GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

DATE: September 28, 2004

TO: District of Columbia Board of Zoning Adjustment

FROM: Andrew Altman, Director

SUBJECT: Board of Zoning Adjustment Case No. 17218
906 T Street NW

Summary

The applicant is seeking approval of variances from the height and maximum number of stories requirements of §400.1 and a special exception for lot occupancy under §223 for an existing residential building. The Office of Planning **recommends approval** of the requested special exception, but **does not recommend approval** for the requested variances based on the analysis of special exception and variance tests below.

Site and Area Description

The subject property is located at 906 T Street N.W, Square 362, Lot 233. The lot is 1800 square feet, of which the building currently occupies approximately 64.6%. The building contains four above ground stories and a basement level. The subject property and the properties to the east, west, and south are zoned R-4. Properties in the neighborhood to the north are zoned C-M-1. The immediate area consists mainly moderate density residential uses.

Project History Description

The original renovation plans for the project showed a three story building with stairwell access to the roof. These plans were approved in September of 2001. In April of 2002 the plans were amended to change the rooftop access to a full office/den with bathroom in addition to the roof deck. Both DCRA and Historic Preservation approved this amendment in error. The existing building was renovated in 2002 with the legally issued permits. In August of 2002, the applicant was notified that the added fourth story and building height did not meet the zoning requirements of the district. The applicant was

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reissued permits for the building without the loft in September of 2002 and told to file with the BZA for the fourth story. In addition to the extra story, a stairwell was added to the rear of the building that put the building over the maximum 60% lot occupancy allowed.

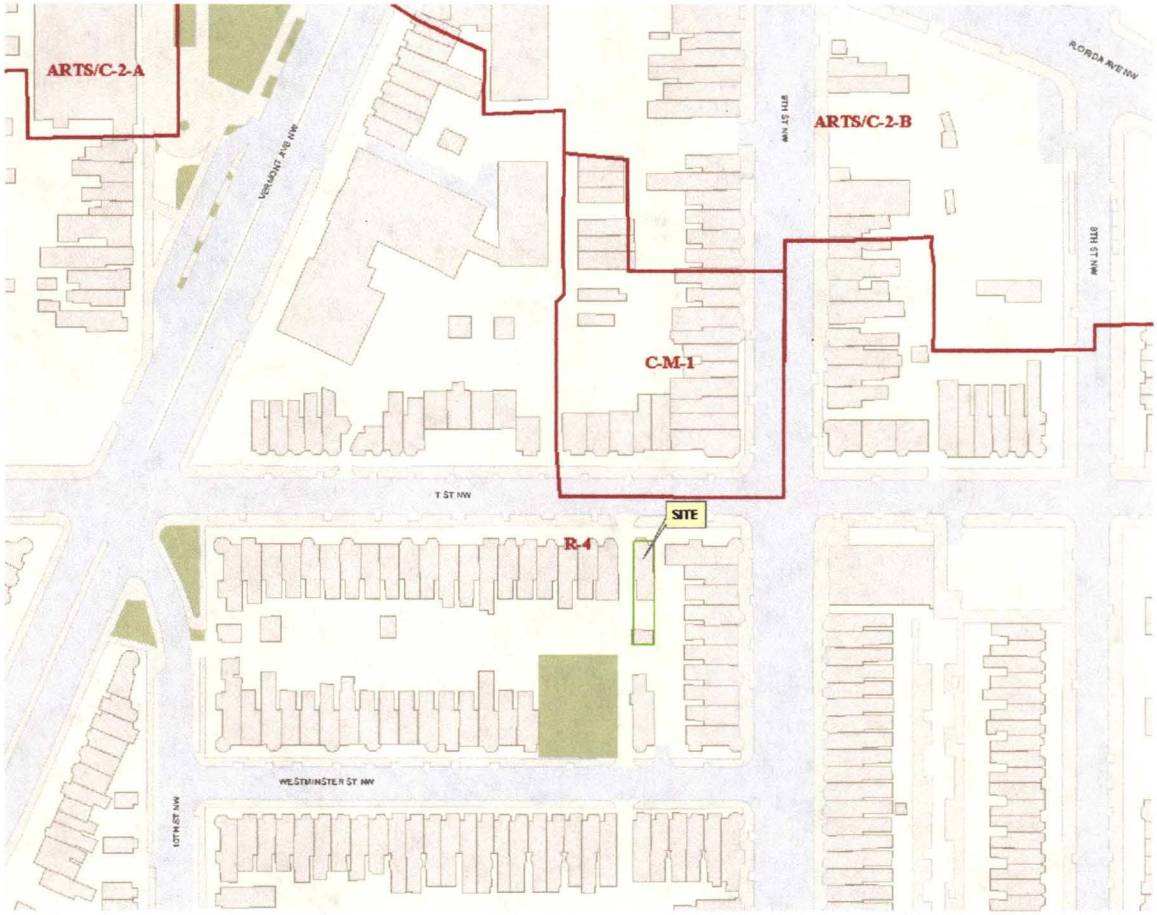


Figure 1: Aerial View

Zoning Requirements

The applicant is requesting a variance from the maximum height and number of stories allowed in an R-4 district as well as a special exception for lot occupancy. The building meets all other zoning requirements for the R-4 zoning district.

