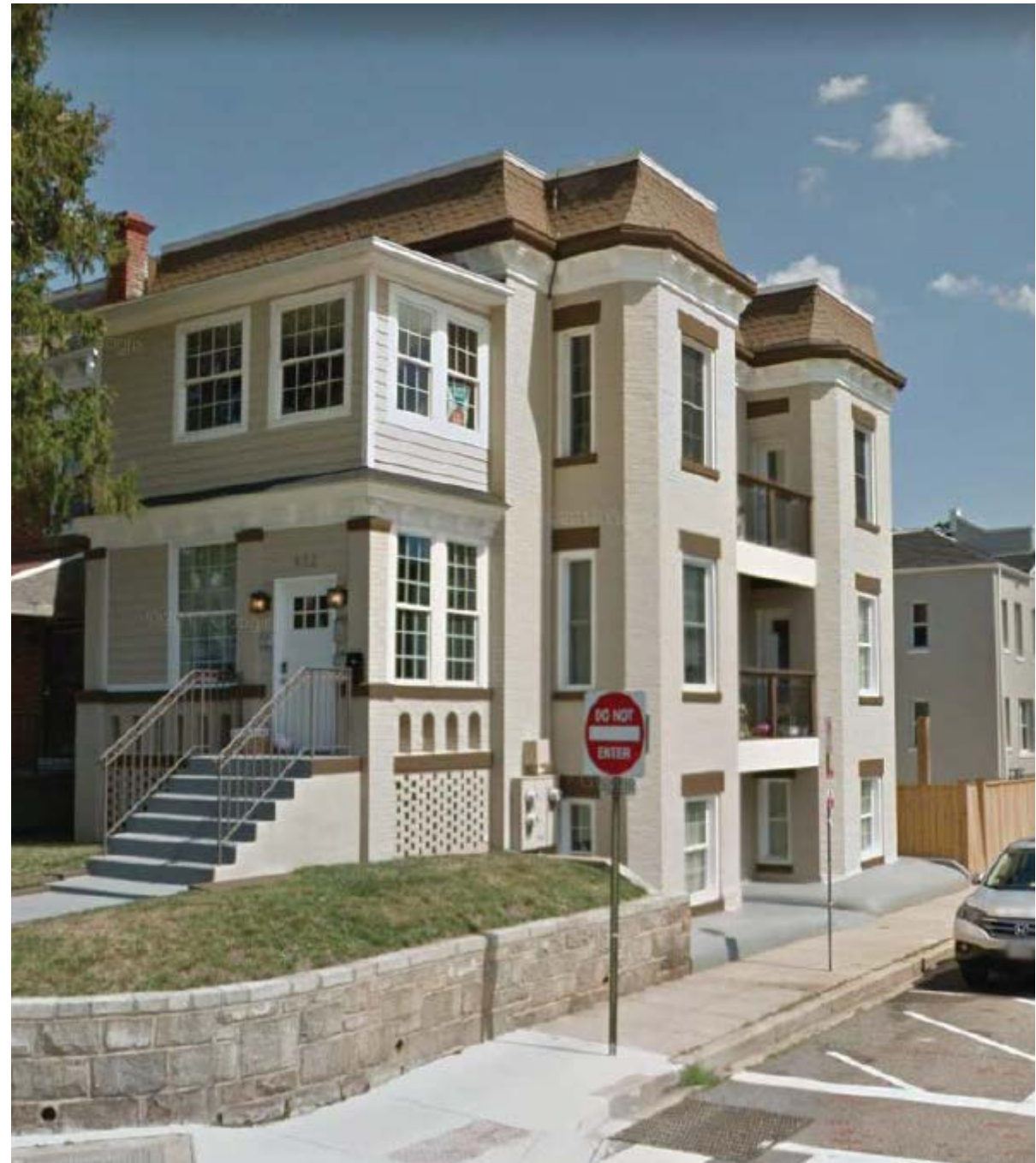


452 Newton Place,  
NW  
BZA Case No. 19712



# (1) Extraordinary Condition affecting the Subject Property

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## Permitting History – Reliance/Estoppel

1. On April 6, 2015, the Owner was granted a minor deviation from the ZA, thereby allowing a 3-unit conversion as a matter-of-right
2. On August 3, 2015, the zoning division of DCRA approved the permit application for 3 units
3. On October 22, 2015, DCRA issued a Building Permit to the Owner, allowing the 3-unit conversion
4. During 2015, the Owner undertook renovations, eventually resulting in the 3-unit configuration approved by DCRA
5. The Owner, beginning with the approval from the Zoning Division, commenced construction in summer, 2015, and then had the project substantially completed by December, 2015
6. DCRA revoked the Building Permit in December, 2015, after substantial completion of construction, failing to acknowledge the principle of estoppel, and taking no responsibility for its permit issuance

## (2) Practical Difficulty:

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- The Applicant is left with a 4 BR, 4 BA unit, which it has been unable to sell at any price which would allow any reasonable recovery from its reliance on the duly-issued 3-unit Building Permit
- Resolution would require either selling a unit with 4 BRs and 4 Bas, a configuration not desired by the market in this area, for a price way below market value- the Applicant provided a detailed letter from its real estate agent explaining the difficulty of selling such a unit
- Other option would be to reconfigure the bedroom and bath situation to combine the two units into one, something that would require a renovation of the entire space, including bathrooms, kitchens, and bedrooms; cost of required renovation would put Applicant in same financial position
- Had the Applicant known it was only able to do 2-units from the beginning, it would have configured the building in a completely different way, with a larger 2-story unit and a smaller unit in the lowest level (vs. now the applicant would be stuck with a large unit on the lowest level and first floor and a smaller unit on the second floor, which is an unusual layout)

### (3) Requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan

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- Permitting history is unique in that the Applicant is only requesting relief because it detrimentally relied on assurances by DCRA and spent a significant amount of money as a result.
- The degree of relief is minimal, only a 1.5% deviation—only 40 square feet—and the Applicant would sustain a significant financial loss after relying on the validly issued 3-Unit Permit

# Response to OP

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- As recently as July 2018 in Case No. 19521A, the Office of Planning recommended approval for a variance case that used estoppel/reliance for its variance argument; and the Board granted the relief
- In that case, the Applicant applied for the incorrect relief in its first BZA Application – a mistake that was arguably its own
- In that case, the Applicant had the permit for only 6 days before it was revoked; in our case, we had it for two months
- In that case, the Office of Planning states: “the exceptional situation resulting in a practical difficulty in this case is that the applicant applied for special exception relief... and was issued a permit for the construction of the [structure] . . . Before DCRA cancelled the permit.”
- In our case, OP states: “OP does not find that the Applicant’s reliance on DCRA permits to be an exceptional situation resulting in a practical difficulty.”
- So why is reliance on permit issuance an exceptional situation resulting in a practical difficulty in 19521A, but not our case?

# Response to OP

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- OP does not address our practical difficulty argument in any way and simply states that it “could be used as a legally conforming flat”; that is not the standard for the variance test
- The test requires that the Applicant prove it has a practical difficulty due to a unique situation/condition– not that it be impossible to use the building as a flat
- The Applicant has clearly demonstrated that it will be faced with a practical difficulty if the Application is not granted, and the Board and OP have previously determined that permitting history can be considered a unique situation/condition
- OP does not address the fact that DCRA permitted the Applicant to continue work on the three unit configuration after the first SWO was issued and before the three-unit permit was issued
- The reason the work was permitted is because the Applicant had its three-unit plans approved by DCRA despite being issued a permit for a SFD; blames the Applicant for not correcting DCRA’s error in issuing the original permit