

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

**AREA VARIANCE APPLICATION
OF NORTH CAPITOL #2 LAND TRUST**

2026 NORTH CAPITOL ST, NW

PRELIMINARY STATEMENT OF THE BURDEN OF PROOF

A. Introduction.

North Capitol #2 Land Trust (the “Applicant”) owns the property located at 2026 North Capitol Street, NW (the “Property”), located in the R-4 zone district. The Applicant recently purchased the Property and has constructed an addition to the existing improvements thereon (the “Building”). As part of the construction approved in Building Permit No. 1408394 (the “Building Permit”), issued in August, 2014, for an addition to the Building, the Applicant received approval to rebuild the first floor deck, expand the existing second floor deck, and build a new third floor deck, as shown on the architectural plans attached to this Application.

In February, 2015, after all of the work approved under Building Permit No. 1408394 - including construction of the decks – was completed, the Zoning Administrator notified the Applicant that he intended to revoke the Building Permit and require that the Applicant remove the third-story deck and reduce the size of the second-story deck, as these two items are considered additions to a structure which is nonconforming as to lot occupancy. As support for this late action, the Zoning Administrator has relied on the fact that the applicable permit plans showing the subject decks were not stamped by the Zoning Division, even though the Applicant did receive the Building Permit and completed construction thereunder in reliance on the Building Permit.

In addition to the decks approved in the Building Permit, through a contractor's error, the Applicant constructed decks slightly larger than what was actually approved in the Building Permit. Therefore, the Applicant is requesting area variance relief from Section 2001.3(a) in order to receive approval for the second and third-floor decks, as already constructed. There are two aspects of the deck area for which relief is being requested: (1) the area of the decks as represented in the approved Building Permit plans, and (2) the additional area of the decks beyond what was approved in the Building Permit plans, which was constructed in error.

The Zoning Administrator has informed the Applicant that he will issue a temporary certificate of occupancy for the Property if the Applicant either (1) removes the third-floor deck and reduces the second-floor deck to its previously existing dimensions; or (2) files a BZA variance application requesting relief to allow the now-constructed decks to remain.

The Applicant has opted to file this BZA area variance application requesting the relief necessary to allow the decks to remain.

B. Description of the Property.

The Property is located at 2026 North Capitol Street, NW. The Property is a rectangular lot with a land area of approximately 2,001 square feet. It is 20 feet wide by 100.5 feet long. The Property is improved with the Building, which has a lot occupancy of about 57.5%. The decks, as constructed, together with the Building, have a lot occupancy of about 65.5%. There is also a garage at the rear of the Property, which raises the total lot occupancy amount to 78%. The construction of the decks have not changed the pre-existing lot occupancy. The Property had a lot occupancy of 78% when the Applicant purchased the Property and before the Applicant began its work. The addition of the third-floor deck, and the expansion of the second-floor deck,

are in the footprint of the pre-existing first-floor deck. Therefore, there is no increase in the lot occupancy for the Property as part of the Applicant's construction.

Aside from the decks, the Building is a three-story building with a cellar level, used as a flat. The Building has a lower lot occupancy amount than the adjacent structure to the north, and a greater lot occupancy than the structure to the south. The subject decks extend to the rear line of the structure to the north – at 2028 North Capitol Street, NW – and then that building has decks extending past that building line.

The surrounding area is made up of row structures, mostly one-family dwellings or flats. Most of the properties on this block include garages, and therefore most properties safely exceed the maximum permitted lot occupancy of sixty percent (60%).

C. Burden of Proof.

Unique Condition

The Applicant received and relied on approval from DCRA in the form of a Building Permit which permitted construction of the expanded second-floor deck and third-floor deck, albeit to an area smaller than what was mistakenly built. The Property is currently at 78% lot occupancy, which consists of the legally nonconforming structure as well as an accessory garage which is below the main level of the Building. The Applicant constructed the decks because it had received approval of same by the Building Permit approval.

Practical Difficulty

It would be a significant expense for the Applicant to remove the third-floor deck and reduce the second floor deck. The Property is currently under contract and is expected to be sold

prior to the hearing on this Application. It would be unnecessarily burdensome for the Applicant to have to remove or reduce the decks. In addition, the request could be considered a *de minimus* request, as the Zoning Administrator has allowed the 8' x 20' first-floor deck, as well as the second-floor deck as it previously existed, and the second and third floor decks do not expand or increase the existing lot occupancy.

No Substantial Detriment to the Public Good or Integrity of the Zoning Regulations.

The decks have no impact on neighboring properties' light and air or privacy. To the north, the rear line of the decks match the rear building line of 2028 North Capitol Street. To the south, the existing Building already extends past 2024 North Capitol Street, and because the Property is on the other side of the sun's direction, there is no impact on that Property's light and air. The request is a small request, and does not increase the lot occupancy percentage of the Property. In addition, it is well established that the permitting history of a property can be a unique condition warranting area variance relief, thereby insuring the integrity of the Zoning Regulations.

D. Conclusion.

For the reasons outlined in this Preliminary Statement, the Applicant respectfully requests the relief as detailed above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan".

Martin P. Sullivan
Sullivan & Barros, LLP