

BOARD OF ZONING ADJUSTMENT

Statement in Support of Area Variance Relief
From the Strict Requirement of Section 401.3 (minimum lot area)
1308 Euclid Street, N.W.; Edward Bruske, Applicant

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I. Nature of Relief Sought.

This Statement is submitted on behalf of Mr. Edward Bruske (the "Applicant"). Mr. Bruske owns the property (the "Property") and improvements (the "Building") located at 1308 Euclid Street, NW. The Building is a row dwelling structure currently used as a two-unit flat, and Mr. Bruske and his family reside in the second/third floor unit. Flats are permitted as a matter-of-right in this zone district. A conversion to an apartment house from a flat is permitted subject to the requirement in the R-4 zone that the land area of the lot be at least 900 square feet for each apartment unit provided (11 DCMR 401.3). The Property has a land area of 2,130 square feet. The Applicant is requesting relief from the strict requirements of § 401.3 in order to restore the Building's basement space and provide a third apartment unit in that space.

As described herein, the Property is subject to a unique set of conditions that combine to present a practical difficulty in maintaining the Building as a two-unit flat. Primarily because of its location on a block dominated by large apartment houses, the granting of relief here will not cause substantial detriment to the public good.

II. Description of the Property and Surrounding Area.

The Property is located at 1308 Euclid Street, N.W., in the Columbia Heights neighborhood. The Property is landlocked, and has no rear access, likely as the result of an alley closing many years ago. This block of Euclid Street is characterized primarily by large apartment buildings, rooming houses, and a few flats. Properties to the east include 1306 Euclid Street, which has operated as a rooming house and a single group house over the years; 1304 Euclid, which has for

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many years operated as the Victor Howell House, a transitional residence for homeless persons; and 1300 Euclid Street, which was recently converted to a 6-unit apartment house. To the immediate west of the Property is 1310 Euclid, a group house occupied by six adults, and just one lot west of the Property begins the R-5-B zone district and a series of large 4-story apartment houses on Euclid Street up to the intersection with 14th Street. Across the street at 1309 Euclid is a building (on a smaller lot than 1308) which was recently converted to a 4-unit apartment house, and is to be used as traditional housing under the aegis of the city's mental health administration.

From the Comprehensive Plan Land Use Map, the Property rests on or near the border between the moderate and medium density residential designations (see Land Use Map attached as Exhibit B). The moderate density designation is "characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings." The medium density designation is characterized by "mid-rise (4-7 stories) apartment buildings."

The Property is 5 blocks from both the Columbia Heights and the U Street Metrorail stations. The Property is located within the R-4 zone 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 (2) or more families." (11 DCMR 330.1).

According to available records, the Building was built in 1900. It is a brick and wood structure consisting of three full stories and a basement space. The basement space has extraordinarily high ceilings for a building of this age, allowing a finished ceiling height of around eight feet. There is about 3,356 square feet of interior floor space in the Building, including approximately 813 square feet in the basement space. The Building's current lot occupancy is approximately fifty-six percent (56%). This footprint will not be increased. The Building consists of

a residential unit on the first floor and a residential unit on the second and third floor (where the Bruskes reside).

As described in more detail below, the basement suffers from various conditions which make incorporating that space into the first floor unit a practical difficulty. These conditions also require significant investment necessary to protect the existing structure.

III. Recent History of the Property.

When Mr. Bruske purchased the Property in 1987, he believed that he was purchasing a 3-unit property, primarily because of its interior configuration. At that time, the Building's 3 main floors were uninhabitable; the basement was the only habitable portion of the Building. Mr. Bruske moved into this neighborhood at a time when it was said to be the most murderous census tract in the country; there was a busy open-air drug market across the street. Mr. Bruske lived in the basement of the Building and eventually restored and renovated the floors above. Mr. Bruske and his family now live on the second and third floors, and they lease out the first floor unit to a young family with a new-born baby.

