

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18570 of 1845 North Capitol Street NE LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401.3, to allow a conversion of a flat into a three-unit apartment house in the R-4 District at premises 1845 North Capitol Street, N.E. (Square 3510, Lot 22).

HEARING DATE: June 18, 2013

DECISION DATE: June 18, 2013

DECISION AND ORDER

This self-certified application was submitted March 28, 2013 by 1845 North Capitol Street NE LLC ("Applicant"), the owner of the property that is the subject of the application. The application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirement under § 401.3 to allow a conversion of a two-unit flat into a three-unit apartment house in the R-4 District at premises 1845 North Capitol Street, N.E. (Square 3510, Lot 22). Following a public hearing on June 18, 2013, the Board of Zoning Adjustment (the "Board") voted 3-0 in a bench decision to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 12, 2013, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation; the Councilmember for Ward 5; Advisory Neighborhood Commission ("ANC") 5E, the ANC for the area within which the subject property is located; and the single-member district ANC 5E-04.

A public hearing was scheduled for June 18, 2013. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on April 12, 2013, mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 5E. Notice was published in the *D.C. Register* on April 12, 2013 (60 DCR 5580).

Requests for Party Status. In addition to the Applicant, ANC 5E was automatically a party in this proceeding. There were no additional requests for party status.

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18570
EXHIBIT NO. 34

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Applicant's Case. The Applicant provided evidence in its Applicant's Statement filed with the Application, and from testimony provided by Cynthia Banuls, a principal of the Applicant.

Government Reports. By report dated June 11, 2013, and through testimony at the public hearing, OP recommended approval of the requested variance.

ANC Report. By Form 129 – Advisory Neighborhood Commission (ANC) Report, including an attachment, filed with the Office of Zoning on June 10, 2013, ANC 5E indicated that, at a regular, duly noticed monthly public meeting held on May 21, 2013 with a quorum present, the ANC voted 6-0-2 to recommend that the Board deny the application. In the attachment, ANC 5E claimed four reasons in support of its recommendation: (i) the lot area of 1,311 square feet is less than half the minimum requirement of 2,700 square feet required for a three-unit apartment house conversion in the R-4 District; (ii) approving the variance will set a precedent in the community and developers will expect a zoning variance to convert to three-unit apartment houses; (iii) the subject property has been plagued with water problems at the basement level; and (iv) the building's historical use was not as a four-unit apartment house since the 1951 certificate of occupancy application did not denote the number of units, and the predominant use from 1981 was a two-unit flat. ANC 5E Commissioner Sylvia Pinckney provided testimony at the hearing commensurate with the ANC's resolution.

Persons in support. The Board received 24 letters of support from property owners within 200 feet of the subject property.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 1845 North Capitol Street, N.E., Square 3510, Lot 22.
2. Lot 22 is a rectangular-shaped property with a land area of 1,311 square feet.
3. The subject property is located in the R-4 Zone District.
4. The subject property is improved with a two-story row dwelling structure with one below-grade level.
5. The subject property was constructed prior to the May 12, 1958 effective date of the current versions of the Zoning Regulations.
6. The most recent certificate of occupancy for the subject property authorized its use as a two-family dwelling, also known as a flat.

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7. The subject property has historical certificates of occupancy evidencing use as an apartment house from 1951 until 1989.

The Applicant's Project

8. At the time of Applicant's purchase of the subject property, the building had been vacant for several years and contained three kitchen areas within the building.
9. The Applicant applied for and received a building permit from DCRA to renovate the building as a three-unit apartment house, based on the existing condition of the building and the existence of certificate of occupancy evidence showing apartment house use prior to 1958.
10. After renovation pursuant to the building permit was substantially completed, the Applicant was denied a certificate of occupancy by DCRA, which claimed that the previous apartment house use was discontinued and therefore could not continue as a nonconforming structure.

