

Application No. 18794 of Newton St Development 3 LLC, pursuant to 11 DCMR §3103.2, for variance relief from the requirements regarding lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1) to allow the Applicant to renovate and convert a vacant nonconforming corner building to a multiunit dwelling in an R-4 District at premises 1740 New Jersey Avenue NW (Lot 9, Square 508N).¹

HEARING DATE: September 16, 2014 and October 28, 2014

DECISION DATE: October 28, 2014

DECISION AND ORDER

On April 30, 2014, Newton St Development 3 LLC (the "Applicant"), the owner of 1740 New Jersey Avenue NW (Lot 9, Square 508N), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. The Board held public hearings on the application on September 16, 2014 and October 28, 2014.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Public Hearing. Pursuant to 11 DCMR §3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 6E, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing and timely submitted an affidavit to the Board to this effect.

The Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Jimmy Edgerton, Nick Hodges, and David Bloom testified on behalf of the Applicant.

ANC 6E. The Property is located within the area served by ANC 6E, which is automatically a party to this application. ANC 6E filed a letter and resolution, dated September 12, 2014 indicating that ANC 6E, at its regularly scheduled meeting on September 2, 2014, which was properly advertised and where a quorum was present, voted 5-2-0, in support of the application. See ANC Report at Exhibit 32.

Office of Planning (OP) Report. OP submitted a report dated August 29, 2014, recommending denial of the Application, based on OP's conclusions that while they support renovation of the building they cannot support renovation with the number of units requested and an addition. At the hearing, OP indicated they recognize an exceptional circumstance and practical difficulty, but that the degree of exceptional circumstance and practical difficulty does not rise to a level that warrants the relief requested by the Applicant.

DDOT Report. By memorandum dated July 8, 2014, DDOT indicated no objection to the application emphasizing that the project will have no adverse impact on the travel conditions of the District's transportation network.

Party in Opposition. There were no Parties in opposition.

¹ The Initial Application requested 8 residential units but the Applicant subsequently modified the application and architectural plans. While the degree of relief was decreased, the areas of relief identified remained the same.

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Persons in Opposition. Three were no persons in opposition.

Persons in Support. No persons in support testified but the Applicant submitted 20 letters in support of the Application.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at 1740 New Jersey Avenue NW, at the intersection of Rhode Island, New Jersey Avenue, and S Street NW.
2. Square 508N is located in the northwest quadrant of the District and is bounded on the north by S Street NW, on the east by New Jersey Avenue NW, on the south by Rhode Island Avenue NW, and on the west by 5th Street NW.
3. The Property contains approximately 1,685 square feet of land area and is located in Northwest Washington, DC.
4. The Property has approximately 32 feet of frontage along S Street NW, 43 feet of frontage along New Jersey Avenue NW, and 31 feet of frontage along Rhode Island Avenue NW.
5. The Property is in the R-4 District.
6. The R-4 District “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 (2) or more families.” 11 DCMR 330.1.
7. The Property is presently improved with a vacant 2-story corner building.
8. The Property is not located within any historic District, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.
9. The Property is located approximately 3 blocks from the Shaw Metro Station.

The Applicant's Project

10. The Applicant proposes to convert the Property from a vacant, two-story residence to a three-story plus cellar residential structure with six residential units. The current footprint of the structure will be left unchanged.
11. The development will also include covered and secure bicycle parking spaces.
12. The Applicant has provided a Parking Demand Mitigation Plan.

Exceptional Circumstance

13. The Property is affected by an exceptional situation and condition as a result of a confluence of several factors.

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14. The Property is a multi-sided lot with street frontage on three streets. The Property fronts on a complex intersection made up of three large arterial streets including Rhode Island Avenue NW, New Jersey Avenue NW, and S Street NW.
15. The Property is zoned R-4 but is within close proximity to large commercial zones along Rhode Island Avenue and Florida Avenue NW.
16. The existing structure has three entryways, one on each of the three sides with street frontage, and a large internal stairway.
17. The existing structure has several nonconforming aspects, including lot area less than 1800 square feet, 100% lot occupancy, and a nonconforming court.
18. The existing structure, was vacant for at least 5 years and has suffered from substantial water damage. The dilapidation of the existing structure is also due, in part, to the extended vacancy and deferred maintenance at the Property.
19. The exceptional history of the Property and extended vacancy is due, in part, to a conflict among heirs and complicated title issues that delayed closing.

