

Board of Zoning Adjustment

Office of Administrative Hearings

441 4th Street, NW

Washington, DC. 20001

April 19, 2015

BZA Order No. 18991

Re: Appeal for 1521 Varnum Street, NW

Appellant: John Stokes, owner of 1519 Varnum Street NW

To the Board and All Concerned:

I am writing to support Mr. Stokes's appeal regarding the decision made by DCRA Zoning Administrator Mr. Matthew Le Grant. The neighborhood first learned of this proposed construction on January 13, 2015; our ANC Commissioner, Jeff Standish, was contacted for an explanation. As a neighbor who lives behind Mr. Stokes, at 1516 Webster Street, NW, I will be directly affected by the construction of the proposed apartment building.

The residential single family attached row house located at 1521 Varnum Street, NW, has been permitted to be razed, so that an apartment building can be built. Mr. Matthew Le Grant, DCRA Zoning Administrator, has approved the construction of a four story, seven unit, two bedroom, 2.5 bath (21 toilets, 28 sinks, 14 baths, two bedroom basement unit) apartment building with balconies, double roof top decks, and a four car rear (alley) parking lot. However, the approval was never presented to the BZA for review.

The construction of this building will not only affect the attached property at 1519 Varnum Street, NW, but all of the residential properties both on Varnum, 16th, and Webster Streets, NW, and the entire neighborhood.

Mr. Matthew Le Grant, DCRA Zoning Administrator, refers to BZA Order No. 18108 for a discussion of Subsection 407.1 (b) as it relates to minimum lot area regarding "minor flexibility for minimum lot area-1521 Varnum Street NW" in a letter dated August 11, 2014, addressed to Martin P. Sullivan, Esq., of Sullivan and Varros, LLP, who represents a developer, variously named on building permits issued by DCRA; as of this date, Westend Development, LLC.

In BZA Order No. 18108, the BZA affirmed the decision of the Zoning Administrator in granting a deviation under 407.1¹ from the minimum lot area requirements, allowing a single record lot to be divided into two separate buildable record lots, despite one of the lots being short of the required 5000 square-foot minimum lot area.

BZA Order No. 18108 refers to the division of one lot into two in the R-1-B District, at 29 Garfield Street NW, with an appeal filed in 2010 by the ANC 3C, concerned neighbors, and neighborhood group.

- The detached one family dwelling on this property, which was at the corner of Garfield Street, NW and 29th Place, was razed in 2010 by the owner.
- No attempt was ever made to sub-divide this property and there was no set-back to this property.
- The resulting division of the property was used to build a one family dwelling on each new lot, with front, side and rear yards with set-backs.
- Properties in the immediate vicinity of the subject property are relatively large lots improved with two-story one-family detached dwellings. The area is hilly and contains numerous trees. The surrounding area also contains row houses, in an R-3 Zone across 29th Place, and apartment buildings, in a nearby area zoned R-5-A.
- The resulting single family dwellings met lot occupancy, height and parking as pertains to the R-1-B Residential District.
- The resulting residential single family dwellings did not impact the neighborhood in constricting neighbors' light, air, and quality of life nor impact negatively on the character of neighborhood.

¹ 407.1 The Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of §§ 401 and 403 (minimum lot dimensions and maximum percentage of lot occupancy); and a deviation not to exceed ten percent (10%) of the linear requirements of §§ 404 and 405 (minimum rear yard and minimum side yard requirements); and a deviation from the requirements of § 406 (minimum court dimensions), not to exceed either two percent (2%) of the area standard or ten percent (10%) of the width standard; provided, that:

- (a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and
- (b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.

It was determined by Mr. Le Grant, the Zoning Administrator, that the requested deviation of 1.98% did not impair the purpose of the otherwise applicable regulations in making the determination of compliance with 407.1 (b): (i) compliance with other applicable zoning requirements, (ii) the purpose of the applicable zone district, (iii) the degree of deviation and (iv) the configuration of a property in relation to adjacent lots.

Based on these factors, permission to grant a deviation of 1.98% for the development of the property was approved and the appeal regarding BZA Order No. 18108 was denied.

