

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

Application of Congressional 1015 E Street, LLC
ANC 6B

STATEMENT OF THE APPLICANT

This is the application of Congressional 1015 E Street, LLC ("**Applicant**") for variance relief to permit the extension of a nonconforming side yard condition that currently exists at the Property, as part of the Applicant's planned renovation of and addition to an existing building to convert it into a multifamily residential building. The nonconforming side yard condition is a historic condition that the Historic Preservation Review Board ("**HPRB**") prefers remain at the Property. The property that is the subject of this application is 1015 E Street SE (Square 973, Lot 813) ("**Property**"). A Surveyor's Plat is included in Exhibit B. The Property is included in the CHC/C-2-A Zone District. An excerpt of the Zoning Map is included in Exhibit C.

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 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 (120 feet long by approximately 18.4 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 and east by small commercial 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.

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. The Building is currently used as a two family flat. 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 five-unit apartment building (“**Project**”). As shown on the plans attached as Exhibit D, the Project will include an addition to the rear of the Building. The addition will have the same height as the Building (two stories and approximately 24 feet), but the Project will still provide a conforming rear yard of approximately 48 feet. The addition will maintain and extend the nonconforming side yard, which is the historic condition and is preferred by the Historic Preservation Review

Board (“HPRB”). Except for the side yard, the Project will conform to all applicable requirements of the Zoning Regulations. 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.

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

¹ HPA No. 14-721.

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. Nearly all buildings constructed in the period of significance in the historic district, and particularly nearby, 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 narrow side yard makes the Building very unique for its historic context.

Further, the Property is unique because it is very long and narrow for a commercially-zoned property. This zone allows for multifamily use, but the long and narrow lot results in it not being very conducive to such use.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate a "practical difficulty" from strict application of the Zoning Regulations. The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that 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." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

The practical difficulty from complying with the side yard width requirement results from the unique condition of a nonconforming side yard for the historic structure. An addition to the Building could comply with the side yard requirements by being constructed to the property line since side yards are not required in this zone. However, this would be inconsistent with the historic character of the existing building, and maintaining this nonconforming side yard is something that the HPRB expressly preferred. Thus, the Applicant would be burdened with a practical difficulty of deviating from the historic character of the building and the preference of the HPRB if it were required to eliminate the side yard for the addition.

Alternatively, providing a conforming rear yard for the addition would also result in a practical difficulty for the Applicant. At approximately 18.3 feet wide, the Property is very narrow for a commercially zoned property with an existing side yard. If a conforming side yard were provided for the addition, then only about 12.3 feet of lot width would remain for the addition. This is too narrow to create a functioning and feasible multi-unit residential building. Providing a Building Code-compliant 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.

The same reasoning applies with respect to the nonconforming condition requirement. If the Applicant were prevented from extending the nonconforming side yard, then it would be

burdened with eliminating a historic condition 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 side yard variance will not adversely affect the availability of light or air to this Property or to neighboring properties. The proposed side yard will allow for windows on the west façade of the addition, which will provide more light and air than would otherwise be required in a zone where side yards are not required. 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. No other properties will be affected by this side yard relief. 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 property, granting this relief will not harm the zone plan.

VI. EXHIBITS

EXHIBIT A	Application Form, Self-Certification Form, and Authorization Letter
EXHIBIT B	Surveyor's Plat
EXHIBIT C	Excerpt of Zoning Map
EXHIBIT D	Architectural Plans and Drawings, including Photos of Property
EXHIBIT E	Names and Addresses of all Property Owners within 200 Feet of the Property

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

A handwritten signature in blue ink, appearing to read 'Cary Kadlecck', with a long horizontal flourish extending to the right.

Cary Kadlecck