

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

APPEAL NO. 18991 – 1521 VARNUM STREET, NW

PROPERTY OWNER’S RESPONSE TO APPEAL

I. Introduction.

This Statement is being filed on behalf of Varnum Holdings LLC, the owner of the property located at 1521 Varnum Street, NW (Square 2698, Lot 817) (the “Subject Property”), in response to appeal number 18991 (Appeal No. 18991). Appeal No. 18991 was filed on February 27, 2015, by John Stokes (the “Appellant”) of 1519 Varnum Street, NW, ostensibly to challenge the decision of the Zoning Administrator to issue the zoning approval for a proposed project (the “Project”) on the Subject Property. The Subject Property is currently improved with a building (the “Building”) constructed prior to May 12, 1958. The Project includes an addition to the existing Building and a conversion from a one-family dwelling to a seven-unit apartment house pursuant to 11 DCMR §330.5(e).

The Appellant’s arguments, for the most part, consist of general complaints about the Project, most of which are either inaccurate or irrelevant. The only specific allegation of error relates to the Zoning Administrator’s decision to grant minor flexibility from minimum lot area. The minimum lot area required to convert the Building to a 7-unit apartment house is 6,300 square feet. The minimum lot area required to convert the Building to a 6-unit apartment house is 5,400 square feet. The Subject Property has a lot area of 6,279 square feet, 21 feet short of the minimum requirement for the 7-unit scenario. Because the lot area was less than two percent (2%) short of the required 6,300 square feet, the Owner requested, and the Zoning Administrator granted, minor flexibility, as he is authorized to do pursuant to 11 DCMR § 407.1.

The grant of minor flexibility changes nothing about the Building’s massing, height, density, or setbacks. This decision by the Zoning Administrator did not grant relief from any section of the Zoning Regulations. The Project is safely within all other area requirements of the Zoning Regulations. Aside from the challenge to the Zoning Administrator’s grant of minor flexibility, the Appellant’s submissions amount to: (i) general complaints about the matter-of-right allowances for the conversion of a structure in the R-4 zone, without any specific allegation

of error, and (ii) complaints relating to construction or building code issues, which are of course unrelated to the Zoning Regulations and therefore outside the BZA's jurisdiction.

II. Statement of Facts.

The Subject Property is located in the R-4 zone district. In the R-4 zone, it is permissible to convert a pre-1958 structure into an apartment house provided there is at least 900 square feet of land area for each apartment unit (11 DCMR §330.5(e)). The Subject Property is one-third of one percent (.33%) shy of the 6,300 square feet of land area required to permit seven (7) apartment house units. The Zoning Administrator issued a Determination Letter Ruling on August 11, 2014 (copy attached as Exhibit A), granting minor flexibility from the minimum lot area requirements pursuant to 11 DCMR § 407.1.

The building permit application for the Project - # BP 1411058 – was applied for on August 18, 2014. The zoning approval for the Project was noted in PIVS as of September 11, 2014. The subject building permit (the “Building Permit”) was issued on December 23, 2014. The description on the Building Permit was revised – per Building Permit No. B1503050 issued on December 31, 2014 – to correct the description of the work on the Building Permit, but did not change any material aspect of the Project.

Contrary to the Appellant's claims, the Project does not contemplate razing the existing structure; nor does the Project involve two separate structures. The Building will occupy only fifty percent (50%) of the lot, which is ten percent (10%) lower than the maximum permitted sixty percent (60%); there will be one large (16 ft) side yard where no side yard is required; and the Building also safely complies with all zoning restrictions relating to height, rear yard setback, and parking spaces.

Even though work on the Subject Property has not yet begun, DCRA has issued two stop work orders: one for a stairway penthouse setback deficiency, which was immediately corrected, and the other for a failure to include all applicable plans with a neighbor notification form, which was also immediately corrected and the 30-day notification period re-started.

The Appellant filed the Appeal on February 27, 2015, about six (6) months after the Zoning Administrator Determination Letter Ruling, five (5) months after the zoning approval

was noted in PIVS, and a little over two (2) months after the issuance of the original Building Permit.

III. Legal Analysis.

The Appellant's only specific allegation of error relates to the Zoning Administrator's granting of minor flexibility for minimum lot area, pursuant to 11 DCMR § 407.1.

Section 407.1 provides:

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.

So there are three requirements for the granting of minor flexibility: (i) a deviation of 2% or less of the minimum lot area; (2) deviations from no more than two (ii) sections; and (iii) the deviation shall be deemed by the ZA not to impair the purpose of the otherwise applicable regulations. This Owner's request safely met all three requirements, as follows:

- (i) the deviation was one-third of one percent (.33%), well under the two percent (2%) limit;
- (ii) the request for flexibility was granted for minimum lot area only and no other section;
- (iii) the deviation has been deemed by the ZA not to impair the purpose of the otherwise applicable regulations.

