

DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Applicant's Statement of 824 13th Street, LLC

824 13th Street, NE; Square 1003, Lot 145.

I. INTRODUCTION.

A. Overview.

This Statement is submitted on behalf of 824 13th Street, LLC (the “Applicant”), owner of the property located at 824 13th Street, NE (Square 1003, Lot 145) (the “Subject Property”). The Subject Property is currently unimproved. The Applicant is proposing to construct a new, three-story flat (2-unit dwelling) (the “Building”).

The Subject Property is extraordinarily small and extremely shallow. It is only 693 square feet in land area, thirty-three feet (33 ft.) wide and twenty-one feet (21 ft.) deep. The Subject Property has existed in its current configuration as Record Lot 145 since at least 1888, and it was previously occupied (as late as 2001) with a structure that occupied almost the entire lot. It has been vacant and neglected for many years. The Owner desires to put the Subject Property back to effective use, creating residential units, but it would be impossible to do so without significant zoning relief, as described herein.

B. Summary of Requested Relief.:

1. Special Exception- Parking Requirements (C § 703.2)

According to the parking schedule in C § 701.5, residential flats are required to provide one (1) parking space per two (2) units. The Building will have two (2) units and therefore requires one (1) parking space. Due to the small size of the lot, the Applicant is unable to provide

parking. Accordingly, the Applicant is requesting special exception relief pursuant to C § 703.2 which permits exemptions from the minimum parking requirements of C § 701.5.

2. Variance- Lot Occupancy (E § 304.1)

In the RF-1 Zone, lot occupancy is limited to sixty percent (60%). As the lot is only 693 square feet, a lot occupancy of only sixty percent (60%) would result in a building footprint of only 415.8 square feet. Due to the small lot size, and other potential difficulties associated with very narrow open areas between buildings, the Applicant is proposing to occupy one-hundred percent (100%) of the lot.

3. Variance - Rear Yard (E § 306.1)

In the RF-1 Zone, the minimum required rear yard is twenty feet (20 ft.). As the lot is only twenty-one feet (21 ft.) deep, a compliant rear yard would limit the Building to only thirty-three square feet (33 sq. ft.). The Applicant is not proposing to have a rear yard. The side lot line of the property to the west directly abuts the Subject Property's rear lot line. If the Applicant were to provide any rear yard, it would simply result in a dark, damp space that is hard to maintain, would serve no purpose, and would simply limit the already small Building footprint.

4. Variance - Side Yard (E § 307.1)

In the RF-1 Zone, "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 Applicant is constructing a new flat; the building to the north of the Subject Property extends to the common lot line and will share a common division wall; however, the Subject Property's southern lot line abuts an alley. Accordingly, the Applicant is required to provide a five-foot (5 ft.) side yard on its southern lot line. A five-foot (5 ft.) side yard would serve no purpose, as the building to the

south is separated by a ten-foot (10 ft.) wide alley and would significantly impact the already small Building footprint.

II. BACKGROUND.

A. Description of the Subject Property and Proposed Project.

The Subject Property is located in the RF-1 Zone. It is an extremely small, shallow lot measuring only 693 square feet, with a depth of only twenty-one feet (21 ft.). As demonstrated by the "Original Subdivision Plat" included with this Application, the lot was created in 1888. The Subject Property is currently unimproved but was previously improved with a two-story single-family dwelling. The previous structure was condemned numerous times, as demonstrated in the "Condemnation Orders" included with this Application.

The Applicant is proposing to construct a new three-story flat (2-unit dwelling) at the Subject Property. Unit 1 is located on both the cellar and first floor levels and has two bedrooms. Unit 2 is located on both the second and third levels and has two bedrooms as well.

B. Surrounding Area.

The Subject Property is located less than two (2) blocks to the north of H Street. The immediately surrounding area is characterized by row dwellings (spanning lot line to lot line). To the north of the Subject Property is a row dwelling facing I Street, the rear of which abuts the side lot line of the Subject Property. This building to the north occupies all of its lot, but for a small court on its south side. To the west of the Subject Property is a row dwelling which occupies most of its lot as well, extending to its rear property line with a connected one-story garage. To the east and south are 13th Street, NE and an improved public alley, respectively.

