Before the Board of Zoning Adjustment of the District of Colombia

Re: Application of James and Julie Edwards
1325 Fairmont Street, NW
Square 2860 Lot 819

BZA Application N° _____
Hearing Date _____
ANC 1B

STATEMNT OF THE APPLICANT

I.

Nature of Relief Sought

This is an application, pursuant to section 3103.2 of the Zoning Regulations, for a variance from the minimum lot area requirements of section 410.3 to allow the conversion of an existing two-unit flat to a four- unit apartment house at premises known as 1325 Fairmont Street, NW in square 2860, lot 819, (the subject property). This application requires no other relief from the strict application of the zoning regulations.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the variance requested herein, pursuant to section 3103.2 of the Zoning regulations.

III.

Background

a. Description of the Subject Property

The subject property is located in the Colombia Heights section of the city close to the 14th street corridor and less than a ten-minute vehicular ride to the heart of the Central Business District downtown. The property is located in an R4 zone district and the lot

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Exhibit No. 3

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area computes to approximately two thousand eight hundred fifty two square feet (2852.5 square ft) of rectangular shape. The subject property is improved with a three-story, plus basement brick structure, constructed in 1910, enveloping a gross floor area of approximately four thousand nine hundred square feet (4900 sq. ft.).

The applicant purchased the building for conversion into a four-unit apartment building based on erroneous information provided by staff in the Zoning Administrator's office about such feasibility. Upon inquiry, applicant's agent was led to believe that the nine hundred square feet (900 sq. ft.) per unit requirement of the zoning regulations to allow such conversions, pertained to individual unit size in gross building area, rather than its relation to lot size as now informs this appeal.

b. Description of Surrounding Area

The property is located amongst a mixed residential type row structure area, including single-family row dwellings, rooming houses, flats and multiple-unit apartment buildings. In addition, the close proximity of the commercially zoned 14th street corridor allows for varied types of retail and service commercial uses. The subject property is located within walking distance of two operating metro stations; the Colombia metro station on Irving street and the U street Cardoso metro station: Zoning district in a three block radius of subject property range from the R4, R5B, R5D to the commercial C2B zone district.

IV.

Applicant Meets the Burden of Proof for an Area Variance from the Minimum Lot Area to Allow Four-Unit Conversion

Under D.C. Code Section 6-641.07 (g)(3) and II DCMR section 3103.2, the Board is authorized to grant variances from the strict applications of Regulations where it finds that three conditions exist:

1. The property exhibits uniqueness because of a pre-existing anomaly of size, shape or topography prior to the May 12, 1958 enactment of the zoning regulations or other extraordinary or exceptional situation or conditions of property.
2. The owner would encounter practical difficulties or undue hardships of the zoning regulations were strictly applied.
3. The variance, if granted, would not cause substantial detriment to public good and will not result in substantial impairment of the intent, purpose and integrity of the zone plan as established in the zoning regulations and maps.

In the case of an area variance, which this application seeks, the applicant need only show that the uniqueness of the property imposes a practical difficulty on the applicants ability to comply with the regulations and that the variance will not be detrimental to public good or impair the purpose of the zone plan.

In the subject case, the applicant only seeks a variance from the minimum lot area requirement to allow a conversion beyond the three units that the "constant" size of the existing lot will permit, and said relief, if granted, will constitute only a twenty- percent variant factor from the minimum lot area requirement of § 401.3 of the zoning regulations.

V.

The Property is Affected by an Exceptional Situation or Condition

The subject property is affected by the exceptional situation of the misinformation provided by city officials and the attendant impact on the feasibility of the owners expressed purpose, upon which the economic value of the vacant property was determined. The property also exhibits an exceptional condition because of its subdivision history, wherein records from the D.C. Surveyor's office reflect two different widths and area of lot at different dates probably because of realignments to create a public alley and street widening. The subject property was created out of a former lot 4 and was at some point only 18 feet wide and had an area of 2353 square feet (see exhibit). To the east of the subject property is an existing apartment building (1321 Fairmont NW), which sits on adjoining lots 818 and 817.

