



March 28, 2018

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**Re: BZA Case No. 19735 – 1528 W Street SE
Applicant's Prehearing Statement**

Chairperson Hill and Honorable Members of the Board:

On behalf of the Applicant, Mi Casa Inc., please find enclosed the Prehearing Statement for the above-referenced case. The application is scheduled to be heard before the Board of Zoning Adjustment on April 18, 2018.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

Eric J. DeBear

A handwritten signature in blue ink, appearing to read 'Eric J. DeBear', is written over a horizontal line.

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

**APPLICATION OF
MI CASA INC.**

**BZA CASE NO. 19735
HEARING DATE: APRIL 18, 2018**

APPLICANT'S PREHEARING STATEMENT

I. EXECUTIVE SUMMARY AND RELIEF SOUGHT

This Prehearing Statement is submitted on behalf of the Applicant, Mi Casa Inc. (the "Applicant"), a non-profit organization and the contract purchaser¹ of the property located at 1528 W Street SE (Square 5779, Lot 0824) (the "Property") in support of its application for variance relief, pursuant to 11 DCMR Subtitle X § 1000.1, from the development standards for lot dimension (Subtitle D § 302.1) and side yard (Subtitle D § 307.4), in order to construct a semi-detached, single-family home in the R-3 zone (the "Project").

II. FREE-STANDING SIDE YARD RELIEF

The initial application requested area variance relief for the Property's lot dimensions as well as the Project's western side yard, which is only six feet in width. While the architectural plans have not changed since the initial application, the Applicant now incorporates the previously stated side yard relief from Subtitle D § 307.4 for the Project's eastern free-standing side yard as well. As described below, the basis for obtaining side yard relief for both the western and eastern side yard is similar.

It must be noted that Zoning Commission Case No. 17-23 is a proposed text amendment (the "Text Amendment") that would, amongst other changes, eliminate Subtitle D § 307.4 that requires a side yard for new construction in the R Zones. The Text Amendment proposes to add Subtitle D § 206.6 stating "No side yards are required in an R-3, R-13, or R-17 zone; however, if

¹ The Property is owned by the District's Department of Housing and Community Development, which has authorized the Applicant to develop the Property.

a side yard is provided, it shall be a minimum of five feet (5 ft.).” As of the filing of this application, however, the Text Amendment has not been approved by the Zoning Commission. Therefore, the Applicant submits this additional request for zoning relief in order to construct the Project in compliance with the Regulations as they currently stand.

III. THE APPLICANT MEETS BURDEN FOR VARIANCE RELIEF

A. Nature of Variance Relief and Standard of Review

Given the related nature of the side yard and lot dimension relief described in the initial application, the Applicant incorporates the arguments made in the initial application and maintains that the Project satisfies the standard for area variance relief from the free-standing eastern side yard requirement. By way of brief review, 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)).

The Applicant reiterates that the Board may apply a more flexible standard of review when it assesses a non-profit, public service organization. *See Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (1979). As part of this reduced standard of review, the Board may more fully weigh the equities of an individual case, including consideration of the property owner’s needs, in finding an exceptional situation or condition. *See Monaco* at 1098; *see also National Black Child Development Institute, Inc. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (1984). Here, the Board should apply

a reduced standard of review because the Applicant is a non-profit organization seeking to provide affordable, family-sized housing as part of the Project.

B. The Property is Affected by an Exceptional Situation or Condition

As outlined in the initial application, the Property is characterized by an exceptional situation or condition arising from a confluence of three factors: (1) the Property is an unimproved corner lot with an abutting neighboring side yard; (2) the Property is located in the Anacostia Historic District; and (3) the Project is subject to the Applicant's particular programmatic needs.

C. Strict Application of the Zoning Regulations Would Result in Practical Difficulty

Strict application of the Zoning Regulations with respect to lot dimensions and side yard would result in a practical difficulty to the Applicant. In regard to lot dimensions, as a corner lot, there is only one abutting property, but that property to the west has its own side yard. This means that the Project *cannot* share a common division wall with any other property, and, therefore, the Project *cannot* be an attached dwelling under the Zoning Regulations. It follows that the Applicant cannot meet the lot dimension requirements for any other type of dwelling at the Property pursuant to Subtitle D § 302.1.

In addition, the Property is only 24 feet wide, and if the Applicant were required to provide a compliant side yard on both sides of the Project, the resulting structure would be only 8 feet wide and not viable as a dwelling. The Applicant described some of the difficulties in complying with the Building Code in the initial application, and these difficulties would be exacerbated with an 8-foot wide house, if such a house is even viable. Additionally, the resulting Project's design would not meet the historic preservation requirements in the Anacostia Historic District.

Therefore, although the Property is unimproved, the Applicant would face a practical difficulty in providing two compliant side yards due to its location next to an abutting property

with a side yard. Consequently, the practical difficulty the Applicant faces in complying with the side yard requirement is directly related to the unique confluence of factors impacting the Property.

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

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief for lot dimensions and side yard. The Project will align with other properties along W Street SE by height, design, and size. Furthermore, the neighborhood, which is overwhelmingly residential in nature, will be undisturbed. The Applicant has designed the Project to fit with the scale and pattern of homes in the neighborhood, including as to the neighborhood's historic aspects. In fact, the Project will benefit the community by adding a new single-family affordable home to the neighborhood. To that end, the Project implements several goals in the District's Comprehensive Plan that encourage development of affordable housing.

Importantly, except for the requested lot dimensions and side yard relief, the Project complies with the development standards of the Zoning Regulations for the R-3 Zone. The Project meets the requirements for height and stories, front setback, rear yard, and parking. Thus, the requested relief does not impair the Zone Plan.

IV. COMMUNITY OUTREACH

Since filing the application, the Applicant presented the Project to the ANC 8A Executive Committee on March 19th and has conducted extensive community outreach in the neighborhood surrounding the Property. The Applicant will present the Project to the full ANC at their regularly scheduled meeting on April 3, 2018, and will provide an update to the Board. The Applicant has also previously presented the Project to ANC 8A during the HPRB application process and received a vote of support. Finally, it should be noted that the Applicant has received several letters of support for the Project, which will be filed into the record accordingly.

V. PROPOSED CONDITIONS

1. Interior partition locations, size, and location of units and stairs are preliminary and shown for illustrative purposes only. Final layouts, design and interior plans may vary to the extent that such variations do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.

2. Flexibility to vary the final selection of exterior materials within the color ranges of the material types and based on the availability at the time of construction, without reducing the quality of materials or intent of the original design.

3. Flexibility to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings trim, and windows or that are otherwise necessary to obtain a final building permit to the extent that such changes do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.

VI. CONCLUSION

For the reasons stated above, enumerated in the Applicant's prior filings, as well as discussed at the Board's hearing, the Applicant submits that the application meets the requirements for area variance relief. Accordingly, the Applicant respectfully requests that the Board approve the application on April 18, 2018.

Respectfully submitted,
COZEN O'CONNOR


Eric J. DeBear

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2018, a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

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