GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19317 of Travis Gordon, as amended,[1] pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, and special exceptions from the penthouse requirements under § 411.5, and from the enclosing walls of equal heights requirements under § 411.9, to construct a new stairway penthouse to an existing one-family dwelling in the R-4 District at premises 1320 10th Street, N.W. (Square 339, Lot 28).

HEARING DATE: July 6, 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 37 - 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.

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 located 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. ANC 2F did not file an official report in the application to which the Board could give great weight. However, at the hearing the Applicant testified that the application was presented to the ANC 2F Community Development Committee ("CDC") which approved the case and recommended that the full ANC support the application. The Applicant filed into the record an email exchange between the

[1] This application was originally filed to request special exception relief under §§ 223.1, 2001.3, 403, and 406. (Exhibit 5.) The application was amended to request additional special exception relief under §§ 411.5 and 411.9 as captioned above. (See Exhibit 37.)

Applicant and members of ANC 2F noting that the CDC did in fact approve the application, and that the ANC approved the CDC's recommendation to support this application. (Exhibit 38.)

The Office of Planning ("OP") submitted a timely report on June 29, 2016, recommending approval of the application which initially included relief from §§ 223.1, 2001.3, 403, and 406. OP recommended that the Applicant add relief from §§ 411.5, 411.9, and 411.18, but OP noted that it would recommend denial of relief under § 411.18 for setback of roof terrace guard rails. (Exhibit 31.) The application was amended to include two of the additional areas of relief recommended by OP, *to wit*, §§ 411.5 and 411.9. (See Exhibit 37.) At the hearing, the Applicant's representative testified that the Applicant is "fine with setting the railing back from the face of the building" as requested by OP (Transcript, Hearing of July 6, 2016, p. 179), obviating the need for relief under § 411.18. Consequently, OP testified in support of the application as amended.[2] The Board requested that the Applicant submit updated plans, which the Applicant provided in his post-hearing submission. (Exhibit 36.)

The D.C. Department of Transportation submitted a timely report on June 29, 2016 indicating that it has no objection to approval of the application. (Exhibit 30.)

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 special exception relief under §§ 223, 2001.3, 403.2, 406.1, 411.5, and 411.9. The only parties to the application were the Applicant and the ANC which expressed support for 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.

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[2] To address the circumstance where DCRA might place a hold on the Applicant's permit application due to the filing of a solar panel permit by a nearby property owner, OP requested that the Applicant file a statement indicating that the project will be in compliance with § 400.24(b) and (c) related to the impact of additions on adjacent properties, which provides:

> 400.24 In an R-4 Zone District, the following provisions shall apply:
> …
>
> (b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code; and
>
> (c) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator.

(11 DCMR § 400.24.)

In response to OP's request, in his Supplemental Submission dated July 8, 2016, the Applicant attested that "the proposed addition or penthouse will neither block or impede the functioning of a chimney or an external vent nor interfere with the operation of an existing or permitted solar energy system." (Exhibit 35, p. 2.)

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, 223, 2001.3, 403.2, 406.1, 411.5, and 411.9, 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 REVISED PLANS AT EXHIBIT 36 – REVISED ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 3-0-2 (Anita Butani D'Souza, Robert E. Miller and Jeffrey L. Hinkle to APPROVE; Marnique Y. Heath and Frederick L. Hill, not 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 20, 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.