

Burden of Proof for Variance Relief

Subject Property: 1350 Queen Street NE, Washington, DC 20002
Zoning District RF-1, Square 4076W, Lots 0057/0058
BZA Application #20275

To: Chairperson Hill and Members of the Board
Office of Zoning
Government of the District of Columbia
441 4th Street, NW, Suite 210 South
Washington, DC

From: Charles M. and Dara B. Mooney
Owners/Applicants
1350 Queen Street, NE
Washington, DC 20002

Date: Thur, 12/31/2020

Re: Variance relief request to increase the number of dwelling units in an Apartment House located at 1350 Queen Street NE, Washington, DC 20002 (Square 4076W, Lots 0057/0058) which is on a combined lot that does not provide the requisite 900 sq. ft. lot area for each dwelling unit.

I. NATURE OF RELIEF SOUGHT

Charles M. and Dara B. Mooney (the “Applicants”), owners of 1350 Queen Street NE in Washington DC 20002, Square 4076W, Lots 0057/0058 (the “Property”), hereby requests an area variance pursuant to 11 DCMR § X-1001.2 and lot occupancy relief pursuant to 11 DCMR § E-201.7.

This one Variance per the Office of Zoning is requested to increase the number of dwelling units in an Apartment House that is on lot that does not provide the requisite 900 sq. ft. of lot area for each dwelling unit. This variance results from a proposed interior renovation to add one additional 5th unit in the cellar/basement level of the existing four-unit Apartment House. Load change of existing Apartment House.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant variance relief requests pursuant to:

D.C. Code § 6-641.07(g)(3) - *Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this subchapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map;*

11 DCMR § X-1000.1 - *With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), "[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, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."*

III. BACKGROUND TO GRANT OF VARIANCE RELIEF

(A) PROPERTY

The existing Apartment House currently has 4 units each approximately 550 sq.ft., in the R-1 zone on two combined lots totaling 3636 sq. ft. The existing building straddles two lots (0057 and 0058, each 1818 sq. ft.) which are both owned by the Applicants. The approximate 1100 sq. ft. lower level basement currently has approximately 825 sq. ft. of idle space used for maintenance/utility, tenant storage bins, plumbing/water heater, electrical and furnace.

Per Section E-201.7, it is noted the total required lot sq. ft. is 4500 sq. ft. which is the required 900 sq. ft. of lot space for the five units in this project comprised of the four existing units plus the one additional 5th unit proposed in this project. Additionally, these two lots (0057 and 0058) will be resized and remapped into one lot to account for the load change resulting from this project increase of 4 units to 5 units (see DC Office of Tax & Revenue map below). Following BZA approval, the Certificate of Occupancy will be amended from 4 units to 5 units. Lastly, the official building plat change process combining 0057 and 0558 is already underway with the Surveyor of the District of Columbia's office. At this time, the Applicants are requesting a variance pursuant to 11 DCMR § X-1001.2 from the Section E-201.7 lot area per dwelling unit requirement because the existing total lot size is 3636 sq. ft., and not 4500 sq. ft.,

resulting in a variance of 864 sq. ft. A final note is the additional single 5th unit will be below grade and have no negative impact to land/lot usage of the tenants or neighbors.



(B) THE SURROUNDING AREA

The Apartment House was built in 1940 and the two lots are located in the R-1 Zone of the Trinidad - Langston neighborhood in northeast Washington, D.C. The surrounding area is comprised predominantly of two-story rowhomes with basements. There are also low rise multi-unit condo buildings and the closest is located on the same block as the Property to the east on Queen Street NE. Additionally, there are multi-unit apartment buildings and the closest is located at the end of the block to the southeast of the Property on Holbrooke St NE.

To the northwest of the Property is the Trinidad Recreation Center and Mt. Olivet Cemetery and to the northeast of the Property is the U.S. National Arboretum. Trinity Washington University, Children's National Hospital and Washington Hospital Center are all located to the northwest of the Property (each with addresses in the NW sector of Washington, DC).

