

BOARD OF ZONING ADJUSTMENT

Prehearing Statement of MADM DEVELOPMENT LLC

411 New Jersey Avenue, SE (Square 693, Lot 96)

I. INTRODUCTION.

This Statement is submitted on behalf of MADM DEVELOPMENT LLC (the “**Applicant**”), owner of the property located at 411 New Jersey Avenue, SE (Square 693, Lot 96) (the “**Subject Property**”). The Subject Property is located primarily in the RF-3 zone; with a small portion of the Subject Property, at the rear, located in the PDR-5 zone. The Subject Property is currently unimproved. The Applicant new three-story building (the “**Building**”) and use the Building as a flat (2-units) (the “**Project**”). In order to complete the Project, the Applicant is requesting the following relief:

Special Exception Relief:

1. Ten Foot Rule Relief- E § 5201 (E § 205.5)

Pursuant to E § 205.4-5, buildings in the RF-3 Zone are not permitted to extend more than ten feet (10 ft.) past the rear wall of any adjoining principal residential building on any adjacent property unless approved as a special exception. There is one adjacent building to the south- 413 New Jersey. A portion of the proposed Building extends twenty-one feet and eight inches (21 ft. 8 in.) past the neighboring building to the south. Accordingly, the Applicant is requesting special exception relief from the ten-foot rule pursuant to E § 205.5 and subject to E § 5201.

2. Height Relief- E § 5203 (E § 503.2)

Pursuant to E § 503.2-4, buildings in the RF-3 Zone are not permitted to exceed a height of thirty-five feet (35 ft.) unless approved as a special exception. The proposed Building will be a height of thirty-five feet and six inches (35 ft. 6 in.) in order to match the height of the neighboring

buildings. Accordingly, the Applicant is requesting special exception approval from the permitted maximum height pursuant to E § 503.2 and as evaluated against the criteria of Subtitle E § 5203.

3. Relief from the Penthouse Setback Requirements- C § 1504 (C § 1502(b)(c))

The Zoning Administrator has previously determined that decks greater than ten feet (10 ft.) in depth are subject to the setback requirements of C § 1502. There is a second story deck at the rear of Building which is greater than ten feet (10 ft.) in depth and the Applicant is proposing railings around the deck. As the deck is relatively small, setting back the railings would reduce its usable space by over fifty percent (50%). Accordingly, the Applicant is requesting relief from the setback requirements of C § 1502(b)-(c) pursuant to C § 1504.

Area Variance Relief:

1. Rear Yard Relief (E § 506.1)

Pursuant to E § 506.1, the minimum rear yard in the RF-3 zone is twenty feet (20 ft.). The Applicant is proposing a rear yard of eighteen feet and two inches (18 ft. 2 in.). Accordingly, the Applicant is requesting variance relief from the minimum rear yard requirements of E § 506.1.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception approval requested pursuant to Subtitle X § 901.2, E §§ 5201 & 5203, and C § 1504 and the variance relief pursuant to X § 1000.1.

III. BACKGROUND.

A. Description of the Subject Property and Surrounding Area.

The Subject Property is located in the South Capitol Hill Area and is in the RF-3 Zone and the PDR-5 Zone. It is also located in the Capitol Hill Historic District and is within the Commission of Fine Arts jurisdiction. Abutting the Subject Property to the north is a railroad yard. Abutting the Subject Property to the south is a row building owned by the Congressional Black Caucus. Abutting the Subject Property to the west is an office building with frontage on Ivy Street, SE.

Abutting the Subject Property to the east is New Jersey Avenue, SE. The area is characterized by row dwellings used for a variety of residential purposes, including single-family dwellings, flats and condos, as well as institutional and office uses. The Subject Property is only five hundred feet (500 ft.) from the Capitol South Metro Station.

The current lot is very oddly shaped and has an odd side lot line that jogs back and forth as it moves south. The existing lot forms an “L” shape at the rear. As discussed further herein, the degree of relief for each area is relatively small and are only necessary because of the lot shape and design considerations.

B. Proposed Project.

The Applicant is proposing to create a new, three-story Building and use the building as a flat. Each unit will have the appearance of a single-family dwelling (separate entrances etc.). The Project is subject to review by both the Commission of Fine Arts (“CFA”) and the Historic Preservation Review Board (“HPRB”) and has received CFA Approval and concept Approval from HPO. The Project has been designed to complement the existing character of the area, which is why the Applicant has designed each unit to appear as a single-family dwelling. The proposed units will then be compatible with the existing lot widths and lot frontages of the block, which average about twenty feet (20 ft.). The Building will have a height of thirty-five feet and six inches (35 ft. 6 in.) in order to align with the existing building heights on this block. The Applicant is also proposing three (3) parking spaces.

III. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF.

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 E § 5201, E § 5203 and C § 1504 of the Zoning Regulations.

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. General Special Exception Requirements of Subtitle X § 901.2.

In this case, the granting of a special exception for lot width relief, relief from the ten foot rule, and relief from the maximum permitted height “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).

1. Project will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Subject Property is located in the RF-3 Zone; the RF zones “are distinguished by a maximum number of principal dwelling units per lot of either two (2), three (3), or four (4) units.” (E § 100.4). The use itself—a 2-unit dwelling—is permitted as a matter-of-right and the requested relief for special exception was contemplated by the Zoning Commission and enumerated in the 2016 Zoning Regulations. The degree of relief for each item is relatively small and the relief is related to design considerations which will keep the proposed Building in character with the surrounding buildings. Accordingly, the proposed Project and use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

2. Project will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Project will not impact the light and air or privacy of the neighboring properties.

C. The Application meets the Specific Requirements of Subtitle E § 5201.

The Applicant is requesting special exception approval from the ten-foot rule pursuant to E § 205.5 as evaluated against the criteria of E § 5201. The Applicant is requesting relief because a portion of the Building will extend twenty-one feet and eight inches (21 ft. 8 in.) past the rear wall of the building to the south. The proposal meets the special exception relief as follows:

Section 5201.4(a) “The light and air available to neighboring properties shall not be unduly affected;

The Building length varies and the portion closest to the building to the south does not extend further and matches the rear wall of the building to the south. The northern portion of the building then extends eleven feet and eight inches (11 ft. 8 in.) further than the portion to the south and adjoining building to the south. The longer portion is separated from the building to the south by approximately twenty feet (20 ft.) which creates approximately a 1:1 ratio from the proposed length to distance from the adjoining building’s rear wall. This was purposefully done to mitigate any potential undue impacts on light and air. Moreover, the longer portion of the building is to the north of the adjoining building. Based on the orientation of the lots relative to the location of the sun, and the distance between the portion of the Building needing relief and the adjacent building, the additional eleven feet and eight inches (11 ft. 8 in.) will create minimal shading (compared to a MOR building). Accordingly, the requested relief will not unduly affect the light and air available to neighboring properties.

Section 5201.4(b) “The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The privacy of use and enjoyment of any neighbors will not be unduly compromised by the additional length as there are no proposed south-facing windows.

Section 5201.4(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;

The additional Building length will not impact the view from New Jersey Avenue nor will it substantially visually intrude upon the character, scale, and pattern of houses along New Jersey Avenue as it is located at the rear of the Building, adjacent to a railroad yard.

Section 5201.4(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;

The Applicant has included plans and photographs sufficient to represent the relationship of the proposed Project to adjacent buildings and views from public ways with this Application.

Section 5201.4(e) “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 shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.”

The Applicant is not requesting to introduce or expand a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception. The Applicant is requesting special exception relief for the height under a separate special exception.

D. The Application meets the Specific Requirements of Subtitle E § 5203.

The Applicant is requesting special exception relief from the maximum permitted height requirement pursuant to E § 503.2 as evaluated against the criteria of E § 5203. The Applicant is requesting relief because to construct the Building to a height of thirty-five feet and six inches (35 ft. 6 in.) which matches the height of the surrounding buildings. The proposal meets the criteria for special exception relief as follows:

Section 5203.1(a) “**The proposed construction shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:**

1. The light and air available to neighboring properties shall not be unduly affected;

The additional six inches (6 in.) of height will not unduly impact the light and air available to neighboring property, as the additional height will match the height of the neighboring building.

2. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

The privacy of use and enjoyment of the neighboring property shall not be unduly compromised as a result of an additional six inches (6 in.) of building height. The additional building height will not result in an increase in windows facing the adjacent property (there are no windows facing the adjacent property).

3. The proposed construction 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 or alley;

The Project shall not substantially visually intrude upon the character, scale and pattern of houses along New Jersey Avenue. As previously stated, the Applicant is proposing a height of thirty-five feet and six inches (35 ft. 6 in.) in order to more closely match the existing heights of the other buildings along the street.

Section 5203.1(b) “In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction’s height to adjacent buildings and views from public ways; and

The Applicant has included plans and photographs with this Application that are sufficient to represent the relationship of the proposed construction’s height to adjacent buildings and views from public ways.

Section 5203.1(c) “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 or nearby properties, or to maintain the general character of a block.

