REVISED

HEARING TESTIMONY/ARGUMENT OF APPLICANT

FOR 906 T STREET, N.W.

BZA #17218

GENERAL OVERVIEW

The Applicant, TON, Inc. has filed this Application with the BZA, seeking (1) a Special Exception from Lot Occupancy requirements set forth in Section 223.1 of the Zoning Regulations; and (2) an Area Variance from the number of stories and height limitations set forth in Section 400.1 of the Zoning Regulations, for addition to an existing row structure in the R-4 District.

BACKGROUND

Applicant submitted her initial Building Permit Application on July 25, 2001 which requested that she be permitted to renovate the existing structure consisting of three stories and two units.

The initial Building Permit (#B438630) was issued on September 19, 2001 for both the demolition and renovation projects. It read: "Demo, renovate entire bldg (new electrical, plumbing and hvac) Wood nonclad, one-over-one windows only. Front door to be repaired. Metal replacement stairs to be finalized with HPO staff. Separate electrical, plumbing and mechanical installation permits are required". The Permit identified the project "To be occupied as a Detached Rowhouse with Basement Unit". General demolition, construction and renovation commenced.

The planned construction/renovation was later revised by a Building Permit application filed February 2002 and issued on April 8, 2002 (#B444065), after review and approval by the DCRA disciplines, the Zoning Administrator, and the Historic Preservation Office. The

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requested revision to the Building Permit was to accommodate proposed changes to the plan of renovation. The Application indicated that the proposed Addition (to accommodate the conversion from a single family dwelling to two (2) family flat), would increase the height in both stories (by one) and feet. Additionally, both the Surveyor's Plat and the drawings attached to the Revised Building Permit Application, clearly identified the extent of the renovation and addition.

That Building Permit (issued April 8, 2002) reads, in pertinent part: "Rehabilitation of existing building as per plans. Separate electrical, plumbing, and mechanical installation permits are required. Historic Preservation clearance: Conforms with Mayor's Acent Approval under DC Law 2-144." It goes on to describe the project "To be occupied as a 2 family flat; 3 stories plus basement and Loft."

In July 2002, after the construction was well underway and nearly complete, an inspector from the DCRA visited the site and issued a Stop-Work Order, in order to determine whether all appropriate Permits had been filed, reviewed and obtained by the Applicant. After being presented with the approved drawings, permits and site inspections, the Stop-Work Order was lifted and construction continued, with final close-ins obtained in September 2002.

In October 2002, there were additional inspections which led to discussions with representatives from the DCRA. It was determined then that the Permits may have been issued in error, despite the fact that the drawings and applications were reviewed and approved by not only the DCRA and the Zoning Administrator, but also by the Historic Preservation Office.

As a result, a third Building Permit application was submitted in order to address concerns about the number of stories to the then converted structure. The Zoning Administrator denied the application by referring the Applicant to the Board on June 18, 2003. That referral

has led the Applicant to seek both a Special Exception and a Variance from strict compliance with the Zoning Regulations.

APPROVALS AND REVIEWS

The Advisory Neighborhood Commission 1B, voted to support the Applicant's request for a Special Exception and the Variance. Additionally, the Office of Planning has given its support for the Special Exception (as to Lot Occupancy), but has refrained from supporting the request for a Variance of the previously approved and constructed Height and number of stories.

ARGUMENT

1. Special Exception from Subsection 3104.1 for Lot Occupancy is warranted.

A Special Exception from Section 223 (Additions to One-Family Dwellings or Flats) with respect to the allowable lot occupancy in the R-4 Residential Zone District, is warranted under the circumstances of this case.

First, the Board is authorized to grant special exceptions where, in the judgment of the Board, the special exceptions 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. Pursuant to the provisions of Section 223, the general permissible lot occupancy of a Flat in the R-4 District may be increased from 60% to 70%.

As set forth on the Notes and Computations Sheet prepared by the DC Zoning Administrator in 2003, the Total Lot Area for this property is 1,803.25 Sq.Ft.; thus the maximum permitted usage of this Lot as a 2 Unit Flat would normally be 1,081.95 Sq.Ft. The previously existing single-family dwelling footprint of 997.6 Sq.Ft. combined with the proposed addition of 167 Sq.Ft., created a new Lot occupancy of 1,165.3 Sq.Ft., which exceeded the generally

permitted lot occupancy for Flats in the R-4 Zone District by 83 Sq.Ft. (or an excess of 4.6%; or a total of 64.6% of lot occupancy).

Second, pursuant to Subsection 223.1 and 223.3, when there is an Addition constructed to an existing one-family dwelling or Flat, and the resulting structure does not meet the applicable requirements of Subsection 403 (Lot Occupancy of 60%), then the Regulations provide that the Addition "shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Section 3104, subject to the provisions of Section 223; not to exceed of seventy percent (70%) in the R-4".

