



September 30, 2024

**Eric J. DeBear**

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Frederick L. Hill, Chairperson  
Board of Zoning Adjustment  
441 4th Street, NW, Suite 200S  
Washington, DC 20010

**Re: BZA Case No. 21183  
Applicant's Prehearing Statement**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant 933 N St NW LLC, please find enclosed the Prehearing Statement for the above-referenced case. We look forward to presenting the application to the Board of Zoning Adjustment on October 30, 2024. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric J. DeBear", written over a horizontal line.

Eric J. DeBear

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2024 a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

D.C. Office of Planning  
c/o Crystal Myers  
1100 4<sup>th</sup> Street SW, Suite E650  
Washington, DC 20024  
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Advisory Neighborhood Commission 2G  
c/o Rachelle Nigro, Chairperson 2G06  
Steven McCarty, SMD 2G04  
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Eric J. DeBear

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF  
933 N ST NW LLC**

**BZA CASE NO. 21183**

**APPLICANT'S PREHEARING STATEMENT**

**I. EXECUTIVE SUMMARY AND NATURE OF RELIEF SOUGHT**

This prehearing statement is submitted on behalf of Applicant 933 N ST NW LLC (the “**Applicant**”), the owner of the property located at 933 N Street NW (Square 367, Lot 81) (the “**Property**”), in support of its application for special exception relief from the requirements for courts (Subtitle E § 209.1) and side yard (Subtitle E § 208.4) and area variance relief from the requirements for rear yard (Subtitle E §§ 207.1, 207.5) and lot occupancy (Subtitle E § 210.1).

The Applicant is requesting this relief in order to subdivide the Property, which is improved with a 39-unit historic apartment building called the “Henrietta,” and construct a two-family dwelling on the new, separate lot (the “**Project**”).

**II. LOT OCCUPANCY RELIEF**

Since filing the application, the Applicant discussed the requested relief with the Office of Planning (“OP”). As part of the discussions, OP requested additional information in support of the area variance for lot occupancy.

In summary, the Henrietta has a building footprint of 5,207 sq. ft. and an existing lot occupancy of 59%. Although the Project will not structurally alter the Henrietta, the proposed subdivision would decrease the size of the Henrietta’s lot from 8,820 sq. ft. (existing) to 6,507 sq. ft. (proposed). As a result, the Henrietta’s lot occupancy will increase from 59% to 80%. In the RF-1 zone, the maximum lot occupancy for a multi-family structure is 60%.

The following is intended to reiterate and supplement the original application as to how the variance standard has been met with respect to lot occupancy relief.

### **A. Exceptional Conditions**

An exceptional condition affecting a property can arise from a confluence of factors provided the factors affect only a particular property. *See Gilmartin v. D.C. Bd. Of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). The exceptional conditions can be distinct and unique to the neighborhood, not necessarily city-wide. *See Ait-Ghezala v. D.C. Bd. Of Zoning Adjustment*, 148 A.3d 1211, 1217 (D.C. 2016).

As it relates specifically to lot occupancy, the Property is exceptional based on the following factors:

- ***Large Unused Side Yard in Dense Neighborhood***

The Henrietta's large unused side yard is unique in the dense Shaw neighborhood. The side yard is 24-28 feet in width (widening toward the rear) for a total area of approximately 3,250 sq. ft. The Henrietta's side yard is large enough to well exceed the minimum dimensions for a new lot in the RF-1 zone, which is 1,800 sq. ft. and 18 ft. in width.

The most common building type in the neighborhood is an attached rowhome, which is consistent with the RF-1 zoning. These attached rowhomes do not have any side yards. There are also some vacant lots and other lots improved with larger apartment buildings or religious buildings. However, there are few, if any, lots in the neighborhood that have existing structures but contain sufficient unused land to subdivide for new construction.

- ***Historic Alignment of Separate Lots***

To that end, the Henrietta's side yard was historically a separate record lot. *See Architectural Plans* (Ex. 6), pg. 3. The Project is proposing to return the side yard as a separate lot and restore the historic alignment of the Henrietta on its own lot.

