhibit 29.)

The Office of Planning (“OP”) submitted a timely report on February 29, 2016, recommending approval of the application. (Exhibit 31.) OP also testified in support of the application at the public hearing. The District Department of Transportation (“DDOT”) submitted a timely report on March 1, 2016, indicating that it had no objection to the Applicant's request for variance relief. (Exhibit 32.)

Two neighbors submitted letters in support of the application to the record. (Exhibits 15 and 16.)

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At the public hearing on March 8, 2016, adjacent property owner Dr. David Salter testified to raise concerns about the impact of the proposed construction on the shared party wall and on the I-beams in the Applicant's garage. Dr. Salter also filed comments in opposition to the record. (Exhibit 33.) The Board requested that the Applicant respond to these concerns, and the Applicant's architect noted that a structural engineer will prepare full structural drawings during the permitting process.

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 § 3103.2, for variances from the lot occupancy requirements under § 403.2, and the nonconforming structure requirements under § 2001.3, to renovate an existing one-story garage into a two-story, one-family dwelling 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 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 in seeking variances from 11 DCMR §§ 403.2 and 2001.3, the Applicant has met the burden of proving under § 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.

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 EXHIBIT 6.**

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May 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 A. BARDIN
Director, Office of Zoning

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FINAL DATE OF ORDER: March 10, 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 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.