(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 0.9 miles

(approximately a 22 minute walk) from the Metrorail NoMa-Gallaudet/New York Avenue Metro Station, which is serviced by the Red Line and offers bikes racks, lockers and bike sharing services. Metrobus routes 90, 92 and X3 all serve the Property and intersect with dozens of additional routes. The ZipCar sharing program is located approximately 900 ft. from the Property on Bladensburg Rd NE. On walkscore.com, the Property is deemed “very walkable” and received a score of “good transit” as well as “very bikeable.”

IV. PROJECT

The Applicant purchased the Property in 2007 and through the years have maintained and modernizing the existing Apartment House. As part of the upkeep, the Applicants upgraded the interiors of the existing 4 units, including installing cabinets, finishes, windows and utility fixtures. The Applicant also improved the existing Apartment Home’s exterior aesthetic by removing overgrown plantings and painting the building. Notably, the Applicants have not previously structurally altered the existing Apartment House.

As part of modernization efforts, the Applicants propose to convert the existing basement area on the ground level to a 2-bedroom apartment with 1 full bath (the “Project”), approximately 825 sq. ft. A copy of the Architectural Plan for this Project is located in Exhibit 1, at the end of this document. The lower level basement is currently idle space used for tenant storage bins, maintenance/utility room, plumbing/water and electrical/furnace components. The existing tenant storage bins are no longer useful to the tenants because each of the 4 existing units provide ample space for storage on each of the tenants’ back porches which wer previously restricted for storage by the Applicants. Similarly, the existing building utility components’ placement do not maximize the available basement space and can be better serviced and accessible if moved to a smaller singular utility and maintenance room in the back corner of the basement.

If the Project receives BZA approval, the removal of the tenant storage bins and the relocation of the utility components to a singular utility room will create ample space for the addition of a spacious 2-bedroom apartment with 1 full bath and the overall Project will not change the footprint of the existing Apartment House. In general, area variances are intended to prevent “usable land from remaining idle;” See *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The BZA approval for this redesign of the existing basement space within the Apartment House will provide much needed affordable housing in a desirable neighborhood with excellent access to public transportation which otherwise would remain underutilized.

V. NATURE OF VARIANCE RELIEF AND STANDARD OF REVIEW

Variance relief is needed from the requirements of 11 DCMR § E-201.7 which requires the requisite 900 sq. ft. lot area for each dwelling unit of the Property. Because the Property is comprised of two lots of 1818 sq. ft. for each lot, the combined total lot square footage totals 3636 sq. ft.

The current Property is comprised of 4 existing units and this application proposes the addition of one unit to the basement level of the existing Apartment House resulting in a total of 5 units within the Property. The general purpose and intent of the Apartment House will not change however the lot area requirement still exists and variance relief is requested.

The total lot area requirement for the two lots with 5 units is 4500 sq. ft. The current Property lot area is 3636 sq. ft. resulting in a deficit of 864 sq. ft. and variance relief is required. 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:

- a. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition.
- b. The owner would encounter practical difficulties if the zoning regulations were strictly applied.
- c. 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.

It is understood that 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. It is further clarified that Applicants experience practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” It is also a well-recognized precedent that a self-created hardship is not a factor to be considered by the Board in an application for an area variance. Explained below and at the upcoming public hearing, all three prongs of the area variance test are met in this Application.

VI. THE APPLICANTS 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 to the land and also to the existence and configuration of a building on the land. The Property is characterized by an exceptional situation and condition because of the inability to add or purchase the additional 864 square feet of lot area to meet the requisite 900 sq. ft. lot area for each of the five dwelling units of the Property totaling 4500 sq ft.

- a. The current Property’s lot area is 3636 sq.ft. The Property is an interior, conjoined Apartment House within a singular city block. The Applicants own all available land to the front and rear of both lots 0057 and 0058. As a result, there is no additional land available to add or purchase in order to meet the required 4500 sq. ft. of lot area in order to add one additional dwelling unit to the existing 4-unit Apartment House. The front of the Property abuts the city sidewalk on Queen St NE and the rear of the property abuts the city alleyway. As an interior Apartment House there is no land on the side of the Property. This unique situation and condition supports

this variance relief requested and therefore strict application of this requirement is practically difficult for the Applicants.

