

Board of Zoning Adjustment
Office of Administrative Hearings
441 4th Street, NW
Washington, DC. 20001

BZA Order No. 18991
Re: Appeal for 1521 Varnum Street, NW
Appellant: John Stokes, owner of 1519 Varnum Street NW
Intervenor to Appeal: Jane Bush
Hearing Date: September 15, 2015

Supplemental Documentation

September 11, 2015

To the Board,

I respectfully submit additional information to support my written testimony of August 25, 2015 which was received on September 1, 2015.

I would like to bring to the attention of the Board two cases which are similar in argument to the issues the neighborhood faces with the proposed apartment building construction at 1521 Varnum Street, NW. In both R-4 cases, the building permit was pulled or denied.

Regarding side yards, I refer specifically to BZA Case. No. 16811 (attached), where the purpose of the side yard requirements is discussed. I maintain that this apartment building has no side yard as is required under 405. From BZA Case No. 16811:

Purposes of the Side Yard Requirements

The minimum yard requirements require the provision of open spaces around buildings and structures. **As** described in **3** Rathkopf's The Law of Zoning and Planning 34B.02[11 at 34B-2 to 34B-5 (2001):

Restrictions on land development controlling building setback lines and requiring minimum front, side, or rear yard areas that must be kept free from structural development have long been recognized by courts as being reasonably related to promotion of the public welfare. Front yards, rear yards, and side yards provide light, air, and privacy. They afford room for lawns and trees, keep residences away from street traffic, noise, dust, and neighbors, provide space for recreation and relaxation, and add to the attractiveness and comfort of a residential district. They provide access for firefighting equipment to the rear of buildings, and space for accessory buildings and uses. . . . More generally, police power restrictions relating to yards, courts, and other open spaces promote the overall community interest by fixing a spatial land use land use pattern and thereby promoting the orderly physical development of a community.

These same policies are reflected in the provisions of 11 DCMR 101.1, which states the purpose of the zoning regulations and guides their interpretation and application. Thus, in the terms employed in 101.1, the minimum side yard requirements serve to provide separation between dwellings, ensuring adequate light and air, preventing the undue concentration of

population and the overcrowding of land, and providing a distribution of population and use of land that will create conditions favorable to the protection of property and that will tend to further economy and efficiency in the supply of public services.

In adopting 405.3 in Z.C. Order No. 17, the Zoning Commission expressly stated that its purpose is “to insure the provision of adequate side yards for all residential buildings regardless of the zoning district in which they lie.”

The new open alley/passage way running along the boundary line (R-4, R-1-B) from Varnum Street, NW to Webster Street, NW cannot be considered a side yard as it leads to the front entrance of the proposed apartment building, has a bike rack, trash can area, an entrance to the building and an exit from one unit onto the passage.

I would also like to address the “three prong test for area variance” which was used in BZA Order No. 17026 (attached). In this case, the applicant wished to expand the property to a seven unit apartment building in an R-4 Residential District, ridding the area of the rear yard; alley parking is also discussed.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

I maintain in my previous testimony that no rear yard exists, as is required under 404, and that the parking for the proposed building exceeds the allowable spaces per the size of the building in the R-4 Residential District. (2101). In addition, the landscaping, as is required under 2303, is inadequate with no barrier or landscaping provided to shelter the adjacent properties.

With regard to the upcoming excavation of the property and the lack of a raze permit, which would include feasibility studies by WASA, PEPCO and Washington Gas, as well as the tree permit removal of a 103” (circumference) tree on the property, all currently lacking, I would like to refer to 2505.¹

¹ 2505.5 The following shall be prohibited:

- (a) Cement plants or rock crushers;
- (b) Other crushing, grinding, or polishing machinery; and
- (c) Other processing equipment.

2505.6 Dirt or dust shall not be permitted to escape or be discharged in objectionable amounts from the lot upon which the excavation is conducted.

2505.7 All private access roads shall be provided with a dustless surface.

2505.8 The lot upon which the excavation is conducted shall be enclosed by a fence of a type and to a height to be prescribed by the Board, unless expressly waived by the Board.

I would like to draw the Board's attention to the fact that the service alley with two entrances from Webster Street, NW measures, at its widest, 16 feet from one entry and, at its narrowest, 11.5 feet from the other' access from 15th Street to the service alley, measuring 15.5 feet in width, requires several sharp turns restricting access to all large trucks. There has been no assessment by the Fire Department to confirm that the safety, health and welfare of the neighboring properties will be protected in case of a building fire. DDOT and the Zoning Commission should also produce studies to determine that there are no issues which would affect the safety and security of the neighborhood under 101 with the introduction of the open alley/passageway along a boundary line, effectively changing the Map of the District of Columbia.

Weighing all factors mentioned in both of my submitted documentation, and applying the three prong test for area variance, I respectfully request that the Board deny the building permit to halt the construction of this apartment building.

Jane Bush

1516 Webster Street, NW, WDC 20011

Attachments: 16811, 17026

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- 2505.9 Excavation operations shall be restricted to the hours from 7:00 a.m. to 7:00 p.m., with no operations conducted on Sundays or legal holidays.
- 2505.10 The excavation operations shall be subject to any requirements for setback, screening, or other requirement that the Board deems necessary for the protection of neighboring or adjacent property.
- 2505.11 The Board may require the execution of a bond to secure the performance of all conditions imposed on the excavation.
- 2505.12 Upon cessation of any excavation operations approved under § 2505.3, the site devoted to that use shall be rehabilitated in the following manner:
- (a) The final slope or wall of any excavation or pit shall not exceed the normal limiting angle of repose or slippage, and shall be planted to prevent erosion;
 - (b) The site shall be left in a condition so that it will not unreasonably interfere with the future development of neighboring or adjacent property, or any street or alley for which an approved line and grade have been established