

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



**Application No. 20314 of George Thanos**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under Subtitle C § 703.2 from the minimum vehicle parking requirements of Subtitle C § 701.5 and under Subtitle G § 409.1 from the lot occupancy requirements of Subtitle G § 404.1 and, pursuant to Subtitle X, Chapter 10, for an area variance from the floor area ratio requirements of Subtitle G § 402.1 to allow a new row building for use as a principal dwelling in the MU-3A District at 4331 14<sup>th</sup> Street, N.W. (Square 2819-S, Lot 1).<sup>1</sup>

**HEARING DATE:** February 24, 2021

**DECISION DATE:** March 3, 2021

**PROPOSED DECISION AND ORDER**

This self-certified application was filed on June 14, 2020 by George Thanos on behalf of 4331 14<sup>th</sup> Street LLC, the owner of the property that is the subject of the application (the “Applicant”). Following public hearing, the Board voted to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by memoranda dated August 24, 2020 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Department of Housing and Community Development, the Councilmember for Ward 4 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”)

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<sup>1</sup> The caption has been revised to reflect the application as finally amended. The Applicant originally requested area variances from the requirements for floor area ratio under Subtitle G § 402.1, lot occupancy under Subtitle G § 404.1, and green area ratio under Subtitle G § 407.2 as well as a special exception under Subtitle G § 409.1 from the rear yard requirement of Subtitle G § 405.1. (Exhibit 4.) The Applicant subsequently withdrew the requests for variances from Subtitle G § 404.1 (lot occupancy) and Subtitle G § 407.2 (green area ratio) as well as the request for a special exception for rear yard and added a request for special exceptions under Subtitle G §§ 404.1 and 407.2 and under Subtitle C § 701.5. (Exhibits 31, 37.) The Applicant later revised the application again, maintaining the request for an area variance from Subtitle G § 402.1 (floor area ratio), withdrawing the prior request for a special exception from the rear yard requirements and adding a request for special exceptions under Subtitle C § 703.2 (vehicle parking) and Subtitle G § 404.1 (lot occupancy). (Exhibits 40, 56.)

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4C, the ANC in which the property is located, Single Member District ANC 4C05, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on October 23, 2020 (67 DCR 12321).<sup>2</sup>

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 4C 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 application for zoning relief needed to allow a new three-story principal dwelling at the subject property.

OP Report. By memoranda dated November 20, 2020 and February 12, 2021, the Office of Planning recommended approval of the zoning relief requested in the application as ultimately amended by the Applicant. (Exhibits 39, 52.)

DDOT Report. By memorandum dated November 6, 2020, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 27.)

ANC Report. At a public meeting on November 10, 2020 with a quorum present, ANC 4C adopted a resolution in opposition to approval of variances from the requirements for floor area ratio ("FAR"), lot occupancy, and the green area ratio and a special exception from the rear yard requirement. (Exhibit 29.) At a public meeting on February 10, 2021 with a quorum present, ANC 4C voted to oppose approval of special exceptions from requirements for vehicle parking, lot occupancy, and green area ratio and an area variance from the FAR requirements. (Exhibit 53.)

Persons in opposition. The Board received letters and heard testimony in opposition to the application from residents living near the subject property. The persons in opposition characterized the Applicant's proposal as an improper "conversion of parkland to a private residence" and objected to potential traffic and environmental impacts of the planned development.

## **FINDINGS OF FACT**

1. The property that is the subject of this application is an irregularly shaped lot bounded by 14<sup>th</sup> Street to the west, Webster Street to the north, and Arkansas Avenue to the east, with the address 4331 14<sup>th</sup> Street, N.W. (Square 2819-S, Lot 1).
2. The subject property has approximately 30.4 feet of frontage on 14<sup>th</sup> Street, 18.7 feet on Webster Street, and 35.9 feet along Arkansas Avenue. The lot area is approximately 307 square feet.
3. The subject property is the only lot in Square 2819-S. The subject property comprises less than 10 percent of Square 2819-S, which contains approximately 5,000 square feet of land

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<sup>2</sup> The public hearing was originally scheduled for November 18, 2020 and was rescheduled twice at the Applicant's request. (Exhibits 25, 41.)

area. The remainder of the square comprises public space abutting each of the three streets that bound the square. (Exhibit 33.)

