12/04/2024

Frederick L. Hill

Chairperson

Board of Zoning Adjustments

441 4th Street NW Room 220 South

Washington, DC 20001

Re: BZA No. 20280A. Application of Nataniel Lewis (622 I Street NE)

In the November 6, 2024 public hearing of the instant application, the BZA requested further brief of the uniqueness clause of the three-prong test for the area variance precipitated by the application of Subtitle C, Chapter 3, § 303.4, in response the ANC opposition citing Gilmartin v D.C. Board of Zoning Adjustment.

Applicant attaches the referenced published Court Order, specifically those portions highlighted in yellow in pertinent part, and submit the following as the relevant salient points:

- That in an area variance, the uniqueness of property is not exclusively restricted to its physical shape or other physical characteristics, and that such uniqueness can result from a confluence of factors, including an extraordinary situation or condition of property.

- That certain other extraordinary or exceptional situation or condition of a specific property need not have preceded or subsequent to the adoption of the Zoning Regulations

- That prior knowledge or construction knowledge or that practical difficulty or hardship affecting a specific property is self-imposed is not a bar to the granting of an area variance

- That the uniqueness need not inhere in the land, and can be extraneous

Applicant has taken the liberty to reference a synopsis of the Home Rule Charter and D.C. Code on Planning and Zoning, highlighted in pertinent part where they reinforce the salient points above, to wit:

- Although the Board is not bound for all time by its prior position, the Board should consider interpretations of the Zoning Regulations which it has approved in the past. **Smith v, D.C. Bd. of Zoning Adjustment, APP D.C. 342 A.2d 356 (1975)**

- The Board can be taken into account in the uniqueness facet of the variance test, the past zoning history of a parcel. **Monaco v. District of Columbia Bd. of Zoning Adjustment, APP. D.C. 407 A 2.d 1091 (1979)**

- "Good faith, detrimental reliance on the zoning authorities' informal assurances may be taken into account in assessing an intervenor's undue hardship under the variance law. **Monaco v. Bd. of Zoning adjustment, APP. D.C. 342 A.2d 356 1091 (1979).**

- To warrant granting an area variance, it must be shown that compliance with area restrictions would be unnecessarily burdensome, the nature and extent of which is best left to the facts and circumstance of each case. **Palmer v. District of Columbia Board of Zoning Adjustment, APP. D.C. 287 A.2d 635 (1972)**

Applicability/Pertinence to BZA No. 20280A

Applicant's contention is that its uniqueness is the result of a confluence of factors resulting in an extraordinary situation or condition of property, to wit, the fixed width of lot 0032 of eighteen feet, including the existing improvement on the lot and the two adjacent lots, which were in existence as of May 12, 1958, the fact of its zoning history in BZA approval of the project under BZA Order 20280, and the fact of the issuance of approved permit plans and building permit, constituting a unique zoning history. **(Monaco v. District of Columbia Bd. of Zoning Adjustment, APP. D.C. 407 A 2.d 1091 (1979) (Gilmartin v. District of Colombia Bd. of Zoning Adjustment. APP. D.C 579 A.2d 1164 (1990)**

In a recent case of similar material fact, the BZA in fact accepted and the Office of Planning predicated its report recommending approval of relief from C, 303.4 the fact of the pre-existing lot width (21 feet) and the fact of improvements on immediately adjoining lots, as the property's "extraordinary condition or situation of property (see BZA Order No. 20951A.

Although the subject property was a tax lot, it comprised of a narrow front lot, and wider alley lot and a landlocked lot.

Given the ambiguous history of the specific section of the Zoning Regulations and its applicability or lack thereof in the circumstance of the conversion rules of RF-1 and its predecessor R-4 zoning district, the Board can take into consideration the only other application it has approved in BZA Order No. 20951A (**Smith v, D.C. Bd. of Zoning Adjustment, APP D.C. 342 A.2d 356 (1975).**

The Applicant contends that the project approved under BZA Order No. 20280, after a protracted and thorough evaluation constitutes a zoning history that the Board in the uniqueness facet of a variance test. (**Monaco v. District of Columbia Bd. of Zoning Adjustment, APP. D.C. 407 A 2.d 1091 (1979))**

The Applicant is this case placed good faith detrimental reliance on the zoning authorities' more than informal assurances, he did so on **formal [Emphasis added]** assurances by virtue of a valid BZA Order of approval, and the approval of permit drawings and a building permit.

The foregoing is the more poignant because the Applicant acquired the property with the inherent value associated with a property with a valid BZA Order.

Public records attest that the Applicant paid $1.25 million to acquire the property along with the BZA Order and proceeded to engage the services of a professional design team to develop the permit set drawings, including paying property taxes, permit fees et cetera to the tune of another $300.000.00 approximately. Monaco states that this fact can be considered is assessing applicant's undue hardship, a test typically reserved for the more burdensome use variance test. Where there is hardship, there is practical difficulty.

In any event, Applicant need only to show that an area restriction would be unnecessarily burdensome to warrant the grant of an area variance such as requested in the circumstance. The fact and circumstance of this particular case is the ability of the front lot to expand its width of lot at the street has been foreclosed since prior to May 12, 1958, and having approved the project in the exact same scheme, making the applicant redesign the

project by unraveling the combination of the two lots through subdivision, on hold by the Zoning Administrator, pending the outcome of this case will be unnecessarily cumbersome for the applicant **Palmer v. District of Columbia Board of Zoning Adjustment, APP. D.C. 287 A.2d 635 (1972)**

For all the foregoing reasons, the Applicant contends that the application has met its burden of proof and respectfully requests that the Board grant the requested relief

Respectfully Submitted

Olutoye Bello