

APPEAL BEFORE THE
BOARD OF ZONING ADJUSTMENT

Appellants: John Stokes and ANC 4C

BZA Case Number: 18991

I. INTRODUCTION

This matter comes before the District of Columbia's Board of Zoning Adjustment (BZA) on an appeal filed against the Zoning Administrator's decision to issue permit no. B1503050 on December 31, 2014 to convert 1521 Varnum St. NW into a seven-unit apartment building. On February 27, 2015, I filed an appeal of the Zoning Administrator's decision. As an adjoining property owner at 1519 Varnum St. NW, I am an aggrieved party. This appeal is timely filed.

The Department of Consumer and Regulatory Affairs' ("DCRA") decision to grant permit no. B1503050 to convert the lot and single-family dwelling at 1521 Varnum St. to a two-building apartment house consisting of seven units was gross error based on a number of violations, including:

- The deviation allowing seven units runs directly contrary to the character of the surrounding district (§ 101.2(a)), and will cause "undue concentration of population and the overcrowding of land" (§ 101.1(b)).
- The allowed deviation and the proposed development significantly impair the purpose of the Zoning Regulations.
- Under 11 DCMR § 3202.1 the permit should not have been granted because the proposed rooftop structures did not comply with the Zoning Regulations when the permit was issued.
- The proposed plans contemplate an impermissible second apartment building separate and apart from the existing structure on the lot. Section 2500.4 requires that secondary or accessory structures be no more than one story or 15 feet in height.
- Even if permissible, which it is not, the second apartment building would be required to have an 8-foot side yard between the structure and the lot line. The permitted plans do not include an 8-foot side yard. Rather, the planned second building directly abuts the lot line.

Any one of these reasons standing alone support revocation of permit no. B1503050. But, when viewed as a whole, the errors in the Zoning Administrator's decision to grant permit no. B1503050 compel reversal. The permit must be invalidated.

II. BACKGROUND

The 1521 Varnum St. Proposed Development

The property at issue is 1521 Varnum St. NW, Washington, DC 20011 ("Subject Property") and is located in the northwest quadrant of the District in the Sixteenth Street Heights neighborhood. The Subject Property is in Ward 4 and in the R4 zone. It is a semi-detached row house at the western end of four contiguous row of homes. The present use is as a one-family dwelling.

On December 31, 2014, the Department of Consumer and Regulatory Affairs ("DCRA") issued a building permit to convert the single-family house at 1521 Varnum St, NW into two (2) apartment buildings consisting of a total of seven (7) units of approximately 1350 square feet ("SF") each. The owner described this as an interior demolition and renovation in the building permit application while the permitted plans show that over 90% of the original house, including the slab on which the house was constructed, will be removed. In this development there will be two buildings, the first of which will consist of four apartments, one each on the basement, first, second, and third floors, plus a roof patio. The second building will have three apartments on three floors and will extend to the eastern side property line where there is no existing party wall.

In place of a single-family home that was occupied until just before being sold, the owner will add six homes increasing the density of our block by 20%. Each of the seven apartments to be built on the subject lot will consist of two bedrooms with a den and 2.5 bathrooms, adding 21 toilets, 28 sinks and 14 bathtubs/showers. The plans presented by the owner/developer of the Subject Property significantly changes the look of the house by adding balconies to the three apartments facing Varnum St. No other house on Varnum St has a balcony. In addition, entry to all the houses and basement apartments on my block of Varnum St. is through a door facing Varnum St. The plans for the Subject Property have entrance to all apartments from a shared stairwell between the 2 buildings in the back yard.

16th Street Heights Neighborhood

The Sixteenth Street Heights neighborhood is a quiet, well-established residential row house neighborhood with mature trees, well-maintained front and back yards and quiet neighbors, some of whom have lived in their homes for decades. Residential properties surrounding 1521 Varnum St. primarily are one-family row houses with a basement, first floor and second floor. There is a consistent design and size to each row house that fits with the character of the neighborhood. Each row house generally occupies less than 50% of the lot size. The construction of the two apartment buildings housing seven apartment units at the Subject Property would be dramatically out of scale and character with existing row homes on the block and in the neighborhood.

The personal and property interests of the surrounding homes and property owners on Varnum and Webster Streets and in ANC 4C would be adversely affected by the construction of these two large apartment buildings with seven 1350 SF apartment units as approved by the Zoning

Administrator. The conversion of the use of the lot and the single-family dwelling on 1521 Varnum St. NW to two apartment buildings will result in the construction of a new, additional building on the lot for a total of seven units and would negatively impact the air, light, privacy, and property values of the surrounding homes. In particular, the impact on my home, which is adjacent to the Subject Property, will be devastating.

