

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

**APPLICATION OF
ROBERT SEARLE**

**1522 8th STREET, NW
ANC 6E**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Robert Searle (the “Applicant”), the owner of property located at 1522 8th Street, NW, Lot 828 in Square 397 (the “Property”) in support of its application for an area variance from the requirements regarding nonconforming structures with respect to lot occupancy (§2001.3) and courts (§406) to allow the Applicant to rehabilitate and construct an addition to the existing rowhouse 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 Property contains approximately 1,966 square feet of land area and is located in Northwest Washington, D.C. *See* Baist Atlas Map at Tab 8. The Property has approximately 20.8 feet of frontage along 8th Street NW. The Property is presently improved with a dilapidated rowhouse with an English basement, purchased by the current owner out of foreclosure in 2009. The Property is located within the Shaw Historic District and is listed on the D.C. Inventory of Historic Sites.

B. Description of the Improvements in the Surrounding Area

Square 397 is a small, split-zoned square. The Square is bounded by 9th Street NW to the west, Q Street NW to the north, 8th Street NW to the east, and P Street NW to the south. The northern three-fourths of the Square, including the Property, are in the R-4 District. The bottom one-fourth of the Square is in a C-2-A Zone District that includes the commercial corridor along 7th Street NW between the Shaw/Howard University Metrorail Station and the Mt. Vernon Square/7th Street/Convention Center Metrorail Station. *See* Zoning Map at Tab 9. Across P Street to the south is the O Street Market. Across 8th Street, at the corner of 8th Street and P Street NW is the Kelsey Gardens Development.

C. Description of the Proposed Development

As shown on the architectural plans, the Applicant proposes to rehabilitate an existing, historic house. *See* Tab 10. An internal structural wall, which has become structurally unsound due to deferred maintenance and a lack of proper precautions during previous additions by prior owners, has caused structural problems throughout the existing house. The proposed plan includes removing the central structural wall, transferring the weight to the exterior load-bearing walls, and extending the third floor toward the rear to match the footprint of the floors below it. The first floor will contain a kitchen, dining room and living room. The second floor will contain bedrooms and a den. The third floor will contain a bedroom and family room. There will also be a small roof deck and staircase penthouse. The basement unit will remain a second unit. The front façade will remain largely unchanged. The Applicant will only enhance poorly maintained elements and replace certain historically inaccurate features as is necessary to satisfy the Historic Preservation Office. While the third story will be extended toward the rear, the number of stories will remain the same and the addition will not be visible from the street.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the lot area requirement under §2001.3 and court requirement under §406. 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 existing nonconforming lot occupancy and court at the Property; (2) the need to reinforce a structurally unsound load bearing wall and other related elements; (3) the dilapidation of the existing structure; and (4) subjection to historic preservation requirements.

1. Existing Nonconforming Lot Occupancy and Court

The existing structure is nonconforming as to lot occupancy. Under §403.2, a row dwelling or flat is permitted to have a maximum lot occupancy of 60%. The existing structure has existing lot occupancy of 77.4%. Thus, the structure is a nonconforming as to lot occupancy. The existing court is 5'-10". The minimum width of an open court is 4 inches per every 1 foot of height, but not less than 6 feet. Therefore, the court is also an existing nonconformity.

2. Structurally Unsound Features

The Property is also exceptional due to several structurally unsound features at the Property. The primary structural concern stems from an unsound interior load-bearing wall caused by extended deferred maintenance and deficient alternations. Previous owners conducted inferior upgrades and renovations now causing significant defects in the structural stability of the house. The Applicant and his architect have inspected the Property. They have observed holes in joists, roof leaks, and stress cracks

throughout the Property centered on the interior load-bearing wall. Furthermore, when extending system upgrades to the building over many years, additional portions of the interior load-bearing wall and joist system were removed, again without providing adequate support or reinforcement. Because these large holes were completed without proper bracing, added pressure has been placed on the remaining support system. The inadequate support for the structure for the interior load-bearing wall has resulted in cracks and other evidence that the wall is structurally unsound. *See Photographs of the Property at Tab 11.*

The proposed plan will remedy the existing structural concerns, prevent future damage, and create an open layout. Problems associated with the structure integrity of the existing structure will be resolved by removing the interior division wall, reinforcing the remaining exterior walls, and pulling the 3rd floor load bearing wall to the back. Furthermore, extending the third floor toward the rear will create a uniform footprint with the 1st and 2nd floor.

