

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

**APPLICATION OF
NASH STREET INVESTORS, LLC**

**4924 NASH STREET N.E.
LOT 59 IN SQUARE 5172**

STATEMENT OF THE APPLICANT

I. NATURE OF THE RELIEF SOUGHT

This Statement in Support of an Application is brought by Nash Street Investors, LLC (“Applicant”) in support of variance relief from the parking requirements (§ 2101.1) pursuant to 11 DCMR § 3103.2 and special exception relief from the roof structure setback requirements pursuant to Sections 4007(b), 411.11¹ and 3104.1 of the Zoning Regulations to allow an expansion of the existing apartment house on the property known as 4924 Nash Street N.E. (Lot 59 in Square 5172) (the “Property”).

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (“BZA” or “Board”) has jurisdiction to grant the relief requested pursuant to 11 DCMR §§ 3103.2 and 3104.1 of the Zoning Regulations.

III. BACKGROUND

The Property is a mid-block, landlocked lot consisting of approximately 11,206 square feet of land area. It is located in the Deanwood neighborhood in Northeast Washington, D.C., less than 1/3 of a mile from the Deanwood Metro Station. *See* Location Map attached hereto as **Tab A**. The rear of the Property is undeveloped and backs up to an approximately 16-foot paper public alley that was never constructed and does not allow for car access. A copy of the plat is attached hereto as **Tab B**. The Property has no existing curb cut. The Property is classified within the R-5-A Zone District. *See* Zoning Map attached hereto as **Tab C**.

¹ This Application is being processed pursuant to the language of Sections 4007(b) and 411.11 that were adopted on February 22, 2008 and are effective as of November 13, 2015.

The Property is currently improved with a 14-unit apartment house that was constructed in 1943 and renovated in 2012/2013 (the “Existing Building”). The Property is not in a historic district.

The Existing Building is leased to Veterans On the Rise (“VOTR”), a District-based non-profit that rents housing to veterans. The surrounding uses are moderate-sized apartment houses similar to the Existing Building. The Existing Building use does not provide off-street parking pursuant to a determination upon issuance of the building permits for the renovation finding that sufficient parking credits existed from the prior apartment use. A copy of the building permit information is included as **Tab D**. Most of the neighboring apartment house uses on Nash Street similarly do not provide off-street parking. The Property is less than a 1/3 of a mile from the Deanwood Metro station.

The Property is well serviced by a number of public transportation facilities and services including Metro and Metrobus routes. The Property is located less than a 1/3 of a mile from three Orange and Silver Metrorail Lines that are served by the Deanwood Metro Station. Moreover, Metrobus routes W4, V14, V15, U7, and R12 all stop within two tenths of a mile (0.2 miles) from the Property.

IV. THE PROPOSED DEVELOPMENT

The Applicant proposes to expand the Existing Building through a meaningful, roof-top connection (the “Connection”) to construct a building addition in the rear of the Property (the “Expanded Building”) that would contain up to 16 units (the “Project”). Attached is a copy of the Project’s plans included at **Tab E**. The Applicant intends to lease the new units in the Expanded Building to VOTR so it can provide additional housing to veterans in the District community. VOTR supports the subject Application.

As shown in the plans at **Tab E**, the proposed Connection satisfies the requirements for a “meaningful connection” because it provides 100% coverage, and it is supported by columns for the shelter, enclosure, or support of persons. The use of the Connection satisfies the requirements of a roof structure for an apartment house set out in 11 DCMR § 411.1, and it is proposed to be 5’ 7” in width and a maximum of height of 11’. The Connection is fully enclosed and connects the rear of the Existing Building to the front of the Expanded Building. The Connection is set back from the front, exterior wall of the Existing Building by approximately 29 feet. The setback from the rear

exterior wall of the Expanded Building is approximately 26 ½ feet. Accordingly, those setbacks more than satisfy the 1:1 roof structure setback required in 11 DCMR §400.7(b) from those exterior walls.

However, in order to connect the Existing and Expanded Buildings, it would be impractical and unreasonable for the Connection to be set back at a 1:1 ratio from the rear exterior wall of the Existing Building and the front exterior wall of the Expanded Building, as appears to be required by 11 DCMR §400.7(b). Accordingly, while it is not clear that these walls would be considered “exterior walls” as that term has been applied because they face an interior courtyard, out of an abundance of caution, the Applicant seeks special exception relief pursuant to 11 DCMR §411.11 for relief from the roof setback requirements of 11 DCMR §400.7(b).