There is no comparison to be made in the case of BZA Order No. 18108 and the proposed construction at 1521 Varnum Street, NW. The differences are as follows:

- The two story single family dwelling, situated in the R-4 Residential District of 16th Street Heights, is an attached row house, a structure built as a row of four in the 1920s. The row houses have deep, covered front porches and two very sturdy exterior property walls effectively bracing either end of the row of four, two-story single family dwellings. All four residences have chimneys; two large chimney and roof structures brace the end row homes. The masonry party walls of the four dwellings measure approximately seven inches, with thicker exterior walls buttressing the construction at 1521 and 1515 Varnum Streets NW, respectively. (See image)
- The style of row home, a two story, single family dwelling, is in keeping with the rest of Varnum Street NW, a narrow residential street with narrow lots and zoned residential parking. (See image)
- The property at 1521 Varnum Street NW was continuously occupied until the owner placed the property on the market in 2014. It is an improved lot and the dwelling is habitable. (See image)
- 1521 Varnum Street, NW is in the R-4 Residential District, as is the attached occupied residential row house dwelling at 1519 Varnum Street, NW. The single family row house dwellings directly across the street from 1521 Varnum Street, NW and in the rear of the property, which are attached, occupied, improved single family row house dwellings of 1520 Webster Street, NW, 1518 Webster Street NW and 1516 Webster Street NW, are also in the R-4 Residential District. These properties share a narrow service alley and face the back of the residences at 1519 Varnum Street NW and 1521 Varnum Street NW. The residential single family dwelling on the other side of 1521 Varnum Street NW, at 1529 Varnum Street, NW, falls in the R-1-B Residential District, as does the attached single family dwelling at 1531 Varnum Street, NW; 4301 16th Street, NW, which has its entrance on Varnum Street, NW, the dental office at 4303 16th Street, NW, the residential church property at 4311 16th Street, NW, and St. George Antioch Orthodox

Church at 4335 16th Street NW are also located in the R-1-B Residential District. (See image)

- The attached row house dwelling at 1521 Varum Street is not on a block corner, but is visible from the corner of 16th and Varum Streets, NW.
- There are no apartment buildings on 16th Street from Shepherd Street until Military Road.
- The 16th Street Heights neighborhood is a quiet, established residential row house neighborhood with mature trees, well maintained yards and quiet neighbors who have lived in the neighborhood for many years. There is a mix of Section 8 housing, multi-family housing, half-way homes and rental properties, along with multi-generational and single family owners within a quadrant of four blocks, running from 16th Street to 14th Street, NW and Varum and Webster Streets, NW. Properties in the immediate vicinity of the subject property are small lots with improved two-story one-family attached dwellings.
- The neighborhood has above-ground communication and utility lines, running along the streets and the alley between Varum and Webster Streets, NW.
- There is excellent public transportation with bus and metro connections.

Mr. Le Grant, Zoning Administrator, in his letter to Mr. Sullivan, mentions that the original proposed development of 1521 Varum Street, NW would consist of an addition to the existing structure and a conversion to a seven unit apartment building, and that the proposed development would comply with lot occupancy, side yard, height and all other area requirements. He did not review the proposal for compliance with any requirements other than the minimum lot area requirements under 401.² The minimum lot area for an apartment building in an R-4 Residential District is 900 square feet per apartment.

² 401.1 Except as provided in chapters 20 through 25 of this title and in the second sentence of this subsection, in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title. Notwithstanding the above, the lot area requirements of § 401.3 must be met when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.

401.2 Except as provided in § 401.3, in the case of an unimproved lot in single ownership on November 1, 1957, that has a lot area or width of lot less than that specified in § 401.3 for the district in which it is located and that does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the lot area and width of lot are at least eighty percent (80%) of the lot area and width of lot specified under § 401.3; provided, that the structure shall comply with all other provisions of this title.

However, for the proposed conversion to a seven unit apartment building, it would require that the existing structure be razed in order to comply with the approval to grant an exception to the minimum lot area per Zoning Administrator flexibility. The property measures 6,279 square feet, approximately 21 feet short of the minimum required 6,300 square feet, or 0.33%.

