

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17614 of 1825 19th Street LLC pursuant to 11 DCMR § 3103.2, for a variance from the prohibition against enlarging a nonconforming structure under subsection 2001.3, and a variance from the off-street parking requirements under § 2101.1, allowing a four-unit residential building in the DC/R-5-B zone district at premises 1825 19th Street, N.W. (Square 132, Lot 218).

HEARING DATE: May 22, 2007

DECISION DATE: June 5, 2007

DECISION AND ORDER

This self-certified application was submitted January 11, 2007 by 1825 19th Street, LLC (“Applicant”), the owner of the property that is the subject of the application. The application requested area variance relief from requirements applicable to the enlargement of nonconforming structures devoted to conforming uses and from parking requirements to allow the construction of an addition to an existing row dwelling and its conversion to a four-unit apartment house in the Dupont Circle overlay/R-5-B zone district at 1825 19th Street, N.W. (Square 132, Lot 218).

Following a hearing on May 22, 2007 and a public meeting on June 5, 2007, the Board voted 5-0-0 to grant the application.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated January 17, 2007, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 2, Advisory Neighborhood Commission (“ANC”) 2B, and Single Member District/ANC 2B08. Pursuant to 11 DCMR § 3113.13, on March 5, 2007 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 2B, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 16, 2007 (54 DCR 2336).

Party Status. In addition to the Applicant, ANC 2B was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to Henry Gallagher, the owner and resident of the property abutting the subject property to the south.

Applicant’s Case. The Applicant presented evidence and testimony from Christopher Zimmer, a representative of the owner, 1825 19th Street LLC, and Alireza Honarkar, the project architect. The Applicant described plans to convert the row dwelling to a four-unit condominium

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apartment house by constructing a new partial fourth floor and by adding three balconies at the rear of the building, which would provide an area of open space as well as access to a new exterior staircase at the rear of the building.

According to the Applicant, the variances were necessary to permit the renovation of the existing building on the subject property so as to return the property to an economically feasible residential use. The Applicant testified that a financial analysis was undertaken and real estate and construction professionals were consulted to analyze various options for renovating the building to help the Applicant decide whether to restore the property to use as a single-family dwelling, as flats, or as an apartment house with three or four units. According to the Applicant, the most viable scenario was the creation of a four-unit apartment house, considering the extensive disrepair of the building, the need to devote part of the interior space of the building to new infrastructure necessary to bring the building up to code, the lack of on-site parking, and the absence of open space on the property. The Applicant also testified that initial plans for the reconstruction of the rear of the building were revised in response to comments from the Historic Preservation Office, which requested the preservation of the existing bay projection, possibly with the addition of balconies and a rear staircase.

The Applicant asserted that the property was exceptional due to a confluence of factors, including a subdivision that made the subject property smaller than most other lots in the immediate vicinity; improvement of the property with a building that did not occupy 100 percent of the lot, unlike other similar properties nearby; and recognition of the building as contributing to a historic district. According to the Applicant, strict compliance with the Zoning Regulations would be unnecessarily burdensome and would preclude economically feasible renovation of the property, while approval of the requested variances would not impair the intent, purpose, or integrity of the zone plan.

The Applicant indicated that a portion of the rear yard would be devoted to a trash storage facility with receptacles for the four condominium units. A private trash-collection service would be retained to collect trash from the storage facility. The Applicant also testified that four parking spaces, in garages located within three blocks of the subject property, would be leased for two years, beginning September 1, 2008. The Applicant proposed conditions of approval of the application that would require the Applicant to ensure, by including provisions in relevant condominium documents, that each condominium owner would maintain an off-street parking space, that no grills would be permitted on the rear balconies of the units, and that a private trash removal service would be used to pick up trash, which would be stored in a trash storage facility on the property.

