BZA Application No. 21307

Henry Tam and Lan Tran
725 Hobart Place, NW

Overview & Requested Relief

- The Property is improved with a 3-story, 3-unit row building. The Applicant purchased the property in 2018; at which time it was configured and advertised as a 3-unit building.
- The Applicant discovered there is no C of O for the existing third unit and is now seeking relief to make the third unit legal.
- The Applicant is not proposing any changes to the building. Just keeping status quo.
- The Property has 1,688 sq. ft. 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) ***area*** 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.

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Agency Support

- The Office of Planning recommends approval.
- ANC 1E voted unanimously in support.
- DDOT has no objection.

Area Variance

- X-1001.2 *An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.*

- X-1001.3 *Examples of area variances are requests to deviate from: (g) Notwithstanding paragraph (f) of this section, the minimum nine hundred square feet (900 sq. ft.) of land area per dwelling unit required by Subtitle U §§ 301.2(b), 301.5, and 320.2(b).*

- *Prior to the adoption of the above language in the 2016 re-write, the relief requested was still area variance relief pursuant to the Court of Appeals decision in Wolf v. DC BZA, 397 A.2d 936*

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Area Variance (Wolf v BZA; 1 of 2)

- “Where variance sought was one for conversion of row dwelling to accommodate three apartment units instead of two plus facilities for roomers, under ordinance requiring lot size of 900 square feet per unit, while actual lot area was only 2,164 square feet, no essential change in use of subject property was contemplated, and thus variance requested fell under rubric of area rather than use variances and did not require showing of both undue hardship and practical difficulties, but only a showing of practical difficulties. D.C.C.E. § 5–420.”

- “Area variance may relate to practical difficulties attending structure on subject property and not just land itself.”

- “Rule as to self-imposed hardship does not apply in case of area as opposed to use variance. D.C.C.E. § 5–420.”

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Area Variance (Wolf v BZA; 2 of 2)

- “Where two-family character of subject property made marketability of its approximately 3,000 square feet as single unit unfeasible, structure of the property worked against its effectively functioning as two-unit apartment house, and monthly expenses incurred by property owner for the property were approximately $1,276 but monthly rental of two apartments and rooms would be about $1,250 whereas such rental for three apartments would be about $1,350, finding of “practical difficulties” by Board of Zoning Adjustment in proceedings on property owner's petition for area variance on lot under 2,700 square feet was neither arbitrary nor capricious. D.C.C.E. § 5–420.”

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Office of Planning; 1 of 3

- The owner has several practical difficulties in that the property is surrounded by other existing buildings, therefore there is no ability to purchase additional land without creating similar nonconformities or noncompliant situations on adjacent properties. Converting the structure back to a matter of right two-unit flat would result in the eviction of a minimum of two of the existing tenants and would result in considerable expense from construction costs and loss of income. Renovations could include the need to remove an existing kitchen and reconfiguring the bedrooms, bathrooms, and staircase and entryway area to the units.

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Office of Planning; 2 of 3

- The applicant is requesting relief to maintain the existing situation and not increase it in size or number of units, after inheriting the situation from a past owner. Given the three units have been in existence for at least five years, there would not appear to be any detriment to the public good by approving the area variance. The density is generally compatible with the surrounding area, which contains rowhomes, flats, and multifamily buildings. Impacts on light, noise or privacy should be minimal as there would be no additions or alterations to the existing structure. Rather, denial of the request would result in a need for construction related disruption to the residents of the building and the neighborhood, in addition to the permanent eviction of one tenant. There should be negligible impact on the transportation network given the site is in an area with numerous public transit options. The site is also proximate to higher density mixed use zoning.

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Office of Planning; 3 of 3

- The zoning regulations anticipate the conversion of buildings within the RF-1 zone to apartment houses, although the regulations require that the property meets the special exception conversion criteria, including that the properties has 900 square feet of land area per dwelling unit. While the property is unable to meet the land area restriction for use, the building would be unchanged and consistent with the intent of the zone. Given that the current owners are not responsible for the illegal conversion, granting the area variance would not significantly impair the integrity of the zoning regulations.

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General Special Exception Requirements

Granting of 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 Maps.

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.

