

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

Application of Tiblez Adal

BZA No. 18979

APPLICANT'S PRE-HEARING STATEMENT

September 22, 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 variance 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 variance under § 2001.3 (a) to allow the retention of an existing two-story carriage house located at the rear of the subject property for adaptive alteration and repair for purposes of an artist studio. The nature of relief sought is variance relief from the maximum permitted lot occupancy for the proposed use in the underlying R-4 Zone District within which the subject property is located.

SUMMARY OF APPLICATION

The applicant seeks an area variance pursuant to 11 DCMR § 3103.2 to allow the alteration and repair of the existing carriage house for the stated purpose, wherein all work related to the restoration of the carriage house, including the main or principal structure have been substantially completed. On December 15, 2009, the Department of

Consumer and Regulatory Affairs (DCRA) approved and issued a building permit for the construction of a third floor on the existing main or principal structure on the condition that the roof of the carriage house be demolished so as to reverse the existing nonconformity of structure with respect to the maximum permitted percentage of lot occupancy for the underlying R-4 zone district by eliminating the carriage house from counting towards percentage of lot occupancy.

The main building and the carriage house combined occupied approximately 75.5% of the area of the lot at the time of the application for the third story addition to the main building. The main building alone occupies approximately 55% of the lot.

Setting aside whether the mere removal of the roof of the carriage house thereby leaving the perimeter walls standing vacates the carriage house from inclusion in lot occupancy percentage calculations, the applicant contends that the specter of freestanding perimeter walls, which would render the carriage house unsuitable for occupancy and/or any use whatsoever, results in an undesirable outcome.

This application seeks to retain the carriage house roof having restored the carriage house for the useful purpose of an artist studio. This preserves a carriage house which was originally constructed in conjunction with the main building in 1890.

The main building has been converted for purposes of a two-family flat; the first floor containing one unit, while the upper two floors comprise the second unit. The proposed artist studio use is a permitted use in an accessory structure in the R-4 zone district as set forth under § 2300.3.

Therefore relief is not required to establish the proposed artist studio

The applicant envisions the carriage house as a work/live space for a single artist with no apprentice(s), therefore parking is not required in the context of §2300.3 (e), in any event providing vehicular parking at the subject property has hardly been feasible beyond the horse and boggy days!

The applicant affirms that the proposed artist studio will comply with all the criteria set forth under §2300.3, subsection (a) through (e)

The relief sought therefore is from the maximum permitted percentage of lot occupancy for the underlying R-4 zone district resulting from the retention of the carriage house for purposeful use, which results in no net change in lot occupancy that has been in existence since the 1890 construction of the improvements on the subject property.

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 property is located in Square 806 at the northeast corner of the intersections of K and 4th Streets in the northeast quadrant. Its legal description is record lot 44.

A rectangular corner lot, the subject property has street frontage both on 4th Street and K Street. Lot width on K Street is approximately 20.08 feet, whereas depth of lot measured alongside 4th Street is 95.00 feet, for a total lot area of 1,907.60 ft²

As aforementioned, the existing improvements on the subject property, including the carriage house, were originally constructed in 1890, according to available public

records. The two-story carriage house, which is unconnected to the main building and is freestanding, is located at the north of the subject property where the rear property lot line abuts a 10 feet public alley.

The main building consisted of two floors prior to the authorized third floor addition under stated condition.

The applicant has been renovating the improvements on the subject property since 2007, starting with stabilizing the long abandoned, dilapidated structures which had been vacant since the MLK riots in 1969, and thus subjected to the degradation caused by water damage and exposure, as filed photographs document and attest.

The applicant will provide testimony in the course of the hearing to establish that work to stabilize the damaged building had to be strategically incremental primarily for a lack of funding and more importantly to improve the structural integrity of the existing structures, including the carriage house. Hence different phases of construction activity have been on-going since 2007

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant seeks variance relief pursuant to the Zoning Regulations, 11 DCMR § 3103.2, specifically under § 2001.3 (a) to allow the restoration of a two-story carriage house for productive use as an artist studio. The relief is necessitated because the approved and constructed third story addition on the main building would otherwise not have been possible without the relief sought in this application.

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 submitted 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 a peculiar and exceptional practical difficulties to 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 the unique fact that it is the only property in its square with a two-story carriage house originally constructed in conjunction with the main building in 1890.

