

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19229 of FOTP, LLC, as amended,¹ pursuant to 11 DCMR § 3103.2, for a variance from the court requirements under § 776, and pursuant to §§ 3104.1 and 411.11, for special exceptions from the penthouse setback requirements under §§ 411.18 and 777.1², and pursuant to § 774.2, a special exception from the minimum rear yard requirements under § 774.1, to allow an addition to accommodate the establishment of a museum and associated offices and conference rooms in the C-4 District at premises 1503-1505 Pennsylvania Avenue, N.W. (Square 221, Lot 810).

HEARING DATES: March 29, 2016, April 5, 2016, and April 19, 2016³
DECISION DATE: April 19, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4 - original, Exhibit 33 - revised.) In granting the certified relief, the Board of Zoning Adjustment ("Board") 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.

¹ The application was originally filed pursuant to 11 DCMR §§ 3104.1 and 411.11, for a special exception from the penthouse setback requirements under §§ 411.18 and 771.1 [sic], and pursuant to § 774.2, the minimum rear yard requirements under § 774.1, to allow an addition to accommodate the establishment of a museum and associated offices and conference rooms at the subject site. On April 1, 2016, the Applicant filed a revised self-certification (Exhibit 33) amending the application to include variance relief from the court requirements of § 776, as indicated in the caption above.

² Subsection 771.1 was apparently referenced in error in the application form (Exhibit 1) given that this section relates to floor area ratio. The subsection should be § 777.1, and it is correctly referenced in the Applicant's statement at Exhibit 6.

³ At the hearing of March 29, 2016, the Board continued the hearing to May 10, 2016, but on April 5, 2016, as a preliminary matter, the Board, on its own motion, rescheduled the hearing to an earlier date – from May 10th to April 19th – and waived the 40-day notice requirement and required a two-week posting of the property, noting the added variance relief. The property was reposted on April 5, 2016 - 14 days prior to the April 19th hearing. (See Exhibit 34 – Affidavit of Posting.)

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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”) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a report dated February 18, 2016, noting that at its regular meeting on February 10, 2016, with a quorum present, it voted 9-0-0 in support of the special exception application. (Exhibit 22.) The ANC did not file a supplemental report after the amended application was noticed and the subsequent hearing was held.

The Office of Planning (“OP”) submitted a report dated March 22, 2016, recommending approval of the application as originally filed, and noting that additional relief may be required under § 776.1 (19.75 ft. width as calculated from height of rear wall, 7 feet existing; 7 feet proposed) and § 2001.3 (increasing the non-conformity of an open court’s width), which OP stated it would not oppose. (Exhibit 29, p. 1.) OP presented no further testimony at the hearing.

The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 26.)

The project received staff approval at the Historic Preservation Review Board and concept approval at the Commission of Fine Arts. (Exhibit 25C.)

The 1510 H Street Condo Association requested party status in opposition to the application. In addressing the party status request, Louette Ragusa, the association representative testified that the association is not opposed to the project under review, but that the members’ concerns were primarily related to the impact that construction will have on the rear alley access to their property. (Exhibits 27 and 28.) At the hearing of March 29, 2016, by consensus, the Board denied the party status request because the concerns raised by the association were outside the Board’s jurisdiction. The Board afforded Ms. Ragusa the opportunity to testify as a witness at the hearing, but, having made the association’s issues known, she had no further comment at that time.

The Board continued the hearing to allow the Applicant to amend the application and post the property with notice of the revised relief. The Applicant filed a revised self-certification form requesting variance relief (Exhibit 33), and posted the property (Exhibit 34 – affidavit of posting). At the hearing of April 19, 2016, no other witnesses appeared to testify in the application. The Board then closed the record and voted to approve the application as amended.

Variance 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 § 3103.2, for a variance from the court requirements under § 776. The only parties to this case were the Applicant and ANC 2B which supported the application. No parties appeared at the public hearing in opposition to this application for variance relief. Accordingly, a decision by the Board to grant this application would not be averse to any party.

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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 a variance from §§ 776, the Applicant has met the burden of proving 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 and 411.11, for special exception relief under §§ 411.18 and 777.1, (penthouse setback requirements); § 774.2, and 774.1, (minimum rear yard requirements). The only parties to this special exception application were the Applicant and the ANC which expressed support. No parties appeared at the public hearing in opposition to this application for special exception relief. 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 the OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411.11, 411.18, 777.1, 774.2, and § 774.1, 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 PLANS AT EXHIBIT 25B - ARCHITECTURAL PLANS.**

VOTE:	4-0-1	(Marnique Y. Heath; Frederick L. Hill, Anita Butani D'Souza, and Robert E. Miller to APPROVE; Jeffrey L. Hinkle not participating, not voting.)
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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

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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 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.