

**Burden of Proof
Special Exception Application**

446 Emerson Street NW

To: **The Office of Zoning**
Government of the District of Columbia
Suite 210 South
441 4th Street, NW
Washington DC 20001

From: **Maria Webb Gomes and Ronald J. Gomes**
Owner/Applicant
446 Emerson Street NW
Washington, DC 20011

Date: April 15, 2013

Subject : **BZA Application – Use variance**
446 Emerson Street NW (Square 3251, Lot 214)

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Maria Webb Gomes and Ronald J. Gomes, owners and residents of 446 Emerson Street NW, hereby apply for a use variance to permit the continued use of an existing flat in an R-3 district. The aspect of the proposed project that falls outside the current zoning regulation is as follows:

The existing flat is located in an R-3 district in which no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for any use permitted in an R-2 district under 11 DCMR 300.3 and row dwellings (11 DCMR 320).

Variance Requested:

A use variance is required pursuant to 11 DCMR 3103.2 to convert an existing nonconforming single family row dwelling to a two unit flat in the R-3 residential zone district (11 DCMR 320.3)

Bases for Grant of Variances:

Section 3103 provides relief based on satisfying specific criteria. Those criteria are addressed separately below:

Subsection 3103.2:

As set forth in D.C. Code Ann §5-424(g)(3) (1981), "[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without

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CASE NO. 18585

EXHIBIT NO. 4

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EXHIBIT NO.4

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.”

This provision has three main tests that must be proved by the applicant:

- 1.) The physical characteristics of the property:**
 - a. make it difficult for the owner to use the property in compliance with the Zoning Regulations (area variance) – ie. shape and size of the property, unusual topography or slope, soil problems, etc.**
 - b. creates financial hardship for the owner in using the property consistent with the Zoning Regulations (use variance)**
- 2.) Granting the application will not be of substantial detriment to the public good – ie. traffic, noise, lighting, etc.**
- 3.) Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.**

The physical characteristics of the property creates financial hardship for the owner in using the property consistent with the Zoning Regulations (use variance):

There are several characteristics of the property that make it unique and make it difficult for the owner to comply with the zoning regulations:

1. The current owner, Maria Webb Gomes, bought the property in 2005 as a rental property. At the time, there were two rentable apartments in the house – the basement unit and the upper two floors. Ms. Webb was unaware that two units are not legal in the R-3 District and she thought she was buying an income-producing property.
2. The basement unit has been rented since 2005 and the tenant only recently moved out when the owners realized the house has major water issues and that the basement must be gutted to resolve such issues. Only when the building permit application was submitted did the owners realize two units are not allowed.
3. Previous work on the basement was not done correctly and extensive water damage exists throughout the house. The basement must be renovated to solve these issues. However, the owners cannot afford the renovation unless they have guaranteed rental income once the work is completed.
4. The owners bought the property so that they could move into the upper unit and rent out the lower unit. Their plan is to retire and use the rental income for their retirement. The inability to rent the lower unit presents a financial hardship for the owners and without the relief they may be forced to sell the house.

Granting of the relief will not be of substantial detriment to the public good:

The existing basement unit has previously been occupied for over six years as a rental unit. During that time, there was no substantial detriment to the public good and continued use of the house as a two-family flat will not cause any harm to the neighborhood. The upper unit will be owner-occupied, which ensures that the house will be well-maintained. Additionally, the adjacent property owner at 448 Emerson Street was granted a variance allowing the basement to be a separate unit. The unit has been rented for a while and been positive addition to the neighborhood.

Granting the relief will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map:

Granting this relief will not be inconsistent with the general intent of the current Zoning Regulations. The residential feel of the neighborhood will not be impacted and the characteristics and intent of an R-3 District will not be harmed.

Along with this application, we have included the following items:

- a) Photos of the existing house and surroundings;
- b) Signatures of support from neighbors;
- c) Plan and elevation drawings of the dwelling, including a site plan showing the relationship of the property to adjacent buildings.
- d) Official Plat from the DC Office of the Surveyor.

If you require any further clarification or have any questions regarding the application, we are available at any time to discuss them with you.

Thank you,



Maria Webb Gomes



Ronald J. Gomes

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