- b. The Property is unique because it is improved with a purpose-built Apartment House which was constructed in 1940 and became legally nonconforming upon the adoption of the 1958 Zoning Regulations. The Building contains a significant amount of now-idle space on the basement level, below the four existing units in the Apartment House. The current tenant storage bin area has not been used by the tenants for some time and that space will continue to be vacant without the requested variance relief. The residents already have adequate storage space in each of the four existing units due to the Applicants allowing individual storage on each units back porch.

(B) STRICT APPLICATION WOULD RESULT IN PRACTICAL DIFFICULTY TO THE OWNERS

Strict application of the Zoning Regulations with respect to lot area requirements per dwelling unit (§ E-201.7) would result in a practical difficulty to the Applicants. The Apartment House is already principally constructed on the Property and the lot area requirement was established at the time of construction in 1940. Due to the inability to add or purchase any additional land to the Property, it would be a practical impossibility to comply with this specific Zoning Regulation.

In order to comply with the requisite lot area of 4500 sq. ft. to include the 5 unit within the existing Apartment House, the Applicants would be required to try to purchase land from one or split between both of the adjoining property owners. This would be a burdensome expense in relation to the 5th unit addition project scope and likely a lengthy negotiation process with one or both adjoining owners. It's also unlikely either of the adjoining property owners would want to sell a piece of their property resulting in an irregular property line and the intrusion of outdoor living space into either one or both neighboring front or rear yards.

Leaving this space idle does not merely waste already-existing space but also presents maintenance and security issues, as the unused basement may be a potential attractive nuisance as it is located on the lowest level of Apartment House with high visibility from the alleyway. A strict application of the Zoning Regulations would be unnecessarily burdensome to the Applicant and result in a practical difficulty, according to *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972). The purpose of variance relief is to prevent otherwise usable land from remaining idle, which is exactly what would happen if the Zoning Regulations were strictly applied, as the basement would remain unoccupied and the Applicants would be unable to dedicate the basement to any meaningful use. The existing 4 units have ample storage space; accordingly, the basement currently has no practical usage.

(C) NO SUBSTANTIAL DETRIMENT TO THE PUBLIC OR IMPAIRMENT TO ZONE PLAN

The proposed 5th unit addition on 3636 sq. ft. of lot area, which is 864 sq. ft. short of the requisite 900 sq. ft. lot area for each dwelling unit totaling 4500 sq. ft., does not have a substantial adverse effect on the use or enjoyment of any abutting or adjacent dwelling or

property because all alterations will be made to the inside and basement level of the existing Apartment House and:

- a. The light and air available to neighboring properties will not be compromised.
- b. The neighboring properties privacy or enjoyment will not be unduly compromised.
- c. All alterations will have no impact to the character, scale and pattern of neighboring or adjoining houses along the subject street frontage or rear alley.
- d. The general purpose and intent of the Apartment House will not change.
- e. Per 11 DCMR Subtitle C, Section 701, the Apartment House is required to provide one off-street parking space for every two units or three spaces for a five-unit building. The existing Apartment House currently has four dedicated parking spaces in the rear which more than currently meets these guidelines with 4 units and will continue to exceed these guidelines with the addition of the proposed 5th unit.
- f. The front, adjoining sides and rear of the existing Apartment House will remain unchanged in compliance with Zoning regulations and maps. (see Office of the Surveyor Plat shown in Exhibit 2 (at the end of the this document) indicating no disturbance to the surrounding buildings or neighbors.)

The Property already has 4 existing units, all of which are occupied, so the addition of one unit will not create a negative impact or noticeable increase in density to the neighborhood. For tenants of the existing Apartment House, renovating the poorly utilized basement will pose limited disturbances because the renovation will not require alterations to shared demising walls. There was an option to create larger two-level units connecting the two 1st floor units to two separate basement units however this option would have entailed much more costly construction which would also cause Building Code and Fire Code compliance issues. In addition, this option of the two 2-level combined apartments would be disruptive to all existing tenants which would have resulted in additional 1st floor construction (which is the entry level for the Apartment House) resulting in the need to relocate at least two existing tenants and would likely only result in a very small approximately 275 sq. ft. of useable space in each lower level addition. Lastly, adding to existing units would unduly increase the monthly rent of two existing tenants and would prevent the addition of desperately needed affordable housing in this desirable neighborhood.

