GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19203 of Sheela Tschand, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for a variance from the side yard requirements under § 405 and a special exception from the conversion to apartment house requirements under § 336, to allow the conversion of a one-family dwelling into a three-story, three-unit apartment house in the R-4 District at premises 1844 Kendall Street, N.E. (Square 4048, Lot 808).

HEARING DATE: March 1, 2016
DECISION DATE: March 15, 2016

SUMMARY ORDER

SELF CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 36.) The application was initially accompanied by a memorandum, dated November 3, 2015, from the Zoning Administrator certifying the relief required, but a self-certification form was filed at Exhibit 36 to reflect new computations based on the Applicant's revised plans.[1] (Exhibit 4.)

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") 5D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on February 9, 2016, at which a quorum was in attendance, ANC 5D voted 7-0-0 to support the application. (Exhibit 24.) A letter detailing the ANC's support also was submitted by the Single District Commissioner (ANC 5D01). (Exhibit 27.) Letters in support of the application were submitted by two adjacent neighbors. (Exhibits 33 and 34.)

The Office of Planning ("OP") submitted a timely report and testified at the hearing in support of the application. (Exhibit 28.) The District Department of Transportation ("DDOT") filed a report expressing no objection to the approval of the application (Exhibit 26.)

Variance Relief

[1] At the March 1st hearing, the Applicant's architect testified that changes were being made to the plans to address the setbacks of the newly proposed penthouse structure. The Board requested that the Applicant submit a self-certification form or Zoning Administrator referral memo together with revised drawings reflecting the agreed-upon penthouse setbacks. On March 14, 2016, the Applicant submitted a self-certification form and revised plans. (Exhibits 36 and 35.)

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 a variance from the side yard requirements under § 405. 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 adverse 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 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 Zoning Regulations, and that the requested relief can be created 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 and 336 for special exception approval to allow the conversion of a one-family dwelling into a three-story, three-unit apartment house 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, the Board concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104.1 and 336, and 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 this application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 35.**

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Michael G. Turnbull TO APPROVE; Jeffrey L. Hinkle, not present, not voting; 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

FINAL DATE OF ORDER: March 22, 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.