- ***Poor Condition of Historically-Contributing Henrietta***

The Henrietta is an historically-contributing structure in the Blagden Alley/Naylor Court and Shaw Historic Districts (the “**Historic Districts**”) that has fallen into disrepair in recent times. Both the interior and exterior of the Henrietta were in poor condition when the Applicant purchased the Property in 2023. As part of the Project, the Applicant is completing a major renovation of the historic Henrietta, including a complete remodel and modernization of the interior, replacement of historic windows, and resuscitation of exterior features.

**B. Practical Difficulty**

The practical difficulty standard requires the applicant to demonstrate that “compliance with the area restriction would be unnecessarily burdensome.” *See Metropole Condominium Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016) (quoting *Fleishman v. D.C. Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011)). As part of this determination, the Board may consider factors including the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *See Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The Applicant cannot achieve the Project,<sup>1</sup> or any alternative residential redevelopment of the Henrietta’s unused side yard, with strict compliance of the lot occupancy requirements, as follows:

***i. Project is not feasible without creating separate lot***

The Applicant purchased the Property in 2023 with the intent to conduct a wholesale renovation of the Henrietta and create a new lot to build a separate structure. Critically, the Henrietta’s status as an historically-contributing building results in the need for more experienced labor and more precise materials to comply with historic preservation guidelines. For example, all

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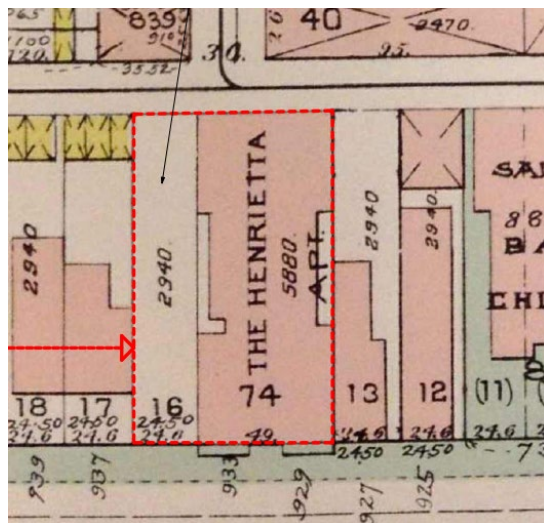
<sup>1</sup> A self-created hardship cannot be considered to bar an area variance. *See Assoc. for Pres. Of 1700 Block of N Street, etc. v. D.C. Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978).

of the Henrietta's windows must be replaced with customized historically-appropriate windows, which is significantly more labor intensive as compared to standard windows. These increased costs were factored in by the Applicant when it purchased the Property.

To counter-balance these increased burdens of the Property, which would not change regardless of the proposal, the Project was only reasonable if the Henrietta's large, unused side yard could be subdivided to allow for new construction. However, with strict application of the lot occupancy standards, the Property cannot be subdivided to create a separate lot and the Applicant faces a practical difficulty to renovate the Henrietta and bring back the 39-unit apartment building. The Project will allow for the renovation of 39 units and the development of two new existing family-sized units.

***ii. Inability to Return Property to Historic Alignment with Two Lots***

The Property was historically two separate lots, with the Henrietta located on Lot 74 and the adjacent Lot 16 being unimproved. As late as the 1980's, the Property remained two separate lots, as reflected in the attached deed at **Exhibit A**. The Henrietta was constructed in 1900, which means the Property was two separate lots for over 80 years. For those 80 years, the Henrietta's lot occupancy far exceed the maximum lot occupancy permitted in the RF-1 zone (formerly R-4 zone).



If the lot occupancy standards are strictly applied on a lot that existing in non-compliance for decades, then the Property cannot be subdivided and returned to its historic alignment with two separate lots.

***iii. Alternative Development Options Require Variance Relief***

Further, the Applicant faces practical difficulties with strict application of lot occupancy standards because alternative development options for the Property also require variance relief or are otherwise unreasonable.

- ***Changes to Subdivision***

The Henrietta has a footprint of 5,207 sq. ft. for an existing lot occupancy of 59%. The maximum lot occupancy in the RF-1 zone is 60%. Therefore, any subdivision would require zoning relief for the Henrietta's lot occupancy.

