

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 20280-A of Nathaniel Lewis, as amended, pursuant to Subtitle Y § 704, for a modification with a hearing to modify the order issued in Application No. 20280 (July 15, 2022) to add an area variance, pursuant to Subtitle X § 1002, from Subtitle C § 303.4 to allow the creation of a new lot for use by an apartment house with a street frontage of less than 30 feet in the RF-1 zone at 622 I Street, N.E. (Square 857, Lots 32 and 113).

HEARING DATE: November 6, 2024

DECISION DATES: July 17, December 11, and December 18, 2024

PROPOSED DECISION AND ORDER

This self-certified request was filed on May 13, 2024 on behalf of Nathaniel Lewis (the “Applicant”), the owner of the property that is the subject of the request.¹ Following a public hearing, the Board voted to deny the request.

PRELIMINARY MATTERS

Notice of Request and Notice of Hearing. The Office of Zoning provided notice of the request and of the public hearing by letters by August 2, 2024 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation, the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the property is located, Single Member District ANC

¹ This caption has been modified to reflect a change in the request. The Applicant originally requested a minor modification. (Exhibit 5.) At a public meeting on July 17, 2024, the Board determined that a hearing was required because the modification sought approval of additional zoning relief. The Applicant submitted a revised request on July 17, 2024. (Exhibits 12, 13, 14.)

6C01, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on August 16, 2024 (71 DCR 010366) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 6C were automatically parties in this proceeding. The Board received no requests for party status.

Applicant's Case. The Applicant provided evidence and testimony in support of the requested modification, which sought an area variance from a street frontage requirement, in addition to other zoning relief previously approved by the Board, to allow a three-unit apartment house on a new lot.

OP Report. By memoranda dated October 24 and December 2, 2024, the Office of Planning recommended approval of the area variance requested by the Applicant. (Exhibits 21, 31.)

ANC Report. By letter dated June 6, 2024, ANC 6C indicated it opposed the Applicant's initial request, which the ANC claimed was improperly filed as a minor modification that sought new zoning relief, making a public hearing essential. (Exhibit 11.) By letter dated November 4, 2024, ANC 6C indicated that at a duly noticed monthly meeting held on October 9, 2024, with a quorum present, ANC 6C voted to oppose the application. (Exhibit 26.)

Persons in Opposition. The Board heard testimony in opposition to the requested modification

from persons who objected to the Applicant's project.

FINDINGS OF FACT

1. The property that is the subject of this application is located on the north side of I Street, N.E. roughly midblock between 6th and 7th Streets, with the address 622 I Street, N.E. (Square 857, Lots 32 and 113).
2. The subject property is shaped roughly like an L or a flag lot, narrower along the street frontage and wider toward the rear. The total lot area is 4,484 square feet.
3. The subject property comprises two record lots, which the Applicant planned to subdivide to create one new record lot.
4. One portion of the subject property, Lot 32, is an interior lot that abuts Lot 33 to the west. The other portion of the subject property, Lot 113, is an alley lot that abuts Lots 32 and 33 to the north. The rear lots lines of Lots 32 and 33 are angled so that Lot 32 is slightly deeper than Lot 33. Lot 113 is approximately 40 feet wide and has a lot area of 3,124 square feet.
5. The subject property has 20 feet of street frontage at the front (south), where Lot 32 fronts on I Street. The subject property also has 40 feet of frontage along a public alley abutting the north lot line of Lot 113.

