

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Prehearing Statement of Henry Tam and Lan Tran
725 Hobart Place, NW (Square 2888, Lot 197)

I. INTRODUCTION AND SUMMARY OF RELIEF.

This Statement is submitted on behalf of Henry Tam and Lan Tran (collectively, the “**Applicant**”), the owners of the property located at 725 Hobart Place, NW (Square 2888, Lot 197) (the “**Property**”). The Property is currently improved with an existing three-story, three-unit row building (the “**Building**”). The Applicant purchased the Property in 2018; at which time it was configured and advertised as a three-unit Building – see Property Listing. The Applicant recently discovered that there is no Certificate of Occupancy for the existing third unit and is now seeking relief to make the third unit legal in order to obtain a Certificate of Occupancy. The Applicant is not proposing any changes to the Building, either interior or exterior. The Property only has 1,688 square feet of land area; therefore, it does not meet the “900 square foot rule” of U § 320.2(c). Accordingly, the Applicant is requesting (1) special exception relief for the conversion pursuant to Subtitle U § 320.2; and (2) variance relief from Subtitle U § 320.2(c) for the 900-foot rule. The Applicant is also requesting parking relief for one space pursuant to C-703.2.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception relief pursuant to U § 320.2 and C § 703.2; and X § 901.2; and the area variance from U § 320.2(c) pursuant to 11-DCMR Subtitle X § 1002.1(a).

III. BACKGROUND.

A. History of the Property and Applicant’s Purchase.

The Property is located in the RF-1 Zone District and has 1,688 square feet of land area. It is an interior lot improved with an existing three-story row building constructed c. 1939. The Applicant purchased the building in 2018. When the Applicant purchased the Building, all three units were occupied by tenants, and have been continuously through today. The Applicant does not know when the Building was converted to three (3) units but is continuing his research on that point.

B. Description of the Surrounding Area.

The Property fronts on Hobart Street to the south. Abutting the Property to the north at 726 Columbia Road, NW, is a single-family row building. Abutting the Property to the west is 727 Hobart Place, NW, a flat, which was part of a 4-lot minimum lot area and parking variance case in 2015 (19068). Abutting the Property to the east is 717 Hobart Place, NW, a flat. The surrounding area is made up of a mix of single-family dwellings, flats, and apartment buildings. The building two lots to the east at 2920 Georgia Avenue, NW, in the MU-4 zone, is a 26-unit apartment building and the building four lots to the west, in the RF-1 zone, is a 12-unit apartment building.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF.

A. General Special Exception Requirements.

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, X-901.2 “the Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions: (a) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; (b) will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and (c) will meet such special conditions as may be specified in this title.”

The special exception for the conversion and parking relief will be in harmony with the general purpose and intent of the zoning regulations and zoning maps and will not tend to adversely affect the use of neighboring properties in accordance with the zoning regulations and zoning maps. The proposal will maintain the status quo and allow the Applicant to bring the building into compliance.

B. Specific Requirements of Subtitle U-320.2 and C-703.2

In reviewing applications for a special exception under the Zoning Regulations, the Board’s discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat’l Cathedral Neighborhood Ass’n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

1. Conversion Relief (U-320.2)

In order to have three (3) principal dwelling units on the Property, the Applicant must request special exception approval from U-320.2. The proposal in this Application satisfies the requirements of 11 DCMR U-320.2(a)-(c) as follows:

Section 320.2(a): The building to be converted or expanded is in existence on the property at the time the Department of Consumer and Regulatory Affairs [Department of Buildings] accepts as complete the building permit application for the conversion or expansion;

The building to be expanded is in existence on the property and will be in existence on the property at the time the Department of Buildings accepts as complete the building permit application for the conversion or expansion.

Section 320.2(b): The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6; and

The proposed structure includes three (3) units. Therefore, Inclusionary Zoning and the set-aside requirements of Subtitle C-1003.6 do not apply.

Section 320.2(c): There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.

