

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

**APPLICATION OF
1801 4TH STREET NW LLC**

**BZA APPLICATION NO. 18796
HEARING DATE: JULY 15, 2014**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted by 1801 4th Street NW LLC (the "Applicant"), the owner of the parcel located at 1801 4th Street, NW, (Lot 27 in Square 3095) (the "Property"). The Applicant seeks (1) a variance from the lot coverage (§ 403.2); (2) rear yard (§ 404.1); and (3) side yard (§ 405.6) requirements in the Zoning Regulations. The purpose of these requests is to permit the redevelopment of the Property with a two-family flat that consists of a two-bedroom basement unit with 844 square feet of living area, and a two-level unit above with approximately 1,688 square feet of living area.

This prehearing statement supersedes the Preliminary Statement submitted to the Board on May 6, 2014, and is submitted in accordance with Section 3113.8 of the Zoning Regulations.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the special exception approvals and variances requested pursuant to Sections 3103 and 3104 of the Zoning Regulations.

**III.
EXHIBITS IN SUPPORT OF THE APPLICATION**

<u>Exhibit A:</u>	Revised Architectural Drawings
<u>Exhibit B:</u>	Revised Zoning Self-Certification (Form 135)
<u>Exhibit C:</u>	HPRB Actions - September 26 and October 3, 2013
<u>Exhibit D:</u>	HPRB Staff Report and Recommendation

IV.
BACKGROUND & PROJECT DESCRIPTION

A. Overview of Subject Property and Surrounding Area

The Property is located at 1801 4th Street, NW, near the intersection of Florida and Rhode Island Avenues. It is within the boundaries of the LeDroit Park Historic District and ANC IB01. Immediately south of the Property (Lot 28) the building that was formerly Frazier's Funeral Home has been converted into an apartment building with six two-bedroom units. The proposed redevelopment of the site and the building design were reviewed by the Historic Preservation Office ("HPO") and approved via consent agenda on October 3, 2013. In its review of the design, HPO requested that the front façade of the flat be aligned with the existing properties along the street.

B. Project Description

The Applicant proposes to redevelop the Property with a two-family flat that consists of a two-bedroom basement unit with approximately 844 square feet of living area. There will be a two-level unit above with approximately 1,688 square feet of living area. One off-street parking space will be provided at the rear of the building, which is accessible via a public alley that extends from Rhode Island Avenue. There is an existing curb cut along 4th Street, but with the redevelopment of the site, the curb cut will be removed and replaced with sidewalk consistent with the rest of the block. The height of the structure will be 33 feet. The proposed design of the structure, including height, floor levels, fenestration patterns and ornament are consistent with the two rowhouses immediately north of the Property.

According to the Historic Preservation Review Board Staff Report and Recommendation, dated September 26, 2012, and attached as Exhibit D, the Property was most recently used as vehicle storage and delivery space for the former Frazier Funeral Home at 391 Rhode Island Avenue. The rowhouse that previously occupied the space was originally constructed as part of

the group of buildings that included three rowhouses at 391 Rhode Island Avenue (which later were combined to form the Frazier Funeral Home) as well as 1803 and 1805 4th Street, NW.

C. Relief Requested.

The following areas of relief must be granted by the Board in order to facilitate the proposed development of the Property:

1. Variance for Lot Coverage. The Applicant seeks a variance from Section 403.2 of the Zoning Regulations in order to have lot coverage of 70.12% where a maximum lot coverage of 60% is permitted.
2. Variance for Rear Yard. The Applicant seeks a variance from Section 404.1 of the Zoning Regulations in order to have a rear yard of 4'-10" where a rear yard of 20' is required.
3. Variance for Side Yard. The Applicant seeks a variance from Section 405.6 of the Zoning Regulations in order to have a side yard of 3' along the south property line where a side yard of 10' is required.
4. Variance for Court Niche.¹ The Applicant seeks a variance from Sec. 406.3 of the Zoning Regulations in order to have a court niche at the north west corner of the building that is less than 3' wide with a depth of 4'-3 1/2".

D. Community Outreach

The Application was presented to the ANC 1B Design Review Committee on June 16, 2014. At that meeting, the Committee voted unanimously to recommend approval of the Application to the full ANC. The full ANC will consider the recommendation at its regularly scheduled meeting on July 1, after the submittal of this prehearing statement.

¹ This variance request was not in the original application.

V.
**THE APPLICANT MEETS THE BURDEN
OF PROOF FOR THE REQUESTED AREA VARIANCES**

A. Standard of Review for Area Variances

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 condition or situation;
- (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.¹

The D.C. Court of Appeals has determined that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property."² The Court has further stated that "the severity of the variance(s) requested;" "the weight of the burden of strict compliance;" "the effect the proposed variance(s) would have on the overall zone plan;" and the "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration" in determining whether to grant an area variance.³ As discussed below, all three prongs of the area variance test are met in this Application.

¹ See *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

² *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

³ *Id.* at 1171.

1. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional 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.⁴ Moreover, the unique or exceptional situation or condition may arise from a confluence of factors that affect a single property.⁵

In this case, the exceptional condition arises from a number of factors. The Property has a substandard lot size of 1,362 square feet where a minimum of 1,800 square feet is specified in Section 401.3.⁶ While currently vacant, the Property was previously improved with a row house which, as a matter of right, could have been converted into a two-family flat. Finally, the Property is in the LeDroit Park Historic District, which means that the Office of Planning Historic Preservation Division weighs in on certain design elements of the building. In this case, HPO requested the front façade of the new building to be aligned with the existing buildings along the street, which causes the new building to be set back from the front property line by approximately 10'.

2. The owner would encounter practical difficulties if the Zoning Regulations were strictly applied.

The Applicant would encounter practical difficulties if the Zoning Regulations were strictly applied to the project. As noted above, the Property is substandard in size. It has an area of 1,363 square feet where Section 401.3 of the Zoning Regulations requires a minimum lot area of 1,800 square feet for a row dwelling and flat in the R-4 District. The available area for building is too small for a conventional row house plan, which makes it impractical to build a

⁴ See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974).

⁵ *Gilmartin v. D.C. Board of zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

⁶ The Zoning Administrator has determined that the substandard lot size is grandfathered and a new building containing either a flat or row dwelling will be allowed to be constructed.

structure with only 60% lot occupancy and also meet the Building Code minimum requirements for bedroom size and width, which are 70 square feet and 7'-0" wide. The substandard size and minimum Building Code requirements also makes it impractical to achieve the rear and side yard requirements.

Because the Property is within the LeDroit Park Historic District, HPO staff weighed in on certain elements of the site plan and building design. Most notably, they requested the front façade of the new building to be aligned with the existing buildings along the street, which meant pushing the building from the front property line, reducing the depth of the rear yard. As it relates to the variance for the court niche, in order to meet the requirements of Section 406.3, the bay must be reduced by at least 1'-3 1/2" or shift it to the south by 1'-4" both of which are inconsistent with the historic preservation objectives to replicate the existing building.

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.

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the Zone Plan if the Board grants the requested parking and loading variances. In fact, the proposed building and configuration is for keeping with the configuration and design of the other buildings on this section of 4th Street, NW. The redevelopment of the vacant site with a residential dwelling that is compatible with the surrounding buildings would be beneficial to the neighborhood. Also, as noted in the Historic Preservation Staff Report, the proposed design advances historic preservation objectives.

VI. WITNESSES

1. Thomas Swarm
Allan Properties / 1801 4th Street NW LLC
7701 Belle Point Drive
Greenbelt, MD 20770

2. Kade Sheridan
GTM Architects
7735 Old Georgetown Road, Suite 700
Bethesda, MD 20814

VII.
CONCLUSION

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

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Leila Batties
Leila M. Jackson Batties
800 17th Street, NW - Suite 1100
Washington, DC 20006
(202) 955-3000