6. Lot 113 is unimproved. Lot 32, with a lot area of 1,360 square feet, is improved with an attached building constructed in 1923 and formerly used as a principal dwelling.
7. In 2022, the Board approved a self-certified application submitted by a prior owner of the subject property that requested zoning relief to allow the enlargement of the existing building on Lot 32 with a rear addition occupying a portion of Lot 113 and the conversion of the building to use as a three-unit apartment house. Specifically, the applicant sought a special exception under Subtitle U § 320.2 to allow the conversion of an existing residential building to an apartment house and a special exception under Subtitle E § 205.5 to allow a rear addition to a row building extending farther than 10 feet beyond the farthest rear wall of principal residential buildings on adjacent properties. The Board granted the requested relief subject to six conditions that *inter alia* required the Applicant to install a new fence trellis, landscaping, and anti-glare film and louvers on all windows facing an internal courtyard. See Application No. 20280 (VBS Community Builders LLC; July 15, 2022).
8. On October 19, 2023, the Department of Buildings issued a building permit, No. B2303493, to the Applicant for the subject property. The description of work was stated as “single-family row dwelling conversion to three unit apartment building.”² (Exhibits 9, 13.)
9. In November 2023, the Applicant (Nathaniel Lewis) acquired the subject property from the

² On November 15, 2023, ANC 6C filed an appeal at the Board challenging DOB’s decision to issue the building permit, which the ANC claimed violated zoning requirements including with respect to the street frontage requirement of Subtitle C § 303.4. The ANC withdrew the appeal on September 23, 2025. (*See* Appeal No. 21057.)

prior owner (VBS Community Builders LLC) in a transaction that included “conveyance of the BZA order and approved concept plans.” The Applicant paid \$1.25 million for the property. (Exhibits 1, 5, 13, 25, 32.)

10. By letter to the Applicant dated March 12, 2024, the Department of Buildings (“DOB”) issued a Notice to Revoke Building Permit B2303493. The letter stated that the building permit would be revoked because DOB, through the Code Official, had determined that the permit “was issued as a result of an administrative or clerical error” in that the permit concerned a conversion to apartment house use, “which is not considered a Matter-of-Right construction according to [Subtitle C § 303.4] and must be revoked pursuant to 12-A DCMR 111.1(4)...[T]he Permit is not in compliance with [Subtitle C § 303.4] because the frontage of the new record lot is less than the required 30 feet.” The letter listed “options available to bring the Permit into compliance,” which included “obtain relief from the Board from [Subtitle C § 303.4] to allow the construction proposed under building permit B2303493.” (Exhibits 5, 7.)
11. The properties abutting the subject property to the east and west are improved with attached dwellings similar in height and depth to the Applicant’s existing building on Lot 32. (Exhibits 4, 21.)
12. Properties in Square 857 are improved primarily with attached dwellings of two or three stories. (Exhibits 4, 21.)

13. The character of the neighborhood surrounding the subject property is moderate-density residential, consisting primarily of row buildings and apartment houses. A large mixed-use development known as the Apollo is located across I Street from the subject property. That project, containing approximately 430 apartments and a grocery store on H Street, was approved as a planned unit development. (See Zoning Commission Case No. 12-18; initial order effective July 5, 2013.) (Exhibit 4.)
14. The subject property and nearby properties along I Street are located in a Residential Flat (RF) zone, RF-1.
15. The Residential Flat zones are residential zones, which provide for areas developed primarily with residential row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two (2) principal dwelling units. (Subtitle E § 101.1.)
16. The RF zones are designed to be mapped in areas identified as low-, moderate- or medium density residential areas suitable for residential life and supporting uses. (Subtitle E § 101.3.)
17. The provisions of the RF zones are intended to:
 - (a) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to

- the overall housing mix and health of the city;
 - (b) allow for limited compatible non-residential uses;
 - (c) allow for the matter-of-right development of existing lots of record;
 - (d) establish minimum lot area and lot width for the subdivision and creation of new lots of record in RF zones;
 - (e) allow for the limited conversion of single household dwellings and other structures for flats; and
 - (f) prohibit the conversion of single household dwellings and flats for apartment house as anticipated in the Residential Apartment zones. (Subtitle E 101.2.)
18. The purpose of the RF-1 zone is to provide for areas predominantly developed with residential row buildings on small lots within which no more than two principal dwelling units are permitted. (Subtitle E § 101.4.)

