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BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application of Elodie Goirdan and Andreas Xenophontos
4540 Lowell Street, NW Square 1608, Lot 68

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

I. Background

The Property is located at 4540 Lowell Street, NW (Square 1608, Lot 68) in the Wesley Heights neighborhood, and is in the WH/R-1-B zone district. The Property is rectangular in shape and is fifty (50) feet wide by one-hundred fifty (150) feet long. The Property is currently improved with a substantially complete structure (the "House"), for which building permits were approved, and inspections were repeatedly passed. After passing several inspections, and after substantially completing the erection of the permitted structure, the Department of Consumer and Regulatory Affairs delivered to the Applicant a Notice to Revoke Building Permits, claiming that, despite the multiple on-site inspections in previous months – none of which resulted in a violation – DCRA had now determined that this project was deemed to be a demolition and not an addition. The effect of this decision was that the Zoning Administrator determined that a portion of the new construction (a finished 10 x 11 section which was within the footprint of a covered porch constructed with the original building prior to 1958; hereinafter the "Front Room") would require relief from the side yard setback requirements of § 405.9 and the Wesley Heights Overlay front yard setback requirements of § 1543.4.

Before this late determination on demolition vs. addition was made by DCRA, the "Front Room" was completely approved and constructed. The approval was based on the fact that the covered porch that existed in that location previously was constructed prior to May 2, 1958, and was therefore a legally nonconforming aspect of the Property. DCRA's decision to deem the completed work a "demolition" was apparently made following numerous inspections by DCRA which were undertaken, and passed, well after the foundation and framing were fully completed. The permit plans had always included a substantial amount of demolition of the existing building, and the Applicant went slightly beyond those permitted plans when they discovered that some of the wall which was intended to be saved was not viable. However, DCRA inspected such demolition and construction several times over a several-month period without issuing a violation or raising an issue. To make matters worse, it took DCRA several months to inform the Applicant of its decision, and then following a stop work order, it took DCRA eleven days to respond to the Applicant's urgent requests for permission to secure the Property and to (unsuccessfully as it turned out) avoid significant water damage.

While it disagrees with DCRA's determination that this was a demolition, the Applicant is not, in the present proceeding, challenging that decision. The Applicant is here, rather, at

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DCRA's suggestion, to request § 223 special exception relief for the side yard encroachment and area variance relief from § 1543.4 for a front yard setback encroachment. The area of the requested relief (the Front Room) consists of a 10.4' x 11.1' section of the House at the northwest corner. The Front Room was constructed within the footprint, and on the foundation, of a covered porch which was constructed at the same time as the rest of the house prior to 1958. The only difference with the new construction is that a 7' x 4.7' portion of the pre-existing legally nonconforming structure was permanently removed. So, in the area nearest the neighbor to the west, the nonconformity was actually decreased. The Zoning Administrator originally approved the construction of the Front Room, but altered that determination following DCRA's determination that the existing building was razed.

The Front Room has a side yard of only 3.7 feet, along its 10.4 feet length, for which the Applicant requests § 223 special exception relief. The Front Room has a front yard setback of only 2'4" along its 11.1 feet length, for which the applicant is requesting area variance relief from the 13-foot setback requirement pursuant to the Wesley Heights Front Yard Setback Map.

II. Burden of Proof – Area Variance Relief.

In order to receive variance relief, the applicant must satisfy a three-part test which requires: (1) a demonstration that the property is affected by an exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

A. Property Is Affected by an Exceptional Situation or Condition

The Front Room existed as a covered porch prior to 1958, and, but for DCRA's determination to label this project a demolition, was permitted to be constructed in this location as a legally nonconforming structure. In addition, the Applicant did receive such permission, and actually completed construction of the Front Room, along with most of the rest of the House, before DCRA's late determination.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty upon the Property Owner

A strict application of the Zoning Regulations would result in the Applicant having to tear down the Front Room at significant expense. The Applicant had permitted and constructed the Front Room in good faith reliance on DCRA's approval of the building permit plans as well as its several on-site inspections.

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C. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan

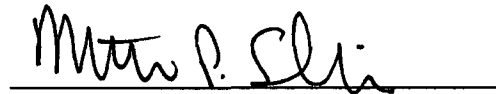
The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Front Room does not extend the nonconformity that existed as of 1958. In fact, the Applicant has significantly reduced the amount of the nonconformity where it most closely abuts the neighbor's house.

III. Burden of Proof – § 223 Special Exception.

The request for side yard relief consists of an encroachment area of 10.4' x 3.7 feet, one story, and within the footprint of the covered porch that existed prior to 1958. This addition will have no impact at all on the light and air or privacy of the neighbor to the west. The proposed situation is actually a significant improvement over the previously existing condition. A 7' x 4.7' portion of the legally nonconforming structure (an enclosed structure, not part of the covered porch), has been permanently removed, thereby increasing the nonconforming side yard. Also, closing in the covered porch will provide more privacy for the neighboring property, while not materially changing the light and air situation.

For the reasons stated above, the Application satisfies the applicable special exception and area variance requirements, and the Applicant respectfully requests the Board's approval.

Respectfully Submitted



Martin P. Sullivan, Esq.
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