

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Jarek Mika

BZA No. 18974

**APPLICANT'S PRE-HEARING STATEMENT
June 16, 2015**

This Hearing Statement ("Statement") outlines the existing and proposed use of the property and the manner in which the application ("Application") complies with the specific tests and burden of proof for the variances sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3103.2 for a use variance under § 330.5 (e) to allow the conversion of an existing structure into a three-unit (3) apartment house or condominium not in compliance with the minimum lot area, and as limited by §§ 401.3 and 403.2

SUMMARY OF APPLICATION

The applicant seeks variance pursuant to 11 DCMR § 3103.2 under §330.5 (e) to allow the proposed conversion of a structure in existence before May 12, 1958 into a three-unit apartment house, not in compliance with the minimum lot area set forth under § 401.3 to permit such matter of right conversion. Section 401.3 requires that the described building shall be allowed to convert to the proposed use, as defined, provided that the lot upon which the building to be converted is located on consists of a minimum 900 ft² of lot area for each unit of conversion. Therefore for the instant application, the minimum lot area is

required to be 2,700 ft², whereas the existing lot area of subject property is 2,625.7 ft²; a de minimis 74.3 ft² or 2.75% short of the prescribed minimum lot area. The applicant notes that this application is before the BZA because it is .75% or a mere 20.3 ft² removed from within the 2% flexibility authority of the Zoning Administrator set forth under § 407.1

The applicant believes it pertinent to state that the subject property has a history of use as a multiple dwelling, as that term is defined under § 199.1 and as follows:

“Dwelling, multiple - a building containing three (3) or more dwelling units or rooming units, or any combination of these units totaling three (3) or more”

As attested to by certificate of occupancy number B 67867, issued on August 22, 1969, 3209 13th Street, the subject of the instant application before the board was used and occupied as a multiple dwelling building having an unspecified number of rooming units as a “Rooming House Plus (2) APTS”

In 2001, a certificate of occupancy was issued for the subject property to be used and occupied as a Community Residence Facility – Boys Group Home, for 8 resident Non-Adjudicated Youth, including 5 rotating staff on 24 hour duty (see C/O 190285 issued 3/22/01).

The existing building consists of four floors (basement, first, second, and third floors) and an attic space spread over approximately 4,645 square feet of gross floor area. The existing floor plan is still configured as used under certificate of occupancy B 67867 with the two (2) apartment units located in the basement and the first floor, and the rooming house occupying the second and the third floors, notwithstanding that the building was later occupied as a community residence facility or a group home for non-adjudicated youth.

The building is currently reverted to and occupied as a rooming house, as that term is defined and set forth under § 199.1

The applicant proposes to convert the building into a three-unit apartment house only by way of reconfiguration of the building, including a limited addition, by retaining the basement and the first floor units, and converting the second, third and the attic into an owner-occupied unit. The attic space is proposed to be converted into a mezzanine.

Although a “balcony” is proposed to be added over an existing nonconforming open court, at completion the building will result in a net reduction in total gross floor area from its existing 4,645 ft² to approximately 4,370.13 ft² distributed over three dwelling units.

The proposed project will provide two off-street parking spaces that are accessible from an improved public alley which abuts the property at its northern boundary.

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested variances under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (3) (2001), as further set forth in 11 DCMR § 3103.2

PROPERTY LOCATION AND DESCRIPTION

The subject property is located in the Columbia Heights neighborhood located in Ward 4. The subject property is located in Square 2844 and is legally described as Assessment and Tax (A&T) lot number 818. It is an interior lot by definition, rectangular in shape, 18.755 feet in width and 140 feet deep for a total 2,625.7 ft² in lot area.

As will be expounded upon later in this statement for its pertinence, prior to an act of condemnation of 187.55 ft² of a portion of the subject property for purposes of a public alley in June 1913, subject property consisted of a total of 2,813.24 ft², which otherwise would have permitted the proposed conversion and/or use for which relief is sought in the instant application before the BZA.

The existing improvement or building located on subject property was constructed in 1911, two years prior to the act of condemnation which reduced its lot size from 2,813.24 ft² to its current area of 2,625.7 ft²

The subject property fronts on 13th Street at its western boundary and abuts an improved 10 feet public alley at its eastern boundary, and rear lot line. Two standard sized parking spaces accessible from this public alley will be provided, constituting an additional parking space in excess of the required parking for a three-unit apartment house that the instant project is not subject to.

As aforementioned, the existing improvement on subject property, including the attic is approximately 4,645 ft², which if split evenly between the two units or family flat to which the strict application of the Zoning Regulations restricts the subject property, results in an aggregate unit size anomalous to the reality of the prevailing conditions in its competitive market area, as expert broker written and oral testimony attest.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant seeks variance relief pursuant to the Zoning Regulations, 11 DCMR § 3103.2, and under §330.5 (e), specifically to allow the conversion of an existing structure or building into a three-unit apartment house or condominium which does not currently meet the minimum lot area prescribed to allow such matter of right conversion as set forth under § 401.3 in the R-4 zone district within which subject premises is located

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted fourteen days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of an area variance as outlined below.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical and exceptional practical difficulties to or upon the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

The applicant contends that the subject property demonstrates extraordinary or exceptional situation or condition of property by virtue of its subdivision history, the precedent date of the construction of the improvement upon it thereto, and the share size of the existing building in aggregate gross floor area combined.