The Expanded Building is designed to be similarly sized to the Existing Building. To that end, the Expanded Building is proposed to be 40-feet, three stories, in height and provide a Floor Area Ratio of 1.1, which includes the Inclusionary Zoning density increase. As expanded, the Project will have a compliant, approximately 37-foot rear yard from the non-traversable paper public alley. Also, the Connection creates compliant open court areas between the building’s sections. Due to the landlocked nature of the lot, the Project cannot provide any off-street parking spaces. As such, the Project will be similar to most of surrounding apartment houses on Nash Street, which also provide no-off street parking.

V. THE APPLICATION MEETS THE REQUIREMENT FOR VARIANCE RELIEF UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

Variance relief is required from the off-street parking requirements of (§2101.1). Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;

(2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and

(3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained in the subsequent Prehearing Statement and at the public hearing, all three prongs of the area variance test are met in this Application.

VI. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The subject Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property is landlocked; (2) the Property backs up to a paper alley, and it does not have vehicular rear alley access; and (3) the Property’s rear lot lines intersect in a point, instead of a straight line.

1. Landlocked property

The Property is landlocked and does not have any curb cuts or vehicular access from any point.

2. Paper rear alley

As previously noted, the Property backs up to a paper alley that has never been constructed by DDOT. Accordingly, like the other properties that front on Nash Street, there is no available rear access point.

3. The rear lot lines intersect at a point

Not only is there no rear access, but the rear lot lines intersect at a point to a rear. This oddly shaped rear lot line configuration increases the uniqueness of the Property.

B. Strict Application Would Result in a Practical Difficulty to the Owner.

Due to the Property's exceptional conditions discussed above, the strict application of the minimum parking requirements of Section 2101.1 would result in practical difficulties for the Applicant for the follow reasons.

Based on the proposed building program, the Applicant is required to provide a total of 16 off-street parking spaces pursuant to § 2101.1 (one space for each new unit in the Expanded Building). However, as a result of the landlocked nature of the Property as well as the lack of rear access, the Applicant cannot provide any off-street parking spaces on the site.

As a practical matter, no access could be provided to the rear of the property due to the paper alley that runs parallel to Nash Street for the majority of the block between 49th and 50th Streets N.E. While the Applicant is not aware of the circumstances that lead to the creation of the paper alley, it would certainly be unnecessarily burdensome for the Applicant to have to construct any (or all) or the alley simply to provide access to its lot.

Further, due to the lack of an existing curb cut, it would create a practical difficulty to install a driveway from Nash Street to the rear of the Property for a theoretical parking lot in the rear. First, such a curb cut would have to be approved by DDOT's Public Space Committee, and it is not known whether there would be support for such a curb cut. Also, as stated above, there are almost no curb cuts from Nash Street to the other, existing apartment houses. Therefore, the pattern of development on the block appears to disfavor curb cuts, possibly making it even more difficult for the Applicant to obtain a curb cut from DDOT.

Accordingly, as a result of the landlocked nature of the Property, strict application of the zoning regulations would result in a practical difficulty for the Applicant.

C. Neither Substantial Detriment to the Public Good nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

The requested variance can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the Zone Plan. As noted above, the Property is less than 1/3 of a mile from the Deanwood Metro Station, and is well-served by surrounding transit network. Accordingly, the requested variance from the minimum parking requirement will not have a substantial impact on the public good. Further, the proposed veteran tenants through VOTR do not own cars for the most part. Consequently, parking spaces, if provided, would go unused. Indeed, because many of the veterans do not own vehicles, the proximity to transit makes the Property attractive to VOTR and the veterans it serves. Also, as stated above, most of the other apartment houses on Nash Street do not provide off-street parking. Accordingly, the Project will be more compatible with the surrounding neighborhood without parking, than with it. To that point, as the Property is landlocked, the only potential for off-street parking would be new curb cuts from Nash Street. However, as stated above, this block of Nash Street has relatively few curb cuts. Accordingly, the Project would be more detrimental to the public good and zone plan if curb cuts were provided, because such access points could impair the design and harmonious nature of this block of Nash Street. For the reasons stated above, the requested parking variance relief will have neither substantial detriment to the public good nor substantial impairment to the Zone Plan.

VII. THIS APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF FOR A ROOF STRUCTURE

Section 411.11 of the Zoning Regulations provides that “Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.”

