

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

**Application for 1605 Madison Street, N.W.
Square 2722W, Lot 0001**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Mr. George Simpson (the “Applicant”), owner of property located at 1605 Madison Street, N.W. (Square 2722W, Lot 1) (the “Site”), in support of its application pursuant to 11 DCMR § 3103.2 for area variances from (i) 11 DCMR § 2001.3 to permit the enlargement of a nonconforming single-family structure that already exceeds the allowable lot occupancy percentage requirements and already has a substandard side yard width, and (ii) 11 DCMR § 405.8 to permit a third story addition to the existing residence that does not conform to the minimum side yard width requirements, in the SSH-1/R-1-B District at the Site.

Pursuant to 11 DCMR § 3113.8, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 14 days prior to the public hearing for the present application. In this statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board’s approval of the requested special exception and variance relief. Following herein, as required by the Board’s application process, is a preliminary statement indicating how the Applicant meets the burden of proof.

I. BACKGROUND

The Site consists of Lot 1 in Square 2722W, and has a total land area of approximately 4,300 square feet. The Site is near the northwest intersection of Madison Street and 16th Street, NW, in the 16th Street Heights neighborhood. The Site is presently improved with a detached, two-story single-family dwelling, constructed circa 1927. The Site is located in the R-1-B District, within the Sixteenth Street Heights (SSH-1) Overlay District, and within the boundaries of Advisory Neighborhood Commission (“ANC”) 4A-07. The Site is located on the north side of Madison Street, and it is bounded by a public alley to the north and east, and a detached, single-family dwelling to the west.

II. PROJECT DESCRIPTION

As shown on the architectural drawings included in this application, the Applicant proposes to renovate the existing house by adding a third story addition. The addition will encompass a fourth bedroom, a sitting area, full bathroom, and closet space. There will also be a small balcony at the third floor facing the rear yard. On the first floor, the Applicant will install a wood deck and stair that leads to the rear yard.

The existing structure has a height of 30.9 feet in two stories. The Applicant proposes to increase the height of the residence to 38’-1” with the construction of the proposed third story addition. The proposed height complies with the Zoning Regulations, which permits a maximum height of 40 feet in the R-1-B District.

The Site is presently non-conforming with respect to lot occupancy (approximately 45% existing where 40% is permitted) and side yard width (3.2-foot side yard width is provided to the east and 7.9-foot side yard width is provided to the west, where a 5 foot side yard width is required pursuant to 405.8). The Applicant proposes to increase the non-conforming lot occupancy to approximately 48% and extend the non-conforming side yard width on the west side of the Property at the third level of the residence. The Site has a smaller lot area and lot width than what is permitted under the current Zoning Regulations, but those non-conforming elements are not impacted by the proposed third story addition.

III. VARIANCE RELIEF

The Applicant requests area variances from 11 DCMR §§ 2001.3 and 405.8 to permit (i) the enlargement of a nonconforming single family structure that already exceeds the allowable lot occupancy percentage requirements, and (ii) a third story addition to an existing building that does not conform to the minimum side yard width requirements.

1. Section 2001.3

Pursuant to 11 DCMR § 2001.3 “[e]nlargements or additions may be made to [a nonconforming structure] provided:

- a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and
- b) The addition or enlargement itself shall:
 1. Conform to use and structure requirements; and
 2. Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.”

In this case, the existing nonconforming structure does not conform to the percentage of lot occupancy requirements (11 DCMR § 2001.13 is inapplicable), and the proposed addition will increase the existing nonconforming lot occupancy percentage. It will also extend the existing non-conforming side yard on the west side of the Site by extending it to the third story addition.

2. Section 405.8

Pursuant to 11 DCMR § 405.8, “[i]n the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).” In this case, the existing nonconforming side yard is 3.2 feet. With the construction of the third story addition, the non-conforming side yard on the west side of the Site will be extended.

3. Standard for Variance Relief

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 condition or situation;
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). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

A. Exceptional Condition or Situation

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. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). The unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990).

In this case, the Site is improved with an existing detached single-family house that was constructed circa 1927, prior to the implementation of the Zoning Regulations, and is nonconforming to the current regulations as to lot occupancy and side yard. As a result, any increase in height to the building on top of the existing floorplate, which would occur with the construction of the third-story addition, results in an increase to the existing nonconforming side yard width at the third level. Moreover, any slight enlargement of the house's footprint will necessarily result in an increase to the nonconforming lot occupancy. The lot occupancy will be increased by a mere 89.9 square feet by enlarging the ground floor deck at the rear of the house. The result necessitates relief from 11 DCMR §§ 2001.3 and 405.8.

B. Resulting Practical Difficulty

The Applicant will demonstrate that the strict interpretation of 11 DCMR §§ 2001.3 and 405.8 will result in a practical difficulty. In order to comply with the 40% lot occupancy requirements and still construct the proposed deck, the Applicant would have to demolish approximately 346.78 square feet of the existing structure (17.5% of the existing lot occupancy).

in order to reduce the Site's lot occupancy down to 37.9%, in order to then increase it back to 40% by constructing the deck. Demolishing part of the existing house would result in a practical difficulty to the applicant since it would significantly impact the structure of the existing house and make the proposed renovations significantly more difficult to construct.

In order to comply with side yard requirements of 11 DCMR § 405.8, the Applicant would have to demolish approximately 1.8 feet in width along the entire east side of the existing house in order to provide a 5-foot side yard, which is required by § 405.8. Removing this portion of the house would significantly interfere with its layout and the functioning of the existing utilities. For example, portions of the existing kitchen, the bathroom in the cellar, and the bedrooms on the second floor would be cut out of the building. It would also create an imbalance and asymmetrical design that is inconsistent with other surrounding properties. Constructing any third floor addition to the house on top of the existing floor plate would necessarily result in a non-compliance with 11 DCMR § 405.8, since the width of the existing side yard is already less than the minimum required threshold width of 5 feet.

C. No Harm to Public Good or Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. The proposed addition will not result in any adverse impacts on the light and air or privacy to adjacent structures. Moreover, the third story addition to the structure is consistent with the character of the surrounding single-family neighborhood.