

BOARD OF ZONING ADJUSTMENT

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**

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I. Introduction.

This Statement is submitted on behalf of Applicant Marvin Lytle, Jr. (the “**Applicant**”), owner of the property located at Square 3890, Lot 35, currently using the address of 1030 Taussig Place, N.E. (hereinafter referred to as the “**Property**” of “**Lot 35**”), in the R-2 zone district. Lot 35 was created prior to 1958, according to a 1910 plat included herein as Exhibit A.

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. The Property has a lot width of forty (40) feet, but only has a total area of approximately 2,300 square feet, so a variance 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.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18504
EXHIBIT NO. 5

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

The Property is located immediately adjacent to the east of 1030 Taussig Place, N.E., and shares that address with that neighboring property. 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, per Exhibit A, but Lot 35 appears to be the only lot that remains vacant. It is not known

Board of Zoning Adjustment
District of Columbia
CASE NO. 18504
EXHIBIT NO. 5

whether or not a building was ever located on Lot 35. The Property can be accessed as well from a rear alley, which will provide 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 area requirements, including lot occupancy (40%), and 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).

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.

Record Lot 35 was created no later than 1910, according to the 1910 Surveyor's Plat included as Exhibit A. 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 that remains vacant.

The lots on either side of the Property are already developed with pre-1958 homes and there is no opportunity to combine Record Lot 35 with any other land. Relief is necessary in this case in order to prevent Lot 35 from remaining idle, one of the conditions for which variance relief was specifically created.¹

There have been numerous cases in which the Board has provided variance relief from the minimum lot dimensions for substandard lots created prior to the adoption of the current Zoning Regulations in 1958. In particular, the Board has favored granting relief when an applicant can prove that the lot was created prior to 1958 (and this is often just presumed), when there is no opportunity to combine that existing record lot with other adjoining vacant lots, and when proposed construction is in character with the surrounding homes.

Recent approvals include BZA Case No. 18342, 17558, and 17737. In addition to these approvals, in 2005 (Case No. 17321), the Board denied an application for variance relief for a property directly across the street from this Property, 1041 Taussig Place, N.E. In that case, however, the Board noted that the substandard size of that property was a legitimate exceptional condition that could result in a practical difficulty. The problem with that application was that the Applicant was asking for several other areas of relief in addition to §401.3, and the Board

¹ As noted above, the variance procedure "is designed to provide relief from the strict letter or 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).

determined that any practical difficulties related to those other areas of relief were merely the result of the Applicant's house design. The Board noted that that if the Applicant had designed a structure to meet the area requirements, they would have approved the minimum lot dimension relief.

In this case, the Applicant is proposing just that – nothing more than §401.3 relief - and Brookland has designed a structure that adapts to the smaller lot and therefore meets all other area requirements.

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).

A strict application of the minimum lot area requirement in this case would result in a practical difficulty to the Applicant, as construction of any dwelling at all would be impossible without the requested relief.

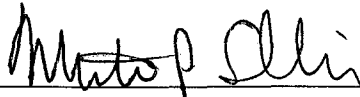
C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

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 will comply with all area zoning requirements, including lot occupancy, and side and rear yards. One-family semi-detached dwellings are a matter-of-right use 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. Finally, granting relief will bring a long-vacant lot back into productive use.

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", is written over a horizontal line.

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

Date: 11/19/12

List of Exhibits

Exhibit A – 1910 Plat

Exhibit B – Zoning Map and Other Illustrative Maps

Exhibit C – Proposed Elevations

Exhibit D – Photos of the Front of the Vacant Lot