



ADVISORY NEIGHBORHOOD COMMISSION 4C

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LETTER OF SUPPORT

FOR

BZA CASE NUMBER: 18991 – 1521 VARNUM STREET, NW

PART II

August 12, 2015

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To the Board of Zoning Adjustment:

***Preamble:** As BZA's filing system will not allow for a document to exceed 8MB of space, this document – BZA CASE NUMBER 18991 – 1521 VARNUM STREET, NW – had to be broken up into two (2) parts. In order to maintain continuity, we have purposely repeated the cover page of PART I. PART II continues on the following page, marked PART II / PAGE 3. PART II also contains the signature page, which is marked Page 5, as the required signatures were obtained before the ANC learned of BZA's filing restrictions.*

I am writing on behalf of and with the authority of Advisory Neighborhood Commission 4C, (ANC 4C), its Single Member District Commissioner, (4C03), and the residents we serve, to request that the Board of Zoning Adjustment (BZA) revoke the permit to build seven apartment units to replace the one-family dwelling located at 1521 Varnum Street NW. The property at 1521 Varnum Street NW falls within ANC 4C, and the legal and policy issues in this case implicate the entire ANC.

ANC 4C is a local government body representing approximately 20,000 citizens and approximately 7200 households. In our analysis, Zoning Administrator Matthew LeGrant erred when he granted permission to build a seven unit apartment complex in place of the current dwelling, where a reasonable interpretation of the facts shows that the construction does not constitute a mere conversion.

As a separate but related issue, the decision in this case violates the zoning framework adopted by the citizens of the District of Columbia and our elected representatives, reflected in this instance in the nature of the R-4 zone.

The preamble to the R-4 section of the Zoning Regulations indicates that apartment houses are specifically discouraged in the R-4 District. The zoning framework, and the nature of a neighborhood zoned R-4, reflect policy choices about the types of development that are appropriate in a particular neighborhood. The 20,000 stakeholders of ANC 4C have concerns that applications for development, such as this one, are not being viewed with close attention to issues of:

1. Sustainability,
2. Impact on third parties,
3. Absorptive capacity, and
4. Preservation.

In that environment, we urge the BZA to require Zoning Administrators to adhere closely to the underlying purposes of the relevant statutes and regulations, and to ensure that the public policy purposes underlying R-4 zoning are kept in the forefront as each Zoning Administrator evaluates a permit.

On the face of the decision concerning 1521 Varnum Street NW, neither was the case here, and we therefore urge a reversal of the decision taken by Mr. LeGrant.

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District of Columbia
CASE NO.18991
EXHIBIT NO.72

To elaborate:

1. The subject project is of a type of project that would normally be located in an R-5 residential zone (11 DCMR § 330.3.);
2. In that instance, the proposed project would be subject to the zoning regulations for a high-density zone, which affords protections to neighbors and stakeholders;
3. The R-5 zoning code requires that the BZA refer the application for comment and recommendation from:
 - A. The D.C. Board of Education;
 - B. The Department of Transportation;
 - C. The Department of Housing and Community Development; and
4. The results from these activities would inform neighbors and the Zoning Administrator of the potential impacts of the planned development on the safety, health and welfare of the neighborhood.

Even though R-4 zoning contemplates greater restrictions on development than R-5 zoning, the developer is in effect pursuing the project on Varnum Street without any of the procedural protections that would apply if the project were taking place in an R-5 zone. No such analysis took place, and none of the due diligence applied to protect the neighbors of 1521 Varnum Street and the surrounding neighborhood is being offered here. **Given the underlying purposes and policies of R-4 and R-5 zoning, this outcome is clearly contrary to the law.**

This permit, if allowed to stand, will serve as precedent that would open all R-4 zoned neighborhoods to a slippery slope, opening the door to significant infill development. The law of R-4 zoning and the zoning framework in general would be circumvented, frustrating their underlying policies, and threatening to change our neighborhood from a low density, row house neighborhood, envisioned by R-4, to something more like Columbia Heights – without the attendant infrastructure in place.

