GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: November 9, 2004

TO: District of Columbia Board of Zoning Adjustment

FROM: Andrew Altman, Director

SUBJECT: Board of Zoning Adjustment Case No. 17241
1824 24th Street N.W.

Summary

The applicant is seeking approval of variances from the height and maximum number of stories requirements of §400.1, a variance from the side yard setback provision of §405.9 and a variance from §2001.3 prohibiting additions to non-conforming buildings. The Office of Planning **cannot recommend approval** for the requested variances based on the analysis of variance tests below.

Site and Area Description

The subject property is located at 1824 24th Street N.W., Square 2506, Lot 45. The lot is 4,295 square feet, of which the building currently occupies approximately 53.3%. The building contains four above ground stories. The subject property and the properties on all sides are zoned R-1-B. Properties to the west are in the Mixed Use Diplomatic Overlay District. The immediate area consists mainly of three and four story single-family and diplomatic uses.

Project Description

The applicants intend to extend the fourth story of the existing building by approximately 350 square feet. The addition would be built on the back of the house over the existing three-story portion. The applicant also proposes a 74 square foot deck over the remainder of the three-story portion at the rear of the property.

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Figure 1: Aerial View

Zoning Requirements

The applicant is requesting a variance from the maximum height and number of stories allowed in an R-1-B district, a variance from the side yard requirements, and a variance from the prohibition on additions to non-conforming buildings in §2001.3 The building is currently non-conforming for lot occupancy, but the proposed addition will not impact the existing non-conformity. The existing building meets all other zoning requirements for the R-1-B zoning district.

Section	Item	Required/Allowed	Existing/Proposed	Variance
400.1	Height	40'	44.17'	4.17'
400.1	Maximum # of Stories	3	4	1
403.2	Lot Occupancy	40%	53.32%	Existing Non-conforming
404.1	Rear Yard	20'	25'	N/A
405.9	Side Yard	8'	0'	8'

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 claimed that all of the buildings in the area are unique because they are overbuilt for the R-1-B zone that was applied after construction. OP has three specific concerns with this argument. First, the argument that the buildings are too large for the zone is a case for rezoning, not for a variance. The variance uniqueness test requires something exceptional about the property other than a desire for a larger building.

Second, the idea that all of the buildings in the area are similarly unique is flawed. Nearly every building on the street frontage of the subject property is of similar bulk with a four-story front half and a three-story rear half. No case can be made that any one property on this block is more or less worthy for a variance then the others, therefore any decision on one must be applied to all. This situation calls for following the zoning regulations rather than declaring all the properties similarly unique and allowing variances for all.

Third, it would be a mistake to accept a uniqueness argument based on the premise that the building is too large in order to allow it to be larger. This is a situation of defining a problem that is only exacerbated by, rather than solved by, the solution. The argument loses even more validity when one considers that a smaller existing structure would not be allowed to build to this level much less the proposed level because it could not claim to be uniquely too large.

Practical Difficulty

The applicant has made no claims of practical difficulty. Further, a lack of exceptional condition of the property makes it difficult or impossible to argue that there is a practical difficulty to not building a new study on the fourth floor. OP has no reason to believe that application of the regulations would result in an undue hardship on the property owner.

Substantial Detriment

OP concedes that the proposed addition would have no significant impact on the public good. The neighboring property owner most affected by the proposed addition has sent a letter stating no objections to the proposal. ANC 2D has recommended approval. However, OP does feel that there would be a negative impact on the intent and integrity of the Zoning Regulations. For the reasons stated above, accepting the given argument for uniqueness would severely dilute the standards of variance approval and impair the integrity of the regulations by allowing much broader license for variances from zoning standards. Furthermore, approval of the variance would impair the intent of §2001.1

which specifically prohibits the expansion of non-conforming structures like this one.

In summary, OP does not believe that the exceptional situation described by the applicant meets the standards of §3103 for approval of a variance. In addition, no case for the existence of practical difficulty has been provided by the applicant. Furthermore, approval of the variance appears to have the potential to impair the integrity of the Zoning Regulations by weakening of variance standards.

ANC Recommendation

ANC 2D has met on the application and has stated to OP that they have no objection to its approval. OP is also in possession of a letter from Gerald Perman to the ANC stating that he has no objection to the addition.

Recommendation

The Office of Planning concludes that the applicant has not met the burden of proof, pursuant to 11 DCMR §3103 of the Zoning Regulations, for the granting of the requested variances to permit the fourth floor addition. The request does not meet the tests for uniqueness and practical difficulty. Further, the approval of the application would have the potential to impair the intent, purpose, and integrity of the Zoning Regulations.

OP **cannot recommend approval** of the requested variances for height, number of stories, side yard, and addition to a non-conforming structure at 1824 24th Street N.W.

AA/tp