

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18598 of 3612 Park Place LLC, pursuant to 11 DCMR § 3103.2, for a variance from the minimum lot area requirements under § 401.3 to convert two vacant row dwellings into a six-unit apartment house in the R-4 District at premises 3612-3614 Park Place, N.W. (Square 3035, Lots 837 and 838).

HEARING DATES: July 30, 2013
DECISION DATE: September 10, 2013

DECISION AND ORDER

This self-certified application was submitted on May 7, 2013 by 3612 Park Place LLC (the “Applicant”), the owner of the property that is the subject of the application. The application requested an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow for one additional unit in order to combine with the five units permitted as a matter of right in order to have a six unit apartment building, at the property located at 3612-3614 Park Place, N.W. (Square 2833, Lots 837 and 838). Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 9, 2013, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located; and Single Member District/ANC 1A08. Pursuant to 11 DCMR § 3112.14, on May 23, 2013 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1A, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on May 24, 2013 (60 DCR 7315).

Party Status. The Applicant and ANC 1A were automatically parties in this proceeding. There were no requests for party status in this proceeding.

Applicant’s Case. The Applicant provided evidence and testimony from Neil Siman, a lender and developer, and Roger Riggins, the project manager for the Applicant’s proposal. The Applicant’s witnesses described the current conditions at the subject property and the planned

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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renovation of the buildings, and testified about the financial factors underlying the Applicant's decision to seek approval of a six-unit apartment house rather than undertake a matter-of-right project.

OP Report. By memorandum dated July 16, 2013, OP recommended denial of the application. According to OP, the Applicant had not demonstrated any practical difficulty, since the Zoning Regulations did not contemplate a grant of relief "in anticipation of a higher return on an applicant's investment and not in response to an established practical difficulty derived from a lot's unique condition." (Exhibit 28.) By supplemental report dated September 3, 2013, OP reiterated its recommendation to deny the requested area variance. OP stated the proposed development of a 4-story, 6-unit apartment building is not consistent with a conversion in the manner anticipated by the Zoning Regulations and would therefore be clearly contrary to its intent and integrity. The OP report stated the intent of the Zoning Regulations is "to allow for the reasonable conversion of existing large structures in the R-4 zone that are considered too large for current living standards," but it is "not to allow for speculative conversions of typically sized row houses into apartment buildings, or to rectify a bad business decision based on a lack of due diligence." (Exhibit 34, emphasis omitted.)

DDOT. By memorandum dated July 17, 2013, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 27.)

ANC Report. By report submitted July 11, 2013, ANC 1A indicated that, at a properly noticed public meeting, held October 7, 2013 with a quorum present, the ANC voted 9-1-1 in support of the application. The ANC indicated its belief that the Applicant's "blighted properties meet the extraordinary or exceptional condition threshold," noting that "[r]egardless of purchase price, the advanced deterioration of the properties puts them beyond the means and abilities of most individuals seeking to renovate a property." The report also stated that "ANC 1A is appreciative that the [Applicant's] plan preserves much of the historic fabric of the facades and encourages the developer to do as much as possible to retain the architectural character of the neighborhood in general, and the particular block specifically." According to ANC 1A, the requested zoning "relief can be granted without substantial detriment to the public good." (Exhibit 24.)

Persons in support. The Board received letters from the owners of properties abutting the subject property at 3610 and 3616 Park Place, N.W. Both letters commented favorably on the Applicant's proposal, especially with respect to the renovation of vacant buildings and the provision of five parking spaces for the planned six apartments.

FINDINGS OF FACT

The Subject Property

1. The subject property comprises two adjoining lots located on the west side of Park Place between Otis and Newton Places (Square 3035, Lots 837 and 838).
2. Each of the two interior lots has 18.3 feet of frontage along Park Place, and each lot is improved with a three-story plus basement row-type building. The building on Lot 838 is

attached to both the building on Lot 837 and to a similar building on the lot abutting to the south. The building on Lot 837 is built to the northern property line, and therefore lacks a side yard on the north side, but is not attached to the adjoining building. (That building, a semi-detached dwelling, has a side yard facing Lot 837.)

