

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

**APPLICATION OF
MR. DAVID G. HELFRICH
HEARING DATE: MAY 10, 2016**

**BZA APPLICATION NO. 19255
SQUARE 110, LOT 819
ANC 2B**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Mr. David G. Helfrich (the "Applicant"), owner of property located at 1735 Fraser Court, N.W. (Square 110, Lot 819) (the "Site"), in support of his application pursuant to 11 DCMR § 3103.2 for an area variance from 11 DCMR § 2001.3 to permit a 207 square foot (0.08 FAR) enlargement of a nonconforming single-family dwelling that exceeds the allowable lot occupancy percentage and floor area ratio ("FAR") requirements.

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception relief requested herein pursuant to 11 DCMR § 3103.2

**III.
BACKGROUND**

A. Description of the Site and Surrounding Area

The Site has a total land area of approximately 2,443 square feet. The Site abuts a 30 foot wide alley named Fraser Court and is presently improved with a single-family dwelling, consisting of a garage level-ground floor and two floors of living quarters above. As shown on the Zoning Map attached hereto as Exhibit A, the Site is located in the DC/R-5-B District, and within the boundaries of the Dupont Circle Historic District and Advisory Neighborhood

Commission (“ANC”) 2B. The Site is bounded by public alleys to the north and west, a multifamily dwelling to the east, and a surface parking lot to the south. In addition to its inclusion within the historic district, the Site is subject to a conservation easement to protect the façade of the building. Prior to its conversion to a single-family dwelling, the building was used as the carriage house for the Fraser Mansion.

Square 110 is zoned DC/R-5-B, except for one lot on the southwest corner of the Square, which is zoned DC/R-5-D and is occupied by the Fraser Mansion. The Fraser Mansion is currently used as offices for the Church of Scientology. There are also numerous multi-family apartment buildings located within the Square, all of which are taller and larger than the building at the Site.

C. Project Description

As shown on the architectural drawings (the “Plans”) attached hereto as Exhibit B, the applicant proposes to marginally extend the second floor 7.6 feet over the existing garage level-ground floor, adding 170 square feet of gross floor area, to allow for the construction of a third bedroom. The Applicant also proposes to add 37 square feet of gross floor area on the third floor for an elevator enclosure that will be screened behind the existing façade, and will not extend above the level of the existing roof. All of the proposed renovations will be located within the existing footprint of the building and will not increase the lot occupancy.

The Site is presently nonconforming with respect to lot occupancy (approximately 97% existing where 60% is permitted), height (approximately 32.2 feet where 30 feet is permitted), and FAR (approximately 2.38 existing where 1.8 is permitted). The renovation will not increase the nonconforming lot occupancy or height. The two additions, totaling 207 square feet, will add 0.08 FAR to the building.

IV.
THE APPLICANT MEETS THE TEST FOR
VARIANCE RELIEF

The Applicant requests an area variance from 11 DCMR § 2001.3 to permit the enlargement (by 0.08 FAR) of a nonconforming single-family dwelling that currently exceeds the allowable lot occupancy and FAR.

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, and the proposed addition will increase the existing nonconforming FAR.

2. The Applicant Meets The Burden Of Proof For The Requested Area Variance

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 situation or condition;
- (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 Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). The Board has “flexibility to consider a number of factors including...the severity of the variance requested” and if the variance is *de minimis* in nature “a correspondingly lesser burden of proof rests on the” Applicant. See *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1171 (D.C. 1990). As discussed below, the Applicant meets all three prongs of the area variance test.

A. The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

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 a large single-family dwelling that was built in 1892 as two separate carriage houses, prior to the implementation of the Zoning Regulations. A substantial portion of the garage level-ground floor is occupied by two existing garages, which were originally used for carriage storage. The building was combined into one single-family dwelling by a previous owner, and for approximately thirty years the dwelling has been occupied by a single family. The building is nonconforming as to lot occupancy, height, and FAR. Even though the living quarters levels (floors two and three), measure 3,362 square feet, there are only two bedrooms, one on the second floor, and one on the third floor. An additional room on the

third floor could theoretically be usable as a bedroom; however that room does not have Building Code compliant window openings, and therefore cannot be used as a bedroom.

The Site is located within the Dupont Circle Historic District and is a contributing building to the character of the historic district. On September 30, 2003 Anthony P. Browne, a previous owner of the Site, granted the L'Enfant Trust (the "Trust") a conservation easement in perpetuity. The easement prohibits the alteration of the façade of the building at the Site without consent of the Trust. The Trust has consented to the proposed additions, pending receipt of permit drawings. As shown in the letter attached hereto as Exhibit C, the Historic Preservation Office has also reviewed the proposal, and has given their consent to the proposed additions.

B. Strict Application Would Result in a Practical Difficulty to the Owner

The strict application of 11 DCMR § 2001.3 would result in a practical difficulty since there is no way to add an additional bedroom and add an elevator without increasing the existing nonconforming FAR. The architects have devised a renovation plan that maximizes the efficiency of space utilization within the existing building, but the proposed renovations are not possible without a modest increase in square footage.

A dwelling of this size would typically have three or more bedrooms. The only other theoretical location for a third bedroom within the existing living quarters levels is the room on the third floor labeled on the plans as "study", but the window for that room is part of the mansard roof on the building facade, and does not meet the current Building Code requirements for the size of window openings. The Trust and the HPRB staff have both indicated that they will grant consent to extend the side wall on the second floor to create a third bedroom, as proposed in this application, but they will not consent to the enlargement of window openings on the facade. Both the Trust and HPRB staff differentiate between a designed principal façade with

window openings, and the extension of a side wall with the replication of existing windows on the new side wall.

