

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

**Application for 1735 Fraser Court, N.W.
Square 110, Lot 819**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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 enlargement of a nonconforming single-family dwelling that exceeds the allowable lot occupancy percentage and floor area ratio ("FAR") requirements.

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 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 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 above. 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 an office for the Church of Scientology. There are also numerous multi-family apartment buildings located within the Square, all of which are taller than the building at the Site.

II. PROJECT DESCRIPTION

As shown on the architectural drawings included in this application, 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.

III. 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). 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. 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 building is a large dwelling, there are only two bedrooms on the living quarters levels (floors two and three). An additional room on the third floor would otherwise be usable as a bedroom; however the 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. A substantial portion of the garage level-ground floor is occupied by two existing garages, which were originally used for carriage storage.

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 informally consented to the proposed additions, pending receipt of permit drawings. The Historic Preservation Office has also informally reviewed the proposal, and has given their verbal consent. Historic Preservation Review Board (the "HPRB") approval is expected prior to the date of the BZA hearing on this matter.

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 construct an additional habitable bedroom and add an elevator without increasing the existing nonconformity. 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.

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 “office”, but the window for that room is part of the mansard roof, 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 alteration of the window opening in the mansard roof. Both agencies differentiate between a designed principal façade, with window openings in the mansard roof, 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 on the principal façade to convert the office on the third floor to a habitable 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 office on the third floor cannot be used as a habitable 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 office to the third floor garden, because there is an essential hallway between the office 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. In addition, in order for there to be emergency egress compliant with the building code, the office door would have to be removed thus extinguishing the office’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 have 6 foot sills, which exceeds the code required maximum height for emergency egress. As a result, the media room is not 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 is only accessible via the two existing garages. If the storage room was converted into a bedroom, then an occupant would have to traverse through either garage for ingress and egress. Since 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 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. 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 living quarters levels. The elevator location preserves the existing parking spaces on the garage level-ground floor. If the elevator was located in another area of the building, it would cut through the 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 a result, 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 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(b)(2).

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

The requested relief would not cause substantial detriment to the public good and would not substantially impair the intent, purpose or integrity of the zone plan. The proposed addition will not result in any adverse impacts on the light and air or privacy of adjacent structures since the 7.6 foot second story addition 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 elevator enclosure at the third floor will be screened behind the existing façade and will not be visible from adjacent properties. The proposed elevator enclosure will not be visible from the alley and will not increase the height of the existing building. 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. As a result, the proposed renovations respect the existing character of the neighborhood.

Based on the foregoing, the Applicant has demonstrated that it meets the test for variance relief under section 3103.2 of the Zoning Regulations.