

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

**ROB AND LINDA LOW (APPLICANTS)
1827 PARK ROAD, NW (Square 2614, Lot 801); ANC 1D**

**APPLICANT'S STATEMENT
AND STATEMENT OF EXISTING AND INTENDED USE**

This is the application of owners Rob and Linda Low (the “**Applicant**”) for area variance relief from 11 DCMR §3202.3, regarding the conversion of a building to a second principal structure on a single record lot, and from the rear yard requirements of 11 DCMR §404.1 in an R-4 Zone District for the property located at 1827 Park Rd, NW, Square 2614, Lot 801 (the “**Property**”). Attached as Exhibit A is the Zoning Map for the Property.

I. BACKGROUND AND NATURE OF RELIEF SOUGHT

The Property is improved with a detached one-family dwelling (the “House”) with a detached two-story carriage house (the “Carriage House”). Both the House and the Carriage House were built in 1907. The Carriage House is set back about 3 feet from the rear property line. The Applicants have owned the Property and lived in the House since 1974. When the Applicant purchased the House in 1974, the Carriage House was already configured and used as a separate residence. It has continued to be used as a separate residence since that time. Based on conversations with the granddaughter of a previous owner, the Applicants have reason to believe that the Carriage House was used as a residence at least as early as the 1920s.

Not only are the Carriage House and the House contributing buildings in the Mount Pleasant Historic District, but they are part of a designated historic landmark, in conjunction with

the entire north side of this block of Park Road. This historic landmark, known as the "North Side of the 1800 Block of Park Road, NW", was designated in 1977. It includes ten houses and five carriage houses (including the House and the Carriage House) built from 1892 – 1911. Attached as Exhibit B is a description of this landmark from the District of Columbia Inventory of Historic Sites. The House and Carriage House, along with the rest of the north half of this block, are also included in the National Register of Historic Places. Attached as Exhibit C are portions of the National Register's nomination form describing the House and the Carriage House.

The Applicant recently became aware that the use of the house as a separate residence requires a certificate of occupancy. In order to obtain the certificate of occupancy, it is necessary to secure relief from the prohibition against two principal structures on the same record lot. The conversion of the Carriage House to a separate residential unit (occupied by individuals unrelated to the occupants of the House) effectively converts what was an accessory structure into a second principal structure. When it became a principal structure, the Carriage House was subject to 11 DCMR § 3202.3 - the prohibition against having two principal structures on a record lot.

In addition, when the Carriage House became a principal structure by virtue of its independent residential use, the rear yard setback for the Property was required to be calculated from the edge of the Carriage House to the rear property line. When (if ever) the Carriage House was just an accessory structure, the rear yard length was measured between the rear line of the House and the rear property line. Accessory structures may be located within a required rear yard. Principal structures may not.

It is not known for certain when the Carriage House was converted to an independent residential unit. If this was done prior to 1958, the current use is arguably permitted as a matter of right and no relief is necessary. The Applicants have not been able to secure evidence of the continuous use of the Carriage House for residential use; nor do they know when the building was converted to residential use. It is unlikely that the Carriage House was ever used as a garage for automobiles, as the structure still has its original doors.¹ Therefore, the Applicant is applying for variance relief with the desire to sanction the continued legal use of the Carriage House as it has been since at least prior to the Applicant's purchase of the Property in 1976. To obtain such legal sanction, the Applicants are applying for the area variance relief requested herein.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant relief requested pursuant to §3103.2 of the Zoning Regulations.

III. THE APPLICATION MEETS THE REQUIREMENTS FOR A VARIANCE UNDER SECTION 3202.3 OF THE ZONING REGULATIONS

The Applicant is seeking variance relief from 11 DCMR §3202.3 of the Zoning Regulations prohibiting the creation of two principal structures on a single record lot, and from 11 DCMR §404.1 for rear yard setback. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- (1) the property must be subject to an extraordinary or exceptional situation or condition;
- (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and

¹ See Exhibit C.