Here, the lot occupancy of the dwelling or Flats, together with the Addition, is 64.6%, less than the seventy percent (70%) permitted under Subsection 223.3 of the Regulations. The increase in the footprint of the structure, was to accommodate an enclosed staircase required by the Fire Marshall, providing an additional means of egress from the third floor of the structure. The rear staircase does not extend to the rooftop deck nor serves as a means of egress to the 4th/Loft level. It also only extends 8 feet, 7 inches beyond the original footprint of the structure.

Third, in order to qualify for the additional Lot Occupancy, the Applicant must prove to the satisfaction of the Board that the Addition does not have a substantially adverse affect on the use and enjoyment of any abutting or adjacent dwelling or property. We will take them in order:

(a) The light and air available to neighboring properties are not unduly affected.

The photographs appended to this Application, clearly reflect the relationship of the neighboring properties to 906 T Street, N.W. The building is fully detached and is situated on the South side of T Street, thus facing North. The structure borders an Alley directly to the West; and beyond the Alley, stands a comparably built structure of 3 stories and a basement, which is currently under substantial renovation. Directly to the East of 906 T Street, the building

is set approximately 10 feet from the rear/side of a two-story extension of the improved property at 900 T Street. The Southern most edge of the subject structure, sits 65 feet from the nearest improvement, 905 Westminster Street, a newly renovated conversion of a single-family row dwelling to three condo units.

Applicant submits that the additional Lot Occupancy from 60% to 64.6% has no affect or impact, unduly or otherwise, on the Light and Air available to the neighboring properties. The rear staircase neither blocks nor inhibits the light or air of the neighboring properties to the East or West.

(b) The privacy of use and enjoyment of neighboring properties are not unduly compromised.

As previously stated, the building is fully detached and the extension at the rear is only about 8 feet. As there are no windows or doors which face the neighboring properties, there is no visual intrusion into the privacy of use and enjoyment of the neighboring property owners.

(c) The addition, together with the original building, as viewed from the street, alley, and other public way, do not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Again, the rear addition/staircase does not substantially visually intrude upon the character, scale and pattern of the neighboring properties along the street, or alley, frontage. This rear enclosed staircase can not be seen from or along the street frontage.

(d) In demonstrating compliance with (a), (b) and (c) of this subsection, the Applicant used 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.

Finally, the photographs and architectural drawings supplied by the Applicant (previously to the DCRA when filing for the Permits; and then again with this BZA Application), along with

the aerial photographs supplied by the Office of Planning (attached to the OP Report of September 28, 2004), support the minimal impact of this increase in Lot Occupancy on adjacent properties.

The Applicant submits that the increase in the Lot Occupancy from 60% to 64.6%, creates no adverse impact on the neighboring properties nor does it infringe upon the use and enjoyment of those property owners. Additionally, the minimal increase of 4.6% is anticipated and allowed for by the Regulations, when there is a proposed addition to existing structures, or conversion from a single family dwelling to Flats.

The approval of the Special Exception is consistent with the general intent and purpose of the Zoning Regulations and Map. Both the Regulations and Map contemplate the construction and/or conversion of single-family dwellings and Flats. This renovation, addition and conversion, is fully consistent with the Interpretation and Application of the Zoning Regulations (Section 101.1), which is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare by:

(1) providing adequate light and air;

(2) preventing undue concentration of population and the overcrowding of land; and

(3) to provide a plan for the distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational and cultural activities; and that will tend to further economic and efficiency in the supply of public services.

Finally, although perhaps less important to this body, is the fact that the structure and addition are consistent with the Historic nature of the surrounding community and was fully reviewed and approved by the Historic Preservation office several times.

2. Area Variance from the Height and Story Limitation is also justified.

A Variance from the Height and number of stories permitted in the R-4 Zone District is justified and warranted under the circumstances of this case.

The Board has the power where (by reason of extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Regulations would result in an exceptional practical difficulty or exceptional and undue hardship upon the owner of the property) upon appeal, a variance may be granted to relieve the hardship; PROVIDED that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Applicant submits that the Variance provision of the Zoning Regulation was drafted, in part, to address the very situation she now faces.

Beginning in 2001, Applicant presented her Building Permit Applications to the Historic Preservation Office, the Zoning Administrator and the DCRA Permit Process, in good-faith. Those drawings reflected the increased height and the number of stories, clearly and fully. Despite the full and complete review of the Building Permit Applications, appended drawings and plats, and the ultimate issuance of the requested Permits, those very Government offices later claimed that their approvals had been "in error"; and that they should have referred Applicant to the BZA earlier. Although the agencies and departments never assign blame for their "error" or indicate how such an "error" could have occurred, the impact of their "error" has been tremendous upon the Applicant.

