

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19762 of AMT-Varnum LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U § 320.2, to construct a three-story rear addition and convert the existing principal dwelling unit to a three-unit apartment house in the RF-1 Zone at premises 1521 Varnum Street, N.W. (Square 2698, Lot 47).

HEARING DATE: June 6, 2018
DECISION DATES: June 20, 2018; July 25, 2018

DECISION AND ORDER

This self-certified application (the “Application”) was submitted on April 11, 2018 by AMT-Varnum LLC, (the “Applicant”) the owner of the property located at 1521 Varnum Street, N.W., (the “Subject Property”) that is the subject of the Application. The Applicant requests special exception approval pursuant to 11-U DCMR § 320.2 of the Zoning Regulations to convert a one-family dwelling into a three-unit residential building. Following a public hearing, the Board voted to approve the Application. In granting the certified relief, the Board of Zoning Adjustment (“Board” or “BZA”) made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 20, 2018, the Office of Zoning sent notice of the Application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC for the area within which the Subject Property is located; and the single-member district ANC 4C-03. Pursuant to 11-Y DCMR § 402.1, on April 20, 2018, the Office of Zoning mailed notice of the hearings to the Applicant, ANC 4C, and the owners of all property within 200 feet of the Subject Property. Notice was published in the *D.C. Register* on April 27, 2018. (65 DCR 17.)

Party Status. The Applicant and ANC 4C were automatically parties in this proceeding. There were no additional requests for party status.

BZA APPLICATION NO. 19762
PAGE NO. 2

OP Report. The Office of Planning (“OP”) issued two reports. In its first report dated May 24, 2018, OP stated that it could not make a recommendation at the time and requested additional materials, including more detailed plans and renderings. (Exhibit 33.) After the Applicant submitted the updated materials (Exhibits 38, 38A-38C), OP submitted a supplemental report recommending approval of the special exception for a conversion pursuant to 11-U DCMR § 320.2. (Exhibit 40.)

DDOT Report. By memoranda dated May 16, 2018, DDOT indicated it had no objection to the approval of the Application, noting that the proposal will have no adverse impacts on travel conditions of the District’s transportation network. (Exhibit 33.)

ANC Report. At a regular public meeting on May 9, 2018, with a quorum present, the ANC voted 10-0-0 to oppose the Application. The ANC indicated that its opposition was based on concerns regarding: (1) outreach to adjacent neighbors and (2) concerns over development compliance with another nearby property owned by the Applicant. (Exhibit 36.)

Persons in Opposition. Ten letters and a petition in opposition were submitted to the record.

Persons in Support. No letters in support were submitted to the record.

FINDINGS OF FACT

1. The Subject Property is located at 1521 Varnum Street, N.W. (Square 2698, Lot 47).
2. The Subject Property is improved with a principal dwelling unit that was constructed circa 1923.
3. The Subject Property has a lot area of 2,966 square feet and a lot width of 23 feet.
4. Abutting the Subject Property to the west is 1523 Varnum Street, N.W., which is currently unimproved.
5. Abutting the Subject Property to the east is 1519 Varnum Street, N.W., which is improved with a row dwelling.
6. Abutting the Subject Property to the north and south are a public alley and Varnum Street, N.W., respectively.
7. The Subject Property is located in the RF-1 Zone District.
8. The Applicant is proposing to convert the existing residential building (the “Building”) to a three-unit residential building.

