

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

**AREA VARIANCE APPLICATION
OF 525 LONGFELLOW ST LLC**

**525 LONGFELLOW ST, NW
BZA APPLICATION NO. 19100**

PREHEARING STATEMENT

I. Nature of Relief

This Statement is submitted on behalf of 525 Longfellow St LLC, owner of the property located at 525 Longfellow St NW (Square 3206, Lot 3), (the “Property”). The Property is located in the Brightwood Park Neighborhood of the District, and is zoned R-4. As discussed more fully below, the Property’s unique features and conditions justify the granting of area variance relief from the minimum lot width and lot area requirements of Section 401.3, and the requirements for minimum distance to adjacent driveways under §2117.8(d), as strict compliance with these requirements would be unnecessarily burdensome for the Applicant.

II. Background

A. Description of the Property.

The Property is a large, trapezoidal through lot measuring 4777 square feet in area and 50 feet in width. It is bound by Longfellow Street to the south and Shepherd Road to the north. The Property also shares a lot line with 601 Longfellow Street to the west and 523 Longfellow Street to the east. Currently, the Property is improved with a single family detached dwelling (the “Building”). The Building sits near the southwest corner of the lot and fronts Longfellow Street. The Property measures 50 feet in width, making it approximately 32 feet wider than every other lot on this block of Longfellow Street. The Property also contains a curb cut along Shepherd Road, allowing access to a driveway on the Property. While Shepherd Road is technically a

public *street*, on this block, it effectively operates as an alley, without sidewalks or formal curb cuts.

The Property is located in the Brightwood Park neighborhood. The area is characterized by the small row dwellings along Longfellow Street, measuring 17 to 18 feet in lot width. Many of the row dwellings maintain driveways for parking spaces accessible via Shepherd Road.

B. Proposed Project.

The Applicant is seeking to subdivide the Property into three record lots in order to build three row dwellings on each of the lots. The Applicant also proposes to create one large “curb cuts” from Shepherd Road. Since there is no sidewalk or curb on Shepherd Road, these will be curb cuts in name only. Section 2117.8(d) of the Zoning Regulations provides that curb cuts providing access to row dwellings or flat be a minimum of 28 feet away from adjacent driveways. This requirement is obviously intended to apply to driveways which access the front of a property, rather than the rear, as in this case. Since Shepherd operates like an alley, without sidewalks or curbs, there are already multiple effective “curb cuts” from Shepherd Road.

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.

The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 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 293–94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (*i.e.*, the building or structure) and not just the land itself. 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.”

The 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. See *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428 (D.C. 1975).

Additionally, the “exceptional situation or condition” of a property can arise out of “events extraneous to the land,” including the zoning history of the property. See, *e.g.*, *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978), and see *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097, and 1098 (D.C. 1979). See also *Application No. 17264 of Michael and Jill Murphy* (2005) and *Application No. 18725 of Rafael Romeu* (2014).

The Property is characterized by an exceptional situation and condition as the result of a confluence of factors: (1) the unique lot size and shape; and (2) the zoning history.

1. *Unique lot size and shape*

The Property's unique lot size and shape creates an exceptional condition. The Property is a trapezoidal through lot measuring 50 feet in width and 4777 square feet in lot area. The Property is more than double the size of the next biggest lot on the block and more than three times as large as the average lot size of the lots fronting Longfellow Street. While many of the lots along Longfellow Street are also through lots, they are long, skinny lots and are only 17 to 18 feet in width. There is no other lot in the area afflicted with these size issues, therefore the size and shape of the lot can be considered a unique situation or condition for purposes of the variance test.

Additionally, the Property abuts Shepherd Road to the north. Shepherd Road is unique because while it is technically considered a road, it is only 33.7 feet wide. This width is more consistent with an alley than a public street. Accordingly, most of the residents in the area treat it like an alley, using it only to access the parking spaces behind the row dwellings on that block.

2. *Zoning History*

The Zoning History also contributes to the creation of an exceptional condition and situation. The Applicant purchased the Property, spent money towards the development of the Property and applied for a building permit with the reasonable expectation that the then-current Zoning Regulations regarding conversions of R-4 properties would still be in effect by the time the permit was granted. The Applicant purchased the Property in March 30, 2015 with the intention to convert the existing building into a five-unit apartment building. A five-unit conversion would have been a matter of right conversion prior to the new R-4 regulations that took effect in late June 2015. At the time that the Applicant purchased the Property, he believed

that his right to convert the Building into a 5-unit apartment house would be vested upon permit application, which was filed well before the new Regulations became effective.

After investing significant time and money to do what was expected to be a matter of right conversion, the Applicant was surprised by the last minute regulation changes and had already spent over \$80,000 in design and other costs in reliance on the current Regulations.

The confluence of the above mentioned factors create a highly unique situation in which the Applicant is trying to keep the project as in character with the neighborhood as possible while developing an economically viable project that will offset the costly effect on this owner of the R-4 amendments. As discussed below, these unique conditions would result in a practical difficulty if the zoning regulations were strictly applied

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

Generally, to warrant granting area variance, it must be shown that strict compliance with area restrictions would be unnecessarily burdensome. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Court of Appeals has found that financial infeasibility rises to the level of a practical difficulty and satisfies the second prong of the area variance test. See *Downtown Cluster of Congregations v. District of Columbia Bd. Of Zoning Adjustment*, 675 A.2d 484 (D.C. 1996)(finding that an undue hardship existed because a tenant could not be located that offered a “reasonable rate of return to the owner”). In *Downtown Cluster*, the court heard testimony and upheld variance relief based on financial infeasibility, concluding that the 6% return the applicant could achieve as a matter of right was insufficient and the higher return that would be achieved had the applicant been granted relief, was a reasonable return. *Id.* At 487–89.

