

452 Newton Place,
NW
BZA Case No. 19712



Overview and Summary

- Special Exception Relief pursuant to U § 320.2 in order to convert the property to three units
- Variance Relief from U § 320.2(d) as property is 40 sq. ft. shy of the 900 ft. rule requirement
- Exceptional Conditions:
 1. On April 26, 2015, the Owner was granted a minor deviation from the ZA, thereby allowing a 3-unit conversion as a matter-of-right.
 2. On August 3, 2015, the zoning division of DCRA approved the permit application for 3 units.
 3. On October 22, 2015, DCRA issued a Building Permit to the Owner, allowing the 3-unit conversion.
 4. During 2015, the Owner undertook renovations, eventually resulting in the 3-unit configuration approved by DCRA.
 5. The Owner, beginning with the approval from the Zoning Division, commenced construction in summer, 2015, and then had the project substantially completed by December, 2015.
 6. DCRA revoked the Building Permit in December, 2015, after substantial completion of construction, failing to acknowledge the principle of estoppel, and taking no responsibility for its permit issuance.
- Practical Difficulty:
 1. The Applicant is left with a 4 BR, 4 BA unit, which it has been unable to sell at any price which would allow any reasonable recovery from its reliance on the duly-issued 3-unit Building Permit.

General Special Exception Requirements of X-901.2

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11-X DCMR § 901.2).

- Will not adversely affect the only adjoining row home to the east, as the Applicant has not changed the building footprint and added only one (1) residential unit
- Will not adversely affect the properties to the north, south, or west, separated by Newton Place, Warder Street, and a public alley

Requirements of U-320.2

- (a) Limited to 35 feet in height; no change in height, limited to 28 ft.
- (b) 4th dwelling dedicated to IZ; only proposing 3 units, IZ does not apply
- (c) Existing residential building at the filing; existing residential building on Property
- (d) Minimum of 900 square feet of land area per unit; requesting variance, property has 2,660 sf.– 40 ft. shy
- (e) Addition must not extend more than 10 ft. past rear wall of neighboring properties; no addition/change in building footprint
- (f) Addition shall not block chimney or vent; no change in building footprint
- (g) Addition shall not interfere with solar panels; no change in building footprint
- (h) Original roof top architectural elements are not to be altered; no rooftop architectural elements were altered

Light, Air & Privacy Test: 320.2(i)

(1) The light and air available to neighboring properties shall not be unduly affected;

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

(3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley;

As the Applicant did not change the existing building footprint, the light and air, privacy and use of enjoyment of the only adjoining property will not be unduly affected or compromised

The proposed unit will not substantially visually intrude upon the character, scale, and pattern of houses along Newton Place

(1) Extraordinary Condition affecting the Subject Property

Extraordinary or Exceptional Condition Affecting the Property;

A. Permitting History – Reliance/Estoppel (See BZA Case History on Following Slides)

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B. Size of the Property

- See slide with map of square/block; *De Minimis* Request for 1.5% relief.

452 Newton Place, NW

LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
To: KC Price <kc@kcdcstudios.com>

Mon, Apr 6, 2015 at 5:32 PM

KC Price-

After reviewing your email and attachments asking for minor flexibility under 11 DCMR 407.1 for a lot that is 2,660 SqFt which is 40 SqFt less than the normal standard of 2,700 SqFt necessary for a three unit apartment building, based on the 900 square feet per dwelling unit standard, I will grant the request as this would constitute a 1.5% deviation of the lot size requirement, which is within the flexibility that can be granted. Based on the information you provided I agree that this is unlikely to adversely affect adjacent properties, and all other zoning requirements will be met by the proposed plans.

Please let me know if you have any further questions.

Best Regards,

Matthew Le Grant

Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
Email: matt.legrant@dc.gov
Web: <http://dcra.dc.gov/service/zoning-dcra>

DCRA/OFFICE OF THE ZONING
ADMINISTRATOR/COMPLIES
WITH THE REQUIREMENTS OF
DC ZONING REGULATIONS (11 DCMR)

8/3/15

~~The drawings have been reviewed for code compliance with the applicable provisions of the zoning regulations and are approved. I hereby certify that the drawings are subject to the final inspection.~~
Structural
8-3-15

Minor Deviation-
April 6, 2015

B

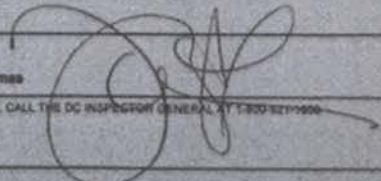
BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 10/22/2015

