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October 8, 2025

Via Email

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Post-Hearing Submission - BZA Case No. 21307 – 725 Hobart Place, NW

Dear Chairperson Hill and Members of the Board:

The Board has asked for additional information regarding the purpose and intent of the 900-foot rule. Based on the Board's focus on the purpose and intent of the 900-foot rule, we have focused our response on providing further argument and supporting documentation that granting approval for an existing 3rd unit at 725 Hobart will not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

We are therefore submitting herewith attachments which further explore the Board's interaction with that question in the context of area variance cases for relief from the 900-foot rule. The additional information provides detail, from full Orders, of the Board's position on how this relief does not substantially impart the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is noteworthy that we have found no evidence of the Board ever denying such an application solely because such relief would substantially impair the purpose and intent of the Zoning Regulations. Rather, we have found documentation that the Board has granted 900-foot rule relief many times, going back to at least the 1960's.

In addition to the above-reference attachment, we also attach BZA Order No. 12278 from 1977, the oldest full Order we could find. This was the Order behind the *Wolf v. BZA* Court of Appeals case that affirmed the Board's decision to grant relief based on market-value practical difficulties. *Wolf* also affirmed that this relief is an area variance relief requiring the lesser standard of practical difficulty, and not a use variance requiring a more difficult standard of undue hardship.

Most telling regarding the Board's long-held view of relief from the 900-foot rule and its perceived impact on the intent and purpose of the Zoning Regulations, see Finding of Fact Number

4 in BZA Order No. 12278, referring to cases from 1966 and earlier:

> "*In B.Z.A. Application No. 9062, the Board incorporated by reference in the reasons for the grant of the variance the reasoning in Application No. 8631 which provides in pertinent part that "the best practical rule for conversion in the R-4 District is to permit one living unit per floor and we have granted variances from the 900 square feet per unit requirement of Section 3301.1 to permit this in many cases*."

As discussed at the last hearing, we noted that the Board's position has narrowed somewhat since the "one-unit-per-floor" standard used by the Board in "many cases" prior to 1966. This is why we have noted the consistent rationale used by the Board over the last 10 years in approving a number of - what we have termed - "inherited condition" cases. In these cases, the Board has rightfully identified specific fact patterns that represent an exceptional practical difficulty, for which relief does not substantially impair the intent or purpose of the Zoning Regulations. The present Application matches that fact pattern and deserves evaluation by the Board consistent with its decisions over the last 10 years.

To be clear, we are not saying that because the Board has approved this relief many times over the last sixty years, it must approve this case for that reason alone. What we are saying is over the last 60 years, this Board has not seen any issue with the impairment of the intent and purpose of the zoning regulations in granting this relief for an additional unit, sometimes more. We are also saying that over the last 10 years, when faced with the fact pattern before it in this application, the Board has found the area variance test met. To reverse that standard in this Application would be the very definition of an arbitrary decision, in our opinion, and would condemn this owner and his tenants to catastrophic consequences, financial and otherwise; rather than affirming this property owner's decision to take the honest approach, unprompted, to bring his property into compliance.

For these reasons, we respectfully request that the Board approve the Application.

Respectfully Submitted,

Martin P Sullivan

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP

Before the Board of Zoning Adjustment, D. C.

Application No. 12278, of David J. Dubois, pursuant to Sub-section 8207.11 of the Zoning Regulations, an area variance from the strict application of Sub-section 3301.1. Applicant seeks to convert a two (2) family flat (basement, 1st and 2nd floors) to use the subject premises for an apartment house consisting of three (3) units (basement, 1st and 2nd floors) in the R-4 District at 1115 Independence Avenue, S. E., Lot 814, Square 990.

HEARING DATE: February 16, 1977
DECISION DATE: March 8, 1977

FINDINGS OF FACT:

1. The subject property is improved with a three-story (basement, 1st and 2nd floors) row dwelling constructed in 1912 as a two-family flat. The building is exceptionally large for the area, having a gross floor area of approximately 4,500 square feet or 1,500 square feet per floor on a lot size of 2,164 square feet. Out of 70 houses within 200 feet, none are as large as the subject property. Fifty of the houses within 200 feet, are less than half as large and 40 have approximately one-third the size.

2. The subject property is presently used as a two-family flat, although the basement is improved to accommodate roomers either accessory to tenant use or as a rooming house as permitted in the R-4 Zoning District. In addition to the two families, roomers in number of approximately four to six could occupy legally the basement.

3. In 1966, the Board granted a variance from the 900 square foot rule for this same property for four units with two units on the first floor and two units on the second floor in B.Z.A. Application No. 9062. However, the owner was not able to obtain financing and the Order expired.

4. In B.Z.A. Application No. 9062, the Board incorporated by reference in the reasons for the grant of the variance the reasoning in Application No. 8631 which provides in pertinent part that "the best practical rule for conversion in the R-4 District is to permit one living unit per floor and we have granted variances from the 900 square feet per unit requirement of Section 3301.1 to permit this in many cases."