The Court of Appeals in *Russel v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. 1979) opined that minimum lot restrictions are more than unnecessarily burdensome and are such as to authorize issuance of a variance when owner could never sell unimproved lot for residential use absent a variance.

1. Minimum Lot Width and Lot Area

The effort required to develop a project under the reasonable expectation that the zoning regulations would remain in effect, change the project as circumstances require, and create dwellings that will still make the project economically viable on a large trapezoidal through lot, creates a unique situation under which strict application of the zoning regulations would be an unnecessary burden on the Applicant. As discussed above, the Applicant purchased the Property and applied for a building permit with the reasonable expectation that the proposed regulations would not take effect before the permit was granted. The Applicant was surprised by the last minute regulation changes and had already spent over \$80,000 in design and other costs in reliance on the then-current Regulations.

The proposed project would be in character with the dwellings in the neighborhood, as the dwellings would maintain 16.67 feet of lot width, only .83-1.33 feet less than the surrounding row dwellings. Additionally, the lot sizes would be in character with the neighborhood, as the average lot size of the lots on the block of Longfellow between 7th Street and 5th Street is only 1477 square feet and the proposed subdivision would create lots with 1530, 1592, and 1653 square feet of lot area. These units will provide a greater rate of return and will offset the costs of compliance from the unexpected effects of the new regulations.

If the Applicant were to do a matter of right project and subdivide the lot into two dwellings, each dwelling would be 25 feet wide and have about 2380 square feet of lot area.

These row homes would be 7 to 8 feet wider than the other dwellings on the block and the lots would be about 200 square feet bigger than the biggest lots on the block. A matter of right project is so out of character with the neighborhood that it will be highly unmarketable, require more effort to sell, and will therefore provide a very low rate of return. As shown on the attached financial projection, without the additional two (2) units from a third lot, the Applicant would be unable to break even and would realize a net *loss* of \$325,872.

If the zoning regulations are strictly enforced, the Property will essentially be undevelopable because no one will be able to get a reasonable return due to the large lot size.

2. Driveway Requirement

Section 2117.8(d) of the zoning regulations provides that “a driveway that provides access directly from a street to a row dwelling or flat shall be a minimum of twenty-eight feet (28 ft.) from all adjacent driveways that provide access directly from a street to a row dwelling or a flat.” While Shepherd Road is technically a street, it is treated like an alley. The road is extremely narrow and residents use the street to access driveways and parking areas on the rear of their homes. Requiring the Applicant to space the driveway 28 feet from adjacent driveways would be highly unnecessary and would result in a practical difficulty because the Applicant would be unable to provide the requisite number of parking spaces as required by the regulations.

The Property’s size and shape, along with its zoning history, creates a situation in which strict application of the zoning regulations would result in a practical difficulty. The proposed project will be significantly more in character with the neighborhood, the matter of right project is essentially undevelopable and the Applicant will be unable to mitigate the unexpected effects of the R-4 changes without the requested variances. Strict reliance on the zoning regulations would result in the exact type of unjust situation that variance law seeks to avoid. *See Monaco v.*

District of Columbia Bd. of Zoning Adjustment, 407 A.2d 1091 (D.C. 1979) (“Variance law is broad enough to relieve, in some instances, the strict application of the zoning regulations where an applicant’s unique situation and undue hardship are caused by good-faith reliance on prior assurances of zoning authorities; while authorities’ actions may not suffice to warrant application of estoppel, their actions may be considered under variance law, which is designed to avoid harsh and unjust results in extraordinary situations.”).

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

The Applicant also satisfies the third prong of the variance test, as granting relief from the lot minimum lot width and driveway requirements would have no substantial detriment to the public good or integrity of the zoning regulations. Subdividing the large odd-shaped lot into three lots would create lots that are much more in character with the neighborhood than two large lots allowed as a matter of right. Additionally, granting a variance for minimum driveway distance would not have any detriment to the public good or integrity of the zoning regulations because there is already a curb cut, Shepherd Road is already used like an alley, and many of the other through lots on the block have driveways on Shepherd Road like that one the Applicant is proposing. Granting relief will not be detrimental to the integrity of the zoning regulations because the building is unique for the reasons listed above and granting relief will be consistent with recent decisions, as discussed below.

D. Recent Board Decisions on Lot Width and Area

Recently, the Board of Zoning Adjustment, (the “Board”) has granted relief from minimum lot width and lot area in BZA Case No. 18943. In Case No. 18943, the Board granted relief from the fifty foot (50 ft.) lot width requirement for a project located at 2610 Myrtle

Avenue, NE and zoned R-1-B, finding that the applicant satisfied the requirements for an area variance. The Applicant proposed to subdivide a large lot into two nonconforming lots. The Board found that the Applicant had a unique condition or situation because of the zoning history and size and shape of the lot led to a practical difficulty “in that the vacant lot is not buildable without zoning relief.” The Board also relied heavily on the fact that the request would make the lots 46.34 feet in width, about four feet (4 ft.) shy of the 50 foot width requirements, and less than a foot shy of the average lot width of the properties in the square (46.7 feet).

Similarly in this case, the Applicant has a unique condition because of the zoning history and the size and shape of the lot. This unique condition leads to a practical difficulty because the lot is not buildable without zoning relief, due in part to the effects of unexpected changes in the regulations. Furthermore, the Applicant’s proposal will create three lots 16.67 feet in width, only 1.33 shy of the required lot width.

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 black ink that reads "Martin P. Sullivan". The signature is written in a cursive, slightly slanted style.

Martin P. Sullivan
Sullivan & Barros, LLP
November 3, 2015