GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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D.C. BOARD OF ZONING ADJUSTMENT

MEMORANDUM

DATE: March 1, 2005

TO: District of Columbia Board of Zoning Adjustment

FROM: Ellen McCarthy, Director

SUBJECT: Board of Zoning Adjustment Case No. 17291
1410 21st Street N.W.

Summary

The applicant is seeking approval of a variance from the maximum FAR allowed in the R-5-B zone per §402.4 from 1.8 to 2.59. In addition, the Office of Planning believes that a variance from the standards of 2001.3 preventing additions to nonconforming structures is required. OP **cannot recommend approval** of the requested variances based on the analysis of variance tests below.

Site and Area Description

The subject property is located at 1410 21st Street N.W., Square 68, Lot 848. The lot is 1400 square feet, of which the building currently occupies approximately 75%. The building contains three above ground stories and an English basement. The subject property and the properties on all sides are zoned R-5-B. The northern portion of this block is zoned C-2-C. All of the properties in the vicinity are in the Dupont Circle Overlay District. Properties on both sides of 21st Street on this block are mainly one and two family row houses.

Property History

The original structure on this lot dates to the late nineteenth century. Between 1977 and 1981 the property was massively renovated with a large addition on the back, a complete interior redesign and the loft added to the top. At this same time period in 1979 the rear portion of the original lot was transferred to a neighboring owner for the condominium building to the west leaving the existing lot of 1400 square feet and a building non-conforming for FAR, rear yard, and lot occupancy.

BZA
Case No. 17291
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO. 17291
EXHIBIT NO. 24

Project Description

The existing building is divided into two units. The applicants occupy the top two and a half stories while the lower one and a half stories comprise a separate unit. The main unit consists of a bedroom on the first floor; living, dining and kitchen on the second floor; and a bedroom, sitting room, and patio on the third floor. Currently, there is a small loft in a triangular enclosure above the third floor. The applicants propose expanding this loft to create a fourth floor comprising two bedrooms and a bathroom. The addition would extend back from the existing loft structure to align with the rear of the third story. The height of the building would increase by only about two feet and remain under 50 feet.

