

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Application of Kenneth & Ellen Marks
ANC 2D02

BZA Application No.
Hearing Date:

APPLICANT'S STATEMENT

This is the application of Kenneth & Ellen Marks ("**Applicant**") for area variance relief to allow the construction of an addition to an existing single family row dwelling. The property that is the subject of this application is 2130 Bancroft Place NW (Square 2532, Lot 802) (the "**Property**"). The Property is included in the R-3 Zone District. A Surveyor's plat is attached as Exhibit C, and a portion of the District of Columbia Zoning Map is attached as Exhibit D.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve area variances from the lot occupancy limit in Section 403.2, from the rear yard requirement in Section 404.1, and from the nonconforming structure limitation in Section 2001.3 of the Zoning Regulations.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Kalorama Heights neighborhood of Ward 2. It is rectangular in shape and contains approximately 2,375 square feet of land area. The Property is mid-block between Phelps Place and Connecticut Avenue. It is bounded by three-story row

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dwellings to the east and west, by Bancroft Place to the north, and by a 15-foot wide public alley to the south.

The Property is improved with a two-story single family row dwelling constructed circa 1907. The house was originally constructed as a one-story ballroom addition for the mansion immediately to the east (2128 Bancroft Place). A second story was added in 1926. The building became a separate single family residence in 1960. The Property also includes a separate accessory garage at the rear with parking for two cars. The garage opens on to the rear alley and abuts the rear property line. The garage and house are separated by an open courtyard containing landscaping and hardscaping. The existing house has a nonconforming lot occupancy of 62%.

The surrounding area is predominantly residential in character, with most of the buildings having been constructed prior to 1950. Most of the buildings along both sides of the block are single family three and four-story row dwellings, and many of these are nonconforming as to lot occupancy and/or rear yard. The buildings to the south across the alley are primarily row dwellings and multifamily apartment buildings.

IV. THE PROPOSED PROJECT

The proposed project will add to and reconfigure the existing structures in order to make the house more functional and more suitable for modern living standards. Architectural plans are included in Exhibit E. The addition will involve three main components. First, a third floor will be added to the existing house. This additional story will provide an informal family room, as opposed to the formal living room originally constructed to serve as a ballroom. Second, the courtyard between the house and the garage will be enclosed with a glass roof to create a conservatory, but no new rooms will be constructed in the area of the courtyard. Even though the garage will still be separated from the rest of the house by the enclosed courtyard, the glass roof will connect the house with the garage at the first level so that both will combine into one

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structure for zoning purposes. Finally, a second story will be added to the garage structure to include a master bedroom and bathroom. These facilities will be accessed from the ground level of the main structure to ensure the owners can use the bedroom and bathroom in their later years without having to climb 14 feet to the existing bedrooms.

Following the addition and reconfiguration, the house will have a height of 34 feet. The new house will have a nonconforming residential lot occupancy of 88% (maximum permitted is 60%) and a nonconforming rear yard of 0 feet (20 feet is required).

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, this application satisfies the three-part test for the requested area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a

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single situation or condition on the property. Rather, it may arise from a “confluence of factors.”

Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

The Property is unique because of its unusual history. As mentioned above, the house was originally designed and constructed as a ballroom for the adjacent mansion at 2128 Bancroft Place. The ballroom, which is today the living room of 2130 Bancroft Place, was not accessible from the street and accessed only through a cased opening in the adjacent mansion at 2128 Bancroft Place. As such, the first floor of the building was originally constructed as a large room devoid of any features typical of a house. When added later, the second story contained two bedrooms and bathrooms meant as servants’ quarters for the adjacent mansion, not as those independent and part of a stand-alone house. Accordingly, the original design of the structure never contemplated it functioning as a residence separate from the adjacent mansion. The result was that the later changes to the house were merely to create a habitable space, but structure never functioned well as a house.

Further, the building is a contributing structure in the Sheridan-Kalorama Historic District and is considerably smaller in stature than the neighboring houses. Thus, any addition to the house must account for its context in much larger houses, and any changes must be harmonious with the many larger houses nearby. Similarly, the façade is protected by an easement held by a historic trust, so any physical changes must be approved by the trust. Also, the existing house is nonconforming as to lot occupancy, so no addition is possible without that nonconforming aspect continuing.

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B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . . . Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

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Complying with the Zoning Regulations with respect to lot occupancy, rear yard, and nonconforming structure prohibitions would create a practical difficulty for the Applicant. Because of the house’s unique history as a former ballroom and resulting odd configuration, the

house does not function well as a residence. The Applicants are of an age that they desire a master bedroom located on the ground level. The existing bedroom is currently located two stories above the basement level kitchen. The original design of the main level ballroom, which remains functioning as one symmetrical room with decorative interior features, does not permit an interior elevator to be introduced at the ground floor without significantly disrupting the character of the historic interior. And an exterior elevator would disrupt the exterior conservation easement. The 14 foot high ceilings of the original ballroom, now the house's ground floor living room, created a high rise of stairs to the second floor where two small bedrooms cannot adequately accommodate the couple's need for a master bedroom. Thus, the proposed design would locate the master bedroom above the existing garage and accessed from the ground level of the main structure through the proposed conservatory. Creating a well-functioning house that is suitable for modern living standards, while respecting the historic context of the neighborhood, would be burdensome to the Applicant without the requested variance relief.

