GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18979 of Tiblez Adal, pursuant to 11 DCMR § 3103.2, for a variance from the nonconforming structure requirements under § 2001.3 and a variance from the off-street parking requirements under § 2101.1 to allow use of a two-story accessory structure as an artist studio in the R-4 District at premises 400 K Street, N.E. (Square 806, Lot 44).[1]

HEARING DATES: April 21, 2015, June 23, 2015, September 22, 2015, and November 10, 2015[2]

DECISION DATE: November 10, 2015

DECISION AND ORDER

This self-certified application was submitted on February 11, 2015 by Tiblez Adal, the owner of the property that is the subject of the application. As amended, the application requested an area variance from the requirements for enlargement of a nonconforming structure under § 2001.3(a)[3]

[1] This caption has been amended to reflect that, after the application was initially filed, the Applicant also requested parking relief. (Exhibit 65.)

[2] The application was postponed from the hearings of April 21, 2015 and June 23, 2015. The hearing was held on September 22, 2015 and continued to November 10, 2015.

[3] The requested relief as stated in the initial application was " a variance pursuant to Section 3103.2 under Section 2001.3(a) to allow an existing addition to an existing nonconforming structure to remain in order to make adaptive use through restoration of an existing carriage house for purposes of an artist studio…." (Exhibit 1.) This statement seems to refer to an already completed third-story addition to the principal building at the subject property, which the Applicant now wants to retain, along with the accessory structure (the "carriage house"), which the Applicant renovated without obtaining either the necessary permits or zoning relief attendant to the nonconforming lot occupancy of the property. Subsequently, the Applicant acknowledged "a subtext nexus between the constructed third floor and the relief sought in this application" and that zoning relief "to allow the restoration of a two -story carriage house for productive use as an artist studio…is necessitated because the approved and constructed third story addition on the main building would otherwise not have been possible without the relief sought in this application." (Exhibit 35.) However, the Applicant also stressed that "the subject of relief before the Board is the retention of the carriage house for purposeful matter of right use and occupancy" and that the "validity of the building permit which authorized the construction of the third floor on the main building is not under challenge in the application…." (Exhibit 35.) Instead, the Applicant described the "nature of relief sought [as] variance relief from the maximum permitted lot occ upancy for the proposed use in the underlying R-4 Zone District" as a result of "the retention of the carriage house for purposeful use, which results in no net change in lot occupancy…." (Exhibit 35.) The Applicant's written submissions stated a need for relief to avoid having to remove the roof of the accessory structure because " the specter of

and a variance from § 2101.1 to allow use of an accessory building as an artist studio without providing any off-street parking in the R-4 District at 400 K Street, N.E. (Square 806, Lot 44). Following a public hearing, the Board of Zoning Adjustment ("Board" or "BZA") voted to grant the application with respect to the variance to allow the enlargement of a nonconforming structure and to deny the parking variance.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 23, 2015, 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 6; Advisory Neighborhood Commission ("ANC") 6C, the ANC in which the subject property is located; and Single Member District/ANC 6C06. Pursuant to 11 DCMR § 3112.14, on February 26, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 6C, and the owners of all property within 200 feet of the subject property.[4] Notice was published in the *District of Columbia Register* on March 6, 2016 (62 DCR 2754).

Party Status. The Applicant and ANC 6C were automatically parties in this proceeding. There were no requests for party status.

Applicant's Case. The Applicant provided testimony and evidence indicating that the principal and accessory buildings at the subject property were both vacant and dilapidated when the property was purchased by the Applicant's family, and that the Applicant's efforts to restore the buildings have occurred piecemeal over a period of years. The Applicant testified that a building permit was issued on December 15, 2009 to allow construction of a third-floor addition to the principal building on the lot, subject to a condition requiring removal of the roof of the accessory structure so as to avoid exceeding the maximum lot occupancy permitted in the R-4 zone as a matter of right. The Applicant built the third-story addition and later began renovation of the two-story accessory structure, although no building permit was obtained for the latter construction. The Applicant now seeks a variance from the restrictions on enlargement of a nonconforming structure under § 2001.3 to allow the roof of the accessory structure to remain, notwithstanding the nonconforming lot occupancy, so that the accessory structure could be put to use as an artist studio.

OP Report. By memorandum dated March 24, 2015, the Office of Planning indicated its lack of support for the application on the ground that the Applicant had not demonstrated an exceptional situation resulting in practical difficulty. (Exhibit 32.) However, after additional information was provided by the Applicant, OP testified at the public hearing that removal of the roof of the accessory building "would be impractical." (Tr. of September 22, 2015 at 46.)

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freestanding perimeter walls, which would render the carriage house unsuitable for occupancy and/or any use whatsoever, [would result] in an undesirable outcome." (Exhibit 35.) The Board considered the application as a request for a variance from § 2001.3 to allow the Applicant to retain the accessory structure at the subject property.

[4] The public hearing, originally scheduled for April 21, 2015, was postponed twice at the request of the Applicant.

DDOT. By memorandum dated April 9, 2015, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 29.)

