

April 21, 2015

John A. Stokes
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Washington, DC 20011
(202)288-7275

BZA Case Number: 18991

Re: Appeal for 1521 Varnum Street, NW

Appellant: John Stokes, owner and resident of 1519 Varnum Street, NW

To the Board of Zoning Adjustment:

Thank you for the opportunity to present to you my case against the decision of a Zoning Administrator to grant a permit to build two apartment buildings at 1521 Varnum Street, NW next to my house in NW DC.

This whole ordeal has been an extremely time consuming, money draining, mind boggling, bureaucratic maze of a journey that I would not wish on anyone.

I am not a lawyer, an architect or an engineer. I hope that my case can be a learning lesson for all of the unfortunate residents of the District of Columbia that face destruction of their homes and really do not know what to do to protect themselves or their property.

The true story of how we arrived here today is shocking and it is extremely important that the history of this debacle be told so that others have a clear understanding of how this system works, or lack thereof. While this is a zoning hearing, it would be misguided and irresponsible to not consider the building code violations that led us to this point.

The fact of the matter is that if there were not misapplication and misinterpretation of the building codes and failure to enforce those same codes we might not be here today.

On January 13, 2015, a neighbor came to visit me. He told me that there were two apartment building structures being proposed that would be 3 or 4 stories with 7, two bedroom and den units. The proposed apartment building would rise over my house and the neighborhood and extend the length of our backyards. A sample picture of a similar type of pop-up is included is attached. **(EXHIBIT 1)** In essence, imagine a boat being built beside your house for those that have houses. I did not believe my neighbor, laughed and said, "Nice joke." He was not laughing. He pulled out a listing that was on Redfin and showed me the proposed sale of the property. He said it would be a "Pop-Up". I had not heard that word before as it relates to a building but it's a word I have heard every day since.

I thought, how could this happen? How could anyone do this without proper notification to me? I thought, "I work for the District government and one thing I know is that any proposed construction must have neighbor and resident input.

I learned that day there was a thing called "matter of right". What I did not know was that matter of right presented developers with a means to circumvent the system so they could forge ahead with buildings that had little to no input from the homeowners directly impacted by these developments. Forget about residents or ANC's, they did not have to be notified at all.

One of the most bewildering things I found out is that before my neighbor contacted me, this building was going full speed ahead – plans had been drawn, permits had been granted and the DC Office of Regulatory Affairs (DCRA) thought everything was in order. DCRA does not currently have a system in place to ensure that indeed everything is in order, starting with the notification process. Developers can say they have informed homeowners who live next door that they are proposing a project but there is no proof that they have. The big scheme is to send a one page notification letter without sending construction documents so you have no idea what is really happening.

I was informed by my neighbor that a Zoning Commission hearing was taking place on Thursday, January 15. I testified at that hearing in support of 14-11 which would change the zoning regulations on pop-ups and my testimony should be available.

As the owner and resident of the single family attached row house dwelling located at 1519 Varum Street, NW, in the neighborhood of 16th Street Heights, an R-4 Residential District, I am submitting this appeal regarding permits granted and the decision made by DCRA Zoning Administrator Mr. Matthew Le Grant about 1521 Varum Street, NW. I have included attachments and images to support my case.

While this is a zoning hearing, everyone needs to be aware of how what happens at DCRA has a strong relationship with what happens to zoning.

- I received a initial letter on September 12, 2014. It did not contain any construction documents, was on a form that did not look official, indeed the contact information was hand written and the DCRA logo barely legible. **Not receiving the construction documents at that time was violation of DCMR Code 3307.2.1 Form of notification** - ...This notification shall include a copy of all **construction documents** which relate to the structural support of the adjoining building or other structure or to the structural support of the excavation, including any updates or amendments to the work plan that have been submitted with the permit application(s).
- I would have raised my concerns at that time if I was fully aware of what was being proposed.
- The Notification Form is not sufficient to alert residents about what is really expected and is misleading. I do not know what I'm agreeing to.
- I also understand I was supposed to receive a notice of zoning hearing because my home and 1521 Varum Street, NW share a party wall and rear yard garage. I never received any such notice.