III. THE APPLICATION SATISFIES THE GENERAL AND SPECIFIC SPECIAL EXCEPTION REQUIREMENTS.

A. Overview.

Pursuant to Subtitle X § 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; subject also, in this case, to the specific requirements for relief under Subtitle C § 703.2.

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 Subtitle X § 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). The Project proposes to eliminate a neglected vacant lot and eyesore, bringing back to productive use a property which previously had a building on it, and providing two (2) new residential units.

C. Parking-Requirements of Subtitle C § 703.2.

The Proposal in this Application satisfies the requirements of Subtitle C § 703.2 as follows:

Section 703.2 “The Board of Zoning Adjustment may grant a full or partial reduction in number of required parking spaces, subject to the general special exception

requirements of Subtitle X, and the applicant's demonstration of at least one (1) of the following:

As provided below, the Applicant can satisfy several of the considerations, even though only one (1) is required to grant the requested approval. The information below includes only the sections that safely apply to this Subject Property and Application.

(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;

Due to the small size of the Subject Property, the required parking space cannot be provided on the lot. The space cannot be provided within six hundred feet (600 ft.) of the lot as the surrounding area is made up of primarily small residential row dwellings. From the Applicant's investigation, the only parking lots within six hundred feet (600 ft.) of the Subject Property are in use as part of other residential apartment buildings. Included with this Application is a map showing all properties within six hundred feet (600 ft.) from the Subject Property (see pg. 1 of "Proximity to Mass Transit" included with this Application).

(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;

The Subject Property is particularly well served by mass transit, shared vehicle, and bike facilities. The Subject Property is only three hundred and seventy (377 ft.) from the Florida Avenue and 13th Street bus stop, only three hundred and ninety feet (390 ft.) from the H Street Streetcar, three-tenths of a mile (0.3 mi.) from the nearest Capital BikeShare station, and two-tenths of a mile (0.2 mi.) from the nearest ZipCar location on 11th and H Streets, NE (see "Proximity to Mass Transit" included with this Application).

(c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;

As described in detail above, the land use and transportation characteristic of the neighborhood minimize the need for required spaces.

(d) Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood;

Two (2) additional units are unlikely to create additional traffic congestion in the neighborhood.

IV. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF.

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variances.

A. Extraordinary or Exceptional Condition affecting the Property.

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).

The Subject Property is affected by its exceptional shallowness and size. The lot was created in 1888, which pre-dates the 1958 Zoning Regulations, and is extremely small and shallow. It has 693 square feet of land area, is thirty-three (33 ft.) wide, and twenty-one feet (21 ft.) deep. While there are five (5) other unimproved lots in the square, it is the only unimproved lot of its shape and size in the surrounding area. The properties located at 808-812 13th Street are currently unimproved but are all significantly deeper (45 feet deep) and larger (825 square feet of land area) than the Subject Property. The other unimproved lots are interior lots that are significantly deeper and larger than the Subject Property (See "Assessment and Taxation Map" of the square which shows measurements for each lot, included with this Application).

The property to the north (1255 I Street, NE) is the only property in the square that is similar in shape; however, that property is 819 square feet and fronts on I Street. Because that property is a corner lot, it can take advantage of the frontage along I Street which gives it a depth of thirty-nine feet (39 ft.). Because of the location of the Subject Property, it must front on 13th Street and therefore has a width of thirty-three feet (33 ft.) but a depth of only twenty-one feet (21 ft.).

The history of the Subject Property is also unique in that it was previously improved by an existing non-conforming two-story structure. The structure was condemned numerous times, as demonstrated in the "Condemnation Orders" included with this Application. At some point in the last seventeen (17) years, the structure was finally demolished. This presents a unique situation in that the demolition eliminated an existing non-conforming structure, and a lot that is

impossible to improve without BZA relief. Had the structure been renovated instead of razed, it is possible that relief may not have been necessary.

B. Practical Difficulties will occur if the Zoning Regulations are Strictly Enforced.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. 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.