PERMIT NO. **B1500315**

Expiration Date: 10/22/2016

Address of Project: 452 NEWTON PL NW		Zone: R-4	Ward: 1	Square: 3036	Suffix:	Lot: 0089
Description Of Work: USE CHANGE FROM TWO FAMILY FLAT TO THREE UNIT CONDO BUILDING. ALTERATION OF EXISTING FRONTY PORCH TO ACCOMMODATE 2ND FLOOR ACCESS.						
Permission is Hereby Granted To: Estelle M Rosales		Owner Address: 452 NEWTON PL NW WASHINGTON, DC 20015-1716		PERMIT FEE: \$1,204.50		
Permit Type: Addition Alteration Repair	Existing Use: Two-Family Flat - R-3	Proposed Use: Multifamily (> 2 units)			Plans: Yes	
Agent Name: Samnang	Agent Address: 20024	Existing Dwell Units: 2	Proposed Dwell Units: 3	No. of Stories: 2	Floor(s) All	
Conditional Restrictions:						
<p>This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.</p> <p>All Construction Done According To The Current Building Codes And Zoning Regulations.</p> <p>As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.</p> <p>Lead Paint Abatement Whenever any work with material in this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint abatement provisions of the Lead Hazard Prevention and Elimination Act of 2009 and the EPA Lead Renovation, Repair and Painting rule regarding lead-based include adherence to lead-safe work practices. For more information, go to http://doh.dc.gov, Lead and Healthy Housing.</p>						
Director: Melinda Bolling	Permit Clerk: Tezrah Thomas					
<p>TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-9500</p> <p>FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-8557</p> <p>TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-6557.</p>						

3-Unit Permit:
Issued
October 22,
2015

(2) Practical Difficulty:

1. The Applicant is left with a 4 BR, 4 BA unit, which it has been unable to sell at any price which would allow any reasonable recovery from its reliance on the duly-issued 3-unit Building Permit.
2. Resolution would require either selling a unit with 4 BRs and 4 Bas, a configuration not desired by the market in this area, for a price way below market value, or reconfiguring the bedroom and bath situation to combine the two units into one, something that would require a renovation of the entire space, including bathrooms, kitchens, and bedrooms.

(3) Requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan

- Only property in this square of this size; every other property is ~100 square feet over/under 2,700 sf.
- Next nine properties to the east are identical, whereas the Subject Property is unique, a corner lot just 40 feet shy of the requisite 900 square feet
- Permitting history is unique in that the Applicant is only requesting relief because it detrimentally relied on assurances by DCRA and spent a significant amount of money as a result.
- The degree of relief is minimal, only a 1.5% deviation—only 40 square feet—and the Applicant would sustain a significant financial loss after relying on the validly issued 3-Unit Permit

Case No. 18570

- Application No. 18570 was a case virtually identical to this case, but for a couple factors that make the present case stronger than 18570
- In that case, the applicant applied for and received a building permit to convert to 3 units on a 1,311 sf lot at 1845 North Capitol St (note that the 1845 lot was half the size of the Newton lot, and Newton received minor flex approval for the 40 sf it was short of 2,700 sf.
- The applicant completed the project and was told they could not get a Certificate of Occupancy for 3 units
- The BZA approved variance relief of over 50% (the present case is 1.5%)
- OP recommended approval, stating: "there is an exceptional situation as the applicant demonstrated good faith and a reliance on the actions of City officials."
- OP stated further that the applicant "relied on DCRA's issuance, in error, of the Building Permit for a 3-unit apartment building"

Case No. 18750

The Board also found:

- “The zoning history of a property, including past actions of governmental authorities, can constitute the "events extraneous to the land" which create the requisite exceptional situation or condition. *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). In *Monaco*, a zoning history which implicitly approved a use and thereby gave rise to good faith, detrimental reliance by the property owner, helped to establish the necessary exceptional situation.”

Other Cases

- While 18570 is the most applicable example - for this case - of how reliance on a building permit can be an exceptional situation meriting variance relief, it is not the only case
- The Board made similar decisions in Case No. 17624, Case No. 18725 and as recently as 2016 in Case No. 19366, citing good-faith reliance on a building permit in pursuing construction can be an extraordinary condition leading to a practical difficulty
- In Case No. 18725, the structure was only partially built, and still, ~100% lot occupancy for a deck was approved as a result of DCRA's actions and the applicants reliance thereon

Applicant's Case

- Permit was issued in October 2015
- Applicant constructed exactly what was approved
- SWO issued December 2015
- DCRA lifted fines because Applicant demonstrated that it built what was approved by the 3-unit permit
- On numerous occasions DCRA encouraged the Applicant to move forward with 3 units
- Was granted minor flex for the configuration
- Work was substantially complete by the time the SWO was issued

Response to OP

- OP did not consider the reliance argument, which can be considered as part of the variance test
- In previous cases, OP fully considered this argument and recommended approval based on this argument