

The Board of Zoning Adjustment

441 4th Street NW, Suite 200 S

Washington DC, 20001

April 25, 2016

RE BZA Case 19256

We, Geoffrey S. Dow and Christina M. Werth (the "Affected Parties") are resident at and legal owners of the house and property at 1714 Hobart St NW (the "Affected Property"). We have requested Party Status in BZA Application 19256, and wish to provide the testimony herein to the Board of Zoning Adjustment (the "BZA") in opposition to the proposed development at 1716 Hobart St NW (the "Applicant's Property").

The Affected Parties ask that the BZA deny the Request for Area Variance Approval at 1716 Hobart St NW (the "Request") submitted by Kerry Reichs (the "Applicant") on the basis that the Applicant has failed to show under §3103.2 that (i) there are exceptional circumstances inherent to her property, (ii) that she would experience exceptional hardship as a result and (iii) that the approval of area variance would not harm the public interest.

I. Jurisdiction

The BZA has jurisdiction to deny the variance relief requested by the Applicant in BZA Application No. 19256, pursuant to 11 DCMR § 3103.2

II. Background

The Applicant's Property at 1716 Hobart St NW is located on the south side of the street in the R-4 Zoning District.

The Affected Property is the immediate neighbor to the east of the Applicant's Property.

Relief Requested By Applicant

The lot occupancy of existing structures at 1716 Hobart St NW is non-conforming (74% compared to the maximum allowable 60%), and will be unchanged by the proposed construction. An area variance is therefore required.

III. Proposed Development

Please refer to Case 19256 Exhibit 2, incorporated here by reference.

IV. Applicant's Burden of Proof Statement Does not Satisfy Requirements of 3103.2

The Applicant is seeking variance relief from the requirements regarding non-conforming structures (§2001.3). Section 3103.2 authorizes the Board to grant an area variance where the following conditions are satisfied:

- (i) The property is affected by exceptional circumstances, and;

- (ii) These would result in practical difficulties if the zoning regulations were applied strictly, and;
- (iii) If the requested variance would not harm the public good, and;
- (iv) If the requested variance does not harm zoning regulations

The Affected Parties contend that the Applicant has failed to meet the first three of these requirements as we outline below.

A: The exceptional circumstances cited by the Applicant are common occurrences and are a natural consequence of the personal choice to live in the Mount Pleasant district of Washington DC. The Applicant has not proven that there are unique circumstances specific to the lot in question as is required for a variance to be granted.¹ The connection between the circumstances cited and the alleged hardships created do not seem persuasive or compelling.

1. Existing Non-Conformities:

The Applicant makes the argument that the lower than minimum specified lot size (1760 f² v 1800 f²) constrains the buildable area of the property and ensures that the lot occupancy of the existing structures is non-conforming. This argument is unpersuasive because even if the lot size was increased by 40 square feet to meet the minimum requirement under Section 401.3, the existing lot occupancy would be only marginally smaller and still non-conforming. Furthermore, the size of the lot is similar in size to the adjacent properties, many of which are also non-conforming from a lot usage perspective (see Exhibit I to this letter).

2. Location in a Historic District:

The presence of the residence in a Historic District is not in itself an exceptional circumstance because all the residential houses on Hobart and Irving Streets NW within 200 feet of the residence are also in a Historic District² and have similar sizes and non-conforming structures (see Exhibit I to this letter).

3. Exceptional Topography:

All the adjacent properties between 1700-1732 Hobart St NW have a similar drop in elevation from Hobart St to the public alley at the rear of the properties. Therefore, the topography is not exceptional. Many if not all adjacent properties are non-conforming from a lot occupancy stand-point, because they contain decks, garages and other structures (see Exhibit I to this letter). The Applicant argues that if the grade were lower, the existing lot occupancy would be lower. However, this argument is unpersuasive, since presumably this would make it easier to build additional structures or improvements, i.e. adding to greater lot occupancy.

4. Existing Evergreen Tree:

¹ The applicant for a variance must show that the difficulties or hardships [are] due to unique circumstances peculiar to the applicant's [lot] and not to the general conditions in the neighborhood. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976) (quoting *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (D.C. 1972)).

² See also *Capital Hill Restoration Society Inc.*, 534 A.2d 939, 942 (D.C. 1987) (location in historic district does not make property unique for purposes of granting variance).

