

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18984 of Kateh Zahraie, as amended,¹ pursuant to 11 DCMR § 3103.2, for area variances from the requirements for lot area (§ 401.3), lot occupancy (§ 403.2), and enlargement of a nonconforming structure (§ 2001.3), to convert a row flat to a three-unit apartment building in the R-4 District at premises 1546 New Jersey Avenue, N.W. (Square 510, Lot 50).

HEARING DATES: April 28, 2015; July 14, 2015
DECISION DATE: July 14, 2015

DECISION AND ORDER

On February 19, 2015, Kateh Zahraie (“Applicant”), the owner of 1546 New Jersey Avenue, N.W. (Square 510, Lot 50) (“Subject Property”), filed a self-certified application with the Board of Zoning Adjustment (“Board”) for zoning relief. The application requests area variances from the requirements for lot area under § 401.3, lot occupancy under § 403.2, and enlargement of a nonconforming structure under § 2001.3. Following a public hearing, the Board voted to deny the application. The factual and legal basis for the Board’s decision follows.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 27, 2015, 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 6; Advisory Neighborhood Commission (“ANC”) 6E, the ANC for the area in which the Subject Property is located; and Single Member District/ANC 6E02. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on March 9, 2015, providing notice of the hearing to the Applicant, ANC

¹ The original application was amended to eliminate the request for a special exception under § 400.7(b) that was referenced in the original Self-Certification form at Exhibit 5 but removed per the Applicant’s Prehearing Statement (Exhibit 31, p. 7), and to include variance relief pursuant to § 2001.3 in accordance with the Zoning Administrator’s memorandum of April 7, 2015. (See Revised ZA’s Memorandum, Exhibit 22, and Revised Self-Certification, Exhibit 25.)

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6E, and the owners of all property within 200 feet of the Subject Property. Notice of the hearing was published in the *D.C. Register* on March 13, 2015 (62 DCR 3014).

Party Status. The Applicant and ANC 6E were automatically parties to this proceeding. No other persons requested party status.

Applicant's Case. The Applicant proposed to convert an existing flat (*i.e.* a two-family dwelling) into a three-unit apartment building. In addition to the Applicant, Navid Zahraie and Frederick Rubens, who are co-owners of the Subject Property, testified in support at the hearings on the application. The Applicant asserted that the application met the requirements for variance relief. Specifically, the Applicant alleged that the Subject Property is affected by an exceptional situation based on the following: the Subject Property is surrounded by other multi-family buildings; the structure is currently nonconforming as to lot occupancy; and the existing structure is in a state of disrepair requiring substantial renovations. The Applicant further alleged that she would face practical difficulties absent relief because repair and renovation of the structure is not financially feasible unless the Applicant is able to add a third unit to the existing flat.

OP Report. By memorandum dated April 21, 2015, OP stated that it did not recommend approval of the application. Although OP found that subject property exhibited an exceptional condition as a result of its state of disrepair, OP concluded that the Applicant had not demonstrated that this circumstance resulted in a practical difficulty because a conforming project could have been financially feasible if the Applicant had paid a lower purchase price to acquire the Subject Property. (Exhibit 33.) Following the Board's hearing April 28, 2015, OP submitted a supplemental report on May 12, 2015, stating that it continued to not recommend approval of the application. Notwithstanding additional submissions by the Applicant, OP maintained its position at the Board's July 14, 2015, hearing.

DDOT Report. By memorandum dated April 15, 2015, DDOT indicated no objection to approval of the application. (Exhibit 32.)

ANC Report. By report submitted April 22, 2015, ANC 6E indicated that it discussed the application at its regularly scheduled, properly noticed meeting on April 7, 2015, and with a quorum present, voted 6-0-0 to support the application. The ANC stated that it did not expect any adverse consequences in the neighborhood. (Exhibit 34.)

Persons in opposition. Betsy McDaniel, a former resident of ANC 6E, submitted a letter in opposition to the application, stating that granting the requested relief would set a bad precedent. (Exhibit 36.) Lawrence Smith, the owner of neighboring property at 1544 New Jersey Avenue, N.W., testified in opposition to the application at the Board's hearing on April 28, 2015.

FINDINGS OF FACT

1. The Subject Property is a rectangular lot located on the west side of the street at 1546

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New Jersey Avenue, N.W., between Q Street, N.W. and Franklin Street, N.W. (Square 510, Lot 50) and is zoned R-4.

