

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Application of Deborah Van Buskirk**  
**In Support of Special Exception and Variance Relief**

**445 15<sup>th</sup> Street, SE (Square 1062, Record Lot 52)**

**I. INTRODUCTION AND BACKGROUND**

This Statement is submitted on behalf of Deborah Van Buskirk (the “Applicant”), owner of the property located at 445 15<sup>th</sup> Street, SE (Square 1062, Record Lot 52) (the “Property”). The Property is improved with a one-family dwelling and a garage at the rear of the Property. The Applicant purchased the Property in early 2016, without the knowledge that there was no record of a building permit on file for existing garage. The garage sits at the rear of the lot, directly abutting the alley, and the footprint of the garage causes the Property to exceed the permitted lot occupancy for the RF-1 Zone, as well as other nonconforming situations. The Applicant is in the process of obtaining permission for a curb cut, in order to access the garage from the street side. It was during this process that the Applicant was told to present a building permit for the garage. She then spoke to DCRA staff, who informed her that she would need zoning relief in order to get a building permit for the existing garage. Accordingly, the Applicant is requesting special exception relief pursuant to 11-E DCMR § 5201.1 from the rear yard requirements of 11-E DCMR § 5004.2(b) and from the accessory building center line alley setback requirements of 11-E DCMR § 5004.1. The Applicant is also requesting variance relief from the lot occupancy requirements of 11-E DCMR § 304.1, as the garage brings the total lot occupancy to eight-five percent (85%).

## **II. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA**

The Property is located in the RF-1 zone district. It is Record Lot 52, although it also includes two tax lot designations - Lot 803 and Lot 804. The principal structure is a one-family dwelling which sits entirely on Lot 803 (445 15<sup>th</sup> Street, SE). The garage sits entirely on Lot 804 (439 15<sup>th</sup> Street, SE). The Property is a small corner lot measuring 1,120 square feet. Abutting the Property to the north is a public alley. Abutting the Property to the south is E Street, SE. Abutting the property to the east is 15<sup>th</sup> Street, SE. Abutting the Property to the west are other one-family row dwellings. The area is made up of primarily small, one-family row dwellings. Of the fifty-eight (58) properties on this square, seventeen (17) have accessory structures, most of which directly abut the alley and most of which appear to hold the same nonconformities as the Property. A map of the surrounding area has been submitted with this Application. The Applicant does not know when the garage was originally constructed.

## **III. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF 11-X DCMR § 901.2, 11-E DCMR §§ 5004.1 AND 5004.2(B).**

A. Overview. Pursuant to 11-X DCMR § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application.

See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. Requirements of 11-X DCMR § 901.2.

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11 DCMR Subtitle X § 901.2). Given the nature of the relief, the proposed use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

C. Requirements of 11-E DCMR § 5201.1.

Pursuant to 11-E DCMR § 5004.1, “no minimum rear yard is required for an accessory building in an RF zone except when abutting an alley, where it shall be set back at least twelve feet (12 ft.) from the center line of the alley.” The garage is required to be setback at least twelve feet (12 ft.) from the centerline of the alley. The garage is setback only five feet (5 ft.) from the centerline of the alley. Accordingly, the Applicant needs relief from this provision.

Subtitle E § 5004.2 states, “an accessory building shall be permitted in a required rear yard of a principal building pursuant to the following conditions: (a) The accessory building is less than ten feet (10 ft.) in height; and (b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area.” Although the garage is less than ten feet (10 ft.) in height, it has 288 square feet of gross floor area. Accordingly, the Applicant needs relief from this provision.

The proposal in this application satisfies the requirements of Subtitle E § 5201, as follows:

**Section 5201.3** *“An Application for special exception under this section shall demonstrate that the addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (a) The light and air available to neighboring properties shall not be unduly affected;*
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
- (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; and*
- (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*
- (e) The Board of Zoning adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).*

(a) The light and air available to the neighboring property will not be unduly affected. The garage is only nine feet and nine inches (9 ft. 9 in) in height.

(b) The privacy of use and enjoyment of neighboring property will not be unduly compromised by the garage.

(c) & (d) The proposed garage will not visually intrude upon the character, scale, or pattern of houses on the alley. Many other buildings on this square have garages or other accessory structures abutting the public alley.

(e) The proposed building will have a lot occupancy of eighty-five percent (85%). The Applicant is requesting variance relief from this provision.

**Section 5201.4** *“The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.”*

The Applicant will comply with Board directives for protection of adjacent and nearby properties.

**Section 5201.5** *“This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.”*

The Applicant is not requesting to introduce or expand a nonconforming use.

**Section 5201.6** *“This section may not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.”*

The Applicant is not requesting to introduce or expand nonconforming height or number of stories.

#### **IV. 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 so that it may expand the living space in the four (4) existing units.

##### **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.25 1091, 1096 (D.C. 1979). 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.

In *Monaco v. D.C. Board of Zoning Adjustment*, the Court of Appeals held that the history of a property could be considered in making the determination of uniqueness. In that case, the Court affirmed the BZA's broad interpretation of the uniqueness test and the Board's ability to consider the history of the Applicant, its traditions, as well as the existing structure on the property.

The Property is unique for several reasons, including: (1) history of the Applicant; (2) its location on the corner of 15<sup>th</sup> Street and the public alley; and (3) the lack of permitting history available for the existing garage, and the need for a curb cut to use the garage in the safest manner.

*1. History of the Applicant*

The history of the Applicant may be considered an exceptional situation/condition to satisfy the first part of the variance test. In this case, the Applicant purchased the Property as it exists now—with a garage at the rear of the Property. There was no indication that the garage was not permitted, and the Applicant had no reason to believe the garage was not legally constructed. It was not until a year and a half after she purchased the property that she learned the contractor never obtained a building permit for the construction of the garage.

*2. Location*

In this case, the Property is also unique for the square and surrounding area. The orientation of the Property makes it so that the rear of the Property is at the entrance to where people turn into the alley. No other properties on this square—or even the adjacent squares—are similarly located. As demonstrated on the photographs, the entrance to the parking area exits onto 15<sup>th</sup> Street, not the alley, giving the public direct access to the Applicant's property via a curb cut and sidewalk.

3. Garage Existing Without Permit History.

The Applicant purchased the Property without any idea that the existing garage may not have a building permit history. When she attempted to obtain a curb cut approval for the garage, she eventually was informed that she would need zoning relief in order to be able to use the existing condition. The Applicant does not know when the garage was constructed and whether or not it was constructed with approval by DCRA, but the lack of any permitting history on file requires that this relief be obtained in order to get a building permit. The building permit is a prerequisite to obtaining curb cut approval, pursuant to the directive of the Public Space Committee.

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 Applicant would face a practical difficulty if the regulations were strictly applied. The Applicant would be forced to demolish a garage that she did not construct. When the Applicant purchased the Property, the garage was already constructed. The garage provides protection for vehicles, as the rear of the Property is located at the entrance to the alley, which is very narrow. It also provides security for the Applicant, as there is no barrier between the Applicant's parking area and the public sidewalk.

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 can be granted without impairing the intent, purpose and integrity of the Zone Plan. The garage is already constructed and does not impact the only adjoining property to the north. Many properties on this square have accessory structures abutting the alley, this structure will not create any additional impact. Further, this Property is unique for the square and surrounding area—no other Property in the square has a rear yard that is on the corner of an intersecting alley and street.

**V. Conclusion.**

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

Respectfully Submitted,



Matthew P. Sellen



Applicant's Statement  
445 15<sup>th</sup> Street, SE

Martin Sullivan  
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