Government Reports. By memorandum dated May 15, 2007, the Office of Planning (“OP”) recommended approval of the requested parking variance, provided that the Applicant incorporated provisions in the condominium bylaws requiring all unit owners to maintain an off-street parking space, and that a copy of the bylaws was placed in the public record prior to issuance of a certificate of occupancy. According to OP, the Applicant’s project also required

variance relief from the minimum floor area ratio (“FAR”) of 1.8 allowed under § 402.4, the minimum rear yard setback of 15 feet, and the maximum lot occupancy of 60 percent.

OP recommended denial of the additional variance relief on the grounds that the application did not adequately explain how the Zoning Regulations presented a practical difficulty and that approval of the application would be contrary to the intent of the Zoning Regulations. OP stated that the “exceptional conditions” claimed by the Applicant were not factors unique to the subject property or directly related to the relief requested. OP concluded that the variances, other than the parking variance, would permit enlargement of a nonconforming building but the Applicant had not explained “how not being allowed to *further* over-build the site” would create a practical difficulty. OP also concluded that approval of the variances, other than the parking variance, would impact the privacy and enjoyment of neighboring dwellings and rear yards, and would impair the intent, purpose, and integrity of the zone plan by allowing an increase in the nonconformity of the existing building on the subject property.

ANC Report. By letter dated March 26, 2007, Advisory Neighborhood Commission 2B indicated that, at a public meeting on March 14, 2007 with a quorum present, the ANC decided to take no action in this matter.

Persons in Support of the Application. The Board received several letters and heard testimony from persons in support of the application, including some residents living near the subject property. The persons in support of the application commented favorably on the rehabilitation of a deteriorated property and the design of the proposed addition and balconies, and asserted that approval of the application would not cause objectionable impacts related to noise, parking, or trash removal.

Party in Opposition to the Application. The party in opposition testified that air flow would be adversely affected by the Applicant’s proposed fourth-story addition, and that the proposed roof deck and balconies would infringe on the privacy of neighboring residents. According to the party in opposition, use of the building as a four-unit apartment house would exacerbate an already severe trash disposal problem in the rear of the property.

Person in Opposition to the Application. The Board received a letter in opposition to the application from the owner of 1827 19th Street, N.W., a rowhouse abutting the subject property to the north. The letter asserted that approval of the application would result in the loss of sunlight, air, and privacy to the abutting property as well as problems related to parking and trash collection. The Dupont Circle Citizens Association also submitted a letter in opposition, citing concerns about privacy, light, and air and declining property values affecting neighboring properties, and the effect of overbuilding on the historically significant neighborhood.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 1825 19th Street, N.W., on the east side of 19th Street near the intersection with Swann Street (Square 132, Lot 218). The rectangular lot is 23 feet wide and 60 feet deep, with an area of 1,381 square feet.
2. The site is improved with a three-story row dwelling, with basement, built in 1892. The building contains approximately 3,100 square feet on three floors, with an unfinished basement of 1,161 square feet. The building has been vacant for at least 25 years and has fallen into a state of disrepair.
3. The subject property is located in the Dupont Circle historic district, and the building is contributing to the historic district.
4. The properties abutting the subject property on both sides and to the rear are also improved with row dwellings. Surrounding development consists primarily of similar row dwellings, some of which have been converted to flats or apartment houses.
5. The subject property and the two lots to the south were formerly larger – a size similar to other neighboring lots on the east side of 19th Street – until a subdivision some time before 1939. The subdivision created two new lots, facing Swann Street, in the area formerly comprising the rear part of the three lots facing 19th Street. The dwellings on the three lots facing 19th Street just north of Swann Street, likely constructed after the subdivision, are smaller than the other dwellings on 19th Street to the north of the subject property.
6. The subject property does not have vehicular access to the alleys in the interior of Square 132. A pedestrian walkway easement extends across the two abutting lots to the east to a 10-foot-wide alley that extends north from Swann Street.
7. The subject property cannot accommodate any off-street parking due to the lack of vehicular access to the property.