BZA APPLICATION NO. 19762
PAGE NO. 3

9. Accordingly, the Applicant requested special exception relief pursuant to 11-U DCMR § 320.2.
10. The Applicant is proposing to construct a third-story addition to the Building and a three-story addition at the rear of the Building. The third-story addition will be set back 13 feet from the front façade and will not alter any architectural elements original to the Building. The addition will be 35 feet in height, which is permitted as a matter of right in the RF-1 Zone.
11. The Applicant is not required to set aside units for Inclusionary Zoning, as the Applicant will increase the number of units from one unit to three units. Inclusionary Zoning applies to residential conversions proposing four or more units. (11-U DCMR § 320.2(b).)
12. There is an existing residential building on the Property at the time of filing an application for a building permit.
13. At 2,966 square feet, the lot area of the Subject Property exceeds the minimum lot area requirement of 2,700 square feet (i.e. 900 square feet per dwelling unit) as required pursuant to 11-U DCMR § 320.2(d).
14. No adjacent property has a solar system installed on its roof.
15. The addition will not block or impede any chimneys.
16. The proposed addition extends exactly ten feet past the only adjacent property to the east at 1519 Varnum Street, N.W.
17. The light and air available to neighboring properties will not be unduly affected by the addition, as any shadows from the addition would fall primarily on the roof of the only adjacent building.
18. The proposed addition will not unduly compromise the privacy and use of enjoyment of neighboring properties. After the hearing, the Applicant updated the plans to include screening on the sides of the balconies facing the adjacent property at 1519 Varnum Street, N.W. (Exhibit 55B), as well as a six-foot tall privacy fence.
19. The conversion and associated addition, as viewed from the street, alley and other public ways, will not substantially visually intrude upon the character, scale, and pattern of houses along the Varnum Street or the alley. The proposed changes to the front façade are repairs. The third-floor addition will be set back 13 feet from the front façade and will not be visible

BZA APPLICATION NO. 19762
PAGE NO. 4

from the street. As the Applicant is proposing an 89-foot rear yard, the Building will be significantly set back from the alley.

20. The Applicant provided plans, photographs, sections and elevations, as well as rendered views of the proposed conversion to sufficiently represent the relationship of the conversion to the buildings and views from Varnum Street and the adjacent alley.
21. The Applicant did not request any waivers from the special exception criteria in Subtitle U § 320.2.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief pursuant to 11-U DCMR § 320.2 of the Zoning Regulations in order to construct a third-story addition and a rear addition to the existing building, and to convert the building from one housing a principal dwelling unit to a three-unit apartment house. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations. Subtitle X § 901.2 authorizes the grant of a special exception 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.

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether an applicant has complied with the specific and general special exception requirements, which in this case are found in 11-U DCMR § 320.2 and 11-X DCMR § 901.2 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See, e.g. Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995).

Pursuant to 11-U DCMR § 320.2, a conversion of an existing residential building, existing on the lot prior to May 12, 1958, to an apartment house may be permitted as a special exception, subject to the enumerated conditions. These conditions include: (a) The maximum height of the residential building and any additions thereto shall not exceed 35 feet; (b) The fourth dwelling unit and every additional even numbered dwelling unit thereafter shall be subject to the inclusionary zoning set-aside requirements; (c) There must be an existing residential building on the property at the time of filing an application for a building permit; (d) There shall be a minimum of 900 square feet of land area per dwelling unit; (e) An addition shall not extend further than ten feet past the furthest rear wall of any principal residential building on the adjacent property; (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of an operative chimney

BZA APPLICATION NO. 19762
PAGE NO. 5

or other external vent on an adjacent property required by any municipal code; (g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing or permitted solar energy system (of at least 2kW) on an adjacent property; (h) A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size.; and (i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: (1) The light and air available to neighboring properties shall not be unduly affected; (2) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and (3) the conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley. In demonstrating compliance with 11-U DCMR § 320.2(i) the Applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways. (11-U DCMR § 320.2(j).) The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block (11-U DCMR § 320.2(k).) Finally, the Board may modify or waive not more than three of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with 11-U DCMR § 320.2(i). (11-U DCMR § 320.2(l).)

Based on the findings of fact, the Board concludes that the request for special exception relief, as represented by the submitted plans, testimony, and evidence, satisfies the requirements of 11-U DCMR § 320.2. The Board credits the testimony of the Applicant and the Office of Planning and finds that the proposed addition and conversion meet the enumerated conditions. As evidenced by the plans and testimony, the proposed addition will not exceed 35 feet in height. (Finding of Fact No. 10.) The Inclusionary Zoning set-aside requirements do not apply, as the Applicant is not proposing more than three units. (Finding of Fact No. 11.) There is an existing residential Building on the Subject Property and it has over 2,700 square feet of land area. (Findings of Fact No. 12-13.) The addition will not extend more than ten feet past the only adjacent property to the east and will not alter any architectural elements original to the Building. (Findings of Fact No. 10, 16). The addition will not interfere with any adjacent chimney, adjacent vents, or solar panels. (Findings of Fact No. 14-15.) The Applicant has not requested any waivers, as it meets the requirements of Subtitle U §§ 320.2(e) through § 320.2(h).

