

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



**Application No. 18122 of Arthur G. Carr**, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under section 401.3 to allow the conversion of a flat (two-family dwelling) to a three-unit apartment building in the R-4 District at premises 815-817 A Street, N.E. (Square 919, Lot 31).

**HEARING DATE:** October 26, 2010  
**DECISION DATE:** November 2, 2010

**DECISION AND ORDER**

This application was submitted on July 6, 2010 by Arthur Carr (“Applicant”), the owner of the property that is the subject of the application. The application requests an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow conversion of a two-unit flat into a three-unit apartment building in the R-4 District at 815-817 A Street, N.E. (Square 919, Lot 31). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the requested variance subject to a condition precluding the construction of a roof deck on the accessory garage at the subject property.

**PRELIMINARY MATTERS**

Notice of Hearing. Pursuant to 11 DCMR § 3112.14, on July 27, 2010 the Office of Zoning mailed letters providing notice of the hearing to the Applicant; to Advisory Neighborhood Commission (“ANC”) 6A, the ANC in which the subject property is located; and to the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on July 30, 2010 (57 DCR 6720) and on August 20, 2010 (57 DCR 7663).

Party Status. The Applicant and ANC 6A were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Timothy Hauser, a resident of 9<sup>th</sup> Street in a row dwelling that abuts the subject property at the rear.

Applicant’s Case. The Applicant provided evidence and testimony describing the proposed conversion of the building at the subject property from a two-family flat into a three-unit apartment building. According to the Applicant, the building is currently underutilized as a flat with storage and office use on the ground floor and in the basement, and its design prevented conversion of the entire building into a two-family dwelling, in light of the large size of each floor and the lack of integration between the first floor, which has a separate entrance, and the

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flats on the upper stories. The Applicant noted that, in 1991, the Board conditionally approved an area variance allowing conversion of the building into three apartments,<sup>1</sup> and testified that the conversion had not been undertaken previously due to a lack of funds.

Party in opposition. The party in opposition asserted that the conversion of the building on the subject property to a three-unit apartment building would result in increased density in an area where there are already a number of apartment buildings, as well as cause adverse impacts related to noise, traffic, parking, and loss of privacy. The party in opposition also indicated that he could support the requested variance if the Board conditioned its approval on an agreement similar to one reached between the Applicant and neighbors in the 1991 proceeding.

OP Report. By memorandum dated October 19, 2010, the Office of Planning (“OP”) indicated no objection to approval of the requested variance. According to OP, absent variance relief, the unusual conditions confronting the subject property would result in a practical difficulty that would require the first floor and basement of the building to remain vacant or would limit their use to a home office or use accessory to the flats on the upper floors, or would require conversion of the building into two large residential units (each at least 2,200 square feet), one on the first floor and basement and another formed by converting the two existing flats into a single unit.

OP concluded that approval of the requested variance would not result in substantial harm to the public good or impair the intent of the Zoning Regulations, notwithstanding the limit on conversions of existing buildings into apartment houses imposed by the minimum lot area requirement in the R-4 District. OP indicated no objection to approval of the relief sought by the Applicant in light of the unusual circumstances of the building, the Board’s previous approval of an apartment building at the subject property, and “the potential benefit to the neighborhood of putting an underused and potentially vacant first floor into productive use.” (Exhibit 32.)

ANC Report. By letter dated October 19, 2010, ANC 6A indicated that, at a regularly scheduled and properly noticed meeting on October 14, 2010 with a quorum present, the ANC voted 7-0-0 to support the application subject to the condition that a deck shall not be constructed on the roof of the rear garage. According to the letter, the ANC supported the Applicant’s request for a variance “because, given the unique structure of the building, the strict application of the lot area requirements would result in peculiar and exceptional practical difficulties to and undue hardship upon the property owner.” (Exhibit 33.)

Persons in support. The Board received letters in support of the application from some neighbors living near the subject property, who generally cited the large size of the building, the limited changes to the building planned by the Applicant, and the availability of parking on the subject

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<sup>1</sup> The Board granted Rome Baptist Church, a prior owner of the property, a variance to allow conversion of the building (then a “church structure”) to “a 3-unit apartment house, basement through third floor” subject to the condition that “development of the project shall comply with the agreement marked as Exhibit No. 33 of the record.” See Application No. 15569, order issued November 25, 1991.

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property. The Stanton Park Neighborhood Association stated that “[s]ome accommodation to protect the rear yard privacy of residences on Ninth St. is warranted,” and recommended that the Applicant should “negotiate an agreement similar to that recommended by the BZA in 1991.” (Exhibit 24.) The Capitol Hill Restoration Society also requested that the Board adopt the conditions of approval that were incorporated in its 1991 order. (Exhibit 35.)

Person in opposition. The Board also received a letter in opposition to the application, which expressed concern that additional conversions of homes into apartment buildings would destroy the character of the residential neighborhood and exacerbate problems with noise, traffic congestion, and parking shortages.

