

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19570 of GWC 220 Residential LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 Zone at premises 220 2nd Street, S.E. (Square 762, Lot 8).<sup>1</sup>

**HEARING DATE:** September 27, 2017

**DECISION DATES:** October 18, 2017 and October 25, 2017<sup>2</sup>

**DECISION AND ORDER**

This self-certified application was submitted on June 26, 2017 on behalf of GWC 220 Residential LLC, the owner of the property that is the subject of the application (the “Applicant”) to request an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2<sup>nd</sup> Street, S.E. (Square 762, Lot 8). Following a public hearing, the Board voted to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated July 18, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B01. On the same date, the Office of Zoning also provided notice of the application to the Architect of the Capitol. Pursuant to 11 DCMR Subtitle Y § 402.1, on July 18, 2017 the Office of Zoning also

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<sup>1</sup> The caption has been modified to reflect the name of the applicant. The initial application was submitted on behalf of George Calomiris and William Calomiris. (*See Exhibit 8.*) A statement in support of the application was submitted on behalf of “William Calomiris Company and George and William Calomiris.” (*See Exhibit 12.*) In its prehearing statement, the Applicant indicated that the “BZA application was initially submitted under the names of two of the managing members of the limited liability company that owns the property. The correct ownership entity name is GWC 220 Residential LLC.” (*See Exhibit 32.*)

<sup>2</sup> The Board deferred its decision in the case from October 18, 2018 to the decision meeting of October 25, 2018.

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mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *DC Register* on August 11, 2017 (64 DCR 7886).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Peter Waldron, the owner and resident of an attached principal dwelling abutting the subject property to the north.

Applicant's Case. The Applicant provided evidence in support of the requested zoning relief to allow a new apartment in the existing partial basement of the building. The Applicant proposed to create the new apartment since, according to the Applicant, the basement space was not needed for storage and was no longer needed for laundry facilities, and would otherwise go unused.

OP Report. By memorandum dated September 15, 2017, the Office of Planning recommended approval of the requested zoning relief. (Exhibit 35.)

DDOT. By memorandum dated September 15, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 36.)

ANC Report. By letter dated September 15, 2017, ANC 6B indicated that, at a properly noticed public meeting on September 12, 2017 with a quorum present, the ANC voted to support the application provided that the Applicant was required to provide “an exclusive indoor trash storage room.” (Exhibit 37.)

Party in Opposition. The party in opposition alleged that approval of the application would create “construction disruption and possible issues with rodents.”<sup>3</sup> (Exhibit 34.)

Person in support. The Board received a letter in support of the application from the National Indian Gaming Association, the owner of the abutting property to the south. The letter stated that the creation of an additional apartment unit in the building at the subject property would have no substantial impact on the neighborhood.

Person in opposition. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society. The letter stated that the requirements for approval of the requested variance relief had not been met because the Applicant had not demonstrated a need for the additional apartment; the Applicant's proposal to provide bicycle storage in the rear yard, rather than in the basement, was not workable because only the basement

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<sup>3</sup> The Applicant had discussions with the party in opposition about construction issues, which are outside the purview of the Board of Zoning Adjustment. They were unable to reach agreement at the time of the public hearing on this application but the Applicant expressed an intent to continue to efforts to enter into a construction management agreement with Mr. Waldron. The party in opposition agreed that the Applicant's proposed trash storage and collection measures would be “adequate” to address concerns about rodents. (Transcript of September 27, 2017 at 214.)

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apartment would have access to the rear yard; and the building lacked adequate space to provide indoor trash storage.

**FINDINGS OF FACT**

1. The subject property is a relatively large parcel located on the east side of 2<sup>nd</sup> Street S.E. between C Street and Pennsylvania Avenue, S.E. (Square 762, Lot 8).
2. The subject property is irregularly shaped but generally rectangular, with 54 feet of frontage along 2<sup>nd</sup> Street and a narrower lot width for approximately one-third of the length of the lot at the rear. The lot area is 6,657 square feet.
3. The subject property is improved with a three-story building, with a partial basement, built as an apartment house around 1955-1956. The building is configured as 12 apartments, each containing two bedrooms and approximately 800 square feet of space. A paved area is located at the rear of the lot, accessible by public alleys that abut the subject property along the rear (east) lot line and along a portion of the northern property line.
4. The partial basement is accessible via a stairway located in the first-floor hallway of the building near the front door, or via an entry located on the north side of the building. The basement has been used primarily as a laundry room for building residents. As part of a renovation of the building, the Applicant has provided laundry facilities in each of the existing apartments and the space formerly occupied by the communal laundry facilities is vacant and unused.
5. The Building has never provided storage, and because the existing apartments are relatively large, the residents' demand for storage facilities in the basement would be minimal.
6. A portion of the basement is used to provide trash storage. The Applicant now plans to create a new room in the basement for trash storage. The trash will be removed from the building via the front door for collection, which the Applicant indicated will occur three times per week.
7. The apartment building shares a party wall with buildings on each of the adjoining lots. The property to the south is used as office space by a nonprofit entity, the National Indian Gaming Association.<sup>4</sup> The party in opposition lives in the attached principal residence to the north.
8. Properties near the subject property are developed primarily with two-story attached dwellings, some used as flats. Other nearby properties include attached buildings used as

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<sup>4</sup> The Board approved, subject to conditions, the special exception and area variance relief requested to allow the expansion of the abutting building at 224 2<sup>nd</sup> Street, S.E. for use by a non-profit organization. *See* Application No. 17985 (final date of order: November 10, 2009); modified in Application No. 18114 (December 9, 2010).