CONCLUSIONS OF LAW AND OPINION

Pursuant to Subtitle Y § 704, the Applicant seeks a modification with a hearing to modify the Board's order in Application No. 20280 to add an area variance, pursuant to Subtitle X § 1002, from Subtitle C § 303.4 to allow the creation of a new lot for use by an apartment house with a street frontage of less than 30 feet in the RF-1 zone at 622 I Street, N.E. (Square 857, Lots 32 and 113).³ A request for a modification with hearing must be focused on the relevant evidentiary

³ The Applicant argued that relief from Subtitle C § 303.4 was not needed because that provision was "not intended to be applicable in the circumstance of conversions, but applicable where an application is for a subdivision which 'creates' new lots out of a larger lot, upon which the apartment use is to be established." (Exhibits 5, 13; Transcript of November 6, 2024 at 63-64.) Nonetheless, the Applicant requested an area variance from Subtitle C § 303.4, prompted

issues requested for modification and on any condition impacted by the requested modification. (Subtitle Y § 704.6.) The Board’s scope of review is limited to the “impact of the modification on the subject of the original application,” and is not a revisitation of the Board’s original decision. (Subtitle Y § 704.7.)

The Board previously approved two special exceptions requested in a self-certified application by a prior owner of the subject property to allow an addition to an existing residential building and the conversion of the use of the building to a three-unit apartment house. The Applicant was later informed by the Department of Buildings that DOB would not issue a building permit for the project unless the Applicant demonstrated compliance with, or obtained relief from, an additional zoning requirement that was not considered by the original applicant; that is, Subtitle C § 303.4, which states that “[e]ach new lot being created to be used and occupied by an apartment house shall have a street frontage measured along the street line a distance of not less than thirty feet (30 ft.).” The property at issue in this proceeding is currently configured as two lots, which the Applicant intended to subdivide into one new record lot for use as a new three-unit apartment house. The subject property has street frontage of 20 feet, measured along the street line of I Street.

The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other

by DOB’s issuance of a notice of intent to revoke the building permit. (Exhibit 13.) The Applicant did not challenge the issuance of the notice of revocation in an appeal to the Board, and the Board declined to address the Applicant’s contention in the context of the request for a modification. By its terms, Subtitle C § 303.4 requires at least 30 feet of street frontage when a new lot is created for use by an apartment house. The Board has no power to amend any regulation. (D.C. Official Code § 6-641.07(e).)

extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (Subtitle X § 1000.1.) Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 6C, the Board concluded that the Applicant did not satisfy the requirements for approval of the requested variance and therefore the request for modification must be denied.

Extraordinary or exceptional situation. The Board did not determine that the subject property was faced with any extraordinary or exceptional situation or condition uniquely affecting the subject property that would warrant approval of the requested area variance. The Applicant contended that the subject property was faced with an extraordinary or exceptional situation or condition arising from a confluence of physical and historical factors unique to the subject property, including the configuration of the lots, the inability to create a 30-foot street frontage due to the existing adjoining structures and physical constraints, and the zoning history of the subject property, including the prior Board approval, approved permit plans, the issuance of a building permit, and the Applicant’s reliance on the actions of zoning officials. According to the Applicant, the Board “approved the project” in its initial order in this proceeding, which led to DOB’s approval of architectural plans and the issuance of a building permit. (Exhibit 32.)

The Board was not persuaded by the Applicant's claim of an exceptional situation.⁴ The subject property is irregularly shaped but is not exceptionally narrow or shallow and did not exhibit any unusual topographic features. The subject property's lack of street frontage of at least 30 feet was not exceptional compared to nearby properties, given its location in a Residential Flat zone, an area predominantly developed with row buildings on small lots. Similarly, the Applicant's inability to increase the street frontage was not unusual in light of the prevalence of row buildings in the vicinity. As demonstrated by ANC 6C through historical maps and GIS data, similar lot arrangements and street frontages are prevalent throughout the square.⁵ (Exhibits 26, 27; Transcript of November 6, 2024 at 39-40.)

