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Attorneys at Law

3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814

Tel. (301) 986-1300
www.lerchearly.com

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

**Burden of Proof Statement
Request for Area Variance Approval
1716 Hobart Street, NW**

On behalf of Kerry Reichs (the "Applicant"), the owner of the property located at 1716 Hobart Street, N.W. (Square 2588, Lot 0015) (the "Property"), we are requesting approval of an area variance to allow for the construction of a new third story addition to an existing one-family row dwelling. The Applicant is seeking area variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding nonconforming structures (§2001.3).

I. Board's Jurisdiction

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance relief requested herein, pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR §3103.2).

II. Background

The Property is located on the south side of Hobart Street between Irving Street and Mount Pleasant Street, NW, in the R-4 zoning district. The Property has a net lot area of approximately 1,760 square feet and is currently improved with an approximately 2,280 square foot two-story single family row dwelling (the "Residence") that was built around 1917.

The Residence is located within a residential neighborhood and is within the Mount Pleasant Historic District. The Property is bounded on the south by a 15 foot wide alley, to the north by Hobart Street, and to the east and west by single-family row dwellings.

III. Requested Relief

Section 2001.3 allows for enlargements or additions to nonconforming structures, so long as the structure conforms to lot occupancy requirements. Section 403 of the Zoning Regulations limits the maximum percentage of lot occupancy for row dwellings in the R-4 district to 60 percent. The Property currently has a lot occupancy of 74 percent. Accordingly, because the Property is *currently* non-conforming with respect to lot occupancy, the Applicant is seeking variance relief from Section 2001.3 to allow for

construction of a third-story addition to a non-conforming structure. As will be discussed in detail below, the proposed addition conforms to all relevant zoning regulations and will not increase the lot occupancy or exacerbate any existing non-conformities.

IV. Proposed Development

To accommodate the demands of a growing family, the Applicant is proposing several modifications that are intended to modernize and improve the efficiencies of the existing structure. The Applicant is proposing to increase the three bedroom, three bathroom Residence (including one bedroom and one bathroom in the basement, which will remain) to a four bedroom, three and a half bathroom home to accommodate her growing family (which now includes herself and her two children), and future live-in home care provider. Along with interior renovations, the existing two-story rear addition will be demolished and reconstructed to allow for the construction of a partial third-story addition above. The two-story addition was originally a porch that was subsequently enclosed. As such, it does not meet current code standards and is not structurally sized to support the proposed partial third-story addition. The two-story addition will be reconstructed in the exact same location and the building footprint will not change. The proposed third-story addition will increase the gross floor area of the structure by approximately 500 square feet, resulting in a total gross floor area of approximately 2,780 square feet. Only because of the existing non-conforming lot occupancy is variance relief required under section 2001.3, to construct this otherwise permitted addition.

The proposed addition has been designed to preserve the historical massing and characteristics of the neighborhood. The partial third-story addition has been setback 12 feet from the front of the Residence and the roof has a gentle slope from front to rear, to ensure that the addition will not be visible from Hobart Street. Additionally, the roof addition was setback four feet from the rear façade to ensure compatibility with the adjacent properties. As mentioned above, the two-story addition will not encroach further into the rear yard than the existing structure, preserving the relationship of the rear elevations along the alley. The architectural design is in keeping with the character of the surrounding area and complements the existing Residence.

Because the proposed addition will not result in any changes to the existing building footprint, the lot occupancy will remain unchanged by the proposed construction. Additionally, the proposed addition will conform to all relevant regulations of the R-4 District. After completion of the proposed construction, the Residence will have a sloped roof that will measure 31'-5.5" at its highest point, which is below the 35 foot height limit allowed in the R-4 Zone. The side and rear yards will remain unchanged.