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offices, a hotel, and commercial buildings. The Madison Building of the Library of Congress is located across 2<sup>nd</sup> Street to the west of the subject property.

9. The subject property is located within convenient walking distance of public transit, including bus stops on Pennsylvania Avenue and the nearby Capitol South Metrorail station. Shared bicycle facilities are also available in the vicinity. The Applicant plans to install bicycle parking facilities at the rear of the apartment building.
10. The subject property is located in the Capitol Hill historic district. However, the apartment building was constructed after the designated period of significance and is not a contributing building to the historic district.
11. The subject property is zoned RF-3. The purpose of the RF-3 zone is to provide for areas adjacent to the U.S. Capitol precinct predominantly developed with attached houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 500.1.) The RF-3 zone is intended to: (a) promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the adjacent area; (b) reflect the importance of and provide sufficient controls for the area adjacent to the U.S. Capitol; (c) provide particular controls for properties adjacent to the U.S. Capitol precinct and the adjacent area, having a well-recognized general public interest; and (d) restrict some of the permitted uses to reduce the possibility of harming the U.S. Capitol precinct and the adjacent area. (Subtitle E § 500.2.)
12. The Applicant proposes to create a new apartment, which will become the 13<sup>th</sup> apartment unit in the building, by converting the area formerly used for laundry facilities into a one-bedroom apartment containing approximately 615 square feet of space. Creation of the new apartment will not entail any enlargement or other change to the exterior of the building.
13. An apartment house in an RF-3 zone, including an apartment house existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new. (Subtitle E § 201.4.) With a lot area of 6,657 square feet, the subject property would contain 512 square feet of lot area for each of the 13 planned apartments.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the minimum lot area requirement of 900 square feet per apartment unit set forth in Subtitle E § 201.4 to allow one additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2<sup>nd</sup> Street, S.E. (Square 762, Lot 8). 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

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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.)

Extraordinary or exceptional situation. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself....[The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases....); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board concurs with the Applicant’s assertion that the subject property is characterized by an exceptional condition arising from the confluence of the size, age, history, and location of the existing apartment house. The building was constructed as a 12-unit apartment house at a time when that use was permitted as a matter of right at that location. The Applicant’s building is the only purpose-built apartment house in the square, an area characterized by a variety of residential, commercial, and institutional uses. The building provided laundry facilities in the basement for the residents’ use, but, in response to changes in market conditions and technology since the building was constructed around 1955, the Applicant has undertaken a renovation of the building that will provide individual laundry facilities in each apartment. As a result, the former laundry space in the basement has become vacant. Especially since the basement was only partially excavated, the building was configured in such a way that limits access to the basement by residents of the existing apartments, which now limits the potential reuse of the space.

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in “practical difficulties.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires “[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome....” *Metropole Condominium Ass’n v. District of Columbia*

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*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. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding reuse of a basement space no longer needed for its original purpose but not well suited to another use that would not require variance relief, such as storage. The Applicant demonstrated that, absent variance relief, the basement space formerly occupied by the communal laundry facilities would likely remain vacant and unused, or at best underutilized. Because of the interior configuration of the building and the existing areas of access, the partial basement is not readily accessible to residents, and cannot be practically incorporated into the existing ground floor units. Because the existing apartments are relatively large, the Applicant predicted that the residents' demand for storage facilities in the basement would be minimal; the building has never offered storage. The Applicant also predicted low demand for bicycle storage in the basement, especially in light of plans to provide bicycle storage at the rear of the property.

No substantial detriment or impairment. The Board finds that approval of the requested variance will not result in substantial detriment to the public good or cause any impairment of the zone plan. The Applicant does not propose any enlargement of the existing building but will continue the existing apartment house use with one additional apartment. The Board does not find that the addition of a single one-bedroom apartment within the existing building will have any significant impact on the vicinity of the subject property, including the U.S. Capitol precinct and the adjacent area. The Applicant indicated that certain measures will be undertaken with respect to trash storage and collection in an effort to minimize the potential for adverse impacts especially pertaining to rodents, and the Board adopts those measures as conditions of approval in this order. The addition of an apartment within the existing building will be consistent with the residential nature of the RF-3 zone, without affecting the principal dwellings and flats in small attached buildings near the subject property.

**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 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP's recommendation that the application should be approved in this case.

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) (2012 Repl.)).) In this case ANC 6B expressed support for the Applicant's proposal provided that the Board "specifically requires an exclusive indoor trash storage room." The ANC expressed concern about "trash

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management for the building” and opposed the placement of receptacles in front of the apartment building. The Board concurs with the ANC that “the option of placing trash receptacles in the exterior of this building [is] unacceptable given the history of rodent problems in that area.” (Exhibit 37.) The Board concludes that the conditions of approval adopted in this order are sufficient to address the concerns of ANC 6B with respect to trash storage, which will occur inside the building. Collection of the trash by way of the front door will ensure that trash will not be stored improperly at the rear of the building.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the lot area requirement of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2<sup>nd</sup> Street, S.E. (Square 762, Lot 8). It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33 – REVISED ARCHITECTURAL PLANS AND ELEVATIONS - AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall store trash receptacles within the building.
2. The Applicant shall ensure that trash is removed from the interior storage location through the front door of the building.
3. The Applicant shall schedule trash collection at least three times per week.

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood (by absentee ballot) voting to APPROVE; 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:** August 16, 2018

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.

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PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.