

## Memorandum

To: District of Columbia Board of Zoning Adjustment

From: Theresa A. Westover, 2803 25th Street NE, DC

Date: May 2, 2019

Subject: = BZA #19967 – 2429 Girard Place, NE – Request for variance relief to construct a new single family detached home

### I. Introduction

District Properties is seeking a variance for 2429 Girard Place, NE, (hereinafter “side yard lot”) in order to cram a 19’ home on a 25’ wide lot that it purchased in coordination with another developer as part of a three-parcel purchase. It is seeking a lot variance, a width variance, and a side yard variance from this Board.

In the hearing that occurred in April of 2019, Mr. Sek, a representative from District Properties testified, under oath, to a number of things that are factually inaccurate or artfully misled this Board by omitting material facts. Namely, Mr. Sek testified that the construction of this home on this side yard lot would not “change the picture of the neighborhood on that block.” That is inaccurate. A drive down Girard Place NE will show that each house has a sizeable side yard on at least one side of it. As Commissioner Montague explained during his testimony, this is of historical significance. Each homeowner on that street purchased at least two parcels, built on one parcel, and maintained the other as a side yard. In fact, the current home at issue was three parcels all owned by Mrs. Ethel until she passed - parcel 007 is a beautiful side lot with a large, possibly legacy tree on it; parcel 008 is where Mrs. Ethel’s home is located; and parcel 009 was the driveway and parking pad for Mrs. Ethel’s home until District Properties tore it up and left a mud pit with the deconstructed driveway and parking pad left in pieces on the adjacent pocket park.

Second, Mr. Sek was dishonest with the Board when he omitted from his testimony the fact that District Properties fully intends to come before this Board again and seek the same variance for parcel 009, the previous driveway and parking pad lot. Mr. Sikder from District Properties engaged neighbors in discussions about this proposal far before the variance that is at issue in this case came before this Board. The neighborhood has made it clear to both Mr. Sikder personally and District Properties as a whole that it does not support construction of a home on either side yard lot, by his company or by any other, and it vehemently objects to his continued destruction and desecration of public land adjacent to this lot, which goes unchecked by the DC Government and District Properties thinks so little of our neighborhood it has failed to correct the string of wrongs it has committed here. Through his actions thus far, Mr. Sikder and District

Properties has proven to this neighborhood that he has no respect for this neighborhood or the people that live in it.

Finally, and most importantly, Mr. Sek was dishonest with the Board when he omitted a material fact from his testimony. District Properties purchased three parcels in November of 2018 in a multi-party purchase. Privately, the parties then split up the three parcels, with District Properties maintaining ownership of the two side yard lots while the other developer maintained ownership of 2431 Girard Place NE, where the existing home is located and currently under renovation. This is an important material fact because District Properties now comes before this Board seeking variances on the basis that this is an exceptional situation resulting in a practical difficulty. Mr. Sek even dared to testify to this Board that the owner of parcel 008 is “not interested in selling,” which borders the line of perjury. It’s inconceivable to me that this Board would find it appropriate that a well-seasoned developer would be allowed to cry and claim “exceptional situation” when it divided parcels in a multi-party purchase in such a way as to create a practical difficulty for itself and then come to this Board and be rewarded with variances for lot width, lot size, and side yard. I have located no case law to support the idea that a developer can create an exceptional situation resulting in a practical difficulty and then be granted a variance but I put it to District Properties to locate such case law.

### Background

As noted above, in November of 2018, District Properties purchased three parcels in a single deal that involved another developer. The three parcels include 2431 Girard Place NE/Parcel 008, where an existing single family home sits and is currently under renovation, as well as two side yard parcels, neither of which are currently recorded taxable lots. Parcel 009 sits to the west of parcel 008 and is adjacent to another home and is the subject of this variance request. Parcel 007 sits to the east of parcel 008 and, until a few months ago, was a driveway and side yard for Parcel 008.

