

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



**Application No. 18560 of 3545 13th Street LLC**, pursuant to 11 DCMR §§ 3103.2, for a variance from the lot area requirements under § 401.3 to allow the conversion of a flat into a four-unit apartment house in the R-4 District at premises 3545 13th Street, N.W. (Square 2833, Lot 120).

**HEARING DATES:** June 11 and July 16, 2013

**DECISION DATE:** July 16, 2013

**DECISION AND ORDER**

This self-certified application was submitted on March 11, 2013 by 3545 13<sup>th</sup> Street, LLC (the “Applicant”), the owner of the property that is the subject of the application. The application requested an area variance from the lot area requirement under § 401.3 of the Zoning Regulations to allow the conversion of a flat to a four-unit apartment house in the R-4 District at 3545 13<sup>th</sup> Street, N.W. (Square 2833, Lot 120). Following a public hearing, the Board voted to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated March 14, 2013, the Office of Zoning provided 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”) 1A, the ANC in which the subject property is located; and Single Member District/ANC 1A04. Pursuant to 11 DCMR § 3112.14, on April 1, 2013 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1A, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on April 1, 2013 (60 DCR 5128).

Party Status. The Applicant and ANC 1A were automatically parties in this proceeding. The Board denied a request for party status in opposition to the application submitted by Richard Klugman, a resident of the 3600 block of 13<sup>th</sup> Street.

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Applicant's Case. The Applicant provided evidence and testimony from Mohammad Pishvaeian, who described the proposed conversion of the building on the subject property into a four-unit apartment house; Alan Dalton, a real estate agent; James Killete, an architect; and Allison Campbell, a neighbor living across the street from the subject property, who described past non-residential use of the subject property. With regard to the financial feasibility of the proposed conversion, the Applicant asserted that conversion to three apartments would result in a return on investment of 1.4%, while creation of a four-unit apartment house would produce a return of 10%.

OP Report. By memorandum dated July 9, 2013, OP recommended denial of the application. According to OP, the Applicant had not demonstrated any practical difficulty, since the Zoning Regulations did not contemplate a grant of relief "in anticipation of a higher return on an applicant's investment and not in response to an established practical difficulty derived from a lot's unique condition." (Exhibit 32.)

DDOT. By memorandum dated April 4, 2013, DDOT indicated no objection to approval of the application. (Exhibit 25.)

ANC Report. By report submitted June 4, 2013, ANC 1A indicated that, at a properly noticed public meeting, held May 5, 2013 with a quorum present, the ANC voted 5-0-5 to adopt a report recommending denial of the application. The report stated that the "neighborhood has concerns with the disintegration of the single family home framework and fabric of the community." According to the ANC, conversion of the building at the subject property to four residential units was "not necessary to make a profit, but to make a substantial profit" and the "argument that the developer must have four units [to make] the project feasible is insufficient justification" to approve the requested zoning relief. The report also noted a "predatory development trend" and concluded that ANC 1A did "not want a community of condo units." (Exhibit 30.)

By report dated July 15, 2013, ANC 1A indicated that at its public meeting, held July 10, 2013 with a quorum present, the ANC reconsidered the application as modified to include the provision of pervious pavers and three off-street parking spaces. Although "the application received more support" from the ANC than at its prior public meeting, a motion in support of the application failed by a vote of 4-6-2. According to the ANC, its "primary concern, as related to the standards of the Zoning Regulations, was with density and the impact of the proposed 4<sup>th</sup> unit on parking, infrastructure, etc.," while some members of the ANC also "supported community concerns with the loss of single-family dwellings in the area." (Exhibit 37.)

Persons in support. The Board received letters and heard testimony in support of the application from persons living in the vicinity of the subject property, who commented generally that the Applicant's plans to renovate the subject property would improve the neighborhood.

Persons in opposition. The Board heard testimony in opposition to the application from two residents of 13<sup>th</sup> Street, N.W. in the vicinity of the subject property. Richard Klugman testified

that the subject property was a “standard pre-renovated home,” the “norm” for its location, and similar in size, footprint, layout, and age to nearby properties used as one-family dwellings or as flats. Mr. Klugman also argued that the Applicant had not satisfied the burden of proof necessary for a grant of variance relief, and that the application was “clearly in contradiction to the R-4 zone plan” and would have “a negative impact on the character of the neighborhood.” (Exhibit 33.) Byron McNeill opposed the conversion of a one-family dwelling into four apartments on the ground that increased density in the neighborhood has led to an increase in the number of vehicles and demand for parking for residents.

