

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant’s Statement in Support of Variance Relief

B Monroe Ventures LLC

1844 Monroe Street, N.W.; Square 2614, A&T Lot 849, Record Lot 38

I. INTRODUCTION

This Statement is submitted on behalf of B Monroe Ventures LLC (the “Applicant”), owner of the property located at 1844 Monroe Street, N.W. (Square 2614, Lot 38) (the “Property”). The subject Property is one of two lots that makes up A&T Lot 849. Both lots are currently unimproved.

The Applicant is proposing to construct two (2) twenty-five-foot-wide flats on the vacant lots located at 1842 Monroe Street and 1844 Monroe Street, N.W. Subtitle E § 307.1 states, “when a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.” The proposed building on 1842 Monroe Street, N.W. is permitted as a matter-of-right, because it will share a common division wall with the building on 1840 Monroe Street, N.W. Accordingly, the Zoning Administrator has determined the Applicant does not need to provide a side yard to construct a row dwelling on that property (1842 Monroe Street, Lot 39). However, the Zoning Administrator determined that a side yard is required for 1844 Monroe Street, even though that structure will also share a common division wall with the adjacent building being constructed together with the subject building.¹

¹ This decision is the subject of BZA Appeal No. 19613.

In the RF zones, special exception relief for required side yards is only permitted for an addition to an existing building, not for new construction. Therefore, the Applicant is requesting variance relief from the minimum side yard requirements of 11-E DCMR § 307.3.

II. BACKGROUND

A. Description of the Property.

The Property is located in the RF-1 Zone. It is a large rectangular lot measuring 3,100 square feet. The Property is current unimproved. The lot is part of a larger A&T Lot which also contains Lot 39 (1842 Monroe Street).

The Property is located in the Mount Pleasant Historic District. This block consists almost entirely of lot-line to lot-line row dwellings, with but 4 or 5 exceptions. The Property fronts on Monroe Street to the north and is abutted by a public alley to the south. Abutting the Property to the east are three row dwellings. Abutting the Property to the west is a semi-detached dwelling.

B. Proposed Project.

The Applicant has worked with HPRB to design the project and HPRB is in support of the project. HPRB noted that at first, “the proposal for new construction [was found] to be insufficiently contextual with Monroe Street’s historic pattern of development. The Board suggested other approaches, including trying to recreate the massing of the double house that once stood on the lots, studying the few 25-foot-wide rowhouses in the historic district, or creating repeating—rather than mirror image—units.” The Applicant worked with HPRB to make the requested changes and received concept approval on December 15, 2016.

III. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF.

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 harm to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variance for the side yard.

A. Unique Physical Aspect or Other Exceptional Situation/Condition.

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). Moreover, 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*, 579A.2nd 1164, 1168 (D.C. 1990).

This Property is uniquely impacted by a confluence of factors, including its location, and the interpretation of the zoning regulations.

1. Location

Due to the unimproved status of the lot and its location adjacent to a semi-detached building with a side yard, the Applicant must now seek a variance. The situation is so unique that of the two proposed buildings (1842 and 1844), only the building at 1844 Monroe Street must seek side yard relief. Further, had the semi-detached building at 1850 Monroe been built to the lot line closest to the subject Property, the Zoning Administrator would have interpreted the regulation differently and the Applicant would not need relief. Had there been any improvements

on the lot, the Applicant would be able to request special exception relief, and not variance relief. The project would easily meet the requirements for special exception relief.

2. Interpretation of Zoning Regulations

The Applicant is also uniquely impacted by the change in the interpretation of the Zoning Regulations. Subtitle E § 307.1 states, “when a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.” This language is not new, and has not changed with the adoption of the 2016 Zoning Regulations. It was previously found in Section 405.3 of the 1958 Zoning Regulations. Only the interpretation has changed. The apparent intent is to prevent the construction of row dwellings in a neighborhood of historically semi-detached or detached homes. As this neighborhood is made up of mostly dwellings that span lot-line to lot-line, the interpretation of this provision is preventing cohesive buildings from being constructed as a matter-of-right.

The Zoning Administrator has only recently interpreted this provision to mean that because there is no existing wall on the western lot line, a side yard must be provided. A critical read of 11-E DCMR § 307.1 requires that a building meet the prerequisite condition (does not share a common division wall with an existing building or a building being constructed together...) before it can be subject to the requirement at the end of the provision. The new flat being erected at 1844 does indeed share a common division wall with a building being constructed together with it (the 1842 building). Therefore, it cannot be subject to the resulting requirement, as it does *not* meet the prerequisite condition.

Both 1842 and 1844 will indeed share a common division wall with an existing building or a building being constructed together with them. Therefore, neither one can be subject to the

resulting side yard requirement. In other words, there is no requirement that the new building share a common division wall with **two** buildings. The plain meaning provides that it need only be attached to a single building, and if it is attached to **a** building, then it is simply not subject to this provision at all.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)). The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the

proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

In this case, the Application meets the practical difficulty standard with regard to the side yard, because, in order to comply with the regulations, the Applicant would have to build a twenty-foot semi-detached dwelling. As discussed in the staff report, quoted above, HPRB required the Applicant to re-create the double house that was once on the lot. Accordingly, HPRB would likely not approve a dwelling that does not match the proposed building at 1842 Monroe Street. A side yard would require a substantial change in the proportions at 1844 and weaken the rowhouse repetition. The rowhouse repetition also strengthens the proposed design's relationship to the neighborhood context as it is similar to the many rowhouses on the street. Two twenty-foot (20 ft.) wide semi-detached dwellings, or one twenty-five-foot wide (25 ft.) flat next to a twenty-foot (20 ft.) wide semi-detached dwelling would be a completely unique design that is rarely—if ever—seen in the district.

The additional five feet (5 ft.) will not have much impact—if any at all—on the adjacent property at 1850 Monroe. The neighboring semi-detached residence has an existing side yard on its property, which would alleviate any concerns about light and air. Other semi-detached or detached residences on the same block have much narrower side yards directly next to rowhouses. Based on the zoning map, the adjacent residence appears to have the widest side yard of any residence on the block.

The Property has remained idle while almost every other property on this block has been developed. According to *Palmer*, the purpose of variance relief is to prevent otherwise usable

land from remaining idle, which is likely what would happen if the Zoning Regulations were strictly applied.

C. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan. The relief can be granted without substantial detriment to the public good, as the improvement of the Property is in the interest of the public good, and the proposed project fits with the character of the neighborhood, as evidenced by HPRB concept approval. The proposed design is no different from most rowhouses in that the exterior wall is on the property line. Existing rowhouses with a side yard are the exception to the rule rather than the rule, as evidenced by the fact that there are no other rowhouses with side yards on this block of Monroe Street.

The uniqueness of the situation means that relief can be granted without impairing the intent, purpose and integrity of the zone plan. This situation is unique in that only one of two proposed buildings needs relief because a zoning provision—which was likely not intended to apply to this situation—has been interpreted to apply to the Property, due to its location adjacent to the side yard of a semi-detached structure.

IV. CONCLUSION.

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the variance relief as detailed above.

Applicant's Statement
1844 Monroe Street, N.W.

Respectfully Submitted,

A handwritten signature in black ink that reads "Martin P. Sullivan". The signature is written in a cursive style with a large initial "M".

Martin Sullivan
Sullivan & Barros, LLP
Date: August 22, 2017