

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



**Application No. 19300 of Capitol Holdings II LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the lot occupancy requirements under § 403.2, and special exceptions from the use requirements under § 336, and under § 400.24 to allow relocation of the rooftop cornice<sup>2</sup>, to convert a two-story, one-family dwelling into a three-unit apartment house in the R-4 District at premises 1121 G Street N.E. (Square 983, Lot 850).

**HEARING DATE:** July 12, 2016

**DECISION DATE:** July 12, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 26 (revised).) 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.

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<sup>1</sup> The Applicant requested the application be amended to include lot occupancy relief from § 403.2, to 64.6%, to allow a covered porch at the front of the building. (Exhibit 24.) The caption includes that relief. Although the Office of Planning recommended that the Applicant add a special exception for alteration of rooftop architectural elements under § 400.25 (Exhibit 32), the Applicant did not do so. Nevertheless, the Board did approve that relief in its deliberations and motion. The Applicant noted that the requirement dealing with the alteration of roof top architectural elements in § 400.24, which the Board did include in its motion to approve, is also found within § 336.8 and thus, by mentioning the special exception under § 400.24 in its motion, the Board could have exercised its ability to waive the identical provision in 336.8, to the extent it is applicable, as the Board is permitted to do by § 336.12.

<sup>2</sup> The Board, upon the recommendation of the Office of Planning, added special exception relief from § 400.24 (as is permitted by § 400.25) to allow relocation of the rooftop cornice to its motion for approval of the application. The caption has been changed accordingly.

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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") 6A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report in support of the application, which indicated that at a duly noticed and regularly scheduled meeting of the ANC on June 9, 2016, at which a quorum was present, the ANC voted 7:0 to approve the application. In its report, the ANC stated:

The Commission supports granting the requested special exception because the development meets the conditions stipulated in §§ 336.2 through 336.10. With regard to §§ 336.11, the Commission believes that the development will maintain the character of the block thanks to the developer's commitment to make best efforts to replicate the porch cover at the existing structure and extend the porch to match the new structure being built. In addition, the Commission requested and developer agreed to provide language within the condominium by-laws that requires private trash management at the rear of the property, to avoid trash issues negatively impacting the enjoyment of neighboring properties, as described in §§ 336.9.

(Exhibit 28.)

The Office of Planning ("OP") submitted a timely report and testified in support of the request for a special exception for residential conversion, but recommended denial of a variance for lot occupancy. Also, OP recommended a special exception for alteration of rooftop architectural elements under § 400.25.<sup>3</sup> (Exhibit 32.) At the hearing the Applicant provided additional information as to how met the burden for an area variance for lot occupancy. OP testified that, given the additional information that the Applicant provided to OP, it was now more sympathetic to the Applicant's request for a variance from lot occupancy, although OP still wanted more information before it could support the request for variance relief.

During the hearing, the Applicant testified that the requirement to preserve the covered porch under the design requirements was what triggered the need for lot occupancy relief. Retention of the porch, according to the Applicant, was a condition of the ANC and the community's support and also was required by OP as an architectural feature under § 336. By retaining a covered porch in the design, the property, as viewed from the front, would be consistent with the neighboring properties, thereby achieving a design in keeping with the character of the neighborhood. In addition, the Applicant noted that the lot is nearly twice as large as almost every other residential property on the block and is the only house with an open area on the block, adding to its uniqueness. Because the covered porch is completely within the private property and not in public space, where normally houses are not so set back from the property line and given the exceptional condition of

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<sup>3</sup> The OP report recommended adding relief under § 400.25 which in authorizing special exception relief references the design requirements under § 400.24. Subsection 400.25 states that "[i]n an R-4 Zone District, relief from the design requirements of § 400.24 may be approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the conditions of § 400.23(a), (b), and (c)." The Board, in its motion to approve the application, included a special exception under § 400.24 to allow relocation of the rooftop cornice.

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requiring the Applicant to preserve the porch in the design has led to a situation where the owner would lose three stories of approximately 160 square feet each of occupiable space in the rear of the property to make up for the five feet taken up to retain the front covered porch in the design. The Applicant stated that this situation creates a practical difficulty. The Applicant also noted that the project was supported by the community and that no one would be adversely impacted by the additional five feet in the rear of the property. The Board found the Applicant's additional testimony persuasive.

Further, as to OP's recommendation that the Applicant needed a special exception for alteration of rooftop architectural elements under § 400.25, the Applicant did not specifically request that relief, but noted that the requirement dealing with the alteration of roof top architectural elements in § 400.24, which the Board did include in its motion to approve, is also found within § 336.8 and thus, by mentioning the special exception under § 400.24 in its motion, the Board could have exercised its ability to waive the identical provision in 336.8, to the extent it is applicable, as the Board is permitted to do by § 336.12.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 33.)

Letters in support of the application were submitted to the record from the Capitol Hill Restoration Society (Exhibit 36), the owner of 1129 G Street, N.E.<sup>4</sup> (Exhibit 22), and the adjacent owners of 1125 G Street, N.E. (Exhibit 39.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for an area variance from the lot occupancy requirements under § 403.2, to convert a two-story, one-family dwelling into a three-unit apartment house in the R-4 District. The only parties to the case were the ANC and the Applicant. 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 averse 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 a variance from 11 DCMR § 403.2, 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 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.

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<sup>4</sup> The owner of 1129 G Street, N.E. requested the Applicant amend its plans to retain the existing porch roof, thus necessitating the Applicant's request for a variance from the lot occupancy requirements. (Exhibit 22.)

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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, for a special exception from the use requirements under § 336 and to allow relocation of the rooftop cornice under § 400.24. 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, 400.24, 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.

It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED UPDATED PLANS AT EXHIBIT 25, AS REVISED BY THE PORCH DESIGN AT EXHIBIT 37.**

**VOTE:**       **4-0-1** (Marnique Y. Heath, Anita Butani D’Souza, Jeffrey L. Hinkle, and Peter G. May, to APPROVE; Frederick L. Hill, not present or participating.)

**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:** July 28, 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

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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 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.