In a private agreement, one that is in contention according to the developer of parcel 008, District Properties maintained ownership of the side yard parcels: 007 and 009. The other developer maintained ownership of parcel 008 where the existing home is located.

This background is important because it was this private agreement with another developer that led to the alleged exceptional situation the Office of Planning found to result in a practical difficulty. The Office of Planning stated in its report on page 2 that “[b]ecause adjacent properties are developed and under separate ownership, there is no opportunity for this lot to be expanded in width or area.” Again, this is District Properties own doing. They divided up the three parcels in a way that prevented any of them from conformance with the current zoning laws. It is disingenuous for District Properties to get greedy in a deal, sell off the middle parcel of a three-parcel deal, and now come crying to this Board for a variance because they cannot build on the side yards they left themselves with in their deal.

Moreover, in the Office of Planning report on page 3, it's noted that because the "width of the lot cannot be expanded, the applicant faces a practical difficulty in building a home of useable width." To that, I say, why is it this Board's problem to solve or this community's issue to deal with when District Properties knew exactly what it was doing when it purchased and divided up these three parcels? He shouldn't have sold the middle parcel to another developer if he needed to expand the width of parcel 009 in order to build a home of useable width. This is an experienced developer who has done loads of business here in DC, to varying degrees of community outrage.

Finally, the Office of Planning report on page 3 states that "[c]onstruction on the vacant lot could improve the streetscape by filling in a gap in the urban fabric." As mentioned earlier, this would be outside of the character of our neighborhood generally and this street specifically. Each house has a generous side yard on at least one side of it. By granting this variance, there will be three homes in a row with no side yard to speak of between them, and, eventually, a fourth house on parcel 007 if District Properties gets its way. Langdon is not a neighborhood of tiny homes crammed into narrow lots - it's a neighborhood of backyards and bungalows and families, like ours, flock here from other parts of the city to get generous outdoor space that gives you a sense of privacy and personal space while staying within the city limits.

## II. Argument

- a. This is not an exceptional condition and relief cannot be granted as it would substantially impair the intent, purpose, and integrity of the zone plan.

The Board is authorized to grant variances from the strict application of the Zoning Regulations where, in relevant part, "other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can only 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." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

In reviewing previous Decisions and Orders issued by this Board to District Properties, it's important to note how this instance case is distinguishable from those cases. Namely, District Properties created the exceptional condition in this case when it divided up the three parcels in the manner it did, assuming it could lie to this Board and to the Office of Planning about that material fact and obtain a variance. Secondly, in other cases where District Properties was granted a variance for an in-fill project, an example being application number 17737, the subject lots were created prior to the enactment of the current Zoning Regulations' requirements of a minimum lot area and width. This parcel has not been created as a lot, either record or tax, and District Properties has not yet begun that process with the Surveyor's Office.

Moreover, I could find no other case in which the Board has found an exceptional condition present when the applicant created that condition through private deals. Notably, in application number 17737, the Board found it to be important that District Properties offered, in writing, to sell the subject lot to adjacent neighbors, but neither accepted the offer. No such offer has been made by District Properties to any neighbor. They are not attempting to cure any practical difficulties, of their own creation, they are just smugly coming to this Board to rubber stamp their greed and lack of interest in maintaining the character of our beautiful neighborhood.

b. The Board must give great weight to full ANC vote

The full ANC voted against this project and the neighborhood was similarly unanimous in its opposition to the project. Granting this variance request in the face of that strong opposition would show that this Board failed to give the necessary great weight to the full ANC vote.

III. Conclusion

I ask that you deny this request in full. Absent that, if the Board is inclined to grant this request, I urge you to grant this request contingent upon an agreement that District Properties will not seek a variance and will not attempt to construct a home on parcel 007 in order to maintain the character of this neighborhood and to thwart its attempt at pulling the wool over this Board's eyes. District Properties has created this mess - both figuratively and literally - on Girard Place NE we are asking that this Board not reward its behavior by granting this unnecessary variance request.