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May 28, 2014

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

**Re: Application No. 18782 – 302 M Street NW (Square 524, Lot 4)
Prehearing Statement of the Applicant**

Chairman Lloyd Jordan and Honorable Members of the Board:

On behalf of Applicant Fenton 302/304 M St, LLC, enclosed please find the Prehearing Statement for the above-referenced application. Since the initial filing, the Applicant has retained our firm as zoning counsel and we hereby enter our appearance in the case. *See* Letter of Authorization at Exhibit A.

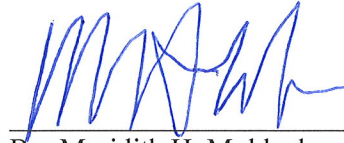
The Applicant initially filed an application for §223 special exception relief by expedited review. The Applicant has revised the architectural plans filed originally to accommodate requirements placed on the Property by the Historic Preservation Office (“HPO”). *See* Revised Architectural Plans at Exhibit B. These revisions, while minor, necessitate an amendment to the application. Instead of §223 special exception relief by expedited review, the Applicant now seeks area variance relief from the nonconforming structure requirements (§2001.3) with respect to lot occupancy (§403) and rear yard (§404) and from the closed court requirements (§406).

The application for 302 M Street NW is currently scheduled to be heard before the Board of Zoning Adjustment for §223 relief by expedited review on June 17, 2014. We have also filed an application on behalf of the same Applicant for area variance relief at the adjacent lot, 304 M Street NW, in BZA Case No. 18786 scheduled for a hearing on June 24th, 2014. For purposes of judicial economy and efficient use of the Applicant’s limited resources, the Applicant respectfully requests that Case No. 18782 be removed from the June 17th hearing and be consolidated with Case No. 18786 on the June 24th, 2014 hearing date.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 6E
c/o Alexander Padro, Chair (via email)
Single Member District Representative 6E04, Rachel Nigro (via email)
Office of Planning (via email)
Cliff Moy, Board of Zoning Adjustment (via email)

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

**APPLICATION OF
FENTON 302/304 M ST, LLC**

**302 M STREET NW
ANC 6E**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Fenton 302/304 M St, LLC (the “Applicant”), the owner of property located at 302 M Street NW, Lot 4 in Square 524 (the “Property”). The Applicant hereby amends its application for zoning relief¹ and now seeks area variance relief, pursuant to 11 DCMR §3103.2, from the nonconforming structures requirements (§2001.3) with respect to lot occupancy (§403) and rear yard (§404) and from the court requirements (§406) to allow the Applicant construct an addition to an existing single-family residence and convert the structure to a flat in the DD/R-5-B District at the Property.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

III. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Letter of Authorization

Exhibit B: Revised Architectural Plans

Exhibit C: Revised Form 135

¹ The Applicant initially applied for §223 special exception relief for an addition to single-family home. The Applicant revised the architectural plans filed originally to accommodate requirements placed on the Property by the Historic Preservation Office (“HPO”). These revisions, while minor, necessitated amendment of application for area variance relief and removal of the application from the expedited review calendar.

IV. BACKGROUND

A. Background Information Regarding the Property

The Property, also known as Lot 4 in Square 524, contains approximately 869 square feet of land area and is located in northwest Washington D.C. The Property is located within the R-5-B District. Adjacent to the Property is a vacant lot to the west, which is also owned and being developed by the Applicant, and a vacant corner lot to the east. The 6-sided lot is oddly shaped, with a small narrow portion at the rear jutting eastward along the southern portion of Lot 5. The Property is nonconforming as to lot occupancy and rear yard. The existing lot occupancy is 73%. The rear yard is currently roughly 9 feet. The Property is located in the Mount Vernon Square Historic District and is listed on the D.C. Inventory of Historic Sites.

