

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

Application of Congressional 1015 E Street, LLC
ANC 6B

BZA Application No. 18992
Hearing Date: May 5, 2015

PRE-HEARING STATEMENT OF THE APPLICANT

This is the pre-hearing statement of Congressional 1015 E Street, LLC (“**Applicant**”) for an application for variance relief to permit the extension of an existing nonconforming side yard, as part of the Applicant’s planned renovation of and addition to an existing building to convert it into a small multifamily residential building. The nonconforming side yard is a historic condition that the Historic Preservation Review Board (“**HPRB**”) prefers remain. The property that is the subject of this application is 1015 E Street SE (Square 973, Lot 813) (“**Property**”). The Property is included in the CHC/C-2-A Zone District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) approve the following:

1. Variance from Section 775.5 (side yard width). The proposed side yard is approximately 2 feet-2 inches wide, and the requirement is six (6) or zero (0) feet.
2. Variance from Section 2001.3(b)(2) (extending a nonconformity). The proposed addition will extend the nonconforming side yard.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the southeast quadrant of the District and in the Capitol Hill neighborhood of Ward 6. The Property is also located in the Capitol Hill Historic District. The Property is rectangular shaped. The Property is long and narrow (approximately 120 feet long by approximately 18.3 feet wide), and it contains approximately 2202 square feet of land area. It is roughly bounded to the north by E Street, to the south by the parking space of a commercial building, to the east by commercial and residential properties improved with two-story buildings, and to the west by a 10-foot public alley and a residential building that also will be redeveloped into a small apartment building. As the site plan on page 1 of Exhibit A shows, the Property's eastern property line abuts the rear walls of four commercial buildings and the rear yards of two other residential/commercial buildings.

The Property is improved with a two-story semi-detached single-family house constructed circa 1880 ("**Building**"). The Building is a contributing building in the historic district and is currently used as a two family flat. The Building also has a rear addition that is not part of the original historic structure. Along the Building's west side, it has a nonconforming side yard that is approximately 2 feet-2 inches wide.

The surrounding area contains a mix of commercial office, retail, and residential uses. Within the square, most properties are used as row dwellings, flats, small multifamily buildings, and small commercial/retail buildings. Nearby properties are zoned CHC/C-2-A, C-2-A, and R-4. Nearly all other nearby buildings are attached on both sides, and, in particular, only two other buildings in the square (out of more than 50 buildings) are semi-detached.

IV. PROJECT DESCRIPTION

The Applicant proposes to renovate and expand the Building to create a small five-unit apartment building ("**Project**"). As shown in the plans attached as Exhibit A, the Project will

remove the existing rear addition and include a new modest addition to the rear of the Building. The new addition will have the same height as the Building (two stories and approximately 24 feet), but the Project will still provide a significantly large conforming rear yard of approximately 48 feet. The addition will be constructed to the eastern property line without a side yard, as is permitted in this zone. On the west side, the addition will maintain and extend the historic nonconforming 2-foot, 2-inch side yard, which is strongly preferred by HPRB. Except for the western side yard, the Project will conform to all applicable requirements of the Zoning Regulations, and the addition will be significantly smaller than the matter-of-right zoning envelope permits. The Project received conceptual approval from the HPRB on February 26, 2015.¹

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variances from the side yard and nonconforming requirements.

¹ HPA No. 14-721.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adj.*, 320 A. 2d. 291 (D.C. 1974) 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." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See Monaco v. D.C. Board of Zoning Adj.*, 407 A.2d 1091, 1097 (D.C. 1979). The Court in *Monaco* went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in *Gilmartin*, 579 A.2d at 1167, that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. *Id.* Finally, it is not necessary that the property be unreservedly unique. Rather, an applicant must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

In this case, the Property is affected by an exceptional condition because of the existing Building that is a contributing building in the Capitol Hill Historic District but is semi-detached. Nearly all buildings constructed within the period of significance for the historic district, and particularly in the square, are attached on both sides. The Building is unusual because it is contributing to the historic district but is semi-detached; the presence of a nonconforming side yard makes the Building very unique for its historic context in the historic district where the vast majority of buildings are attached on both sides.

Further, the Property is unique because it is very long and narrow for a commercially-zoned property. The C-2-A zone allows for multifamily use, but the long and narrow lot results

in it not being very conducive to such use because of programmatic requirements for a functional multifamily residential building.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 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.” 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’ . . . Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” *Gilmartin*, 579 A.2d at 1171 (citing *Barbour v. D.C. Bd. of Zoning Adj.*, 358 A.2d 326, 327 (D.C. 1976)); *see also Tyler v. D.C. Bd. of Zoning Adj.*, 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” *Gilmartin*, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

The practical difficulty of complying with the side yard width requirement results from the unique condition of an existing nonconforming side yard adjacent to the historic structure and the long and narrow commercially-zoned lot. Because of these exceptional conditions,

neither an absence of a side yard nor a six-foot side yard – both of which are conforming conditions – are feasible without imposing a significant burden on the Applicant.

