

7) Burden of Proof

Pursuant to 11 DCMR § 3103.2,³ Mr. Christopher Wright (APPLICANT) is requesting an area variance from the minimum lot dimensions under § 401.3, a variance from the lot occupancy requirements under § 403.2, a variance from the rear yard requirements under § 404.1, a variance from the open court requirements under § 406.1, and a variance from the nonconforming structure under § 2001.3,⁴ to allow an addition to an existing building serving as a flat in the R-4 District at premises 17 U Street NW, Square 3117, Lot 0003 (PROPERTY).

The request meets the standard for granting a variance to provide relief from strict application of zoning regulations that would result in peculiar and exceptional practical difficulties, pursuant to 11 DCMR § 3103.2 and 11 DCMR § 3103.7⁵, due to the existing and unchangeable attributes of the PROPERTY. The requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. Further, the proposal is also consistent with general intent and purpose of related § 223.2⁶, § 400.23⁷, and Z.C. Case No. 14-11, protecting the character and architectural features of the original row house in height, scale, and materials used.

³ 11 DCMR § 3103.2, "With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

⁴ 11 DCMR § 2001.3, NONCONFORMING STRUCTURES DEVOTED TO CONFORMING USES, , "Enlargements or additions may be made to the structure; provided: (a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and (b) The addition or enlargement itself shall: (1) Conform to use and structure requirements; and (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined."

⁵ 11 DCMR § 3103.7, "The standard for granting a variance, as stated in § 3103.2 differs with respect to use and area variances as follows: (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103.2, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and (b) An applicant for a use variance must prove that as a result of the attributes of a specific piece of property described in § 3103.2, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property."

⁶ 11 DCMR § 223.2, ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES, "The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: (a) The light and air available to neighboring properties shall not be unduly affected; (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; (c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and (d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways".

- Physical Characteristics of the Property Difficult to Comply with Zoning Regulations - Strict compliance with the regulations is practically difficult because the adoption of the Zoning Regulations immediately resulted in the nonconformities that are subsumed in the requested variance relief as well as nonconformities with respect to lot size and lot width.
 - o Both the subject property and the existing structures were in developed in 1906 prior to the adoption of the Zoning Regulations and became nonconforming with respect to lot occupancy, open court, and rear yard upon the adoption of the regulations.
 - o The lot area and lot width are nonconforming and unchangeable, creating an exceptional condition
 - o With any other proposed expansion to the structure, additional lot occupancy would be generated, even one as modest an increase in square footage as proposed
 - o No expansion would be possible in conformance with the zoning regulations without demolition of a portion of the existing building.
 - o While the variance relief is sought, recognizing existing nonconformance with lot occupancy, the lot occupancy percentage includes an open court that is nonconforming as to width and thus counted toward that coverage (11 DCMR § 406).

- No Substantial Detriment to Public Good. Consistent with the General Purpose of the Zoning Regulations and Map - The proposed addition will not cause substantial detriment to the public good or impair the intent, purpose, and integrity of the Zoning Regulations and Map. The project is a modest extension that will not increase any existing nonconformity, nor create any new nonconformity.
 - o The proposed extension will maintain the same building height of 36.16 ft
 - o The proposed project has little change in appearance from the front
 - o The proposal does not increase a nonconforming height condition (stories, feet)
 - o The proposal does not create any new nonconforming condition
 - o The property will continue to be used as a residential flat

⁷ 11 DCMR § 400.23 “In an R-4 Zone District, a building or other structure may be erected to a height not exceeding forty feet (40 ft.) if approved by the Board of Zoning Adjustment as a special exception, under § 3104, subject to the following conditions, except that if the building is being converted to an apartment house, special exception relief from the thirty-five foot (35 ft.) height limitation is only available pursuant to §§ 336 or 337 as applicable: (a) The applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: (1) The light and air available to neighboring properties shall not be unduly affected; (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; (3) An addition shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code; (4) An addition shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and (5) The resulting building or structure height, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; (b) The applicant shall demonstrate that overall building or structure height or an upper addition resulting from the additional five feet (5 ft.) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features; and (c) In demonstrating compliance with §§ 400.23(a) and (b), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways.”

- o There is no significant alteration to the architectural elements of the PROPERTY or effect on neighboring roofs, including chimney or external vent functioning, in accordance with 11 DCMR § 400.24⁸
- o The extension will not have an undue impact on the light and air of neighboring properties because of the vertical nature of the addition, the absence of any increase in lot occupancy, the substantial setback from the rear of the property for the extension, and the open air nature of the balcony. To further elucidate the lack of any issues, letters acknowledging and supporting the propose alterations have been signed by the two adjacent homeowners (15 and 19 U Street NW).

⁸ 400.24 "In an R-4 Zone District, the following provisions shall apply: (a) A roof top architectural element original to the building such as a turret, tower or dormers, shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size; (b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code; and (c) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator.