

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18312 of Rashid Salem, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401.3, to allow a conversion of a one-family dwelling into a four-unit apartment house in the R-4 District at premises 1341 Irving Street, N.W. (Square 2848, Lot 815).¹

HEARING DATE: February 14, 2012
DECISION DATE: March 13, 2012

DECISION AND ORDER

This self-certified application was submitted October 3, 2011 by Rashid Salem (“Applicant”), the owner of the property that is the subject of the application. The application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirement under § 401.3 to allow a conversion of a one-family dwelling into a four-unit apartment house in the R-4 District at premises 1341 Irving Street, N.W. (Square 2848, Lot 815). Following a public hearing, the Board of Zoning Adjustment (the “Board”) voted 4-1 on March 13, 2012 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated October 6, 2011, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 2; Advisory Neighborhood Commission (“ANC”) 1A, the ANC for the area within which the subject property is located; and the single-member district ANC 1A06.

A public hearing was scheduled for February 14, 2012. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on November 11, 2011, mailed notice of the hearing to the Applicant, the

¹ In addition to the § 401.3 relief, the application originally sought a variance from the lot occupancy requirement of § 403 to construct rear balconies on all three floors. The Applicant withdrew the lot occupancy request in its pre-hearing statement filed on January 3, 2012, and provided revised plans without the balconies.

BZA APPLICATION NO. 18312
PAGE NO. 2

owners of property within 200 feet of the subject property, and ANC 1A. Notice was published in the *D.C. Register* on November 11, 2011. (58 DCR 9509.)

Requests for Party Status. In addition to the Applicant, ANC 1A was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided testimony and evidence from Rashid Salem, the Applicant and owner of the subject property; Tim Chamberlain, owner of Kealee Construction, LLC, the contractor for the reconstruction/addition project; Janet Bloomberg of Kube Architecture, the project architect; and Barrett Evans, a real estate agent and developer, and a resident of the Columbia Heights neighborhood.

Government Reports. By report dated February 7, 2012 and through testimony at the public hearing, OP recommended denial of the requested variance. According to OP, "Although the building is exceptional in its state of disrepair, that condition does not appear to lead to a practical difficulty for the applicant." OP also testified in its report that the relief would be a detriment to the public good because the conversion "would diminish the availability of family-sized housing stock in the area." OP also stated that the relief would impair the intent of the Zoning Regulations.

ANC Report. By Form 129 – Advisory Neighborhood Commission (ANC) Report, including an attachment, filed with the Office of Zoning on February 29, 2012, ANC 1A indicated that, at a regular, duly noticed monthly public meeting held on January 11, 2012 with a quorum present, the ANC voted 8-1-1 to recommend that the Board approve the application with the condition that the Board limit the approval to three units, rather than four units. This letter noted that the four-unit scenario prompted concerns about parking from some commissioners.

Persons in Opposition. The Board heard testimony from two persons in opposition to the application, including Steve Greenwood of 1317 Irving Street, N.W., and Andrew Krieger of 1309 Irving Street, N.W. The Board received a letter in opposition signed by various neighbors, as well as several letters of support from neighbors, including the two neighbors immediately adjacent to the subject property.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 1341 Irving Street, N.W., Square 2848, Lot 815.
2. Lot 815 is a rectangular shaped interior lot with a land area of 2,471.58 square feet. The lot is approximately 16.67 feet wide and 148.265 feet long.
3. The subject property is located in the R-4 Zone District.

BZA APPLICATION NO. 18312

PAGE NO. 3

4. The subject property is improved with a three-story row dwelling with one below-ground level.
5. The structure was originally constructed around 1910, and a two-story addition was added to the rear of the existing building in the early 1950's.
6. The subject property currently contains one parking space.
7. The 1300 block of Irving Street, N.W. is comprised almost exclusively of row dwelling structures consisting of one-family dwellings, flats, and converted apartment houses.
8. The subject property is located approximately 360 feet from the Columbia Heights Metrorail Station on the corner of 14th and Irving Streets, N.W.