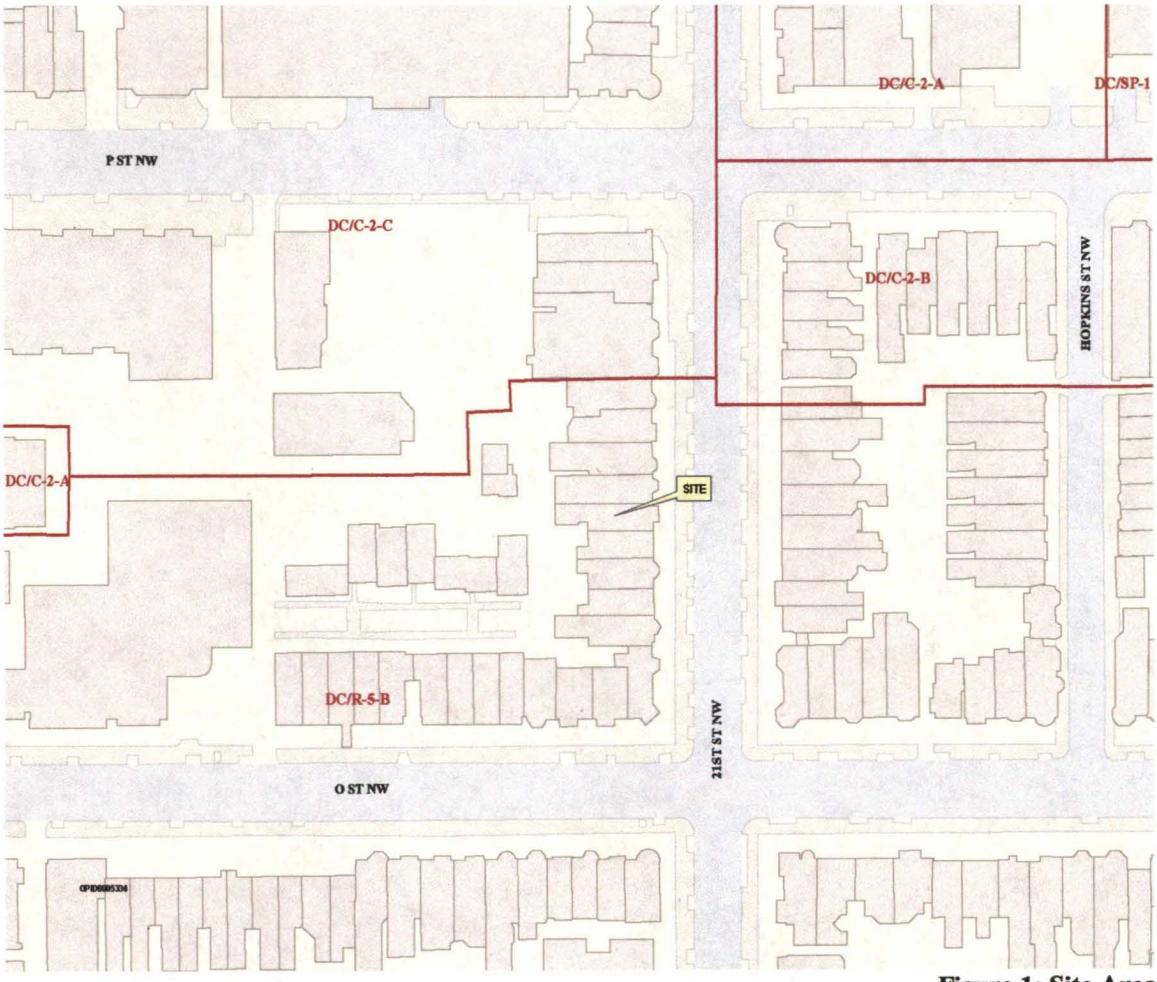


Figure 1: Site Area

Zoning Requirements

The applicant is requesting a variance from the maximum FAR allowed in an R-5-B district from 1.8 to 2.59. The building is currently non-conforming for lot occupancy and rear yard, but the proposed addition will not impact the existing non-conformities. The existing building is currently over the allowable FAR by 0.43.

Section	Item	Required/Allowed	Existing	Proposed	Variance
400.1	Height	50'	43.6'	45.4'	4.17'
402.4	FAR	1.8	2.23	2.59	0.79
403.2	Lot Occupancy	60%	75%	75%	Existing Non-conforming
404.1	Rear Yard	15'	13'	13'	Existing Non-conforming

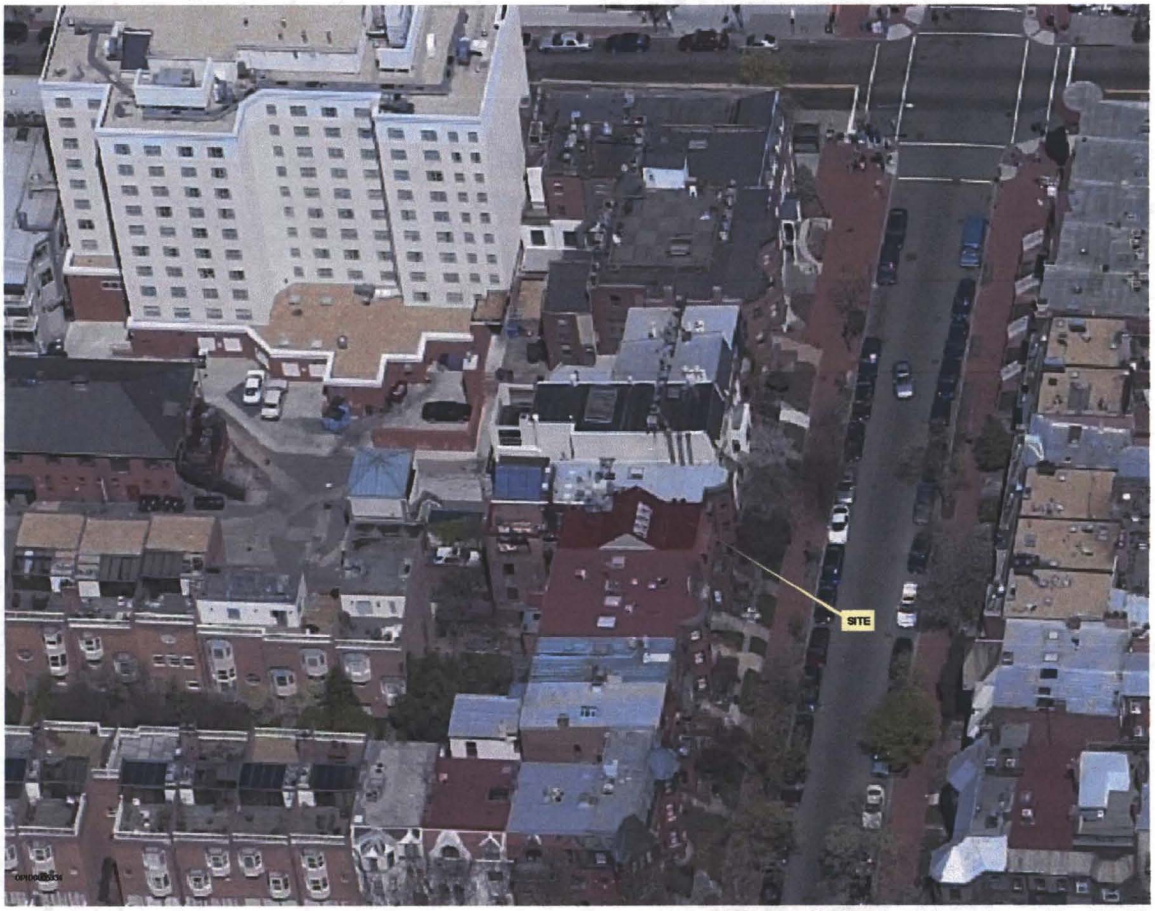


Figure 2: Aerial View from the South

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.