- I received notification of the proposed construction at 1521 Varnum Street, NW on January 16, 2015, (**AFTER** the zoning permit for the project was already granted on December 31, 2014), along with the proposed plans for which I had thirty days to sign granting the builder access to my property. (**EXHIBIT 2**). I submitted to DCRA and the developer a letter stating my hesitation to sign a notification letter. I asked for full scale plans and assistance in understanding the plans. The time frames for submissions to submit my BZA Appeal and to try to figure out the Notification Form were a serious constraint for me:
 - I am neither an attorney nor a contractor. I have very limited knowledge how this system works.
 - There is no way I could have "reasonably" known about the full scope of this project until I was sent the plans on January 16.
 - There is no way I could have reasonably known about the permits being granted on this project.
 - I was not aware that an appeal would cost \$1,040.
 - I did not have \$1,040 to pay for the appeal and needed to have the whole 4C ANC Committee hold a meeting to vote on assisting with the appeal. ANC 4C voted unanimously to support my appeal and an overwhelming majority – 9 out of 10 ANC 4C Commissioners voted to submit the application for this BZA Appeal.
 - I met with the developers attorneys from Sullivan and Varros around mid-February.
 - I did not have funds to hire a structural engineer. I was forced to hire an attorney to try to figure out what was going on. I do not have the means to keep an attorney on retainer and since I am neither a attorney, structural engineer or contractor all of this is very confusing.
 - After speaking with a engineer, he asked me where was the underpinning designs and the structural designs for the proposed apartment building, he informed me that I was supposed to receive those as well when I was sent the construction documents on February 16. I did not know this. After conferring with DCRA I found that indeed I should have a received those documents as well.
- *** A second stop work order was placed on 1521 Varnum Street on March 31, 2015 for violation of not providing me with all construction documents which may have a zoning impact. (EXHIBIT 3) More about the first stop work order later.**

From my limited understanding of the regulations, listed in this appeal are reasons that the property at 1521 Varnum Street, NW should not be allowed to convert to an apartment building.

The residential single family attached row house located at 1521 Varnum Street, NW, has been permitted to allow an apartment building to be built. Mr. Matthew Le Grant, DCRA Zoning Administrator (ZA), has approved the construction of a three story, seven unit building. Each unit is two bedroom, 2.5 bath. This equates to a 21 toilet, 28 sink, 14 bathtub, 7 dishwashers, 7 garbage disposal, 4 parking space apartment building with balconies, double roof top decks, rear parking lot. All in a house that was meant to be a single family home.

The existing single family home structure would be converted while a wholly new additional building would be constructed and added onto the converted structure.

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

While we are aware that matter-of-right construction is not subject to community input, with the construction of a new building in a residential neighborhood, the matter-of-right rule absolutely needs to be reviewed, it basically says residents don't have a right, how would you feel if someone built a building next to your house and the explanation was, well, the developer can do this as a matter of right.

ZONING APPEALS

The ZA 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. (EXHIBIT 4).

Even though the ZA has approved of a minor flexibility for minor lot properties, there are errors in the administrative decision:

- The ZA speaks to the granting of relief to the regulations due to the **"...uniqueness of this property compared to surrounding properties..."**. Indeed this proposed development would destroy the character of the neighborhood and is unique in a most awful way.
- The ZA states, **"The primary purpose of the R-4 District shall be the stabilization of remaining one-family dwellings."** While these are his words, the actions he has taken run completely contrary protecting single family dwellings. Later in that same letter, The ZA goes on to grant "minor flexibility" pursuant to §407.1 from the minimum lot area requirements (§401.3) for the development of a seven unit condominium building. In justifying this minor flexibility, the ZA cites a single Board of Zoning Adjustment (BZA) decision (Order No. 18108) (EXHIBIT 5) where the BZA affirmed a decision of the ZA to grant a deviation from the minimum lot area requirements "so as to alleviate the need to seek *de minimus* zoning relief from the Board."
- The ZA also does not accurately address the matter of right for a seven unit building. I believe matter-of-right is a consideration for six-units and not seven-units.

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.

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.

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 dwelling did not impact the neighborhood in constructing neighbors' light, air, and quality of life nor impact negatively on the character of neighborhood.

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 Varum 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.

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)

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.

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 attached row house dwelling at 1521 Varnum Street is not on a block corner, but is visible from the corner of 16th and Varnum Streets, NW. (see image)

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 Varnum 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 Varnum and Webster Streets, NW.

The ZA, in his letter to Mr. Sullivan, mentions that the original proposed development of 1521 Varnum 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.