Practical Difficulty

20. Due to the exceptional circumstances at the Property, including the dilapidated condition, layout of the existing structure, the location of the structure on a complex intersection, and frontage along three streets including large arterial avenues, a matter of right single-family home or flat is not feasible at the project.
21. The Applicant has provided evidence into the record demonstrating that the proposed number of units are required to allow for renovation of the structure while remaining economically feasible.
22. The Applicant is working around an existing stairwell location, which naturally divides the structure into the manner proposed by the Applicant. The creation of fewer units would result in awkward layouts as well as inefficient ingress and egress into the units due to the preexisting three entrances. Larger units would be less appropriate at the location considering the proximity to a complex, commercial intersection.
23. The Property, at 100% lot occupancy, cannot accommodate off-street parking without demolition of a substantial portion of the existing structure. Furthermore, there are no curb cuts on the lot to allow access for vehicles onto the Property.

Zoning Relief Requested

Variances

Lot area (§401.3)

24. The conversion of a building or structure to an apartment house in the R-4 District is permitted, but requires a minimum of 900 square feet of lot area per apartment unit. 11 DCMR §401.3.
25. The lot area is 1685 square feet.
26. Conversion of the structure to a six-unit apartment therefore requires relief from the lot area requirement.

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27. As further explained in Findings of Fact above, the lot area requirement cannot be met as a result of the exceptional circumstances at the Property.

Nonconforming Structures (§2001.3) as to Lot Occupancy (§403.1)

28. The Property currently has a lot occupancy of 100%.
29. While the footprint of the structure, and lot occupancy on the first and second story, will remain unchanged, the addition to the third story with a lot occupancy of 100% requires relief from the nonconforming structure requirements (§2001.3) as to lot occupancy (§401.3). 11 DCMR §2001.3.
30. As further explained in Findings of Fact above, 100% lot occupancy on the third story is necessary to allow a project that is financially feasible and, in light of the street frontage on three sides of the Property, that conforms visually with neighboring properties.

Parking (§2101.1)

31. Apartment use in the R-4 District requires 1 parking space for every 3 dwelling units.
32. The project, at 6 units, requires 2 parking spaces.
33. As further explained in Findings of Fact above, as a result of the 100% lot occupancy there is no space to put the required parking spaces on the Property without demolishing a significant portion of the structure. The Applicant has agreed to comply with a Parking Demand Mitigation Plan.

CONCLUSIONS OF LAW

Standard of Review

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 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.

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). The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases." *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an area variance that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration.")).

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The Applicant is seeking a variance from the zoning regulations regarding lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1). As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested area variances in this case.

Exceptional Circumstance

The Board concludes that based on a confluence of factors an exceptional circumstance exists at the Property. The Property is affected by an exceptional situation and condition as a result of a confluence of several factors. The Property is a multi-sided lot with street frontage on three streets. The Property fronts on a complex intersection made up of three large arterial streets including Rhode Island Avenue NW, New Jersey Avenue NW, and S Street NW. The Property is zoned R-4 but is within close proximity to large commercial zones along Rhode Island Avenue and Florida Avenue NW. The existing structure has three entryways, one on each of the three sides with street frontage, and a large internal stairway. The existing structure has several nonconforming aspects, including lot area less than 1800 square feet, 100% lot occupancy, and a nonconforming court. The existing structure, exposed on three sides, has suffered from substantial water damage. The dilapidation of the existing structure is also due, in part, to the extended vacancy and deferred maintenance at the Property. The history of the Property, including an extended period of vacancy and complicated title issues delaying closing, is also exceptional.

Practical Difficulty

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the requirements regarding lot area, nonconforming structure requirements with respect to lot occupancy, and parking.

Lot area (§401.3)

The lot area requirement cannot be met as a result of the exceptional circumstances at the Property. The creation of fewer units would result in awkward layouts as well as inefficient ingress and egress into the units due to the preexisting three entrances. Furthermore, significant renovation is required to resolve issues such as water damage, excessive property damage, and roof repair. There are also additional costs, no matter the number of units, as a result of the required closing of two existing curb cuts in public spaces unknown to the Applicant until meeting with DDOT. The substantial renovations required, in addition to the location of the Property on a complex and pedestrian unfriendly corner, make rehabilitation of the home to a single-family home or fewer units impractical. The Board disagrees with the Office of Planning's recommendation based on OP's contention that OP could not evaluate the case based on financial infeasibility. As a result of the extensive renovations required, a six unit structure is required for the project to be financially feasible, which the applicant demonstrated by providing detailed financial information on the proposed project as well as various alternatives. In light of the evidence presented by the Applicant, the Board concludes that the Applicant has demonstrated the need for variance relief to allow six apartment units at the Property.