Uniqueness and Practical Difficulty

The applicant has stated that the building is unique in its architecture, history, and layout. The building has little left of its historical roots beyond the façade and is not landmarked, however the interior architecture resulting from the renovation represents a good example of modernist design that is not common in buildings of this type. Reconfiguring this design to accommodate a bedroom in the interior of the unit would severely compromise the architecture. Second, the applicants present the history of the property as a possible uniqueness. The timeframe is uncertain, but the rear portion of the lot was sold off very soon before or after the renovation creating a nonconforming structure that might have been conforming without the sale. Third, the applicants present the layout of the home as unique. The upper unit has two bedrooms, one on the first floor and one on the third. The distance between these bedrooms could be difficult to negotiate for a couple with young children necessitating the addition near the master bedroom.

OP is not convinced that these arguments represent an exceptional situation that creates a practical difficulty. First, while the interior design is notable and worthy of retention, the inability to add more bedrooms inside does not provide justification to add more bedrooms outside. The desire for more space has never been sufficient cause in and of itself for variances from the zoning regulations.

Secondly, the history of the lot provides no additional justification for the variance. The existing building is already nonconforming to three standards of the code. Whatever situation created the current configuration does not relate to or address the proposed addition or the variance tests needed to approve it. Moreover, the existing non-conforming status of the building is an argument against, rather than for, the addition. Section 2001.3 addresses additions to nonconforming buildings and allows them where lot occupancy is met and the nonconformity is not increased. The proposed addition does not meet either test and the history of this particular lot does not mitigate the nonconformity of the existing building.

A third uniqueness proposed by the applicant is the internal layout of the flat. The home currently has two bedrooms, however the layout, with one bedroom on the third floor and one on the first floor, is not conducive to a family with very young children. The difficulty with this argument is that the zoning regulations require that variances be a result of uniqueness of property, not of owners. Section 3103 explicitly states that variances are possible when a practical difficulty results "where, by reason of exceptional narrowness, shallowness, or shape *of a specific piece of property at the time of adoption of the regulations*...or other extraordinary or exceptional situation or condition *of a specific*

piece of property." This section focuses the variance test on characteristics of the property that necessitate relief rather than the situations of individual owners.

These arguments show that the case presented by the applicant does not equate to a uniqueness that results in a practical difficulty caused by conformance with the zoning regulations. Furthermore, the aerial photograph shows that while there are higher buildings to the north, the buildings on the southern half of this street are uniform in their height and number of stories. In fact, the three buildings immediately to the south do not even have the rear addition that the subject property contains.

Substantial Detriment and Integrity of the Zoning Regulations

The neighboring property owners most affected by the proposed addition have not registered any objections to the proposal and many surrounding neighbors have signed a petition in support. In addition, ANC 2B has recommended approval. This serves to show that the surrounding neighborhood would be little affected by the proposed addition.

The only objection of OP under this test lies not with impact on the public good, but with the integrity of the zoning regulations. Approval of the variance would impair the not only the intent, but the specific wording of §2001.3 which prohibits exactly the type of expansion of non-conforming structure that is proposed. §2001.3(a) prohibits additions to buildings that do not meet the lot occupancy requirements and §2001.3(b) prohibits additions that expand or enlarge an existing nonconformity. The proposed addition cannot meet either test and attempts to avoid conformance with both the spirit and the letter of this regulation.

The site also lies within the Dupont Circle Overlay District. While this District is very generalized about its recommendations, it does emphasize maintenance of residential character through scale and density controls, restricted height and FAR, and compatibility with the Comprehensive Plan. While the Comprehensive Plan calls for moderate density residential, a 2.59 FAR is more appropriate for R-5-C, or medium density development. The Board should consider the integrity of the Dupont Circle District as well as the city as a whole when considering this application.

In summary, OP does not believe that the exceptional situation described by the applicant meets the standards of §3103 for approval of a variance. Most notably, no compelling case for the existence of practical difficulty has been provided by the applicant. Furthermore, §2001.3 of the zoning regulations specifically prohibits the type of addition requested by the applicant.

Community Comments

ANC 2B has met on the application and has voted to express no objection to its approval. OP is also in possession of a petition submitted by the applicant in support of the application signed by fourteen neighbors. OP is aware of no neighborhood opposition to the project.

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 variance to permit the fourth floor addition.

OP **cannot recommend approval** of the requested variance for FAR for the nonconforming structure at 1410 21st Street N.W.

EM/tp