Trees are temporary features and are likely to have a life span substantially shorter than a home. Many properties in the neighborhood have trees of varying sizes and shapes, so the presence of a large evergreen tree on a lot is not in itself an exceptional circumstance.

5. Combination of Ordinary Circumstances is not an Exceptional Circumstance:

Trees that block light, moderately steep topography, presence of non-conforming structures and location in a Historic District are a combination of circumstances that are generally occurring amongst the neighboring residences, and so their combination is not a specific condition affecting only the Applicant's residence.

B: Hardships cited by the Applicant are not compelling and alternatives exist.

1. Demolition of Existing Addition:

The Applicant cites as burdensome the idea that the only way to make existing structures conforming in terms of lot occupancy (and therefore an area variance would not be required) would be to demolish the existing in addition. However, this is exactly what the Applicant intends to do already as part of the proposed renovation and addition (i.e. would impose no more burden or cost).

2. Increasing Natural Light:

The Applicant cites the presence of a large evergreen tree as a structure that blocks natural light, and that therefore, the only way to increase natural light is to add additions vertically. However, the proposed roof top addition would do nothing to increase natural light on the floors below (allegedly still blocked by tree) so this does not seem like a practical difficulty. Furthermore, the tree is sufficiently large that it will block light from the south side of the house to the proposed roof top addition, and the Applicant herself cites the tree as blocking visibility of same addition from Harvard St.

3. Not Enough Space for a Growing Family:

The applicant states that the location of the property in a Historic District limits the available space for a growing family to two floors above a full a full basement, and that this is burdensome. The Applicant was presumably aware of this when she chose to reside in the Mount Pleasant historic district. Many families large and small have chosen to reside in Mount Pleasant and have found the size of existing dwellings to be adequate for this purpose without breaking out of space constraints.

C: An area variance would not be in the public interest

Immediate neighbors will have their statutory right to light, air and privacy impeded by the proposed rear projections in violation of the provisions of Sections 223.2.a and 223.2.b (for additional information see the Affected Parties' accompanying letter).

Assuming that the proposed vertical addition is eventually acceptable to HPRB (currently not confirmed), it will still impede upon the light, air and privacy of the residents of the north sides of Harvard and Hobart Streets NW in violation of the provisions of Sections 223.2.a and 223.2.b.

There are not currently any second floor additions that protrude beyond the existing wall line of between 1700-1732 Hobart St NW (Exhibit 1).

There are not currently any roof top additions of the kind proposed by the Applicant on Hobart St NW.

Although we understand permitting is a separate regulatory process, nevertheless, the engineering effects of placing up to 33% more weight on 100 year old party walls is unknown, and this is not in the interest of immediate neighbors.

Because lot occupancy is high and non-conforming in this section of Mount Pleasant, the granting of a variance would create a precedent inviting the proliferation of such structures, which will impede on the rights of more residents than just the immediate neighbors.

For nearly 100 years now, families large and small have lived comfortably in the neighborhood with the charm we all treasure without the need to break through the limitations our modest homes share. We have not yet heard a compelling case that requires a departure from the historic norm that is the essence of our little community.

For all of the above reasons, individuals residing in 37 of the residences sent a BZA notice have signed a petition asking BZA not to allow the variance (refer to BZA Case 19256 Exhibit 24), demonstrating that the granting an area variance would not be in the public interest.

We note that ANC1D referenced the above petition in the passage of a resolution (4 in favor, one against) opposing the granting of an area variance for 1716 Hobart St NW on April 25, 2016.

V. Conclusion

The Affected Parties believe that the BZA does not have the authority to grant the variance requested by the Applicant as the Applicant has not satisfied the conditions required under §3103.2 that would allow the granting of an area variance for a property with non-conforming structures.

Very respectfully,



Geoffrey S. Dow

1714 Hobart St NW



Christina M Werth

1714 Hobart St NW

Exhibit I:

This exhibit depicts a satellite photo of part of the 1700 block of Hobart NW west. The red horizontal lines depict the uniform existing rear wall line between 1700 and 1732 Hobart St NW. Structures in the rear of many of the properties (indicated by diagonal hashed lines), when combined with the residence, occupy at least 60% of the property in most cases and at least 70% in many cases. If granted, the proposed variance would set a precedent that would invite the proliferation of rear additions which will impede on light, air and privacy.



FLUSH REAR WALL LINES

EXHIBIT I

NON-CONFORMING STRUCTURES