ANC Report. By letter dated April 13, 2015, ANC 6C indicated that, at a properly noticed public meeting on April 8, 2015, with a quorum present, the ANC voted 6-0 to oppose the application "as currently presented." The ANC objected that the Applicant had apparently built a third dwelling unit, rather than an artist studio, in the accessory building at the subject property and had paved a section of public space to create a parking pad. (Exhibit 30.) By letter dated November 3, 2015, ANC 6C indicated that, at a properly noticed public meeting on October 14, 2015 with a quorum present, the ANC voted 6-0 to adopt a position in opposition to the application. (Exhibit 54.)

FINDINGS OF FACT

The Subject Property

1. The subject property is located at the northeast corner of the intersection of Fourth and K Streets, N.E. (Square 806, Lot 44). The rectangular parcel is 20 feet wide (fronting on K Street) and 95 feet deep (fronting on Fourth Street), with an area of 1,907.6 square feet. A public alley 10 feet wide abuts the property along the rear (north) lot line.

2. The subject property is improved with an end-unit row building and an accessory structure that were both constructed around 1890. The subject property is the only lot in its square that contains both a principal building and a two-story accessory structure constructed in conjunction with the principal building.

3. The accessory structure is approximately 20 feet in both length and width and abuts the public alley at the rear of the lot.

4. The existing nonconforming lot occupancy at the subject property is approximately 75.5% where a maximum of 60% is permitted as a matter of right. (*See* 11 DCMR § 403.2.) The principal building occupies approximately 55% of the lot.

5. The principal building has been used as a two-family flat since a third-floor addition was built around 2010. The Applicant constructed the third-floor addition pursuant to a building permit issued on the premise that the accessory structure lacked a roof and therefore was not included in the calculation of lot occupancy. A subsequent inspection revealed that the building at the rear of the lot was in fact an existing accessory building under roof. The Applicant has substantially renovated the accessory building without obtaining permits for the work.

6. Upon completion of the renovation project, the accessory structure will not contain kitchen or bathing facilities, as depicted in the final floor plan submission. (Exhibit 67.)

7. 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.) The "primary purpose" of the R-4 zone is "the stabilization of remaining one-family dwellings." (11 DCMR § 330.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the requirements for enlargement of a nonconforming structure under § 2001.3(a) and a variance from § 2101.1 to allow use of an accessory structure as an artist studio without providing any off-street parking in the R-4 district at 400 K Street, N.E. (Square 806, Lot 44). 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 satisfies the requirements for variance relief in accordance with § 3103.2 with respect to the relief from requirements under § 2001.3 for the enlargement of a nonconforming structure to allow a roof on the accessory structure. The Board concurs with the Applicant that the property is faced with an exceptional situation as the only property in its square that is improved with both a principal building and a two-story accessory structure that have occupied the property since 1890 and together create a nonconforming lot occupancy. The Board also concurs with the Applicant that the historic nature of the property is significant, in part because the ages of the buildings, which were vacant and dilapidated when the Applicant acquired the property, have complicated the Applicant's incremental efforts to renovate the property since 2007.

The Applicant claims practical difficulty arising from the construction of the third-floor addition pursuant to a permit that the Applicant contends was issued after "the applicant was advised that annotation on the plat to the effect that the roof of the carriage house would be removed, was enough to secure the building permit sought for the third floor addition to the main building," even though "the existing improvement on the lot, including the carriage house, exceeded the maximum percentage of lot occupancy allowed (60% versus 75.5%)." (Exhibit 35.)

The Board may consider zoning history in determining whether variance relief is warranted. *See, e.g., DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978) (extraordinary conditions that justify a finding of uniqueness can be caused by events that are extraneous to the land, including the zoning history of a property). In this case, the Applicant, or the Applicant's agent, apparently misrepresented the status of the accessory structure in order to obtain a building permit to allow an addition to the principal building, which otherwise would have

required zoning relief as an enlargement of a structure that was nonconforming with respect to lot occupancy. Now the Applicant seeks to retain the accessory structure as a viable building, as well as the already completed addition to the principal building. The Board finds that the strict application of the Zoning Regulations would result in practical difficulty to the Applicant in light of the exceptional situation of the subject property, despite the Applicant's role in the zoning history of the property. *See Washington Canoe Club et al. v. District of Columbia Zoning Commission*, 889 A.2d 995, 1001 (D.C. 2005) (rule of self-created hardship does not apply to area variances). The Board agrees with the Applicant and the Office of Planning that demolition of the roof of the accessory structure, to comply with the purported condition allowing the earlier enlargement of the principal building, would create practical difficulty related to the demolition of the accessory building, or at minimum its conversion to a set of exterior walls not suitable for any use.

The Board does not find that approval of the requested variance relief, subject to the conditions adopted in this order, would cause substantial detriment to the public good or would substantially impair the intent, purpose, and integrity of the zone plan. The zoning relief sought by the Applicant would allow the adaptive reuse of the accessory structure, perhaps as storage space for the residents of the two-family flat in the principal building. Neither the retention of the accessory structure nor the already completed third-floor addition to the principal building created any increase in the nonconforming lot occupancy of the subject property, which has existed since 1890.