B. Description of the Improvements in the Surrounding Area

Square 524 is split zoned with an R-5-B District occupying the northern half of the Square and a C-2-C District occupying the southern portion of the Square. Square 524 makes up the northeastern portion of the Downtown Development (DD) overlay. Square 524 is a small square bounded by M Street NW to the north, 3rd street to the east, New York Avenue NW to the south, and 4th Street to the west. Across New York Avenue to the south is the entrance to Interstate 395. Abutting Square 524 to the east is the complex intersection where M Street NW, New York Avenue NW, and New Jersey Avenue NW intersect creating three isolated pieces of land including Reservation 179 and Reservation 180. New York Avenue is a major, six-lane thoroughfare which carries a high traffic volume, including large trucks and buses. New Jersey Avenue is also a major thoroughfare. Interstate 395 is a heavily used interstate with an on/off ramp on New York Avenue across from Square 524. The R-5-B portion of the Square, on the southern side of M Street NW, is made up of a 7- unit apartment building and several rowhouses. The surrounding area is characterized mostly rowdwellings, although across New York Avenue are several multifamily dwellings and institutional uses. The C-2-C portion of the Square has a commercial building

on the southeast corner but is otherwise vacant and used as a gated parking lot. Square 524 has no public alley.

C. Description of the Proposed Development

As shown on the Revised Architectural Plans and Elevations, *see Exhibit B*, the Applicant proposes to renovate an existing single-family home, convert it to a flat, and build a small addition at the rear of the Property. The cellar level will contain a one-bedroom unit. The ground level and second story will contain a two-bedroom unit. The living room, kitchen, dining room, and a ½ bathroom will be on the ground level. Both bedrooms and a full bathroom will be on the second story. A small addition, with a footprint of roughly only 100 square feet, will be added at the rear of the Property. The renovation of the building will improve a long-standing dilapidated building at the corner of a historic block.

V. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the nonconforming structures requirements (§2001.3) with respect to lot occupancy (§403) and rear yard (§404) and from the closed court requirements (§406).² Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

² No parking is required at the Property under §2120, which exempts historic structures and additions thereto.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained in the Prehearing Statement and at the public hearing, all three prongs of the area variance test are met in this Application.

VI. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property is exceptionally small; (2) the Property is oddly shaped; (3) the Property is subject to particularly stringent historic preservation requirements; and (4) the Property has no access to a public alley.

The Property is exceptionally small, particularly relative to other properties in the DD/R-5-B District. At 869 square feet of land area, the Property is one of the smallest lots on the south side of M Street between 3rd and 4th Street NW.³ While Square 524 has several small vacant lots, including lots 803 and lots 13-8, those lots are all owned by a single entity.

The Property is oddly shaped. The Property has an awkward dog-leg at the rear of the Property extending eastward roughly 20 feet and a depth of roughly 3 feet. In total the Property has 6 sides. This is the only irregularly shaped property on the Square. The dog-leg at the rear of the Property makes a portion of the already small lot unusable, further limiting the developable area of the Property.

The Property is subject to particularly stringent historic preservation requirements. Corner lots in historic districts are heavily scrutinized by the Historic Preservation Office (“HPO”) because they are more highly visible than interior lots. The Property is not a corner lot; however, because the corner lot abutting the Property is vacant, with no pending plans for development, Historic Preservation staff has informed the Applicant that the corner lot criteria will be applied in evaluating the project. The Applicant initially filed for 223 relief to allow a lot occupancy of 70% and the construction of a small third-floor addition at the Property within the permitted matter-of-right height. An HPO staff member informed the Applicant that staff would recommend denial of those plans, preferring construction at the rear rather than above the existing structure. The Applicant has revised the architectural plans, *see* **Exhibit B**, which brings the project into conformity with the requests from HPO but requires additional variance relief.

The Property has no access to a public alley. Square 524 is unusually small. The distance between 4th Street and 3rd Street is very short and the Square is an odd shape and size due to the location

³ The Board has found several properties of similar size to the subject Property to be exceptionally small in the context of a variance to allow an addition to a row dwelling. *See i.e.* BZA Order 18725 (921 square foot lot, one of six small lots in the northwest corner of the square, deemed exceptionally small); BZA Order No. 17313 (1,452 square foot lot found to be “significantly smaller and shallower than the 1,800 square feet lots that are generally required in the R-4 zone.”); BZA Order No. 14048 (1,188 square foot lot found to be small in comparison to the normal R-3 District standards).

and orientation of New York Avenue NW. For this reason, there is not space for a public alley at the rear of the Property as is often the case.

