

February 8, 2018



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VIA IZIS

Frederick Hill, Chairperson
Board of Zoning Adjustment
441 4th Street NW Suite 210S
Washington, DC 20001

**Re: BZA Application for 2901 North Capitol Street NE
Square 3500, Lot 0033 – Application for Area Variance and Special Exception
Relief**

Dear Chairperson Hill and Members of the Board:

Please accept for filing the enclosed application of Tracey Turner (the “Applicant”). The Applicant requests an area variance pursuant to 11 DCMR § X-1000.1 and Subtitle D § 5201.3 for lot occupancy relief and special exceptions pursuant to 11 DCMR §§ X-901.2 and D-5201.1 for rear yard (D-306.2) and pervious surface (D-308.3), as well as for expansion of a nonconforming condition (C-201.1).

The application package includes the following materials:

1. BZA Form 120, Application for Variance/Special Exception
2. BZA Form 126, Fee Calculator
3. BZA Form 135, Self-Certification
4. Agent Authorization Letter
5. Certificate of Proficiency
6. Plat showing the existing structure on the Property
7. Zoning Map
8. Photographs of the Property
9. Baist Atlas Map
10. Statement of Existing and Intended Use
11. Statement of the Applicant
12. Architectural Plans
13. Summary of Witness Testimony
14. Statement of Community Outreach
15. List of names and mailing addresses of owners of all property within 200 feet of the boundaries of the Property

16. Certificate of Service upon the Office of Planning and the affected Advisory Neighborhood Commission

We believe that the application is complete and acceptable for filing, and request that the Board scheduled a public hearing for the application as soon as possible. If you have any questions please do not hesitate to contact me on behalf of the Applicant.

Thank you for your attention to this application.

Sincerely,

COZEN O'CONNOR



Alyssa L. Bigley

Samantha L. Mazo

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

**APPLICATION OF
TRACEY TURNER**

**2901 N. CAPITOL STREET NE
ANC 5E**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Tracey Turner (the “Applicant”), the owner and intended inhabitant of the property located at 2901 North Capitol Street NE, Square 3500, Lot 0033, (the “Property”) in support of his application for variance relief¹ pursuant to 11 DCMR § X-1000.1, from the requirements regarding lot occupancy (§ D-5201.3), and special exception relief pursuant to 11 DCMR §§ X-901.2 and D-5201.1 for rear yard (D § 306.2), and pervious surface (D § 308.3), as well as for expansion of a nonconforming condition (C § 201.1) to obtain retroactive zoning relief for an addition to a single-family attached dwelling on the Property (the “Structure”) in the R-3 Zone District (the “Project”).²

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the special exception relief requested pursuant to D.C. Code § 6-641.07(g)(2) and variance relief requested pursuant to D.C. Code § 6-641.07(g)(3). 11 DCMR §§ X-901.2, 1000.1.

¹ The Property is considered “attached” for the purposes of this application. The Property meets the definition of attached under the pending Zoning Text Amendment ZC 17-23 because although the southern façade is not attached to another building, the Structure is constructed lotline to lotline.

² Based on publicly available information, the addition to the structure was constructed pursuant to a number of building permits issued between March 10, 2016 and November 26, 2016, including Building Permit No. B1605531 and Public Space Permit No. PA204924.

III. BACKGROUND

A. The Property

The Property is a uniquely-shaped triangular corner lot with approximately 1,089 square feet of land area located on the southwest corner of the square. The Property is an end lot bounded by North Capitol Street NE and Girard Street NE. The Property is approximately 20 feet wide facing North Capitol Street NE, narrowing to only 5 2/3 feet wide at the rear facing the alley. Square 3500 is bounded by Michigan Avenue NE to the north, Franklin Street NE to the east, Girard Street NE to the south, and North Capitol Street NE to the west. See Zoning Map at **Exhibit A**. The Property is improved with the Structure.

B. The Surrounding Area

The lot is located in the R-3 Zone in the Edgewood neighborhood of near northeast Washington. The surrounding area is comprised predominantly of two-story rowhomes. There are also low rise apartment buildings to the south along North Capitol Street NE.

Directly west of the Property is the McMillan water filtration site. To the southeast of the Property is the Glenwood Cemetery, and to the north is Trinity Washington University and Children's National Hospital.

C. Traffic Conditions and Mass Transit

The Property is well serviced by a number of public transportation facilities and services including Metrorail, Metrobus, Capital Bikeshare, and Zipcar. The Property is 0.8 miles from the Rhode Island Metrorail Station, which is serviced by the Red Line. Metrobus routes H1, H2, H3, H4, 80, and D8 all serve the Property. A Capital Bikeshare station is located 0.3 miles away at 1st Street NW at the Washington Hospital Center. And, a car sharing program is available 0.6 miles away. On walkscore.com, the Property is deemed "very walkable" and received a score of "good transit."

IV. NATURE OF VARIANCE RELIEF AND STANDARD OF REVIEW

Variance relief is needed from the requirements of Subtitle D § 5201.3 pertaining to the maximum permitted lot occupancy. That section permits 70% lot occupancy in the R-3 Zone for an addition to an existing structure. Because the Project comprises 88% lot occupancy, variance relief is required.³ Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § X-1000.1, the Board is authorized to grant an area variance where it finds that:

- (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 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 (D.C. 1987).

Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting, “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). It is well-recognized precedent that a self-created hardship is not a factor to be considered by the

³ The total lot occupancy includes a deck constructed on the lot. Portions of the deck are also located in public space adjacent to the Property.