Prior to Mr. Bruske's purchase in 1987, the Building was operated as a rooming house for some time (according to a certificate of occupancy from 1964, attached as Exhibit C). A previous owner, prior to 1987, divided the Building into three units, and eliminated the internal connection between the basement and the first floor. Upon discovering that the Building could only be used as a two-unit flat, and after renovation of the top three floors, Mr. Bruske used the basement level for storage, lived in one unit and rented the other. Due to the aging of the structure and consequences of water damage, termites, and moisture, the basement area is now beset with various structural conditions which make restoration difficult and which also threaten the main structure. A

restoration is necessary to maintain the integrity of the structure, and to correct worsening long-term structural issues in the basement.

Because of the lack of an interior connection and the water and moisture issues, the basement space has been under-utilized, and this restoration will bring this space back to productive use, and provide for the maintenance and sustainability of the basement and the Building as a whole. As a result of changes made to the Building prior to Mr. Bruske's purchase in 1987, the basement is not accessible by way of the first floor. A re-connection of the basement to the first floor would be unnecessarily burdensome for the Applicant and for the Applicant's tenant.

IV. Requested Relief.

The Property's lot area is approximately 2,130 square feet. For conversion from a two-unit flat to a 3-unit apartment house as a matter-of-right, the land area must be 2,700 square feet. The Applicant is therefore requesting area variance relief to provide one additional unit in the restored basement space.

V. Variance Relief and the Burden of Proof.

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) practical difficulty from strict application of the Zoning Regulations; and (3) no substantial detriment to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As the D.C. Court of Appeals has noted, the variance procedure "is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of

property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541, (D.C. 1972).

As set forth below, the Applicant meets the three-part test for the requested variance from minimum lot area.

A. The Property is Uniquely Affected by an Exceptional Situation/Condition.

The phrase “exceptional situation or condition” in the variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974) (emphasis added). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990).

Following are the various situations and conditions which combine to exhibit a unique condition that makes strict compliance with the Zoning Regulations unnecessarily burdensome.

1. Separation of the Basement and First Floors and Prior Configuration as Three Units.

When Mr. Bruske purchased the Property in 1987, the Building was configured into three separate units. After his purchase, Mr. Bruske first occupied the basement, while he restored the floors above. At that time, the basement unit was the only habitable unit. A previous owner had eliminated the internal connection between the basement and the first floor, so the basement is not accessible from the interior of the Building. The Building has operated in this condition since then, with the basement being used for storage only. The basement, since some time before 1987, has been separately metered. See photo of the current meter setup attached as Exhibit D.

2. Water Drainage, Moisture, and other Issues are Causing Rapid Deterioration in the Basement. The Building is subject to significant water and moisture issues that require significant investment to correct and maintain, including excavating around the foundation and waterproofing the basement wall. The basement otherwise needs significant work to be brought to code and productive use. Attached hereto as Exhibit E is a report from 3D Structural Engineers, Inc., detailing the various structural problems with the Building. Necessary restoration work includes excavating and replacing the existing slab; replacing ceiling joists damaged by moisture, rot, and termites; and repairing or replacing sections of mortar and brick and chimney framing.

3. Structural Beam Needs to be Replaced. A previous owner had for some reason removed a support beam. The Applicant had recently noticed effects from the lack of this support beam, and engaged a structural engineer. The Engineer discovered the missing beam and has recommended undertaking significant work to replace the beam as part of the basement restoration. This is also included in the Engineer's Report (Exhibit E).

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the 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. 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 Adjustment*, 606 A.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)). The Board has previously ruled on numerous occasions that relief from the 900-foot rule is considered an area variance and therefore subject to “the lower practical difficulty standards.” The D.C. Court of Appeals confirmed that ruling in *Wolf v. D.C. Board of Zoning Adjustment*, 397 A.2d 936, 943 (D.C. 1979).

It is well established 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 an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA, according to *Gilmartin*, 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.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is *burdensome*, not impossible.