5. In 1973, the present owner, knowing of the previous approval for four units, purchased the property and learned that an application to the Board of Zoning Adjustment would be required for three units. Believing the application to be rather simple in view of the previous four-unit approval, the present owner applied for approval of three units to the Board and appeared before the Board without advice on variance matters and without referencing the previous approval for four units. The Board in B.Z.A. Application No. 11444 denied the application for failure to carry the burden of proof. The Board apparently used the test of "hardship". The decision in Case No. 11444 was prior to the decision in Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. App. 1974), which held that a variance could be based on difficulties inherent in the structure as opposed to difficulties inherent in the land.

6. In keeping with the Board of Zoning Adjustment denial, the owner renovated the property for flat use, including renovation to the basement. The property was offered for rent for two families, including the rental of 3,000 square feet, being the basement and first floor. Restoration to the building cost $74,376.

7. The subject property has a lot width of 22 feet and a depth of 98 feet. The building is approximately 80 feet in depth, including the porch and front projection. On each floor, with the exception of the basement, there are full living accommodations with six rooms deep, including living room, dining room, bath, kitchen and two bedrooms as well as the porch. In the basement, the front portion is presently devoted to a recreation room. There is also a bar and bedrooms which are readily usable for apartment use with the inclusion of a full kitchen and removal of the stair access to the first floor. All floors have access both front and rear to the street.

8. In November, 1974, the owner advertised the property for tenants. While the owner had no difficulty in renting the top floor, he had difficulty in finding a tenant for the basement and first floor unit containing approximately 3,000 square feet. Finally, the two floors were rented to one person with the understanding that the basement rooms would be sublet. From approximately July of 1976 until present, the basement has been unoccupied.

9. Monthly expenses for the property are approximately $1,276. Rental on an annual basis for two apartments and rooms would be approximately $1,250; whereas rental for three apartment would be $1,350, or a difference of approximately $100.

10. The applicant's bases for variance are four-fold: (1) size of building, being the only one like it in the neighborhood; (2) layout, having a depth of approximately 80 feet and being six rooms deep; (3) practical difficulties of marketing a 3,000 square foot unit or using the basement for roomers; and (4) the relationship of market and income to cost.

11. The Board finds that the building is exceptional in that it is dissimilar to row house neighbors since it was constructed as a two-family flat, is exceptionally large, has a unique layout and has exceptional quality of workmanship. The rental market for a single unit of approximately 3,000 square feet results in a practical difficulty in that the rental market for that size living unit is restricted to buildings designed for single-family dwellings. While the basement can technically be used for two roomers accessory to the first floor apartment unit, this is a restricted market since such rental is normally restricted to single-family dwellings and is not normally accomplished in rental apartments.

12. With regard to the right to use the basement as a rooming house, which could accommodate up to four or five roomers, we note that the density would be greater for roomers than an apartment use, that such roomers because of transient nature would not be as harmonious as an apartment use and, further, because of the restriction on preparation of meals on roomers results in an inherently difficult problem because of inability to police the use.

13. The owner has canvassed the area for support in the application; and out of properties within 200 feet, 52 properties through owners or residents support the application. Additionally, the Capitol Hill Restoration Society supports the application.

14. The grant of the variance will not require any exterior changes and only minor interior changes in the basement to permit the installa t ion of a full kitchen with stove and thee discontinuance of the basement to the first floor access. The change in basement status from permitted rooming house use to apartment will result in a slight increase in income but a marginal profit to the owner. This marginal income will enable the continued maintenance of the building.

15. There was opposition registered at the Public Hearing of this application.

CONCLUSIONS OF LAW AND OPINION:

The Board is of the opinion that the application for variance from the 900 square foot minimum area requirement of the R-4 District for apartment conversion is an area variance as previously found by the Board in BZA Application No. 12100. See page 37 of Statement of Applicant. In Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (1972), the D.C. Court of Appeals adopted for this jurisdiction the dichotomy between area variances and use variances. The Court there noted that a proof of practical difficulty for area variances is appropriate for cases "relating to restrictions such as side yard, rear yard, frontage, setback or minimum lot requirements ....." Id., 541. Here, in the R-4 District, apartments are permitted as a matter of right so long as the lot contains 900 square feet per unit. Here, the only requirement missing from the conversion in the instant case is the requirement of having 2,700 square feet. Thus, the sole relief relates to the "area" of the lot.

We are further of the opinion that the applicant has met his burden of proof in showing an exceptional situation resulting in practical difficulties. The size, layout of the building together with the marketability and economic aspects clearly show that the restriction would be unduly burdensome unless a variance is granted. Further, since there will be no substantial changes and no substantial increase in density, we see no likelihood of an adverse affect on the neighborhood. We believe that the grant is in keeping with the intent of the Zoning Regulations and Maps. Therefore, it is hereby ORDERED that the above application be GRANTED.

VOTE:

3-0 (Leonard L. McCants, Esq., William F. McIntosh and Richard L. Stanton to grant, Lilla Burt Cummings, Esq., not voting, not having heard the case.)

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

ATTESTED By: 
ARTHUR B. HATTON
Executive Secretary

FINAL DATE OF ORDER: 4-11-77

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2025, an electronic copy of this submission was served to the following:

D.C. Office of Planning
Philip Bradford
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Advisory Neighborhood Commission 1E

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Respectfully Submitted,

Sarah Harkcom
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