Mr. Le Grant writes that “pursuant to 407.1 of the Zoning Regulations, the Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of 401 for minimum lot dimensions provided that:

- a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and
- (b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.

Being only approximately 0.33% short of 6,300 square feet, the Property is eligible for Zoning Administrator flexibility, provided that conditions (a) and (b), above are satisfied. In my opinion, this proposal does in fact meet those conditions.”

Mr. Le Grant confirms that the proposal by the developer will otherwise comply with all other applicable zoning regulations. The degree of deviation requested, in his view, will have no apparent impact on adjacent properties and can be considered virtual compliance with apartment lot area requirements, as the required land area to support seven units measures 99.66%. In his opinion, granting the deviation will not cause an increase in the overall density of the proposed project, or in the lot occupancy, or likely number of occupants. “It will, rather, allow the provision of seven units at market size for an apartment house in the District, rather than six slightly larger units possibly with more bedrooms overall. Despite the additional unit, the lot occupancy, height, density and other aspects of the property will not be increased as a result of the requested deviation.”

401.7 Each lot created after February 15, 1966, to be used and occupied by an apartment house shall have a street frontage measured along the street a distance of not less than thirty feet (30 ft.).

401.11 An apartment house in an R-4 District, whether converted from a building or structure pursuant to §330.5 or existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new.

As a resident of the neighborhood, I must respectfully disagree with Mr. Le Grant's findings, comparisons, and decisions regarding the approval to grant minimum lot area for 1521 Varnum Street so that an apartment building can be constructed.

The argument of granting flexibility in minimum lot use, using, as an example, the division of one property lot into two to build two single family homes with front, side, rear yards in the R-1-5 Residential District cannot be compared to the granting flexibility in minimum lot use in the construction of a twenty-one (21) toilet apartment building in the R-4 Residential District.

The proposed seven unit apartment house, developed by Westend Development, will be a four story building with two bedrooms, two and a half baths per unit, a roof top which exceeds the building height for the R-4 Residential Zone, two roof top decks for units 6 and 7, balconies for the units which will overlook Varnum Street, NW, as well as on the sides, a side entrance with exterior trash area, and a rear exit which opens directly to the proposed four car parking lot. Crime lighting from the roof top will illuminate the grounds. The proposed apartment building will effectively have twenty-one (21) toilets, twenty-eight (28) sinks, fourteen (14) baths.

In granting an allowance of .33% as an exception, under 407.1, the mandatory 900 square foot allowance per apartment unit in the R-4 Residential District ruling under 401.11 might not be met with the proposed basement unit.

In granting an allowance of .33% as an exception/deviation, under 407.1, Mr. Le Grant overlooks rule 403.1 regarding minimum lot size occupancy in the R-4 Residential District which states: Conversion of a building or structure to an apartment house = Greater of 60% or the lot occupancy as of the date of conversion. Currently, lot use for 1521 Varnum Street, NW is at 40% with a deck; the habitable home would have to be razed in order to build the apartment building.

In granting an allowance of .33% as an exception/deviation under 407.1, the entire lot of 1521 Varnum Street, NW is being used to build a seven unit apartment building, ignoring the requirements as stated in 404 and 405, regarding side and rear yards. While this property will have only one side yard it will also be used as egress and housing for exterior trash cans.

- 404.1 A rear yard shall be provided for each structure located in a Residence District, the minimum depth of which shall be as set forth in the following table: minimum depth of the rear yard: 20 feet for the R-4.
- 405.3 In R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.

Contrary to the construction of two residential properties which met the height size in BZA Order No. 18108, this building will tower over the neighborhood at four stories, and be visible from 16th Street, NW, a street which has no apartment buildings from Shepherd Street, NW to

Military Road, NW. The proposed roof top height of the four story building with its pent house roof structure at 45.6 feet will exceed the allowable building height for the R-4 Residential District, currently 40 feet, (with proposed Title 11 Case 14-11 text amendment changes to measure 35 feet), and stories, which will be four, instead of the allowable two, in the R-4 Residential District.

A Stop Work Order was issued for 1521 Varnum Street, NW on February 2, 2015 pertaining to the roof top elevator design, a violation of 400.7; a second Stop Work Order was issued recently.

