

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal of John Stokes

BZA Appeal 18991

RESPONDENT'S PRE-HEARING STATEMENT

Appellant alleges that the Zoning Administrator (the “**ZA**”) erred in approving Building Permit B1503050 issued on December 31, 2014 (the “**Permit**”) for the conversion of 1521 Varnum Street (the “**Property**”), located in a R-4 zone district, from a single family dwelling to a seven (7) unit apartment building.

Respondent, the District of Columbia Department of Consumer and Regulatory Affairs (“**DCRA**”), asserts that the ZA properly reviewed the Permit application and correctly approved the Permit. Furthermore, when the ZA determined that the Permit as issued appeared to authorize a minor violation of the Zoning Regulations, the ZA imposed a Stop Work Order (“**SWO**”) until the owner of the property (the “**Permit Holder**”) submitted revised plans that complied with the requirements of the Zoning Regulations. Therefore, DCRA respectfully requests the Board of Zoning Adjustment (the “**Board**”) to affirm the ZA’s approval as correct and deny this Appeal.

APPELLANT'S ALLEGATIONS

Appellant appears to allege that the ZA erred in approving the Permit for the following reasons:

- 1) Minor flexibility: The ZA improperly granted “minor flexibility” under Section 407.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, the “**DCMR**”) to enable the proposed apartment building house seven units;
- 2) Conversion to apartment house: The “proposed conversion [of the single family dwelling] to a seven unit apartment ... 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”;

- 3) Rear yard: The Permit violates Section 404.1 of the Zoning Regulations requiring a 20 foot rear yard;
- 4) Side yard (a): The Permit violates Section 405.3 of the Zoning Regulations requiring a side yard on each free-standing side for a one-family, flat or multiple dwelling erected without a division wall in the R-2, R-3, R-4 and R-5 Districts;
- 5) Side yard (b): The Permit violates Section 405.4 of the Zoning Regulations requiring one side yard for all structures in a R-5-A District except for an apartment house with three or more dwelling units per floor which requires two side yards;
- 6) Building height: The Permit authorizes a building height in excess of the current maximum of 40 feet in a R-4 District;
- 7) Alley too small: The alley that provides access to the four spaces of parking proposed in the rear of the Property is too small to add four more cars;
- 8) Parking ratio: The parking requirement should be one parking space for each bedroom;
- 9) Parking lot: The Permit violates Section 2303.1 of the Zoning Regulations establishing minimum standards for a “parking lot”;
- 10) Pervious surface: The Permit violates Section 412 of the Zoning Regulations requiring 20% of the lot have pervious surface;
- 11) Lot occupancy: The Permit violates Section 403 of the Zoning Regulations establishing a maximum lot occupancy, which should include the porch;
- 12) Standards for additions/accessory structures: The Permit violates Section 223.2 of the Zoning Regulations establishing standards for additions or accessory structures;
- 13) Rooftop structures: The Permit violates the limits on rooftop structures contained in Sections 400.7 and 411.2 of the Zoning Regulations; and
- 14) Number of stories: The Permit violates the limit on stories by not counting the cellar as a story.

ARGUMENT

The Permit complies with all of the cited provisions of the Zoning Regulations

DCRA asserts that the plans approved by the Permit (the “**Approved Plans**”) comply with each of the provisions of the Zoning Regulations that Appellant has alleged are violated, as follows:

- 1) “Minor flexibility” – Section 407.1 of the Zoning Regulations authorizes the ZA to allow a deviation from the requirements of no more than two of the provisions of the following Sections:

- 401 (minimum lot size by no more than two percent),
- 403 (maximum lot occupancy by no more than two percent),
- 404 (minimum rear yard by no more than ten percent),
- 405 (minimum side yard by no more than ten percent), and
- 406 (minimum court dimensions by no more than two percent of the minimum area requirement or ten percent of the minimum width requirement)

Before granting a deviation, the ZA must determine that the proposed deviations do not “impair the purpose of the otherwise applicable regulations.” 11 DCMR 407.1.

For the Permit, the ZA granted minor flexibility from Sections 401.3 and 401.11, which require 900 square feet per apartment in an apartment house in an R-4 zone district. The Property is 6,279 square feet, just 21 square feet short of meeting this requirement for seven apartments. The ZA determined that granting a deviation of just 0.33% to permit each apartment to be three square feet below the required 900 square feet would not “impair the purpose” of Sections 401.3 and 401.11 because the deviation would not increase the size of the proposed apartment building and would only increase the number of units from the six permitted by right to the seven proposed. The ZA also cited the unusual shape of the Property as the deepest on the block and the irregular rear corner which if straight would likely provide the missing 21 square feet. BZA 18991, Exhibit 24, August 11, 2011 letter from the ZA to Permit Holder’s Counsel.

- 2) Conversion to apartment house: Section 330.5(e) specifically permits a building that existed before the adoption of the Zoning Regulations be converted to an apartment house provided the conversion complied with Sections 401.3 (minimum 900 square feet of lot area per apartment) and 403.2 (lot occupancy). The Approved Plans do comply with these provisions – the ZA granted minor flexibility from 401.3, as discussed above at #1, and the lot occupancy complies, as discussed below at #11.