Prior to purchasing property, the applicant was informed by the Zoning Administrators' office that conversions to multiple units was permitted in the R4 zone if each unit within the existing building is 900 square feet minimum. In reliance on this erroneous information, the owner determined that subject property was permitted conversion because it was constructed prior to May 12, 1956, and because it had enough gross building area to meet the 900 square ft per unit requirement. The gross building area of the existing building is 4900 square feet approximately.

Conflicting and erroneous information played a major role in determining the economic value of the existing vacant building and by the extension renders the project economically unfeasible, if limited to the three-unit conversion that its lot area permits

By simple deduction, given acquisition cost of $340,000 (see attachment), estimated construction cost of $120. per square foot of building (attachment) and average

sale price in this geographic area, it is apparent that this project is economically unfeasible for this owner or for any other owner. This fact, precipitated by unreliable information provided by city officials, results in the extraordinary situation which impairs, if not completely forecloses, the ability of the current owner to sell the subject property to recoup his considerable investments in the property to date, or to proceed on a venture that is impossible to break even on financially. The potential outcome is the abandonment of subject property in its dilapidated and vacant state, since it is elementary that no lender would consider the project viable. This outcome is inimical to the stated objectives of the Ward 1 Element of the Comprehensive plan, which stresses the provision of additional housing, the need for neighborhood stabilization and the promotion of housing near Metro stations.

The subject property is further affected by a peculiar history of subdivision predating the May 12, 1958 promulgation of the Zoning regulations, which reflect differing width and area of the same lot at different dates. The record reflects that Lot 819 was a part of a larger former lot 4 (see exhibit A) which may have been of a size permitting the conversion for which relief is now sought. It is also apparent that subject property has since May 12, 1958 been permanently impaired from the opportunity to comply with the minimum area requirement of sections 330.5 and 401.3 as it could not have expanded in any direction, been that it is and has been so bounded on either side by pre-1958 improvements on adjoining lots and a public alley in the rear.

Further, public property records (see attachment # 1.3) depicted subject property as a "Multi Family Dwelling" use on property information Win2Data.

This is consistent with pre-1958 uses prevalent in this block of Fairmont Street (see attachment #1.6). Old certificate of occupancy records show a preponderance of a mix of

rooming/boarding houses and apartment buildings. It is not inconceivable that uses such as rooming houses, tenement houses and apartment houses were all deemed "Multiple Dwelling Units", prior to text amendments ascribing zone district sensitive non-transient definitions to "apartment house" and "rooming and boarding houses." In fact, it was not until 1999 that the subject property was converted from its history of "multiple unit" use to a two-unit flat. This was reflective of the reality of the real estate market then as the current proposal is of the conditions of the market regurgitating prohibitive acquisition cost. This reality is compounded when due diligence is informed by erroneous or inaccurate information. The Board may consider the economic feasibility of a project in deciding whether an area variance should be granted (see Tyler v. District of Columbia BZA, App. D.C. 606 A.2d (1992)). The more reason when such feasibility or lack thereof is further impaired by reliance on erroneous information provided by city officials. An area variance may not be granted on the ground that a property, which produces a reasonable income when conforming to the regulations, will, if put to another use, yield a greater return (see Palmer v. BZA, App. D.C. 287 A.2d 535, 1972). It is inferred, in this argument, that at minimum, where a property cannot be used in a conforming manner so as to yield a reasonable income, then an area variance is warranted. Limiting the subject property to a conforming three-unit building will not yield a reasonable income to allow its rehabilitation and its reintroduction to the housing stream. The effect is to promote blight, a direct contravention of the objective of the zone plan.

VI.