4. The subject property was created as a record lot before the effective date of the 1958 Zoning Regulations.
5. The subject property is currently unimproved. The site was previously developed with a gasoline service station; an attendant underground storage tank may still be located at the subject property or in the abutting public space. (Exhibit 39.) The Applicant submitted a letter prepared by a firm retained “to perform a review of available files at the District of Columbia Department of Energy and the Environment (DOEE)” for the subject property. The letter stated that a notification obtained on October 8, 2020 from DOEE indicated that “a single 6,000-gallon capacity steel UST [underground storage tank] was installed on the property to store fuel oil... [T]he estimated age of the tank is listed as 31 years. No information related to a subsequent closure of this UST was listed on this notification form.” Other information obtained from DOEE reflected that other tanks had previously been installed at the subject property, where a service station was constructed in 1934. The firm recommended further investigation, including a subsurface survey, “to confirm or deny the presence of underground storage tanks at the site.” (Exhibit 36.)
6. The Applicant proposed to construct a new row building for use as a principal dwelling at the subject property. An entrance to the dwelling would be located along 14<sup>th</sup> Street. A door on the east façade would be accessible via a walkway from Webster Street.
7. As proposed, the building would be three stories and 35 feet in height. The building would extend to each of the three lot lines of the subject property, without providing side yards.<sup>3</sup> The resulting lot occupancy would be 100 percent and the floor area ratio would be 3.0.
8. The planned building would project approximately 3.4 feet into the public space abutting the subject property at each of its three corners. At the northwest corner, the projection would extend 11 feet along 14<sup>th</sup> Street and 10 feet along Webster Street. At the northeast corner, the projection would extend 10 feet along Webster Street and 10 feet along Arkansas Avenue. At the south, the projection would extend 12 feet along 14<sup>th</sup> Street and 14 feet along Arkansas Avenue. The new building would also project into public space with a balcony (approximately three feet deep and 11 feet wide; 36 square feet) on the second floor of the west façade, a ground-level deck (approximately four feet, five inches deep and 13 feet, nine inches wide; 61 square feet) on the east façade, and a balcony

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<sup>3</sup> Pursuant to the rules of measurement set forth in Subtitle B § 318, in the case of a through or corner lot abutting three or more streets, the depth of the rear yard may be measured from the center line of the street abutting the lot at the rear of the structure. For zoning purposes, a “corner lot” is defined as a lot fronting on two or more streets at their junction, with the streets forming with each other an angle of 45 degrees up to and including 135 degrees; a through lot is an interior lot having frontage on two or more streets where the streets differ in direction by 45 degrees or less. A triangular lot fronts on two streets at their junction, where the streets form with each other an angle of less than 45 degrees. (See Subtitle B § 100.2.)

(approximately four feet deep and 13 feet, four inches wide; 53 square feet) on the third floor of the east façade.

9. The Applicant proposed to erect a fence surrounding the new dwelling in the public space at a distance of 15 feet from the curb of abutting streets. The Applicant indicated that the fence would be constructed in compliance with applicable regulations, including that the fence would not exceed 42 inches in height and would not be constructed of combustible or opaque materials. (Exhibits 33, 35.)
10. The widths of the rights of way abutting Square 2819-S are 90 feet (Webster Street), 110 feet (14<sup>th</sup> Street), and 120 feet (Arkansas Avenue).
11. Areas adjacent to the subject property to the east, west, and south are located in a Residential Flat (RF) zone, RF-1. Properties directly to the north, across Webster Street, are located in a Mixed-Use (MU) zone.
12. Properties in the vicinity of the Applicant's lot are devoted primarily to residential use in a mix of building types including attached and detached dwellings as well as apartment houses. The area also contains locally serving commercial uses, and a public recreation facility is located to the east of the subject property across Arkansas Avenue.
13. The subject property is located in a Mixed-Use zone, MU-3A.
14. The Mixed-Use (MU) zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling residential development at varying densities. The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. The MU zones are intended to (a) provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses; (b) provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city; (c) reflect a variety of building types, including shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses; (d) encourage safe and efficient conditions for pedestrian and motor vehicle movement; (e) ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; (f) preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces.
15. The MU-3 zone is a mixed-use zone that is intended to be applied throughout the city consistent with the density designation of the Comprehensive Plan. The MU-3 zones are intended to (a) permit low-density mixed-use development and (b) provide convenient

retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact on surrounding residential development.

## **CONCLUSIONS OF LAW**

The Applicant seeks zoning relief including a variance from the floor area ratio requirement of Subtitle G § 402.1 to allow a new row building for use as a principal dwelling at 4331 14<sup>th</sup> Street, N.W. (Square 2819-S, Lot 1). 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 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. *See* 11 DCMR 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 of ANC 4C, the Board concludes that the application has not met the requirements for approval of the requested variance.

The Applicant asserted, without elaboration, that a new commercial use at the subject property would be “detrimental” to nearby properties and instead proposed a new residential building with three floors above grade, resulting in a FAR of 3.0 in a zone where a maximum of 1.0 is permitted. (See Subtitle G § 402.1.) 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). In addition, the Applicant’s proposal would require a significant degree of variance relief, tripling the FAR permitted as a matter of right. The degree of relief requested in this application was not *de minimis* in nature. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1172 (D.C. 1990) (Board may consider whether a variance is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests on the applicant).

The Board concluded that the subject property was affected by an exceptional situation or condition due to its small size. The subject property is a record lot that was created before current zoning requirements went into effect and is generally triangular in shape. The unusually small size and triangular shape of the subject property created unusual constraints on the potential development of the site.