The proposed parking lot for four cars in a narrow service alley with an exit to the parking lot will directly affect the residential properties at 1516, 1518 and Webster Streets NW as well as 1519 Varnum Street, NW.

This alley, measuring 18 feet in width, has no access from Varnum Street, NW and must be entered by 15th Street, NW or Webster Street, NW. A poorly maintained service alley which freezes in icy conditions, the parking area at 1521 Varnum Street, NW was not designed to be converted into a four car parking lot with access to a building facing the alley. Additionally, no landscaping has been planned for this four car parking area 2303³. The current parking for residents is in compliance with the R-4 Residential District of one car per back lot. The resulting noise and increased opportunity for crime is a neighbor concern. The properties of 1520, 1518 and 1516 Webster Streets, NW and 1519 Varnum Street, NW would be directly impacted by the noise by both people and vehicles, lack of privacy, danger from speeding vehicles, possible property damage from vehicles attempting to back in and out of the spaces on a narrow alley, and street lighting.

³ 2303.1 A parking lot in any district shall conform to the following provisions:

- (a) All areas devoted to driveways, access lanes, and parking areas shall be surfaced and maintained with an all-weather surface. In addition to traditional impervious surfaces, allowable all weather surfaces include porous (or pervious) concrete, porous asphalt, and/or mechanically-reinforced grass, excluding grass or gravel;
- (b) The parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line;
- (c) No other use shall be conducted from or upon the premises, and no structure other than an attendant's shelter shall be erected or used upon the premises unless the use or structure is otherwise permitted in the district in which the parking lot is located;

Since the neighborhood is well serviced by WMATA with both bus and metro lines, the approved plan to build a four car parking lot is excessive and unnecessary. While the parking lot has been approved by Mr. Le Grant, the Zoning Administrator, the current rule states that, in the R-4 Residential District, there should be one parking space per three units for an apartment house, which means that there should be two parking spaces, not four, as planned 2101.1:

<u>Apartment house or multiple dwelling:</u>	
R-5-A, C-1	1 for each dwelling unit
R-5-B, C-2-A, C-3-A	1 for each 2 dwelling units
R-4, R-5-C, R-5-D, C-2-B, W, CR	1 for each 3 dwelling units

The back yards of the ten (10) properties listed previously which surround 1521 Varnum Street, NW, will be directly impacted by the construction of this four story apartment building. (see image)

The privacy and use of neighbors' front and back yards and decks will be lost with the apartment building's proposed crime lighting, roof top decks, and windows and balconies facing private property.

It was determined by Mr. Le Grant, the Zoning Administrator, that the requested deviation did not impair the purpose of the otherwise applicable regulations in making the determination of compliance with 407.1 (b): (i) compliance with other applicable zoning requirements, (ii) the purpose of the applicable zone district, (iii) the degree of deviation and (iv) the configuration of a property in relation to adjacent lots.

I argue that the construction of this apartment building, contrary to Mr. Le Grant's assessment, does not meet any of the weighing factors listed above in the granting of the deviation. The proposed apartment building not only exceeds the allowable and acceptable size for a lot of this size, for which a deviation was granted, but the scale and size of this building exceeds the allowable size of an apartment building in the R-4 Residential District. The building is not in compliance with other applicable zoning requirements as mentioned, and it is therefore not in

keeping with the purpose of the applicable zone district nor in the best interests of the neighborhood. 101⁴

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- ⁴ 101.1 In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:
- (a) Provide adequate light and air;
 - (b) Prevent undue concentration of population and the overcrowding of land; and
 - (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.
- 101.2 The regulations in this title and the Zoning Maps are designed with consideration of the:
- (a) Character of the respective districts;
 - (b) Suitability of each district for the uses permitted in each district under this title; and
 - (c) Encouragement of the stability of districts and of land values in those districts.
- 101.3 The provisions of this title shall govern whenever they:
- (a) Require larger yards, courts, or other open spaces;
 - (b) Require a lower height or bulk of buildings or a smaller number of stories;
 - (c) Require a greater percentage of lot to be unoccupied; or
 - (d) Impose other higher standards than are required in or under any statute or by any other municipal regulations.
- 101.4 The provisions of any statute or other municipal regulations shall govern whenever they:
- (a) Require larger yards, courts, or other open spaces;
 - (b) Require a lower height or bulk of buildings or a smaller number of stories;
 - (c) Require a greater percentage of lot to be unoccupied; or
 - (d) Impose higher standards than are required by this title.
- 101.5 No building, structure, or premises shall be used, and no building, structure, or part of a building or structure shall be constructed, extended, moved, structurally altered, or enlarged except in conformity with this title.

