

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, as revised by Building Permit B1506179 to correct a minor error in the setback of the rooftop stairway penthouse (together with B1503050, the “**Permit**”) for the conversion of 1521 Varnum Street, N.W. (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. When the ZA determined that the issued permit 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 plans that complied with the requirements of the Zoning Regulations and received a revised building permit for those plans. 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 alleges that the ZA erred in approving the Permit for the following reasons:

- 1) Plat - The updated Plat does not provide a “diagrammatic layout” of the proposed development.
- 2) Encroachment – The plans approved by the Permit (the “**Approved Plans**”) show an encroachment of approximately 5.625 inches for a length of 10.33 feet onto Appellant’s property.
- 3) Rooftop structures - The original permit as issued included an error in the setback for the stairwell penthouse.

- 4) Second Building – There is a “second apartment building [that] is a separate, free-standing building” in violation of Section 2500 of the Zoning Regulations.
- 5) Side Yard – The proposed rear portion of the building violates Section 405 of the Zoning Regulations that requires “free-standing, unattached structures (i.e., not row or semi-detached structures)” to have an eight foot side yard.
- 6) Minor Flexibility – The ZA improperly granted “minor flexibility” to enable conversion to include seven units instead of the matter-of-right six units because this runs counter to the purpose of the Zoning Regulations and change the character of the neighborhood by increasing the population density.
- 7) Roof Structures – The presence of rooftop air conditioners on two separate locations violates Section 411.3 requiring all mechanical equipment be housed in a single enclosure.
- 8) Pervious Surface – The Approved Plans do not provide sufficient information for the ZA to have determined that the 20% pervious surface requirement of Section 412 was satisfied.
- 9) Green Area Ratio – The ZA failed to require that Green Area Ratio requirements of Sections 3401-3402 be satisfied for the Permit.

ARGUMENT

The Appeal is without merit as the Permit complies with the Zoning Regulations

DCRA asserts that the Approved Plans comply with each of the provisions of the Zoning Regulations that Appellant has alleged are violated, as follows:

- 1) Plat – Appellant does not cite a section of the Zoning Regulations to support this allegation. The only requirements in the Zoning Regulations regarding plats are in Section 3202.2, which requires a building permit application “be accompanied by *any of the following that is deemed necessary*” (emphasis added):
 - “(b) An official building plat, in duplicate, prepared by the Surveyor of the District of Columbia, upon which the applicant shall indicate in ink and to the same scale dimensions:
 - (1) All existing and proposed structures;
 - (2) The number, size, and shape of all open parking spaces, open loading berths, and approaches to all parking and loading facilities; and
 - (3) *Other information necessary to determine compliance with the provisions of this title.*(emphasis added).

The plat submitted by the Permit Holder provides the required information – it shows all existing and proposed structures and parking spaces. Contrary to Appellant’s assertions, there is no bar against “extraneous information” – the two italicized portions of Section 3202.2 explicitly permit all additional information necessary to determine compliance. There is, therefore, no merit to this allegation by the Appellant.

- 2) Encroachment – This encroachment - of less than five square feet - was an inadvertent minor error made by extending the existing party wall. The Permit Holder has agreed to correct this encroachment.
- 3) Rooftop Structures - The ZA, upon realizing this error after the permit had been issued, imposed the SWO and required the Permit Holder to revise the plans to comply with this requirement. Therefore there is no merit to this allegation by the Appellant.
- 4) Second Building – There is only one building on the Property, which shares the same stairwell, walls and roof as shown by the Approved Plans as is clearly illustrated by Sheets A202-205 of the Approved Plans.¹ The Zoning Regulations define a building as not “separated [*i.e.*, connected] from the ground up or from the lowest floor up”. 11 DCMR 199.1, “Building”. The Board has held that

“the definition of “building” under § 199.1 permit separate portions of a structure to be considered as a single building for zoning purpose provided that a communication exists between those separate portions at or above the main floor.”²

The building as shown on the Approved Plans clearly meets this definition of a single building. Therefore there is no merit to this allegation by the Appellant.
- 5) Side Yard – Section 405.3 of the Zoning Regulations only applies to buildings that do not share a “common division wall with an existing building”. This provision does not apply to the Approved Plans, since as Appellant stated, Appellant’s building shares a party wall with the building to be built under the Permit on the Property.³ Since the Permit approved only one building on the Property, the rear portion of that building is not subject to this provision. This allegation of Appellant is therefore without merit.
- 6) “Minor flexibility” – The ZA was asked to grant a deviation to allow a seventh unit; not to grant a deviation permitting the conversion of a single family house to an apartment house,

¹ BZA Appeal 18991, Exhibit 43A, A202-205.

² *BZA Application No. 18263-B of Stephanie and John Lester* (2011), at 11.

³ Letter of Appellant to Board, April 21, 2015, at 12 (BZA Appeal 18991 Exhibit 30).

which the Zoning Regulations permitted by right for six units. Upon consideration of this request to add the seventh unit, the ZA determined that granting the deviation of just 0.33% to permit each apartment to be three square feet below the 900 square feet required by Sections 401.3 and 401.11 would not “impair the purpose” of the Zoning Regulations because the deviation would not increase the size or density of the proposed apartment building and would only increase the number of units from the six permitted by right to the seven proposed. This deviation is well within the two percent maximum flexibility granted to the ZA by Section 407.1.