Nonconforming Structures (§2001.3) as to Lot Occupancy (§403.1)

The 100% lot occupancy on a third story is necessary to allow a financially feasible project with street frontage on three sides of the Property. The Applicant has demonstrated that a third story is necessary and that a third story, at 60% lot occupancy, would be structurally inefficient and aesthetically awkward as a result of the frontage along three streets.

Parking (§2101.1)

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The Board concludes that compliance with the parking requirement would result in a practical difficulty. The Office of Planning, while recommending denial, did acknowledge that exceptional circumstances at the property result in a practical difficulty with respect to parking. As a result of the 100% lot occupancy there is no space to put the required parking spaces on the Property without demolishing a significant portion of the structure. Furthermore, there is no curb cut and DDOT indicated in their report that it is unlikely that a curb cut would be permitted. See DDOT Report at Exhibit 27.

No Detriment to the Public Good or Zone Plan

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the project as proposed.

The proposed project renovates a vacant, single-family home, a portion of which was previously used as a doctor's office, as a residential structure. Furthermore, the footprint of the existing structure will be left unchanged. In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. The Property is located on a prominent corner and serves as a gateway into the Shaw neighborhood. The height and massing of the proposed project are compatible with the location of the Property at the intersection of three wide avenues including Florida Avenue, New Jersey Avenue, and Rhode Island Avenue. The proposed project, though not in a historic district, uses high quality materials and thoughtful design to both match the defining architectural features of the existing building and compliment the character of the surrounding properties.

The Board agrees with OP that parking relief can be granted without detriment to the public good. Due to the accessibility of the Property, including an extremely high walkscore as well as access to two metro stations, several bus routes, carsharing and bikesharing options, variance relief for three spaces will not have a substantial impact. The Applicant will implement the PDM measures to promote the use of non-automotive transportation. Furthermore, the availability of a variety of transportation options, particularly carsharing and proximity to the Metro, as well as demographic changes in Shaw, reduces the need for residents to own a vehicle.

CONCLUSION

Based upon the record before the Board, and having given great weight to the ANC, OP, and DDOT reports filed in this case, the Board concludes that the Applicant has met the burden of proof for variance relief pursuant to 11 DCMR §3103.2 from the zoning regulations regarding lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1) to allow the Applicant to renovate and convert a vacant nonconforming corner building to a multiunit dwelling in the R-4 District at premises 1740 New Jersey Avenue NW (Lot 9, Square 508N).

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT** to the following **CONDITIONS**:

1. The Applicant shall include in its residential leases a provision that prohibits tenants from obtaining a Residential Parking Permit ("RPP") or Visitor Parking Pass ("VPP") at the building approved by this BZA Order from the D.C. Department of Motor Vehicles ("DMV") for the life of the project;
2. The Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any lessee or owner of the Property from obtaining an RPP or VPP at the building approved by this BZA Order for the life of the project;

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3. If rented as an apartment, the Applicant shall, for a period of 5 years, provide the first occupant of each residential unit a \$100 car sharing membership, or a \$150 Capital Bikeshare membership, or a \$200 *Smart Trip* card. If sold as condominium units, the Applicant shall provide the first owners with the incentives mentioned herein and the Condominium Declaration and Bylaws shall contain, in their operating budget, a pro rata allocation to offer all new purchasers the incentives mentioned herein for 5 years from transfer of control of the Condominium from the declarant to the Condominium Board.
4. The Applicant shall provide 7 covered and secure bicycle spaces in the building;
5. The Applicant shall use reasonable efforts to lease 4 parking spaces from a nearby parking garage and make them available to residents at the Property;
6. The Applicant shall work with DDOT to close existing curbcuts, which provides additional public street parking space on Rhode Island Ave as well as additional space for parking on S St NW; and
7. The Applicant shall work with DDOT to provide space for a Capital Bikeshare Dock if and when a Capital Bikeshare Dock can be installed.

VOTE: 4-0-0 (_____)

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

Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____

SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY

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WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ETSEQ.* (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.

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As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: _____

SARA BARDIN
DIRECTOR, OFFICE OF ZONING