First, the absence of a side yard conflicts with historic compatibility. Given that side yards are not required in this zone, the Applicant could construct an addition to the Building that encloses the existing historic side yard condition by extending the addition to the west property line. However, this would be inconsistent with the historic character of the Building, and maintaining this nonconforming side yard is something that the HPRB expressly preferred when it gave concept approval. Indeed, in her recitation of resolution adopted by the HPRB at its February 26, 2015 public meeting, Chairperson Pfaehler stated, “While we are recognizing this needs to go to BZA, we are proponents of keeping the side yard open all the way through.” Thus, the Applicant would be burdened with a practical difficulty of deviating from the historic character of the Building and the explicit direction from the HPRB if it were required to eliminate the western side yard for the addition to make it conforming. This deviation would significantly restrict the construction of any such addition altogether and limit the Applicant’s meaningful ability to develop the Property.

Second, providing a conforming six-foot western side yard for the addition would result in a practical difficulty for the Applicant. At approximately 18.3 feet wide, the Property is very narrow for a commercially-zoned and residentially-used property with an existing side yard. If a conforming six-foot side yard were provided for the addition, then only about 12.3 feet of lot width would remain. As shown in the illustration included in Exhibit B, the remaining lot width would be too narrow to create a functioning and feasible multi-unit residential building. Providing a Building Code-compliant three-foot wide corridor and sufficiently wide units in only 12.3 feet of space would be infeasible. Therefore, providing a conforming six-foot side

yard would effectively render the addition impossible, and the Applicant would be unable to construct such an addition on the Property.

The same reasoning applies with respect to the nonconforming condition requirement. If the Applicant were prevented from extending the nonconformity (side yard), then it would be burdened with eliminating a historic condition expressly preferred by the HPRB or an inability to provide an addition at all.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variances can be granted without substantial detriment to the public good or the zone plan.

Granting the requested variances will not adversely affect the availability of light or air to this Property or to neighboring properties. The only property affected by the requested variances is that to the west since that is the side of the Property on which the nonconforming side yard will be located. Therefore, when assessing the impacts of side yard relief, the logical role of the Board is to consider primarily the impacts on only the side of the property where the nonconforming side yard is proposed. In this case, whether the western side yard is conforming will affect only the property to the west. No other properties will be affected by the size of the western side yard since all other aspects of the proposed Project will conform to the Zoning Regulations, including no side yard along the eastern property line. Because the western-adjacent property will not be adversely affected, there will not be a substantial detriment to the public good by granting the requested variances.

Indeed, the requested variances will allow for a better condition than would otherwise be permitted as a matter-of-right. As shown on page 4 of Exhibit A, the proposed side yard will allow for windows on the west façade of the addition. Also, as shown on page 7 of Exhibit A, the nonconforming western side yard will provide more light and air to this Property, the property to the west, and surrounding properties than would otherwise occur if the addition were constructed to the western property line. Furthermore, the building to the west will not be adversely impacted because that building will not have windows facing east that would be obstructed by the addition, so the presence of the addition will not be perceptible to the west-adjacent property. No other properties further to the west will experience any impact from the requested relief because the western-adjacent property (1013 E Street) also will be redeveloped with a rear addition that will obscure the addition proposed in this application. Because the extension of the side yard will allow for more light and air than if no side yard were provided (as permitted in this zone) and will not adversely impact the adjacent affected property, granting this relief will not harm the public good or zone plan.

While the impact of the requested western side yard relief is not germane to the properties to the east, the Project, nevertheless, will not have an adverse impact on the light and air available to those properties either. As the shade studies attached as Exhibit C show, the modest two-story proposed addition will not cast significantly more shadows on properties to the east, so it will not have an adverse impact on light and air available to those properties. Indeed, only two properties to the east will experience any effect from the Project because all but those two are improved with buildings that extend the full lengths of their lots (i.e., no rear yards) and occupy 100% of their lots. As Exhibit C clearly demonstrates, when comparing the existing conditions to the proposed conditions, the shadows cast on the two properties to the east will not

be noticeably different; thus, the addition will not create a condition of noticeably less light or less air available to these properties than they currently experience.

In addition, an equally important consideration is that the Project will be very modest in scale and will leave a generous amount of light and air available to all neighboring properties. The site plan and birdseye views on page 7 of Exhibit A demonstrate the compatible, moderate scale of the Project. This is not a case of seeking relief just to maximize the developable density of the project; indeed, it is quite the contrary. Because the proposed addition will be well within the matter-of-right building envelope, it is consistent with the zone plan embodied in the standards for the C-2-A zone. The Project will be well under the maximum permitted height (approximately 26 feet below maximum of 50), FAR (approximately 1.45 below maximum of 2.5), and lot occupancy (approximately 1.24% below maximum of 60%). The Project also will provide a rear yard that is approximately 33 feet deeper than required (15 feet).

Furthermore, constructing an addition to the eastern property line is consistent with the zone plan. If the policies embodied in the side yard standards were to always require side yards, then the Zoning Regulations governing the C-2-A zone would prohibit the development of properties up to the property line of adjacent property owners. However, that is not the case, and the underlying premise in the C-2-A zone is that a zero side yard along the eastern property line, in this case, will not adversely affect neighboring properties. Because the proposed Project will be significantly smaller than the mater-of-right zoning standards allow, it will provide more light and air than a fully conforming addition would and will not adversely impact the only affected property to the west. Therefore, granting the requested relief will not harm the zone plan.

VI. EXHIBITS

EXHIBIT A	Architectural Plans, Drawings, and Illustrations
EXHIBIT B	Illustration of Practical Difficulty for Conforming Side Yard
EXHIBIT C	Shadow Studies
EXHIBIT D	Resume of Shadow Study Consultant

VII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance relief in this case.

Respectfully submitted,
GOULSTON & STORRS, PC



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