

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

**AREA VARIANCE APPLICATION
OF EVERGREEN PROPERTIES I, LLC**

**7300 GEORGIA AVE, NW
BZA APPLICATION NO. 19118**

PREHEARING STATEMENT

I. Nature of Relief

This Statement is submitted on behalf of Evergreen Properties I, LLC, owner of the property located at 7300 Georgia Avenue NW (Square 2956, Lot 40) (the “Property”) zoned C-2-A. As discussed more fully below, the Property’s unique features and conditions justify the granting of area variance relief from the lot occupancy restrictions of Section 772.1, from the restriction against additions to structures which exceed lot occupancy of Section 2001.3, and from the parking space requirement under Section 2101.1, as strict compliance with these requirements would create a practical difficulty for the Applicant.

II. Background

A. Description of the Property.

The Property is an odd-shaped end lot measuring 1,995 square feet in area. It is bound by Georgia Avenue to the east. The Property also shares a lot line with 7302 Georgia Avenue to the North. It has a lot width of 46.31 feet along the front property line, similar to four other contiguous lots adjacent to the north. However, the lot width decreases from that point, at a 45 degree angle, from the front of the Property to a point about a third of the way toward the back, to an eventual width of about 17 feet, which then continues at that width to the rear property line.

The Property is currently improved with a two-story plus cellar, 4-unit apartment house (the “Building”). The Building currently occupies approximately seventy percent (70%) of the lot.

B. Proposed Project.

The Applicant is proposing to construct a one-story addition to the Building, including a mezzanine (the “Addition”). The Addition will add one (1) residential unit in the cellar and two (2) residential units in the new third floor of the Building. The new third floor will utilize the existing building’s footprint. The Applicant is also adding one (1) parking space.

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

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 determined 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.

Generally, to warrant granting an 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). To support a variance it is fundamental “that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood.” *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (citing *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (D.C.1972), quoted in *Myrick*, *supra*, 577 A.2d at 760)). Exceptional shape or contour of a 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. *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428 (D.C. 1975).

The Property’s odd size and pre-existing lot occupancy percentage create an exceptional situation or condition. Due to the exceptional situation, strict application of the lot occupancy restrictions, nonconforming structure restrictions, and parking requirements, would result in a practical difficulty.

1. Lot Occupancy and Nonconforming Structure.

As discussed above, the Property has an odd configuration. The Building occupies approximately seventy percent (70%) of the lot, and the shape of the Property severely limits the density of the existing building compared to the neighboring buildings to the north. The existing building is only two stories, at a height of 24.5 feet. This existing nonconforming Building uses

less than half of the 50 feet of height permitted in the C-2-A zone, and is only able to utilize 1.4 of its available 2.4 FAR.

Due to the pre-existing lot occupancy percentage being legally nonconforming, strict compliance with the Zoning Regulations makes it a practical difficulty to do any addition at all. Without relief from the restrictions, or a reduction in the existing Building footprint, the Building is effectively restricted to an FAR of only 1.4. The situation is very unique to the subject Property, as it is the only lot in this row of properties which is odd shaped as a result of the adjacent alley to the south running northwest at a 45 degree angle, effectively cutting off the Property.

If the zoning regulations were strictly applied and the Applicant were forced to build additions at 60% lot occupancy on the third floor and mezzanine, the addition would be roughly 199 square feet smaller than the other floors. This would create several practical difficulties. First, the current building would remain at 70% lot occupancy and the Applicant would be unable to utilize the existing walls. This would not only create construction inefficiencies and aesthetic issues, but would make it impossible to fit two units and the stair requirement on the second floor. Without the second unit, the project is economically infeasible. This odd configuration would only remedy the lot occupancy issues with the Addition, not the existing nonconforming lot occupancy percentage; therefore, a variance request would still be necessary.

If the zoning regulations were strictly applied and the Applicant did a matter of right project, the Applicant would have to demolish 10% of the existing building. This demolition would cost much more than the proposed Addition, would make it impossible for the Applicant to fit a second unit on the third floor, and would preclude the Applicant's ability to offset the cost

of additional construction. Without relief from the strict requirements of 772.1 and 2001.3, development of this property would be impossible for the reasons listed above.

2. Parking Requirement.

The zoning regulations require that the Applicant provide two (2) parking spaces. The Applicant is providing one (1) conforming parking space and possibly one (1) compact space. The unique shape of the lot, as well as the 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.

B. 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 the minimal relief from the lot occupancy restrictions, nonconforming structure restrictions and parking requirements would have no substantial detriment to the public good or integrity of the zoning regulations. The roughly 199 square foot difference between 60% and 70% lot occupancy is minimal and will not impact the neighboring properties due to the horizontal distance separation over the alley on two sides of the property. The Applicant is providing one legal-sized parking space. The Applicant has also received letters in support of the Application from the owner of 7302 Georgia Avenue and Alice Giancola, the owner of 528 Cedar Street NW who resides in the Takoma area and is a member of Gateway Georgia Avenue Revitalization Corporation, Plan Takoma, and Walter Reed LRA. ANC 4A has also voted unanimously to recommend approval of the Application. Additionally, the Property's unique features make it so that granting relief will not be detrimental to the integrity of the zoning regulations.

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 10, 2015