

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



**Application No. 18350 of Benson D. Medley**, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401.11 to increase the number of dwelling units in an existing apartment house from three to four units in the R-4 District at premises 1865 Newton Street, N.W. (Square 2616, Lot 100).

**HEARING DATE:** May 22, 2012  
**DECISION DATE:** May 22, 2012

**DECISION AND ORDER**

This application was submitted January 26, 2012 by Benson D. Medley, the owner of the property that is the subject of the application (“Applicant”). In accordance with a memorandum from the Zoning Administrator (“ZA”), the application was filed pursuant to 11 DCMR § 3103.2 for an area variance from the minimum lot area requirements under § 401.11 to allow a proposed load increase, from three to four units, in an existing apartment building in the R-4 District at 1865 Newton Street, N.W. (Square 2616, Lot 100). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted 5-0-0 on May 22, 2012 to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing. By memoranda dated January 27, 2012, the Office of Zoning (“OZ”) sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1D, the ANC for the area within which the subject property is located; and the single-member district ANC 1D-03.

A public hearing was scheduled on May 22, 2012. Pursuant to 11 DCMR § 3113.13, OZ on March 6, 2012 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 1D.

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

Applicant’s Case. The Applicant described plans to create an efficiency apartment in the basement level of the apartment house. The Applicant cited a preference to maintain control at

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the subject property by creating a fourth apartment as an efficiency, rather than potentially expanding one of the existing one-bedroom apartments into a three-bedroom unit, in part to limit the total number of people likely to live in the apartment house and the attendant demand for parking.

Government Reports. By report dated May 15, 2012 and through testimony at the public hearing, OP recommended denial of the requested variance. According to OP, the Applicant had “not provided any information regarding any unique physical characteristics of the subject lot or any other extraordinary circumstance affecting the property that leads to a practical difficulty,” and approval of the requested variance would impair the intent of the Zoning Regulations, especially with respect to the limits on apartment buildings applicable in the R-4 Zone District. (Exhibit 27.)

By report dated May 11, 2012, DDOT indicated “no objection” to approval of the requested variance. (Exhibit 26.)

ANC Report. At a public meeting on February 21, 2012 with a quorum present, ANC 1D voted 6-0 to pass a resolution stating that the application could be granted “without substantial detriment to the public good. Because the building will provide off-street parking, there is no parking impact on the area.” (Exhibit 24.)

**FINDINGS OF FACT**

*The Subject Property and Surrounding Area*

1. The subject property is a rectangular parcel located on the north side of Newton Street, N.W. (Square 2616, Lot 100). A public alley, 15 feet wide, abuts the property along the rear lot line. The property is zoned R-4.
2. Prior to the Applicant’s purchase of the subject property in 2009, the subject property was improved with a row dwelling. The Applicant then renovated the building. created three apartment units on the first and second floors, and was issued a certificate of occupancy for the apartment house on January 25, 2010. (Exhibit 4.)
3. The renovations made no change to the building’s footprint, so that it continued to provide a rear yard of 72 feet and occupy approximately 28% of its lot. A parking area at the rear of the property, accessed from the alley, provides parking spaces for four vehicles.
4. The subject property is 25 feet wide and 130 feet deep, and has an area of 3,250 square feet.

5. The subject property is similar in size and shape to other properties in the same square. Nearby properties are also developed primarily with row dwellings, some of which are devoted to multifamily housing.

***The Applicant's Project***

6. The Applicant proposed to increase the number of dwelling units at the subject property from three to four by creating a new dwelling unit in the basement level. The new apartment would be created within the existing building, and no change to the exterior of the building would be required. The new apartment would have a gross floor area of approximately 819 square feet.
7. Alternatively, the basement could be connected to the first-floor apartment, which is currently a one-bedroom unit, to create a three-bedroom apartment.
8. The R-4 District does not allow the renovation or expansion of an apartment house 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. (11 DCMR § 401.11.) Since a lot area of 3,600 square feet is required to allow four apartments at the subject property, the Applicant's proposal falls short of the lot area requirement by 350 square feet, or approximately 10%.

**Harmony with Zoning**

9. 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.) The R-4 District is not an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures is controlled by a minimum lot area per family requirement. (11 DCMR § 330.3.)

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the 900-square-foot minimum lot area requirement under § 401.11 to allow a proposed load increase, from three to four units, in an existing apartment house building in the R-4 District at 1865 Newton Street, N.W. (Square 2616, Lot 100). 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 application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the

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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.)

Based on the findings of fact, the Board does not find that the Applicant has satisfied the requirements for variance relief. The Board concurs with OP that the Applicant has not shown that the subject property faces any extraordinary or exceptional situation or condition; rather, the lot is very similar to neighboring properties in size and shape, and in the nature of the building on the property. Similarly, the Board concurs with OP that the Applicant has not shown that the strict application of the Zoning Regulations would create any practical difficulty to the owner of the property. The existing building has been renovated and converted to a three-unit apartment house; the basement space can be put to use consistent with the Zoning Regulations as an enlargement of the existing first-floor apartment. The Board was not persuaded by the Applicant's testimony regarding the number of persons potentially living at the property or the possible demand for parking as grounds for granting variance relief from the prohibition in the Zoning Regulations against creating new apartments unless the property provides 900 square feet of lot area for each dwelling unit, both existing and new.

While OP did not find that approval of the requested variance would create substantial detriment to the public good, the Board concurs with OP's conclusion that the variance, if approved, would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Zoning Regulations specifically limit the creation and expansion of apartment houses in the R-4 District, which is not intended to serve as an apartment house district. The Applicant did not provide justification for a variance from that limitation.

The Board has accorded the issues and concerns raised by ANC 1D the "great weight" to which they are entitled. In this case, ANC 1D supported the application, which the ANC concluded would not cause substantial detriment to the public good due to the availability of off-street parking at the subject property. Based on the findings of fact, and for the reasons discussed above, the Board was not persuaded by ANC 1D that the application should be granted, noting that the ANC's report did not address the requirements for variance relief other than the impact on the public good.

For the reasons stated above, and having given great weight to the recommendations of OP and to the issues and concerns of ANC 1D, the Board concludes that the Applicant has not satisfied the requirements for an area variance from the 900-square-foot minimum lot area requirement under § 401.11 to allow a proposed load increase, from three to four units, in an existing apartment building in the R-4 District at 1865 Newton Street, N.W. (Square 2616, Lot 100). Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

**VOTE:**        **5-0-0** (Lloyd L. Jordan, Rashida Y.V. MacMurray, Nicole C. Sorg, Jeffrey L. Hinkle, and Anthony J. Hood voting to Deny.)

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**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**  
A majority of the Board members approved the issuance of this Order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** November 27, 2012

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.