The Zoning Administrator Failed to Consider Whether the Facts Qualified as a Conversion

As the permitted plans show that the proposed buildings at 1521 Varnum Street must be characterized as new construction, which is not allowed in an R-4 District, permission should not have been granted by the Zoning Administrator. An analysis of the facts further shows that the situation does not fall under Title 11 Sec. 330.5(e).

The general provisions for an R-4 District (Chapter 330) state that the R-4 District is one of primarily row dwellings. The primary purpose of the R-4 zone district is the stabilization of remaining single-family dwellings. (11 DCMR § 330.2). To this end, the R-4 district is not to be an apartment house district. (11 DCMR § 330.3).

Under some circumstances, conversion to flats – that is, two-family houses – is allowed (330.1). The only multiple-dwellings permitted – other than two-family flats – are conversions of pre-1958 structures. These conversions are controlled by a minimum lot area per family requirement – (11 DCMR §§ 330.5) and 401.3 (Board of Zoning Adjustment Application No. 16983 of Richard Nappi Page 4).

In his letter, the Zoning Administrator suggests that the only limit on the matter of right conversion in an R-4 district is the size of the lot. Mr. Le Grant erred because Section 330.5 (e) allows “The conversion of a building or other structure existing before May 12, 1958, to an apartment house,” and while the section allows conversion to an apartment house, it does not allow other kinds of changes.

The BZA clearly states that an apartment house in an R-4 Zone could only be established through the conversion of an existing structure; (See Appeal No. 18181 of AMM Holdings, Inc., Date: March 29, 2011). It is clear that Mr. LeGrant’s analysis ignores that the changes proposed in the subject project go far beyond conversion, and are in the realm of new construction. As the section uses the word “conversion” – not replacement, new construction, or new building – a proposed change of that magnitude is not allowed by the law under the banner of “conversion.” **The Zoning Administrator may not disregard the plain reading of the 330.5(e) that allows conversion of a building or structure, not new construction or the wholesale replacement of the existing structure.**

When reading Chapter 330 as a whole, it is clear that the use of conversion is limited by the overall goal of stabilization of the remaining one-family dwellings. **Given that, Mr. LeGrant could only allow the project to go forward if it constituted a “conversion” (and not some other kind of change), and – in light of the totality of Chapter 330 – he would need to interpret “conversion” strictly. Neither requirement is met in this case.**

Under Any Reasonable Analysis of the Facts, the Proposed Project is New Construction and/or a Raze, Not Conversion

In this case, the project proposes to demolish at least 90% of the existing structure, and to create a second new structure. This cannot constitute mere conversion, but is a raze and/or new construction. If this is allowed to qualify as "conversion," the *conversion* exception to Sec. 330.3 would swallow that section's general prohibition against the construction of apartment buildings on R-4 lots, illegally rendering Sec. 330.3 null in practice.

1) Creation of a New Building Goes Beyond Conversion and Constitutes New Construction

The subject project includes a newly constructed, building located behind the new structure replacing the existing pre-1958 structure. This second building is an apartment building with three dwelling units and consequently prohibited by the zoning code. (See, generally 11 DCMR §330.3 – 330.5).

A stairwell and roof top trellis connecting the back building with the front building is an attempt to create the appearance of one building, but this mere fiction should not be allowed to overcome the prohibition against new construction. The apartment units in the second building are fully contained within that structure. Residents of the units in the second building can access their units without entering the apartment building fronting Varnum Street. (See A001 Existing & new Work Site Plans, all pages). Consistent with this point is the fact that the original plans place a separate mechanical unit on the roof of the second building. (See A203 Proposed Floor Plans).

The BZA, in Application No. 12873, of Richard V. McNamara, held that the separate unit in that project did not qualify as a "conversion" of an existing structure. The proposed covered walkway was not a structure establishing a common living arrangement between the front and back units and was shown to evade the Zoning Regulations.

2) The Degree of Proposed Changes Constitute a "Raze," Not a "Conversion"—A Raze Permit Should Have Been Required

Because 90% of the existing pre-1958 structure at 1521 Varnum St. will be demolished and replaced by the planned apartment building fronting Varnum Street, the subject project should not be classified as a conversion.