The Board notes the Applicant's stated intention to devote the accessory structure to use as an artist studio, which is a use permitted as a matter of right in the R-4 District in accordance with the requirements of § 2300.3. However, the Applicant envisioned the accessory structure "as a work/live space for a single artist with no apprentice(s)" even though by definition an "artist studio" is "a place of work," distinguishable from "artist housing," i.e. "an apartment or studio where an artist works and lives." (*See* 11 DCMR § 199.1.) Both the Office of Planning and ANC 6C opposed the potential residential use of the accessory structure, which would not be permitted under the Zoning Regulations at the subject property. The Applicant responded by revising the plans for the accessory structure to remove features that would allow residential use of the space. The first plans submitted by the Applicant showed kitchen facilities on the first floor and a shower in the bathroom on the second floor. (Exhibit 8.) The revised plans depicted a sink but no kitchen appliances on the first floor; the shower remained in the revised plans for the second floor. (Exhibit 34.) The final plans showed no kitchen facilities on the first floor and no bathroom facilities on the second floor, although the Applicant stated a preference for retention of the shower facilities. (Exhibit 67; Tr. of Nov. 10, 2015 at 143-144.) To ensure that the Applicant will not devote the accessory structure to residential use, the Board conditions its approval of the requested variance on the absence of bathing facilities in the accessory structure, noting that kitchen facilities have already been deleted from the Applicant's proposal.

In response to the opposition of ANC 6C to the proposed use of the accessory structure as an artist studio, the Applicant contended that "relief is not required to establish the proposed artist studio" because that use is permitted as a matter of right in the R-4 zone pursuant to § 2300.3. (Exhibit 35.) However, § 2300.3(e) requires that "[i]n addition to any parking spaces that may be required by § 2101 or any other provision of this title, parking for the studio use shall be provided at the rate

of one (1) parking space for each three (3) occupants of the studio." Because § 2101 does not specify a minimum parking requirement for an artist studio, that use is instead required to provide one parking space for each 600 square feet of gross floor area and cellar floor area pursuant to § 2101.1.

Based on the findings of fact, the Board does not find that the application satisfies the requirements for a variance from § 2101.1 to allow use of the accessory structure as an artist studio without providing any off-street parking.[5] The Applicant did not provide persuasive evidence and testimony to support the grant of a parking variance, but disputed whether the proposed artist studio use would generate a parking requirement even after amending the self-certified application to seek a variance from § 2101.1 out of "an abundance of caution." (Tr. of Nov. 10, 2015 at 161.) Since the application was self-certified, the Board declines to address the Applicant's claim that no parking relief is necessary and concludes that the Applicant has not satisfied the burden of proof necessary for approval of variance relief.

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, OP supported the request for a variance from the lot occupancy requirements to allow the retention of the accessory structure so long as it would not be used as a third dwelling unit at the subject property in addition to the flat in the principal building. The Board concurs with OP's recommendation in this regard.[6]

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 6C did not oppose a variance for lot occupancy relief that would allow the retention of the accessory structure, but did oppose the use of the accessory structure as an artist studio on the ground that the Applicant could easily convert the space to residential use. The Board notes the ANC's concerns about residential use of the accessory structure and concludes that the conditions adopted in this order, along with the prospect of enforcement action taken against any future zoning violation at the subject property, will prevent its use as a residence. Use of the accessory structure as an artist studio – that is, as a place of work – may be permitted as a matter of right so long as the use satisfies all elements of § 2300.3, including any parking requirement.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the requirements for enlargement of a nonconforming structure under § 2001.3(a) but not with respect to the request for a parking variance from § 2101.1 to allow use of an accessory structure as an artist studio without providing any off-street parking in the R-4 District at 400 K Street, N.E. (Square 806, Lot

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[5] The Board notes that the Applicant's initial plans showed a parking pad located between the accessory building and the sidewalk on 4th Street. (Exhibit 10.) The Applicant in fact paved much of the area between the accessory building and the sidewalk. (Exhibit 5.) While a later submission did not show a parking pad, the Applicant initially stated that the paving had not been removed but that a "no parking" sign had been posted on the outer wall of the accessory structure. (Tr. of Sep. 22, 2015 at 21.) Later, the Applicant stated that the size of the paved area would be reduced to a lead walk, consistent with DDOT requirements. (Tr. of Nov. 10, 2015 at 144.)

[6] Neither the Office of Planning nor DDOT submitted supplemental reports addressing the request for parking relief made by the Applicant in the amended application.

44). Accordingly, it is **ORDERED** that the application is **GRANTED** in part, **SUBJECT TO** two **CONDITIONS,** and **DENIED** in part:

1. The Applicant shall not provide bathing facilities in the accessory structure.

2. The Applicant shall not provide a parking pad in the public space along 4th Street, as depicted in the revised site plan (Exhibit 66).

VOTE: 3-0-2 (Peter G. May, Marnique Y. Heath, and Frederick L. Hill voting in favor of the motion to Approve in part, and Deny in part; Jeffrey Hinkle not present, not voting; one Board seat vacant.)

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

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 12, 2016

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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS 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, 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.