

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

**LEW HAGES AND GERARD BOQUEL (APPLICANTS)
2123 TWINING COURT, NW
(Square 68, Record Lots 15 and 16 (Tax Lots 807 and 808))
ANC 2B**

APPLICANT'S STATEMENT

I. INTRODUCTION

This is a statement in support of the application of owners Gerard Boquel and Lew Hages (the “**Applicants**”) for area variance relief from §2507.3 of the Zoning Regulations to allow the conversion of a building most recently used as a nightclub to a one-family dwelling. The subject building is located on an alley lot that does not have access to a street through alleys at least thirty (30) feet wide, prompting the required relief. The restoration and conversion of the subject building, in addition to a small addition (after a slightly larger demolition) also requires area variance relief from § 772.1 for lot occupancy, and from § 2001.3(a) prohibiting additions to structures which exceed the permitted lot occupancy percentage.

**II. BACKGROUND OF THE PROPERTY AND
THE PROPOSED PROJECT**

The subject property is located at 2123 Twining Court, NW, Square 68, Lots 807 and 808 (the “**Property**”). The Property is located in the Dupont Circle neighborhood, in the DC/C-2-C zone district, within the square surrounded by O, P, 21st, and 22nd Streets (see Map attached as Exhibit A). It is improved with a building, vacant since December, 2013 which was originally constructed as a carriage house and stable and has been used as a restaurant and most recently as a nightclub (the “**Building**”).

The Building, known as the Spencer Carriage House and Stable, was built in 1905 to serve as a carriage house, stable, and servant's quarters for the residence of railroad executive Samuel Spencer. The building is a freestanding two story brick structure measuring 35 feet wide by 110 feet long set upon a raised brick foundation delineated by a brick water table and by a shallow hipped slate roof, topped by two picturesque vented cupolas. The Building was designed by master builder John McGregor, and was designated a landmark in the DC inventory in 1995 and listed in the national register in 1996.

The Building is situated behind a 4-story commercial building at 2122 P Street, and a 10-story Marriott Residence Inn building located at 2120 P Street. It is adjacent to a 15-foot wide alley to its west, and a 30-foot wide alley to its south. To the south across the 30-foot wide alley is a development of 6 townhouses which, although technically part of a larger development with frontage on O Street, are essentially alley residences. To the east are the rear yards of the residential properties fronting on 21st Street, and to the west are two large, high-rise apartment buildings

At some point in its history, the Spencer Carriage House and Stable was converted from its original use to commercial use and was operated as a restaurant known at one time as the Twining Court Stables. It was most recently used as a nightclub known as Omega, and prior to that the Frat House. The Applicants purchased the Property at the end of December, 2012, as the previous owner was winding down its nightclub operation. The Applicants purchased the Property intending to convert the Building back to residential use and occupy the Building as a one-family dwelling. When they purchased the Property, the Applicants were not aware that BZA relief was necessary to use the Building as a residence.

The proposed work includes a full renovation of the interior of the Building, restoration of the exterior - maintaining the original characteristics of the Building, construction of a small one-story addition for a garage extension, and altering the roof to accommodate a roof top deck and mechanical equipment. The scope of restoration includes cleaning and repointing the brick facades, replacing and restoring the windows and window openings, reopening the hay bale door, replacing the doors, light fixtures, downspouts, and gutters with historically appropriate material, restoring the retained portions of the roof, and rebuilding the deteriorated metal cupolas.

The proposed work was approved by the Historic Preservation Review Board in May, 2013. A copy of the HPRB Staff Report is attached hereto as Exhibit B.

III. JURISDICTION OF THE BOARD

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

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCE RELIEF

The Applicant is seeking variance relief from 11 DCMR §2507.3. Subsection 2507.3 provides that nonresidential structures located on alley lots which do not have access to the street via alleys which are all at least thirty feet in width may not be converted to one-family dwellings. Because the Applicant is also removing a small portion of the Building and providing an addition, relief is also required from Subsection 772.1 regarding lot occupancy, and from

Subsection 2001.3(a), which prohibits additions to structures which currently exceed the maximum permitted lot occupancy.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 also *French v. District of Columbia Board of Zoning Adjustment*, 628 A.2d 1023, 1035 (D.C. 1995); and *Capital Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

An applicant for area variance relief must demonstrate that, as a result of the exceptional situation or condition of the Property, it will encounter practical difficulties in strictly complying with the Zoning Regulations. 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

¹ The net effect will be a decrease in lot occupancy, but the work is nonetheless characterized as “an addition” for purposes of §2001.3(a).

be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

The variance procedure “is designed to provide relief from the strict letter or regulations, protect zoning legislation from constitutional attack, alleviate an unjust invasion of property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541, (D.C. 1972).

A. The Property is Unique Because it is Affected by an Exceptional Situation or Condition.

The phrase “other extraordinary or 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. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). In this case, the exceptional condition with the Property results from the fact that the Spencer Carriage House and Stable was built in 1905 as a carriage house, stable, and resident's quarters, and was converted to commercial use at some point, and now sits vacant after most recently being used as a nightclub. The Property has been located on an alley lot since its original construction, well before the adoption of the zoning regulations restricting residential use on alley lots and limiting lot coverage for residential lots in this zone district. The Building is a historic landmark, which, while used in the past for permitted commercial uses, was originally built in part for residential use, as servant's quarters. The Applicant is proposing to restore and maintain many historical features of this registered landmark, and has received HPRB approval therefor.

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

As a result of the Property's extraordinary situation and condition, including the Carriage House's history and location, the Building cannot be demolished, or joined with any structures on lots with street frontage. The Applicants purchased the Property as the then existing nightclub use was winding down and no longer thriving. The Applicants intended from the time of their purchase to restore the Building and to occupy it as a one-family dwelling. It was only recently - after receiving HPRB approval - that the Applicants discovered that such use would require BZA variance relief because of the lack of access to the street by way of thirty-foot wide alleys. While the adjacent alley is thirty feet wide, and there are four possible exits to street frontage, the thirty-foot width is not maintained for the entire access path to the street frontages on O, P, or 22nd Streets.

Compliance with the lot occupancy restrictions is a practical difficulty because the Building's landmark status prevents the removal of any material portion of the original structure.

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

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zoning regulations by granting the requested relief. Granting relief would allow the Property to be used as a one-family dwelling, rather than the much more intensive uses that existed here in the past. This square now includes mostly residential uses, including two large apartment buildings, and a group of row houses located on the alley, across a thirty-foot wide section of alley from the Property. The Building was

construction and use partially for residential use well before the adoption of the current restrictions which prevent its use as a one-family dwelling.

Relief from §2507.3 has recently been determined by the Zoning Commission to be area variance relief, rather than use variance relief, pursuant to Z.C. Order No. 12-11. As part of that Order the Commission adopted a text amendment including § 3103.5(d), which provides that: “Examples of area variances are requests to deviate from: ... (d) Limitations on the alteration or conversion of certain structures on alley lots as stated in § 2507.3;”. This text amendment became effective on June 14, 2013. (D.C. Register, Vol. 60, No. 26, June 14, 2013). Based on this recent change, the Zoning Commission made the conscious decision to declare conversions of existing buildings on alley lots to be a matter of *area* variance relief, while presumably leaving the *new* construction of dwellings on alley lots as use variances pursuant to recent BZA precedent. The effect of this is to express a preference for the conversion of existing buildings on alley lots (area variance) over new construction of alley lot dwellings (use variance). This application is such a conversion of an existing building and therefore has only to meet the lower area variance standard.

V. CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan". The signature is written in a cursive, slightly slanted style.

Martin P. Sullivan, Esq.