

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

Application of Mohammed Khaishgi BZA No. 18968

APPLICANT'S HEARING STATEMENT

April 14, 2015

This Pre-Hearing Statement ("Statement") outlines the existing and proposed use of the property of application and the manner in which the application ("Application") complies with the specific tests and burden of proof for the variance sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3103.2 for variance to allow a modest addition which extends the existing third floor of an owner-occupied single family semi-detached dwelling. The building constitutes an existing nonconforming structure by definition because the existing structure, including the accessory building are in excess of the maximum percentage of lot occupancy allowed for similar structures in the R-4 zone district within which the subject property is located.

The proposed project therefore seeks relief from three specific provisions of the Zoning Regulations to wit:

1. Area variance provision of § 2001.3, (a), (b), (1) and (2) to allow an addition to an existing nonconforming structure, which does not conform to structure requirements; and which extends a nonconforming aspect of a structure;
2. An area variance from the provision set forth under § 403.2 for the maximum allowable percentage of lot occupancy for the underlying R-4 zone district and;
3. An area variance from the minimum requirement for a side yard as set forth under § 405.9.

The subject property complies with all other provisions of the Zoning Regulations, including floor area ratio (FAR) limitation. The total gross floor area of the improvements on the subject property is 3,185.0 ft², whereas the maximum allowed based on the prescribed FAR of 1.8 and the lot area of 2,090 ft², is 3,762 ft²

SUMMARY OF APPLICATION

The applicant seeks the above area variances pursuant to 11 DCMR § 3103.2 under §§ 2001.3 (a), (b), (1) and (2), 403.2 and 405.9.

As aforementioned, the existing building is classified a nonconforming structure because the building, including the accessory structure currently occupy approximately seventy three percent (73%) of the lot area, in excess of the forty percent (40%) maximum allowed similar structures in its underlying R-4 zone district. Therefore the request for relief under § 2001.3 (a), (b), (1) and (2)

The main structure is also nonconforming with respect to the minimum side yard setback requirement for a portion of its depth. That nonconforming side yard is approximately three and one half feet (3.5 ft.) making the unoccupied area count towards the total percentage of lot occupancy, by virtue of the definition set forth under §199.1 for “Building, area”

The proposed addition extends the existing third floor by a modest two hundred and twenty-five square feet (225 ft²), but also features a two feet (2 ft.) bay window overhang which is cantilevered and projects into the conforming part of the side yard. This bay window, albeit an infinitesimal 14.7 square feet, triggers the necessity for the two other reliefs sought in this application, specifically those set forth under §§ 405.9 and 403.2 pertaining to the side yard and lot occupancy provisions respectively.

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested variances under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (3) (2001), as further set forth in 11 DCMR § 3103.2

PROPERTY LOCATION AND PROJECT DESCRIPTION

The property is located in the Greater 14th Street historic district in the northwest quadrant of the city. The subject property, though an interior lot by definition, is an end-unit lot because the side lot line abuts a public alley at the west boundary.

The property is rectangular in shape, has street frontage on Q Street, twenty two feet (22 ft.) in lot width and ninety five feet (95 ft.) in depth, for a total of two thousand and ninety square feet (2,090 ft²)

The subject property is located within the southern half of square 208 which is bounded in the north by Corcoran Street, Q Street at its southern boundary, 14th Street at the east and 15th Street to its west.

The subject property is improved with a one-family semi-detached building and an accessory structure located at the rear of the property where the rear lot line abuts a public alley north of subject property. The buildings together occupy approximately 73% of the lot, however this condition was in existence prior to and precedes the adoption of the Zoning Regulations as of May 12, 1958.

The existing building is 18 feet wide only for the first 26.2 feet of the total depth of the first two floors, and tapers to a narrow 13.5 feet thereafter. The third floor does not extend for the full depth of the two floors below. The proposed addition adds a bedroom with en-suite bathroom facilities adding a de minimis 225 ft² in extending the existing third floor.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted fourteen days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of the area variance sought, as outlined below.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

The main building, together with its accessory structure, located on the subject property were constructed in 1880 in their current sizes, therefore had the status of nonconformity imposed upon it at the time of the adoption of the current Zoning Regulation on May 12, 1958. Further, designation of the neighborhood as a historic district, and consequently the subject property as a contributing building after May 12, 1958, precludes the demolition of the improvements or part thereof located on it.

The applicant contends that these two foregoing factors combine to impose upon the subject property an extraordinary or exceptional situation or condition of property and forms the basis for compliance with the first burden of proof on uniqueness.

PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY

The peculiar and practical difficulties imposed upon the owner of the subject property are the direct result of the extraordinary or exceptional situation or condition of the property.

Firstly, the building footprint has remained the same since its construction in 1880, but its designation as a nonconforming structure, specifically with respect to the allowed percentage of lot occupancy for the underlying R-4 zone district mapped upon it, did not occur until the May 12, 1958 adoption of the current Zoning Regulations.

Secondly, the restriction on demolition of the existing structures or a portion thereof, forecloses the only option available to the owner to possibly reduce the building footprint to 60% lot occupancy for the express purpose of changing the status of subject property to that of a conforming building, in exchange for the matter of right addition proposed in this application. Even then, such possibility of partial demolition to derive compliance is arguably so cost prohibitive as to impose an undue burden or hardship upon the owner of the subject property.

As aforementioned the entirety of the addition, save for the cantilevered bay projection, is an extension of the third floor atop the existing second floor, hence no new footprint is proposed or contemplated. The history of the subject property constraints any addition whatsoever to the necessity for the variance sought in this application.

SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE PLAN

The applicant seeks to construct a small addition by extending an existing third floor atop existing footprint of a single family semi-detached structure located in the residence R-4 zone district.

The applicant does not propose to change the conforming use to which the subject property is devoted. The proposed project is intended to result in a development which will not be incompatible with the scale and character of the neighborhood based on the fact that the Historic Preservation Review Board (HPRB) has approved the project design in concept.

The proposed addition will share a common division wall with an adjoining building devoid of any fenestration on its western property lot line, and to the east faces a public

alley twenty feet (20 ft.) wide, and when added to closest face of the cantilevered bay window, at approximately six feet (6 ft.), will be at minimum twenty-six feet (26 ft.) removed from any improvement and/or fenestration across the adjoining lot. The addition will not therefore adversely impact the light and air, nor unduly affect the privacy of use of neighboring properties

The applicant therefore submits that for all the foregoing reasons, the reliefs sought may be granted without substantial detriment to the public good, and without substantial impairment of the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

WITNESS

1. Mohammed Khaishgi.
2. Faheen Allibhoy

CONCLUSION

The Applicant submits that the instant application complies with all conditions for the granting of the requested area variances as outlined above and as shall be further documented, and respectfully requests that the application be granted.

The affected Advisory Neighborhood Commission, ANC 2F unanimously supports the application, and there is no evidence of neighbors in close proximity objecting to the proposed third floor addition.