Applicant's Project

8. The Applicant plans to convert the existing row dwelling into four condominium apartments, one per floor. The third-floor unit would extend into the proposed fourth-floor addition.
9. The Applicant plans to add 416 square feet of gross floor area to the interior of the existing building by constructing a new partial fourth floor, and by adding a new exterior spiral staircase at the rear of the building to improve safety and provide access to the trash removal services provided in the alley. The Applicant also plans to build rear

- balconies, eleven feet wide and projecting less than six feet, for each apartment except the basement unit.
10. The partial fourth-floor addition will not be visible from the street level. The height of the building after the addition is constructed will not exceed the maximum 50-foot height permitted in the R-5-B zone.
 11. The Historic Preservation Review Board gave conceptual approval to the Applicant's project on November 16, 2006. Approval of final construction plans was delegated to the Historic Preservation Office.

Requested Variances

12. Zoning requirements applicable to the site include a maximum floor area ratio of 1.8 for buildings devoted to apartment house or other residential use, a maximum lot occupancy of 60 percent, and a rear yard of at least 15 feet. 11 DCMR §§ 402.4, 403.2, 404.1. The existing building on the subject property is nonconforming with respect to FAR (at 2.36), lot occupancy (at 81 percent), and rear yard (at nine feet, six inches).
13. The proposed construction will increase the FAR of the building to 2.71 and will increase lot occupancy to 87 percent. The increased FAR will result from the new partial fourth floor and the new exterior staircase. The additional lot occupancy will result from the addition of the staircase and three balconies. The rear construction will reduce the rear yard to seven feet, six inches.
14. The Applicant requested an area variance to allow an addition to a nonconforming structure devoted to a conforming use. The planned enlargement will not affect the height of the existing building or create any new nonconformity, but will increase nonconforming aspects with respect to floor area ratio, lot occupancy, and rear yard setback.
15. Generally, the parking requirement applicable in the DC/R-5-B district calls for one parking space for every two dwelling units. Because the building on the subject property was used as a single-family dwelling prior to the adoption of the Zoning Regulations, the property is deemed to provide one off-street parking space. The conversion of the building to a four-unit apartment building would thus require the provision of one off-street parking space. The Applicant requested a parking variance so as not to provide any parking on the subject property.

Harmony with Zone Plan

16. The Dupont Circle overlay district is intended to protect the "low scale, predominately residential character, independent small retail businesses, human scale streetscapes, and historic character" of the relevant area. 11 DCMR § 1501.1. Purposes of the DC overlay include (i) to require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk; (ii) to ensure a general compatibility in the scale of new buildings with older, low-scale buildings by restricting the maximum

permitted height and floor area ratio of new buildings to that of the underlying zone; (iii) to protect the integrity of buildings contributing to the historic district; (iv) to enhance the residential character of the area by maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development; (v) to ensure compatibility of development with the Comprehensive Plan; and (vi) to preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide. 11 DCMR § 1501.4.

17. The R-5 districts are general Residence districts designed to permit flexibility of design by permitting, in a single district, all types of urban residential development if they conform to the height, density, and area requirements. 11 DCMR § 350.1. The R-5-B district permits a moderate height and density. 11 DCMR § 350.2.

CONCLUSIONS OF LAW

The Applicant seeks area variance relief from the prohibition against enlarging a nonconforming structure devoted to a conforming use under § 2001.3 and a variance from the off-street parking requirements under § 2101.1 to allow the construction of an addition to an existing row dwelling and its conversion to a four-unit apartment house in the Dupont Circle overlay/R-5-B zone district at 1825 19th Street, N.W. (Square 132, Lot 218).¹ The Board is authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation 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. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

Based on the above findings of fact, and having given great weight to the recommendations of the Office of Planning, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted.