Strict Application of the Zoning Regulations would impose a Practical Difficulty on the Applicant

The subject property owner will be saddled with defunct project for which no lender will risk a loan approval, if the zoning regulations were strictly applied. The practical difficulty to the owner, which is financial, also hinges on the subject property's inability to comply with minimum area requirements to allow a four-unit apartment conversion, even if it wanted to. This possibility has been permanently foreclosed since prior to May 12, 1958, because subject property was in single ownership as of that date and adjoining propertied were already improved prior to that date. The concept of easing the strict standards of the zoning regulations on the properties so specially affected is not novel within the zoning regulations itself. By operation of interpretation, this is what §§ 401.1 and 401.2 do in allowing substandard lots to be re-improved, or build upon, where the conditions of non-compliance existed prior to May 12, 1958 and the opportunity to remedy such did not exist then, nor exist in the present. § 401.1 allows a substandard lot, regardless of area or width, to be re-improved if a building existed on the lot as of May 12, 1958, so long as no other relief is necessary. § 401.2 allows, under certain provisions, for a vacant lot, which has exhibited the inability to come into compliance with minimum area and width requirements since November 1, 1957, to be improved, provided it meets eighty percent (80%) of the requisite requirement. Both concepts hinge on the opportunity, or lack thereof, to remedy an existing non-conformity of minimum area and width of lot. Where the zoning regulations find such opportunity to have been foreclosed prior to the enactment of the regulations and no opportunity presents itself for any remedy in the present, it mandates relief. In the instant case, the subject property owner is presented with no opportunity to increase its lot size to meet the criteria for a four-unit conversion because improvements exist on adjoining lots and have so existed prior to May 12, 1958.

The existing building on the subject property was constructed in 1910. Given the dates on survey plats (12/7/55), suffice to say that the existing building was in fact sitting on a significantly larger lot 4, prior to pre-1958 subdivisions that made the lot smaller. In granting the requested relief, subject property owner is able to present a proforma showing positive cash flow to facilitate an economically feasible project.

VII.

Relief can be Granted Without Substantial Detriment to the Public Good and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan

Approval of the requested relief will not cause substantial detriment to the public good nor impair the intent of the regulations or map. The applicant proposes to convert an existing dilapidated and vacant building into a four-unit residential housing. The existing lot area of approximately two thousand eight hundred and fifty two (2852 square feet) square feet is within eighty percent (80%) of the required minimum area for such conversions. The relief, if granted, is not inconsistent with the administrative fiat of § 401.2. The variant factor of requested relief is an insignificant twenty percent (20%). This portends minimal adverse impact in a general area already devoted, in its preponderance, to like uses. As stated earlier, the range of zone districts within a three-block radius of subject property already permits a great mix of medium to high-density residential and commercial uses. The proposal is not inconsistent with the Ward 1-land use elements of the comprehensive plan, which stresses the provision of additional housing as means of neighborhood stabilization. It also promotes the creation of housing near Metro stations. Subject property is located midpoint between two new metro stations, the Colombia Heights and U Street Casrdozo stations both operational

within the last four years. Two parking spaces will be provided in the rear of the property, though no parking is required for the proposed conversion. Approval of a four-unit apartment building at the subject property will not adversely impact the present character and future development of the neighborhood because the neighborhood is already predominantly used in a similar manner, given the wide range of zone districts prevalent in the immediate area. Renovation of the existing dilapidated and vacant building, otherwise not feasible without this approval, removes blight from a community currently undergoing renaissance and rejuvenation. The R4 zone district, within which the subject property is located, is a residence district designed to allow "row dwellings, conversions and apartments" (see section 105.1 (a)(4), 11 DCMR. Whereas, the minimum area requirements of section 401.3 pertaining to conversion of pre-1958 buildings into multiple-unit buildings is designed as a density control measure, such density was premised on "traditional" families (according to old census demographic; a husband & a wife with 2.5 children) occupying such units of conversion. The present reality is that the demographic of the resident in such urban areas has shifted towards the young single or newly married couples without children. The affect is that density concerns of the fifties are somewhat mitigated by contemporary demographic realities. Finally, the proposed use is not incompatible with the underlying zone district.

VIII.

Conclusion

For the reasons stated above, the requested relief meets the applicable standards for a variance relief. Accordingly, the applicant respectfully requests the Board to grant the application.