

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

SK Asset Group, LLC BZA No. 19167

APPLICANT’S HEARING STATEMENT

March 8, 2015

This Hearing Statement (“Statement”) outlines the existing and proposed use of the property of application and the manner in which the application (“Application”) complies with the specific tests and burden of proof for the variances sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3103.2 for variance to allow the new construction of two-unit dwelling building or a flat as that term is defined, not in compliance with the minimum one (1) required parking space as set forth under § 2101.1 and the maximum allowed percentage of lot occupancy as set forth under § 403.2 for the underlying R-4 zone district within which the subject property is located.

SUMMARY OF APPLICATION

The applicant seeks the above area variance pursuant to 11 DCMR § 3103.2 under §§ 403.2, and 2101.1 to allow the construction a new residential building containing two (2) dwelling units in the R-4 zone not in compliance with the required parking and maximum allowed percentage of lot occupancy respectively.

The applicant also seeks special exception relief pursuant to § 3104.1 under § 400.25 to permit the construction of the building in excess of the thirty-five feet (35 ft.) to which

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the underlying R-4 zone district restricts the proposed building or structure as set forth under § 400.5 by proposing to construct to a height not to exceed approximately thirty eight feet or less (38 ft)

The proposed project complies with all other applicable provisions of the Zoning Regulations

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested variances under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (3) (2001), as further set forth in 11 DCMR § 3103.2

PROPERTY LOCATION AND PROJECT DESCRIPTION

The property is located within the boundaries of Old City II in the Mount Vernon Square neighborhood, and is within the boundaries of the Mount Vernon Square more Historic District.

Although DC Surveyor's records and lot dimensions computation confirm lot area of 1413.23 ft², and lot width of 13 feet, applicant notes that site survey depicts and confirms that the width of lot is restricted by encroaching party wall and part of an encroaching existing building on lots adjoining the subject property on its eastern and western flanks respectively. The effect is that for that portion of the subject property so encroached, the lot is narrower, and subtracts from density or bulk available for the proposed building.

The subject property fronts on M Street and is an interior lot by definition. Further the subject property is landlocked because it is inaccessible at its rear from any public right of way, be it a street or a public alley.

The surrounding neighborhood comprises of a mix of residential, commercial and municipal uses and the immediate vicinity are zoned medium density R-5-B districts to the west and north of subject property. To the east is zoned R-4, while to the south are residential areas zone R-5-B and commercial C-2-C zone district.

At a narrow 13 feet, the subject property is approximately 28% less than the minimum 18 feet required width for a conforming lot in its underlying R-4 zone district, although that condition predates the adoption of the current Zoning Regulations as of May 12, 1958.

The subject property at a lot area of 1413.23 ft² is approximately 21% less than the prescribed 1800 ft² minimum, but this condition also predates the adoption of the Zoning Regulations.

Notwithstanding the foregoing and absent the requested relief, the subject property may be redeveloped as a matter of right pursuant to § 401.1 because evidence of the existence of a building on subject property prior to May 12, 1958 exists (see Zoning Administrator email correspondence).

The applicant proposes to construct a building comprising a cellar and three stories above to be devoted to use and occupancy as a flat, as that term is defined. Each dwelling unit will occupy two floors.

The proposed building will occupy approximately sixty seven percent (67%) of the total lot area, including the rear stairs intended to permit access for the occupants of both dwelling units to the private exterior space in the rear and on the roof. If the rear stair is excluded, the building proper occupies 62% of the total lot area only, which would otherwise have been within the 2% flexibility authority of the Zoning Administrator, as set forth under § 407.1

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted fourteen days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of the area variance sought, as outlined below.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

The Subject Property at 13 feet in width and 1413.23 ft² in area is substantially narrow and neither complies with the minimum width nor the minimum lot area prescribed for its underlying R-4 zone district.

The subject property is further restricted in width for a portion of its depth by encroaching projections of a party wall and building footprint of improvements of structures on adjacent properties.

The Historic Preservation Office (HP), by letter dated March 25, 2014, determined that a design which would seek to incorporate a garage door on the front of the building will be wholly inconsistent with the architectural character of the historic district.

Consequently even in the unlikely event of approval of a curb cut by the Department of Transportation (DDOT) such approval would constitute an exercise in redundancy.

As aforementioned, the subject property is landlocked because the property does not abut any public right-of-way, such as a street or public alley, or via a private easement as such inaccessible by vehicle.

The encroaching party wall and part of an existing adjoining building further constrict the narrowness of lot and by extension reduces the buildable bulk otherwise available to the subject property.

