

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18924 of David Gullick, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, and parking space requirements under § 2101.1, to allow the conversion of a flat to a three-unit apartment house in the GA/C-2-A District at premises 705 Kenyon Street, N.W. (Square 2892, Lot 804).¹

HEARING DATE: February 24, 2015
DECISION DATE: March 24, 2015

DECISION AND ORDER

This application was submitted on November 12, 2014 by David Gullick (the “Applicant”), the owner of the property that is the subject of the application. The application requested variances from requirements pertaining to lot occupancy under § 772.1, rear yard under § 774.1, and parking under § 2101.1 of the Zoning Regulations to allow the conversion of a two-family flat to a three-unit apartment house, by interior alteration, in the GA/C-2-A District at 705 Kenyon Street, N.W. (Square 2892, Lot 804). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to deny the application.

¹ The caption has been revised to reflect a request for a variance from the parking requirements use under § 2101.1. Consistent with the referral memorandum from the Office of the Zoning Administrator, the Applicant requested, in addition to the two area variances, a variance from § 2100.1. Subsection 2100.1 requires that each building erected on or after May 12, 1958 must be provided with parking spaces to the extent specified in § 2101 (with exceptions not relevant to this application). The record does not reflect when the Applicant’s building was erected; however, as a nonconforming structure, the building presumably predates May 12, 1958, and thus § 2100.1 would not apply. The Applicant proposed to establish a new apartment house use in the building, which is presently used as a flat. Pursuant to § 2100.4, when the use of a building is changed to another use that requires more parking spaces than required for the immediately prior use, parking spaces must be provided for the additional requirement in the amount necessary to conform to § 2101. Pursuant to § 2101, a flat in the C-2-A zone must provide one parking space for the two dwelling units. An apartment house in C-2-A must also provide one parking space for each two dwelling units, and any fraction of one-half or over requires one parking space (see § 2118.6). Thus, the conversion of the building from a flat to a three-unit apartment house would increase the off-street parking requirement at the subject property. Because the schedule of parking requirements is set forth in § 2101 and the Applicant proposed to provide no off-street parking at the subject property for the apartment house use, the Board considered the request a variance from § 2101.1. The Applicant indicated that the off-street parking requirement for the apartment house use at the subject property would be one space. (Exhibit 14.)

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 20, 2014, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located; and Single Member District/ANC 1B09. Pursuant to 11 DCMR § 3112.14, on December 2, 2014, 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 *D.C. Register* on December 12, 2014 (61 DCR 12607).

Party Status. The Applicant and ANC 1A were automatically parties in this proceeding. The Board denied a late request for party status in opposition to the application from Romeo Morgan, the owner of property abutting the Applicant’s property.

Applicant’s Case. The Applicant described his proposal to convert a building from a two-family flat into a three-unit apartment house by creating a new dwelling unit in the basement level. The conversion would require non-structural internal improvements but no external changes or additions to the existing building.

OP Report. By memorandum dated February 17, 2015, the Office of Planning recommended approval of the application.²

DDOT. By memorandum dated February 6, 2015, the District Department of Transportation (“DDOT”) indicated no objection to approval of the application. (Exhibit 33.)

ANC Report. By report submitted November 21, 2014, ANC 1B indicated that, at a public meeting held November 12, 2014, with a quorum present, the ANC voted 8-0-0 in support of the application, stating no issues or concerns. The report stated that ANC 1B “supports the requested relief” because the Applicant’s proposal to convert the two-family flat to a three-unit apartment house “is the highest and best use that can be made of the existing structure and the Commission does not see that [it] will have an adverse impact to the surrounding area.” (Exhibit 15.)

Persons in opposition. The Board heard testimony in opposition to the application from Romeo Morgan, the owner of property abutting the subject property to the east. He asserted that the Applicant’s proposal would cause adverse impacts with respect to traffic, parking, and trash in the vicinity.

² The Office of Planning considered the application as including a request for a parking variance from the requirements of § 2101.1 rather than § 2100.1.

FINDINGS OF FACT

The Subject Property

1. The subject property is located on the north side of Kenyon Street near its intersection with Georgia Avenue (Square 2892, Lot 804). The rectangular lot is 25 feet wide and 50 feet in depth, providing a lot area of 1,250 square feet. There is no apparent change in grade.
2. The subject property is located within the Georgia Avenue (GA) commercial overlay District and is zoned GA/C-2-A. Nearby properties along Georgia Avenue are also zoned GA/C-2-A, while the majority of Square 2892 is located in the R-4 District.
3. The subject property is improved with a two-story building now used as a two-family flat, with one dwelling unit per floor. The Applicant obtained a certificate of occupancy authorizing use of the first and second floors of the building as a two-family dwelling on February 28, 2014. Each of the existing dwelling units at the subject property has three bedrooms; the building currently houses the Applicant and a total of five tenants.
4. The Applicant's building was constructed to the lot lines on both sides, and thus lacks side yards. A small rear yard is located behind the building. The subject property has no curb cuts or alley access.
5. The subject property is nonconforming with respect to lot occupancy. The existing lot occupancy is 80% where a maximum of 60% is allowed as a matter of right. (11 DCMR § 772.1.)
6. The subject property is nonconforming with respect to rear yard. The existing rear yard is 10 feet deep, where a minimum of 15 feet is required. (11 DCMR § 774.1.)
7. The subject property is nonconforming with respect to parking. The lot provides no off-street parking, where a minimum of one space is required for use as a two-family flat. (11 DCMR § 2101.1.)
8. The neighborhood in the vicinity of the subject property is characterized by commercial and mixed-use development along Georgia Avenue. A planned unit development, a mixed-use building 80 feet in height, is located along Georgia Avenue directly north of the subject property. A residential neighborhood with row dwellings and some small apartment houses is located to the west.

