

**PRE-HEARING STATEMENT
KAREN MARSH – 1837 VERNON STREET NW
BZA CASE NO. 21194**

On July 19, 2024, Karen Marsh (the “Applicant”) submitted an application to the Board of Zoning Adjustment (the “Board” or “BZA”) for approval of a special exception pursuant to 11 DCMR Subtitle X § 901 for relief from Subtitle F § 207.1. Subsequently, on February 14, 2025, the Applicant amended the application to add variance relief pursuant to 11 DCMR Subtitle X §§ 1000.1 and 1002.1 for relief from Subtitle F §§ 201.1 and 210.1. Collectively, the Special Exception and Variance relief seeks to allow for (1) the construction of an elevated egress stair/walkway within the required rear yard, which exceeds the lot occupancy standards; and (2) construction of a 64 square foot upper level addition to accommodate an interior access stair, which exceeds the Floor Area Ratio (“FAR”) standards. These modifications are necessary to permit the creation of an apartment on the upper level of the existing row building, consistent with the intent of the RA-2 Zone and the Property’s historic use.

I. Outreach Efforts with the Community and ANC

The Applicant presented to the ANC, who voted to approve the Special Exception Application at its regularly scheduled meeting on October 09, 2024. Given the change in relief requested (although there are no changes proposed to the physical improvements initially presented), the Applicant presented again to the ANC’s Planning, Zoning and Transportation Committee on February 19, 2025. The Applicant is scheduled to reappear before the full ANC on March 05, 2025.

The Applicant has discussed the proposed plans with her immediately adjacent neighbors who have expressed support for the proposed applications.

II. Satisfaction of the Special Exception Requirements

In accordance with Subtitle X § 901.2, the requested relief is in harmony with the general purpose and intent of the Zoning Regulations. The Property will continue to be used for residential use. In fact, the proposed modifications, which will allow for the creation of an upper level apartment, will be more in-keeping with the historic use of the home (which was previously occupied as a group home for approximately 30 years, from the ‘70s until 2006). This is consistent with the intent of the Residential Apartment zones, which are “designed to provide for residential areas suitable for multiple dwelling unit development and supporting uses.” (See Subtitle F Section 101.1). The proposed modifications, which will allow the Applicant to continue to own and reside in the existing building while also creating a smaller-sized rental unit on the upper floor, also are in furtherance of the recommendations Comprehensive Plan, which recognizes the importance of providing a mix of unit sizes, and opportunities for both homeownership and renting in this area of the City. (See Mid-City Area

Element, Policy MC-1.1.5).

The proposed Special Exception will not tend to adversely affect the use of neighboring property. The proposed alterations have been designed to ensure that the privacy, use and enjoyment of the neighboring properties will not be unduly compromised. The proposed elevated walkway/stair will be constructed of steel framing with anti-slip steel walking surface and has an open design that allows light to pass through it. The upper level addition is only 64 square feet and has a partially sloped roof, which further minimizes its impacts on the surrounding properties.

III. Satisfaction of the Variance Requirements

The Board is authorized to grant variance relief, pursuant to Subtitle X §§ 1000.1 and 1002.1(b), as authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), where it finds that: (1) the Property is affected by exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition; (2) as a result of these specific attributes of the property, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the Property; and (3) the variance 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. As demonstrated below, the Applicant meets these required findings:

A. The Property is affected by exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition.

The phrase “other extraordinary or exceptional situation or condition” “was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases...” (*See De Azcarate v. D.C. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (citing *Palmer v. Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)). “Other extraordinary or exceptional situation or condition” applies to both the characteristics of land and the existence of improvements on the land. *See Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974) (*emphasis added*). The “extraordinary or exceptional situation or condition” may also arise from a confluence of factors that affect a single property. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). Here, the Property is characterized by an exceptional situation and condition arising from a confluence of factors, including the existence of a row building, constructed circa 1899, and now located in a Historic District, which was occupied as a group home for approximately 30 years. Given the prior use of the Property as a group home, the plumbing and interior infrastructure is already located on the 4th floor to easily accommodate an apartment. However, to utilize this existing

infrastructure and provide an additional apartment unit, consistent with the intent of the RA-2 zone, the Applicant must provide access and egress to the upper level. Given the grade change on-site, this necessitates the construction of an egress stair and walkway, to connect the alley to the existing house. The proposal has been designed to minimize the increase in lot occupancy, to the maximum extent practicable. Specifically, this stair and walkway results in only approximately 60.8 square feet of additional coverage, which increases the lot occupancy by 3.51%. Given the depth of the existing rear yard and location of the third floor rear façade, the Applicant must construct an interior stairwell to complete the access to the fourth floor (which is setback from the rear façade). While most of this interior stair can be accommodated within the existing building, to provide necessary headroom on the fourth floor, a small 64 square foot addition must be constructed. As noted above, the Property is also located in the Washington Heights Historic District. The Applicant already received historic approval for the proposed modifications.

