

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

**APPLICATION OF
NEWTON ST DEVELOPMENT 3 LLC**

**1740 NEW JERSEY AVENUE, NW
ANC 6E**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Newton St Development 3 LLC (the “Applicant”), the owner of property located at 1740 New Jersey Avenue NW, Lot 9 in Square 508N (the “Property”) in support of its application for an area variance from the zoning regulations regarding lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1) to allow the Applicant to renovate and convert a vacant nonconforming corner building to a multiunit dwelling in an R-4 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 Applicant owns the Property, also known as Lot 9 in Square 508N, which approximately 1,685 square feet of land area and is located in Northwest Washington, D.C, as well as Lot 10. Square 508N is bounded by New Jersey Avenue to the east, Rhode Island Avenue NW to the south, 5th Street to the west, and S Street to the north. See Baist Atlas Map at Tab 8. The Property is located within 4 blocks (.3 miles) of the Shaw Metro Station entrance. The Property has approximately 32 feet of frontage along S Street NW, 43 feet of frontage along New Jersey Avenue NW, and 31 feet of frontage along Rhode Island Avenue NW. The Property is not located within any historic District, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.

The Property is presently improved with a vacant 2-story corner building.¹ The Property has been vacant for several years and has been registered as vacant with the DC Department of Housing and Community Development since at least 2011. The structure has existing nonconformities with respect to lot occupancy and lot area. The structure has an existing lot occupancy of 100%, which exceeds the 60% lot occupancy permitted for a row dwelling.² The lot area, at 1685 square feet, is less than the 1800 square feet required for row dwellings. The existing structure is compliant in all other respects.³

The Applicant purchased the Property by a deed recorded January 7, 2014. That purchase included Lot 9 and Lot 10. The Applicant is renovating the existing rowhouse on Lot 10 as what it anticipates is a matter-of-right development. The Application is currently seeking relief for purposes of renovating and converting Lot 9 only.

B. Description of the Improvements in the Surrounding Area

The Property is located in Shaw, 3 blocks from the Shaw Metro Station. Square 2855 is zoned R-4. It makes up part of a small R-4 section surrounded by commercial zoning. Florida Avenue to the north, New Jersey Avenue to the east, Rhode Island to the South and 7th Street to the west are all commercially zoned. *See Zoning Map at Tab 9.* Across Rhode Island are two gas stations on either side of New Jersey Avenue. Across New Jersey Avenue from the Property is a complex intersection where Rhode Island, New Jersey Avenue, and Florida Avenue form a triangle. A US Post Office structure is located at the center of the triangle. Also across Rhode Island is The Josephine, a new 5-story, 20 unit

¹ According to the Office of Tax and Revenue the structure is a semi-detached single-family home. However, because the structure is built lot line to lot line, without a side yard, the structure is a rowdwelling.

² Under §403.2, the lot occupancy requirement for a conversion of a building to an apartment house is the greater of 60% or the lot occupancy as of the date of conversion. The lot occupancy at the date of conversion is 100%, thus the Applicant has not requested relief at this time for the proposed project pursuant to §403.2. The Applicant does, however, believe that strict application of a 60% lot occupancy would result in a practical difficulty.

³ Under 404.2, for a through lot abutting three streets, the depths of a rear yard may be measured from the center of the street abutting the lot at the rear of the structure. The center line of S Street NW, 45 feet from the rear of the structure, is a greater than the 20 feet rear yard requirement. Thus, there is no existing nonconformity with respect to rear yard.

condominium building. Also on the Square are attached and detached single family homes, flats, and apartments.

C. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area

The Property is well serviced by a number of public transportation facilities and services including Metro, Metrobus routes, Capital Bikeshare, and Zipcars. The Property is located approximately 3 blocks (0.3 miles) from the Show Metro. Moreover, Metrobus routes along Florida Avenue NW (90, 92, 93, 96, and X3), Rhode Island Avenue (G8), and New Jersey Avenue (96) all serve the Property. Also nearby on 7th Street are the 70, 79 and G8. Bus stops are located across the street on Rhode Island Avenue, at New Jersey Avenue & Rhode Island Avenue NW, and at Florida Avenue & 6th Street NW. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Five Capital Bikeshare stations are located within 5 blocks of the Property. The closest is at New Jersey Avenue & R Street NW (15 docks). Several Zipcar spaces are located within walking distance including 1 space behind 625 Rhode Island Avenue and 1 space at 7th & R Street NW. Another local car-sharing program, Car2Go, reported in July 2013 that the use of the company's car-sharing service in the District had reached over 25,000 and that the fleet was expanded from 300 vehicles to 400 vehicles to accommodate increasing demand. Car sharing is also available from Hertz on Demand and RelayRides. On walkscore.com, the Property received a walkscore of 98 out of 100 and is deemed a "walker's paradise"; and a transitscore of 100 out of 100 and is deemed a "rider's paradise".