**FINDINGS OF FACT**

**The Subject Property**

1. The subject property is located at 815-817 A Street, N.E., an interior lot on the south side of the street (Square 919, Lot 31).
2. The subject property is improved with a three-story, plus basement, building constructed in 1913. The building originally housed a grocery store on the ground floor and two flats on the second and third floors. Other prior uses of the building include a rooming house and subsequently a church on the ground floor and basement, with flats on the upper floors, until the building was acquired by the Applicant in the early 1990s.
3. The building is currently used as a two-family dwelling, with flats on the second and third floors. The ground floor and basement – approximately 2,200 square feet of space – are used as a home office and for storage.
4. The ground floor has an entrance separate from the entrance to the flats, as well as a separate address (817 A Street, N.E.). The building lacks an interior staircase that would connect the ground floor with the second and third floors.
5. The upper floors of the building have small rear decks that are used by the residents of the flats for storage and as recreational space.
6. The subject property is rectangular, 25 feet wide and approximately 92 feet deep. The lot area is 2,312 square feet. The existing lot occupancy is approximately 86%.
7. Each floor of the building at the subject property contains more than 1,200 square feet of space. The building is apparently the largest building in the square that is not already used as an apartment building.

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8. The subject property contains one parking space that complies with requirements of the Zoning Regulations, although the Applicant indicated that two cars can be parked on-site. The parking space is contained in a one-story accessory garage located at the rear of the lot.
9. Most lots in the immediate vicinity of the subject property are developed with row dwellings that are used as one-family dwellings or as flats, or with moderate-density apartment buildings.

**The Applicant's Project**

10. The Applicant proposes to convert the ground floor and basement of the building to residential use. The existing residential use will continue on the upper stories, so that, after the conversion, the building will contain three apartments. No changes to the exterior of the building are planned.

**Harmony with Zoning**

11. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The primary purpose of the R-4 District is the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.)
12. Pursuant to § 401.3, conversion of a building in an R-4 District to an apartment house requires a minimum lot area of 900 square feet per apartment created by the conversion. Thus, a conversion creating three apartments requires a lot area of at least 2,700 square feet. The subject property requires a variance of 388 square feet (14%) to allow conversion to a three-unit apartment house.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant requests area variance relief from the 900-square-foot minimum lot area requirement under § 401.3 of the Zoning Regulations to allow conversion of a two-unit flat into a three-unit apartment building in the R-4 District at 815-817 A Street, N.E. (Square 919, Lot 31). The Board is authorized under the Zoning Act of 1938 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 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 § 3103.2.)

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Based on the findings of fact, the Board finds that the application satisfies the requirements for the requested area variance relief. The existing building at the subject property creates an exceptional condition in light of its large size and configuration, especially with respect to the lack of interior access between the first floor and basement and the upper floors. The building's configuration reflects its historical usage of nonresidential uses on the ground floor and flats on the upper two floors, with separate entrances and lack of interior stairways between the ground floor and upper floors.

The Board also concludes that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the owner of the property. The Zoning Regulations do not allow the conversion of existing buildings to apartment use unless the property in question contains at least 900 square feet of lot area for each apartment unit created by the conversion. In this case, the subject property has a lot area of slightly more than 2,312 square feet, a shortfall of less than 400 square feet from the 2,700 square feet required for a three-unit apartment building. Absent zoning relief, the ground floor and basement would likely remain vacant or underutilized as storage and home office space. The Board credits the Applicant's testimony that conversion of the entire building to a two-family flat would be prohibitively expensive, particularly due to the need to reconfigure the two existing flats, which were previously renovated by the Applicant, into one unit.

The Board credits OP's testimony that, under the circumstances, the requested relief can be granted without causing 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. The conversion will not require any changes to the exterior of the building but will maintain the residential character of the property by putting an underused and potentially vacant first floor into productive residential use. Because the subject property contains an off-street parking space, the property satisfies the zoning requirement for parking applicable to a three-unit apartment house and thus is unlikely to create objectionable impacts related to parking. The Board does not find that the creation of a third dwelling unit at the subject property would unduly increase density or cause any adverse impacts related to noise or traffic.

The Board is 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)). In this case, ANC 6A voted unanimously to support the application, subject to a condition precluding the Applicant from constructing a roof deck on top of the accessory garage at the subject property. The ANC noted that the application satisfied the first two prongs of the variance test – citing "the unique structure of the building" and that "the strict application of the lot area requirements would result in peculiar and exceptional practical difficulties to and undue hardship upon the property owner" (Exhibit 33) – but was apparently concerned that additional residents living at the subject property could create a demand for additional recreational space that could create adverse impacts on the use of neighboring property. The Board shares that concern and therefore adopts

the proposed condition in this order. The Applicant indicated his willingness to accept the condition proposed by the ANC, stating that no new deck was planned for the garage.

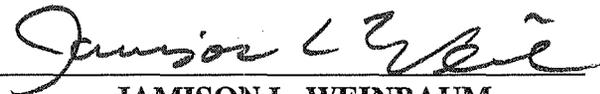
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the 900-square-foot minimum lot area requirement under § 401.3 of the Zoning Regulations to allow conversion of a two-unit flat into a three-unit apartment building in the R-4 District at 815-817 A Street, N.E. (Square 919, Lot 31). Accordingly, it is **ORDERED** that the application (pursuant to Exhibit 28 – Plans) is **GRANTED**, subject to the **CONDITION** that the Applicant shall not construct a deck on the roof of the accessory garage at the rear of the subject property.

**VOTE:**            **3-0-2**            (Meridith H. Moldenhauer, Jeffrey L. Hinkle, and Anthony J. Hood (by absentee ballot) to Approve; Nicole C. Sorg not participating; No other Board member (vacant) participating)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY: \_\_\_\_\_



**JAMISON L. WEINBAUM**  
Director, Office of Zoning

**FINAL DATE OF ORDER:**           MAR 18 2011          

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION 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 CONDITION 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on MAR 18 2011, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:

  
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Director, Office of Zoning

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