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Without the requested lot occupancy relief, the courtyard could not become enclosed part of the new house. Modern design standards and practical considerations mean that an enclosed conservatory is more feasible than an open central courtyard for a row dwelling. To add a connecting corridor that is enclosed from the main structure to the proposed master bedroom above the existing garage would encroach upon the historic façade and would disrupt the rear symmetrical façade. By placing a proposed glass conservatory roof over the existing courtyard, the symmetry of the architecture and the detailed scored plaster façade at the rear elevation would remain unaltered. A partial covering is not very practical and does not result in a harmonious design that works well within the house's historic context because the two structures

may be connected for year-round passage without building a structure or breezeway. A partial covering would not solve the design and practical constraints, and it likely would be disfavored by the HPRB and the holder of the façade easement. Thus, the entire courtyard must be covered, which results in an increase in lot occupancy that does not reflect the fact that the courtyard, effectively, will continue to function as open space, just with a glass roof. The existing landscaped beds would remain and the courtyard exterior features would be restored. The enclosed courtyard will not contain any new rooms, and it will be merely a zoning technicality that the glass roof increases the lot occupancy. Keeping the lot occupancy to under 70% (the maximum permitted for a special exception under Section 223) would result in a loss of courtyard space and landscaping. In addition, a breezeway connecting the two structures would exceed 70% lot occupancy and would significantly encroach on the historic fabric that is protected by the conservation easement.

The necessity of the rear yard relief is closely related to the request for additional lot occupancy. Presently, the garage is an accessory structure permitted in the conforming rear yard. However, once the courtyard is covered, the garage would become part of the house, and the rear yard would technically disappear. If the glass courtyard enclosure did not connect to the garage, as discussed above, then the courtyard could not be entirely enclosed. Eliminating the garage to allow for a conforming rear yard would not be possible because of the historic and façade easement considerations, as well as the resulting design that would not function well. Effectively, the proposed design would force the elimination of the rear yard from a technical standpoint, but it would not encroach on the rear of the Property any more than the existing garage does. It would be very impractical and burdensome to the Applicant to create a functioning house without maintaining the existing garage structure.

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As discussed above, the proposed addition and changes to the existing house are not possible without extending the lot occupancy nonconformity. In addition, the proposed changes are not possible without creating a nonconforming rear yard. Without the requested variance from the nonconforming structure provisions, the Applicant would be unable to create a well-functioning house suitable for modern standards.

C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

The requested variance relief would not be detrimental to the public good or the Zone Plan. Because the resulting lot occupancy will exceed 70%, the proposed project is not eligible for consideration of special exception relief under Section 223. However, the rear yard relief could otherwise be considered under Section 223, so this relief should be entitled to consideration under a lower standard.¹ The house will be compatible with the neighboring houses, and the Applicant designed the project to be compatible with the surrounding neighborhood in a way that adjacent light and air would not be affected. The proposed lot occupancy would not create any measurable impact because, as a practical matter, the lot occupancy will not be any different than the status quo. If the Applicant were proposing to fill the courtyard with additional rooms, then there would be a verifiable effect on neighboring properties. However, this is not the case: the lot occupancy results from a glass enclosure over a courtyard, but the use and impact of the courtyard will be virtually unchanged. Indeed, the glass enclosure, as opposed to a breezeway, allows the landscaping and width of the courtyard to remain.

¹ For the sake of simplicity, the Applicant requests three variances rather than two variances and one special exception. Since all of the areas of relief are interrelated, it is least complicated to consider them all as variances.

Similar to the lot occupancy, the proposed rear yard relief is much more of a technicality than a consideration of real impacts. The garage will abut the rear property line whether or not the glass enclosure connects to it, so the presence and impact of the garage will be unchanged once it is connected via the glass roof. Similarly, if the glass roof over the courtyard stopped short of the garage by one inch, then the rear yard would be conforming. That it will connect will not create any additional adverse impacts on adjacent light and air, but it drastically alters how the garage is considered under the Zoning Regulations. The same may be said of the relief from the nonconforming structure provisions. Since the requested lot occupancy and rear yard will not create any real adverse impacts, then the fact that a nonconformity is extended and another is created means that there is no resulting adverse impact. Furthermore, many of the nearby houses are also nonconforming as to lot occupancy and rear yard, so the requested relief will not be detrimental to the Zone Plan because it will not disrupt the pattern, character, and scale of the neighborhood.

The Applicant met with the adjacent neighbors, who are now supportive of the project. The proposed design has also been distributed other neighbors on Bancroft Place. A full report on the unique nature of the historic property has been written and presented to the L'Enfant Trust, who has reviewed the preliminary design proposal. Revisions to a past design proposal were made according to suggestions and feedback from the L'Enfant Trust and the HPO in the submitted architectural plans and elevations, as well as from input from the adjacent neighbors.

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VI. EXHIBITS

EXHIBIT A	Application Form, Self-Certification Form, and Letter of Authorization
EXHIBIT B	Applicant's Statement
EXHIBIT C	Surveyor's Plat
EXHIBIT D	Portion of Zoning Map
EXHIBIT E	Architectural Plans and Elevations, including Photos of Property
EXHIBIT F	List of Property Owners within 200 Feet of the Property

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VII. CONCLUSION

Because of the foregoing reasons, the Applicant satisfies the criteria for area variance relief and respectfully requests that the Board approve this application.

Respectfully submitted,


Allison Prince


Cary Kadlecek