The Applicant's Project

9. The Applicant proposed to convert the two-family flat to a three-unit apartment house by

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creating a new dwelling unit in the basement level of the building at the subject property. The conversion project would not require any enlargement or changes to the exterior of the building but would create a new three-bedroom apartment in the basement through a renovation of the interior of the building.

Harmony with Zoning

10. The C-2-A zone classification is a Community Business Center district that permits shopping, housing, and mixed uses in developments to medium proportions, located in low- and medium-density residential areas. (11 DCMR §§ 720.2 – 720.4.)
11. The purposes of the Neighborhood Commercial overlay district include encouraging a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement. (11 DCMR § 1300.3(a).)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a parking variance and area variances from the requirements for lot occupancy under § 772.1 and to rear yard under § 774.1 of the Zoning Regulations to allow the conversion of a two-family flat to a three-unit apartment house, by interior alteration, in the GA/C-2-A District at 705 Kenyon Street, N.W. (Square 2892, Lot 804). 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 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 Applicant contended that “the size and depth of the Site, combined with its lack of access to a public alley, create an exceptional situation and condition that directly impacts the requested relief.” (Exhibit 10.) The Office of Planning asserted that, with respect to lot occupancy and rear yard, the “existing building already has 80% lot occupancy and a 10’ rear yard,” and, with respect to parking, that the lot “has no opportunity to provide onsite parking” because the “subject property has no alley access and is landlocked on the east, west and north by other properties,” while the “existing building occupies the entire property frontage, leaving no room for a curb cut and driveway.” (Exhibit 26.)

The Board does not find these assertions persuasive because neither the Applicant nor the Office of Planning has demonstrated that the subject property is in any way characterized by an extraordinary or exceptional situation or condition. The subject property is rectangular in shape, without any apparent change in grade. The record does not reflect that the property is exceptionally narrow or shallow, or in any manner significantly different from other properties in the vicinity. The property is improved with a building that is now nonconforming with respect to lot occupancy and rear yard, but its nonconforming aspect does not alone create an exceptional condition or situation. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (The rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulations from the Zoning Commission; if such problems were addressed through individual variances, the effect would be a *de facto* amendment of the zoning regulations by the Board because requests by other owners similarly situated would have to be granted as a matter of equal protection under the due process clause. The Zoning Commission, and not the Board, is empowered to make such amendments to the overall zone plan.), citing *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *see also Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 234 (D.C. 1973) and *Myrick v. District of Columbia Bd. of Zoning Adjustment*, 577 A.2d 757, 760 (D.C. 1990). The Board concludes that the subject property is not faced with any extraordinary or exceptional situation or condition such that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the property.

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 Applicant contended that the “addition of one apartment to the neighborhood will have a very small effect on traffic and parking and it will provide needed housing to a growing neighborhood.” (Exhibit 10.) The Office of Planning noted that the Applicant did not propose to enlarge the existing building, “so no new impacts would be created that would affect the light, air or privacy of adjacent properties.” OP also asserted that “the addition of one car on the street should not have a great impact on the parking situation in the neighborhood.” (Exhibit 26.)

The Board does not agree, and concludes instead that approval of the requested variance relief could result in substantial detriment to the public good. Although the building would not be enlarged as part of its conversion to an apartment house, the creation of an additional dwelling unit in the building would increase the intensity of the use of the subject property attendant to the addition of another three-bedroom apartment on the site. The Applicant’s property lacks space for any off-street parking, and does not meet current requirements for lot occupancy or rear yard. The Board does not find a basis in the record in this proceeding to allow an increase in those nonconforming aspects of the Applicant’s property. The Board did not find the Applicant’s testimony to be credible regarding the number of vehicles used by current residents of the building, nor what the projected use of vehicles would be if relief is granted. The Board did not

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find credible the Applicant's testimony regarding the impact the additional tenant will have on the community, in that the evidence shows the Applicant's present management of the property presents a problem on the community. The Board heard credible testimony from the person in opposition about the unmet demand for parking in the neighborhood, and the impact of relief on the community. Approval of the requested relief would also run counter to the purposes of the Neighborhood Commercial overlay district which include encouraging attributes such as safe and efficient conditions for pedestrian and vehicular movement.

The Board is required to give "great weight" to the recommendation of the Office of Planning, D.C. Official Code § 6-623.04 (2012 Repl.). For the reasons discussed above, the Board does not find OP's recommendation persuasive in this proceeding.

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)). To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

In this proceeding ANC 1B indicated its support for the application and raised no issues or concerns. However, the ANC's report did not address the grounds for variance relief as stated in the Zoning Act but was based in part on the ANC's conclusion that the Applicant's proposal to convert the two-family flat to a three-unit apartment house would be "the highest and best use" for the building at the subject property, a factor that is not germane to the Board's deliberations in this proceeding.

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 area variances from the requirements for lot occupancy under § 772.1 and to rear yard under § 774.1 of the Zoning Regulations to allow the conversion of a-family flat to a three-unit apartment house, by interior alteration, in the GA/C-2-A District at 705 Kenyon Street, N.W. (Square 2892, Lot 804). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 3-0-2 (Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood (by absentee ballot) to Deny; Jeffrey L. Hinkle not participating; 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.

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ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 7, 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.