3. Dilapidation of The Existing Structure

In addition to the underlying structurally unsound features, the Property is in a dilapidated condition. The existing structure is currently in an unmarketable condition as a result of several substandard aspects. There are cracks in the ceilings in a number of rooms. The roof has considerable damage, resulting in in water damage and mold throughout the interior and exterior of the existing structure. *See Photographs of the Property at Tab 11.* The Applicant has been unable to remedy these conditions until now.

4. Subjection to Historic Preservation Requirements

Based on its location in the Shaw Historic District, and listing on the D.C. Inventory of Historic Sites, the property is subject to historic preservation requirements. Enhanced elements include removing historically inaccurate features and returning altered portions of the structure back to its natural color, replacing the older drainage spout with a cast-iron or copper drainage spout, installing custom-made

decorative trim to match the original design on the balcony frame, restoring slate roof tiles that were previously removed from the original roof, and several others.

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

Strict application of the zoning regulations regarding nonconforming structures with respect to lot occupancy (§2001.3) and courts (§406) would result in a practical difficulty to the Applicant.

1. Nonconforming Structures with Respect to Lot Occupancy (§2001.3)

The existing structure is nonconforming as to lot occupancy. Under §403.2, a row dwelling or flat is permitted to have a maximum lot occupancy of 60%. The existing structure has an existing lot occupancy of 77.4%. Thus, the structure is a nonconforming as to lot occupancy.

Under §2001.3, enlargements or additions may be made to a nonconforming structure provided the structure conforms to percentage lot occupancy and the addition does not increase or extend any existing nonconforming aspect of the structure. Thus, while the lot occupancy on the third floor itself will remain compliant before and after the addition, going from 31.5% lot occupancy to 53.2% lot occupancy, and the lot occupancy on the first and second story will remain unchanged, area variance relief from 2001.3 is still required. Any addition to the structure would require area variance relief by virtue of the nonconformity of the first and second story with respect to lot occupancy.¹

The need for lot occupancy relief arises from increasing the lot occupancy on the third floor. As described above, removal of the structurally unsound interior division wall on the first and second floors requires extending the third floor to the rear of the structure so it can withstand the designed service load. The degree of structural problems cannot be fully evaluated until the walls are opened and tenants have

¹ Under §223, lot occupancy may be increased to 70% by special exception in the context of an addition to an existing one-family dwelling or flat. Again, while the lot occupancy on the third floor itself will remain compliant before and after the addition, because the first and second story are currently at 77% lot occupancy the project is subjected to the area variance standard.

vacated, thus the proposed design accounts for a cautious approach to remedying existing structural deficiencies and dilapidation. Keeping the third floor as a ½ floor, once the interior division wall is removed, is not feasible as it is difficult to structurally support the rear wall.

2. Courts (§406)

The Property has an existing nonconforming open court as a result of the L-shape of the existing structure. The existing court is 5'-10". The minimum width of an open court is 4 inches per every 1 foot of height, but not less than 6 feet. Therefore, the court is an existing nonconformity.

Again under §2001.3, enlargements or additions may be made to a nonconforming structure provided the structure conforms to percentage lot occupancy and the addition does not increase or extend any existing nonconforming aspect of the structure. Thus, while the width of the court will remain 5'-10," because of the addition to the third story the nonconforming court will be extended.²

The need for court relief also arises from extending the third floor to the rear wall of the first and second story below it. Again, the rear wall of the third story is being moved to line up with the floors below it for structural reasons associated with removing the interior division wall on the first and second story. Furthermore, the floors of the rear addition are lower in elevation relative to the original structure. Thus, the floors in the rear addition must be elevated to the height of the floors in the original structure. In addition, the ceiling of the rear addition must be raised slightly to be even with the existing third floor ceiling of the original structure. These modifications allow for even floor heights throughout and enhance the structural efficiency of the proposed plan.

² Under §223, an addition to a one-family dwelling or flat is permitted by special exception even though the addition does not comply with certain zoning regulations, including §406 regarding courts, so long as the addition will not have a substantially adverse impact on the use and enjoyment of neighboring properties. While there will be no substantially adverse effect on neighboring properties, the Applicant has requested relief under §2001.3 due to the existing nonconforming lot occupancy.

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 Applicant proposes to renovate an existing, dilapidated structure while enhancing the historical accuracy of several features that had been changed previously by prior owners. The light, air, and privacy of neighboring property owners will be unaffected. The build out of the third floor, which must comply with the demands of the Historic Preservation Office, will be at the rear of the structure and will not be visible from the street.

VI. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for area 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:

A handwritten signature in blue ink, appearing to read 'M. H. Moldenhauer', written over a horizontal line.

Meridith H. Moldenhauer
Eric M. Daniel
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000