1. All the interior walls, door and floors will be removed;
2. All the steel structural beams will be removed;
3. The flat roof and mansard roof will be removed;
4. Both chimneys will be removed;
5. All external doors and windows will be removed;
6. The back wall will be removed;
7. The front porch will be removed; and finally
8. Parts of the three remaining walls will be removed.

Demolishment of this degree of the existing building constitutes a "raze." In that case, the owner must follow the 2013 Building Code. Classifying a project with 90% demolishment as a mere "conversion" would eviscerate any meaningful difference between the exception outlined in 11 DCMR § 330.5(e) – that is conversion – and, on the other hand, new construction. The Zoning Commission is considering a proposal that 30% of the original building must remain in order for a project to be considered a conversion. Clearly the Zoning Commission recognizes that development under the term "conversion" has gone too far.

Health and Safety Risk

Additionally, the demolition – which must constitute a raze – will put neighbors and neighborhood children at risk from lead and asbestos found in all houses built before 1977. An owner should not be allowed to put the neighbors and surrounding properties at risk by doing an end-run around the requirements of the raze permit that exist to protect the owner and neighbors – merely by keeping parts of three walls up.

3) The Permitting Did Not Accurately Reflect the Work Done

Permits must accurately reflect the work being done. The owner of 1521 Varnum Street filed permits to convert a one family house to an apartment building under 11 DCMR § 330.5(e). The plans show everything in the original house will be removed with the exception of the interior of parts of three external walls. **The plans are in conflict with permit B1500897**, which states that only interior renovation work will be done. Permit B1506179 revised the earlier permit by deleting an explanation of the demolition and construction work that would be done and adding the word "conversion."

In Conclusion:

ANC 4C, its commissioners, and its residents, urge the BZA to reverse the action of the Zoning Administrator. In making his determination, the Zoning Administrator failed to adhere to the requirements of law, particularly in failing to conclude that the circumstances presented go far beyond the "conversion" exception to the bar on apartment buildings in a R-4 Zone.

The impact of this erroneous analysis is significant. The construction of these two large buildings with seven (7) 1350 sq. ft. apartments, as approved by the Zoning Administrator, would adversely affect the personal and property interests of the surrounding homes and property owners on Varnum and Webster Streets and in ANC 4C.

It would negatively impact the air, light, privacy and property values in the neighborhood. The ANC fears that if Zoning Administrators allow construction of apartment building-type structures without a strict analysis showing an actual conversion, as opposed to a near complete re-build, then the R-4 zoning requirements will be meaningless, and our city will suffer a *wild west* of infill development with city residents left paying the price.

This would frustrate the general public policy underlying R-4 districting, as well as citizens and neighbors' interests, in maintenance of the existing character of neighborhoods and of full consultation in the case of proposed transfiguring changes to property.

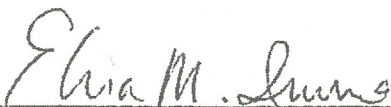
Great Weight Consideration:

Procedurally, for this Letter of Support in the matter of BZA Case No. 18991 to be perfected, ANC 4C must establish a quorum for any official business, authorized under DCMR for any ANC, which requires that our meeting: (1) Be properly noticed, (2) Be held in a public forum, and (3) Include the presence of (currently) five (5) Single Member District Commissioners (SMD) in order to constitute that quorum.

At a properly noticed August 12, 2015 ANC 4C public meeting, a majority of those duly elected and sworn-in ANC 4C Commissioners, with that quorum present, upon considering a motion of the foregoing Letter of Support, with points and authorities, concluded by a vote of eight (8) yeas and zero (0) nays, to accept the contents of the Letter of Support, authorizing the ANC's secretary to forward to the Board of Zoning Adjustment for consideration and made a part of the record.

We thank BZA in advance for its close attention to this matter.

Yours truly,


Elisa Irvin, SMD Commissioner 4C03


Vann-Di M. Galloway, Chairman ANC 4C