III. LEGAL ANALYSIS

DCRA requires that the Office of the Surveyor draw the plat upon which an architect/civil engineer draws the new development. All of the information about the development plans included in this document are based on the updated Plat as submitted by the developer (from DCRA website). The updated plat was created by the DC Office of the Surveyor as required by DCRA.

DCRA submitted to me on May 21, 2015 the final revised plat and final revised plans for the proposed apartment buildings at 1521 Varnum Street, NW. (EXHIBIT 42).

“New Development Footprint”

The updated Plat does not include a diagrammatic layout of the new development as required by DCRA. The diagrammatic layout in the final plans is that of a Roof Plan and not the “new development footprint” as required by DCRA. As such, the Plat includes extraneous information not pertinent to, or directly impairing the evaluation of, the Plat, e.g., penthouse roof structure, roof deck, rooftop AC units.

The Proposed Development Encroaches Over the Property Line

The proposed development footprint is non-compliant because it goes over the eastern lot boundary line. Looking at the updated DC Surveyor Plat with the floor plan drawings on Sheets A201 and A202, the new Partition Wall P3 that extends the existing eastern party wall further north, encroaches on my adjoining property at 1519 Varnum Street, NW for 5.625 inches along the 10 feet 4 inch length of the new Partition Wall P3 wall type.

11 DCMR § 400.7(b) & 3202.1: Rooftop Penthouse Structure

Shortly after the permit was issued, DCRA imposed a Stop Work Order on 1521 Varnum Street, NW on February 2, 2015 for failing to comply with § 400.7, which requires that mechanical equipment, a stairway, or elevator penthouse be set back from the exterior walls a distance at least equal to its height above the roof on which it is located. After the Stop Work Order was issued, the owner/developer remedied the violation. While the owner/developer may have revised the plans, such revision concedes that permit no. B1503050 should not have issued.

In fact, under § 3202.1 “a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless the plans of and for the erection, construction, conversion, or alteration fully conform to the provisions of” the Zoning Regulations. As such, the Zoning Administrator erred in issuing the permit because the plans for

the conversion of the Subject Property did not comply with § 400.7, the rooftop structure provision of the Zoning Regulations.

11 DCMR § 2500: Impermissible Second Building

The second apartment building is a separate, free-standing building located behind the first apartment building that is attached to my row home at 1519 Varnum Street. As a secondary building on the R-4 lot, it should be subject to § 2500.4, which requires that “[a]n accessory building in any zone district shall not exceed one (1) story or fifteen (15 ft) in height, except as provided in section 2500.5 (which permits a second story in R-1-A or R-1-B zones).” According to the subject plans the second apartment building will have three rather than the required one story for accessory buildings.

11 DCMR § 405: Side Yard

In R-4 districts, free-standing, unattached structures (i.e., not row or semi-detached structures) must have an eight-foot side yard between the structure and the lot line on each side. The subject project plans to build the second apartment building up to the lot line abutting 1519 Varnum Street and would not create the required east-facing side yard. (Page 2 of the Site Plan). As described, *supra*, and shown in the Plans, the second apartment building is a separate building, independent of the first apartment building that is attached to the party wall of 1519 Varnum Street.

405.3 states that 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. The second apartment building absolutely fits this description.

The plans do have a side yard on each free standing side of the second building.

11 DCMR § 407.1: Minor Flexibility

In § 401, conversion of a building to an apartment house in the R-4 zone is limited by the minimum lot area dimensions of 900 SF per apartment unit. Under § 407.1, the Zoning Administrator may permit a deviation not to exceed two percent (2%) of the area requirements of § 401 provided that the deviation does not impair the purpose of the otherwise applicable regulations.

However, the Zoning Administrator must analyze the proposed minor flexibility in light of § 101, Interpretation and Application of the Zoning Regulations, which require that: (a) there be “adequate light and air,” (b) there not be “undue concentration of population and the overcrowding of land”; and (c) “the 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.”

The proposed development consists of 7 units on an existing lot with an area 6,279 SF. The minimum lot size required for this development under § 401 is 900 SF multiplied by seven units, or 6,300 SF. The proposed development contemplates seven units on a 6,279 SF lot. The Zoning Administrator granted the owner/developer "minor flexibility" to deviate from the minimum lot requirements by 21 SF. The deviation granted and the project itself will ruin the character of the surrounding neighborhood. To be sure, the proposed development will visually intrude and ruin the character, scale, and pattern of houses along the side, back, and front of the street frontage and the neighborhood. The allowed deviation and the proposed development significantly impair the purpose of the Zoning Regulations.

The three-story "addition" on the lot line adjacent to my property will tower above my home and yard and obstruct light and air to his property, which contradicts the regulations' purpose as stated in § 101.1(a). In Application 12873, of Richard V. McNamarra, the BZA upheld an appeal because, among other reasons, the proposed development would invade his rear yard privacy, reduce the green open area on the interior of the block, and impose on him an economic hardship. The effect of the granting of flexibility will similarly have a significant and adverse impact on my property.