The proposed structure includes three (3) units, requiring a minimum of 2,700 square feet of land. The Subject Property has 1,688 square feet of land area, requiring an area variance from this provision, as detailed herein.

2. Parking Relief

The lot has no alley access or room for a driveway in the front. Accordingly, the request is to continue to have no legal parking spaces where one is required for the increase from two units to three units, pursuant to C § 703.2 as follows:

Section 703.2 “The Board of Zoning Adjustment may grant a full or partial reduction in number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant’s demonstration of at least one (1) of the following:

The Applicant is only required to satisfy one of the considerations under C § 703.2. The information below includes the section that most safely applies to this Property and Application.

(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8

The Property has no alley access and no ability to provide a driveway in the front. The Applicant was unable to locate any available off-street parking within 600 feet.

(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;

The Property is well-served by various forms of public transportation. It is located approximately 200 feet from the bus routes on Georgia Avenue, and a little over a half mile from the Georgia Avenue - Petworth Metro Station.

V. THE APPLICATION MEETS THE STANDARDS FOR AREA VARIANCE APPROVAL

The Applicant is requesting variance relief from the 900 square foot rule (U-320.2(c)). The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the 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.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance relief.

A. Extraordinary or Exceptional Condition Affecting the Subject Property Resulting in a Practical Difficulty if the Zoning Regulations were Strictly Enforced

To prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2d 1164, 1168 (D.C. 1990).

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested;” “the weight of the burden of strict compliance;” and “the effect the proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome; not impossible.

The Property is faced with an exceptional condition due to its existing configuration and condition. At some point prior to the owner’s purchase, it was converted to three separate units. The Property was very clearly advertised as having three separate units.

Requiring two of the units to be combined would be a disruption to the tenants, one of whom has been a tenant since before the Applicant purchased the Property. The Applicant will provide additional information on estimated costs to the Applicant to bring the building into 2-unit compliance.

The only matter-of-right option is to evict 2, or possibly all, of the 3 tenants, to undertake the construction to convert the Building to either one or two units, which cannot be done without considerable expense, and will ultimately result in the loss of one housing unit and at least one rental income.¹ The cost, in addition to the loss of rental income, loss of a unit of housing, and generally reconfiguring this house by create a practical difficulty.

Moreover, the proposed use is a permitted use via special exception and the 900-foot rule is a restriction based on land area, not the use. The Applicant has a land area of 1,688 square feet and is shy of the requirement by about 1,012 square feet. Given that the properties on either side are each improved with an existing building, the Applicant does not have the ability to purchase

¹ The Board and OP have found that the loss of existing rental income and removal of units of existing housing can be considered practical difficulties (See BZA Case No. 19517, 20116, 20002, 19574 (“If the Applicants were required to convert the building back to a single family dwelling or flat to comply with the RF-1 regulations, they would be faced with substantial renovation and expense, as well as the loss of the rent they would collect for the third unit which is part of their anticipated income.”- OP Report Case No. 20002).

the requisite land without creating nonconformities on the respective adjacent properties. Accordingly, purchasing land to meet the land area requirement is not an option.

B. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

The Applicant is requesting relief based on the unique circumstances affecting this Property, namely the illegal conversion, advertisement, and subsequent inheritance of an existing nonconforming condition with respect to three units. The proposal is not to increase the size of the units nor the existing Building but rather maintain the status quo and bring the building into compliance with the applicable Zoning Regulations. Further, the use itself is permitted in the RF-1 zone via conversion and the Applicant is not seeking relief related to use but rather an area restriction related to land area. Finally, this block of Hobart, adjacent to Georgia Avenue, is unique in its massing and uses, in contrast to the blocks to the west, which are mostly smaller row houses used as singles and flats. Accordingly, granting relief shall not be a substantial detriment to the public good, nor impair the intent, purpose, and integrity of the zone plan.

VI. CONCLUSION.

For the reasons outlined in this statement, the Applicant respectfully requests the special exception and variance relief as detailed above.

Respectfully Submitted,

Martin P Sullivan

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