The RF-1 zone allows up to 70% lot occupancy by special exception, with anything greater than 70% requiring variance relief. For the Henrietta to maintain a lot occupancy under 70%, the Henrietta's lot must be at least 7,438 sq. ft. This would leave a remainder of only 1,382 sq. ft. for the new proposed lot, which does not meet the minimum 1,800 sq. ft. of lot area in the RF-1 zone. Even if the Applicant were to pursue voluntary inclusionary zoning, the minimum lot area is 1,500 sq. ft. and variance relief is required. Therefore, the strict application of lot occupancy requirements makes it practically difficult to subdivide and redevelop a separate lot.

- ***Achieving Project as an Addition to the Henrietta***

Alternatively, achieving this project as an addition to the Henrietta would require use variance relief. In the RF-1 zone, a multi-family apartment use is generally not permitted. Under Subtitle U-301.5, an existing apartment house constructed prior to May 1958 is considered a conforming use. While such an apartment house can be renovated or expanded, an existing apartment house with less than 900 sq. ft. per existing dwelling unit cannot increase the number

of units (Subtitle U-301.5(b)). The Henrietta has 39 units with 226 sq. ft. per unit. Therefore, adding new units to the Henrietta would require use variance relief.

There would also be historic preservation limitations and structural challenges with any addition to the Henrietta. While additions to an historically contributing structure are possible, it would present greater challenges to achieve this Project. It is unclear whether HPO and HPRB would be supportive of any addition. There would also be challenges in integrating a new addition to the Henrietta.

- ***Reducing the Henrietta's Footprint***

It would be practically difficult to reduce the Henrietta's footprint in order to maintain compliance with lot occupancy. Based on the proposed subdivision of the Property, the Henrietta's footprint would have to be reduced from 5,207 sq. ft. to 3,904 sq. ft. to achieve a 60% lot occupancy. Yet, the Henrietta is a contributing structure in the Shaw Historic District that was constructed over a century ago. It is very unlikely that a large-scale demolition of a portion of the building would be consistent with historic preservation laws and design guidelines.

Further, any reduction in the Henrietta's footprint would decrease the number of units in the Henrietta and create substantial structural and engineering challenges. Accordingly, this option is unnecessarily burdensome.

- ***Separate Structures on One Lot***

Finally, the Henrietta's unused side yard could not be improved with a separate residential structure on the same lot as the Henrietta without variance relief. Under Subtitle C-302.2, each new primary building must be erected on a separate lot of record in the RF zones. Therefore, this option would also require variance relief for two structures on one lot.



### **C. No Substantial Detriment**

The lot occupancy relief allows for the infill of the Henrietta's long vacant side yard that has become a nuisance in the community, as reflected in the support letters filed in the case record. The Project will return the Henrietta to its historic alignment on a separate lot, fill in a large gap in the urban fabric, and reinforce the character of the historic district. Further, the lot occupancy relief will not impact light, air, noise or privacy because the Henrietta is not being structurally altered.

In sum, the Applicant has met the standard for area variance relief from the requirements for lot occupancy in the RF-1 zone.

### **III. COMMUNITY OUTREACH**

The Applicant has been coordinating with Advisory Neighborhood Commission 2G and has been placed on its October 2024 agenda. As such, the Applicant expects to present to ANC 2G's Zoning Committee on October 3<sup>rd</sup> and the full ANC 2G on October 10<sup>th</sup>. The Applicant will provide the Board with an update as to the ANC's position at the hearing on October 30<sup>th</sup>.

### **IV. SUMMARY OF WITNESS TESTIMONY**

Sanjay Bajaj, a representative of the Applicant, will provide testimony as to the project and background on the renovation of the Henrietta. Gozde Tanyeri of ADG+G Architecture is the Project architect and will provide expert testimony regarding architecture and project design. Ms. Tanyeri's resume is attached at **Exhibit B**. The Applicant reserves the right to add witnesses or expert witnesses as necessary.

### **V. CONCLUSION**

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings as well as the reasons discussed at the Board's hearing, the Applicant submits that the application

meets the requirements for special exception relief and variance relief and respectfully requests that the Board approve the application on October 30, 2024.

Respectfully submitted,  
COZEN O'CONNOR

  
Eric J. DeBear