

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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2013 MAY -1 PM 1:03

Application of John and Julie Lippman
471 M Street, NW Square 513, Lot 920

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF
AND STATEMENT OF EXISTING AND INTENDED USE

I. Background

The Property is located at 471 M Street, NW (Square 513 Lot 920). The Property is improved with a two-story four-unit apartment house constructed prior to 1958 (the "Building"). The Building has been used as a 4-unit apartment house since its original construction. An apartment house in the R-4 zone which existed as an apartment house prior to 1958 is considered to be an "other structure" for purposes of determining the maximum permitted lot occupancy under 11 DCMR 403.2. Therefore, the maximum permitted lot occupancy for this Building is only forty percent (40%). This is in contrast to the maximum permitted lot occupancy of sixty percent (60%) for a building built before 1958 but converted to apartment house use after 1958. In fact, if this proposal involved an expansion for a fifth unit, the maximum lot occupancy would be sixty percent (60%) (although such an expansion would constitute a violation of minimum lot area requirements).

If the Building had been converted to apartment house use any time after May 12, 1958, there would be no need for variance relief, as the existing and proposed lot occupancy percentages would both be under the maximum sixty percent (60%). But because this building was an apartment house prior to 1958, it is subject to maximum lot occupancy of only forty percent (40%), and no additions are possible without variance relief. The Applicant is proposing to construct an addition to the Building by adding a partial third story, with no increase in the existing lot occupancy.

A building built prior to May 12, 1958, and converted to apartment house after May 12, 1958, is permitted as a matter-of-right in the R-4 zone provided there is 900 square feet of land area for each apartment unit (known as the "900-foot rule"). Pursuant to a clarification by the Zoning Administrator provided to the Applicant, as well as numerous BZA precedents, a pre-1958 apartment house in the R-4 zone is not considered to be a nonconforming use. Therefore, Section 2002.5 – which prohibits the enlargement of a nonconforming use – does not apply to the proposal for this Property. Also, although the Property has a land area of only 2,000 square feet, the 900-foot rule does not apply because the Applicant is not converting to apartment house, nor are they requesting an increase in the number of apartment units.

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Relief, however, is needed from 11 DCMR § 2001.3, since the proposal involves an addition to a structure that is currently nonconforming as to lot occupancy. The Applicant is proposing an addition to the top floor. The addition will be set back from the front building line and will not increase the Building's existing lot occupancy.

The Property is located on a block comprised of much larger, 3- and 4- story buildings. The Property is bordered to the east and north (its rear) by a parking lot owned and used by the Metropolitan Community Church. The width of the parking lot area to the east of the subject Building is forty (40) feet. On the far side of the parking lot, to the east is a three-story row structure. Bordering the Property to the west is another three-story row structure.

II. Burden of Proof

In order to receive variance relief, the applicant must satisfy a three-part test which requires: (1) a demonstration that the property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

A. Property Is Affected by An Exceptional Situation or Condition

The Subject Building is a two-story structure in an area dominated by large 3-story row houses. The large majority of structures on this block have significantly larger footprints than the subject Building. Also, while the Building has been a 4-unit apartment house since before 1958 (causing a maximum lot occupancy of only forty percent (40%)), the majority of the surrounding structures are either one-family dwellings, flats, or apartments converted after 1958 (all having a maximum lot occupancy of sixty percent (60%)). The Property is considered a contributing building in the Mount Vernon Historic District Property and this proposed addition has been subject to modifications by the Historic Preservation Review Board staff.

Finally, the Building borders a taller building to its west, and to the west borders the forty (40) feet of open space and then another taller building. The confluence of all of these conditions makes the subject Property and Building extremely unique.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty upon the Property Owner

Because the apartment house existed as an apartment house prior to 1958, it is subject to maximum lot occupancy of only forty percent (40%). This is a full third lower than the sixty percent (60%) lot occupancy for row dwellings and for apartment houses that were converted *after* 1958. Because of this anomaly, the Applicant is not able, without the requested relief, to

build the proposed addition.¹ The Addition will provide additional space to bring the Building in line with current space needs. The renovation work done as part of this project will also modernize the interior of the Building and bring it up to current Building Code, without extending the existing footprint, and also keeping the height well below the maximum permitted height of forty (40) feet.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan

The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The proposed project will comply with the design standards of the Historic Preservation Review Board, providing a third-story addition that will leave the height of the Building lower than almost all other structures on this block. The number of apartment units will not be increased, and the existing lot occupancy of fifty-eight percent (58%) will not be increased. The Applicant believes that the sum of the extraordinary conditions surrounding this Property make for a very unique situation. Combined with the fact that this is a very modest request, with no increase in the lot occupancy or the number of units, there will not be a substantial detriment to the Zone Plan.

STATEMENT OF EXISTING AND INTENDED USE.

The Building is currently used as a 4-unit apartment house, and has been used as a 4-unit apartment house since prior to 1958.

The Applicant intends to continue the use as a 4-unit apartment house.

¹ The currently proposed Zoning Regulations Revision will correct this anomaly, allowing sixty percent lot occupancy here, so this project would be matter-of-right under the new Regulations.