

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

August 11, 2014

Via Emailed PDF and US Mail



Martin P. Sullivan, Esq.
Sullivan & Barros, LLP
1990 M Street, NW, Suite 200
Washington, DC 20036

Re: Minor Flexibility for Minimum Lot Area – 1521 Varnum Street, NW

Dear Mr. Sullivan:

You have asked me to confirm compliance with the Zoning Regulations of the minimum lot area requirement under § 401.3 for your client’s proposed development at 1521 Varnum Street, NW (Square 2698, Lot 817) (the “Property”), in conjunction with the grant of minor flexibility pursuant to § 407.1.

According to the records of the Office of Tax and Revenue, the Property has a land area of 6,279 square feet. According to the DC Office of Zoning the Property is zoned R-4 [A Location Survey and a Zoning Certification is attached as Exhibit A]. The Property currently consists of a structure (the “Existing Structure”) which existed prior to May 12, 1958. The Existing Structure has been used as a one-family dwelling.

You have represented that the proposed development would consist of an addition to the Existing Structure and a conversion to a seven (7)-unit apartment house, and also that the proposed development will comply with lot occupancy, side yard, height, and all other area requirements. I have not reviewed this proposal for compliance with any requirements other than the minimum lot area requirements under § 401.

Minimum Lot Area – Zoning Administrator Flexibility

For the proposed conversion to a seven-unit apartment house, the minimum lot area required is 6,300 square feet. As noted above, the lot area for the Property is 6,279 square feet, approximately 21 feet short of the minimum required amount, or 0.33%. Pursuant to § 407.1 of the Zoning Regulations, the Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of § 401 for minimum lot dimensions, provided that:

- “(a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and

- (b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.”

Being only approximately 0.33% short of 6,300 square feet, the Property is eligible for Zoning Administrator flexibility, provided that conditions (a) and (b), above, are satisfied. In my opinion, this proposal does in fact meet those conditions. Therefore, I will grant the necessary deviation for the reasons described herein.

The proposal meets condition (a) because deviation from §401.3 is the only deviation requested. Regarding condition (b), I have deemed the 0.33% deviation to not impair the purpose of the otherwise applicable regulations.

Reference is first made to BZA Order No. 18108 for a discussion of Subsection § 407.1 (b) as it relates to minimum lot area. In BZA Order No. 18108, the BZA affirmed a decision of the Zoning Administrator in granting a deviation under § 407.1 from the minimum lot area requirements, allowing a single record lot to be divided into two separate buildable record lots, despite one of the lots being short of the required 5,000 square-foot minimum lot area.

The Board noted generally in that BZA Order that “in creating § 407.1, the Zoning Commission...gave the ZA authority to permit minor deviations from certain provisions of the Zoning Regulations so as to alleviate the need to seek *de minimus* zoning relief from the Board.” (p.5 of the Order.) The Board also noted that the Zoning Commission left this determination “to the discretion of the ZA in implementing the Zoning Regulations governing a particular property.” (p.6 of the Order.)

Among the factors that the Zoning Administrator may consider in making the determination of compliance with § 407.1(b) are (i) compliance with other applicable zoning requirements, (ii) the purpose of the applicable zone district, (iii) the degree of deviation, and (iv) the configuration of a property in relation to adjacent lots. An evaluation of these items in relation to this proposal allows me to deem that the requested deviation does not impair the purpose of the otherwise applicable regulations.

As discussed, the Proposal will otherwise comply with all other applicable zoning regulations. The degree of deviation requested is one-third of one percent, which will have no apparent impact on adjacent properties and can be considered virtual compliance with the lot area requirement, as the Property has 99.66% of the required land area to support seven (7) units. In addition, granting the deviation will not cause an increase in the overall density of the proposed project, or in the lot occupancy, or likely number of occupants. It will, rather, allow the provision of seven units at market size for an apartment house in the District, rather than six slightly larger units possibly with more bedrooms overall. Despite the additional unit, the lot

occupancy, height, density, and other aspects of the Property will not be increased as a result of the requested deviation.

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 (2) or more families. The primary purpose of the R-4 District shall be the stabilization of remaining one-family dwellings. The granting of the deviation in this case will not impair the purpose of the R-4 District, since an addition and a conversion to a six-unit apartment house is already permitted as a matter-of-right on the Property. In fact, the change between 6 units and 7 units is a much smaller change than that granted in the decision appealed in BZA Appeal No. 18108, in which the number of units was doubled, and the minor flexibility resulted in a completely new one-family dwelling which would not have been permitted without that flexibility.

I have also considered the configuration and size of the Property, relative to surrounding properties, in my decision to grant minor flexibility here. Because of its relative narrow width compared to its overall size (it is the deepest lot in its square), and the location of the Existing Structure, the Property cannot be subdivided to provide any additional units or lots. In other words, unless the Existing Structure is razed, you cannot subdivide the Property at all. Also, the Property jogs in on the west boundary line at the rear of the Property, without which it appears that the Property would meet the minimum required lot area of 6,300 square feet. I note also that there is no reasonable opportunity to add any land to the Property in order to reach the required minimum amount of land area.

In summary, the overriding factors in my decision that the requested relief does not impair the purpose of the otherwise applicable regulations include: (i) the extremely small amount of deviation required, (ii) the uniqueness of this Property compared to surrounding properties, (iii) the relative consistency in character between a 6-unit building and a 7-unit building, (iv) the fact that the 7-unit configuration provides fairly large living units (1,350 square feet) for an apartment house in the District, (v) the fact that this decision does not allow for any increase in the overall density or bulk of the proposed project, and (vi) the consistency of this decision with past decisions of the Zoning Administrator and the Board of Zoning Adjustment regarding minor flexibility for minimum lot area.

Based on all of these factors, I have deemed that an approximate 0.33% deviation in the minimum lot area requirement of § 401.3 would not impair the purpose of the otherwise application regulations. Therefore, I will permit the requested deviation under § 407.1 to allow the proposal for a matter-of-right addition and a conversion to a seven-unit apartment house at 1521 Varnum Street, NW. Such deviation also applies to any subdivision required to convert tax

lot 817 into a record lot, provided the resulting record lot is at least 6,279 square feet in land area.

Please feel free to contact me if you have any questions.

Sincerely, 

Matthew Le Grant
Zoning Administrator

Attachment - Exhibit A:
Location Survey
Zoning Certification Plat