

BOARD OF ZONING ADJUSTMENT

Pre-Hearing Statement in Support of Area Variance Relief
From the Strict Requirement of Section 401.3 - minimum lot area -
1030 Taussig Place, N.E.; Square 3890, Lot 35

BZA APPLICATION # 18504

I. Introduction.

This Pre-Hearing Statement is submitted on behalf of Applicant Marvin Lytle, Jr. (the "Applicant"), owner of the property located at Square 3890, Lot 35, at 1030 Taussig Place, N.E. (hereinafter referred to as the "Property" or "Lot 35"), in the R-2 zone district. Lot 35 was created prior to 1958, and has existed in its current configuration since at least 1910, according to a 1910 plat included as Exhibit A in the Applicant's Statement filed with the original Application.

Brookland Homes ("Brookland") is the contract purchaser of the Property. Brookland is proposing to build a one-family semi-detached dwelling on the Property (the "Proposed Dwelling"). The minimum lot dimensions for a semi-detached dwelling in the R-2 zone district are 3,000 square feet of lot area and 30 feet of width.¹ The Property has a lot width of forty (40) feet, but only has a total area of approximately 2,300 square feet; therefore, variance relief from the minimum lot area requirements of 11 DCMR §401.3 is necessary in order to build the Proposed Dwelling. The Proposed Dwelling will comply with all other area and use requirements and will be in character with the other homes on Taussig Street and in this square. One-family, semi-detached dwellings are permitted as a matter-of-right in the R-2 zone district.

¹ Since this lot was unimproved and in single ownership on November 1, 1957, and does not adjoin another unimproved lot in the same ownership, pursuant to §401.2 the minimum lot area requirement is 80% of 3,000 square feet, or 2,400 square feet. Therefore, the amount of variance relief requested is only 100 square feet.

II. Description of the Property, the Surrounding Area, and the Proposed Dwelling.

Taussig Place is a one-block street located one block north of Taylor Street, N.E., between 10th and 12th Streets, N.E. Lot 35 is located on the north side of Taussig Place, a street which consists of a series of one-family semi-detached dwellings on similarly-sized lots. These other lots on the north side of Taussig Place were also created prior to 1958, but Lot 35 appears to be the only lot that was vacant in 1958 and which remains vacant today. The Property can be accessed from a rear alley, providing access to a proposed parking space in the rear of the Property. Across that alley are more semi-detached dwellings on similarly-sized lots, all apparently constructed prior to 1958.

The Proposed Dwelling will be constructed with a twelve foot side yard to the east, and no side yard to the west. The footprint of the Proposed Dwelling will be 28 feet wide and 32 feet long, with a rear yard of approximately 25.5 feet. The Proposed Dwelling will be built in compliance with all other area requirements, including lot occupancy (40%) as well as rear yard and side yard setbacks.

III. 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).

Section 3103.2 reads, in part [emphasis added]: “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, ...the strict application of any regulation...would result in peculiar and exceptional practical difficulties...to the owner of the property...”. This Property became nonconforming at the time of the original adoption of the regulations in 1958 as a result of its small size. In addition, it appears to be the only lot in this square which was vacant in 1958, and thus the only lot left idle. Therefore, this variance request complies with the language of § 3103.2 *on its face*, since the peculiar and exceptional condition – the small, vacant lot surrounded by finished homes - existed in this same size and shape “at the time of the original adoption of the regulations” in 1958.

A Brief Summary of the Variance Test:

1) Exceptional Condition – The Property was the only property in this square that was vacant in 1958 and remains vacant today. The rest of the lots in the square are improved with one family semi-detached dwellings.

2) Practical Difficulty – (a) As a result of the adoption of the regulations in 1958, the lot is nonconforming and cannot be developed under the current regulations; and (b) there is no abutting land available to enlarge the lot to reach compliance with § 401.3.

3) No Substantial Detriment – (a) The house will comply with all other area requirements and be in character and scale with the neighborhood; (b) the Comprehensive Plan encourages compatible infill in low-density residential areas of Northeast; (c) there is significant precedent from

similar BZA decisions; and (d) there is no known objection from neighbors and at least two letters of support.

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

Record Lot 35 was created well prior to 1958, according to the 1910 Surveyor's Plat included as Exhibit A to the separately-filed Applicant's Statement. The north half of Square 3890 is made up entirely of semi-detached homes built prior to 1958 on lots created prior to 1958, and the subject Property is the only one of these lots which was vacant in 1958 and remains vacant today, making it extremely unique compared to surrounding properties.

