

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18790 of Jefferson - 11th Street LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401, and a variance from the off-street parking requirements under § 2101.1, to add eight apartment units to an existing 25-unit apartment house in the R-4 District at premises 2724 11th Street, N.W. (Square 2859, Lot 89).¹

HEARING DATES: July 8, 2014, July 22, 2014, October 21, 2014, and November 18, 2014

DECISION DATE: January 13, 2015

DECISION AND ORDER

This self-certified application was submitted on April 24, 2014 by Jefferson-11th Street LLC (the “Applicant”), the owner of the property that is the subject of the application. The application requested variances from the minimum lot area requirement under § 401.11 and the parking requirements of § 2101.1 of the Zoning Regulations to allow the addition of eight dwelling units to an existing 25-unit apartment house, with no enlargement of the building, in the R-4 District at 2724 11th Street, N.W. (Square 2859, Lot 89).² Following a public hearing, the Board voted to deny the application.

¹ This caption has been revised to reflect the Applicant’s amended request for relief. The application originally indicated that the building currently contains 24 apartments and sought a variance from the lot area requirements under § 401 to add 11 new apartment units to the basement level of the building, for a total of 35 apartments. The application was subsequently revised to indicate that the building now contains 25 apartments, and to reduce the proposed number of new apartments in the basement level to eight, for a total of 33 apartments. Finally, the Applicant proposed to add nine units to the basement level and to combine two existing units into one, for a net increase of eight units from the current number of 25 units, for a total of 33 apartments. The lower number of dwelling units also reduced the minimum parking requirement to three spaces, instead of four as initially proposed.

² The Applicant initially sought variance relief from § 401.3, which requires at least 900 square feet of lot area per apartment in the case of the conversion of a building in an R-4 zone to an apartment house. The Applicant subsequently clarified that the applicable provision in this case is § 401.11, which provides that an apartment house in an R-4 district, whether created through conversion or existing before May 12, 1958, “may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each new dwelling, both existing and new.”

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PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 25, 2014, 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”) 1B, the ANC in which the subject property is located; and Single Member District/ANC 1B09. Pursuant to 11 DCMR § 3112.14, the Office of Zoning published notice of the hearing on the application in the *District of Columbia Register*,³ and on May 2, 2014 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1B, and the owners of all property within 200 feet of the subject property.

Party Status. The Applicant and ANC 1B were automatically parties in this proceeding. There were no requests for party status in this proceeding.

Applicant’s Case. The Applicant provided evidence and testimony from Jennifer Parker, representing the owner of the subject property; Stanley Ford, an agent for the Applicant; and Michael Alan Finn, an architect. The Applicant described plans to add additional dwelling units in the lower level of the existing building, and asserted that the new market-rate apartments were necessary to finance the renovation of the building and would subsidize the sustainability of the affordable units on the upper floors.

OP Report. By memorandum dated November 10, 2014, the Office of Planning recommended approval of the application.⁴ (Exhibit 28.)

DDOT. By memorandum dated July 1, 2014, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 24.)

ANC Report. ANC 1B did not submit a report in this proceeding.

Person in support. James Turner, the chairman of ANC 1B and commissioner for 1B09 (the single-member district where the subject property is located), testified that the Applicant’s building is old and has not been adequately maintained. He stressed the need for renovation of the property, preferably with an increase in the number of affordable units. Mark Ranslem, also a member of ANC 1B as commissioner for 1B08, the abutting single-member district, testified about concern for the well-being of the tenants currently living at the subject property and described the Applicant’s proposal as the best solution to renovate the building. The Board also received a letter in support of the application from the owner and resident of a property in the 1100 block of Girard Street that abuts the subject property. The letter stated that the addition of apartments in the building’s lower level would assist in the renovation and maintenance of the

³ The public hearing was initially scheduled on July 8, 2014 but was postponed, first to July 22, 2014, then to October 21, 2014, and finally to November 18, 2014 at the Applicant’s request.

⁴ The Office of Planning report describes the application as a request to increase the number of units from 25 to 33; i.e. the Applicant’s proposal as finally amended.

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building while improving living conditions for the current tenants, without creating “any significant negative impacts” for the surrounding neighborhood. (Exhibit 27.)