Mr. Le Grant states, "I have not reviewed this proposal for compliance with any requirements other than the minimum lot area requirements under 401." 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.

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.

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%.

The ZA 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 meet those conditions."

The ZA 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."

As the residing owner of the attached row house at 1519 Varnum Street, NW, 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 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 7 units - 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, 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, the 900 square foot allowance per apartment unit in the R-4 Residential District ruling under 401.11 has not been met at the approved 897 square feet per unit.

In approving an allowance of .33% as an exception, 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.

405.4 Except as provided in § 405.1, in an R-5-A District, one (1) side yard shall be provided for all structures unless the structure is an apartment house containing three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum width set forth in § 405.9.

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 two pent-house decks will

exceed the allowable building height for the R-4 Residential District, currently 40 feet, (with proposed 14-11 text amendment changes to measure 35 feet), and stories, which will be three, instead of the allowable two in the R-4 Residential District.

******The first Stop Work Order was issued for 1521 Varnum Street, NW on February 2, 2015 pertaining to the roof top elevation design, a violation of 400.7.***

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.

While the design calls for 1 parking space for every 2 units, equally 4 spaces in this case, to be sure, these are TWO Bedroom units, so there is the very real possibility that there would be 14 cars for a house that is currently a single family home on a block where parking is already limited. Where are those cars going to be parked? Oh there is a developer buying the property so why would they care.

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;

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 the adjacent lots.

I argue that the construction of this apartment building, contrary to the ZA'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 or in the best interests of the neighborhood. 1014

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 the ZA, 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 existing utilities and our streets and alley. The construction of the apartment building will most emphatically place a strain on the ageing infrastructure of the neighborhood.

Sec 412 Pervious Surface: 20% of the total lot must be pervious surface. Pervious surface is grass, permeable pavers , decks, porches that are erected on pier foundations, etc. are counted toward the 20%.

Sec. 403: Percentage of lot occupancy should include the front porch since that is where the property line begins. Also, in section 223 under 403:

223.2 The addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(a) The light and air available to neighboring properties should not be unduly affected:

Light would absolutely be affected. Shadows will be on all sides. The height of and length of the two apartment buildings would tower over all of the homes in the neighborhood.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised:

The structure has not been designed to maintain the privacy of adjacent properties. Windows face directly onto adjacent residences.

(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage:

The construction of the addition and existing structure would significantly alter the character of the front of the street, back alley and side of the yards. There are no other buildings in the middle of a block in the surrounding neighborhood that would look anything like the two new buildings. This building would stand out and is its own character.

(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representation such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways

There has been no submission that displays the proposed apartment buildings from public views.

Sec. 411: Roof Structures: There was already a Stop Work Order placed on 1521 Varnum for violation of 400.7, which is aligned with 411.2. A copy of this Stop Work Order was included in my BZA application submission.

Sec. 199 Definitions: In an R-4 district residential building are limited to 3 stories, Sec. 400. For the purpose of counting the number of allowed stories the term "story" shall not include "cellar ...", basement is not mentioned in this paragraph. Not sure what can be made of this anomaly.

While the following issues pertain to Building Code, and not the BZA, these factors add to my defense.

The new apartment building would rise above my house and is within 10 feet of my chimney. I believe that the chimney within 10 feet of the new structure is a fire code violation.

Plans for construction involving my chimney should have been provided for review.

503.5.4 Chimney termination. (Fuel Gas Code)

Chimneys for residential-type or low-heat appliances shall extend at least 3 feet (914 mm) above the highest point where they pass through a roof of a building and at least 2 feet (610 mm) higher than any portion of a building within a horizontal distance of 10 feet (3048 mm). Chimneys for medium-heat appliances shall extend at least 10 feet (3048 mm) higher than any portion of any building within 25 feet (7620 mm). Chimneys shall extend at least 5 feet (1524 mm) above the highest connected *appliance* draft hood outlet or flue collar. Decorative shrouds shall not be installed at the termination of factory-built chimneys except where such shrouds are *listed* and *labeled* for use with the specific factory-built chimney system and are installed in accordance with the manufacturer's installation instructions.

My covered garage, in the rear of my property, is attached to that of the covered garage structure of 1521 Varum. This will be destroyed when that structure is removed so that a parking lot can be built. (See image)

The fencing which divides my lot will be damaged by this construction (See image).