## **FINDINGS OF FACT**

### **The Subject Property**

1. The subject property is an interior lot located on the east side of 13<sup>th</sup> Street, N.W. near its intersection with Otis Place (Square 2833, Lot 120).
2. The subject property is a rectangular parcel 20.25 feet wide, with an area of 2,936.25 square feet. The property is improved with a two-and-a-half-story brick row building that is set back 20 feet from the street and has a rear yard 60 feet deep. Existing lot occupancy is approximately 57%.
3. The property abuts a public alley along its rear lot line. The Applicant removed a dilapidated accessory garage formerly located at the rear of the lot so that two parking spaces are available, accessible from the alley.
4. The building on the subject property is attached to similar row buildings on both sides. Properties in the immediate vicinity are improved primarily with two- or three-story residential buildings. The surrounding neighborhood contains a mix of residential and institutional uses.
5. The building on the subject property was built approximately 100 years ago and was originally used as a one-family dwelling. In 2008, a prior owner of the lot obtained a building permit to convert the structure to a two-family flat. A certificate of occupancy was issued in 2009 to authorize use of the property as a two-family flat with storage in the basement. The building is currently vacant.
6. The Applicant testified that the building is now in poor condition due to extensive deferred maintenance and prior water damage, and that its floor plan is outdated and inefficient. The first floor lacks a kitchen but contains a bar, possibly reflecting past use of the space as a hookah bar and lounge. The staircase leading from the first floor to the second floor is wider than normal, while the staircase from the second floor to the third floor is located on the opposite side of the building and does not comply with building code requirements. The

Applicant discovered unexpected dilapidation in the lower level of the building, related to mold, water infiltration, and structural damage, after purchasing the property.

### **The Applicant's Project**

7. The Applicant proposes to renovate the building at the subject property in a conversion to a four-unit apartment house. The conversion would not alter the building footprint but would create one dwelling unit per floor, including the basement. As proposed, the Applicant would provide three off-street parking spaces at the rear of the subject property, using permeable pavers. Parking for four bicycles would also be provided.
8. The majority of the costs attributable to the creation of the proposed fourth apartment would be incurred primarily in connection with the enlargement of the third floor, which presently does not extend as far back as the lower two floors, and adding brick to the building exterior.
9. Pursuant to § 401.3, conversion of a building in the R-4 Zone to an apartment house requires at least 900 square feet of lot area per unit. The Applicant could convert the building to a three-unit apartment house as a matter of right, but the subject property would require an additional 664 square feet in lot area to permit a four-unit apartment house without variance relief. With a lot area of 2,936 square feet, the Applicant's proposal would provide 734 square feet per unit.
10. The Applicant contended that the subject property was unusual and affected by an exceptional situation and condition as a result of a confluence of factors: (a) the inefficient layout and unique history of the existing structure, such that the existing structure must be reconfigured to achieve an efficient layout, unit size, and design for a residential building; (b) stairwells on both the first and second floors that require replacement to improve the efficient layout and use of the building in compliance with the building code; and (c) the physically deteriorated condition of the building such that a significant investment in renovation is needed to return the building to a marketable condition.
11. The Applicant contended that strict application of the minimum area requirement would result in practical difficulty because, in light of the extensive renovations required, a four-unit building was required for a financially feasible project. According to the Applicant, renovation of the building to three apartments would result in an economically infeasible project in light of the large renovation investment required, and the fourth unit was necessary so that the project would generate a fair and reasonable return on investment. According to the Applicant, the prior illegal use of the property for nonresidential purposes created a limited likelihood that an individual would purchase the subject property and invest the necessary funds to convert the building to a one-family dwelling.

**Harmony with Zoning**

12. The subject property is located in the R-4 District, which 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.) Because its “primary purpose” is “the stabilization of remaining one-family dwellings,” the R-4 Zone is not intended to become an apartment house district as contemplated in the General Residence (R-5) Zones. (11 DCMR §§ 330.2, 330.3.)