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

1. Nonconforming Structure Requirements (2001.3) with respect to lot occupancy (§403) and rear yard (§404)

Under §403, the maximum permitted lot occupancy at the Property is 60%. The existing structure has a lot occupancy of 73%, and thus is an existing nonconforming structure. The proposed project has a lot occupancy of 84%. Because the project increases existing nonconforming lot occupancy, the Applicant has requested relief from §2001.3 with respect to lot occupancy. Under §404, the minimum rear yard required is 4 inches/1 ft of height but not less than 15 feet. The height at the rear of the structure⁴ is roughly 27 feet; therefore, the rear yard requirement is 15 feet. The rear yard provided is roughly 9 feet and thus is an existing nonconforming structure. Because the project increases the existing nonconforming rear yard by filling in the rear yard with a small addition, the Applicant has requested relief from §2001.3 with respect to the rear yard.

The Applicant's initial application maintained the lot occupancy and rear yard of the existing structure, building an addition above the existing structure that was matter-of-right with respect to the height and story requirements. HPO indicated that no addition to height would be approved, preventing the Applicant from building to the matter-of-right height of 50 feet in the R-5-B District. In response to requirements imposed by HPO, the Applicant has revised the application to put a small addition at the rear. The increase in lot occupancy and decrease in rear yard is a result of that modification in response to HPO. Furthermore, the awkward dogleg at the rear of the Property renders a large portion of the

⁴ Under §404.1, the measurement of the rear yard requirement is calculated as "4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet."

already small lot unbuildable. For these reasons, strict application of the zoning regulations with respect to lot occupancy and rear yard at the Property would result in a practical difficulty to the Applicant.

2. Courts (§406)

Under §406.1, a closed court in the R-5-B District has a width and area requirement. The required width of a closed court is 4 inches per 1-foot of height, but not less than 15 feet. The required area of the closed court is 350 square feet.⁵ The proposed closed court is 10 feet wide and is roughly 90 square feet. The closed court is created by the small addition at the rear of the Property. As described above, the addition has been put at the rear of the Property at the request of HPO and in place of building to the matter-of-right height of what would ordinarily be 50 feet.

Again, the small size of the lot and the awkward dog leg at the rear of the Property also greatly restrict development of the site. Each proposed floor is only 732 square feet. Increasing the closed court by 260 square feet to comply with the closed court area requirement, at the expense of the size of each floor, reduces each floor to 472 square feet. Furthermore, on a lot that is only 21 feet wide and 39 feet deep, a 350 square foot court would result in a very oddly shaped structure. The resulting floor size and odd shape would be unmarketable and would make the project unviable. Moreover, this court is a closed court because of the lack of a rear alley. If the house were abutted by a rear alley, as is typically the case, the court would be deemed an open court, which has no area requirement, and would comply with the court requirements. Therefore, strict application of the closed court requirement, in conjunction with the restrictions imposed and other exceptional circumstances at the Property, would result in a practical difficulty.

⁵ The required area of a closed court is twice the square of the required width of court dimensions based on the eight of the court, but not less than 350 square feet.

C. No Substantial Detriment to the Intent, Purpose and Integrity of the Zoning Plan

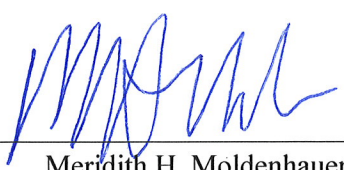
The requested variance is in furtherance of the public good and zoning regulations. The proposed flat is modest in nature and not out of scale with the surrounding patterns of development on this stretch of M Street NW. The proposed project, by rehabilitating a vacant historic rowhouse, will have a positive impact on neighboring properties and the character of the neighborhood. Furthermore, because the Property is in a transit-rich area, and the countervailing policies against curb cuts in certain locations, the lack of parking at the Property will not cause a substantial detriment to the public good. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VII. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By: 

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