V. Historic Preservation Review Board

The proposed development was considered by the Historic Preservation Review Board ("HPRB") at its regularly scheduled meeting on December 17, 2015. HPRB voted to approve the project concept, subject to conditions. In response to comments received from HPRB, the Applicant has made several revisions to the project design. The final building design addresses and complies with each of the conditions specified by HPRB: (1) the roof addition and all mechanical equipment, chimneys, flues and vents will not be visible from Hobart Street, as confirmed by the stick test conducted by the Applicant; (2) the roof has been lowered; (3) the design of the rear façade has been simplified by making the proposed bay window symmetrical, in keeping with the façades throughout Mt. Pleasant; (4) the main rear wall plane will not project past the rear walls of the adjacent row dwellings; (5) the partial third-story addition will be setback a minimum of four feet from the rear walls of 1714 and 1718 Hobart Street; and (6) the siding and rails will be constructed of painted lap siding and painted wood and steel railings, to be compatible with the existing house and surrounding neighborhood.

VI. Nature of Relief Sought and Standard of Review

The Applicant is seeking variance relief from the requirements regarding nonconforming structures (§2001.3). Section 3103.2 authorizes the Board to grant an area variance where the following three conditions are satisfied:

1. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
2. The strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; 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, 941 (D.C. 1987).

As discussed in detail in below, the Applicant satisfies all three prongs of the area variance test.

- A. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition.

The phrase "other extraordinary or exceptional situation or condition" applies to both the characteristics of land and the existence of improvements on the land. *See Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C.

1974). The "extraordinary or exceptional situation or condition" may also arise from a confluence of factors that affect a single property. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Property is affected by exceptional situations and conditions arising from a confluence of factors, including: (1) the existing non-conformities of the Property; (2) the Property's location in a historic district; (3) the exceptional topography of the site; and (4) presence of large trees, both in the rear yard and along Hobart Street.

1. Existing Non-Conformities

As mentioned above, the Property is currently non-conforming with respect to lot occupancy – the Property has a lot occupancy of 74 percent, which exceeds the maximum lot occupancy for row dwellings in the R-4 Zoning District by 14 percent. The Property also has a substandard lot area of 1,760 square feet, which is below the 1,800 square feet minimum specified in Section 401.3 of the Zoning Regulations for row dwellings in the R-4 District. The substandard lot area contributes to the non-conforming lot occupancy. As a result of these non-conformities, the Property's buildable area is constrained. Significantly, because the lot is non-conforming with respect to lot occupancy, the Applicant cannot expand the existing structure without seeking relief from the Board.

2. Location in a Historic District

The Property is located within the Mount Pleasant Historic District (the "District"). The location within the District places substantial constraints on the Applicant's ability to modify and expand the existing structure. In order to maintain the historic character of the District, the Applicant must set the third-story addition back approximately 12 feet from the front façade, to ensure the roof addition is not visible from Hobart Street.

3. Exceptional Topography

The Property is affected by steep slopes. The Property slopes from front to rear – the alley grade is approximately 15 feet below the grade of the main living area. As a result of the extreme topography of the site, there is an existing garage located off of the alley that sits beneath an elevated rear deck to provide usable area within the rear yard. If the Property did not have such an extreme slope, these improvements would not be necessary and as a result, the lot occupancy would be lower.

4. Existing Evergreen Tree

A large evergreen tree is located in the rear yard of the Property. Additionally, there is a large street tree located along Hobart Street in front of the Residence. Given the large size and year-round foliage, the trees cast substantial shadows on the Property. As a result, the third story addition is necessary in order to maximize light and air for the Residence.

B. The strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the Applicant.

Strict application of the zoning regulations regarding nonconforming structures (§2001.3) will result in practical difficulties to the Applicant by effectively prohibiting any expansion or addition (vertical or horizontal) to the existing non-conforming structure.