The extraordinary situation or condition can also arise from zoning history of the case. (See *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (citing *Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417, 425, 293 N.Y.S.2d 75, 81, 239 N.E.2d 713, 717 (1968) (difficulty which sets a property apart from its neighbors need not be physical but can stem from the zoning history of the case)). As noted in the Applicant's Burden of Proof Statement, the Applicant initially received building permit approval for an elevated egress stair/walkway in 2021 but didn't move forward with the construction prior to expiration of the permit. It was only when the Applicant re-applied for a building permit with improved drawings by a new architect, that the need for this relief was identified. As noted, the Applicant has also obtained Historic Preservation sign-off for the proposed work. The Applicant has spent considerable time and money on multiple designs, and has lost considerable rental income due to approval delays. This history of the case adds to the extraordinary situation and conditions of this Property.

B. The strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the Property.

The Court has previously found that applicants for an area variance need only satisfy the lower "practical difficulty" standard (and not the higher "undue hardship" standard that applies to use variances). (See *Gilmartin* at 1170 (D.C. 1990) (citing *Palmer* at 540-41)). The two-prong test for "practical difficulties" requires the applicant to demonstrate that (1) compliance with the area restriction would be unnecessarily burdensome and (2) the practical difficulties are unique to the particular property. See *Id.* at 1170 (citing *A.L.W. Inc. v. District of Columbia Board of Zoning Adjustment*, D.C.App., 338 A.2d 428, 431 (1975) and *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C.1976)). The determination of what qualifies as unnecessarily burdensome is fact dependent and made on a case-by-case basis, at the discretion of the Board. See *Id.* at 1171 (citing *Wolf v. District of*

Columbia Bd. of Zoning Adjustment, 397 A.2d 936, 942 (D.C.1979)). The Board has the flexibility to consider a number of factors in determining whether there is an “unnecessary burden” or “practical difficulty” including, for example, increased expense and inconvenience (*see id.* at 171 (citing *Barbour* at 327); the severity of the request variance; and the effect the proposed variance would have on the overall zone plan. *See Id.* at 1171. In *Gilmartin*, the Court noted that on remand the BZA could “consider whether the variance sought is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests on the intervenor.” (*See Id.* at 1171 (citing the *de minimis* test in 3 R.M. Anderson, *American Law of Zoning*, § 2051 at 534 (1986 ed.); *Stewart v. Zoning Hearing Bd. of Radnor Township*, 110 Pa.Cmwlth. 111, 531 A.2d 1180, 1182 (1987)).

Strict application of the Zoning Regulations would be unnecessarily burdensome on the Applicant. As discussed in the Applicant’s Burden of Proof Statement (Exhibit 29), given the existing non-conforming FAR on the Property, the Applicant would be precluded from making any expansion of the existing structure. Based on the prior use of the existing building as a group home, the upper floor of the building is currently built-out to accommodate an apartment unit, with the bathroom and kitchen already existing. The Applicant is merely seeking minor modifications to provide legal fire separation and egress to this upper floor unit, in this Residential Apartment zone. Locating the unit elsewhere in the building would result in significant additional cost (as it would essentially require the Applicant to gut and redesign the entire interior). Additionally, to avoid the need for a FAR variance, the Applicant would need to construct uncovered, exterior stairs between the third and fourth floors. These exterior stairs would pose a technical hardship by creating drainage issues that would result in significant additional work and expense, along with on-going maintenance challenges. These practical difficulties, which arise in part from the existing building’s prior use as a group home, are unique to this Property.

Importantly, the proposed relief is truly *de minimis*. The Applicant is only seeking to add 64 square feet of floor area to provide for a small stair enclosure that is necessary to provide headroom at the top of the stairway. Similarly, the exterior stair and walkway result in only approximately 60.8 square feet of additional coverage, which increases the lot occupancy by merely 3.51%. As such, strict application of the Zoning Regulations would result in practical difficulties that would preclude the Applicant from utilizing the existing infrastructure within the building to provide additional housing, consistent with the Property’s historic use and the intent of the current Residential Apartment zone.

C. The Variance relief requested 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.

The variance will allow for the construction of an upper floor apartment within the existing row building, consistent with the purpose and intent of this Residential Apartment Zone. As discussed above, the Property is located within the Mid-City Area Element of the Comprehensive Plan. The Mid-City Area Element recognizes the importance of providing a mix of unit sizes, and opportunities for both homeownership and renting. (See Policy MC-1.1.5). This variance will allow for the creation of an upper level rental apartment unit, to add to the housing diversity in this desirable neighborhood. The proposal will promote many goals and objectives of the Zone and the City, as expressed through the Plan. As such, the variance application will not substantially impair the intent, purpose and integrity of the zoning regulations and map.

The Property will continue to be used for residential use and the proposed modifications (which will not be visible from Vernon Steet) will be in keeping with the character of the surrounding neighborhood. The variance will not cause substantial detriment to the public good but rather, will promote an important public policy objective of increasing housing supply in the City.

IV. Conclusion

For the reasons stated herein and set forth in the Applicant's Burden of Proof Statement and Application Materials contained in the record, the Applicant submits that the proposed Special Exception and Variance satisfies the requirements for relief contained in the Zoning Regulations. The Applicant looks forward to presenting its case to the Board at the hearing scheduled on April 02, 2025.

Respectfully submitted,
LERCH, EARLY & BREWER, CHTD

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2025, the foregoing Statement was delivered via email to the following:

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By: 
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