

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19363 of Zachary and Robert Bernstein, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the penthouse requirements of Subtitle C § 1500.4, the walls of unequal height requirements of Subtitle C § 1500.9, and the setback requirements of Subtitle C § 1502.1(c), to add a roof deck addition to an existing one-family dwelling in the R-3 Zone at premises 35 Franklin Street, N.E. (Square 3501, Lot 31).

HEARING DATES: November 16, 2016 and December 14, 2016²
DECISION DATE: December 14, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 5 (original – 1958 Regulations), 10 (revised - 2016 Regulations), and 35 (amended).) 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")

¹ The application was initially filed under the provisions of the 1958 Zoning Regulations which were repealed as of September 6, 2016. (Exhibits 1 and 5.) The Applicant revised the application to request relief under the 2016 Zoning Regulations that became effective on September 6, 2016. That revision asked for a special exception from Subtitle C § 1500.4, pursuant to 11 DCMR Subtitle X, Chapter 9. (Exhibits 9 and 10.) Subsequently, based on a recommendation by the Office of Planning (OP), the Applicant further amended the application and added a request for special exception relief from Subtitle C § 1500.9 (multiple enclosure wall heights) and Subtitle C § 1502.1 (railing setback). (Exhibit 35.) The caption has been amended accordingly.

² The Board continued the public hearing of November 16, 2016, to allow the Applicant to provide supplemental information relating to drawings of different options for the roof hatch to meet the special exception relief.

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5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 18 2016, at which a quorum was present, the ANC voted 10-0-0 to support the application.³ (Exhibit 30.)

The adjacent residents of 37 Franklin Street, N.E., Washington D.C. submitted a letter of support for the application. (Exhibit 45.)

The Office of Planning ("OP") submitted a timely report dated November 4, 2016 (Exhibit 34), and testified at the hearing in support of the application. The District Department of Transportation ("DDOT") submitted a timely report, dated November 2, 2016, expressing no objection to the approval of the application. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the penthouse requirements of Subtitle C § 1500.4, the walls of unequal height requirements of Subtitle C § 1500.9, and the setback requirements of Subtitle C § 1502.1(c), to add a roof deck addition to an existing one-family dwelling in the R-3 Zone. 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 OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C §§ 1500.4, 1500.9, and 1502.1(c), 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **3-0-2** (Frederick L. Hill, Carlton E. Hart, and Michael G. Turnbull to APPROVE; Anita Butani D'Souza not participating or voting; one Board seat vacant).


³ The ANC's report also indicated that during its public monthly meeting on October 3, 2016, the Stronghold Civic Association voted unanimously to support the application. (Exhibit 30.)

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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 order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 23, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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

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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.