Exceptional Condition of the Property Leading to Practical Difficulty

11. According to existing certificate of occupancy evidence, the subject building was approved as an apartment house from at least 1951 until 1989.
12. The Building consisted of three kitchen areas.
13. The Applicant was granted building permits to renovate the subject building as a three-unit apartment house.
14. The Applicant justifiably relied on the building permits to lawfully complete an expensive renovation project to use the subject building for a three-unit apartment house.
15. The Applicant would have a practical difficulty in reconfiguring the subject building back to a two-unit flat, or in closing off and not using the third unit.

No Substantial Detriment to the Public Good or the Integrity of the Zone Plan

16. The Applicant has restored a vacant and neglected property and brought it back to productive use.
17. The Application had letters of support from 24 neighbors, all located within 200 feet of the subject property. Other than ANC 5E, there was no testimony or letters in opposition to the Application.

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18. The Applicant acted in good faith reliance on the approval from DCRA to renovate the subject building as a three-unit apartment house.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3), to grant variance relief where “by reason of exceptional narrowness, shallowness, or shape of a specific property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (*See* 11 DCMR § 3103.2.)

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) as a result of the property’s size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the owner will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variance will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 1170.

The District of Columbia Court of Appeals has held that “an exceptional or extraordinary situation or condition” may encompass the buildings on a property, not merely the land itself, and may arise due to a “confluence of factors.” *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

Because a conversion to a three-unit apartment house would require a land area of 2,700 square feet, or 900 square feet per unit, and the lot consists of only 1,331 feet, the applicant requires a variance from the minimum lot restrictions under 11 DCMR § 401.3 to allow the conversion of the subject building to a three-unit apartment house.

The Board concludes that the Application satisfies the requirements necessary for variance relief, as follows:

The Board concludes that the condition and the circumstances surrounding the subject property constitute an exceptional condition and situation. The building has historically been used as an apartment house, was configured for three apartment units when the applicant purchased it, and was approved for significant renovation as a three-unit apartment building. The zoning history

of a property, including past actions of governmental authorities, can constitute the “events extraneous to the land” which create the requisite exceptional situation or condition. *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). In *Monaco*, a zoning history which implicitly approved a use and thereby gave rise to good-faith, detrimental reliance by the property owner, helped to establish the necessary exceptional situation.

The situation here is not unlike the circumstance that confronted the Board in *Application No. 17960 of Lucia and Claudio Rosan* (2009), *affirmed, Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment* 22 A.3d 748 (D.C. 2011). Like the applicant in *Rosan*, the Applicant here “reasonably relied on the issuance of the building permits by DCRA in believing that they were acting in accordance with the zoning regulations.” *Id.* at 753. Also, the Applicant here “had no reason to understand that the building permit[] did not represent the zoning determination that they were seeking.” *Id.* at 755. Thus, the Applicant’s “good faith and detrimental reliance constitute[ed] an exceptional situation.” *Id.*

The Board concludes that complying with the Zoning Regulations and converting the subject building back to a two-unit flat would impose an unnecessary burden on the owner because of the extraordinary expense necessary for such conversion.

The Board further finds that variance relief can be granted to this applicant without substantial detriment to the public good or the integrity of the zone plan. The R-4 District permits conversions to multiple family dwellings subject to a land area condition that cannot be met here. The additional density resulting will not prove detrimental to the neighborhood and the conversion of the vacant property will remove an existing adverse condition.

The Board notes ANC 5E’s opposition to the application and addresses their four stated concerns as follows: (i) despite the fact that the subject property’s land area was only 1,331 square feet, the application otherwise met the requirements for variance relief; (ii) the Board considers each application for its own merits and is not setting a precedent for other properties in the neighborhood; (iii) previous water problems on the subject property are not relevant to the Board’s consideration of this variance relief and at any rate, this project is likely to correct such problems; and (iv) the subject property has an obvious historical use as an apartment house, which was a contributing, but not the only, factor in the Board’s decision to grant relief.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking the variance relief that 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 requested 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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For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application, subject to Exhibit 13 – Plans, is hereby **GRANTED**.

VOTE: **3-0-2** (S. Kathryn Allen, Jeffrey L. Hinkle, and Robert E. Miller to Approve;
 Lloyd J. Jordan not present, and the third mayoral appointee seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 9, 2013

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 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.