The applicant therefore contends that the three foregoing factors affecting the subject property constitute an extraordinary or exceptional situation or condition of property, and forms the basis of compliance with the first burden of proof on uniqueness.

PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY

The unique physical characteristic of the subject property results in peculiar and practical difficulties upon the owner, because the strict application of the Zoning Regulations with respect to the provision of the required minimum one (1) parking space has always been foreclosed for lack of a public right of way access to the rear, and is currently prohibited by HPRB restriction of installation of a curb-cut from the front street, which in turn will permit access via a driveway. In any event, the lot width of 13 feet makes such a driveway and a front garage entrance unduly restrictive and incompatible with the prevailing conditions in the Historic District of location.

Likewise the request for percentage of lot occupancy relief is directly the result of the narrowness of lot given that lot shape forces building design that longer in depth that it can be in width. The lot does not currently have the opportunity to be wider that it has been since its creation, given that both adjacent properties are and have been improved with buildings which enjoy protection of location within the Mount Vernon Historic District.

SPECIAL EXCEPTION FOR HEIGHT UP TO FORTY FEET

The applicant asserts that the application complies with all applicable provisions for the granting of the requested special exception relief from the maximum height permitted as line itemized below. The proposed project is the new construction of a two-family dwelling or flat as defined and not a conversion to an apartment house, therefore properly seeks relief under the set forth provisions below

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;

The proposed project is an in-fill construction sandwiched between two row structures without fenestration or openings on adjoining party walls. Notwithstanding that the proposed building is proposed to be constructed to a height in excess of the existing heights of the two immediately adjoining properties, neither of these properties features any roof decks or any other form of roof assembly or habitable space. Therefore the proposed building will not have a substantially adverse effect on the use and enjoyment of any abutting property, in particular will have no effect whatsoever on the light and air available to any and all neighboring properties

2. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

As aforementioned, because the proposed structure is an infill development amongst a series of row dwellings with no openings in connecting party or line walls, the privacy of use and enjoyment of neighboring properties are not unduly compromised. The applicant notes that the two immediately adjoining owners are in support of or have no objection to the proposed project. Respective letters of support from each neighbor are filed in the case record. These two neighbors are the especially affected since they share common division walls with the proposed project

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;

Neither of the two adjacent properties has a chimney nor an external vent 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

The two adjacent properties do not feature a solar energy system.

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;

The design of the proposed Row Structure meets the design requirements of the Historic Preservation Review Board (HPRB), and has been adjudged to enhance the historic character of the street. As such, the project is deemed compatible in its Historic neighborhood and therefore a benefit to the neighboring properties and the general public

- (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**

The relief seeks only an additional three feet maximum, as measured to the upper side of the highest point of the roof and is new construction. Hence there are no existing defining architectural features of an existing building that is exposed to any adverse effect.

- (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.**

Applicant believes the submitted drawings and other documents demonstrate the compliance outlined above and intends to present all other additional representations in the course of the public hearing

SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE PLAN

The applicant seeks to construct a new residential two-family flat in the underlying R-4 zone district on a lot that has been and remains unimproved probably due to its odd shape and narrowness. The proposed use is allowed as a matter of right, but seeks the instant relief forced upon it by conditions of the lot which predates the adoption of the Zoning Regulations.

The Applicant proposes what is appropriately deemed an in-fill development of the last vacant lot of such size along a historic street wall of M Street in its square of location.

The infill closes the aforementioned gap and adds to the historic character of the neighborhood. The proposed design will not visually differ from the character, scale or

pattern of houses along the subject street frontage and will complete a gap in the historic street wall without significantly impeding light or air of any adjoining property.

The design of the proposed Row House meets the design requirements of the Historic Preservation Review Board (HPRB), enhancing the historic character of the street, and as such, is a benefit to the neighboring properties and the general public

Thus, the proposed construction will not be of substantial detriment to public good, and conforms to the intent and purpose of the R-4 Zoning District as espoused in the General provisions of that zone district.

Without at least requested parking relief, the subject property cannot be improved as matter of right and is likely to remain vacant for the foreseeable future.

The applicant therefore submits that for all the foregoing reasons, the reliefs sought may be granted without substantial detriment to the public good, and without substantial impairment of the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

WITNESS

1. Stuart McMeans
2. Kanyi Masembwa

CONCLUSION

The Applicant submits that the instant application complies with all conditions for the granting of the requested area variances and special exception as outlined above and as shall be further documented, and respectfully requests that the application be granted.