3. Both lots of the subject property are approximately 134 feet deep. However, Lot 838 is rectangular, 18 feet wide along the rear lot line, while Lot 837 is irregularly shaped defined by public alleys in the interior of the square. An alley 10 feet wide runs approximately north-south from Otis Place behind properties to the north of Lot 837, which are not as deep as the subject property and other lots to the south. An east-west alley, 15 feet wide, abuts Lot 837 for more than half its depth, and causes the width of Lot 837 to narrow at two points. Another north-south alley, also 10 feet wide, abuts Lots 837 and 838 along their rear lot lines.
4. Park Place slopes very gradually in the vicinity of the subject property, approximately two feet, east to west, in the 3600 block. The grade also changes by a few inches at the rear of Lot 837 such that the alley is slightly higher than the rear yard of the subject property. This slope has contributed to the deterioration of the Applicant's buildings since inadequate drainage has led to water pooling at the building's foundation.
5. The buildings on the subject property were built in 1915 and may have been used previously as one-family dwellings. Each contains approximately 1,380 square feet of living space. The Applicant testified that both buildings have been vacant for at least seven years and are now in "severely dilapidated" condition and "in need of significant structural repair and restoration." The Applicant provided photographs of conditions at the subject property, illustrating damage to masonry walls, deteriorated mortar, slab displacement, damage to the roof and windows, and damage attributed to mold, termites, and fire.
6. Properties in the vicinity of the subject property, along the west side of Park Place and on other nearby streets, are improved primarily with low to moderate density attached and semi-detached dwellings. The U.S. Soldiers' and Airmen's Home (Armed Forces Retirement Home-Washington Campus) is located on a large parcel on Park Place immediately to the east of the subject property.
7. The Applicant has begun the subdivision process to consolidate Lots 837 and 838 into a single record lot, which will have an area of 4,521 square feet. (As separate parcels, the current lot areas are 2,108 square feet for Lot 837 and 2,413 square feet for Lot 838.) As combined, the subject property would have a lot occupancy of 32.35 percent and a rear yard of 46.4 feet. Existing building height is 25.5 feet.

The Applicant's Project

8. The Applicant proposed to renovate the buildings at the subject property into a single building, construct a new addition extending across the rear of the building, and convert

the property to a six-unit apartment house. The rear addition would be three stories, with basement and roof deck. Five parking spaces would be provided at the rear of the subject property, accessible from the alleys.

9. The proposed conversion and enlargement would create a lot occupancy of 52.05% where a maximum of 60% is permitted, a rear yard of 21.8 feet where a minimum of 20 feet is required, and a building height of 34.5 feet where a maximum of 40 feet and three stories are permitted. (See 11 DCMR §§ 403.2, 404.1, and 400.1.)
10. Pursuant to § 401.3, conversion of a building in the R-4 zone to an apartment house requires at least 900 square feet of lot area per unit. In light of the subject property's area of 4,521 square feet, the Applicant could convert the combined building to a five-unit apartment house as a matter of right, but the subject property would require an additional 879 square feet in lot area to permit a six-unit apartment house without variance relief. Conversion of the combined building into six apartments would provide 753.5 square feet of lot area per unit, a variance of approximately 16% from the minimum requirement of 900 square feet.
11. The Applicant asserted that the subject property was affected by an exceptional situation or condition in that the buildings are "in a severe state of disrepair and decay" and have "incurred extraordinary structural damage to a much greater degree than the ordinary vacant, blighted structure," especially when compared to the "generally up-to-date properties" on the same block. As a result, the Applicant claimed that renovation of the property would require "extraordinary" expenses to amend the blighted condition and to correct structural damage, subject to "the unpredictable nature of a major structural restoration." (Exhibit 4.)
12. The Applicant argued that the strict application of the minimum lot area requirement set forth in the Zoning Regulations would result in practical difficulty by limiting to five the number of apartment units that could be provided at the subject property as a matter of right, because the creation of five units in the two buildings "makes for an inefficient and non-cohesive layout, as well as a potentially unappealing and asymmetrical exterior." According to the Applicant, "the demand for, and marketability of, a certain size and layout of apartment unit," would make compliance with the minimum lot area requirement of § 401.3 of the Zoning Regulations "unnecessarily burdensome for the Applicant." (Exhibit 4.)
13. The Applicant testified that the requested relief could be granted without substantial detriment to the public good or substantial impairment of the zone plan because the "request is modest," allowing conversion of the building to six units instead of the five permitted as a matter of right and achieving the restoration of "blighted, vacant, and structurally deficient buildings" so as to "eliminate an eyesore and bring the quality of the Property in line with that of the other properties on this block." (Exhibit 4.)