- (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application.²

The Applicant meets the test as follows:

A. An extraordinary or exceptional situation or condition is inherent in the Property

The D.C. Court of Appeals has held that the exceptional situation or condition standard goes to the “property”, not just the “land”; and that “...property generally includes the permanent structures existing on the land.”³ The court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land *or* the property (i.e., the building on the land).⁴ Here, the Property is subject to an extraordinary or exceptional situation or condition. The Property – including both the row house and the carriage house – are designated historic landmarks, as part of the north side of the 1800 block of Park Road, NW. These structures are also contributing structures within the Mount Pleasant Historic District.

Their location within the historic district, but more specifically their designation as a landmark, severely limits the ability of the owner to remove portions of the structures or locate new structures on the Property, or to convert the Carriage House to another permitted use in the zone district. The front wall of the Carriage House consists of two narrow door openings which are the original barn doors, according to the nomination form for the Historic Register (Exhibit C). These doorways are not operable and are not wide enough to fit an automobile. So the Carriage House has never been used as a garage, and conversion to an operable garage would not be permitted by the Historic Preservation Review Board because it would destroy the historic character of this registered landmark.

² See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

⁴ *Id.*

In addition to the door openings, the Carriage House includes an old brick fireplace that appears to have been constructed with the original structure. So it is possible that the Carriage House was always used for residential purposes and in any event, it does not appear that it was ever used as a garage.

The Carriage House was originally constructed as a two-story structure, making its use for residential purposes from the beginning more likely.

As the Board has recognized, the existence of historic carriage house structures prior to 1958, the prohibition on owners from removing them or substantially altering their exteriors, and the suitability of such houses for conversion to residential use altogether constitutes an “exceptional situation.”⁵ In 2002, the Board concluded that the existence of an historic carriage house behind a row house at 420 M Street, N.W. that could not be demolished or substantially altered constituted an “exceptional situation or condition.”⁶ In 2007, the Board ruled on a similar case involving an existing carriage house at 442 M Street, NW.⁷ It is important to note that while those precedents involved contributing buildings in a historic district, this application involves an actual landmark designation that includes the Carriage House.

B. A practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations

It is important to note how the D.C. Court of Appeals has defined “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals has stated that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily

⁵ See e.g., Board of Zoning Adjustment Application No. 11902, p. 2 (May 24, 1975); Board of Zoning Adjustment Application No. 13829, p. 4 (November 3, 1982); Board of Zoning Adjustment Application No. 14358, p. 8 (December 4, 1985); Board of Zoning Adjustment Application No. 14633, p. 3 (September 2, 1987); Board of Zoning Adjustment Application No. 16081, p.2 (July 10, 1996).

⁶ Board of Zoning Adjustment Application No. 16863, p. 1-2 (November 5, 2002).

⁷ Board of Zoning Adjustment Application No. 17586 (April 10, 2007)

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.”⁸ In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.”⁹ Finally, it is well settled that the BZA may consider “...a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’...”¹⁰ Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard.

The Applicant faces a practical difficulty because the historic landmark designation of the Carriage House, as well as its contribution to the Mount Pleasant Historic District, renders the Applicant unable to remove the structure or alter it for a permitted use. The Carriage House appears to have been intended for residential use, and it has been known to be in residential use for the past forty years or more. Finally, the location of the carriage house is fixed, so the Applicant faces a practical difficulty in satisfying the rear yard requirement.

In this case, the conversion has already taken place, and the practical difficulty would be even greater because it would involve removing the 2-story residential unit and evicting a tenant.

C. No harm to the public good or to the zoning plan will occur as a result of the approval of the variance application

Variance relief can be granted without detriment to the public good and without impairing the intent, purpose and integrity of the zoning plan. The granting of relief will merely recognize what has been the existing situation for more than forty (40) years, and will continue to

⁸ Palmer v. D.C. Bd. of Zoning Adjustment, 287 A.2d 535, 541-542 (D.C. 1972).

⁹ Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990).

¹⁰ Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A. 2d 1362, 1367 (D.C. 1992).

encourage the preservation and maintenance of this historic landmark. In addition to these requirements, the façade of both the House and the Carriage House are subject to a preservation easement from the L'enfant Trust.

IV. CONCLUSION

For all of the above reasons, the Applicant respectfully requests variance relief.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Martin P. Sullivan". The signature is fluid and cursive, with the first name "Martin" and last name "Sullivan" clearly distinguishable.

Martin P. Sullivan, Esq.