

Burden of Proof
Application for Variance and Special Exception

I. Summary

Sarah Beth and Josh Kuyers, owners of 156 Duddington Place, S.E., (“Applicants”) hereby apply for the Board of Zoning of Adjustment (“BZA”) to grant a variance pursuant to Subtitle X, Chapter 10 of the D.C. Zoning Regulations (“Zoning Regulations”) and a special exception pursuant to Subtitle X, Chapter 9 of the Zoning Regulations, in order to build a one-story rear addition in the existing dogleg of their two-story row house.

The proposed addition requires a variance and a special exception because Applicants’ home is already nonconforming with the lot occupancy requirements of Subtitle E § 504.1 and the rear yard requirements of Subtitle E § 506.1, and the proposed addition would increase the lot occupancy and continue the existing rear line of the house.

Specifically:

- Applicants’ home currently occupies 72.9% of their property, which already exceeds the maximum lot occupancy of 60% allowed by Subtitle E § 504.1. The proposed addition would further increase the lot occupancy to 79.5%.
- Applicants’ home currently has a rear yard of 12.4 feet, which is less than the 20 feet required by Subtitle E § 506.1. The proposed addition would not decrease the rear yard but would enclose the existing dogleg on the first story and use the same rear line of the existing house (i.e., the addition would go up to but not extend beyond the existing rear line of the house), which does not conform with the rear yard requirement.

Therefore, Applicants are requesting a variance from Subtitle C § 202.2 (expansion of existing nonconformities)^{1/} and Subtitle E § 504.1 (lot occupancy)^{2/}, as well as a special exception from Subtitle E, § 506.1 (rear yard).^{3/}

II. Existing Property

Applicants purchased the two-story row house at 156 Duddington Place, S.E. in January 2017 and have used it as their primary residence since. Applicants’ home was built in the late 1890s or early 1900s and is located within the Capitol Hill Historic District. The home has not undergone any additions or other major structural alterations since it was built. The row house is approximately 1,298

^{1/} Applicants are requesting a variance from Subtitle C § 202.2 after discussions with the D.C. Office of Planning, who spoke separately with the D.C. Office of the Attorney General. As mentioned above, Applicants’ property is already nonconforming with certain Zoning Regulations, and the proposed addition would increase the lot occupancy and utilize the same rear line of the house, both of which do not conform to the Zoning Regulations.

^{2/} Pursuant to Subtitle E § 5201.3(e), the BZA cannot approve relief from the lot occupancy requirements as a special exception for more than 70%. Since Applicants’ lot occupancy currently exceeds and will further exceed 70%, Applicants are requesting a variance from the lot occupancy requirements in accordance with Subtitle E, § 5200.2.

^{3/} Pursuant to Subtitle E § 5201.1(b), the BZA may approve relief from the yard requirements as a special exception.

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square feet and stands on a lot totaling 891 square feet (14.75 feet wide by 60.375 feet deep). The property is located in the RF-3 zone.

III. Proposed Addition

Applicants love their neighborhood and are hoping to continue living at 156 Duddington for many more years. They are trying to make their home more functional to accommodate their growing family. Therefore, Applicants are seeking to expand their existing kitchen by enclosing the existing rear dogleg on the first story only. The addition would be 3.98 feet wide and 14.8 feet deep, adding a total of approximately 58 square feet to the house. The addition would come up to but not extend beyond the existing rear line of the house. The second story of the home would remain untouched.

The addition would be approximately 11.5 feet tall from the interior floor to the top of the roof. Applicants' row house currently has an interior height on the first story of 9.5 feet, and the addition would have the same interior height to match the rest of the existing first story. The additional two feet above the ceiling are for the roof structure and piping/venting only; there will be no attic or storage space above the interior ceiling. Applicants have designed the addition to be as minimal in height as possible while matching with their existing ceiling heights. The addition would also have a one foot parapet wall on top of the roof for the sole purpose of preventing water from running off the roof and into their neighbor's property.

Applicants' home is currently built at grade, and their property slopes upward from the front to the rear alley behind it (i.e., the front elevation is lower than the rear). As a result, the interior floor of the first story is currently 6 inches lower than the elevation of their existing dogleg, which is where the addition would be constructed. The floor of the addition would be at the same height as the existing floor of the first story (i.e., the floors would run flat into each other and there would be no steps up or down), so the addition would actually be built 6 inches below the existing ground in the dogleg. Therefore, the addition would only rise 11 feet above the existing ground in the dogleg.

In addition, Applicants' rear yard is enclosed on all sides by an approximately 7 foot tall fence. The fence between Applicants' property and their adjacent neighbor at 154 Duddington Place, S.E. (whose property abuts Applicants' dogleg and proposed addition), is about 6-foot-8-inches, and the fence between Applicants' property and the alley is approximately 7 feet tall. Because the property slopes up to the rear alley, the first story is almost completely hidden from the alley due to the tall fence. Therefore, the addition would be practically invisible from the alley behind the house.

