

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

**AREA VARIANCE APPLICATION
OF 1010 IRVING LLC**

**1010 IRVING STREET, NE
BZA APPLICATION NO. 19117**

PREHEARING STATEMENT

I. Nature of Relief

This Statement is submitted on behalf of 1010 Irving LLC, (the “Applicant”) owner of the property located at 1010 Irving Street, NE (Square 3877, Lot 7) (the “Property”). The Property is located in the Brookland neighborhood and is zoned R-2. As discussed more fully below, the Property’s unique features and conditions justify the granting of area variance relief from the minimum lot width restrictions of Section 401.3, 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 lot measuring 8037 square feet in area. It is bound by Irving Street to the south. The Property also shares a lot line with 1002 Irving Street to the west, 1018 Irving Street to the east, and both 1009 and 1011 Jackson Street to the north. The Property is currently unimproved.

The Property is located in the Brookland neighborhood. The street is characterized by single-family detached structures and single-family semi-detached structures. Several of the existing lots to the east and north also maintain substandard lot widths and have been improved with semi-detached one-family structures.

B. Proposed Project.

The Applicant is seeking to subdivide the Property into two record lots of equal size and area. Each lot would then be improved with a semi-detached one-family structure. The minimum lot width for a semi-detached one family structure is 30 feet. The Applicant is proposing to create lots measuring 26.8 feet in width along Irving Street and 35.6 feet of width in the rear, therefore the Applicant requests relief from the minimum lot width requirements of Section 401.3.

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 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 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).

Unique lot size and shape

The Property's unique lot size and shape creates an exceptional condition. The Property is exceptionally large, measuring 8037 square feet in lot area. Beginning at the northwest corner of the property, the western lot line runs at a southeast diagonal towards the southern lot line, creating a trapezoidal lot. This diagonal lot line creates the issues with the lot width and there is no other lot in the square afflicted with this specific lot width issue. Therefore the size and shape of the lot can be considered a unique situation or condition for purposes of the variance test. As discussed below, this unique condition 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 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. 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.

Minimum Lot Width

The proposed project would be in character with the dwellings in the neighborhood, as the proposed lots would maintain 26.8 feet of lot width. Without this area variance, the Applicant would only be able to provide one (1) single-family dwelling unit. The lot area would be 2.5 times bigger than the minimum lot area required for a single-family dwelling. This would create a practical difficulty because the lot would be much larger than the lots in the surrounding area, forcing the Applicant to build a single-family dwelling proportional to the lot size, or alternatively an average-sized single family dwelling that would look awkward on such a large lot. Either scenario would create an unnecessary burden because the dwelling would be harder to sell and would also fail to offset the development costs associated with the Property.

Granting a very small lot width variance would provide the Applicant with a rate of return necessary to offset the costs of developing this large, odd-shaped lot.

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 requirements would have no substantial detriment to the public good or integrity of the zoning regulations. The character of the street is a combination of single-family detached and single-family semi-detached homes, therefore the subdividing the large lot

into two smaller lots with a single family home on each lot matches the character of the neighborhood. Access to on-site parking and trash can be achieved by an existing public alley. The Applicant has also received letters in support of the Application from the owners of the adjacent properties to the east and the west, 1018 Irving Street and 1002 Irving Street, respectively. Granting relief will not be detrimental to the integrity of the zoning regulations because the Property is unique for the reasons listed above, the R-2 zone is characterized by single-family dwellings such as the ones proposed, and granting relief will be consistent with recent decisions, as discussed below.

D. Recent Board Decisions on Lot Width

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 the 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 size and shape of the lot. This unique condition leads to a practical difficulty because the lot is not buildable

without zoning relief. Furthermore, the Applicant's proposal will create two lots 26.8 feet in width, only 3.2 feet 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 17, 2015