Board in an application for an area variance. *See Ass'n for Pres. Of 1700 Block of N St., NW & Vicinity v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (1978); see also BZA Case No. 18651. As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE

RELIEF

A. The Property 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. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. The Property is characterized by an exceptional situation and condition as a result of (1) the Property’s unusual size and shape; and (2) the lot’s unique location as a corner lot.

The Property is an irregular, nearly-triangular shaped corner lot. It has approximately 20 feet of frontage on North Capitol Street and narrows to less than 6 feet in the rear. Due to this shape, the Property is particularly small compared to others on the square. The triangular shape also creates the design challenges for any structure on the Property. This unique condition precipitated the relief requested associated with the addition to the Structure.

B. Strict Application of Zoning Regulations Would Result in Practical Difficulty

Strict application of the Zoning Regulations with respect to lot occupancy (§ D-5201.3) would result in a practical difficulty to the Applicant. The Structure is already principally constructed on the Property. See Photos at **Exhibit B**. Due to the small and irregular shape of the

lot, and in order to comply with the maximum lot occupancy regulations, the Applicant would be required to demolish extensive portions of the Structure that were already permitted, and then to reconstruct a substantially smaller structure.

C. No Substantial Detriment to the Public Good or Impairment of the Zone Plan

The Property will be used as a single family home for the Applicant, which is a matter-of-right use permitted in the R-3 Zone, and there will be no detriment to the public good. Moreover, the Structure's lot occupancy *appears* to be significantly less than it actually is because there is ample public space adjacent to the Property. Therefore, there will be no substantial detriment to the public good or zone plan if the Board grants the requested variance relief.

VI. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

Special exception relief is required from D § 5201.1 for rear yard and pervious surface, as well as for expansion of a nonconforming condition pursuant to Subtitle C § 201.1. Subtitle D § 306.2 requires a minimum of 20 feet rear yard setback, and this requirement will not be met. The Structure is constructed to approximately 14 feet of the rear property line, as such rear yard relief is required. The R-3 Zone requires a minimum of 20% pervious surface, which will not be met. D § 308.3. Consequently, relief from this requirement is required. Finally, the construction of the Structure expanded a nonconforming condition on the property, namely the maximum permitted lot occupancy. For this reason, the Applicant seeks special exception relief from Subtitle C § 201.1.

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § X-901.2, the Board is authorized to grant a special exception where it will be in harmony with the general purpose and intent of the zone plan and will not tend to adversely affect the use of neighboring property, subject to the

special conditions specified in each case. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

The Board is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations.

11 DCMR Subtitle X § 901.2. As outlined below, the Project meets these requirements.

VII. THE APPLICANT MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF

A. The Special Exception Requirements for Rear Yard, Pervious Surface, and Expansion of a Nonconforming Condition Relief are Satisfied

Subtitle D § 5201.3 states that “an applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property.” The Project meets the conditions of this section as follows:

- (a) *The light and air available to neighboring properties shall not be unduly affected;*

The addition to the Property does not unduly impact the light and air of neighboring properties because the lot is an end lot on the corner of the block. Moreover, the requested relief is for the rear deck on the Property, which is lower in elevation and thus less intrusive to the neighboring properties.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The addition did not expand the Structure in a way that would impact the privacy of use and enjoyment of neighboring properties. There is ample public space to the south, the alley to the east, and the wide street to the west. Also, there is a privacy fence between the Property and the adjacent lot. Therefore, there will be no impact on the privacy, use and enjoyment of the neighboring properties.

(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;

As described above, the Property is the corner lot on a row of attached homes. The addition to the rear of the Structure does not change the character, scale, and pattern of houses along the street frontage on North Capitol Street NE. The Structure's façade has been preserved, and the entire Project was specifically designed to enhance and maintain the character of the block. See Photos at **Exhibit**

B.

(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and

See Plans and Elevations at **Exhibit C.**

(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot as specified in the following table . . .” 70% in the R-3 Zone.

The Applicant seeks a variance from this requirement, as outlined above.

B. The Proposed Lot Occupancy Is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps

The Structure will conform with the purpose and intent of the zoning regulations. “The R-3 zone is intended to permit attached rowhouses on small lots.” Subtitle D § 300.7. The requested

relief will not change the use of the Property and will permit the Applicant to occupy his single-family rowhome. The special exception relief is necessary, specifically because the lot is particularly small and irregular. Therefore, the Project is harmonious with the intent of the zoning regulations for the R-3 zone.

C. The Lot Occupancy Relief Will Not Adversely Affect the Use of Neighboring Property

The use of neighboring Property will not be adversely affected by granting the requested relief. As stated above, the Property is a corner lot, the last on the row, and faces the alley to the rear. The Project will continue to allow light and air to access adjacent structures, as it does now.

VIII. STATEMENT OF COMMUNITY OUTREACH

The Applicant will be contacting the chair of ANC 5E as well as the Single Member District Commissioner for the Property, shortly after the Application is filed. After presenting at the ANC 5E meeting, the Applicant will seek a vote in support of the Project from the ANC.

IX. CONCLUSION

For all of the reasons stated above, the Project meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully Submitted,

COZEN O'CONNOR



Alyssa L. Bigley

Samantha L. Mazo

CERTIFICATE OF SERVICE

I certify that on February 8, 2018, a copy of this Application was served via email on the Office of Planning and Advisory Neighborhood Commission 5E, as follows:

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
planning@dc.gov

Advisory Neighborhood Commission 5E
Bradley Ashton Thomas, Chairperson
5e06@anc.dc.gov
C. Diane Barnes, Single Member District Commissioner 5E09
5e09@anc.dc.gov



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