The Applicant's Project

9. The Applicant proposes to construct a three-story addition to the rear of the structure on the subject property and to restore and renovate the exterior and interior of the remaining existing structure. In the process, the Applicant intends to convert the structure into a four-unit apartment house with one living unit on each level.
10. A conversion to an apartment house is permitted in the R-4 zone district, pursuant to § 330.5(e), subject to §§ 401.3 and 403.2.
11. Subsection 401.3 requires a minimum land area requirement of 900 square feet for each unit, while § 403.2 requires a maximum lot occupancy of the greater of (i) 60% or (ii) the existing lot occupancy as of the date of conversion.
12. Although the project does not exceed the lot occupancy limit, it will not comply with the land area requirement. The subject property consists of 2,471.58 square feet of land. With four apartment units, the land area provided by the subject property is approximately 617.9 square feet per apartment unit.
13. The completed project will continue to provide one legal parking space and will also provide an adjacent compact parking space as a "limited common element" available for purchase by one of the eventual condominium unit owners.

The Exceptional Condition of the Subject Property

14. Prior to acquisition by the Applicant, the subject property was vacant for approximately 15 years.

BZA APPLICATION NO. 18312

PAGE NO. 4

15. A previous owner of the property was in partnership with a developer who partially demolished the interior of the building, and then abandoned the project.
16. The structure is now only a gutted shell with walls and a roof and, as detailed below, is in a state of disrepair.
17. The Board credits the findings contained in the report of the Applicant's structural engineer, Steven D. Goughnour, P.E., of Goughnour Engineering, PC, that (i) the floor joists over the crawl space at the rear of the house were severely rotted and several were cracked and buckled, (ii) the wood header supporting the rear wall of the upper two levels is severely rotted and cracked, (iii) the wood joists supporting the low roof at the rear of the building are rotted and are cracked and buckled, (iv) the wood roof sheathing for the high roof as water stains, the roof joists also appear to be stained and some of the joists appear to have rot, (v) the two story wall at the side of the west side of the rear portion of the house is cracked and has shifted, and (vi) the rear wall of the upper levels is cracked and shifting around windows.
18. Mr. Goughnour's professional recommendation was to demolish the two-story rear section of the structure as well as the rear wall of the remaining three-story portion of the building (which the Applicant noted he had already done by the time of this hearing). Tim Chamberlain, owner of Kealee Construction, and general contractor for this project, agreed with this analysis.
19. In order to replace the two-story rear section of the building, the new addition must be constructed to the lot line thereby removing the nonconforming closed court. This resulted in significant additional expense to relocate the structure's existing footprint and foundation.
20. In addition, every other significant aspect of the structure needed to be replaced, including all plumbing, HVAC, electrical, windows, floor joists, and roof.

The Exceptional Condition Results in a Practical Difficulty

21. The additional expense to restore the subject building, caused by the building's extraordinary state of disrepair, was such that restoring the structure as anything less than four apartment units was not an economically viable option, after considering probable market values for the finished product.
22. The Board accepts the conclusion of comparative market analysis evidence submitted by the Applicant that the average price *per square foot* for condominium units in this section of the city was markedly lower for units larger than 2,000 square feet than it was for units of less than 1,600 square feet.
23. Based on those projected market values, the Board finds that, as a result of extraordinary cost to restore the subject building, the development of the subject property as anything less than

a four-unit building would not provide revenue in excess of the Applicant's total costs to acquire and restore the property.

Public Good and Integrity of the Zone Plan

24. The Applicant has agreed to restrict eventual condominium owners from obtaining Residential Parking Permits and will adopt and record condominium covenants, which memorialize that restriction, as conditioned by the Board.
25. Successful restoration will stabilize this property, whereas the denial of this application would result in the property continuing in its blighted state for the foreseeable future.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3), 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.)

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

The District of Columbia Court of Appeals has held that “an exceptional or extraordinary situation or condition” may encompass the buildings on a property, not merely the land itself, and may arise due to a “confluence of factors.” *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

Because a conversion to a four-unit apartment building would require a land area of 3,600 square feet, or 900 square feet per unit, and the lot consists of only 2,471 feet, or 671 square feet per

BZA APPLICATION NO. 18312

PAGE NO. 6

proposed unit, the applicant needs a variance from the minimum lot restrictions under 11 DCMR § 401.3 to allow the conversion of the subject building to a four-unit apartment house.

The Board concludes that the Application satisfies the requirements necessary for variance relief, as follows:

The Board concludes that the condition and the circumstances surrounding the subject property constitute an exceptional condition and situation. The building has been blighted and vacant for 15 years, is in a state of severe dilapidation and suffers from structural integrity to such a degree that a structural engineer recommended that the owner demolish the rear portion of the structure and the rear wall of the remaining portion of the structure.

