

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Prehearing Statement in Support of Area Variance Relief

1247 E Street, S.E.; Square 1019, Lot 43

I. Introduction.

This Statement is submitted on behalf of 1247 ESE, LLC (the “Applicant”), owner of the property and improvements located at 1247 E Street, S.E., Square 1019, Lot 43 (the “Property”), in the R-4 zone district.

The building on the Property (the “Building”), built in the 1890’s, was originally built as a mixed-use building with a commercial use on the north half of the first floor and residential use on the south part of the first floor and the upper floors. The Building also has a large cellar space, about half of which will be used to complement the first-floor commercial space, some of which is used for storage space for the residential tenants, and the remainder of which is currently empty, as a separate residential unit is not permitted there without the requested relief.

The residential use has existed for the life of the Building, and in the 4-unit configuration apparently since 1958, at least. The non-residential uses on the first floor have varied for the Building’s life. It has been used as a grocery store (its original intended use), a candy store, a rugby club (matter-of-right private club), and most recently as office space pursuant to a previous use variance approval. The Applicant, in a 2014 decision, was granted variance relief to operate a restaurant in the first floor and cellar space, subject to certain conditions.¹

Even after a large portion of the cellar level is allocated for the storage space for the four (4) existing residential units and to complement the first-floor restaurant use, a large portion of the lower level remains. The Applicant has completely renovated the other four (4) residential units and

¹ See BZA Order No. 18701. The Building’s first floor and cellar space had lost its legally nonconforming commercial status after the first floor was used for the matter-of-right rugby club.

the proposed restaurant space, and now requests area variance relief from 11 DCMR § 401.11 in order to provide a 691 square foot residential unit in the existing, unutilized lower level space.

Pursuant to § 401.11, an existing apartment house may not be expanded so as to increase the number of units unless there are nine hundred square feet (900 sq ft.) of lot area for each dwelling unit, both existing and new. As the property has 3,514 square feet of lot area, area variance relief is required in order to provide a fifth (5th) residential unit. Such fifth (5th) residential unit will have existing code compliant means of access and egress. No other changes are contemplated other than the interior renovation of the subject cellar space.

II. Description of the Property, the Surrounding Area, and the Proposed Dwelling.

The Property is located at 1247 E Street, SE (Square 1019, Lot 43) and is zoned R-4. The lot is a large, L-shaped lot located on the southwest corner of the intersection of 13th and E Streets, S.E.; one block north of Pennsylvania Avenue. The Property is a single lot of record with 3,514 square feet of land area. It is improved with a large brick two-story row structure with a cellar (the "Building"). The Building was built around 1898, according to available records, and was originally constructed as a mixed-use building, with commercial space on parts of the first floor and cellar, and residential space on part of the first floor and the entire second floor. It has been used continuously in this manner since the original construction, with several different nonresidential uses in the first floor commercial space (the "Commercial Space").

On February 4, 2014, the Applicant was granted use variance relief to operate a restaurant on the north portion of the Building's first floor. The Applicant has fully renovated the entire Building, although a tenant has not yet been secured for the first floor space.

III. Variance Relief and the 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) practical difficulty from strict application of the Zoning Regulations; and (3) no substantial detriment 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 the D.C. Court of Appeals has noted, the variance procedure “is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

As set forth below, the Applicant meets the three-part test for the requested variance from minimum lot area.

A. The Property is Uniquely Affected by an Exceptional Situation/Condition and Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Applicant.

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.” A building’s configuration as a reflection of its historical uses on the ground floor can create an exceptional condition. *See BZA Application No. 18122 of Arthur G. Carr*. In that case, the BZA found that, along with its large size and configuration, the historical usage of nonresidential uses on the ground floor and flats on the upper two floors established an exceptional condition.

This Property is characterized by just such an exceptional condition, among others. Specifically, the unique conditions include: (1) its history and continual use as a mixed-use building with four (4)

residential units and commercial space on the first floor and cellar floor; (2) the exceptional size of the lower level; and (3) the large building footprint.

Prior to the Applicant's purchase in 2013, the most recent use of the Commercial Space was a non-profit office, which operated by virtue of a use variance granted in BZA Order 15694 in 1992. The non-profit office utilized the first floor and part of the cellar space as office space. Other previous uses in the Commercial Space included a private rugby club, a confectionary store, and a grocery store.

The cellar is extremely large and the building also has a large footprint. A portion of the cellar is being used for residential tenant storage purposes, but the majority of that space will remain unutilized without variance relief. Although the previous uses of the Building required such a large space, the current commercial use and residential storage do not fill the cellar, resulting in an idle, wasted space.²

A strict application of the minimum lot area requirement in this case would result in a practical difficulty to the Applicant. Absent zoning relief, this large cellar space will remain vacant or underutilized. This unique conditions resulting in the idle space also creates a security concern, as the cellar is accessible from the street through a separate entrance. This space could conceivably be entered illegally and occupied if the space does not appear to be utilized.

B. No Substantial Detriment to the Public Good

Granting an area variance from the strict requirements of 401.3 would result in no substantial detriment to the public good. Recent BZA approval of townhomes and condominiums on the block of 13th street that sits between D and E streets indicates the need for revitalization and additional habitable space in the Capitol Hill/Southeast area. The new dwellings will sit catty-corner

² As noted above, the variance procedure "is designed to provide relief from the strict letter or regulations, protect zoning legislation from constitutional attack, alleviate an unjust invasion of property rights and prevent usable land from remaining idle." *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541, (D.C. 1972)(emphasis added).

to the Property. The Proposed Addition will require no changes to the exterior of the building, as the fifth unit already has an existing means of access and egress. The Applicant is providing four (4) parking spaces. Additionally, the Planning and Zoning Committee has recommended approval for the project to ANC 6B. The Applicant anticipates approval by ANC 6B at the Full ANC meeting on February 9, 2016.

C. Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

Granting an area variance from the strict requirements of 401.3 would result in no substantial impairment to the intent, purpose and integrity of the Zone Plan. As discussed above, the Building is very unique for the R-4 Zone. Its history contributes to its uniqueness, as it has never been used as a one or two-unit dwelling, and therefore, granting relief will not impair the integrity of the Zone Plan. Additionally, as the Building was originally built as a mixed-use apartment house and never used as a one or two – unit dwelling, this is therefore not considered a conversion. The request is for area relief only and amounts to an addition of just one unit in a four-unit mixed-use space.

IV. Conclusion.

For the reasons stated above, this application meets the requirements for area variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,



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