

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

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

**304 M STREET NW
ANC 6E**

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 304 M Street NW, Lot 19 in Square 524 (the “Property”), in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding lot occupancy (§403), FAR (§402), rear yard (§404), and parking (§2101.1) to allow the Applicant to construct a single family home on a vacant lot 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. BACKGROUND

A. Background Information Regarding the Property

The Property, also known as Lot 19 in Square 524, contains approximately 698 square feet of land area and is located in northwest Washington D.C. *See* Baist Atlas Map at **Tab 8**. The Property is located within the R-5-B District. *See* Zoning Map at **Tab 9**. The Applicant seeks variance relief so it may construct a single-family home on a vacant lot. Adjacent to the Property, to the east and west, are rowhouses. The Property is located in the Mount Vernon Square Historic District and the address 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. *See **Tab 9***. 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 Architectural Plans and Elevations, *see **Tab 10***, the Applicant proposes to construct a new, three-story plus cellar, single-family rowhouse on the vacant lot. The cellar level will contain a family room, bedroom, and bathroom. The ground level will contain a living/dining room and kitchen. The second level will contain a small bedroom and bathroom. The third level will contain a second bedroom and bathroom. Construction of a single-family home at the Property will put a long-vacant infill lot to a productive use.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding lot occupancy (§403), FAR (§402), rear yard (§404), and parking (§2101.1). 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.

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.

V. **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 vacant; (3) the Property was previously improved with a nonconforming single-family rowhouse; and (4) the Property has no curb cut or access to a public alley.

The Property is exceptionally small, particularly relative to other properties in the DD/R-5-B District. At 698 square feet, the Property is the smallest lot on the south side of M Street between 3rd and 4th Street NW.¹ 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 vacant. Other than lot 5, lot 19 is the only vacant lot on the south side of M Street between 3rd and 4th Street NW. Again, while Square 524 has several small vacant lots, those lots are all owned by a single entity.

The Property was previously improved with a nonconforming single-family home. According to the baist atlas map, at **Tab 8**, the Property was previously encumbered by a single-family home occupying roughly 70% of the lot. Therefore, the prior structure that existed on the lot would not be a

¹ The Board has found several properties, of much larger size than the subject Property, to be exceptionally small in the context of a variance to construct a single-family home. *See i.e.* BZA Case No. 17637 (1,120 square foot lot in the CAP/R-4 Zone District was found to be exceptionally small); and BZA Case No. 17264 (753 square foot lot in the R-4 Zone District was found to be exceptionally small).

conforming structure if built today. The majority of the vacant lots on Square 524 were not previously encumbered by a single-family home.

The Property has no curb cut or 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 location and orientation of New York Avenue. 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. Lot occupancy (§403)

Under §403, the maximum permitted lot occupancy at the Property is 60%. The proposed single-family home has a lot occupancy of 70%. Because the lot is exceptionally small, at just 698 square feet, the footprint of a single-family home that complies with the lot occupancy would be just 419 square feet. Construction of a single-family home with a footprint of just 419 square feet would be unusually small for a residence in the surrounding community and cause design and other construction issues. If a structure existed on the lot, the 70% lot occupancy proposed would be permitted under a §223 special exception for additions to existing single-family homes. Therefore, strict application of the zoning regulations with respect to lot occupancy at the Property would result in a practical difficulty to the Applicant.

2. FAR (§402)

Under §402, the maximum permitted FAR at the Property is 1.8 FAR. The proposed single-family home has an FAR of 2.1 FAR. The relief requested amounts to just 209 square feet. Because the lot is exceptionally small, at just 698 square feet, an FAR of 1.8 would allow for a total square footage of only 1,257 square feet. Construction of a single-family home with a total square footage of just 1,257 square feet would cause design and other construction issues. For the proposed structure, stairs and hallways already occupy roughly 27% of the total square footage. Reducing the total square footage to

comply with the FAR requirement would increase the percentage of square footage devoted to stairs and hallways creating practical difficulty for the Applicant with respect to layout, design, and marketability if relief is not granted. The relief requested, only 209 square feet, is just enough to provide adequate circulation. Therefore, strict application of the zoning regulations with respect to FAR at the Property would result in a practical difficulty to the Applicant.

3. Rear yard (§404)

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 structure² is 40'-9"; therefore, the rear yard requirement is 15 feet. The rear yard provided is roughly 12.5 feet. Because the depth of the lot is just 43 feet, a rear yard of 15 feet would leave a single-family home with a depth of just 28 feet. A single-family home with a depth of just 28 feet would cause design and other construction issues. For example, providing space for a code complaint stairwell, based on maximum riser and minimum tread depth, is challenging if the home is not sufficiently deep. Therefore, strict application of the zoning regulations with respect to rear yard at the Property would result in a practical difficulty to the Applicant.

4. Parking (§2101.1)

Pursuant to §2101.1, a single-family home in the R-5-B District has a parking requirement of one space. DDOT will most likely not permit a curb cut at the proposed location because of its proximity to the intersection of M and 3rd Streets, NW. The previously existing single-family home at the Property also did not provide a parking space. Due to the size and configuration of the Property, the lack of alley access, and the unlikelihood of a curb cut being permitted, the Property will remain idle without relief from the parking requirements. Therefore, strict application of the zoning regulations with respect to parking at the Property would result in a practical difficulty to the Applicant.

² 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."

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 single-family home 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 will not have a negative impact on the character of the neighborhood. The zoning relief requested will permit use of a long-vacant property as a rowhouse in a location where a rowhouse previously existed. The variance procedure is designed, in part, to “prevent usable land from remaining idle.” *Palmer*, 287 A.2d 535, 541. Furthermore, because the Property is in a transit-rich area, and the countervailing policies against curb cuts in certain locations, the parking relief for 1 parking space 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.

VI. 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

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By: _____


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