In their appeal brief, the DCRA argues that the deviation granted "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." (DCRA Br. at 3). DCRA does not explain, nor can it, how increasing an apartment house by one unit that comprises an entire story could not increase the size of the proposed building. This is simply illogical. Moreover, the deviation which allows the additional apartment unit, directly contradicts the purpose of the Zoning Regulations to "prevent undue concentration of population and the overcrowding of land." (§ 101.1(b)).

The Zoning Administrator cited the size of the lot as the deepest on the block and an irregular corner, which if straight would likely provide the missing 21 SF. (EXHIBIT 24, Aug. 11, 2014 letter from the ZA to Permit Holder's Counsel). However, neither of these purported justifications warrant an apartment complex that is grossly out of character with the neighborhood and surrounding homes. Moreover, historical research indicates that this lot was originally 5,956 SF not 6,279 SF. The lot at 1521 Varnum St. was increased by an additional 323 SF through the purchase of adjoining property to the west that was formerly occupied by a church. Thus, rather than the lot "missing" 21 SF, it is an anomaly in that it is roughly 323 SF larger than surrounding lots. Such unusual shape does not justify destroying the character of the neighborhood, however. The ZA's reliance on the "unusual" size and/or shape of the lot was misplaced. Accordingly, the deviation should be disallowed and the permit revoked.

11 DCMR § 441: Roof Structures

The proposed development shows rooftop mechanical equipment located at two separate locations and outside of the Rooftop Penthouse Structure, which is non-compliant. Section 441.3 requires that all penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color. The proposed development shows rooftop mechanical equipment located at two separate locations

and outside of the Rooftop Penthouse Structure. (Rooftop Deck Plan Sheet A203). As discussed above, under § 3202.1, the permit should not have been issued because the plans for the Subject Property do not comply with § 441.3 when the permit is issued.

Incidentally, the owner/developer's inclusion of separate mechanical equipment for each of the buildings is a tacit admission that the owner/developer does indeed intend there to be two separate apartment buildings on the Subject Property, rather than one building with an extensive addition or pop-back.

11 DCMR § 412: Pervious Surface

In an R-4 District with a minimum lot size of more than 2000 SF, at least 20% of the lot must be pervious surface. (§ 412.4). The New Work Site Plan drawing on Sheet A001 does not identify the specific areas that are grass, mulched groundcover, permeable pavers, decks or porches with dimensions and/or square footage included for each. The updated, final Plat submitted identifies the specific areas of Pervious Surface that are grass, mulched groundcover, permeable pavers, decks, or porches, all of which are considered pervious surface under § 412-6. However, the New Work Site Plan does not include dimensions of and/or square footage for each. This omission prevents verification of the Pervious Surface calculations provided on the Plat. (§ 412.5) The Plat needs to be revised to identify and delineate all pervious and impervious surface materials, with dimensions and/or square-foot areas.

11 DCMR § 3401-3402 Green Area Ratio

Whenever there is an increase in lot usage of 20% or more a Green Area Ratio is required (§ 3401.5). According to the General Notes and Zoning Code Analysis provided on Sheet A000 of the project drawings the lot occupancy will increase from 19% to 50%, well over the 20% minimum under § 3401.5. Since the lot occupancy increased by over 20% the Green Area Ratio (GAR) applies. The developer did not provide the GAR calculations pursuant to § 3402.

IV. CONCLUSION

Building Permit no. B1503050 must be invalidated and revoked. It is crystal clear that these two apartment buildings are not in keeping with the intent and purpose of the Zoning Regulations for the R-4 District. Section 101 has been totally ignored. But, it should be the basis on which all other all other provisions of Title 11 should be interpreted and applied. Most of all, permit number B1503050 changes the character of this district.

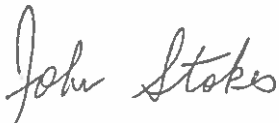
The allowed deviation and this project will ruin the character of this neighborhood. It visually intrudes and ruins the character, scale and pattern of houses along the front, back and side of the street frontage. And, it impairs the purpose of the regulations.

While I am certainly not against development, indeed there are owners who respect the neighborhood by increasing their household size without popping up or popping back their properties. In fact, neighbors aren't looking to create large unsightly houses, only developers who are not part of the neighborhood are looking to do so.

Even Mr. LeGrant in his letter dated August 11, 2014, addressed to Mr. Martin Sullivan, Esq., of Sullivan and Varros, LLP, who represents the developer, variously named on building permits issued by DCRA, states "The primary purpose of the R-4 District shall be the stabilization of remaining one-family dwellings."

For the reasons stated above, I respectfully request that the BZA grant the appeal, and invalidate this permit.

Thank you,

A handwritten signature in cursive script that reads "John Stokes".

John Stokes
1519 Varnum Street, NW
Washington, DC 20011