The subject property faces an exceptional situation or condition arising principally from a subdivision undertaken before the current version of the Zoning Regulations went into effect, coupled with the nature of the existing row dwelling on the subject property, which was built before even the first Zoning Regulations became effective. The subdivision greatly reduced the area available for a rear yard setback on the subject property and eliminated the possibility of vehicular access to the subject property through the alley, thereby eliminating the opportunity to locate any parking spaces on the lot. The subdivision also contributed to the other

¹ The Office of Planning asserted that the Applicant's project also required variance relief from requirements pertaining to floor area ratio, rear yard setback, and lot occupancy. The Board finds that these aspects of relief are subsumed in the Applicant's request for relief to enlarge a nonconforming building, since the building in question is nonconforming with respect to FAR, rear yard setback, and lot occupancy.

nonconforming aspects of the subject property once the row dwelling was built, because, while the row dwelling was not as large as the residences built on neighboring lots that had been similar in size to the subject property before the subdivision, the dwelling on the subject property nevertheless became nonconforming with respect to subsequently adopted lot occupancy, rear yard, and floor area ratio because of the smaller lot size that resulted from the subdivision.

The Board does not agree with the assertion of the Office of Planning that none of the “confluence of factors” claimed by the Applicant as giving rise to an extraordinary or exception situation were unique to the subject property or directly related to the relief requested. The Applicant undertook a rigorous review of options for the reuse of the row dwelling on the subject property in an economically feasible manner, considering the building’s current derelict condition and history of poor maintenance, the need for new facilities, a financial analysis, and input from real estate and construction specialists. The Applicant’s plan for renovation of the building as a four-unit apartment building was based on the results of that review, as well as a recommendation from the Historic Preservation Office to retain the rear façade of the building. With regard to the need for a parking variance, the Board notes that the subject property cannot accommodate any parking due to the lot occupancy of the row dwelling and the lack of vehicular access to the nearby alley.

The Board concludes that the requested variances can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The degree of relief requested is relatively minor, comprising one parking space, a small addition that will not increase the height of the building beyond that permitted as a matter of right and will not be visible from the street, small balconies at the rear of the property that will provide some open space for the apartments’ residents, and a small spiral staircase that will give residents access to the trash storage area at the rear of the property. The Board was not persuaded by the Office of Planning or the party in opposition that the addition and balconies would infringe on the privacy of residents of nearby dwellings, because the balconies at the subject property will be small and utilitarian.

The proposed use of the building as an apartment house is permitted in the DC/R-5-B zone, and will be consistent with the residential use of neighboring properties, which include many row dwellings that have been converted to multi-family use. The project is consistent with the purposes of the Dupont Circle overlay district, and approval of the requested variances will allow the renovation and return to viable residential use of a row dwelling that has long been vacant and in poor condition.

The Board declines to adopt the conditions of approval proposed by the Applicant or the Office of Planning as they are outside the scope of the Board’s authority in this proceeding. The Office of Planning suggested a condition requiring the Applicant to ensure that all future unit owners would maintain an off-street parking space.² However, OP did not offer persuasive advice on

² The Applicant concurred with OP’s proposed condition concerning off-street parking, and also proposed two conditions relating to the use of outdoor grills and to trash removal service. The Board declined to adopt those two

how the Board's adoption of the proposed condition would be relevant or appropriate to its deliberations on the Applicant's request for variance relief. The Applicant requested a variance from the requirement to provide one off-street parking space. OP's proposed condition would require all future unit owners, regardless of whether a unit owner owned a vehicle, to maintain an off-street parking space. The Board declined to adopt OP's suggestion as overly broad and not necessary since the Board determined that the requested variance would not cause substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for area variance relief from requirements applicable to the enlargement of a nonconforming structure devoted to a conforming use and from parking requirements to allow the construction of an addition to an existing row dwelling and its conversion to a four-unit apartment house in the Dupont Circle overlay/R-5-B zone district at 1825 19th Street, N.W. (Square 132, Lot 218). Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: **5-0-0** (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, John A. Mann II and John G. Parsons to grant the application)

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: NOV 07 2007

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, 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

conditions, which addressed aspects of the project that are not subject to zoning requirements but are governed by other titles of the District of Columbia Municipal Regulations.

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WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 of the D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 7, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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