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Purpose per Legislative History

1. Preserve Rowhouse Neighborhood Character.
2. Prevent Speculative Mid-Block Assemblages.
3. Direct Multi-Family Growth to Higher Density Zones.
4. Maintain a Rational, Predictable Density Standard.
5. Aimed at Conversions to Prevent Micro Units.

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Precedents

While the Board views each case on its own *merits*, it still has an obligation to apply legal standards consistently across similarly-situated scenarios.

To take a certain set of elemental facts which are indistinguishable from the elemental facts in a handful of previous cases, and apply a different legal standard and decision, is the definition of arbitrary.

Precedents

While this good-faith inherited condition situation has presented itself often enough to provide a strong body of consistent precedent to guide the Board, it is infrequent enough to be rare and unique (6 or 7 cases over the last 10 years).

Discussion of previous OP and Board rationale in similarly-situated applications:

- Wolf, 18312, 18598, and 19517, 20116, 20002, 19574, 21335. Also 21080, which was not mentioned in the supplemental submission.

The history of area variance relief from the 900-foot rule is rather extensive, and it has become more limited and focused, resulting in a consistent evaluation of a limited fact pattern. Since 2014, the approved scenario includes only the situation where an innocent purchaser has in good faith undertaken ownership of a nonconforming property; and wishes to secure the necessary legal approvals without evicting tenants, losing expected rental income, or undergoing expensive reconstruction.

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Precedents

18312 – Approving 4 units on a lot area of 2,471 SF.

The Board concludes that complying with the Zoning Regulations by restoring the building as anything less than a four-unit residential building would impose an unnecessary burden upon the owner as a result of the extraordinary additional expense necessary to restore the subject building back to productive and sustainable use. Based on the building's extreme state of disrepair and the expense required to restore the building, developing anything less than a four-unit apartment house in this case would not be economically viable and would put the property in danger of remaining idle. Preventing usable land from remaining idle is one of the primary reasons for providing variance relief. Variances from the strict application of the Zoning are "designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an unjust invasion of property rights and prevent usable land from remaining idle." Palmer v. D.C. Board of Zoning Adjustment, 287 A.2d 535,541 (D.C. 1972).

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Precedents

18598 – Denying 6 units on a lot area of 4,521 SF.

The Applicant argues that the property exhibits an exceptional situation or condition due to the significantly deteriorated state of the existing building, especially in contrast to the generally good condition of surrounding properties, and the fact that the properties have been vacant for some time. The Board does not agree that the deteriorated state of the buildings on the subject property creates an exceptional situation, or that the degree of damage present at the Applicant's buildings is extraordinary. Conditions cited by the Applicant, such as damage to the roofs and walls, some attributable to poor drainage, termites, or fire, are common in vacant buildings. Nor was the Board persuaded that the fact that the properties had been vacant for some years created an exceptional situation, in part because the Applicant was unable to testify about the reasons why the properties had been vacant, or how long they were on the market before their purchase by the Applicant.

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Precedents

Following the denial of 18598 in 2014, the Board's position on the critical elements necessary to satisfy the area variance relief from the 900-foot rule became very limited and specific.

All approvals - in fact all cases - since then are for cases involving a "good-faith inherited condition" in which the practical difficulty includes tenant displacement, expensive reconstruction, and loss of rent. This type of situation is much less ambiguous and questionable than the "disrepair" or "marketability" (Wolf) rationales that supported some pre-2014 approvals.

The Office of Planning has recommended approval – and the Board has approved – all of these "inherited condition" cases; in contrast to the "disrepair" cases, which OP never supported.

On the elemental facts applicable to the Board's consistent application of area variance legal analysis for these 6 cases over the last 10 years, the present application is indistinguishable. Discussion on aspects of the Board's consistent view on these cases.

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Precedents

BZA # 21080 – not in the brief

BZA Chair Hill: ….I do think that they bought it the way it was thinking that it was the way it was that, you know, to change it would be, you know, practically, you know, impractical, impractical difficulties. I do agree with the first prong. I agree with the second prong. And I agree with the third prong. I think that I will also agree with the Office of Planning's report and I will also agree with the ANC's position. I am going to be voting in favor of this application. Mr. Blake, do you have anything you'd like to add?

MEMBER BLAKE: No, Mr. Chair. I agree with the assessment. I too believe this is a straightforward case. There are several levels of relief that are being requested, but all in all, it makes sense.

OP: If the Applicant was required to convert the building back into 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 eviction of at least one current resident.