Harmony with Zoning

14. The subject property is located in the R-4 District, which is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) Because its “primary purpose” is “the stabilization of remaining one-family dwellings,” the R-4 zone is not intended to become an apartment house district as contemplated in the General Residence (R-5) zones, since the conversion of existing structures is “controlled by a minimum lot area per family requirement.” (11 DCMR §§ 330.2, 330.3.)
15. Properties in the vicinity of the subject property are also zoned R-4, with the exception of the site of the U.S. Soldiers’ and Airmen’s Home, which is unzoned.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow the conversion of two former row dwellings, enlarged with a rear addition, into a six-unit apartment house in the R-4 District at 3612 and 3614 Park Place, N.W. (Square 3035, Lots 837 and 838). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of 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.)

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship” must be made for a use variance. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances; therefore, he had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. 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. See *Association For Preservation of 1700 Block of N St., N.W., and Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978).

Based on the findings of fact, the Board finds that the application does not satisfy the requirements for variance relief from the minimum lot area requirement of § 401.3 in accordance with § 3103.2. The Board does not find that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations would create a

practical difficulty to the Applicant as the owner of the property. The subject property is generally rectangular in shape, without significant changes in grade, and is similar to other properties in the vicinity. The buildings on the subject property are similar to the buildings on the abutting lots, as well as to many other buildings in the vicinity. As described by OP, which found no exceptional situation or practical difficulty in this application, the “current physical configuration of the existing building does not preclude its use for flats, or five units if the lots are combined....” The Applicant argues that the property exhibits an exceptional situation or condition due to the significantly deteriorated state of the existing building, especially in contrast to the generally good condition of surrounding properties, and the fact that the properties have been vacant for some time. The Board does not agree that the deteriorated state of the buildings on the subject property creates an exceptional situation, or that the degree of damage present at the Applicant’s buildings is extraordinary. Conditions cited by the Applicant, such as damage to the roofs and walls, some attributable to poor drainage, termites, or fire, are common in vacant buildings. Nor was the Board persuaded that the fact that the properties had been vacant for some years created an exceptional situation, in part because the Applicant was unable to testify about the reasons why the properties had been vacant, or how long they were on the market before their purchase by the Applicant.

As a practical difficulty arising from the strict application of the Zoning Regulations, the Applicant claims that the “unique physical condition” of the subject property presented “significant economic practical difficulties that the Applicant must overcome to realize a viable and sustainable restoration” of the buildings “with a fair and reasonable return.” The Applicant argues that a matter-of-right conversion to a five-unit apartment house would present practical difficulties because of the “extraordinary expense” entailed in correcting structural deficiencies and restoring the buildings at the subject property as well as the difficulty in configuring an uneven number of units within the existing configuration of the two buildings. According to the Applicant, the history of neglect of the subject property, the buildings’ physical condition and structural problems, and market demographics would make a five-unit conversion “unnecessarily burdensome” and a four-unit conversion “impossible,” citing a *pro forma* and construction budget prepared by the Applicant.

The Board was not persuaded that practical difficulty would result to the Applicant because of the strict application of the Zoning Regulations. The Applicant contends that a conversion of the buildings to a five-unit matter-of-right apartment house would not be economically feasible due to the need to recover significant expenses associated with the renovation of the buildings. The Board did not find creditable the financial information presented by the Applicant. The Board noted that some of the financial information did not properly capture the difference in cost and the number of associated units.

