

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

**Application of
Portofino, LLC
Square 478, Lots 59**

**BZA Application No. _____
ANC 6E, SMD02**

STATEMENT OF THE APPLICANT

This statement is submitted in support of an application for Board of Zoning Adjustment (“BZA”) approval by Portofino, LLC (the “Applicant”) for an area variance to allow completion of a permitted and under construction semi-detached flat dwelling in the R-4 Zone District at the premises 1534 5th Street, N.W. (Square 478, Lot 59) (“the Property”).

I. NATURE OF RELIEF SOUGHT

The Applicant seeks BZA approval, pursuant to 11 DCMR Section 3103.2, for area variance relief from the off-street parking requirements under Section 2101.1 to complete construction of the semi-detached flat dwelling.

II. JURISDICTION OF THE BOARD

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

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property consists of a recently subdivided Lot 59 (formerly, Lots 813 and 814) with a lot area of 2,894.6 sq. ft. and is zoned R-4 (See Exhibit A, Zone Map). The Property fronts on 5th Street, N.W., but is otherwise landlocked with no public alley or other vehicular or pedestrian access to the rear of the lot.

Until recently, the Property was a vacant lot. In May, 2014, the Applicant obtained a Building Permit No. B1403166 to construct a “New Semi-Detached Flat Building” (“Building Permit”). Exhibit B. More specifically, the Building Permit authorized a 3-story with mezzanine structure with a roof deck in compliance with all the applicable R-4 zoning restrictions. See Approved Construction Plans, Exhibit C. As shown of the Approved Construction Plans, the required off-street parking was to be provided in the side yard of the Property with access to and from 5th Street by a new curb cut and driveway to be constructed in public space. See Approved Surveyor’s Plat showing proposed dwelling and new driveway and curb cut. Exhibit D.

Square 478, which includes the Property, is bordered by Q Street to the north, 5th Street to the east, P Street to the south and 6th Street to the west. The Property is accessible only from 5th Street. The Property is landlocked and there is no public alley or other means of pedestrian or vehicular access to the rear of the lot. See Site Photographs, Exhibit E.

IV. PROPOSED REDEVELOPMENT OF THE PROPERTY

Under the previous owner, the Property was vacant for many years. The Applicant obtained the Building Permit to construct the new semi-detached flat dwelling structure. The new flat is permitted as a matter-of-right in the R-4 zone. As shown on the Approved Construction Plans, the required off-street parking was to be accessed from 5th Street by a new curb cut and driveway to be constructed in public space. The Applicant has begun construction of the new structure which is now framed and under roof with interior build out underway. A Public Space application for the proposed new curb cut and driveway on 5th Street has been submitted. This application is scheduled for a hearing at the Public Space Committee on September 25, 2014. However, the application is opposed by the adjacent property owners. On

September 2, 2014, ANC 6E voted unanimously to oppose the public space application for the required curb cut and driveway. Based on the ANC 6E and community opposition, the application is unlikely to be approved.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR THE REQUESTED AREA VARIANCE

In order to satisfy the standards for an area variance relief, the Applicant must satisfy a three part test:

- (1) the property must be subject to an extraordinary or exceptional situation or conditions;
- (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and
- (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

See Gilmartin v. District of Columbia Bd. Of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

The Applicant meets the variance test as follows:

A. An extraordinary or exceptional situation or condition is inherent to the Property

The D.C. Court of Appeals in Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) held that the exceptional situation or condition standard goes to the “property” not just the “land”; and that “property generally includes the permanent structures existing on the land [footnote omitted].” Id. At 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e. the building on the land).

If the Public Space Committee denies the Applicant’s request to construct a curb cut,

apron and driveway from 5th Street to the Property, the lot will be entirely landlocked. There will be no means for a vehicle to gain access to the Property or the required off-street parking area. The required off-street parking must be accessible from a public street, public alley or private driveway. 11 DCMR §2117. Under these circumstances, it will be impossible for the Applicant to provide the required off-street parking.

B. A practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations

It is important to note how the DC Court of Appeals has defined “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. D.C. Bd. Of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) that, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [footnote omitted]. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only the “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. Of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. Of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider “. . . a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . . .” Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard for practical difficulty.

1. The Applicant is faced with a practical difficulty and, in fact, impossibility of

complying with the off-street parking requirements if the Public Space application is not approved for the curb cut and driveway to the Property.

2. If the Applicant is not able to provide the required access to the off-street parking, the redevelopment of the previously vacant Property will not be possible for any permitted use, including the approved flat under construction. If this area variance is not approved, the partially constructed building could not be completed and would need to be demolished. In the end, the Property would not be developable and would remain vacant and a void in the otherwise established streetscape of this block of 5th Street.

C. No harm to the public good or to the zoning plan will occur as a result of the approval of the variance application

Relief can be granted without the detriment to the public good. The Applicant only requests a variance to allow the flat to be completed without the required one (1) off-street parking space. The underlying flat is a permitted use. The completion of this in-fill development without off-street parking is entirely consistent and in keeping with the landlocked nature of the properties in Square 478 which are also unable to provide access to parking from a public alley, public street or private driveway. The absence of one (1) off-street parking space will have no impact on the adjoining properties or the neighborhood.

IX. EXHIBITS

- Exhibit A: Zoning Map (with the Property outlined in red) and Surveyor's Plat.
- Exhibit B: Building Permit No. B1403166.
- Exhibit C: Approved Construction Plans.
- Exhibit D: Approved Surveyor's Plat with Proposed Improvements.
- Exhibit E: Site Photographs.

X. **CONCLUSION**

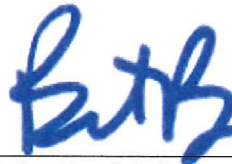
For the reasons set forth above, the Applicant is entitled to, and respectfully requests approval of, the requested variance relief to allow completion of the permitted and partially constructed flat at the Property.

GREENSTEIN DELORME & LUCHS, P.C.

Respectfully submitted,

September 8, 2014

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