Persons in opposition. The Board heard testimony in opposition to the application from persons, including some current residents of the building, who cited poor conditions in and around the building presently and challenged whether the additional units were needed to pay for the planned renovation. The Board also received letters in opposition to the application, which generally cited the poor condition of the building for tenants as well as concerns about density, access to a public alley, trash, and vermin affecting neighboring residents, and stated that the addition of dwelling units at the subject property, and the related parking variance relief, would not be in the best interests of the community.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at the southwest corner of 11th Street and Girard Street, N.W. (Square 2859, Lot 89). The rectangular lot has approximately 142 feet of frontage on 11th Street (on the east) and approximately 86 feet on Girard Street (on the north), providing a lot area of 12,209 square feet. A public alley 16 feet wide abuts the south property line.
2. The subject property is improved with a two-story building that has been devoted to apartment house use since it was built in 1923. The building entrance is on 11th Street. Its existing configuration provides 25 dwelling units, 12 on the first floor and 13 on the second floor. The basement level has been used for mechanical equipment, and for a time contained a small caretaker’s unit.⁵
3. The Applicant has owned the subject property since 2006. The Applicant is owned and managed by a family-owned company, Hartford E. Bealer Development Company, which has owned the subject property for more than 50 years.
4. The building is currently in poor condition and in need of renovation, although the Applicant disputed allegations of housing code violations and submitted an inspection certificate, issued on May 29, 2014 by the Department of Consumer and Regulatory Affairs, in support of its contention that the building complies with applicable building code requirements.
5. The neighborhood in the vicinity of the subject property is moderate-density residential in character. Much of Square 2859 and the area across 11th Street from the subject property are improved with row dwellings, with some small commercial uses also located there. A

⁵ The application designates the lower level of the building variously as a basement or a cellar. This Order refers to the space as a “basement,” consistent with the initial application (Exhibit 1) and the surveyor’s plat (Exhibit 3) submitted into the record by the Applicant.

public school is located on a large lot on Girard Street directly north of the subject property.

The Applicant's Project

6. The Applicant proposed to increase the number of apartments in the building at the subject property by converting the basement into nine new residential units similar in configuration to the existing layout of apartments on the first and second floors, and to combine two of the existing units into one apartment, for a net increase of eight dwelling units. The conversion project would not enlarge the building but would increase the total number of units to 33.
7. The Applicant planned a new curb cut on Girard Street to provide access to five new parking spaces that would be located on the northern portion of the property between the building and Girard Street. Alternatively, in the event that the curb cut application was not approved, the Applicant requested variance relief from the off-street parking requirement. A minimum of three spaces would be required for the addition of eight apartments at the subject property.
8. The Applicant's renovation project would include work "necessary or recommended for the structural maintenance" of the building as well as measures to provide direct access from the street for five of the new basement units, with patio spaces in front of those entrances; the relocation of trash storage from an outdoor spot at the rear of the property into the building in a sealed room on the basement level; and changes to the exterior appearance of the building. (Exhibit 26.)
9. At present the subject property provides 488 square feet per dwelling unit (the lot area of 12,209 square feet divided by 25 apartments). The Applicant's proposal to create eight additional apartments would reduce the lot area per unit to 370 square feet (lot area divided by 33 existing and new apartments). Pursuant to § 401.11, renovation or expansion of the Applicant's building so as to increase the number of dwelling units would require at least 900 square feet of lot area for each dwelling, both existing and new. Accordingly, use of the building as an apartment house with 33 dwelling units would require a lot area of at least 29,700 square feet. The Applicant's proposal to increase the number of dwelling units to 33 on the existing lot area of 12,209 square feet creates the need for a variance of 17,491 square feet, approximately 59%, from the minimum requirement of 900 square feet per unit.

Harmony with Zoning

10. 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. In the R-4 zone, the conversion of existing structures into multi-family housing is “controlled by a minimum lot area per family requirement.” (11 DCMR §§ 330.2, 330.3.) The same minimum lot area requirement also restricts the renovation or enlargement of any apartment house, including those predating the Zoning Regulations, in a manner that would “increase the number of dwelling units unless there are 900 square feet of lot area for each new dwelling, both existing and new.” (11 DCMR § 401.11.)
12. Properties in the vicinity of the subject property are also zoned R-4.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a parking variance and an area variance from the minimum lot area requirement under § 401.11 of the Zoning Regulations to allow the renovation of an apartment house so as to increase the number of dwelling units from 25 to 33, with less than 900 square feet of lot area for each dwelling unit, both existing and new, in the R-4 District at 2724 11th Street, N.W. (Square 2859, Lot 89). 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 concludes that the application does not satisfy the requirements for variance relief from the minimum lot area requirement of § 401.11 in accordance with § 3103.2. The Board does not find that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as the owner of the property. The subject property is rectangular in shape, without significant changes in grade. The lot is significantly larger than most nearby lots, with the exception of the parcel directly to the north that is improved with a school, but its size reflects its use as an apartment house since before the Zoning Regulations went into effect. The Board does not find that the age of the building in itself creates an exceptional situation that would warrant variance relief, nor does its dilapidated condition, especially considering that the Applicant has owned the property for almost a decade.

