

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

**APPLICATION OF
SIMONE GORING AND
RICHARD DEVANEY**

**BZA APPLICATION NO. 18913
HEARING DATE: FEBRUARY 3, 2015**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This prehearing statement is submitted by Simone Goring and Richard Devaney, husband and wife (collectively, the "Applicant"), the owner of the lot located at 517 Q Street, NW (Lot 827 in Square 0477) (the "Property") which is located in the R-4 District. The Applicant seeks relief from the following requirements of the Zoning Regulations: (1) lot size and width (§ 401.3), (2) lot occupancy (§ 403.2), (3) side yard (§ 405.6), (4) court (§ 406.1), (5) off-street parking (§ 2101.1) and (6) 1:1 setback for roof structures (§ 400.7). The purpose of the requested relief is to permit the redevelopment of the Property with a two-family flat that consists of two two-level units.

This prehearing statement supersedes the Preliminary Statement submitted to the Board on October 28, 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

- Exhibit A: Revised Architectural Drawings
Exhibit B: Revised Zoning Self-Certification (Form 135)
Exhibit C: Photograph of original structure on the Property
Exhibit D: ANC 6E Letter in Support

IV.
BACKGROUND & PROJECT DESCRIPTION

A. Overview of Subject Property and Surrounding Area

The Property consists of approximately 1,470 square feet and is located on the north side of Q Street, NW, between 5th and 6th Streets. The structure that previously existed on the Property was a two story, three-bedroom town house that was constructed in the late 1800's. A photo of the structure is attached as Exhibit C. The house was in use as a rental property until February 27, 2013, when the eastern wall collapsed and, through subsequent assessment by the Department of Consumer and Regulatory Affairs, the structure was condemned in March of 2013. The house has been razed and the Property has been cleared of all debris and secured. The Property is in the R-4 District and within the boundaries of ANC 6E02.

B. Project Description

The Applicant proposes to redevelop the Property with a two-family flat. Unit A will occupy the cellar and first floor; it will consist of 1,372 square feet and contain two bedrooms. Unit B is also a two-bedroom unit that will occupy the second and third floors of the building. It will consist of 1,580 square feet and have direct access to a roof deck. Because there is no rear alley access to the building, the project is designed with a 3-foot wide side yard along the east property line. The walkway provides an external connection from the rear of the building to Q Street, which provides for additional access to the units, and accommodates trash and utility

services and bicycle storage. Also, because the bedrooms are on the east side of the building, the walkway is important for life safety and light/air. The project will not have any off-street parking. The height of the building will be approximately 38.79 feet.

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. Lot Size/Width. The project requires relief from Sec. 401.3 of the Zoning Regulations because the lot is only 1,470 square feet where a minimum lot area of 1,800 square feet is required for a flat in the R-4 District. Also, the lot width is only 17.6' where 18' is required.

2. Lot Occupancy. The project requires relief from Section 403.2 of the Zoning Regulations in order to have lot occupancy of 71.8% where a maximum lot coverage of 60% is permitted. Please note that the Applicant originally proposed a lot occupancy of 76%, but reduced the building footprint to 71.8% based on feedback from the Office of Planning.

3. Side Yard. The project requires relief from Section 405.6 of the Zoning Regulations in order to have a side yard of 3' along the east property line where a side yard of 10' is required.

4. Court. The project requires relief from Section 406.1 of the Zoning Regulations in order to have an open court along the east side of the building that is 3' in width where a width of 12.93' is required.

5. Parking. The Applicant will not provide any off-street parking spaces on the Property where one parking space is required under Section 2101.1 of the Zoning Regulations.

6. Roof Structure Setback. The roof structure for the project requires special exception approval because the stairway penthouse is not setback 1:1 from the exterior wall of the building as required under Section 400.7 of the Zoning Regulations.

D. ANC Review

The Application was presented to the ANC 6E (the “ANC”) on November 6, 2014. At the meeting, the ANC voted unanimously (6-0) to support the request for zoning relief to support the proposed redevelopment of the Property.¹

**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.²

¹ The ANC reviewed the original application plans, which depicted three units instead of two and a lot occupancy of 76% instead of 71.8%; the building configuration was the same. The ANC has determined the current application plans are within the scope of the plans it approved on November 6th, and therefore a second presentation by the Applicant is not required.