The main building was originally a two-story structure row structure, except that towards its rear opposite K Street, the building narrows down to approximately 10 feet where it creates a conforming open court.

As aforementioned, in December of 2009, the owner was granted a building permit to construct a third floor addition, which did not extend to the doglegged part of the existing footprint, therefore no increase in footprint occurred.

However, since the existing improvement on the lot, including the carriage house, exceeded the maximum percentage of lot occupancy allowed (60% versus 75.5%), the applicant was advised that annotation on the plat to the effect that the roof of the carriage house would be removed, was enough to secure the building permit sought for the third floor addition to the main building.

The applicant sought approval for a third floor addition on the main building in order to reconfigure the two dwelling units within it for better functional floor layout design. The existing improvements upon the subject property, including the carriage house, have existed since 1890 and long predate the adoption of the current Zoning Regulations

The foregoing fact, including that the subject property is uniquely the only property upon which a “historic” two-story carriage house is constructed is the extraordinary or exceptional situation or condition of property when viewed against the necessity to demolish its roof so as to subject it to unproductive use of any kind, worse its complete demolition in order to sustain a third story addition to the main building.

PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY

The applicant contends that the very uniqueness of the subject property relating to its extraordinary or exceptional situation or condition of property, a condition which existed prior to the adoption of the Zoning Regulations, is what results in the peculiar and practical difficulties upon the owner to comply with the requirement of the Zoning Regulations

As aforementioned, the improvements on the subject property, including the carriage house, have been in existence since their original construction in 1890. Hence the aggregate percentage of lot occupancy, which computes to approximately 75.5%, has been the same since inception and long before the May 12, 1958 adoption of the current Zoning Regulations which prescribes a more restrictive 60% maximum.

The applicant has been foreclosed from compliance with the more restrictive limitation on maximum permitted percentage of lot occupancy since the 1890 construction of the current improvements on the subject property.

Notwithstanding that the constructed third floor addition atop the main building does not change the existing aggregate lot occupancy, seeking the instant relief before the BZA is practically unavoidable.

Further, the impractical outcome of the demolition of the roof of the carriage house results in a two-story structure of four walls which remains open and exposed to weather elements which will subject it to structural integrity degradation and blight

The fact that the roof of or the carriage house in entirety is required to be demolished in order that an already constructed third floor addition to the main building is allowed to be retained inherently results in peculiar and practical difficulties upon the owner

For the foregoing reason, the applicant contends that the subject property meets and complies with the second prong of the burden of proof for the granting of the specific variance relief sought.

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

The applicant seeks to establish use permitted as a matter of right in an accessory garage or structure in a Residence zone district by making adaptive use of an existing carriage house, which is the only existing one of its kind in the subject property's square of location.

Although the subject property is not within a specific Historic District, given the carriage house's year of construction in 1890 and the fact that it is the only one of its kind in the square, the applicant contends that these two factors alone bestow upon the carriage house a historic-like status that warrants its preservation, and militates against its demolition.

The applicant has expended significant resources, financial and sweat equity, to restore property that remained vacant, abandoned, and a blight to the community for productive use and occupancy.

Both the main building and the restored carriage house will be devoted to uses permitted in the underlying R-4 zone district, therefore are compatible uses. The project does not result in any net change in visual impact because the envelope of the buildings that has existed on subject property since 1890 remains the same, save for positive impact of the adaptive renovation and use of a long abandoned and property which was a blight on the neighborhood or community for a long period of time.

ADVISORY NEIGHBORHOOD COMMISSION 6C (ANC 6C)

By a resolution dated April 13, 2015, ANC 6C voted to oppose the instant application as originally presented but may reconsider its opposition on two grounds:

1. That a proposed kitchen be removed so as not to constitute the carriage house as a third dwelling unit, and;
2. That the paved parking pad in public space be eliminated.

The applicant notes the following:

1. That the proposed kitchen has been removed from the proposed artist studio so the proposed use is not misconstrued to constitute a third dwelling unit, and;
2. As photographic and the revised plat documentation attest, applicant has eliminated the parking pad in the paved public space and additionally will permanently post a no parking sign in front of the paved area. Applicant notes that contrary to ANC belief that applicant illegally paved the area of public space in concrete the work was duly authorized by a public space permit, a copy of which is filed in the case folder.