The Applicant contended that the building was “at the end of its useful life in its current state” (Tr. of Nov. 18, 2014 at 96) and that the strict application of the Zoning Regulations would create practical difficulties in limiting the options for redevelopment of the property. The Office

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of Planning agreed, and also cited the underutilized nature of the basement at present. The Board makes no findings with respect to the Applicant's perceived lack of redevelopment options, but notes that the Zoning Regulations do not preclude the continued use of the subject property as an apartment house with 25 units, a legal nonconforming use. Nor did the Applicant demonstrate that the basement level could not be utilized in any manner consistent with the existing apartment house use.

As the Applicant noted, the building has been used as an apartment house since its construction and was not originally subject to the minimum lot area requirement. However, the Zoning Regulations now require at least 900 square feet of lot area per unit when, as here, an apartment house in the R-4 District would be renovated in a manner that would increase the number of dwelling units, and that minimum applies to all units, both existing and new. Apartment house use is discouraged in the R-4 zone, and the Zoning Regulations limit both conversions of buildings to apartment house use and increases in the number of units in older apartment houses. The Applicant's property already contains more units than would be permitted under the current regulations through a conversion of the building from some other use. Especially considering the financial data submitted by the Applicant, the Board was not persuaded by the Applicant's contention that the net increase of eight additional dwelling units in the building is necessary to finance the renovation of the structure and to subsidize the existing units on the upper floors. The Board does not credit the Applicant's assertions that rent control has created the need for a variance from the minimum lot area requirement of the Zoning Regulations in order to pay for the renovation of the building and to create a subsidy to maintain the existing units. The financial information submitted by the Applicant did not demonstrate the Applicant's assertion that "any comprehensive renovation is simply not economically feasible" without the "market-based revenue stream" from the additional units. (Exhibit 26.)

The Applicant and the Office of Planning both asserted that the requested variance relief could be granted without substantial detriment to the public good. The Board notes that the Applicant's proposal would not increase the size of the existing building but was intended to enhance the property through measures such as the planned renovation of existing apartments, creation of an interior room to store trash inside the building, and landscaping improvements. However, the Applicant could undertake all the projected improvements without variance relief, since the Zoning Regulations would not prevent any of the measures described by the Applicant to improve the existing building. The proposed increase in the number of apartments could diminish the public good, however, as the Board heard testimony from persons in opposition to the application who stated concerns about density, access to the public alley adjoining the subject property, trash, and vermin affecting neighboring residents. The Applicant acknowledged that most properties in the vicinity of the subject property are much smaller lots, while the Office of Planning described the surrounding neighborhood character as moderate density residential. The Applicant's proposal would add eight new apartments to an already anomalous apartment house with more than 20 units already, furthering its distinction as a multi-family building in a neighborhood of lower density residential uses.

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The Applicant and the Office of Planning also asserted that the requested variance relief could be granted without substantially impairing the intent, purpose, and integrity of the zone plan. The Board does not agree, especially considering the significant degree of variance relief requested by the Applicant. New apartment houses are not permitted as a matter of right in the R-4 District, and limits on the renovation or expansion of existing apartment houses, in a manner that would increase the number of units, were implemented in the R-4 District as a means of regulating the proliferation of large multi-family dwellings in a district whose purpose is the stabilization of remaining one-family dwellings. The Applicant has not demonstrated the need for variance relief sufficient to allow such a substantial decrease in the minimum lot area requirement as would be necessary to create any additional units in an apartment house that presently contains many more units than would be permitted by strict compliance with the minimum lot area requirement. 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.

In light of the Board's decision to deny the requested variance from the minimum lot area requirement, the Board dismisses the Applicant's request for a parking variance as moot. The parking variance was necessary only in conjunction with an increase in the number of apartments at the subject property, which would have created a need for off-street parking in accordance with chapter 21 of the Zoning Regulations

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 does not find OP's recommendation persuasive.

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)). The affected ANC did not participate in this proceeding, and thus did not raise any issues or concerns.

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 a parking variance and an area variance from the minimum lot area requirement under § 401.11 of the Zoning Regulations to allow the addition of eight dwelling units to a 25-unit apartment house in the R-4 District at 2724 11th Street, N.W. (Square 2859, Lot 89). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **4-0-1** (Anthony J. Hood, Lloyd J. Jordan, S. Kathryn Allen, and Marnique Y. Heath to Deny; Jeffrey L. Hinkle not present, not voting.)

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

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

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ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 24, 2015

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.