Accordingly, under this Section, the Board may approve relief from the roof structure setback requirements delineated in Section 400.7 when compliance would be impractical because of operating difficulties making full compliance unreasonable and when such determination causes no material impairment to the intent and purpose of the Zoning Regulations and no adverse effects on the light and air of adjacent buildings.

Further, Section 3104.1 provides the Board the authority to grant special exceptions where the “special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in according with the Zoning Regulations and Zoning Maps.”

As stated above, pursuant to Section 400.7, because the Connection is 11-feet in height, it would need to be set back 11’ from the rear exterior wall of the Existing Building and as well as 11’ from the front exterior wall of the Expanded Building in order to comply with Section 400.7’s 1:1 setback requirement.

First, complying with the requirement to set the Connection back 11 feet would be impractical “because of operating difficulties”, as the Connection’s sole purpose is to provide a meaningful connection between the Existing and Expanded buildings. Accordingly, it would be unreasonable to set it back from the exterior walls of the building’s two sections by 11 feet because doing so would negate its inherent purpose.

Second, as stated above, the Connection is set back from the front of the Existing Building facing Nash Street by approximately 29 feet and it is set back from the rear of the Expanded Building by approximately 26 ½ feet. With these substantial setbacks, the Connection will not be seen from either Nash Street or the rear property line. Therefore, because the purpose of the roof structure regulations is to “exercise a reasonable degree of architectural control” and limit the views of the roof structures from nearby properties, the proposed setback relief does not “materially impair” the intent and purpose of the Zoning Regulations.

Third, the proposed setback relief does not impact the light and air and of adjacent buildings because the relief is sought in the interior of the site, where impact on other buildings is negligible.

- A. The Request Satisfies the Requirements of Section 3104.1 because the Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR Section 101.1. Specifically, the requested relief must take into consideration the character of the respective Zoning Districts as well as the suitability of each district for the uses permitted; and must be designed to encourage the stability of districts and land values. *Id.* at Section 101.2.

As referenced above, Section 3104.1 of the Zoning Regulations provide guidelines, by which to evaluate whether a special exception should be granted. In this case, the Applicant seeks relief pursuant to Section 411.11, from Section 400.7, which requires a 1:1 setback for all roof structures from all exterior walls. As set out above, Section 411.11 authorizes the Board to grant special exception relief from the setback requirements of Section 400.7 where the required, roof structure, setbacks are “impractical because of operating difficulties... that would make full compliance ...unreasonable...”

As discussed above, the Connection is designed to act as a meaningful connection between the Existing and Expanded Buildings. Consequently, at its very nature, the Connection *must* traverse the rear wall of the Existing Building and the front wall of the Expanded Building, and no setback is possible. It would be patently impractical if the Connection was prohibited from actually connecting the two buildings because of the setback requirements of Section 400.7.

Pursuant to Section 411.11, Board is expressly granted the authority to approve the requested relief, because under these circumstances, the application of the 400.7 setback requirement would, indeed, be “impractical because of operating difficulties... that would make full compliance ...unreasonable...” Accordingly, granting the requested special exception is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

Further, as discussed above, as designed, the Connection will be internal to the site, connecting the rear of the Existing Building to the front of the Expanded Building. This location minimizes the Connection's visual impact from the street and on the neighboring properties. Indeed, due to the substantial setbacks (approximately 29 feet from the front exterior wall of the Existing Building and 26 ½ feet from the rear exterior wall of the Expanded Building), it is anticipated that the Connection will not be viewed from the property lines. The intent of this Section is to prevent unsightly penthouses or roof structures from being viewed from the street and surrounding property lines. The proposed design of the Connection is consistent with that purpose. Therefore, the requested roof structure set back relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

B. The Requested Relief will not Adversely Affect the Neighboring Property

As stated above, the Connection will be set back 29 feet from the front wall of the Existing Building. Also, the setback from the rear wall of the Expanded Building is almost 26 ½ feet. Therefore, as referenced above, the Connection will not be visible from the street or the neighboring property and will have no adverse impacts on the adjoining and confronting properties. As stated above, the neighboring, side properties are apartment buildings that are similar in size to the Existing Building. Because the Connection is located within the interior of the site, and because it is only proposed to be 5'7" in width and 11' in height, the setback relief requested for the Connection will have no adverse impact on the light and air of the neighboring properties.

VIII. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application and permit the expansion of the Existing Building that will permit the construction of new units that could be rented to veterans in the District.

Respectfully submitted,

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