This variance relief will be consistent with public policy to encourage the creation of additional housing with limited or no impact to the public good. The Project will allow a new affordable housing unit in otherwise unused space at an Apartment House that is in a dense, walkable, bikeable and transit-friendly neighborhood. The continued residential use of the Property will “reinforce the importance of neighborhood character . . . preservation of housing stock . . . and the overall housing mix and health of the city.” Subtitle E § 100.3(a).

Granting variance relief would not result in substantial impairment to the intent, purpose and integrity of the Zone Plan. Area variance relief from the 900 sq. ft. per unit rule as it relates to purpose-built apartment buildings was specifically enumerated in the 2016 Zoning Regulations to allow apartment buildings to expand, so long as the request meets the variance test. This variance relief requested is minimal, requesting only one (1) additional unit, and the Apartment House is impacted by a unique situation in that the basement space will be vacant and cannot be put to any use as a matter-of-right without creating a practical difficulty for the Applicants.

The Applicants agree to meet any additional conditions as set forth by the D.C. Board of Zoning Adjustment. At this time the Applicants have addressed all of the applicable Variances and respectfully request approval of this application.

VII. SUPPORTING CASE APPROVALS

The BZA Board has approved similar requests for relief in Case No. 19625, Case No. 19570, Case No. 19436 and Case No. 19196.

(A) CASE NO. 19625

In Case No. 19625 of 61 Rhode Island Avenue NE, LLC, the applicant requested area variance relief from the 900-foot rule in order to add two (2) units to an existing twenty-one (21)-unit apartment house in the RF-1 Zone at 61 Rhode Island Avenue, NE.

The applicant had a vacant space in the lower level of the existing apartment building which was most recently used for commercial purposes. As the nonconformity was discontinued for over three years, commercial use was no longer permitted and the ground-floor space remained vacant. The applicant was proposing to convert the space into two (2) residential units.

The Office of Planning recommended approval finding the expansion of the existing ground floor units into the space was impractical as it would be disruptive, existing tenants would have to be relocated, and it would result in odd-shaped inefficient units. The Board agreed with the Office of Planning's assessment and granted area variance relief.

The Applicants are faced with a similar situation in that the vacant basement space below other units cannot be combined with the units above without significant disruption to the existing tenants. The combined space would only result in very small 275 sq. ft. of additional living space after the addition of stairs and dividing walls for living space and bathroom in each new unit addition. This would also unduly increased rental expense for at least two affected existing tenants who have not requested this type of addition to their units.

(B) CASE NO. 19570

In Case No. 19570 of GWC 220 Residential LLC, the applicant requested area variance relief from the 900-foot rule to construct an additional apartment unit in an existing twelve (12)-unit apartment house in the RF-3 Zone at 220 2nd Street, SE.

The Office of Planning recommended approval, finding that expansion of the ground floor units into the basement would require extensive alterations, including additional stairways. Leaving the space vacant could create nuisances that would pose safety and security risks to tenants. The Board agreed with the Office of Planning's assessment and granted area variance relief.

The Applicants are again faced with a similar situation in that it cannot practically combine the basement space with the units above and leaving the ground floor space vacant could create nuisances that would pose safety and security risks to tenants.

(C) CASE NO. 19436

In BZA Case No. 19436 of CCA Randolph L.P. and Petworth Station LP, the applicant requested area variance relief from the 900-foot rule in order to add thirteen (13) residential apartment units to a purpose-built apartment located at 930-960 Randolph Street, NW.

The Office of Planning report recommended approval, finding that the existing configuration had areas designed as common space in excess of what was necessary to perform the function of an apartment building. The Board agreed with the Office of Planning's assessment and granted area variance relief for the addition of thirteen (13) residential units.

The Applicants in the present case are faced with a similar situation in that the existing basement used as tenant storage space is no longer needed since each tenant can use their back porch as storage and the ill-configured utility components are in excess of what is necessary for the Apartment House. In Case No. 19436, the applicant requested relief in order to add thirteen units, whereas the Applicants in this case are only requesting to add one residential unit.