Due to the Subject Property’s exceptional shallowness, size, and history, a strict application of the Zoning Regulations would result in a practical difficulty for the Applicant. Although the standard for area variance is not that it be “impossible” to meet the zoning regulations, in this case it would be impossible to provide a zoning compliant building if the zoning regulations were strictly applied. With regards to the rear yard, the lot is only twenty-one feet (21 ft.) deep which would limit a matter of right building footprint to thirty-three square feet (33 sq. ft.).

If the lot occupancy were limited to only sixty percent (60%), the Applicant would be limited to a building footprint of approximately 415.8 square feet. This small space will have to accommodate insulation, electric wiring and other necessary components of modern

construction, further reducing the usable living space. Therefore, a strict application would result in an extremely small and inefficient living space.

The side yard requirement of five feet (5 ft.) on the south would further limit the available living space of an already small lot. The Subject Property is only thirty-three feet (33 ft.) in width and a five-foot (5 ft.) side yard would reduce the available width to twenty-eight feet (28 ft.). If the Applicant were to provide a compliant side yard, the building footprint would be limited to 588 square feet. Again, not all this space would be available as living space as the space would have to accommodate insulation, electric wiring and other necessary components of modern construction. Therefore, a strict application would result in an extremely small and inefficient living space.

Accordingly, it would be a practical difficulty to provide a residential building that both complies with the Zoning Regulations and which is also suitable for human habitation. Moreover, the requested relief will still only allow for a building footprint of 693 feet; therefore, anything less than the requested relief would still result in an extremely small and inefficient living space. Furthermore, trying to reduce the degree of relief by providing tiny side or rear yards presents other problems of having small, difficult to maintain, open spaces.

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. A building existed on the Subject Property as recently as 2001 and the infill project provides continuity on the block and will ameliorate any negative effects a vacant lot may pose.

V. CASE LAW

The Board has approved similar cases for relief in Case No. 19404 and 19249.

A. Case No. 19404

In BZA Case No. 19404 of Bellview Development Inc., the applicant requested variance relief from the rear yard and lot occupancy requirements in order to construct a new, three-story flat in the RF-3 Zone at 434 3rd Street, NE. The lot was 816 square feet and had a depth of thirty-four feet (34 ft.). The Office of Planning recommended approval, finding that the small size and depth of the lot created an exceptional situation. Due to the size and depth of the lot, the applicant would have faced a practical difficulty because strict compliance with the minimum rear yard requirements would leave only 336 square feet of developable area and strict compliance with the lot occupancy requirements would result in a building footprint of only 490 square feet. The Board agreed with the Office of Planning's assessment and granted area variance relief.

The Applicant in the present case is faced with a similar situation in that the small lot size and depth of the lot creates an exceptional situation. However, the Applicant's case is stronger because the Subject Property is much shallower and significantly smaller than the property in Case No. 19404. As discussed above, if the Applicant were to comply with the twenty-foot (20 ft.) rear yard requirements, it would leave only thirty-three square feet (33 sq. ft.) of developable area essentially rendering the lot impossible to build on; if the lot occupancy requirements were strictly enforced, it would result in a footprint of only 415.8 square feet.

B. Case No. 19249.

In BZA Case No. 19249 of Jennifer Wisdom, the applicant requested variance relief from the rear yard and lot occupancy requirements (as well as variances for height and parking) in

order to construct a new, four-story flat at 1850 5th Street, NW. The lot was vacant but was previously improved by a four-story dwelling that had been destroyed by a fire. The Office of Planning recommended approval, finding that the property was affected by its exceptional narrowness, size, shallowness, and shape. The property measured 702 square feet in land area and its depth ranged from thirty-eight to fifty-seven feet. OP found that the exceptional conditions would lead to a practical difficulty for the applicant because the development of a flat on the property that would conform to lot occupancy and rear yard requirements would not meet the needs of a tenant. The Board agreed with the Office of Planning's assessment and granted the requested variances.

Once again, the Applicant in this case is faced with a similar situation in that the small lot size and depth of the lot creates an exceptional situation. However, the Applicant's case is stronger because the Subject Property is much shallower than the property in Case No. 19249. The Subject Property shares a similar history to the property in Case No. 19249 in that it also used to be improved with a residence that pre-dated the 1958 Zoning Regulations.

VI. 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,

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Applicant's Statement
824 13th Street, NE

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