2. The Subject Property consists of 2,255 square feet ("sq. ft.") of land area.
3. The Subject Property is improved with a two-story row dwelling that is a flat.
4. The Applicant proposes to convert the existing structure into a three-story, three-unit apartment building.
5. Subsection 401.3 requires that, for conversion of a structure to an apartment house in an R-4 District, a minimum of 900 sq. ft. shall be provided per dwelling unit. The proposed project would only provide approximately 751 sq. ft. per dwelling unit. Accordingly, a variance is required.
6. The Subject Property is nonconforming as to lot occupancy. The existing lot occupancy of the Subject Property is 65%. Under § 403.2, the maximum lot occupancy allowed as a matter of right for a row dwelling in the R-4 District is 60%. The Applicant proposes to increase lot occupancy to 70%.
7. Subsection 2001.3(a) disallows the expansion of any structure that does not conform to lot occupancy. Because the existing lot occupancy of the Subject Property exceeds that permitted by right, a variance is required to expand the structure and convert it into an apartment building.
8. Subsection 2001.3(b)(2) disallows the expansion of any structure that increases or extends any existing, nonconforming aspect of the structure. Because the Applicant proposes to increase the currently nonconforming lot occupancy from 65% to 70%, a variance is required to expand the structure and convert it into an apartment building.
9. The structure has deteriorated mortar, and cracks in the rear and front wall of the structure, and in the floor and roof joists. Its plumbing and HVAC systems are also in need of repair.
10. These types of problems are commonly fixed in home renovations and small building renovations around Washington.
11. The building is not in danger of collapse.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests variance relief under § 3103 of the Zoning Regulations to convert a row dwelling flat to a three-unit apartment building in the R-4 District. The Board is authorized

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under § 8 of the Zoning Act, 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. (11 DCMR § 3103.2.)

Variances are classified as area variances or use variances. (*Id.* § 3103.3.) An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located. (*Id.* § 3103.4.) The Applicant seeks an area variance because she requests a deviation from applicable lot area requirements and the “prohibition against certain enlargements and additions to nonconforming structures as stated at § 2001.3.” (*Id.* § 3103.3.)

The Court of Appeals has interpreted the Zoning Act and Regulations as imposing a three-part test for granting an area variance. The Applicant “must show that (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 560 (D.C. 2011) (quoting *Wash. Canoe Club v. District of Columbia Zoning Comm’n*, 779 A.2d 995, 1000 (D.C. 2005)).

Here, the Board finds that the Applicant has not met her burden to show that the Subject Property is affected by an exceptional condition. The repairs needed for the Subject Property — which include work on deteriorated mortar, cracks in the rear and front wall of the structure, and the floor and roof joists — are common in properties throughout the city. Such repairs are commonly fixed in home renovations and small building renovations around Washington. The building itself is in no danger of collapse. The Applicant also asserted that the Subject Property is nonconforming as to lot occupancy, but this, by itself, does not constitute an exceptional situation. With respect to the Applicant’s claim that the Subject Property is surrounded by multi-family dwellings, this also is not exceptional. Because there is no extraordinary condition affecting the Subject Property, the Board need not reach the other two prongs of the variance test in order to deny the relief requested.

The Board must also give “great weight” to the issues and concerns that the affected ANC raises in its written report. (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)).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10. In this case, the ANC voted unanimously to support the application. The ANC did not elaborate on its vote, except to state that it did not anticipate that

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the project would produce any adverse consequences in the neighborhood. Because the Board finds that the Applicant has not demonstrated an exceptional condition affecting the Subject Property, the ANC's views concerning potential adverse impacts to the neighborhood is not legally relevant to this decision.

In deciding to grant or deny applications for zoning relief, the Board is required to give "great weight" to OP's recommendation. (D.C. Official Code § 6-623.04.) Pursuant to this statutory duty, the Board must demonstrate in its findings that it considered OP's views and must provide a reasoned basis for any disagreement with it. *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted). Here, OP concluded the Applicant had demonstrated an exceptional situation based upon the disrepair of the structure. The report did not explain why the specific repairs needed were in any way exceptional and for the reasons stated above, the Board concluded that they were not. The remainder of the OP analysis, which concerned compliance with the second and third prongs of the variance test, is not legally relevant and therefore will not be discussed.

Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **3-0-2** (Lloyd J. Jordan, Peter G. May, and Jeffrey L. Hinkle to Deny; Marnique Y. Heath and Frederick L. Hill not present, not voting).

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 12, 2015

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.