

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Preliminary Statement of Compliance with Burden of Proof

This statement is submitted by Mr. David Ruddy (husband) and Ms. Bondurant Eley (wife), the “Applicants” here and owners of the subject property located at 1811 Wiltberger Street NW, Washington DC 20001 (the “Property”). The Applicants seek a variance from the lot coverage (§ 403.2) requirement in the Zoning Regulations. The Applicants also seek a variance from the requirements in § 2001.3 of the Zoning Regulations concerning enlargements or additions. Finally, the Applicants seek a special exception from the requirements in § 404.1 of the Zoning Regulations concerning rear yards.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicants will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement and at the public hearing, the Applicants will provide testimony and additional evidence to meet the burden of proof to obtain the Board's approval of the requested relief.

I. BACKGROUND INFORMATION REGARDING THE PROPERTY

The Property is in the R-4 Zone District and is contiguous with, but within, the boundaries of ANC 6E (and specifically ANC 6E02). The property is immediately across Wiltberger Street to the east of the property located at 641 S Street NW (Square 441, Lot 848) (also known as "the Wonder Bread Building") within the ANC 1B across the boundary line running along Wiltberger street that separates ANC 1B from ANC 6E. The property located at 641 S Street NW was the subject of this Board's recent Order in Application No. 18380. The Applicants’ lot is improved with a two-story, one-bedroom row dwelling, with cellar. The property has a stair way that runs not only to the second floor, but continues and terminates at the roof with no current roof access

point. Due to the stairs between the second floor and the roof, we logically presume there was once an internal roof access way.

II. DESCRIPTION OF THE DEVELOPMENT PROPOSAL AND ZONING RELIEF

The Applicant proposes to redevelop the Property with a third story addition above the existing two-story row dwelling, making use of the pre-existing stairs between the second floor and the roof, to add a second bedroom and another bathroom. The proposal will increase the square feet of living area from a one bedroom unit with approximately 720 square feet of living area to a two bedroom unit of 1080 square feet of living area. The height of the dwelling with the addition will be 31'-8" (which complies with a 40' maximum height restriction).

In order to facilitate the proposed addition, the Applicant seeks a Variance from the Lot coverage Requirement. The dwelling currently occupies 90.6% of the lot where a lot coverage of 60% is the maximum permitted under Section 403.2 of the Zoning Regulations. The proposed addition will not alter the existing lot coverage. The Applicants also seek a variance from the requirements in § 2001.3 of the Zoning Regulations concerning enlargements or additions for the same reasons relief from Section 403.2 is requested. Finally, the Applicants seek a special exception from the requirements in § 404.1 of the Zoning Regulations concerning rear yards. The existing "rear yard" is three feet, which is significantly below the 20 foot minimum distance required by § 404.1 for R-4 zoned dwellings. Thus, relief is also requested as the new structure, like the current structure, cannot comply with the rear yard requirement in § 404.1.

III. PROJECT MEETS THE STANDARD FOR APPROVING AREA VARIANCES

The project requires a variance from the lot coverage requirements. 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 or exceptional and undue hardship; 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 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). As discussed below, and as will be further explained in the prehearing statement at the public hearing, all three prongs of the area variance test are met in this application.

A. THE PROPERTY IS AFFECTED BY AN 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. *See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the exceptional condition arises from a number of factors. The Property has a substandard lot size of 397 square feet where a minimum of 1,800 square feet is specified in Section 401.3. Thus, the lot size comprises only 22% of the minimum area specified

by Section 401.3 for the R-4 Zone District. In addition, the Property has a substandard lot width of 12.42 feet where a minimum lot width of 18 feet is specified in Section 401.3. Thus, the lot width comprises 69% of the minimum specified by Section 401.3 for a row dwelling in the R-4 Zone District.

As another example, Section 403 specifies a maximum percentage of lot occupancy of 60% for a row dwelling in the R-4 Zone District. Yet, the Property as it currently exists already exceeds this limit since the row house presently occupies 90.6% of the lot. Clearly the Property was built prior to the enactment of Sections 401 and 403 of the Zoning Regulations. The Applicants also seek a variance from the requirements in § 2001.3 of the Zoning Regulations concerning enlargements or additions for the same reasons relief from Section 403.2 is requested.

Moreover, the Applicant's lot is limited to a sole bedroom and the Property has a functionless stairway running between the second floor and the roof, with no current roof access point.

B. STRICT APPLICATION OF THE ZONING REGULATIONS WOULD CAUSE PRACTICAL DIFFICULTY OR EXCEPTIONAL AND UNDUE HARDSHIP

The Applicant would encounter practical difficulties if the Zoning Regulations were strictly applied to the project. As noted above, the Property is significantly substandard in size. The existing square feet and width are far below the minimums specified by Section 401.3 for a Row House in the R-4 Zone District. In addition, because the Property already exceeds the maximum percentage of lot occupancy specified by Section 403, any third floor addition (regardless of its size) would not achieve compliance absent an area variance.

The substandard lot size and pre-existing 90.6 % lot occupancy make compliance with

Section 403 impossible without a variance. The variance is necessary to move forward with this proposal, which is intended to simply add another bedroom and increase square feet of living area from 729 square feet to 1080 square feet, a result which is still significantly below the minimum of 1,800 square feet specified in Section 401.3. The same reasoning applied to the Applicants request from relief from § 2001.3 of the Zoning Regulations concerning enlargements or additions.

C. NO SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD NOR SUBSTANTIAL IMPAIRMENT TO THE INTENT, PURPOSE AND INTEGRITY OF THE ZONE 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 if the Board grants the requested variance. The roof deck portion of the proposed addition will be set back from the front property line by 9'-6" to remain out of view from the street. The proposed addition portion on the front façade is articulated to minimize impact of view from the street as well whereby a small dormer (width 9'-8") is minimized by sloped roofs on either side. Thus, the proposed addition is in keeping with the configuration and design of the other residential buildings on this section of Wiltberger Street. The project does not result in additional dwellings or units, it merely seeks to achieve a modest increase in square feet of living area. Therefore, the unit will not result in an increase in neighborhood parking congestion. The redevelopment of the existing site with a third floor addition that is compatible with the neighboring buildings would be beneficial to the area.

IV. PROJECT MEETS THE STANDARD FOR APPROVING SPECIAL EXCEPTIONS

As noted above, the Applicants seek a special exception from the requirements in § 404.1 of the Zoning Regulations concerning rear yards. The existing "rear yard" is three feet, which is significantly below the 20 foot minimum distance required by § 404.1 for R-4 zoned dwellings.

Thus, relief is also requested as the new structure, like the current structure, cannot comply with the rear yard requirement in § 404.1.

Pursuant to Section 223.3, a Special Exception is warranted since the addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. In particular, for the same reasons supporting relief set forth above in Section III. above, (a) the light and air available to neighboring properties shall not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised because the proposed third floor does not add additional windows looking onto neighboring residential properties on the north or south walls, the new proposed windows on the third floor face a commercial structure on the west, and no immediate residential structure to the east; and (c) the addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. In further support of compliance with Section 223.3, the Applicants have submitted detailed architectural drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.