(a) Applicant presents an Extraordinary or Exceptional Situation or Condition for the Board's consideration

The physical characteristics of the now renovated and constructed addition, prevent the Owner from bringing the property into compliance with the Zoning Regulations, without substantial financial harm. The initial Building Permits were issued by the DCRA in September 2001 and April 2002, upon submission of the fully-detailed and explanatory drawings. Those drawings clearly indicated that the Applicant sought permission to increase the height of the existing structure by one (1) story, up to a height of 41.75 feet. The Building Permits were paid for and issued; and costly demolition and quality construction soon commenced. Only after the structure was built and the majority of the interior space was completed, did the DCRA require that the Applicant submit a new Building Permit application (submitted September 14, 2002) to revise the earlier issued Permits. The Applicant was required to submit drawings that deleted the addition which created the offending 4th story and the excess height of 1.75 feet. The Owner's Application to the Board followed. Applicant submits that the agencies "flip-flop" from the approval of the initial Building Permit Applications, creates an exceptional situation and condition for her: she can neither sell the property, complete the "Condo Conversion", nor afford to bring the property into compliance.

(b) The Applicant presents substantial, practical difficulties in bringing this property into compliance with the Regulations.

To now require Applicant to remove the additional story and/or the 1.75 feet, would create an undue financial hardship. It is unknown what cost would be incurred to remove the 4th story from this building. Alternatives to a full removal of that level have been investigated by the Owner. Specifically, attempts to reconfigure that level to create a true "Loft/Mezzanine",

(wherein the floor area of that level is no more than 1/3 of the floor area of the floor immediately below), were unsuccessful. None of them are feasible, due to the cost and the difficulty in redesigning the building AND the fact that the Height of the top level could not be decreased below 40 feet, under any of the scenarios.

(c) No substantial detriment is placed upon the surrounding community as a result of an approved Variance.

The Board's approval of the Variance Request will cause no substantial detriment to the public good. No burdensome traffic, noise, lighting or other offensive activity will be evident as a result of the approval of the Variance for additional height and number of stories. The site will create two (2) new homes for District Residents; provide two (2) parking spaces (where only one is otherwise required); provides a rear yard of over 31 feet (where only 20 feet is required); and, is in accordance with the review and approval by the Historic Preservation office.

Additionally, approval of the Area Variance will not be inconsistent with the general intent, purpose, and integrity of the Zoning Regulations. The R-4 Zone provides for row-dwellings, conversions, Flats and apartments. This "conversion" from a single-family dwelling to a two-family Flat is not only consistent with the use contemplate by the R-4 zone, but also with other structures that have been renovated and/or constructed in the immediate area. Specifically, the properties located at 1511 S Street, N.W. and those located at 1916-1922 12th Street, N.W., are similarly constructed, and also create a minimal intrusion as a result of their additional height. Additionally, the Odd Fellows building located at 9th and T Streets is also a four-story structure, which also has a "Penthouse" structure and fenced play area built on the roof.

What we are really debating is 1.75 feet. The fact is, the number of "stories", although relevant due to the limitation in number set forth in the Regulations, really is insignificant when examining the possible "impact" on the surrounding community. The potential impact is not caused by the number of stories, but by the overall height of the structure. The Regulations (Section 400.1) allow a maximum of 40 feet in the R-4 Zone. Owners are not prohibited from erecting a structure of 40 feet, comprised of only 1 or 2 stories. Although this particular building was originally about 30 feet, the top floor could have been raised or popped-up to the full, permissible 40 feet. So the extra 1.75 feet, although admittedly in excess of the permissible 40 foot limitation, is a minor intrusion. Comparatively, housing for mechanical equipment, stairways, elevator penthouses, spires, towers, domes, pinnacles, antenna or minarets serving as architectural embellishments, are all authorized to be constructed on top of and exceed the 40 foot height limitation. Clearly, most of those items would exceed the minimal 1.75 feet in excess height occasioned by this Application.

CONCLUSION

Although the Applicant has suffered greatly as a result of the DCRA's approval and later retraction of the excess height, number of stories and lot occupancy, she has otherwise complied with the requirements of her Building Permits and the Historic Preservation office requirements. However, pursuant to Subsection 223.4 of the Zoning Regulations, she is receptive to any requirements that the Board may impose as "alterations" to the structure that may include additional design, screening, exterior or interior lighting, building materials or other features that are intended to protect adjacent or nearby properties.

This is, unfortunately, one of those circumstances that could easily have been avoided. Issues of Estoppel aside, the prejudicial impact of an order requiring the removal of the 1.75 feet,

sits squarely with the Applicant. Had she been instructed, at anytime prior to the actual completion of the construction, to submit an application with the Board for approval, the financial burden would not have resulted. If the Application had been approved, then construction would have ensued. If not, then her construction/renovation plans would have been modified at that point.

The Owner now seeks your approval of the Special Exception and the requested Variance.

Respectfully submitted,

JACKSON & CAMPBELL, P.C.

Robert Clayton Cooper