The Board concludes that complying with the Zoning Regulations by restoring the building as anything less than a four-unit residential building would impose an unnecessary burden upon the owner as a result of the extraordinary additional expense necessary to restore the subject building back to productive and sustainable use. Based on the building's extreme state of disrepair and the expense required to restore the building, developing anything less than a four-unit apartment house in this case would not be economically viable and would put the property in danger of remaining idle. Preventing usable land from remaining idle is one of the primary reasons for providing variance relief. Variances from the strict application of the Zoning are "designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an unjust invasion of property rights and prevent usable land from remaining idle." *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535,541 (D.C. 1972).

The Board further finds that variance relief can be granted to this applicant without substantial detriment to the public good or the integrity of the zone plan.

As to the integrity of the zone plan, the OP noted that delivering housing comports with the District's high-priority objective of increasing the number of residents in the District. Moreover, the project conforms to the Comprehensive Plan for Ward 1, which encourages development near Metrorail stations and neighborhood stabilization. Lastly, the R-4 Zone typically contains moderately dense neighborhoods, which frequently contain smaller apartment units.

As to whether the grant of the variance will result in substantial detriment to the public good, the Board notes that the Applicant has agreed to restrict the building's occupants from participating in the permit parking program described at 18 DCMR § 2411. Program participants are issued stickers that exempt their vehicles from the parking restrictions applicable to neighborhood streets protected by the program. As a result of the condition, the building's occupants will not compete for curbside parking. The Board does not share OP's concern that granting the variance would diminish the availability of family sized housing stock in the area. OP's view mostly stems from its belief that this property could be successfully rehabilitated with fewer and therefore larger units. For reasons stated earlier, the Board does not consider that to be a viable

BZA APPLICATION NO. 18312
PAGE NO. 7

option. Thus, denying the variance would not preserve family-sized housing stock, but prevent the addition of new and needed housing in this area.

Great Weight

Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case the ANC 1A's opposed the granting of four units, but supported a three-unit conversion. One of the primary concerns with the four-unit configuration was parking. Because the Applicant has agreed to fully restrict the eventual condominium owners' right to participate in the District's Residential Permit Parking program, and also because of the property's location very near a Metrorail station, the Board believes that the parking concerns have been addressed. For this reason, and because the Applicant met the elements for granting a variance for a four-unit conversion, the Board does not find the ANC's advice persuasive.

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP's recommendations. While OP found that the property was subject to an exceptional condition, it found no practical difficulty resulted and that the grant of the variance would substantially harm the integrity of the zone plan and the public good. For the reasons explained in its discussion of these elements, the Board disagrees.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the approved plans as shown on Exhibit 31, and with the following **CONDITION**:

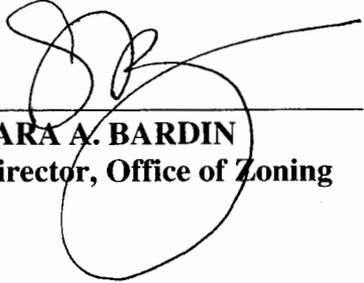
The Applicant or his successor and assigns shall include within the Condominium Covenants a provision that restricts all unit owners from participating in the Residential Permit Parking program and shall adopt and record condominium covenants that memorialize that restriction prior to obtaining the first certificate of occupancy for the project.

VOTE: 4-1-0 (Meredith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, and Jeffrey L. Hinkle to Approve; Michael G. Turnbull to Deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

BZA APPLICATION NO. 18312
PAGE NO. 8

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: **JUN 13 2012**

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 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,

BZA APPLICATION NO. 18312

PAGE NO. 9

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



BZA APPLICATION NO. 18312

As Director of the Office of Zoning, I hereby certify and attest that on JUN 13 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP
1990 M Street, N.W., Suite 200
Washington, D.C. 20036

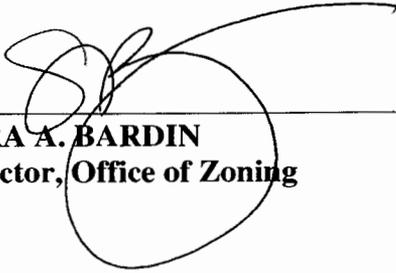
Single Member District Commissioner 1A-06
Advisory Neighborhood Commission 1A
1380 Monroe Street N.W., #103
Washington, D.C. 20010

Chairperson
Advisory Neighborhood Commission 1A
1380 Monroe Street, N.W., #103
Washington, D.C. 20010

Melinda Bolling, Esq.
General Counsel
Office of General Counsel
Dept. of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

Jim Graham, Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, D.C. 20004

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcz@dc.gov

Web Site: www.dcoz.dc.gov