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Real Estate | Zoning | Land Use

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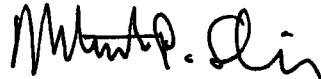
Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Prehearing Statement for BZA Application No. 18657 – 903-907 Florida Ave NE

Dear Chairman Jordan and Members of the Board.

Enclosed please find an original and ten (10) copies of the Applicant's prehearing statement

Sincerely,



Martin P. Sullivan

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18657

EXHIBIT NO. 22

BOARD OF ZONING ADJUSTMENT

PREHEARING STATEMENT OF THE APPLICANT

BZA APPLICATION No. 18657
of 903 Florida Ave NE, LLC, 905 Florida Ave NE, LLC,
and 907 Florida Ave NE, LLC (collectively, the "Applicant")

Square 931N; 903 Florida Ave., NE (Lot 802), 905 Florida Ave., NE (Lot 804),
907 Florida Ave., NE (Lot 803) (collectively, the "Property")

I. Introduction

The Property is located at 903-907 Florida Avenue, NE (Square 931N, Lots 802, 804, and 803). These three lots make up a triangular-shaped property bordered by four streets – Florida Avenue to the north, 9th Street to the west, L Street to the south, and West Virginia Avenue to the east. Lot 802 has a land area of 1,468 square feet. Lot 804 has a land area of 890 square feet. Lot 803 has a land area of 908 square feet. The total land area of the three lots is 3,266 square feet. The Property is located in the R-4 zone district. To the north of the Property, across Florida Avenue, is the southeastern edge of the Gallaudet University campus. To the northeast is a C-2-A commercial district. To the east is a federal reservation. Also to the east, and to the south and west, is an R-4 neighborhood consisting of row homes on small lots. On the surrounding blocks, only one lot meets the 1,800 square foot minimum lot area requirement, at 1,858 square feet. A site plan and elevations were included with the Application. Included here as Exhibit A are renderings of the proposed flats.

While the Property has been vacant for many years, the three lots were all occupied with structures as of May 12, 1958, according to the Zoning Administrator determination letter attached as Exhibit B. As such, pursuant to the Zoning Administrator's determination, each lot may be developed as a matter of right with a one-family dwelling or a flat. Such a plan would result in three small and odd-shaped structures, and would not be practically feasible to develop and market, even though it would lead to two more units than is being proposed here.

Instead of constructing a building on each of the three lots as they currently exist (as permitted), the Applicant is proposing to reconfigure the three odd-shaped lots into two record lots of similar shape, and to construct a flat on each of the two resulting lots. One of the two proposed lots, at 1,803 square feet, will meet the minimum lot area restrictions under § 401.3. The other lot, at a proposed 1,503 square feet, will not meet the 1,800 square feet minimum lot area requirement and will require the area relief requested herein. The proposed development will meet all other area requirements other than minimum lot area.

The Applicant is also requesting relief from the parking requirement of one space for each of the two flats. Because of the Property's size, shape, and location in the midst of several busy intersections with no alley access, it is not likely that a curb cut would be permitted onto the Property or that such parking spaces would operate safely even if a curb cut were granted. And from the Zoning Administrator determination letter included as Exhibit B, the previous owner was told that DDOT would not approve of a curb cut at this location. There is available street parking located on 9th Street adjacent to the west side of the Property.

II. 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

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition *Monaco v D C Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D C. 1979) A property’s uniqueness is not limited to physical aspects of the land and may be determined by “some difficulty not shared by the entire neighborhood.” *Id.* at 1098

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

The Subject Property is a triangular lot bordered by four streets; it is completely isolated from other properties The three lots within the Property are themselves oddly-shaped assessment and taxation lots The Property was in this configuration as of May 12, 1958, and was at that time developed with a structure on each lot, all of which were later razed In addition, the Subject Property, at 3,266 square feet, is much larger than all other lots in the adjacent residential district. The second largest lot in the surrounding residential area is 1,858 square feet, and the large majority of lots are less than half the size of the Subject Property. Because the Property is completely isolated in the midst of 4 major streets - two of which are heavily traveled commuter roads –

providing a curb cut on any of these streets would have a negative impact on traffic and parking and would most likely not be approved by the Public Space Committee for that reason. In addition, the shape of the Property makes providing off-street parking difficult, and such parking would also severely restrict the already limited amount of consolidated open space on the lot, once the two flats are constructed.