² 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).

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."³ 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.⁴ As discussed below, all three prongs of the area variance test are met in this Application.

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.⁵ Moreover, the unique or exceptional situation or condition may arise from a confluence of factors that affect a single property.⁶

In this case, the exceptional condition arises from a number of factors. With only, 1,470 square feet and a width of 17.6', the Property is substandard with regard to size. Currently vacant, the Property was previously improved with a two-story, three bedroom row house that was constructed in the late 1800's. (A photo of the original structure is attached as **Exhibit C.**) The lots on either side of the Property have been redeveloped with structures that are larger than

³ *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

⁴ *Id.* at 1171.

⁵ See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974).

⁶ *Gilmartin v. D.C. Board of zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

the row house originally constructed on the Property -- the lot to the east (515 Q Street) is improved with a three-unit building and the lot the west (519 Q Street) is improved with a two-unit building. Finally, the Property has no rear alley access, which prevents the Applicant from providing off-street parking or an external connection between the rear of the building and Q Street without the creation of a walkway along the side of the building.

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.

Lot Size/Width. As noted above, the Property is substandard in size. It has an area of 1,470 square feet and a lot width of 17.6' where Section 401.3 of the Zoning Regulations requires a minimum lot area of 1,800 square feet and a minimum lot width of 18' for a flat in the R-4 District, which means that the required lot size cannot be achieved under the application.

Lot Occupancy, Side Yard, Court. The substandard lot size makes it impractical, if not impossible, to comply with the minimum standards for lot occupancy, side yard and court because the buildable area is too small for a conventional row house plan and reducing the building footprint beyond what is depicted in the plans would result in units that are contrary to the requirements of the Building Code. For example, if the Applicant provides a side yard of 10 feet as required under the Zoning Regulations, the building would have to be less than 8 feet wide. The Building Code requires a minimum bedroom size of 70 square feet and a minimum width of 7 feet, which could not be accomplished with a 10-foot wide side yard.

A side yard or court is not required for the project. However, since the Property does not have any rear alley access, the project was designed with a 3-foot wide walkway along the east property line in order to provide an external connection between the rear of the building and Q Street, which serves multiple purposes. The walkway accommodates trash and utility services and bicycle storage/access (a bike rack will be installed at the rear of the building). Having these items at the rear of the building, instead of at the front of the building, provides a more attractive street view. Also, the bedroom windows are located on the east side of the building, so the walkway enhances life safety in the event of fire or similar emergency; it also allows light and air for the bedrooms.

It should be noted that the original application plans depicted a building with a lot occupancy of 76%. However, based on feedback by the Office of Planning, the Applicant reduced the building footprint to a lot occupancy of 70%. The lot occupancy calculation includes the area for the side yard; but the actual building footprint only occupies 59.6% of the lot.

Parking. The Property is located mid-block and does not have rear alley access and the lot is not wide enough to provide parking at the front of the building. Therefore, it is not possible to provide off-street parking for the project.

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 variances. The proposed building use and configuration is compatible with the buildings immediately to the east (515 Q Street, N.W.) and to the west (519 Q Street, N.W.) of the Property. 515 Q Street

houses three units and 519 Q Street houses two units. The proposed redevelopment of the vacant site with a residential building that is compatible with the neighboring buildings would be beneficial to the area.

VI.
THE APPLICANT MEETS THE BURDEN
OF PROOF FOR THE REQUESTED AREA VARIANCES

Pursuant to Section 411.11 of the Zoning Regulations, where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board is authorized to approve, as a special exception under § 3104, the location, design, number, and all other aspects of roof structures, when applicable; provided, that the intent and purpose of the Zoning Regulations is not materially impaired by the structure and the light and air of adjacent buildings is not affected.

In this case, the stairway penthouse is not setback from the east wall of the building a distance that is at least equal to its height above the roof. The location of the penthouse is dictated primarily by the narrow size of the lot, which results in a narrow building envelope as discussed in the prior section of this prehearing statement. As proposed, the penthouse does not impair the intent and purpose of the Zoning Regulations and does not affect the light and air of the adjacent building because both the building proposed for the Property and the adjacent building are set back from their respective property lines.

VII.
WITNESSES

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2. David Konapelsky
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VIII.
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,

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