

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

**VARIANCE APPLICATION
OF JOSE AYALA**

**3701 14TH STREET, NW
BZA APPLICATION NO. 19088**

PREHEARING STATEMENT

I. Nature of Relief

This Statement is submitted on behalf of Jose Ayala (“Owner”), owner of the property located at 3701 14th Street, NW (Square 2826, Lot 96) (the “Property”) and on behalf of ERB Properties, LLC, the contract purchaser (collectively with the Owner, the “Applicant”). As discussed more fully below, the Property’s unique features and conditions justify the granting of area variance relief from the 15 foot (15 ft.) rear yard requirement of 11 DCMR § 774.1, from the lot occupancy requirement of § 772.1, and from the parking space requirements of 11 DCMR § 2101.1, as strict compliance with these Zoning Regulations would result in a practical difficulty to the Applicant.

The Applicant wishes to amend the originally requested relief to include relief from the maximum permitted lot occupancy of sixty percent (60%). The proposal is to provide a lot occupancy percentage on the residential floors of sixty-two percent (62%).

II. Background

Description of the Property

The Property is a small corner lot with a land area of 3,216 square feet. It fronts on 14th Street, and borders Spring Road to the south. To the east, it borders a one-story building used as a church (also in the C-2-A zone). To the north is a three-story mixed use building. On the north side and the east side, the property is bounded by adjacent buildings on a common lot line and

there is no access to the Property from the rear. There are no curb cuts and none are likely to be approved for access from Spring Road or 14th Street. Additionally, there is a building restriction line on the south border along Spring Road which substantially limits the area in which a parking space might be provided were vehicular access possible.

The Property is currently improved with a three story mixed-use building. The lower level is used as barber shop. The upper levels are used as a one-family dwelling or rooming house.

Surrounding Area

The surrounding area is characterized by a mix of retail and residential use, and mixed-use buildings on 14th Street. In particular, across Spring Street is a four-story apartment building. Across 14th Street is a restaurant which is also about to undergo redevelopment that will provide residential units above the restaurant. There is a market caddy-corner to the property, on the southwest corner of the intersections of 14th Street and Spring Street.

Proposed Project

The Applicant is proposing to raze the existing structure on the Property and construct a new four-story mixed-use building, with a total of six (6) residential condominium units on floors two through four, and a neighborhood-serving retail use on the first floor.

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 that Results in a Practical Difficulty.

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. D.C.C.E. § 5-420(3). *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428 (D.C. 1975). Furthermore, the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the property. Rather, it may arise from a “confluence of factors.”

Generally, to warrant granting area variance, it must be shown that compliance with area restriction would be unnecessarily burdensome. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Court of Appeals affirmed the Board’s approval of 100% parking relief for construction of a YMCA on a vacant lot based on a finding of practical difficulty due to the need to reduce the size of the swimming pool by half to provide parking at grade and the exorbitant cost of providing underground parking in comparison to such costs under ordinary circumstances. *See 1700 Block of N Street, N.W., et. al. v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 676 (D.C. 1978); *see also Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170-71 (D.C. 1990)(“...1700 Block indicates that at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure.”)

The Property is characterized by an exceptional situation and condition as the result of a confluence of factors: (1) the Property is land-locked, and there is a building on the lot line adjacent to the Property's rear yard, with no alley access; (2) the Property is small, shallow, narrow, and irregularly-shaped; and (3) The Property's developable – and parkable - area is significantly restricted by a Building Restriction Line on Spring Street, which takes up a large percentage of the Property's footprint. The BRL runs along the longest portion of the Property, rather than along its frontage on 14th Street.

The confluence of the above mentioned factors create a unique situation in which the Applicant would be unnecessarily burdened by strict compliance with the Zoning Regulations, including the 3-space parking requirement, the rear yard setback, and the lot occupancy requirement. Regarding parking, the Property is completely land-locked, with no access via existing curb cut or alleys, and little likelihood of getting a curb cut. If it could get a curb cut, the space required to get a full parking space on the Property would severely limit development options for this site. In addition, the Building Restriction Line further limits the available land area for parking spaces.

Regarding the lot occupancy, the lot is small, shallow, and odd-shaped. Due to the shape and size of the lot, and the existence of the BRL, the proposed building has an extraordinarily high core factor (21%) making the two percent (2%) increase in lot occupancy critical in order to get viable units. In addition, one unit on the second floor needs to be handicap accessible which necessitates the need for a lift, also contributing to the high core factor and limiting the usable space.

Regarding the rear yard, the Property faces a side building wall on the rear property line, which would leave the rear yard as hollow dead space between two buildings, serving no purpose

as a set-back (the adjacent building wall is a side wall with no windows). Also, the area of the rear yard is needed to provide the entrance and foyer to the residential portion of the Building on the second floor, without sacrificing the already limited space available for the first floor retail use. Providing a rear yard in this location would severely limit the retail space, and the functionality of the above residential space. This burden is a good example of an “unnecessary” one, as a rear yard would serve no purpose here other than to be an open, inviting dark space between two buildings (a space that currently does not exist here with the existing buildings).

B. No Substantial Detriment to the Public Good.

Granting relief will allow the redevelopment of an underutilized site, and will provide a vital mixed-use property to be used for neighborhood serving retail and high-quality housing in a commercial corridor with plenty of public transportation alternatives. The relief requested is minor in nature and of little impact. The rear yard variance allows the construction of one floor of the building adjacent to what is essentially a side party wall for both the properties to the north and the east. The current building is already located in the area of the subject rear yard. The parking relief requested is for only three (3) spaces.¹ The existing building, in addition to being located in the rear yard, also does not provide parking spaces, so the proposed building will match the existing building in those two respects. The lot occupancy variance is minor and allows for a building of reasonable utility to be built on the Property.

C. No Substantial Impairment of the Intent, Purpose, and Integrity of the Zone Plan.

Granting an area variance from the strict requirements of 2101.1, 774.1, and 772.1 would result in no substantial impairment of the intent, purpose and integrity of the Zone Plan. The condition of this Property, with its location, shape, the impact of the BRL, and other conditions,

¹ Relief would be only one space under the newly-adopted Zoning Regulations as of September 6, 2016.

is extremely unique and will not lead to any unwanted precedents regarding either parking relief or rear yard or lot occupancy relief.

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 stylized font.

Martin P. Sullivan
Sullivan & Barros, LLP
February 10, 2016