The unusual shape of the subject property was in part the result of the Applicant's plan to subdivide two existing lots – one interior lot and an abutting alley lot – to create one new record lot where the Applicant could enlarge an existing principal dwelling for use as an apartment house. Generally, an applicant's desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972). For that reason,

⁴ The Board was not persuaded by the Applicant's assertion that approval of a variance from Subtitle C § 303.4 in a prior, unrelated application required the same result in this proceeding. The Board's decision in the prior application was issued as a summary order that did not state the Board's findings of fact or conclusions of law in approving the requested variance. See Application No. 20951-A (Round Trip Properties, LLC; August 7, 2024). In any event, "the nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170-1171 (D.C. 1990) (citations omitted). In this case, the Board was not persuaded that the Applicant met that burden.

⁵ According to ANC 6C the "official DC GIS Atlas Plus, <http://atlasplus.dcgis.dc.gov>, shows there are in this square at least twenty street-facing record lots abutting separate alley properties.... As shown in [an excerpt from] the 1919 Baist atlas [FN1: Available at <https://www.loc.gov/resource/g3851bm.gct00135b>] the overwhelming majority of those street-facing lots have either 16 or 20 feet of street frontage. Like the applicant's property, these alley-property-adjacent lots also lack the required 30 feet of street frontage. The applicant's property is not unique, even on this block." (Exhibit 26.)

the Board did not agree with the Office of Planning's testimony that the subject property was "encumbered by an exceptional condition" in that "most other lots on the subject square extend from the street the entire way to the alley" while the subject property was "comprised of two record lots – one facing I Street and one fronting on the alley to the rear."

Similarly, the Board was not persuaded by the Applicant's claim of an exceptional situation based on zoning history. Contrary to the Applicant's assertion that the initial order in this proceeding "approved the project," the Board previously approved two specific special exceptions that were sought by the prior owner of the subject property in a self-certified application. Every application for a special exception or variance must contain either a memorandum from the Zoning Administrator certifying the required zoning relief or a certification by an architect or attorney, licensed to practice in the District of Columbia, certifying the required zoning relief. (Subtitle Y § 300.6.) Form 135, created by the Office of Zoning for use in submitting a self-certified application, (a) requires an applicant to acknowledge that the applicant assumes the risk that "additional or different relief" from the relief stated in a self-certified application might be needed to obtain a building permit for the applicant's project, (b) specifies that approval of a self-certified application by the Board does not constitute a finding by the Board that the relief requested is the relief required to obtain a building permit, and (c) indicates the applicant's responsibility for "any liability for [the applicant's] failure...to seek complete and proper zoning relief from the BZA."⁶

⁶ Form 135 contains the following statement: "The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. **Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.** The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning

In approving the self-certified application submitted by VBS Community Builders LLC for the apartment house project at the subject property, the Board's decision was limited to the approval of the two special exceptions requested by the applicant. The initial order did not "approve the project" or make any determination with respect to what other zoning relief, if any, might be needed to obtain a building permit for the planned apartment house. "...No Board of Zoning Adjustment...order shall be deemed to include relief from any zoning regulation unless such relief was expressly requested by the applicant and expressly granted in the order." (Subtitle A § 301.7.) For that reason, the current Applicant's acquisition of the subject property from the prior owner in a "conveyance of the BZA order" and approved plans did not constitute approval of the apartment house project by zoning officials.

The Board may consider the "zoning history" of a specific property in making a determination about whether a specific property is faced with an exceptional situation or condition that might

relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required. The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Buildings harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA. The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter." (Emphasis added.) (The prior owner, in filing the initial application in this proceeding, used a prior version of Form 135 that referred to the Department of Consumer and Regulatory Affairs ("DCRA"). As of October 1, 2022, the zoning functions formerly performed by DCRA were assumed by the new Department of Buildings. See D.C. Official Code § 10-561.01 *et seq.*)

See also Application No. 18263-B (Lester; order on remand issued July 25, 2013) (Applicants decide the type of zoning relief needed during the self-certification process; an applicant assumes the risk that the owner might require additional or different zoning relief from the relief specified in a self-certified application in order to obtain any building permit, certificate of occupancy, or other administrative determination based on the Zoning Regulations and Map.)

warrant approval of variance relief.⁷ In this case, the Board was not persuaded by the Applicant's claim of relevant zoning history, which did not include any action by a zoning official sufficient to support a request for variance relief. Instead, the Applicant cited only the Board's prior approval of the relief requested in a self-certified application, which the Zoning Administrator later determined was insufficient to obtain a building permit, and the mistaken issuance of a building permit, which DOB moved to correct before the Applicant completed the planned subdivision of the subject property or undertook any significant construction. The Board was not persuaded that any expenditures by the Applicant related to the project could reasonably be attributed to "zoning history" in this case.