(D) CASE NO. 19196

In Case No. 19196 of 1247 ESE, LLC, the applicant requested relief from the 900 square foot rule in order to convert a lower-level storage space into a residential unit in the RF-1 Zone at 1247 E Street, SE.

The applicant was proposing to convert an unused storage space into one residential unit for a total of five (5) units. The property was originally constructed in the 1890's as a mixed-use building with commercial use on the first floor and residential use on a portion of the first floor and upper floors. The building also had a large cellar space used for storage by the commercial use. The applicant previously received relief to operate a restaurant on the first floor with storage in the cellar space.

The applicant argued, and the Office of Planning agreed, that a restaurant would not require such a large amount of storage space (1,934 square feet) in the cellar and, even

with the accommodation of storage for existing residential uses (219 square feet), and the partitioning of a portion of the space for restaurant storage (1,024 square feet) a large space would remain underutilized. The Office of Planning reasoned that even though the conversion would not conform to the 900-square foot requirement, “there is no other reasonable use for the space and retaining it as a vacant space presents a practical difficulty to the owner.”

Similarly, the Applicant in the present case has no reasonable use for approximately 825 sq. ft. of unused and ill-configured space of the approximate 1100 sq. ft. basement space and retaining the unused vacant space presents practical difficulties as described herein. The Applicant’s case is even stronger in that no portion of the space can be used for any reasonable purpose, whereas at least a portion of the existing space in Case No. 19196 could be used for some commercial storage.

VIII. NEIGHBORING APPROVAL

Considering the non-impact to any surrounding buildings, it is believed that there will be no objections, no harm to neighboring properties or negative consequences to neighboring property owners as a result of this alteration to the subject building. All neighbors within a 200 ft radius will be notified, their responses documented however no concerns are expected to be expressed.

IX. COMMUNITY OUTREACH

The Applicants will be contacting the Chairman of ANC 5D as well as the ANC Single Member District 5D07 Commissioner for the Apartment House proposed 5th unit addition shortly after this Application is filed. After presenting at the ANC 5D meeting, the Applicants will seek a vote in support of this project from the ANC 5D and SMD 5D07.

X. CONCLUSION

The Applicants look forward to speaking with the D.C. Office of Zoning and community members at the upcoming Office of Zoning public hearing to further discuss the details of the Property alteration and variance relief, provide any additional required documentation for this request, answer questions and address any further considerations. Thank you in advance.

Architectural Drawing of the proposed basement level 2 bedroom apartment with one full bath.

