

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

APPEAL NO. 18991 – 1521 VARNUM STREET, NW

PROPERTY OWNER’S RESPONSE TO APPELLANT’S ADDITIONAL SUBMISSION

This Response to Additional Submission is being filed on behalf of Varnum Holdings LLC (the “Owner”), the owner of the property located at 1521 Varnum Street, NW (Square 2698, Lot 817) (the “Subject Property”), in response to The Appellant’s additional submission of June 10, 2015. The Owner acknowledges that the Appellant has attempted to allege certain specific errors by the Zoning Administrator, and addresses those allegations in turn herein.

Minor Flexibility Pursuant to 11 DCMR §407.1

Claim: The Zoning Administrator erred in granting minor flexibility under §407.1.

Response:

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 delegating to the Zoning Administrator the discretion to approve minor deviations in certain area requirements of less than two percent (2%) (Zoning Commission Order No. 840). The Appellant is proposing that the Board of Zoning Adjustment should now take back that discretion from the Zoning Administrator, for some reason.

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 second-guess 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 the proposed 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 (attached to the Owner's previous submission), 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. 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.

In his additional submission, the Appellant claims that the Zoning Administrator must analyze the proposed minor flexibility in light of §101. There is no direct guidance on that point, but when considering that section, regarding light and air and overcrowding of land, the Zoning Administrator would have recognized that the minor flexibility did not add any interior or exterior density to the proposed building; and he would have also recognized that proposed lot occupancy is about 10% short of the maximum permitted, with a side yard of sixteen (16) feet on one side.

The Appellant claims that providing one additional unit to the six uncontested units "will ruin the character of the neighborhood." It is not explained why the difference of one unit would make such a fundamental difference, or how the addition of one unit impairs the purpose of the otherwise applicable regulations. The Owner safely meets the parking requirement, is under the maximum permitted lot occupancy, and has less overall density than it otherwise could have had, regardless of the number of units.¹

In the end, the Board has determined that it is for the Zoning Administrator to determine an applicant's compliance with the requirements of §407.1. The Zoning Commission delegated this authority to the Zoning Administrator specifically to avoid having the BZA review such minor requests. The Appellant has provided no evidence that the Zoning Administrator acted arbitrarily in applying §407.1 to the Owner's proposal.

¹ The Subject Property could actually contain a matter-of-right rooming house with up to twenty-two units.

Impermissible Separate Building

Claim: The proposed addition is a separate, free-standing building.

Response: The plans clearly show it is not.

Side Yard

Claim: The proposed addition violates the side yard setback requirements.

Response: The Appellant's claim is rooted in a false premise – that the project consists of two separate buildings. The proposed construction is an addition to an existing building, for which three of the four structural walls are retained and an addition is added to the rear of the existing building. The structure is not interrupted or separated in any way, and is certainly one building as such term is defined in the Zoning Regulations. Side yards are not required for this structure unless provided.

Roof Structures

Claim: Roof Structures are not in compliance because there is more than one enclosure and some equipment is not within the enclosure.

Response: There is only one mechanical enclosure on the roof for the proposed construction, not two as suggested by the Appellant. Any equipment or other structures not located in that one enclosure is lower than four feet in height and not subject to the roof structure restrictions. Also, the location of penthouses and other roof structures does not say anything about whether or not a building is one structure or two separate structures.

Pervious Surface

Claim: Pervious Surface not identified.

Response: The permit application has met the twenty percent pervious surface requirement, and this has been noted sufficiently in the permit plans.

Green Area Ratio

Claim: The Owner failed to include a Green Area Ratio (GAR) calculation in the permit application.

Owner's Response
June 22, 2015

Response: The Green Area Ratio Regulations are not applicable to the R-4 zone district, pursuant to Section 3401.2. The section cited by the Appellant, §3401.5, applies – but not in the R-4 or lower zones - to changes for already approved permits and applications.

Conclusion

For the above reasons, the Appeal should be denied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan". The signature is written in a cursive, flowing style.

Martin P. Sullivan

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2015, a copy of this Response was delivered to the following, via e-mail or first class mail:

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