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

E. The Application Meets the Specific Requirements of C § 1504.

The Zoning Administrator has previously determined that decks greater than ten feet (10 ft.) in depth are subject to the setback requirements of C § 1502. The proposed second floor deck, while not on the roof, must therefore set back its railings as a 1:1 ratio from the sides and rear. Accordingly, the Applicant is requesting relief from the setback requirements of C § 1502 pursuant to C § 1504.

C § 1504.1 Relief to the requirements of Subtitle C §§ 1500.6 – 1500.10 and 1502 may be granted as a special exception by the Board of Zoning Adjustment subject to Subtitle X, Chapter 9 and subject to the following considerations:

(b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;

The second story deck is only 240 square feet and requiring a 1:1 setback for all railings would reduce this area to only 100 square feet. Moreover, the railings are clearly distinct from the Building and would not appear to be an extension of the Building wall.

(f) The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

As this is an interpretation of the Zoning Administrator and the railings are not technically roof structures since the deck is on the second story, not the roof, the intent and purpose of this chapter and this title shall not be materially impaired by the railings and the light and air of adjacent buildings shall not be affected adversely. Moreover, a new text amendment would eliminate the need for relief for the railings.

IV. THE APPLICATION SATISFIES THE REQUIREMENTS FOR AREA 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 variance for relief from the rear yard, side yard, and lot width requirements.

A. Extraordinary or Exceptional Condition affecting the Subject 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 faced with a number of exceptional conditions. It is currently unimproved and subject to CFA and HPRB review. While a property is not unique merely by virtue of being in a historic district, it is the only unimproved lot on this block and therefore the review by each agency would be different than if someone were to propose an addition on an existing building. On top of the challenges that come with creating a new Project capable of obtaining HPRB and CFA approval, the Applicant is faced with another exceptional condition in that the existing lot is oddly shaped. It has over double the lot frontage of the adjacent lots to the south and across the street, but it narrows in the middle and then forms an “L” at the rear. It is also split-zoned, and a portion is in the PDR-5 Zone. One of the more difficult aspects of the lot is its northern lot line which jogs at an odd angle and narrows as it moves towards the rear. There are some oddly shaped lots to the west of the Subject Property, but those are located in the PDR zone behind the Subject Property and are used for commercial or institutional purposes.

As discussed below, specific design considerations for a new Project in a row district, coupled with the odd shape of the lot have led to a rear yard variance request for only one foot and ten inches (1 ft. 10 in.) of relief from the applicable development standards of the RF-3 zone.

B. Practical Difficulty if the Zoning Regulations were 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.

Rear Yard

The Project is just one foot and ten inches (1 ft. 10 in.) shy of the rear yard requirements as it is providing a rear yard of eighteen feet and two inches (18 ft. 2 in.). The Board may consider the severity of the relief requested as part of its consideration for the practical difficulty prong. In this case, the severity of relief is only one foot and ten inches (1 ft. 10 in.), and only for a small portion of the Building. The primary difficulty is created by the odd north lot line which prevents the Applicant from being able to take full advantage of the lot width. Essentially the massing is pushed back towards the rear because of the odd lot line, as well as Historic design considerations.

Specifically, in designing the Building the architects created two (2) different aesthetics: the old and historic Victorian design in the front and the more modern design in the rear. The design choices reflect the character of the existing row dwellings fronting on New Jersey Avenue juxtaposed with a railroad yard, loading dock, and mechanical equipment to the north and west of the Property. The Victorian front is limited to a more rectilinear and traditional design and therefore cannot take advantage of the full lot width because of the jogs in the north lot line. The modern aesthetic has been shifted towards the rear of the Building. In order to separate the two (2) aesthetics, the side yard increases at the middle of the Building and the Building width shrinks. While that helps separate the historic and modern design, it eliminates usable building space and pushes the bulk of the modern aesthetic towards the rear, where the Applicant can take advantage of the full width of the lot. Were that space to be trimmed down, the Applicant would lose almost

two feet (2 ft.) of usable bedroom space which is a relative practical difficult considering the complicated lot line, design requests, and amount of relief requested.

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. The proposed rear yard is only one foot and ten inches (1 ft. 10 in.) shy of meeting the rear yard requirement and the need for relief is driven by the odd shape of the north lot line, a condition not found elsewhere on unimproved residential properties in this area. The relief is only for a very small portion of the lot and will therefore not create a detriment to the public good, as it allows for additional bedroom space and will not result in additional density.

V. CONCLUSION.

For the reasons stated above, this application meets the requirements for special exception relief and variance relief by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

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