As aforementioned, the subject property comprised of 2,813.24 ft² at the time of the construction of the current improvement upon it, lot area which otherwise meet the minimum lot area to permit the conversion for which relief is now sought before the BZA. The existing building was constructed in 1911, whereas the act of condemnation which subdivided out a portion of the lot for purposes of a public alley was executed two years later in 1913.

The act of condemnation specifically reduced the lot area to its current 2,625.7 ft² by subdividing out approximately 187.54 ft² for purposes of a public alley. Absent this single act, the subject property would be in a position today to make adaptive use of the improvement upon it to suit the prevailing market condition for its size, as further expounded below and will be in further testimony in the course of the hearing.

PECULIAR AND EXCEPTIONAL PRACTICAL DIFFICULTIES UPON OWNER OF PROPERTY

The peculiar and exceptional practical difficulties upon the owner of the property is the fact that the resultant unit size of approximately 2,300 ft², if the building were to be converted for purposes of the two-unit or family flat to which the strict application of the Zoning Regulations restricts the subject property, is not only impractical, but are unmarketable in a market area dominated by smaller-sized units as a result of the per square feet cost dictated by market forces out of the control of the owner.

The extraordinary or exceptional situation or condition of property described above is the direct result of the peculiar and exceptional practical difficulties imposed upon the property owner because the owner has no recourse for mitigation of the exceptional situation. In other words, the property is foreclosed from any remedy in that all adjoining properties are currently improved, otherwise unavailable to cede that portion of lot area necessary to bringing about matter of right compliance for the conversion sought in this application before the Board.

A comparative Price Point Analysis performed by the Garrison Breck Group of Sotheby's International Realty attests to the fact that market forces exert diminishing returns on the net sales price the larger unit size, based on actual sales figures in this neighborhood market.

Whereas larger unit sizes averaging over 1900 ft² sold at \$387.20 net per square feet, and stayed on the market on average 30 more days than smaller units, smaller unit sizes of just under 1000 ft² sold at \$553.77 net per square feet. In fact, the largest unit size of over 2,000 ft² in the analysis sold for more than \$100.00 net per square feet under the average net sales price per square feet.

The counterintuitive trend of market forces in this particular market is that the more the construction cost associated with larger sized units, the less likely that those costs can be recouped and the less return on investment.

The proposed cellar is approximately 1,200 ft², the first floor is 1,096 ft², while the second, third and mezzanine, which will be occupied by the owner, is a combined 1,934 ft².

Limiting the existing structure to two dwelling units or a flat also present space design difficulties because of the necessity of constructing the interior stairs to connect duplex floors, and exit or egress stairs for purposes of emergency exit of the building from all floors

The applicant submits and the expert real estate broker will testify that for all the foregoing reasons, restricting the use of the subject property to two units will yield unit sizes not competitive in the neighborhood market area, and will therefore result in peculiar and exceptional practical difficulties upon the owner

**SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL
IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE
PLAN**

The applicant seeks relief before the Board, specifically an area variance, to establish an apartment house use to which the unique circumstances affecting the property as described above consigns it. The proposed use is a permitted use in the underlying R-4 zone district, albeit only by conversion of a structure in existence prior to May 12, 1958, subject to minimum lot size prescribed, as set forth under § 330.5 (e). Therefore the proposed use is not foreign to the R-4 zone district.

The proposed apartment house use results in reduced density of use, compared to the previous known uses to which the subject property has historically devoted; multiple-unit dwelling (i.e. mix of two apartments and a rooming house); Youth Residential Facility Home; and a rooming house.

The proposed structure is architecturally compatible in scale and massing to existing neighboring properties. The surrounding buildings are predominantly row dwellings, Flats, and row structures that have undergone conversions to apartment houses, and apartment buildings and institutional uses.

The proposed use will provide twice the number of parking spaces required for the use in the underlying R-4 zone district therefore the use will not impose a substantial adverse impact upon the surrounding neighborhood, with respect to street parking.

WITNESS

The following witness will testify in support of the Application:

1. Jarek Mika Owner
2. Patrick Jones. Architect
3. Gerard DiRuggiero

CONCLUSION

The Applicant submits that the subject property exhibits all the characteristics which merit the granting of the area variance or the relief sought in this application. As will be further documented the subject property is constrained by market forces outside of the owners control to smaller unit sizes

The proposed construction will not substantially adversely affect neighboring properties because parking spaces in excess of that required for the use will be located on site, and the density proposed is in keeping with the predominant architectural scale such that the proposed structure will not be incompatible with the surrounding neighborhood.

The property is likely to remain underutilized absent the relief sought for reasons of the peculiar and exceptional practical difficulties described in the statement.

In BZA Order No. 18122, in granting the area variance sought to allow the conversion of the existing building into a three-unit apartment where the lot was 400 square feet short of the minimum lot area prescribed by § 401.3, the Board accepted as persuasive applicant's and Office of Planning's argument on the resultant size of the units as basis for peculiar and exceptional practical difficulties.

For all the foregoing reasons, the applicant respectfully request that the Board grant the relief sought in this application