Practical difficulties. The Board concluded that the strict application of the zoning regulations would not result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. A showing of practical difficulty requires "[t]he applicant [to] demonstrate

⁷ But see, e.g., Application No. 20631-A (723 Morton, LLC; January 9, 2025); in that case the Board was not persuaded by an applicant's claim of "zoning history" as a basis for approval of a variance where the applicant relied on a 2002 subdivision (which eliminated two substandard lots in the creation of one new lot that met zoning requirements), an unsuccessful attempt by a prior owner of the same property to construct an apartment house without authorization, and the razing of the two row buildings formerly occupying the property; none of these events provided a basis for a determination that the subject property now faced an exceptional situation that would warrant approval of an area variance.

Contrast, *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978) (Court affirmed Board order granting an area variance from minimum lot width requirement due to extraordinary situation concerning lot where (a) the original parcel was susceptible to subdivision into three conforming lots, zoning office personnel on three occasions implicitly found applicant's lot conformed to width requirements, applicant and predecessor proceeded in good faith and dispute over lot width was due to actions of zoning officials which were later found to be in error, and (b) the failure of applicant's lot to meet width requirement could not accurately be described as a direct consequence of sole and affirmative acts of applicant and predecessors in title where zoning department employees played significant part by approving three separate applications concerning subdivision of parcel creating lot) and *Oakland Condo. v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 750, 754 (D.C. 2011) (Court affirmed Board order granting use variance for 12-unit rooming house (8 units permitted) where exceptional situation derived in part from applicants' reliance on zoning officials actions, which included the issuance of an unrestricted certificate of occupancy in 1969, a license to a prior owner for 15 units, and two building permits to the applicants, as well as all necessary final inspections on a 12-unit building, and the lack of enforcement action against the applicants.)

that ... compliance with the area restriction would be unnecessarily burdensome....” *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board’s consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief as well as “the weight of the burden of strict compliance,” the severity of the variances requested, and the effect the requested variances would have on the overall zone plan. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976); *Gilmartin* 579 A.2d at 1171.

The Applicant asserted that practical difficulties would result absent approval of the requested variance due to “the impossibility of creating a new lot to comply” with the 30-foot street frontage requirement “owing to the existence of improvements on adjacent lots,” as well as the “narrowness and irregular lot shape” of the subject property. (Exhibits 5, 13, 25; Transcript of November 6, 2024 at 36.) The Applicant also urged the Board to consider the costs incurred by the Applicant in connection with the planned apartment house. (Exhibit 32.) The Office of Planning testified that the Applicant would encounter practical difficulties on the ground that the requested relief would not be necessary if the subject property were already a single existing record lot, noting that “other street-facing lots in the square could establish a similar use to the one approved here without requiring the frontage relief, because they are existing record lots that extend to the rear alley, and do not involve a lot consolidation.” (Exhibit 21.)