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

A strict application of the minimum lot area requirement in this case would result in a practical difficulty to the Applicant since – due to the substandard lot size - no construction is possible absent variance relief. In addition, since all abutting properties are fully developed, the Applicant does not have the ability to enlarge the Property. Furthermore, relief is necessary in this case in order to prevent Lot 35 from remaining idle, which is one of the conditions for which variance relief was originally created.²

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

As noted above, the Proposed Dwelling will be built in the scale and character of the surrounding semi-detached homes (most of which appear to be nonconforming structures and larger than the structure proposed here), and will comply with all other area zoning requirements,

² The variance procedure "is designed to provide relief from the strict letter of regulations, protect zoning legislation from constitutional attack, alleviate an 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)(emphasis added).

including lot occupancy, and side and rear yards. One-family semi-detached dwellings are permitted as a matter-of-right in the R-2 zone district. One off-street parking space will be provided and will be accessed through the rear alley, so there is no need for a new curb cut or parking variance. The Applicant is not aware of any objections to this Application from neighbors, and has received letters of support from two neighbors (copies attached hereto).

D. BZA Precedents.

The Board has approved similar applications on numerous occasions. Recent approvals include BZA Cases No. 18342, 18117, 17898, 17737, and 17558. In addition to these approvals (and perhaps even more illustrative), in BZA Case No. 17321 (2005), the Board *denied* an application for variance relief for a property across the street from this Property. In denying that application, the Board found that the substandard size of that property was a legitimate exceptional condition that could result in a practical difficulty. The problem with that particular application was that the applicant was asking for several other areas of relief in addition to §401.3, and the Board determined that any practical difficulties related to those other areas of relief were merely the result of the Applicant's ambitious house design. The Board clearly implied that if the Applicant had designed a smaller structure that would meet all other area requirements besides the minimum lot area requirement, it would have approved the minimum lot area relief.

In the present case, the Applicant is requesting relief only from the minimum lot area requirements, which are completely unavoidable regardless of house design. The proposed structure in this Application will comply with all other area requirements.³

³ The Board has also often approved applications which do include additional areas of relief beyond just minimum lot area, typically in the case of narrow lots that cannot reasonably accompany 8-foot side yards. See BZA Orders No. 17737 and 17898.

In BZA Order No. 17898, the Board articulated (page 4) the critical elements justifying variance relief for a vacant, nonconforming lot:

- the lot was established in its current state prior to adoption of the regulations in 1958;
- the area regulations for minimum lot size cannot be satisfied on the subject property;
- development consistent with the zone designation cannot occur without variance relief; and
- the property cannot be enlarged to a conforming size through the acquisition of adjoining property.

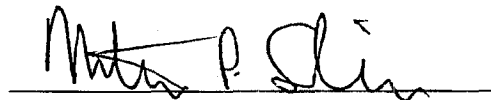
The above elements – all clearly present in this Application - satisfy the first two prongs of the variance test. Regarding the third prong and the question of substantial detriment to the public good, the Board noted in #17898 and other cases that when the proposed structure complies with all other area requirements, it is consistent with the character of the surrounding neighborhood and presumed not to be a detriment to the public good.

Finally, the variance requested in this Application is relatively minor, if not *de minimis*. The Property's lot area (2,300 sf) is only 100 feet short of the 2,400 square feet permissible under the 80% rule of Section 401.2.

IV. 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

November 4, 2012

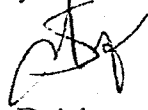
Board of Zoning Adjustment
441 4th Street, NW
Washington DC 20001

Dear BZA Members:

I am the homeowner of 4209 12th Street, NE, which is located just three houses away from the proposed new single family home to be built at 1030 Taussig Place, NE Washington DC 20017. I had an opportunity to meet with Mr. Topjian to review the plans that he is proposing for vacant lot. I have decided to fully support the variance requests for a single family home. I have no objections to the minimum lot size requirements, and I do not have any further objections to the design of the project.

I have seen other products built by Brookland Homes on our block and in our ANC, specifically 1222+1226 Randolph Street and 4212 12th Street, NE and I strongly support the construction plans as proposed. Please do not hesitate to contact me with any questions.

Thank you!



Stefan Deichmann
4209 12th Street, NE
Washington DC 20017
202-731-6564

**Board of Zoning Adjustment
441 4th Street, NW
Washington DC 20001**

November 7, 2012

To Whom It May Concern:

I own the property across the street to the proposed new construction on the vacant lot on Taussig Place, NE.

After reviewing the plans in detail with Sevan Topjian of Brookland Homes, I fully support his variance requests for the property. I have no objections to the relief that he seeks and I do not have any further objections to the design of the project. Please do not hesitate to contact me with any questions.

Thank you,

A handwritten signature in cursive script, appearing to read "Sonny Tate, Jr.", written in dark ink.

**Sonny Tate, Jr.
4210 12th Street, NE
Washington DC 20017
202-726-1846**