D. Description of the Proposed Development

As shown on the architectural plans, *See Architectural Plans and Elevations at Tab 10*, the Applicant proposes to convert the Property from a vacant, two-story residence to a three-story residential structure with eight residential units. The current footprint of the structure will be left unchanged. Each floor will have two units. The cellar will contain a one-bedroom-plus-den unit and a two-bedroom unit.

The first floor will contain a studio and two-bedroom unit. The second floor will contain a one- bedroom unit and a two-bedroom unit. The third floor will contain a one-bedroom unit and two-bedroom unit.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding lot area (§401.3), nonconforming structures (§2001.3), 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 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 characterized by an exceptional situation and condition as a result of a confluence of the following factors: (1) the size and shape of the Property and configuration of the existing structure; (2) the location of the Property at the intersection of Rhode Island Avenue NW, Florida Avenue NW, and New Jersey Avenue NW; (3) the location of the Property in a flood zone; (4) the existing nonconforming aspects of the Property; (5) the title issues and history of the Property; (6) the existing dilapidated condition of the Property due, in part, to the extended vacancy; and (7) the orientation and layout of the existing structure.

1. The Size and Shape of the Property and the Configuration of the Existing Structure

The Property is exceptional with respect to its size and shape, as well as the configuration of the existing structure. First, the Property is a five-sided pentagonal shape and the existing structure has a lot occupancy of 100%.

2. Orientation and Layout of the Existing Structure

The existing structure, built as a single-family home in 1921, has three entryways, one on each of the three sides with street frontage. Furthermore, the preservation of significant features of the structure presents significant design and programming challenges. In order to preserve several of the interior walls, and maintain the historic orientation of the structure, the three entryways are being maintained. Maintenance of the three entryways makes two units on each floor, with a central common stairwell off of New Jersey avenue, the most efficient and logical orientation.

3. The Location of the Property at the Intersection of Rhode Island Avenue NW, Florida Avenue NW, & New Jersey Avenue NW

The Property is located at the intersection of three large arterial streets. Rhode Island Avenue, Florida Avenue, and New Jersey Avenue meet along the eastern side of the Property at a large, complex intersection. The three large roads form a triangle that is divided awkwardly by S Street NW. The northern portion of the triangle is occupied by a small US Post Office structure. The small southern portion of the triangle is an unimproved sliver of land. Also on the triangular intersection are two large gas stations to the south. The Property's location on a busy, complicated, commercial intersection and traffic artery presents unique challenges for residential use.

4. The Property is Located in a Flood Zone

The Property is located in flood zone X, as shown on FEMA Flood Insurance Map Community Panel Number 110001 0020B for Washington, DC. Flood Zone X is designated as an area of minimal flooding. The Property's cellar has been compromised by flooding and neglect. The existing condition must be remedied with additional safeguards to prevent future flood damage.

5. The Existing Nonconforming Aspects of the Property

The existing, five-sided structure, is nonconforming with respect to lot occupancy and lot area. The structure occupies 100% of the lot. Furthermore, the Property, at 1685 square feet, is nonconforming

with respect to lot area. In addition, the Property has an existing nonconforming court. Without demolition, or drastically changing the footprint of the existing structure, both of which would be wasteful and costly, the existing nonconformities are unique and contribute to the practical difficulty. Furthermore, the property has a history of use as a doctor's office without any indication of zoning relief or a properly permitted home occupation. Dr. Elmer Embry Rones, establishing a private medical practice in 1959 and retiring in 1987, practiced from his office at 1740 New Jersey Avenue.

6. The Dilapidated Condition of the Property

The Property has lied vacant for several years. While not a justification for are variance relief in and of itself, the years of vacancy is a testament to the exceptional circumstances and practical difficulty associated with putting the Property to use. Roof damage, vandalism, and flood damage, left unattended for several years, has been exacerbated by the extended vacancy. The cellar fronting on S Street is filled with standing water causing structural damage, mold, and deterioration. The dilapidated condition presents challenges for any reuse of the existing structure.