Section 407.1 was adopted by the Zoning Commission for the purpose of providing a degree of flexibility to the Zoning Administrator by giving the Zoning Administrator the

discretion to approve minor deviations in certain area requirements of less than two percent (2%) (Zoning Commission Order No. 840). In adopting § 407.1, the Zoning Commission gave to the Zoning Administrator the discretion to grant minor deviations in the area requirements. The Appellant is proposing that the Zoning Administrator should not have such discretion.

In a recent appeal on this same topic, No. 18108, the Board refused to substitute its judgment for that of the Zoning Administrator, finding that it was up to the Zoning Administrator to determine whether or not an applicant meets the requirements of § 407.1, and that the BZA would not overrule that decision unless it was proven that the Zoning Administrator had acted arbitrarily or capriciously.

BZA Appeal No. 18108 was a challenge to a grant of minor flexibility for minimum lot area to allow the subdivision into two one-family dwelling lots from a single lot which was just under 2% shy of the required minimum lot area for two such lots. It's worth noting that the minor deviation in that case led to a unit increase of 100%, whereas in this case there is only a 17% increase in the units, and no increase at all in mass or density of structure. In denying that appeal, the Board ruled that an appellant must prove that the Zoning Administrator acted unreasonably or in an arbitrary or capricious manner, abused his discretion, or otherwise committed an error in approving the requested minor deviation. In this case, the Appellant has not provided any evidence at all which would tend to even approach meeting this standard.

In Appeal No. 18108, the Board also noted that a grant of minor flexibility involves both a quantitative analysis (subsection (a)) and a qualitative analysis (subsection (b)). The Owner's request in this case clearly meets both tests. While the quantitative analysis is simple and straightforward, the qualitative analysis necessarily requires a deeper analysis. In the August 11th Letter Ruling, the Zoning Administrator engaged in a thoughtful and detailed analysis in this regard and found that the requested minor deviation would not impair the purpose of the otherwise applicable regulations. We will not repeat the contents of the Letter Ruling here, but the ZA considered several factors, among them: (i) the small degree of the deviation, (ii) the deviation does not cause a change in use, but merely allows a 7th unit to the otherwise permitted 6 units, (iii) the deviation did not alter the size of the Building, and (iv) the lot was uniquely large.

The Appellant has not provided any rationale for why such a detailed and thoughtful analysis should be considered to be arbitrary or capricious. The Appeal should therefore be denied.

IV. Response to Appellant's Arguments.

Other than the challenge to minor flexibility, the Appeal amounts to (i) a request for the BZA to generally review the Project's compliance with every section of Chapter 4 of the Zoning Regulations, without any specific allegation of error, and (ii) general complaints about construction, building code, and other such concerns outside the jurisdiction of the BZA.

The Board is authorized to hear and decide appeals where it is alleged by an appellant that there is error in any decision made by any administrative officer in the administration or enforcement of the Zoning Regulations (11 DCMR §3100.2). The appeal process is not meant for the BZA to provide general project review. In any event, the Project has safely met all Zoning Regulations.

In his statement filed on April 22, 2015, the Appellant tells a story he claims to be time consuming, money draining, mind boggling, and shocking. Yet, all that has happened to date is that the Owner has applied for and received approval for an addition and a conversion which is completely matter-of-right. No construction has taken place. No errors have been made, other than the design for the stairway penthouse, which was quickly and easily corrected. In the process, the Owner and its architect have engaged the Appellant to try to address his concerns. Despite this, the Appellant and others continue to publicly disparage the Owner - with misrepresentations and mischaracterizations which have caused damage to the Owner's reputation – simply for doing exactly what the Zoning Regulations allow, and nothing more.

At public meetings and in public filings, the Appellant has claimed that the Building exceeds lot occupancy, when it is actually 10% under the maximum permitted lot occupancy. He claims it is four stories, when it is only three. He has claimed that the Building violates side yard requirements, when, despite not even having a side yard requirement, the Building has one 16-foot side yard. He claims it is two buildings, when he knows it is one. He claims that it will be a completely new building, when in fact all but the rear wall of the original Building will remain.

Finally, he has claimed that illegal construction is taking place on the Subject Property, when he is well aware that work hasn't even commenced.

Despite these complaints, the Appellant simply hasn't met his burden to prove that the Zoning Administrator committed any error in approving this Project.

V. **Conclusion.**

For the above reasons, the Appeal should be denied.

Respectfully Submitted,

A handwritten signature in black ink that reads "Martin P. Sullivan". The signature is written in a cursive, slightly slanted style.

Martin P. Sullivan