

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement in Support of Variance Relief
74 R Street ,N.W.; Square 3101 Lot 57

I. Introduction.

This Statement is submitted on behalf of 74 R Street NW LLC (the “Applicant”), owner of the property and improvements located at 74 R Street, N.W., Square 3101, Lot 57 (the “Property”). The Property, located in the RF-1 zone district, is improved with a single family dwelling (the “Building”). The Applicant is requesting lot occupancy relief to increase the lot occupancy by 4.17% (existing lot occupancy is 66%) in order to construct a third-story addition on top of the existing footprint and a three-story addition (“Addition”) at the rear of the Property and convert the Property to a flat. As discussed more fully below, the Application meets the test for variance relief from the lot occupancy requirements of 11-E DCMR § 304.1 and from the prohibition against enlarging nonconforming structures of 11-C DCMR § 202.2.

A. Description of the Property and Surrounding Area

The Property is located in the RF-1 Zone District and is a rectangular Property measuring 1,500 square feet. The Property is improved with a single family dwelling. The Applicant is proposing to renovate and convert the Building to a flat (2-unit dwelling). The immediate area is characterized by a mixture of single family dwellings and flats. The Property fronts on R Street to the north and is abutted by a public alley to the south. There are residential row structures to the east and west of the Property.

B. Background and Requested Relief

The relief being requested is for an “after-the-fact” approval of an addition to the Building (the “Addition”). The Addition was constructed pursuant to a building permit; however, the

Applicant was in the final stage of the permitting process when he learned that, due to an oversight, the Property was overbuilt. In an effort to comply with the Zoning Regulations, the Applicant first removed all three balconies at the rear of the Property, bringing the lot occupancy to only 70.17%. The Applicant is unable to further reduce the footprint to seventy percent (70%), as the spiral staircase in the rear—which is the only means of egress at the rear of the Building—accounts for point seventeen percent (.17%) lot occupancy. Without this spiral staircase, the Applicant would be able to apply for special exception relief, which limits additions to existing structures to seventy percent (70%) lot occupancy in the RF-1 Zone. The Addition will not impact light and air, or privacy—as is required to obtain special exception relief—therefore, the Applicant is seeking *de minimus* variance relief for only point seventeen percent (.17%) over the permitted special exception lot occupancy.¹ Although the structure is already built, the Applicant is asking for the requested relief *de novo*, as the Addition meets the variance test.

The Applicant is requesting variance relief from the lot occupancy requirements of 11-E DCMR § 304.1 and from the prohibition against enlarging nonconforming structures of 11-C DCMR § 202.2 in order to construct an Addition to the Property and convert the Building to a flat (2-unit dwelling). The rears of the adjacent buildings extend farther than the rear of the Building, casting a significant shadow at the rear of the Building. Because the rear of the Building is covered in shadow, the Applicant is proposing to construct a three-story addition to address problems with light and air. The adjacent buildings are also significantly taller than the Building, therefore the Applicant is also proposing to construct a third-story addition on top of the existing Building footprint.

¹ The Property was originally over lot occupancy by six percent (6%) for a total lot occupancy of sixty-six percent (66%). Now the Applicant is requesting relief for a *total* increase of only four point seventeen percent lot occupancy (4.17%).

II. De Novo Request: The Application Satisfies Special Exception Requirements of Subtitle X § 1002.

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).

An Applicant for area variance relief must demonstrate that, as a result of the exceptional situation or condition of the Property, it will encounter practical difficulties in strictly complying with the Zoning Regulations. See *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535,540-41 (D.C. 1972), noting that area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden.” 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).

As described herein, the three prongs of the area variance test are met by this Application.

A. The Property is Uniquely Affected by an Exceptional Situation/Condition

The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that “...property generally includes the permanent structures existing on the land.” *Id.* at 293–94. The Court held that the exceptional situation standard of the variance test may be met

where the required hardship is inherent in the improvements on the land (i.e., the building or structure) and not just the land itself.

The Property is unique due to its location, as it is abutted by two larger row dwellings. The buildings located at 72 and 76 R Street extend beyond the rear of the existing structure. This creates a shadow at the rear of the Building, causing issues with light and air. The Property is also unique because the existing Building is already over the permitted sixty percent (60%) lot occupancy for the RF-1 Zone (sixty-six percent (66%)). The proposed Addition is modest, only a total increase of four point seventeen percent (4.17%) lot occupancy, but successfully addresses issues with light and air by extending the Building footprint and increasing the height to more closely match those of the adjacent buildings. Photographs of the rear of the properties have been submitted with this Application.²

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

Generally, to warrant granting area variance, it must be shown that strict compliance with area restrictions would be unnecessarily burdensome. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). A strict application of the Zoning Regulations would be unnecessarily burdensome to the Applicant and result in a practical difficulty, as the Building could never be altered and would be permanently afflicted by a lack of light and air. The proposed Addition is modest—enough to allow light to enter the Building's rear windows—and only expands the existing footprint by four-point seventeen percent (4.17%) lot occupancy. The Addition easily meets the special exception criteria, and, but for the spiral staircase—which

² The photographs show the “proposed” addition compared to the adjacent properties, as the structure has already been built.

provides egress at the rear of the property—the Applicant would be able to apply for special exception relief. In effect, the Applicant is seeking *de minimus* variance relief for only point seventeen percent (.17%) lot occupancy.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

Granting an area variance from the lot occupancy requirements and from the prohibition against enlarging nonconforming structures would result in no substantial detriment to the public good; nor substantial impairment to the intent, purpose and integrity of the Zone Plan. The adjacent buildings are well over the permitted lot occupancy. The relief is *de minimus*, only point seventeen percent (.17%) over the permitted special exception lot occupancy. The Building is unique, as it is located between two much larger structures and it is already over the permitted lot occupancy for the RF-1 Zone. The Addition is modest and will only extend the existing Building footprint as much is necessary to provide light and air to the rear of the Building.

III. Conclusion.

For the above reasons, as will be explained in more detail in the prehearing statement, the Application meets the three-prong test for variance relief.

Respectfully Submitted,



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