A strict application of the minimum lot area requirement in this case would result in a practical difficulty to the Applicant. Pursuant to Section 401.3 of the Zoning Regulations, the conversion of a building existing before 1958 to an apartment house in the R-4 District is permitted as a matter-of-right (11 DCMR 330.5(e)), subject the minimum lot area requirement of 900 square feet of lot area per apartment unit (11 DCMR 401.3). The Property’s current lot area is 2,170 square feet.

As a result of the configuration of the Building into three separate units – since sometime before 1987 to the present - and because of the significant structural work required to restore the basement and to connect the basement space to the first floor, strict compliance with § 401.3 would be unnecessarily burdensome. The BZA has noted several categories of practical difficulty when

considering relief from the 900-foot rule, including: (i) the size, structural configuration, and/or layout of a building (particularly when not due to the actions of the applicant) (*BZA Orders No. 17991*(2009), *16803* (2002), *12278* (1977), *9062* (1966), *8631* (1966)) ; (ii) financial expense in making critical structural repairs (*BZA Orders No. 18312* (2012), *18297* (2012), *18197* (2011)); and (iii) an “estoppel-like” rationale when a purchaser acquires a property believing that he has legal justification for using that Property for apartment house use, or when an owner makes significant investment in a property with the belief that it is a legal apartment house (*BZA Orders No. 17991*(2009) and *16803* (2002)).

In this case, strict compliance with § 401.3 presents a practical difficulty under all three of these general categories. When the Applicant purchased the Property in 1987, it was configured as 3 separate units. The Building has continued to be configured, and separately metered, as three units. There is no connection between the basement and first floors, and the basement unit has never been occupied.¹ The current condition of the Building, with the water damage issues and other structural issues, calls for the repair and restoration of the basement space. It would be unnecessarily burdensome – according to BZA precedent – to have to reconnect the basement and first floor, or to not use the basement space for a third apartment unit.

The necessary structural repairs, including the new support beam and repair of water-related damage and the prevention of further decay, require a significant investment. Restoring that space merely for storage would be unnecessarily burdensome, considering the space would still have a separate entrance and would not provide any corresponding material economic benefit to mitigate restoration and maintenance costs.

¹ This would be the only significant difference between this case and other similar cases approved by the Board (such as in Order No. 17991 and 16803): in this case the Applicant owner at all times followed the applicable Zoning Regulations by refraining from operating the Building as a 3-unit apartment house.

In addition to these practical difficulties, providing a new internal connection between the basement and rest of the Building would be unnecessarily burdensome directly to the Applicant, who lives within the building, and indirectly to the Applicant through his tenant (a family that has been here for three years) because of the disruption that would take place in reconfiguring the Building into a two-unit Building.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

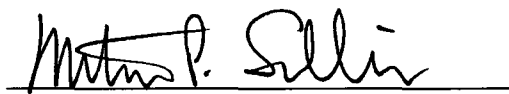
There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan by granting the requested relief. The R-4 District is designed to include areas developed with row dwellings, but the Zoning Regulations recognize that the R-4 zone contains many converted apartment houses, and conversions of buildings existing before May 12, 1958 to apartment houses are permitted as a matter-of-right (§ 330.5(e)), subject only to the minimum lot area and lot occupancy requirements (§ 401.3 and 403.2, respectively). The R-4 District also permits as a matter-of-right a number of uses more intense than the Applicant's proposal, such as rooming houses, child/elderly development centers or adult day treatment facilities for 16 persons, private clubs, lodges, dormitories, fraternity and sorority houses, and museums.

Furthermore, the Board has, in the past, noted that providing one unit per floor is a reasonable situation that would not cause a substantial detriment to the public good or to the integrity of the zone plan (BZA Orders No. 9062 and 8631).

VI. Conclusion.

For the reasons stated above, this application meets the requirements for area variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan", written over a horizontal line.

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP

Date: 7/23/12