Several adjacent property owners on Duddington Place have added structures to their rear doglegs or rear yards, including one addition that is very similar to Applicants' proposal at 120 Duddington.

IV. Burden of Proof

A. Variance from Subtitle C, § 202.2 (Expansion of Existing Nonconformities) and Subtitle E § 504.1 (Lot Occupancy)

In accordance with Subtitle X, Section 1002.1, the proposed addition meets the requirements for a variance because the property's shallowness cause the strict application of certain Zoning Regulations to result in peculiar and exceptional practical difficulties to Applicants; the proposed addition would

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not cause any substantial detriment to the public good; and the proposed addition would not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map.

1. As a result of the attributes of a specific piece of property, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.

Pursuant to D.C. Official Code § 6-641.07(g)(3) and Subtitle X, § 1000.1 of the D.C. Zoning Regulations, the BZA has the power to authorize a variance “[w]here, by reason of exceptional narrowness, **shallowness**, or shape of a specific piece of property at the time of the original adoption of the regulations, ... the strict application of any [zoning] regulation ... would result in peculiar and exceptional practical difficulties to ... the owner of property” (emphasis added). Applicants’ property is exceptionally shallow, which makes application of certain Zoning Regulations like the lot occupancy and rear yard requirements incredibly difficult. Applicants’ lot is only 14.75 feet wide and 60.375 deep, providing a total square footage of only 891 square feet.

Applicants’ shallow and small lot is less than half of the 1,800 square feet required in the Zoning Regulations. Applicants’ home is not particularly large at only 1,298 square feet but already occupies over 72% of their lot. If Applicants had a lot size of 1,800 square feet, their current home would occupy only 36% of the property. Conversely, if Applicants tried to meet the 60% lot occupancy on their property as required in Subtitle E § 504.1, the total square footage of their home would have to shrink down to just over 1,000 square feet over two stories.

The houses on Duddington Place, S.E., were developed around the same time and by the same developer almost 100 years ago, and therefore many of the houses on Duddington Place have lots similarly sized as Applicants’. However, neighbors directly in behind and next to Applicants’ home on E Street, S.E. and 2nd Street, S.E., have significantly deeper and larger lots and do not have the same kinds of difficulties in applying certain Zoning Regulations like Applicants do. The deeper lots on E Street, S.E., provide Applicants’ neighbors with a total square footage of more than 1,300 square feet, which is over 400 square feet greater than Applicants’ lot size of 891 square feet. For example, according to public records, the lot sizes of 145 and 147 E Street, S.E., which are directly across the alley from Applicants’ property, are 1,308 square feet each. Applicants’ existing home at 1,298 square feet would occupy less than 50% of a lot that size, and with the proposed addition, Applicants’ home would occupy just 54%. Applicants would therefore be able to meet the lot occupancy requirements without a variance if it had the same lot size as its neighbors directly behind it. In addition, while the lots on 2nd Street S.E. are more modest than those on E Street, S.E., they are still greater than Applicants’ and make application of the Zoning Regulations much easier. For example, 513 2nd Street, S.E., which is just three houses away from Applicants’, has a lot size of 1,095 square feet. This lot size is over 200 square feet bigger than Applicants’, and on a lot that size, Applicants’ current home of 1,298 would occupy just 59.3% of the lot, which conforms to the Zoning Regulations. With the proposed addition, the lot occupancy would increase to 64.6%, which would only require a special exception from the lot occupancy requirements. Therefore, many of Applicants’ neighbors and other properties in the Capitol Hill area do not have the same difficulties when applying the Zoning Regulations.

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Furthermore, Applicants have an additional burden of being located on a particularly unique street within the Capitol Hill Historic District. This location prevents Applicants from expanding their space into a third story, which they have the right to do under the Zoning Regulations.^{4/} Applicants believe that the Historic Preservation Review Board would not (and should not) allow them to build a third story, which would ruin the charm and historic characteristics of Duddington Place, even though Applicants technically have the right to do so under the Zoning Regulations. Therefore, Applicants cannot expand their home by adding a third story and are left with the only option of expanding behind the house and into the dogleg. Applicants have carefully considered how to design their addition with as minimal impact as possible on neighbors and the historic nature of their neighborhood by making the addition a single story that will be barely visible from the rear alley.