Section	Item	Required/Allowed	Existing	Variance
400.1	Height	40'	41.75'	1.75'
400.1	Maximum # of Stories	3	4	1
403.2	Lot Occupancy	60%	64.6%	4.6%
404.1	Rear Yard	20'	31'	N/A

Variance Analysis

The provisions of §3103.2 require the applicant to show a unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property that creates an undue hardship or practical difficulty. In addition, there should be no harm to the public or to the zone plan.

Exceptional Situation

The applicant has submitted arguments that the application meets the requirements of the first test due the fact that construction of the addition proceeded on the basis of a permit issued by DCRA. The subsequent retraction of that permit after the addition was constructed presents a unique situation where a building that does not meet the zoning requirements was constructed by following the legal procedures. OP is sympathetic with the owner of the building since the original permits were issued in error, however the legal standards for a variance apply uniqueness to the property and OP has concerns about using improperly issued permits as basis for meeting the standards of this test.

Practical Difficulty

The practical difficulty involved in this case would, of course, be the cost of removing the constructed fourth story. Regardless of whether the above situation is determined to be unique, there is a practical difficulty in this situation to complying with the zoning regulations. Any change to meet the strict requirements would involve significant cost to the owner and a further significant delay in the occupancy of this building. OP recognizes this situation, but questions whether the situation creating it legally fits the standards for approval of a variance.

Substantial Detriment

While this variance request is the result of neighborhood concern over the height, OP finds very little evidence that this addition would significantly affect the use and enjoyment of neighboring properties. The loft is less than two feet over the height allowed by right in the R-4 zoning district and therefore only minimally affects the light and air to neighboring properties compared to a by-right development and provides no additional privacy concerns to what would otherwise be allowed.

Of greater concern however, is the impact on the intent and integrity of the Zoning Regulations. The residential districts R-1 through R-4 have a firm and rarely relieved maximum standard of three stories. Granting this relief goes against the obvious intent of the regulations for this district and could open the door for similar relief requests in the future.

In summary, OP questions whether the exceptional situation described by the applicant meets the standards of §3103 for approval of a variance. Furthermore, approval of the variance appears to have the potential to impair the integrity of the Zoning Regulations by allowing a fourth story in a moderate density residential district.

Special Exception

The applicant is seeking relief from the requirements of §403.2 through a special exception under §223. The previously constructed addition of a stairway increases lot occupancy over the 60% maximum in the R-4 district to 64.6%. §223 allows additions up to 70% lot occupancy provided that the standards of the section are met. The standards of §223.2 are listed below with staff analysis:

(a) *The light and air available to neighboring properties shall not be unduly affected.*

The stairway addition is only two stories high and under nine feet in width. It projects off the rear of the building and faces an open alley on the rear yards of neighboring lots to the east. The only possible effects of this addition would be minor changes to the evening light to neighboring rear yards to the east, however the small size of this addition and its location on the building will make any effects minor and not unduly obtrusive.

(b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.*

There should be no noticeable affect on the enjoyment or privacy of use of the neighboring properties. There are no windows on the sides of the new stairwell addition nor is there access to the roof. The addition will provide no new views nor have any negative affects on the usability of neighboring properties.

(c) *The addition together with the original building, 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 frontage.*

The building is alone on T Street east of the public alley so it does not and will not have an immediate adjacent neighbor. The rear addition projects further into the rear yard than many of the buildings on T Street, but does not intrude at all on the character, scale, or pattern of the housing along the street or alley.

(d) *In demonstrating compliance with (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and view from public ways.*

The applicant has provided photos and architectural drawings showing the relationship of the proposed addition to adjacent buildings and views from public ways. Aerial photographs attached to this report and a site visit have confirmed the minimal visual impact of the proposed addition.

Based on the above analysis, OP believes that the application meets the standards of §223 for approval of a special exception from the requirements of §403.2. The application will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties.

ANC Recommendation

ANC 1B is scheduled to meet on this application the first week of October, 2004. A report should be available to the Board by the time of the public hearing. OP is aware of some neighborhood opposition to approval of the fourth story on this building.

Agency Reviews

Historic Preservation staff reviewed and approved the original plans in September 2001 and the revision in April 2002, however Historic Preservation staff have stated that the April 2002 revision was approved in error without a full understanding of the visibility or impact of the proposed fourth floor.

Recommendation

The Office of Planning concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 223 of the Zoning Regulations, for the granting of the requested special exception to permit the increase in lot occupancy for the stairwell. The request can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zoning Regulations.

The Office of Planning has further reservations regarding the applicant's ability to meet the tests for approval of the requested variances. The situation, while regrettable and unique, may not rise to the level of a variance by virtue of not being a unique feature of the *property*. In addition, the integrity of the Zoning Regulations is in question since the City does not usually approve four story buildings in the R-4 district.

The Office of Planning **recommends approval** of the requested special exception relief by the Board of Zoning Adjustment to allow the increase in lot occupancy at 1401 Q Street N.W. OP **cannot recommend approval** of the requested variances for height and a fourth story at the same address.

AA/tp

Attachment 1: Aerial Photos from April 2003

