

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19258 of DGS of DC**, as amended<sup>1</sup>, pursuant to 11 DCMR §§ 3104.1 and 411.11, for a special exception from the penthouse setback requirements under § 411.18, to modernize the systems of an existing public elementary school in the R-4 District at premises 1350 Upshur Street, N.W. (Square 2822, Lot 800).

**HEARING DATE:** June 7, 2016  
**DECISION DATE:** June 7, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 4 – original self-certification and 24 – revised self-certification.) 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.

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. ANC 4C did not file a report related to the application or participate in the hearing.<sup>2</sup>

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<sup>1</sup> The original application sought special exception relief under § 400.3 – requirements for height of buildings or structures (non-penthouse), and § 770.6 – penthouse height requirements. The application was amended to request special exception relief as noted in the caption above. (See Exhibit 24 – revised self-certification.)

<sup>2</sup> The Applicant's representative testified at the hearing that the application had been presented at a community meeting at which an ANC representative was present, but that the application was not presented at an official ANC 4C meeting. The Applicant's representative also submitted email communications between the Applicant and the Commissioner for ANC Single Member District ("SMD") 4C05 for the record. The Board reminded the Applicant of its responsibility to meet with the full ANC.

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The Office of Planning (“OP”) submitted a timely report on May 24, 2016, recommending approval of the application as amended (Exhibit 23) and testified in support of the application at the hearing.

The Department of Transportation submitted a timely report dated June 1, 2016, indicating that it has no objection to the application. (Exhibit 29.)

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. The only parties to the application were the Applicant and the ANC which did not participate in the application. 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 OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411.11, and 411.18, that the requested relief can be granted, 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 25 – UPDATED ARCHITECTURAL PLANS.**

**VOTE: 3-0-2** (Frederick L. Hill, Marnique Y. Heath, and Michael G. Turnbull to APPROVE; Anita Butani D’Souza, recused, and Jeffrey L. Hinkle not present, not 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:** June 9, 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.

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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.