A very old tree which has a deep root structure grows on my property at 1519 Varum. This tree will be damaged by the construction of this apartment building. A very old tree which has a deep root structure grows on the property at 1521 Varum. This tree will need to be cut down. These living trees are over one hundred years old. Other trees on my property will also be directly affected by the construction project. The tree canopy which provides shade to all of the affected houses facing the alley will be destroyed. (See image)

My yard and the back areas of ten (10) other properties (mentioned above) surrounding 1521 Varum Street, NW, will be directly impacted by the construction of this four story apartment building. (see image).

The privacy, sun and use of my back yard and deck will be lost with crime lighting, roof top decks, and windows facing my property coming from a huge new wall that covers the length of my backyard.

My home shares both a party wall with 1521 Varum Street, and a rear yard garage (shared wall of the rear yard garage) As you know, the rear yard garage cannot be demolished for the condos at 1521, unless I sign off. Where in the DCRA permitting record is this signed consent? Answer; there is no signed consent because I have not given a signed consent. The permits should not have been issued without this record being received and being in order (notarized signature from me).

The design of the building, a four story box-like structure with balconies overlooking Varum 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. 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 proposed construction of the building will most definitively affect the adjacent ten 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 increase in automobile parking will put a strain on the available, zoned residential parking on Varnum and Webster Streets, NW.

Also, while the Office of Planning and the Zoning Commission considers a change in the law to address pop ups, do not forget how this proposed apartment building would directly conflict with the Office of Planning's Comprehensive Plan.

Here are the policies from the Comprehensive Plan, East Rock Creek Area Element, that conflict with the zoning regulations permitting these pop-up conversions to apartment buildings in the R-4 zone:

RCE-1.1 Guiding Growth and Neighborhood Conservation 2208

The following general policies and actions should guide growth and neighborhood conservation decisions in the Rock Creek East Planning Area. These policies and actions should be considered in tandem with those in the citywide elements of the Comprehensive Plan. 2208.1

Policy RCE-1.1.1: Conservation of Low Density Neighborhoods Maintain and conserve the attractive, stable neighborhoods of the Rock Creek East Planning Area. Any new development in the Planning Area should be attractively designed and should contribute to the community's positive physical identity. 2208.2

Policy RCE-1.1.2: Design Compatibility Ensure that renovation, additions, and new construction in the area's low density neighborhoods respects the scale and densities of adjacent properties, avoids sharp contrasts in height and mass, and preserves park-like qualities such as dense tree cover and open space. 2208.3

It is my opinion that Mr. Le Grant, Zoning Administrator, while attempting to justify 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.

Other items that need to be considered that I believe would constitute ruling in my favor include:

Urban Forestry and Trees: A tree is special if it has a minimum circumference of 55", sec 3799.1. There are specific regulations on taking care of a "special tree" during construction.

******Finally, a third Stop Work Order was placed on 1521 Varnum on April 20 (See EXHIBIT 5). It says it was placed due to illegal construction/working without a permit.***

| How many Stop Work Orders and infractions does it take for a resident to get relief?

Let me state for the record I am not against reasonable development and growth and I applaud the Office of Planning and the Zoning Commission for trying to find a fair balance between development and outright destruction of DC neighborhoods. There are houses on my block in the neighborhood that are indeed being used as multi-family without destroying the character of the houses and the neighborhood and becoming detriments to the infrastructure.

I can live with a building that is going up 35 feet and 10 feet back, instead of 40 feet up and as far back as you want to go just before the alley. Matter of right has gone horribly wrong.

BZA Case number 18991 is an example of someone taking something to the extreme as this development would be one of if not the largest developments for a matter of right. This is out of control.

Please hear the plea of the hundreds of residents who are being negatively affected by pop-ups. Please help me, help us, help District residents.

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

I thank you for your attention to this matter.

Sincerely,



John Stokes

1519 Varnum Street, NW

Attachments:

Exhibit 1 - Sample Pop-Up Picture

Exhibit 2 – Notification Letter

Exhibit 3 – #2 Stop Work Order

Exhibit 4 – ZA Letter to Mr. Sullivan

Exhibit 5 – BZA Order 18101

Exhibit 6 - #3 Stop Work Order

Plats/Plans by Westend Development

Pictures of property