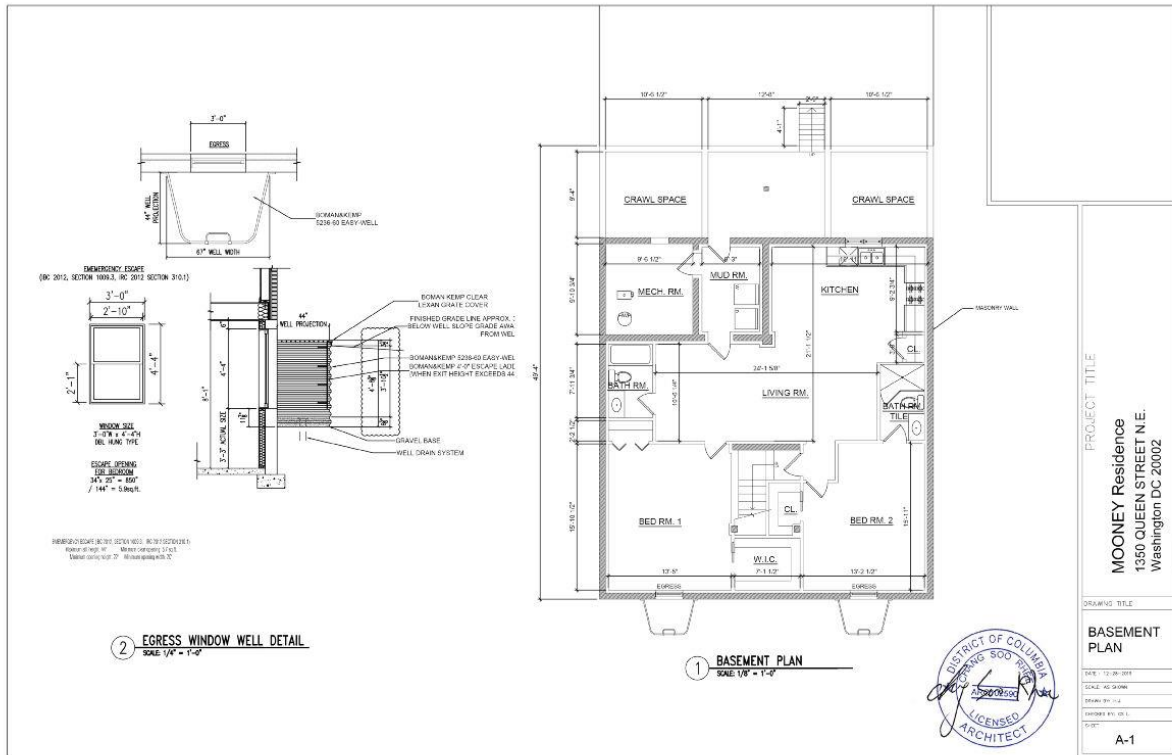


EXHIBIT 2

Office of the Surveyor's Plat outlining the property boundary lines.

DISTRICT OF COLUMBIA GOVERNMENT OFFICE OF THE SURVEYOR

Washington, D.C., January 6, 2020

Plat for Building Permit of: SQUARE 4076-W SITE PER SUB

Scale: 1 inch = 20 feet

Receipt No. 20-01813 Drawn by: B.D.M.

Furnished to: DARA B. MOOMEY

"I hereby certify that the dimensions and configuration of the lot(s) hereon depicted are consistent with the records of the Office of the Surveyor unless otherwise noted, but may not reflect actual field measurements. The dimensions and configuration of A&T lots are provided by the Office of Tax and Revenue and may not necessarily agree with the deed description(s)."

Surveyor, D.C.

I hereby certify that on this plat on which the Office of the Surveyor has drawn the dimensions of this lot, I have accurately and completely depicted and labeled the following:

- 1) all existing buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, and any existing face-on-line or party wall labeled as such, well as projections and improvements in public space - with complete and accurate dimensions;
- 2) all proposed demolition or raze of existing buildings duly labeled as such, all proposed buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, any existing face-on-line or party wall labeled as such, as well as projections and improvements in public space and the improvements used to satisfy previous surface or green area ratio requirements - with complete and accurate dimensions, in conformity with the plans submitted with building permit application _____; and
- 3) any existing chimney or vent on an adjacent property that is located within 10 feet of this lot.

I also hereby certify that:

- 1) my depiction on this plat, as detailed above, is accurate and complete as of the date of my signature hereon;
- 2) there is no elevation change exceeding ten feet measured between lot lines; or if so, this elevation change is depicted on a site plan submitted with the plans for this permit application;
- 3) I have ~~have not~~ (circle one) filed a subdivision application with the Office of the Surveyor;
- 4) I have ~~have not~~ (circle one) filed a division of lots application with the Office of Tax & Revenue; and
- 5) if there are changes to the lot and its boundaries as shown on this plat, or to the proposed construction and plans as shown on this plat, that I shall obtain an updated plat from the Office of the Surveyor on which I will depict all existing and proposed construction and which I will then submit to the Office of the Zoning Administrator for review and approval prior to permit issuance.

Plats issued by the Office of the Surveyor will be valid for a period of 6 months from the date of issuance. I acknowledge that any inaccuracy or errors in my depiction on this plat will subject any permit or certificate of occupancy issued in reliance on this plat to enforcement, including revocation under Sections 105.6(1) and 110.5.2 of the Building Code (Title 12A of the DCMR) as well as prosecution and penalties under Section 404 of D.C. Law 4-164 (D.C. Official Code §22-2405).

Signature: _____ Date: 01/09/2020

Printed Name: David Hyung Jo Relationship to Lot Owner: Agent

If a registered design professional, provide license number _____ and include stamp below.