Without the Trust's and the HPRB staff's consent the principal façade cannot be altered to enlarge the windows in order to convert the study on the third floor to a third bedroom. The 2012 ICC Residential Code requires "[b]asements, habitable attics and every sleeping room shall have at least one operable emergency escape and rescue opening." 2012 ICC Residential Code § R310.1. All emergency escape and rescue openings shall have a minimum net clear opening of 5.7 square feet. 2012 ICC Residential Code § R310.1.1. Since the existing third floor windows only have a maximum net clear opening of approximately 2.5 square feet, the study on the third floor cannot be used as a bedroom. In addition to the Residential Code requirements, for the principal facades of contributing buildings in an historic district "alteration of window openings...is strongly discouraged" by the HPRB. 10-C DCMR §2308.2(e). As result, the addition to the rear of the building is more appropriate than changing the principal façade.

Emergency egress also cannot be accomplished by providing direct access from the study to the third floor garden, because there is an essential hallway between the study and the garden. The hallway cannot be removed because it is the only hallway from the master bedroom that provides access to the building code compliant stairwell. Even if the hallway could be eliminated, in order for there to be emergency egress compliant with the building code, the study door would have to be removed thus extinguishing that room's usefulness as a bedroom.

The third bedroom also cannot be located on the garage level-ground floor. The existing garage areas occupy a substantial portion of that level, and the remainder of the garage level-ground floor is used as a media room and for storage. The windows in the media room and storage room have 6 foot high sills, which exceed the code required maximum window sill

height for emergency egress for a bedroom. As a result, neither the media room nor the storage room are able to be used as a bedroom. The storage room on the garage level-ground floor is also not a suitable location for a bedroom since it has three ground floor windows facing the alleys, and that room is only accessible via the two existing garages

Because a bedroom cannot be placed on the garage level-ground floor or third floor, the only logical place for an additional bedroom is on the second floor. As a result, the rear of the building at the second floor level must be marginally extended by 7.6 feet in depth and 170 square feet in area to accommodate the additional bedroom.

The addition of the elevator to the existing building is an ordinary repair, alteration or modernization to a nonconforming structure. The top of the elevator enclosure will not increase the height of the existing building and will not exceed the height of the roofline of the existing mansard roof. The elevator will be located in an area of the building that allows for the smallest encroachment on the functional space on the garage level-ground floor and the second and third floor living quarters levels. The elevator location preserves the existing parking spaces and storage area on the garage level-ground floor. If the elevator was located in another area of the building, it would cut through existing living space on both the second and third floors. Any other location would either reduce or eliminate portions of the main living areas. As shown on the Plans, the proposed elevator enclosure cannot be located within the existing building envelope on the third floor, and the third floor must be slightly expanded to accommodate this modernization.

The building is also already nonconforming with respect to the lot occupancy and FAR requirements and a significant portion of the existing historic building would have to be demolished in order to meet the requirements of 11 DCMR § 2001.3.

C. **No Substantial Detriment to the Public Good or Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan**

The requested relief is *de minimis* and thus would not cause substantial detriment to the public good and would not substantially impair the intent, purpose or integrity of the zone plan. All of the proposed renovation would increase the FAR by 0.08 and would be located within the existing footprint of the building. The proposed renovations would not increase the lot occupancy or the height of the building. As stated above, the Board has flexibility to consider the severity of the requested variance and if the variance is *de minimis* in nature a correspondingly lesser burden of proof rests on the Applicant. *See Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1171 (D.C. 1990).

The proposed 7.6 foot second story extension will not result in any adverse impacts on the light and air or privacy of adjacent structures since it is located in the rear of the building, and will sit on top of the existing garage level-ground floor. It will not increase the encroachment upon any adjacent neighbors. In addition, the proposed elevator enclosure at the third floor will be screened behind the existing façade, will not be visible from the alley, and will not increase the height of the existing building or the roofline of the existing mansard roof. The Site is also surrounded on all sides by multifamily apartment buildings, all of which are of greater height than the building at the Site. All new brick will match as closely as possible to the historic brick on the existing building. As a result, the proposed renovations respect the existing character of the neighborhood. As shown in the letters attached hereto as Exhibit D, the neighboring property owners also support the proposed renovations. The Board has previously granted similar variance relief to allow the enlargement of a nonconforming structure in the R-5-B District. *See e.g.*, BZA Order Nos. 18824, 18593, 18523, 18487, 17785, 17630, 17336, 17307, 17177, 17199, and 16617 attached as Exhibit E.

V.
COMMUNITY SUPPORT

The Applicant has worked with the community and is pleased to have support for the project. On April 13, 2016, at its regularly scheduled, duly noticed ANC 2B meeting, with a quorum of commissioners present, ANC 2B voted 7-0-0 to support the application.

VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

- Exhibit A: A Portion of the Zoning Map Showing the Site
- Exhibit B: Updated Architectural Plans for the Project
- Exhibit C: HPRB Concept Approval Letter
- Exhibit D: Neighbor Letters in Support
- Exhibit E: BZA Order Granting Similar Relief
- Exhibit F: Outlines of Witness Testimony

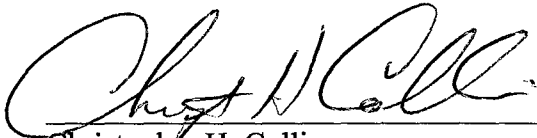
VII.
WITNESSES

- A. David Helfrich, on behalf of the Applicant
- B. Timothy L. Clites, Clites Architects, PC, Architect for the Project

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance approval under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

By: 
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