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.2d 1362, 1365 (D.C. 1992) (citing *Gilmartin v Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)).

A strict application of the minimum lot area requirement in this case would result in a practical difficulty to the Applicant, as construction of three dwellings as a matter of right, and even a previous matter-of-right plan for 2 lots, makes designing a marketable residential unit difficult.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent,

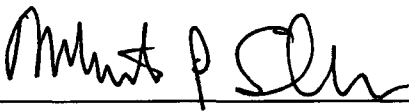
Purpose and Integrity of the Zone Plan

As noted above, the proposed flats will be built within the available zoning envelope, including lot occupancy, and no additional area relief is being requested other than the minimum lot area. Flats are a matter-of-right use in the R-4 zone district. Regarding parking, a curb cut on this triangle could prove troublesome to surrounding traffic. Because of the shape of the Property and the design of the proposed flats, providing a curb cut and parking space would also limit the amount of pervious surface provided on the Property, and will remove perhaps 2 parking spaces from 9th Street.

III. 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

EXHIBIT A

903 FLORIDA AVE. NE



AERIAL VIEW

903 FLORIDA AVE. CONDOMINIUMS



01- RED BRICK
02- DARK GREY LIMESTONE
03- LIGHT GREY STUCCO W //2" REVEALS

4- DARK BROWN ALUM CLAD
5- DARK BROWN WINDOW SYSTEM
6- DOUBLE HUNG WINDOW

7- WOOD TRELLIS
8- PIPE / CABLE RAILING
9- WALL MOUNTED LIGHT FIXTURES



VIEW FROM FLORIDA AVE

903 FLORIDA AVE. CONDOMINIUMS





VIEW FROM FLORIDA AVE

903 FLORIDA AVE. CONDOMINIUMS





CLOSE UP - VIEW OF 18' HIGH CEILING

903 FLORIDA AVE. CONDOMINIUMS





VIEW FROM FLORIDA AVE

903 FLORIDA AVE. CONDOMINIUMS



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



October 22, 2010

Steven E. Sher - Director of Zoning and Land Use Services
Holland & Knight LLP - Suite 100
2099 Pennsylvania Avenue, N.W.
Washington D.C. 20006

Re. Florida Avenue and 9th Street, N E Square N931, Lots 802, 803 and 804

Dear Mr. Sher:

This is to confirm the substance of our discussion on Tuesday, September 14, 2010, with Michael Belisle, Jerry Jewell and Peter Cooper, concerning the development of the property located in the block bounded by Florida and West Virginia Avenues and 9th and L Streets, N.E., known as Lots 802, 803 and 804 in Square N931. The property is zoned R-4. The property is presently vacant, comprises the entire above-referenced block and has frontage on all of the four streets cited.

You advised that the proposed development is to consist of two flats fronting on Florida Avenue which would share a common division wall. A flat is a use permitted as a matter-of-right in an R-4 District.

Each of the three lots contains less than 1,800 square feet in lot area; Lot 802 contains 1,468 square feet, Lot 803 contains 908 square feet and Lot 804 contains 890 square feet. Because of the unusual shape of the block, all the lots are non-rectangular and vary greatly in width, with the widest point along the Florida Avenue frontage and the narrowest point along the L Street frontage.