The Board was not persuaded by the Applicant’s contention that the status of the subject property as the only lot in its square created an exceptional situation that would warrant approval of the requested variance relief. The public space surrounding the subject property precluded any opportunity to enlarge the Applicant’s lot but, as the Applicant noted, the subject property is an

existing record lot and the MU-3A zone does not specify any minimum requirements for lot dimensions. Instead, the applicable development standards regulate the bulk of buildings and the spaces around them with respect to building height and number of stories, density and lot occupancy, yards and setbacks, and environmental performance.

The Board did not conclude that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. The Board was not persuaded by the Applicant's unsubstantiated assertion that compliance with the maximum FAR permitted in the MU-3A zone, limiting a building at the subject property to one floor above grade, would not be "practical" for either residential or commercial use. Similarly, the Board did not agree that the status of the subject property as the only lot in a square, surrounded by public space, created any practical difficulty, since the Applicant's proposal entailed significant projections into the abutting space on all three sides of the planned building, which would not have been possible if the subject property abutting any other privately owned property.

The Board heard testimony from the Applicant and the Office of Planning that approval of the requested variance would not result in substantial detriment to the public good, primarily because the proposed dwelling would be compatible with the predominant residential use of surrounding properties. However, the Applicant's proposal would occupy a significant portion of the public space abutting the subject property, creating six projections of building area or private outdoor space as well as the erection of a fence in the public space. Contrary to testimony in opposition to the application, the Board did not conclude that the abutting public space was a public park or an extension of the existing recreation center across the street from the subject property. Nonetheless, based on the evidence in the record of this application, the Board did not conclude that the requested variance could be approved without creating substantial detriment to the public good, considering especially the significant projections into public space and the development of a building with a floor area ratio three times the maximum permitted as a matter of right.

The Board concluded that approval of the requested variance would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Applicant requested 3.0 FAR, where a maximum of 1.0 FAR is permitted, to facilitate the development of a new principal dwelling. The proposed residential use was permitted as a matter of right in the MU-3A zone. However, the evidence and testimony in the record did not provide a basis for a FAR variance of the requested magnitude. Under the circumstances, the Board did not conclude that the requested variance could be approved without substantially impairing the intent, purpose, and integrity of the MU-3A zone, which include to provide for the orderly development of land at an appropriate density and scale and to ensure that infill development would be compatible with the prevailing development pattern of surrounding areas. The Board was not persuaded by the Applicant's unsubstantiated contention that the site would "otherwise remain vacant in perpetuity ... contrary to the intent of the Zoning Regulations in general" because the application did not address any potential use or structure permitted in the MU-3A zone other than the proposed row dwelling.

Special exceptions. The Applicant also requested special exceptions under Subtitle C § 703.2 from the minimum vehicle parking requirements of Subtitle C § 701.5 and under Subtitle G § 409.1 from the lot occupancy requirements of Subtitle G § 404.1. The Applicant proposed not to provide any vehicle parking at the subject property, where the project created a requirement of one space. The Applicant also proposed to construct a new building for residential use that would occupy 100 percent of the lot, where a maximum of 60 percent was permitted as a matter of right. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

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 4C, the Board was not persuaded that the application met the requirements for approval of either special exception. The Applicant initially asserted that parking relief was not needed, then amended the application to request the relief; however, the application did not address the requirements for approval of the special exception in accordance with Subtitle C § 703 and Subtitle X § 901. Similarly, the application stated a need for a special exception from the lot occupancy requirement to facilitate the development of a new dwelling on a small lot but did not address the requirements for approval of the special exception under Subtitle G § 1200.4 and Subtitle X § 901 or otherwise adequately explain the grounds for approval of the zoning relief.

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 discussed above, the Board did not agree with OP’s recommendation that the application should be approved.

The Board is also required to give “great weight” to the legally relevant issues and concerns raised by an 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)).) In this case, ANC 4C adopted two resolutions in opposition to the application (Exhibits 29, 53) that stated concerns especially with respect to the impacts of the Applicant’s proposal on the public space abutting the subject property and environmental concerns related to the prior gas station use. For the reasons discussed above, the Board agrees with ANC 4C that the application should be denied.

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 appeal, 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 conclusions of law, the Board concludes that the Applicant has not satisfied the burden of proof for approval for an area variance from the floor area ratio requirements of Subtitle G § 402.1 or for special exceptions under Subtitle C § 703.2 from the

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minimum vehicle parking requirements of Subtitle C § 701.5 or under Subtitle G § 409.1 from the lot occupancy requirements of Subtitle G § 404.1 to allow a new row building for use as a principal dwelling in the MU-3A zone at 4331 14<sup>th</sup> Street, N.W. (Square 2819-S, Lot 1). Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE: 4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull voting to deny; one Board seat vacant)

**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:** \_\_\_\_\_