Notwithstanding the foregoing the ANC opposition is at variance with the wide community support the application documents in more than forty (40) signatories to a support letter of neighbors adjacent to and in close proximity to the project

OFFICE OF PLANNING (OP) REPORT

Although OP finds that it cannot support the requested relief for other states reasons, its report also concludes that it is not averse or will not object to approval of the application by the BZA, provided that the carriage house does not constitute a third dwelling unit, in addition to the two dwelling units configured within the main building.

The applicant notes that the floor plans have been revised to eliminate the proposed kitchen, including any other features that may result in the carriage house to be misconstrued as a third dwelling unit.

In determining that it cannot support the application OP's report cites the following:

- 1. Applicant has not demonstrated there is an exceptional situation resulting in a practical difficulty**

The applicant's contention is that the extraordinary situation or condition of property is with respect to the structures or buildings on the subject property, rather than the size or shape of the lot. Both the main building and the existing two-story carriage house were constructed contemporaneously in 1890 as such the nonconformity of structure with respect to percentage of lot occupancy has existed prior to the adoption of the Zoning Regulations on May 12, 1958.

The relief sought portends no net change in the aggregate percentage of lot occupancy as has existed since the construction of the improvements upon the subject property in 1890. The applicant further contends that the uniqueness of the subject property is that it is the only property in its square of location improved with a two-story accessory carriage house.

The fact of the retention of that portion of a nonconforming structure specifically with respect to the permitted percentage of lot occupancy is not foreign to the interpretation of the Zoning Regulations.

The applicant refers to the decision of the BZA in Appeal No. 8030 (BZA Order filed in Case Folder) upholding the ZA's determination to allow the reconstruction and retention of a nonconforming two-story porch, notwithstanding that the property owner had committed to demolishing the structure to bring the subject property into conformity with the allowable percentage of lot occupancy in the underlying R-3 zone district.

2. No Substantial Detriment to the Public Good

OP contends that the relief sought causes detriment to the public good, but appears to focus on the constructed third floor on the main building as the basis for such conclusion. Although the applicant understands that there is a subtext nexus between the constructed third floor and the relief sought in this application, however the subject of relief before the Board is the retention of the carriage house for purposeful matter of right use and occupancy.

The validity of the building permit which authorized the construction of the third floor on the main building is not under challenge in the application before the BZA.

Neither is the use of the main building as a two-family flat, nor the occupancy of the carriage house for purposes of a carriage house for purposes of an artist studio subject to a parking requirement.

The prior use of the main building for purposes of a single family dwelling in existence before the May 12, 1958 adoption of the current Zoning Regulations grants the two-family dwelling of flat one parking credit usable toward the one (1) parking required. The applicant contemplates that the artist studio will be occupied by a single artist of the fine arts without an apprentice.

An artist studio is a permitted use in an accessory structure in the underlying R-4 zone district therefore the use cannot be deemed a substantial detriment to the public good.

No Substantial Harm to the Zoning Regulations

OP contends that the requested relief involves request for lot occupancy increase. To the contrary, there is no net increase in percentage of lot occupancy in excess of the prevailing condition since the 1890 construction of both the carriage house and the main building.

Both the flat and the artist studio which will occupy the main building and carriage house respectively are uses permitted as a matter of right in the underlying R-4 zone district

The third floor addition on the main building was constructed by a validly issued building permit and does not exceed the maximum number of stories and height to which buildings within the R-4 zone district are restricted.

The subject property is within walking distance to two Metro stations – Union Station and New York Avenue Station – and it is on the major K Street bus route, therefore

served by an accessible network of public transportation. Hence the property is likely to attract tenants who do not drive but seek proximity to public transportation networks. Impact on street parking will therefore be negligible. DDOT does not object to the application.

The applicant contends that for all the foregoing reasons, the Board may grant the relief sought without substantial detriment to public good and without substantial impairment of the intent, purpose and integrity of the zone plan

WITNESS

The following witness will testify in support of the Application:

1. Kubrom Adal
2. Arsema H. Adal

CONCLUSION

The Applicant submits that the instant application complies with all conditions for the granting of the variance pursuant to § 3103.2 sought under § 2001.3 (a) as outlined above and as shall be further documented, and requests that applicant should be granted.

The applicant further contends that the Board may grant the relief without substantial detriment to public good and substantial impairment of the intent, purpose and integrity of the zone plan, as embodied in the Zoning Regulations and Zoning Map.