Section 401.1 of the Zoning Regulations provides that "in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title." A lot is defined in Section 199.1 of the Regulations as:

"the land bounded by definite lines that, when occupied or to be occupied by a building or structure and accessory buildings, includes the open spaces required under this title. A lot may or may not be the land so recorded on the records of the Surveyor of the District of Columbia."

You provided evidence to me through plats from the Baist Atlas from 1921 through 1967 that the three lots were improved with houses on May 12, 1958. Those houses were demolished after that date. Accordingly, §401.1 would allow each of the three existing lots to be improved

with a single family dwelling or a flat. The requirements for minimum lot width and lot area are the same for a flat or a row dwelling.

You propose to use existing Lot 802 in its current configuration. You further propose to combine lots 803 and 804 into a single new lot which would have 1,798 square feet of land area and which would have an average lot width of more than eighteen feet. Section 2522.1 of the Regulations gives the Zoning Administrator flexibility to permit up to a two percent deviation in the minimum lot area requirements where the Administrator determines that the purpose of the otherwise applicable regulations will not be impaired. You have requested me to grant that flexibility for two square feet in the new combined lot area, instead of the 1800 square feet requirement. That deviation would amount to 0.11% and is such a minimal deviation that it would not impair the purpose of the regulations. I hereby approve that deviation, noting that you will be eliminating two very substandard lots and replacing them with one lot that complies with the minimum lot area requirements except for two square feet

With respect to the other requirements of the R-4 District, I have determined that the proposed construction of two flats complies as follows.

- **Height (§400):** The maximum permitted height is forty feet and three stories. Height shall be measured from the level of the curb opposite the middle of the front of the building on any of the streets that each flat abuts to the highest point of the roof or parapet. Alternatively, height may be measured from the finished grade at the middle of the front of the building to the ceiling of the top story. The number of stories is counted at the point at which the height of the building is measured. A cellar (a story where the height of the ceiling is less than 4 feet above the adjacent finished grade) does not count as a story. You advised that the height of the flats would be no more than forty feet and would not exceed three stories at the point of measurement.
- **Percentage of lot occupancy (§403):** The maximum percentage of lot occupancy for a flat is sixty percent. You advised that the lot occupancy of the flats would be approximately fifty-one percent and forty-five percent and would therefore be in compliance
- **Rear yard (§404):** A rear yard is required with a minimum depth of twenty feet. Pursuant to §404 2, on a corner lot abutting three or more streets, the depth of the rear yard may be measured from the centerline of the street at the rear. Both lots will be corner lots fronting on three streets, with Florida Avenue at the front and L Street the rear. The twenty foot rear yard requirement is exceeded by the width from the centerline of L Street.
- **Side yard (§405):** No side yard is required and none will be provided.
- **Courts (§406):** If a court is provided, it must be a minimum width of four inches per foot of height, but not less than ten feet. You advised that at the first and second floors, each flat would have a rectangular court opening onto the rear yard with a width of ten feet. At the third floor level, the wall of the court would be setback to create a width equal to the minimum requirement. The courts would thus comply.

Pursuant to §2101.1 of the Regulations, one parking space is required for a flat. You advised that staff of the District Department of Transportation had advised you that DDOT would not approve a curb cut on any of the four streets which form the boundaries of the subject block. Accordingly, you have not proposed to include any parking on either of the two lots Since you would not comply with the parking requirements, you would be required to seek a variance from the D.C Board of Zoning Adjustment (BZA). The authority of the BZA to grant variances is set forth in §3103.2 of the Regulations as follows.

"[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. Official Code §§ 6-641.01 to 6-651.02 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 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 "

Accordingly, as set forth above, it is my conclusion that, provided that the BZA grants the parking variance, you may construct two flats on the subject property. My determination is limited to zoning matters. You must comply with all other applicable District codes and regulations.

Please let me know if I may be of further assistance.

Sincerely, 
Matthew Le Grant
Zoning Administrator

File: Determination Ltr re 903-905-07 Florida Ave NE to Sher 10-22-10