

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

**VARIANCE APPLICATION
OF JOSE AYALA**

**3701 14TH STREET, NW
BZA APPLICATION NO. 19088**

PREHEARING STATEMENT

I. Nature of Relief

This Statement is submitted on behalf of Jose Ayala, owner of the property located at 3701 14th Street, NW (Square 2826, Lot 96) (the “Property”) and on behalf of ERB Properties, LLC, the contract purchaser (the “Purchaser”). As discussed more fully below, the Property’s unique features and conditions justify the granting of area variance relief from the 15 foot (15 ft.) rear yard requirement of 11 DCMR § 774.1, and from the parking space requirements of 11 DCMR § 2101.1, as strict compliance with these Zoning Regulations would result in a practical difficulty to the Applicant.

II. Background

Description of the Property

The Property is a small corner lot with a land area of 3,216 square feet. It fronts on Georgia Avenue, and borders Spring Road to the south. To the east, it borders a one-story building used as a church (also in the C-2-A zone). To the north is a three-story mixed use building. On the north and the east side, the property is bounded by adjacent buildings on a common lot line and there is no access to the Property from the alley. There are no curb cuts and none are likely to be approved for access from Spring Road or Georgia Avenue. Additionally, there is a building restriction line on the south border along Spring Road.

The Property is improved with a three story mixed-use building. The lower level is used as commercial space and was previously a barber shop. The upper level was used for residential use.

Surrounding Area

The surrounding area is characterized by a mix of retail and residential use, and mixed-use buildings on Georgia Avenue. In particular, across Spring Street is a four-story apartment building. The area is under a revitalization effort involving properties such as this.

Proposed Project

The Purchaser is proposing to raze the existing structure on the Property and construct a new four-story mixed-use building, with a total of six (6) residential condominium units on floors two through four, and a neighborhood-serving retail use on the first floor.

III. Burden of Proof.

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) resulting in practical difficulty in complying with a strict application of the Zoning Regulations; and (3) no harm to the public good or the zone plan. *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 area variance.

A. Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition of the Property that Results in a Practical Difficulty.

Exceptional shape or contour of particular piece of property may be ground for granting area variance if strict application of zoning regulations would result in peculiar and exceptional

practical difficulties to landowner. D.C.C.E. § 5-420(3). *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428 (D.C. 1975). Furthermore, the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the property. Rather, it may arise from a “confluence of factors.”

Generally, to warrant granting area variance, it must be shown that compliance with area restriction would be unnecessarily burdensome. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Court of Appeals affirmed the Board’s approval of 100% parking relief for construction of a YMCA on a vacant lot based on a finding of practical difficulty due to the need to reduce the size of the swimming pool by half to provide parking at grade and the exorbitant cost of providing underground parking in comparison to such costs under ordinary circumstances. *See 1700 Block of N Street, N.W., et. al. v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 676 (D.C. 1978); *see also Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170-71 (D.C. 1990)(“...1700 Block indicates that at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure.”)

The Property is characterized by an exceptional situation and condition as the result of a confluence of factors: (1) Location – the Property is land-locked, and there is a building on the lot line adjacent to the Property’s rear yard; (2) Size – the Property is small, shallow, and narrow. Property may have been divided at some point, as it does not go through to the rear alley; (3) The Property’s developable area is further restricted by a Building Restriction Line on Spring Street, which takes up a large percentage of the Property’s footprint, as the BRL runs along the longest

portion of the Property, rather than along its frontage on 14th Street; and (4) the Property is land-locked and abuts a building wall adjacent to the rear yard.

The confluence of the above mentioned factors create a unique situation in which the Applicant would be unnecessarily burdened by strict compliance with the Zoning Regulations by either or both of the parking requirement and the rear yard requirement. Regarding parking, the Property is completely land-locked, with no access via existing curb cut or alleys, and little likelihood of getting a curb cut. If it could get a curb cut, the space required to get a full parking space on the Property would severely limit development options for this site. The Property's proximity to multiple forms of public transportation makes it so that requiring parking on this lot would be both an unnecessary burden to the Applicant and, although not required under the variance test, practically impossible.

Regarding the rear yard, the Property faces a side building wall on the rear property line, which would leave the rear yard as hollow dead space between two buildings, serving no purpose as a set-back (the adjacent building wall is a side party wall with no windows). Also, the area of the rear yard is needed to provide the entrance and foyer to the residential portion of the Building on the second floor, without sacrificing the already limited space available for the first floor retail use. Providing a rear yard in this location would severely limit the retail space, and the functionality of the above residential space. This burden is perhaps the epitome of "unnecessary", as a rear yard would serve no purpose here other than to be an open, inviting dark space between two buildings (a space that currently does not exist here with the existing buildings).

If the zoning regulations are strictly enforced, the project would no longer be viable because there is not enough room to fit six (6) units, and a rear yard or parking, and eliminating

residential units would ensure the project is no longer economically feasible. Total loss of economic viability certainly rises to the level of practical difficulty.

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

Granting relief will allow the redevelopment of an underutilized site, and will provide a vital mixed-use property to be used for neighborhood serving retail and high-quality housing in a commercial corridor with plenty of public transportation alternatives. The relief requested is minor in nature and of little impact. The rear yard variance allows the construction of one floor of the building adjacent to what is essentially a side party wall for both the properties to the north and the east. The current building is already located in the area of the subject rear yard. The parking relief requested is for only three (3) spaces. The existing building, in addition to being located in the rear yard, also does not provide parking spaces, so the proposed building will match the existing building in those two respects. Regarding the integrity of the Zoning Regulations, the condition of this Property, with its location, shape, the impact of the BRL, and other conditions, is extremely unique and will not lead to any unwanted precedents regarding either parking relief or rear yard relief.

IV. Conclusion.

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

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Martin P. Sullivan". The signature is fluid and cursive, with the first name "Martin" and last name "Sullivan" clearly distinguishable.

Martin P. Sullivan
Sullivan & Barros, LLP
October 13, 2015