7. The Title Issues and History of the Property

There is a long history of title issues at the Property. In large part due to a cloud over the title being settled through the court system, the transaction necessary to prevent the Property from remaining idle has been complicated and time consuming. Thus, it has taken several years and considerable expenses spent on attorney's fees and title searches to obtain the financing necessary to transfer the Property from the prior owner.

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

Strict application of the zoning regulations with respect to lot area (§401.3), nonconforming structures (§2001.3), and parking (§2101.1) would result in a practical difficulty to the Applicant.

1. Lot area (§401.3)

Under §401.3, the conversion of a building or structure to an apartment house in the R-4 District is permitted, but requires a minimum of 900 square feet of lot area per apartment unit. In light of the extensive renovations required, an eight unit structure is required for the project to be financially feasible. Thus, as demonstrated in more detail below, strict application of the zoning regulations, which would prevent any structure with more than two units, constitutes a practical difficulty for the Applicant.

The Court of Appeals has repeatedly held that “economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases.” *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an area variance that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.”)⁴ The Board of Zoning Adjustment has granted lot area variances from §401.3 based on financial feasibility grounds on several occasions.

In this instance, it is not simply that having fewer units would produce less of a profit for the Applicant. Rather, due to the exceptional circumstances at the Property described above *any* renovation of the existing structure that results in fewer than eight units would result in an economically infeasible project. The primary driver of the financial infeasibility is that substantial base renovation costs must be completed regardless of the number of units. The base renovation costs include, but are not limited to,

⁴ In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA *could* build a structure that complied with off-street parking requirements by reducing its size and programming but was not economically feasible or cost-effective). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where “marketability” of the property would otherwise be “unfeasible” and investment would yield loss rather than profit. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income).

site cleanup, removal of obsolete and nonfunctional equipment, remediation and prevention of water damage, excavation and earthwork, foundation, and roofing. Base renovation costs make up a larger percentage of total hard costs when the structure has fewer units. *See Profit and Loss Analysis and Construction Budget at Tab 11.* Because of the significant base renovation costs required to allow the structure to be used as a residential structure of any kind, the Applicant must spread those costs over the additional units requested to have a financially viable project.

The Applicant will testify, based on the attached Profit and Loss Analysis and Construction Budget, that there is no economically feasible alternative for rehabilitation of this Property because compliance with the Zoning Regulations will result in a loss. Providing fewer units would result in excessively large units with inefficient layouts. Thus, a practical difficulty exists because the existing structure requires such a large investment that renovation becomes feasible only with eight units.

2. Nonconforming Structure Requirements (§2001.3)

The proposed project requires relief from the nonconforming structure requirements. As described above, the structure is nonconforming with respect to lot occupancy and lot area and has an existing nonconforming court. Section 2001.3 allows enlargements and additions to an existing nonconforming structure. However, for the enlargement to be permitted (a) the structure must conform to lot occupancy and (b) the enlargement itself must conform to the use and structure requirements and neither increase the degree of nonconformity or create a new nonconformity. Therefore, the applicant requests relief from the nonconforming structure requirements as well.

3. Parking (§2101.1)

The parking requirement in the R-4 District is 1 space for every 3 dwelling units. Thus, the parking requirement for the proposed project is 3 spaces. The Property currently has 0 parking spaces. Parking relief is therefore required.

Based on the 100% lot occupancy of the existing structure, providing the three spaces would require demolition of a substantial portion of the existing structure. Furthermore, there are no curb cuts on the lot to allow access for vehicles onto the Property and based on discussion with DDOT, new curb cuts are extremely unlikely to be approved. The public property to the east of the Property along New Jersey Avenue has two nonconforming curb cuts connected by a driveway. DDOT has informed the Applicant that there is no way to obtain the public space for private use. In fact, these two curb cuts will most likely be closed and the paved portion will become green space once the Applicant processes this building pert through public space review. Therefore, strict application of the parking requirement would result in a practical difficulty to the Applicant.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning Plan

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed project renovates a vacant, single-family home with a residential structure. Furthermore, the footprint of the existing structure will be left unchanged. In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. Finally, the additional residential units help address the well documented shortage of housing in the Washington D.C. area.⁵ Due to the accessibility of the Property, including an extremely high walkscore as well as access to two metro stations, several bus routes, carsharing and bikesharing options, variance relief for two spaces will not have a significant detrimental impact. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

⁵ Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year to keep up with predicted population growth. However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about ¾ that much. Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing*. October 17, 2012. Greater Greater Washington. Found at: <http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/>.

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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