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow the conversion of a flat to a four-unit apartment house in the R-4 District at 3545 13<sup>th</sup> Street, N.W. (Square 2833, Lot 120). 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 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 finds that the application does not satisfy the requirements for variance relief from the minimum lot area requirement of § 401.3 in accordance with § 3103.2.

The Board does not agree that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations will create a practical difficulty to the Applicant as the owner of the property. As described by OP, which found no exceptional situation or practical difficulty in this application, the subject property is rectangular in shape, without significant changes in grade, and is one of several similarly sized and shaped lots in its square. The building on the subject property is similar to the buildings on the abutting properties, and to many properties in the immediate vicinity. The subject property meets the requirements for lot occupancy, lot width, and lot area in the R-4 Zone. The Applicant generally knew about the somewhat deteriorated condition, which is not unusual in a century-old building, before buying the property. The Board concurs with OP’s conclusions that the current state of the property does not constitute an exceptional condition, and that the current physical configuration of the existing building does not preclude its use as a flat or a three-unit apartment house, both of which, along with use as a one-family dwelling, are permitted as a matter of right, eliminating the need for zoning relief. The Applicant cited financial infeasibility as a justification for the additional dwelling unit due to construction costs and the building’s current

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condition. The Board concurs with OP's conclusion that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if put to another use, will yield a greater return.

The Applicant asserts that the degree of zoning relief sought in the application, at approximately 18%, is small, and thus that "an applicant need only show a small amount of practical difficulty," citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990) as well as prior cases in which the Board approved larger deviations in applications for variances from the minimum lot area requirement for apartment-house conversions. The Board was not persuaded by the list of prior cases approving similar lot area relief, since each case must stand on its own merits and each application must satisfy all elements of variance relief; the relative degree of relief alone does not merit approval of a request for a variance. Moreover, the Board does not consider an 18% variance in the minimum lot area requirement as insignificant or *de minimus*, particularly where the Applicant has not made a persuasive showing of an exceptional condition or practical difficulty arising from the strict application of the Zoning Regulations.

The Board concurs with OP's conclusion that approval of the application would cause substantial detriment to the public good and would substantially impair the intent, purpose, and integrity of the zone plan. The Board credits testimony from the ANC and persons in opposition to the application expressing concern about "the loss of single-family dwellings in the area" and the changes in neighborhood character as a result of increased density. With regard to the zone plan, the Board notes that the Zoning Regulations allow conversion of a pre-1958 building to apartment house use in the R-4 Zone, but only where the minimum lot area requirement of 900 square feet per unit can be satisfied. The R-4 Zone was mapped for the primary purpose of stabilizing the remaining one-family dwellings, and is not intended to become an apartment house district. New apartment houses are not permitted as a matter of right in the R-4 District, and the conversion of existing buildings is "controlled by a minimum lot area per family requirement"; that is, the limit on conversions to apartment house use was put in place specifically to prevent the R-4 Zone from becoming an apartment house district as contemplated in the General Residence (R-5) zones. (11 DCMR § 330.3.) Approval of a variance from the minimum lot area requirement, without a showing of an exceptional situation of a specific property and practical difficulty upon the owner as the result of the strict application of the Zoning Regulations, would substantially impair the purpose and intent of the R-4 Zone District.

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 denied.

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)).) In this case, ANC 1A initially voted to recommend denial of the application, and subsequently

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reconsidered its recommendation after the Applicant proposed to add three parking spaces and pervious pavers to the project. The ANC's recommendation remained unchanged, reflecting concerns about density and the loss of one-family dwellings in the area. For the reasons discussed above, the Board concurs with the ANC's recommendation that the requested variance relief should not be approved.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow conversion of a flat to a four-unit apartment house in the R-4 District at 3545 13<sup>th</sup> Street, N.W. (Square 2833, Lot 120). Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE: 4-0-1** (Anthony J. Hood, S. Kathryn Allen, Lloyd J. Jordan, and Jeffrey L. Hinkle voting to Deny; one Board seat vacant.)

**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 28, 2014

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.