In conclusion, Applicants' home was built over 50 years before the Zoning Regulations were adopted in 1958 and has never conformed to the lot occupancy and rear yard requirements of the Zoning Regulations. The exceptional shallowness and small size of Applicants' lot and Applicants' location within the Capitol Hill Historic District prohibit Applicants from expanding their home in any way, no matter how small, including the proposed addition that is just 58 square feet. Applicants enjoy living in a small, historic home but want to make it accommodate modern living for their family in the long term. For these reasons, strict application of Zoning Regulations results in peculiar and exceptional difficulties for Applicants.

2. Granting the application will not be of substantial detriment to the public good — i.e., traffic, noise, lighting.

The proposed project would not have any substantial detriment to the public good, including traffic, noise, and lighting.

First, because the addition is very small and in the rear of the house, it does not affect the front of house or street in any way. The addition also does not interfere with the existing alley behind the house. Therefore, it will have no negative impact on traffic in the area.

Second, the project would not cause any negative noise because the property would continue to be used as a single family dwelling and the Applicants' primary residence. The addition will be entirely enclosed and not cause any disturbances to the public.

Third, the project would not negatively impact lighting for the public generally or for the immediately adjacent property owners. The adjoining properties are currently separated by an approximately 7-foot-tall fence, and Applicants' home faces south, which means that the dogleg and rear yard face north and only receive indirect sunlight. Because the proposed addition would only be a single story that surpasses the existing fence by approximately 4 feet and the rear yards only receive indirect sunlight, the proposed addition would not block any more light into the rear yard of the adjacent neighbor than currently blocked by the existing structures and fences on the block. The project would also improve the lighting and circulation inside Applicants' home by opening up the area between the existing dining room and kitchen and allowing more natural light and air circulation between the two rooms.

^{4/} Subtitle E § 503.2 of the Zoning Regulations permits buildings in the RF-3 zone to have a height of 35 feet and three stories. Applicants' home is currently only two stories.

Moreover, one of Applicants' neighbors has already done a similar addition in their rear dogleg at 120 Duddington. Applicants reached out to the immediate neighbor whose dogleg is adjacent to the addition, and the neighbor stated that the addition has no more of an impact on his property than a fence separating their properties.

3. Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.

The proposed project would be consistent with the general intent and purpose of the Zoning Regulations and Map because Applicants would continue to use the property as a single family dwelling and as their primary residence. In addition, the proposed project would not harm or impair the health, safety, or general welfare of the U.S. Capitol precinct and adjacent area.

Applicants have greatly enjoyed living in the area due to the charm and feel of the neighborhood. Applicants simply want to make their home more functional in the hopes of living there for many more years to come and do not want to interfere with the character of the neighborhood.

B. Special Exception from Rear Yard Requirements

Pursuant to Subtitle X, Section 901.1, the proposed addition qualifies for a special exception because it will not adversely affect neighboring properties and will be harmonious with the general purpose and intent of the Zoning Regulations and Map.

1. Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.

Please see Section A.3. above.

2. The addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, i.e., traffic, noise, lighting.

As stated in Section A.2. above, the proposed addition would not have any substantially adverse effect on the use or enjoyment of any abutting or adjacent dwellings. The addition would not affect traffic, block light, create noise, impair privacy, or intrude upon the character of neighboring houses. The proposed addition would not interfere in any way with the existing rear alley or cause any other traffic issues. In addition, Applicants' property is currently separated from adjoining properties by a 6-foot-eight-inch to 7-foot fence on all sides. Applicants' and its neighbors' properties also face south, which means their rear yards face north and only receive indirect sunlight. Because all of Applicants' neighbors have similar two-story row houses that also face south (with the rear yard facing north), the rear yards on Applicants' side of the block are very shady, especially in the doglegs. The single-story addition therefore would not block any more light into the adjacent neighbor's property than the existing fence between the properties and the existing two-story row houses on the block. The proposed addition would also not impair the privacy of use and enjoyment of neighboring properties because the addition would not create any more noise to neighboring properties. Moreover, neither Applicants nor their adjacent neighbor have windows on the first story facing toward the others'

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property, and the proposed addition would not have any windows looking into the adjacent neighbor's property. Therefore, with the addition, the two properties would be separated by a windowless wall next to the existing fence.

Finally, the proposed addition would not intrude on the character, scale, and pattern of houses along the street because the single-story addition would be practically invisible from the alley over the 7-foot tall fence. As stated above, Applicants' home is built at grade, and their property actually slopes upward from the front of the house to the rear alley. Therefore, even though the addition would be taller than the fence, it would sit at a lower elevation than the rear alley and would be barely visible from the alley over the fence.

The proposed addition is also very small at approximately 58 square feet and would therefore not affect the scale of the street. Several other neighboring houses on the street already have similar additions or other accessory structures, as shown the attached photos, so the proposed addition would not change the existing character or pattern of houses on the street.

For the reasons set forth above, Applicants respectfully request that the BZA grant this application for a variance and a special exception for the proposed addition.