

# 1735-1737 10th St NW

Burden of Proof | 05 June 2018

## Background / Project Description

The properties are located at 1735-1737 10th St NW (Square 0363, Lots 105 and 106) in the Shaw neighborhood and sits within the ANC 6E boundary. The lots are zoned RF-1. The lot widths are 17 feet wide and depth is 61 feet. They are bounded by 10<sup>th</sup> Street NW to the west, a public alley to the south, and a narrow four-foot alley to the west, and a portion of the northern boundary line. The lots are located just south of S Street NW.

These lots, owned by the District of Columbia, were auctioned off to the public as part of the “Vacant to Vibrant” initiative of Mayor Bowser and DHCD. There is a requirement to provide “workforce” housing as part of the project. There will be total of four flats, two of which will meet the 120% MFI (median family income) requirements of the program.

The properties are twin lots of 1,037 square feet in lot area. This is well below the minimum lot area requirements for RF-1 of 1,800 square feet for a Flat and 1,500 square feet for a Flat opting into Inclusionary Zoning (Table E § 201.1).

Subtitle C, Chapter 3 §301.1 allows for construction on non-conforming lots, however, it does not provide further relief from the development standards of the zone. These lots are exceptionally small and as such, the strict application of the zoning regulations regarding side yard, rear yard, lot occupancy and parking requirements would result in a practical difficulty for the owner.

## Burden of Proof

### Special Exception Relief - Parking

Per Subtitle X, § 901.2 the Board of Zoning Adjustment is authorized to grant special exceptions, provided that the special exceptions:

- a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- c) Subject in specific cases to the special conditions specified in this title.

Furthermore, per Subtitle C § 703.2 the Board of Zoning Adjustment may grant a full or partial reduction in the number of required parking spaces, subject to the general special exceptions of Subtitle X, and the applicants demonstration of at least one (1) of the following:

# 1735-1737 10th St NW

Burden of Proof | 05 June 2018

(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;

The southern lot of the subject properties (Lot 105) has access to a public alley of at least 10' in width and therefore would require a standard size parking space be accommodated on the lot per Subtitle C § 701. However, at 17' wide, the physical constraints are such that a standard size (9'x18') parking space cannot be provided. The applicant proposes providing an 8' x 16' compact parking space, in accordance with Table C § 712.6, to meet the parking requirements of Table C § 701.5. This will be in harmony with the purpose and intent of the Zoning Regulations and will not adversely affect the neighboring properties. The additional parking space, though compact rather than standard size, will further mitigate neighbor concerns by providing additional parking where possible in the neighborhood.

## Burden of Proof – Area Variances

Area variances are requested from the maximum lot occupancy requirements of Subtitle E § 304.1, minimum rear yard requirements of Subtitle E § 306.1, and minimum side yard requirements of Subtitle E § 307.1.

With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 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."

As noted above, the burden of proof for variances is three-fold. The Applicant must demonstrate the following:

- 1. Is the property is affected by an exceptional size, shape, topography or other exceptional situation or condition?**

*Response: The property is exceptionally narrow and small relative to the zone in which it sits. It predates the current zoning regulations and is non-conforming with regard to lot size minimum widths and area requirements. That constitutes an exceptional condition.*

# 1735-1737 10th St NW

Burden of Proof | 05 June 2018

## 2. Would the strict application of the zoning regulations result in practical difficulty?

*Response: Yes. The property is exceptionally narrow and the strict application of development standards with regard to lot occupancy, side and rear yard requirements would result in small units with limited buildable area. Specifically:*

### § E 304.1 Lot Occupancy:

*The strict application of the zoning regulations allows for 60% lot occupancy. The limited building area available with 60% lot occupancy is unduly burdensome to the Applicant as it is difficult to provide enough market rate building area to offset the costs of the two "workforce" housing units required by the "Vacant to Vibrant" program.*

*For example, in the RF-1 Zone a matter of right Inclusionary Zoning development would require a minimum lot area of 1,500 sf per Subtitle C § 1002.2. These lots at 1,037 sf, are only 69% of that requirement. In a matter of right, IZ opt-in scenario the available lot occupancy would be 60% which would result in 900 sf of building area. The request to allow 70% lot occupancy allows for 725.9 sf which would be well below the 900 sf that would be available to a lot that met the minimum area requirements, but would satisfy the programmatic requirements of the Applicant. The additional building area requested is 103.7 sf. In that context the requested relief is minor.*

*Furthermore, the additional building area available at 70% lot occupancy, would allow for a three-bedroom "workforce" housing unit. This is a more appropriate unit configuration for families and allows for longer-term habitation of the units. The three-bedroom units also have a higher purchase price per the DHCD regulations, which further helps the Applicant defray the cost of constructing the units. This is also in line with the general intent of the "Vacant to Vibrant" program and the "workforce" housing concept.*

### § E 306.1 Rear Yard Relief:

*Relief from the strict application of the rear yard requirement of 20' would allow for building area to accommodate more market rate building area to offset the costs for workforce housing inclusion and to support the requested relief to allow 70% lot occupancy. The resulting rear yard would be 18.3' or a minor, 8.5% deviation from the minimum rear yard requirement. Additionally, there is a four (4) foot public alley along the rear property lines which further mitigates the minor deviation requested and results the appearance of a zoning compliant rear yard.*

### § E 307.1 Side Yard Relief:

*The strict application of Subtitle § E 307.1 would require a five-foot setback along the northern and southern property lines. This would result in exceptionally narrow, 12-foot wide buildings. This is not a reasonable width dimension for a flat. Therefore, this would constitute a practical difficulty for the Applicant.*

*Therefore, the confluence of these issues results in a practical difficulty for the Applicant.*

# 1735-1737 10th St NW

Burden of Proof | 05 June 2018

3. Would granting the relief be a substantial detriment to the public good or impairment of the zone plan?

*Response: The requested variance relief from the side yard setbacks, lot occupancy and rear yard, will not adversely affect the public good. The requested variances are minor in nature and have little impact on the surrounding properties beyond a matter of right development scenario. The planned project will provide two, two-unit flats which is consistent with the RF-1 zone. For these reasons, the requested relief would not be a detriment to the public good or the zone plan.*

## Conclusion

For the reasons noted above, this application meets the requirements for special exception and variance approval by the Board of Zoning Adjustment and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,



Charles Warren, AIA  
Teass \ Warren Architects