- 3) Rear yard: The Approved Plans provide a rear yard of at least 21½ feet, which meets the 20 foot minimum rear yard for the R-4 zone district required by Section 404.1.¹
- 4) Side yard (a): Section 405.3 only applies to buildings that do “not share a common division wall” with another building. This provision does not apply to the Property, since as Appellant stated, Appellant’s building shares a party wall with the building to be built under the Permit on the Property.²
- 5) Side yard (b): Section 405.4 only applies to certain buildings in the R-5-A zone district. Since the Property is an R-4 zone district, this provision does not apply to the Property.
- 6) Building height: The Approved Plans specify a total height of 39 feet and 11 inches, which complies with Section 400.1’s 40 foot maximum for a building in an R-4 zone district. This measurement is from the existing grade at the midpoint of the main façade of the proposed building closest to the street lot line up to the highest part of the roof – the measuring process specified by Sections 400.15-400.17. Roof parapets and balustrades are not included in the height measurement provided they are under 48 inches tall, and the Approved Plans specify that the roof railing is 42 inches tall. Housing for stairways and mechanical equipment also are not included in the height measurement under Sections 400.7 and 400.8. Therefore the Permit complies with all height provisions of the Zoning Regulations.³
- 7) Alley too small: The Zoning Regulations do not govern the size of alleys, or access to alleys.
- 8) Parking ratio: Section 2101.1 requires that at least one parking space be provided for each three dwelling units in an apartment house in an R-4 zone district. The Approved Plans provide four parking spaces, one more than required for the seven apartments.⁴
- 9) Parking lot: A “parking lot”, as used in Section 2303.1, is a defined term: “a tract of land used for the temporary parking of motor vehicles when the use is not accessory to any other use.” 11 DCMR 199.1. The four parking spaces approved by the Permit will be accessory to the principal residential use of the Property. Therefore Section 2303.1 is not applicable to the Permit.

¹ Sheet A001, “Existing and New Work Site Plans” (BZA 18991 Exhibit 22).

² Letter of Appellant to Board, April 21, 2015, at 12 (BZA 18991 Exhibit 30).

³ Sheet A204, “Building Elevations”, #1 “Front Elevation” (BZA 18991 Exhibit 22).

⁴ Sheet A001, “Existing and New Work Site Plans” (BZA 18991 Exhibit 22).

- 10) Pervious pavement: As a lot in an R-4 zone district over 2,000 square feet, the Property must comply with the 20% pervious surface requirement of Section 412.4. The Approved Plans specify that 22% of the Property will be pervious surface, including the parking spaces and landscaping.⁵
- 11) Maximum lot occupancy: Section 403.2 of the Zoning Regulations limits the lot occupancy for lots with buildings converted to apartment houses in an R-4 zone district to 60% unless the lot occupancy at the time of conversion was larger. The Approved Plans specify that the lot occupancy, including the façade balconies, is 50% (3130.7 square feet), well within the maximum permitted.⁶
- 12) Standards for additions/accessory structures: Section 223.2 establishes standards for to guide the Board in considering the granting of special exceptions to allow additions or accessory structures for one-family dwellings or flats. This section does not apply to the Permit, which is for a seven unit apartment house that does not require nor seek a special exception from the Board.
- 13) Rooftop structures: Sections 400.7 and 400.8 permit rooftop structures that exceed the maximum building height specified in Section 400.1, provided that the rooftop structures comply with the requirements of Section 411, are not more than 18 ½ feet above the roof and are set back from exterior walls equal to their height. The Approved Plans met all of those requirements, except for a minor discrepancy in the equal height and setback provision. When the ZA realized this discrepancy, he imposed the SWO until the Permit Holder submitted a revision to the Permit that would satisfy this requirement. The Permit Holder submitted that revision on April 7, 2015 which has been approved by the ZA as compliant with Sections 400.7 and 411. As a result, the ZA withdrew the SWO since the Approved Plans, as revised to address this minor issue, are compliant with the Zoning Regulations.
- 14) Number of stories: Section 400.1 limits buildings in an R-4 zone district to 3 stories in height. The definition of “story” excludes cellars and stairways or other rooftop structures. 11 DCMR 199.1. “Cellar” is defined as space with a ceiling less than four feet above the

⁵ Sheet A000, “Cover Sheet” and Sheet A001, “Existing and New Work Site Plans” (BZA 18991 Exhibit 22).

⁶ Sheet A000, “Cover Sheet” (BZA 18991 Exhibit 22).

adjacent finished grade. The Approved Plans specify three stories and a cellar, and that the floor of the first floor, which is higher than the ceiling of the lower level, is three feet and seven inches above the adjacent finished grade, defined by the same measuring point as used to measure the height of the building.⁷ The Permit therefore complies with Section 400.1.

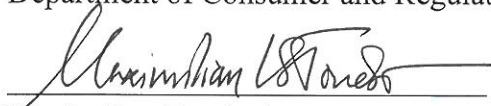
CONCLUSION

For the reasons stated above, DCRA asserts that the allegations stated in the Appeal are not accurate and so the Appeal does not establish a valid reason to overrule the ZA's approval of the Permit. DCRA therefore respectfully requests that the Board affirm that the Zoning Administrator correctly applied the Zoning Regulations to evaluate and approve the Permit and so deny the Appeal.

Respectfully submitted,
CHARLES THOMAS
Interim General Counsel
Department of Consumer and Regulatory Affairs

Date:

9/30/2015


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⁷ Sheet A204, "Building Elevations", #1 "Front Elevation" (BZA 18991 Exhibit 22).

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2015, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

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