Although "practical difficulties" is not defined, the District of Columbia Court of Appeals has held that, as a general standard, an applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

Pursuant to Section 2001.3, enlargements or additions to nonconforming structures are permitted, so long as the structure conforms to lot occupancy requirements. Because the existing lot is non-conforming with respect to lot occupancy, any addition or enlargement of the existing structure will require variance relief from the Board or would require the Applicant to wastefully demolish a significant portion of the existing structure to bring it into conformance with the lot occupancy requirement. The Applicant desires to construct a vertical addition, which is necessary to accommodate the needs of her growing family while allowing them to continue to reside within the District and this neighborhood. Additionally, the Applicant is seeking to maximize the light within the residence, which is limited by the presence of a large evergreen tree located at the rear of the Property and large street tree along Hobart Street. The addition will not affect the existing non-conformities on the Property. However, without relief from the Board, in order to get adequate natural light within the residence, the Applicant would be required to demolish 732 square feet (or 32 percent) of the already too-small structure¹ in order to construct the partial third-story addition.

The Property's location within a historic district further hinders the Applicant's ability to bring the lot into conformance with the lot occupancy requirements. The Applicant is proposing to add a partial third-story addition to the existing Residence, which will be setback 12 feet from the front facade to maintain the historic character of the District. The roof addition has also been setback four feet from the rear façade, as requested by HPRB, in order to ensure compatibility with the adjacent properties. As a result of accommodating these design modifications, the Applicant is only able to construct a *partial* third-story addition. If the Applicant were permitted to add a full third-story to the Residence, it might be possible to pull the existing two-story addition back to decrease the lot occupancy. However, without the ability to make-up the square

¹ 732 square feet is the amount of gross floor area that would be required to be demolished to bring the Property into conformance with the lot occupancy requirement (*i.e.* 60 percent).

footage that would be lost by this modification, it is not practically feasible for the Applicant to lower the existing lot occupancy on the Property.

As illustrated above, the strict application of the zoning regulations will effectively prohibit any horizontal or vertical expansion or addition to the existing non-conforming structure and will result in practical difficulties to the Applicant.

- C. The variance will not cause substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

The Applicant proposes a modest vertical addition. The proposed development will not adversely affect the character of the surrounding neighborhood. The proposed addition will be consistent with the existing architecture of the Residence and incorporates building materials such as masonry and painted lap siding and trim, which will compliment the surrounding neighborhood.

After completion of the proposed addition, the Residence will continue to be in conformance with the scale of the surrounding properties. The proposed partial third-story addition will not be visible from Hobart Street, as a result of the 12 foot front setback. As a result, the Residence will continue to read as a two-story structure from Hobart Street.

The Residence is setback approximately 90 feet from the rear of the confronting row dwelling located to the south, across the alley. The rear setback and 15 foot wide alley reduces the perceived increase in height and bulk of the house from the alley and the properties to the south of the Residence. The existing tree in the rear yard will provide an additional buffer and further mitigate the visual impact of the addition.

The proposed addition is consistent with the general intent and purpose of the Zoning Regulations and Zoning Map. The R-4 Zone is intended as a zone for areas "developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families." (§330.1). The proposed third-story addition will not change the nature of the existing Residence on the Property. The addition will simply allow for interior space that is better suited to the needs of the Applicant. Moreover, the footprint of the existing building will remain the same.

The proposed addition will not affect the use of the neighboring properties. As mentioned above, the main rear wall plane will not project past the rear facades of the adjacent row dwellings. Additionally, because of the orientation of the house and the four foot rear setback of the third-story addition, the proposed addition will not have any adverse impact on the light and air of neighboring properties. The windows on the third story addition have been strategically placed to ensure that the addition will not impact the privacy of the adjacent property owners. In order to afford total privacy to the

adjacent neighbors, no windows will overlook the adjacent properties – all windows will face the street and alley. Finally, current cover from a large evergreen tree cloaks windows on every level, including the proposed third-floor addition.

As a result, the requested variance relief can be granted by the Board without detriment to the public good or impairing the intent, general purpose or integrity of the Zoning Regulations and Map.

VII. Conclusion

The requested relief satisfies the applicable standards for variance relief under Section 3103.2. For the reasons set forth above, we respectfully request that the Board of Zoning Adjustment grant the requested area variance relief.

Very truly yours,
LERCH, EARLY & BREWER, CHTD.



Patricia Harris



Elizabeth C. Rogers