Appellant appears to believe incorrectly that if the ZA had not granted this deviation, that the resulting building would have to be reduced in size. This is not accurate as the maximum building envelope and mass is not dependent on the number of units provided but instead established by other standards, such as lot occupancy, building height, required yards, etc. Thus if the ZA had not granted the deviation, the Permit Holder would still have been able, for example, to combine the two third floor units to create a full-floor penthouse with more bedrooms and baths within the same building envelope approved by the Permit.

BZA Application No. 12873 of Richard V. McNamara (“**BZA No. 12873**”), cited by Appellant in support of his contention that the ZA incorrectly granted the 0.33% deviation — for a total of 21 square feet — is inapposite. BZA No. 12873 did not involve the ZA’s minor flexibility under Section 407.1. Moreover, the variance from the lot occupancy requirement requested in BZA No. 12873 was more than ten times larger than that granted by the ZA for the Permit: a variance of 257.37 square feet for a lot slightly smaller than the Property (6168.8 square feet).⁴ This would be a deviation of 4.2%, more than double the maximum Section 407.1 authorizes the ZA to grant. This is an order of magnitude that far exceeds the 0.33% deviation granted by the ZA for the Permit.

As to Appellant’s assertion that the additional unit granted by the ZA under his minor flexibility authority will unduly concentrate population and overcrowd land, the number of units does not necessarily determine the number of occupants. If the ZA had not granted the deviation, the Permit Holder would have been able to build a larger penthouse unit with more bedrooms and baths that likely would have included as many residents as in the sixth and seventh units as approved.

⁴ *BZA Application No. 12873 of Richard V. McNamara* (1979), at 1-2.

The ZA specifically addressed these issues in his August 11, 2014 letter to the Permit Holder's Counsel, stating that granting the deviation did not "increase the overall density or bulk of the proposed project"; and that the stated purpose of the R-4 zone district, to stabilize remaining one-family houses, did not apply to the requested deviation since a six unit apartment building would be built by right regardless of the ZA's granting or denying the deviation. The ZA also noted the unique size and shape of the Property and emphasized the small size of the requested deviation – 0.33% - which was consistent with past decisions of the ZA and Board.⁵ This is precisely the circumstance for which the ZA was granted the minor flexibility by the Zoning Commission, as the Board noted in *Appeal No. 18108 of Advisory Neighborhood Commission 3C* (2010), cited by the ZA in his August 11, 2014 letter.⁶ As a result, the ZA determined that the requested deviation did not "impair the purpose of the otherwise applicable regulations" and so was permitted under Section 407.1.

Appellant's challenge to the ZA's granting of the requested deviation is therefore without basis.

- 7) Roof Structures – Sheet A205 shows that the air conditioning units on the rooftop rise three feet above the rooftop deck,⁷ within the four-foot exemption of Section 411.17 from the requirements of Section 411 governing Roof Structures. There is, therefore, no merit to this allegation by Appellant.
- 8) Pervious Surface – Contrary to Appellant's assertions, the Property does comply with the 20% pervious surface requirements of Section 412.4, as is shown on the revised plans – providing 1318 square feet, or 21% of the total lot. Sheet A001 shows that the pervious surface requirement is met by the combination of pervious pavement for parking and in the grass and landscaping flanking the walkways as permitted by Section 412.6.⁸ This scaled drawing provides sufficient information for the ZA to determine that the proposed pervious surface did indeed meet the requirement. There is no requirement in Section 412 imposing the pervious surface requirement, nor in Section 3202.2 specifying the minimum information required for a plat, to include dimensions and square footage of all pervious surfaces. Therefore there is no merit to the allegation by Appellant.

⁵ BZA Appeal 18991, Exhibit 24, at 3.

⁶ *Ibid*, at 2.

⁷ BZA Appeal 18991, Exhibit 43A, A205.

⁸ BZA Appeal 18991, Exhibit 43A, A001.

- 9) Green Area Ratio – Appellant asserts that the Property is subject to the Green Area Ratio (“GAR”). This is incorrect, as the GAR does not apply to R-1 through R-4 zone districts per Section 3401.2, because these zone districts are subject to the pervious surface requirement instead. Therefore there is no merit to this allegation by Appellant.

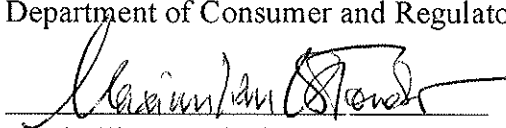
CONCLUSION

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
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Date:

6/22/2015


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CERTIFICATE OF SERVICE

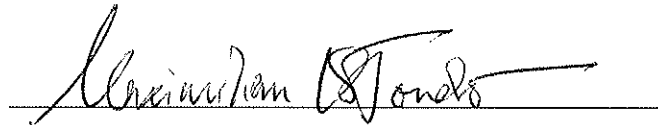
I hereby certify that on this 22nd day of June 2015, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

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A handwritten signature in black ink, appearing to read "Maximilian Tondro", is written over a horizontal line.

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