As noted by OP, the Applicant’s project “would include significant expansion of the buildings, increasing the lot occupancy from 32.35% to 52.05%,” and the Applicant’s plans for considerable enlargement of the buildings, with both a rear addition and a new third floor, complicate evaluation of its claims regarding the economic feasibility of a smaller project. A project not involving significant new construction could be devoted to a matter-of-right use as a five-unit apartment house or a pair of flats or one-family dwellings. Under the circumstances,

the Board was not persuaded by the Applicant's claims that a sixth apartment unit would be essential to making the project feasible, and that a matter-of-right project would not be financially viable.

The Board concurs with OP's conclusion that approval of the application would cause substantial detriment to the public good and would substantially impair the intent, purpose, and integrity of the zone plan. The subject property is located in a relatively low density neighborhood characterized by small row dwellings and semi-detached residences; the Applicant did not identify any other apartment houses in the vicinity. The principal exception to the predominantly low-density character of the neighborhood, the U.S. Soldiers' and Airmen's Home, is located on a campus across Park Place from the subject property. As OP noted, the development of an apartment house where it is not contemplated under the Zoning Regulations would be detrimental to the neighborhood's character, and thus to the public good.

The Board also concurs with OP's conclusion that approval of the requested zoning relief would substantially impair the intent, purpose, and integrity of the Zoning Regulations. The R-4 zone is mapped for the purpose of stabilizing the remaining one-family dwellings and is not intended to become an apartment house district. New apartment houses are not permitted as a matter of right in the R-4 District, and limits on the conversion of buildings to apartment house use were implemented in the R-4 District as a means of regulating the proliferation of large multi-family dwellings. As OP noted, "[a]partment conversions (particularly ones also involving significant additions to facilitate the additional units) conflict with the clearly stated purpose of the R-4 zone ... and would impact the purpose and integrity of the R-4 zone and the minimum lot area provisions." The Board credits OP's testimony that the provisions governing the conversion of older building that predate the Zoning Regulations into apartment houses, in a zone otherwise intended to protect lower density residential uses, were "intended to allow for the reasonable conversion of existing large structures in the R-4 zone that are considered too large for current living standards, not to allow for speculative conversions of typically sized row houses into apartment buildings." (Exhibit 28.)

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be denied.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, ANC 1A adopted a resolution in support of the application, citing the "blighted" nature of the Applicant's property, and "the advanced deterioration" that put the site "beyond the means and abilities of most individuals seeking to renovate a property." ANC 1A commented favorably on the Applicant's plans to preserve "much of the historic fabric of the facades" of the two buildings, and concluded that the requested variance could be granted without substantial detriment to the public good. In according the issues and concerns raised by ANC 1A the "great weight" to which they are entitled, the Board fully credited the unique vantage point that ANC 1A holds with respect to the impact of the Applicant's proposal on the ANC's constituents.

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However, for the reasons discussed above, the Board does not find that the blighted condition and deterioration of the subject property, as described by the Applicant, created an extraordinary condition beyond the means or ability of most individuals seeking to renovate the property. While concerns about the “historic fabric of the facades” are largely outside the purview of the Zoning Regulations, the Board notes the ANC’s concerns about the potential impact of the Applicant’s project on “the architectural character of the neighborhood in general, and the particular block specifically.” The R-4 zone is intended to protect neighborhood character in areas developed primarily with row dwellings, such as the vicinity of the subject property, in part by limiting the conversion of dwellings into multi-family dwellings, in contrast to the apartment house districts contemplated in the R-5 zones. ANC 1A concluded that the requested variance could be granted without substantial detriment to the public good, but its resolution did not address the potential impairment of the zone plan associated with the Applicant’s proposal.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow conversion of two former row dwellings into a six-unit apartment house in the R-4 District at 3612-3614 Park Place, N.W. (Square 3035, Lots 837 and 838). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **4-0-1** (Lloyd J. Jordan; Jeffrey L. Hinkle, S. Kathryn Allen, and Anthony J. Hood to Deny; one Board 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 A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 8, 2014

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.