The light and air available to neighboring properties will not be unduly affected. The Applicant provided shadow studies demonstrating that the light and air available to the only adjacent property to the east, 1519 Varnum Street, N.W., will not be unduly affected by the proposed addition. (Exhibit 55A, Finding of Fact No. 17.)

The proposed addition will not compromise the privacy or enjoyment of the adjacent property. The Applicant updated its plans to include privacy screens on the proposed balconies and a privacy

BZA APPLICATION NO. 19762
PAGE NO. 6

fence to preserve the privacy and use of enjoyment of the adjacent property to the east (Exhibit 55B, Finding of Fact No. 18.) The adjacent property to the west is currently unimproved, therefore the Board finds that there would be no undue impacts on privacy or enjoyment for that property. (Finding of Fact No. 4.)

The Board finds also that the proposed addition, along with the original structure, will not visually intrude on the character, scale, or pattern of houses along the street frontage. The third-floor addition will be set back 13 feet from the front façade and will not be visible from the street. As the Applicant is proposing an 89-foot rear yard, the Building will be significantly set back from the alley. (Finding of Fact No. 19.)

For these same reasons, the Board finds that the proposed addition will not adversely affect the use of neighboring properties as required by 11-X DCMR § 901.2. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP’s recommendation that the Application should be approved.

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) (2001).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

In this case, ANC 4C voted 10-0-0 to recommend denial of the Application, asserting concerns regarding: (1) outreach to adjacent neighbors and (2) concerns over development compliance with another nearby property, also owned by the Applicant. Neither issue is legally relevant to the Board’s decision whether to grant this special exception. While community outreach is encouraged, it is not an element that must be proven to obtain special exception relief. The Board’s rules do require public notice, and the Board finds that proper notice was given to all owners within 200 feet of the Subject Property. In any event, the Applicant testified that it met with the adjacent neighbor, Mr. Stokes, and with ANC Commissioner Ulysses Campbell in person prior to filing the BZA Application. Similarly, the Zoning Regulation include no “clean hands” provision, and therefore any concerns over noncompliance on other properties should be shared with the Department of Consumer and Regulatory Affairs, which is tasked with the administrative enforcement of the Construction Codes and the Zoning Regulations.

The persons in opposition raised concerns regarding: (1) foot traffic; (2) deliveries; (3) alley trash dumping; (4) security and safety; (5) sewage; (6) diminished property value; (7) disruption of character, scale, and pattern; (8) noise and smoking; and (9) privacy. Issues regarding light and

BZA APPLICATION NO. 19762
PAGE NO. 7

air, privacy, and character, scale, and pattern of houses have been addressed above. The majority of letters requested that the Board consider the impact of the matter-of-right project at the adjacent property at 1523 Varnum Street, N.W. Construction on an adjacent property is not a legally relevant issue or concern.

While the majority of these concerns are not legally relevant, the Board requested the Applicant take measures to mitigate any concerns regarding safety, security, and privacy. The Applicant revised the plans to include privacy screening on the east-facing side of the proposed rear balconies. (Exhibit 55B.) The Applicant is also proposing a roll-up garage door at the rear of the property and a six-foot-tall security fence around the perimeter. (Exhibits 55A-55B.). The Board also delayed its decision date until July 25, 2018 at the request of the ANC so that the ANC could respond to the updated renderings and materials.

Based on the case record, the testimony at the hearing, and the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under 11-U DCMR § 320.2, to allow for an addition to and conversion of the Subject Property from a principal dwelling unit to a three-unit residential building. Accordingly, it is **ORDERED** that the Application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 10 - ARCHITECTURAL PLANS AND ELEVATIONS - AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall implement the privacy measures identified in Exhibit 55B, including the privacy screening, a privacy fence, and adequate landscaping.
2. The Applicant shall implement the security measures identified in Exhibit 55A including roll-up security doors at the rear of the Subject Property.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Robert E. Miller, Lesylleé M. White, and Lorna L. John to APPROVE).

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: January 23, 2019

BZA APPLICATION NO. 19762
PAGE NO. 8

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.

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

BZA APPLICATION NO. 19762
PAGE NO. 9

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.