The statement by Mr. Le Grant, Zoning Administrator, that the proposed seven unit apartment building meets all of the requirements in the R-4 Residential District does not bear credence.

The building exceeds both allowable use of lot size and height size, placing a huge strain on the existing sewage and drainage lines, as well as on the existing utilities, our streets and alley. The construction of the apartment building will most emphatically place a strain on the ageing infrastructure of the neighborhood.

The design of the building, a four story box-like structure with balconies overlooking private residences on Varnum Street, NW, is not only not in keeping with the prevailing residential row house dwellings on the block, but will increase noise and disruption to the families who live next to, and across from, the property. The entrance on the side of the building will directly affect the residential properties which will lose the privacy of their back yards. The exit of the apartment building to the back alley parking lot will directly affect the residences on Webster Street, NW, whose owners share the alley. The privacy and use of the yard at 1519 Varnum Street, NW will be lost. Neighbors sharing the alley and back yard spaces will also lose their backyard privacy as apartment windows and roof top decks will prevail, therefore affecting the entire blocks of Varnum, Webster, 15th and 16th Streets, NW.

The addition of an apartment building on this block will bring an increase in noise and rodents.

The proposed construction of the building will most definitively affect the adjacent eleven properties: property damage, noise pollution, light pollution, security, disruptions to water and utilities, rodents, balconies, double roof top decks, location of egress, exterior location of trash cans, height of the building, size of the building, and the design of the building, which has absolutely nothing in common with the design and architecture of the block are some of the issues we will face as a neighborhood.

The increase in population will have a direct impact on the immediate residential neighborhood.

The size of the apartment building will loom not only over the single family homes on three streets, but also the church on 16th Street; it will be visible for several blocks on 16th Street proper.

The transient nature of apartment dwellers, who typically have no stake in a neighborhood, will increase neighbor concerns for security, and upset the fabric, stability and character of the already dense population of the neighborhood.

The increase in automobile parking will put a strain on the available, zoned residential parking on Varnum and Webster Streets, NW.

Because these factors were not considered by Mr. Le Grant, we respectfully request that Board of Zoning Appeal consider our appeal.

It is my opinion that Mr. Le Grant, Zoning Administrator, while justifying the merits of an apartment building of this size and scale in an R-4 Residential District in his letter to Mr. Sullivan, was shortsighted in his decision.

On behalf of the neighborhood, I would like to the Board to consider the additional information regarding this construction:

Westend Development, with a PO Box address in Potomac, Maryland, posts this announcement on-line in advertising their re-modeled properties; no experience is listed regarding experience with the construction of apartment buildings.

Westend Development specializes in the rehab, renovation and development of high end, residential properties in the Washington, DC area. With over 10 years of experience in construction and real estate, our goal is to provide DC home buyers with top notch quality, meticulous design and extraordinary finishes in all of our properties.

An article in Washington Post Express, January 30, 2015, written by Maeve Gallagher, a real estate economist with CoStar Group in the District, under Real Estate News, writes that DC rent is finally getting cheaper, "because an increase in apartments in the city is changing how much renters pay." This growth in units has dropped the rental costs, which is in the renters' favor.

Lacking in the District of Columbia are available, affordable single family houses. There is a glut of rental apartments and condominiums for sale. Why not let Westend Development, which has, so they advertise, experience with remodeling projects, update the existing property at 1521 Varnum Street, NW to an improved single family home so that can be placed on the market.

In closing I would like the Board to consider the appeal and to re-consider the decision made by Mr. Le Grant to approve the construction of the proposed apartment building.

I thank you for your attention to this matter.

Sincerely,

Jane Bush

Jane Bush

cc: John Stokes