

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

Preliminary Statement of Compliance with Burden of Proof

This statement is submitted by Simone Goring and her husband, Richard Devaney, (collectively, the "Applicant"), the owner of Lot 827 in Square 0477, which has a street address of 517 Q Street, NW (the "Property"). The Applicant seeks variances from the lot coverage (§ 403.2), side yard (§ 405.6), and off-street parking (§ 2101.1) requirements, and a special exception from the roof structure setback (§ 400.7) requirements in the Zoning Regulations.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant 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 Applicant will provide testimony and additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Property

The Property consists of approximately 1,470 square feet of land on the north side of Q Street, NW between 5th and 6th Streets; it is in the R-4 District. The Property was previously improved with a two-story, three bedroom row house that was constructed in the late 1800's. On February 27, 2013, the building suffered from a partial collapse and, after assessment by DCRA, was condemned and razed. The Property is within the boundaries of ANC 6E02.

II. Description of Development Proposal and Zoning Relief

The Applicant proposes to redevelop the Property with a multi-family building that consists of three units – Unit A, a one-bedroom cellar unit with approximately 724 square feet of living area; Unit B, a one-bedroom unit on the first floor that consists of 786 square feet; and Unit C, a two-level unit occupying the second and third levels of the building, which consists of

1,709 total square feet. The project will not have any off-street parking. The height of the building will be approximately 38.79 feet.

In order to facilitate the proposed reuse of the building, the Applicant seeks the following area variances:

A. Variance from the Lot Coverage Requirements. As designed, the new building will occupy 76% of the lot where a lot coverage of 60% is permitted under Section 403.2 of the Zoning Regulations.

B. Variance from the Side Yard Requirements. The plans show that there will be a side yard of 3' along the east property line where a side yard of 9.67' is required under Section 405.6 of the Zoning Regulations.

C. Variance from the Parking Requirements. 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 for a multiple dwelling building in the R-4 District.

D. Special Exception from the Roof Structure Requirements. The Applicant proposes to locate a roof structure enclosing the stair tower along the exterior wall on the east side of the building, thus not providing the 1:1 setback required under Section 400.7(b).

III. Project Meets Standard for Approving Area Variances

The project requires a variance from the lot coverage, side yard, and off-street parking 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 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 is substandard with regard to size. It totals 1,470 square feet where a minimum of 1,800 square feet is prescribed in Section 401.3. While currently vacant, the Property was previously improved with a two-story, three bedroom row house that was constructed in the late 1800's which, as a matter of right, could have been converted into an apartment house. Third, there is no access to the Property from the rear of the lot which prevents the Applicant from providing off-street parking.

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

substandard in size. It has an area of 1,470 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 which means that the required lot area cannot be achieved and the minimum lot occupancy requirements cannot be met without building an extremely shallow and narrow building. Furthermore, providing the required 9.67' side yard would result in a building that is less than 8' wide. The available area for building is slightly too small for a conventional row house plan, and the Building Code requires a minimum bedroom size and width, which are 70 square feet and 7'-0" wide. Therefore, strict compliance with the lot occupancy and side yard requirements would result in a practical difficulty to the Applicant. In addition, because the Property is located mid-block and has no rear access, the Applicant is unable to provide off-street parking.

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 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 two dwelling units and 519 Q Street houses three dwelling 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.

IV. Project Meets Standard for Approving a Special Exception for Roof Structure Setback

Section 3104.1 of the Zoning Regulations states that the Board is authorized to grant special exceptions where, in its judgment, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and zoning maps and will not tend to affect

adversely the use of neighboring property in accordance with the Zoning Regulations and zoning maps. Additionally, under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR § 411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

In this case, special exception approval is required because the building's single roof structure, which encloses the stair tower to provide access to the roof, is not set back from the building's east exterior wall. Section 400.7(b) requires roof structures to be set back from all exterior walls at a distance at least equal to their height above the roof upon which they are located. In this case, the roof structure cannot be set back because its location is driven by the width of the Property, the configuration of the building, Building Code requirements, and the location of the building's core features. Given the extremely narrow width of the Property, it is not possible to locate the stair tower away from the east enclosing wall without significantly compromising the layout of the residential units. Furthermore, locating the roof structure in this location will not affect adversely the use of neighboring properties, particularly because the proposed roof structure matches the scale and placement of the roof structure on the abutting building to the east. For these reasons, the roof structure as proposed is in harmony with the purpose and intent of the Zoning Regulations and map.