The Board did not agree. The subject property is located in a Residential Flat zone, where “limited

conversions of dwellings...into more than two (2) principal dwelling units” are permitted by special exception. One limit on the conversion of a residential building to more than two principal dwellings is a requirement of at least 900 square feet of land area for each existing and new dwelling unit (see Subtitle U § 320.2). Lot 32 is improved with a residential building that is eligible for a conversion but lacks sufficient land area to permit three dwelling units. A subdivision of Lot 32 with the abutting alley lot would provide the requisite land area. However, by creating a new lot for use by an apartment house, the subdivision would also create a requirement for 30 feet of street frontage pursuant to Subtitle C § 303.4. The variance requested by the Applicant from the street frontage requirement represented a significant degree of relief (more than 30 percent) and was not *de minimus* in nature.⁸

The Board was not persuaded that the Applicant’s inability to enlarge the street frontage of the subject property created a practical difficulty arising from the strict application of the Zoning Regulations. The existing building on Lot 32 may be used as one or two dwelling units as a matter of right. As noted by the Office of Planning and ANC 6C, the Zoning Regulations also permit a principal dwelling on Lot 113, an alley lot. Thus, the subject property, if not subdivided, would be capable of development as three principal dwellings, albeit in two buildings on two lots and not in the apartment house planned by the Applicant. The Applicant’s desire to consolidate the lots and construct an apartment house, while perhaps personally preferable or economically advantageous, did not elevate this case to one that presented “peculiar and exceptional practical difficulties” sufficient to justify a variance. The availability of alternative options that would not

⁸ The Board may consider whether a requested variance “is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests” on the applicant. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990) (citations omitted).

require variance relief undermined the Applicant's assertions that strict compliance with the Zoning Regulations imposed an unnecessarily burdensome restriction on the subject property that would result in exceptional practical difficulties to the Applicant.⁹

Similarly, the Board was not persuaded by the Applicant's unsubstantiated assertions of practical difficulties related to economic harm. The Applicant claimed to have incurred expenses after acquiring the subject property in furtherance of the apartment house project.¹⁰ However, as discussed above, the initial self-certified application in this proceeding did not request one area relief that the Zoning Administrator later determined was needed, and the Board's approval of the application did not constitute "approval of the project." In this request for modification, the Applicant did not provide any evidence of the claimed expenses. In any event, evidence of costs alone does not present the kind of "exceptional practical difficulties" needed to meet the second prong of variance test.¹¹

Substantial detriment to the public good and impairment of the zone plan. The Board did not determine that approval of the requested area variance would result in substantial detriment to the public good. However, approval of the requested modification would substantially impair the

⁹ See *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976), in which the District of Columbia Court of Appeals affirmed the Board's denial of an area variance where the applicants had at least two alternative methods of enlarging their home that did not require zoning relief, even though those alternatives carried greater cost, reduced interior or rear-yard space, and created other inconveniences. The Court emphasized that the existence of feasible options not requiring variances—even if more burdensome, more expensive, or less desirable—supported a conclusion that exceptional practical difficulties were not present.

¹⁰ The Applicant claimed to have spent approximately \$300,000 to engage the services of a professional design team to develop the permit set drawings and to pay expenses such as property taxes and permit fees. (Exhibit 32.)

¹¹ See *Myrick v. D.C. Bd. of Zoning Adjustment*, 577 A.2d 757, 761 (D.C. 1990) citing *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d at 327.

intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map, by allowing a variance where the requirements for approval of that relief have not been met. Approval of the requested area variance would not be consistent with the intent of the Zoning Regulations, as stated in Subtitle C § 303.4, to provide at least 30 feet of street frontage for each new lot to be used by an apartment house.

Great weight. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons already discussed, the Board did not agree with OP’s recommendation that the Applicant’s request for a modification should be approved.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A).) For the reasons discussed above, the Board agreed with ANC 6C that the request for modification did not meet the requirements for approval of the requested area variance.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order was provided to the parties to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d).

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has

not met the burden of proof for a modification, pursuant to Subtitle Y § 704, of the order issued in Application No. 20280 (July 15, 2022) to add an area variance from Subtitle C § 303.4 to allow the creation of a new lot for use by an apartment house with a street frontage of less than 30 feet in the RF-1 zone at 622 I Street, N.E. (Square 857, Lots 32 and 113). Accordingly, it is **ORDERED** that the request for modification is **DENIED**.

VOTE: 3-0-2

(Frederick L. Hill, Carl H. Blake, Anthony J. Hood to DENY; Lorna L. John and Chrishaun S. Smith, not present, not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____

SARA A. BARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.