

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant's Statement of Rose & Rose Consulting, LLC**  
**3018 N Street, SE (Square 5508, Lot 806)**

**I. INTRODUCTION AND SUMMARY OF RELIEF.**

This Statement is submitted on behalf of Rose & Rose Consulting, LLC (the “**Applicant**”), the owner of the property located at 3018 N Street, SE (Square 5508, Lot 806) (the “**Property**”). The Property is located in the R-1B Zone. It is currently an unimproved tax lot with no address. The Applicant is proposing to construct a new, detached three-story single-family home (the “**Building**”). Due to the configuration of the lot, lot depth, unimproved status, topography, tax lot status, the lot cannot be improved without area variance relief. Accordingly, the Applicant is seeking the following areas of relief:

1. Area Variance for Lot Occupancy- The Applicant is requesting an additional 4.9% lot occupancy over the 40% requirement to provide allow for a small, covered deck at the west/side of the property. But for the topographic conditions, the deck would not count in lot occupancy.
2. Area Variance for Land Area- The existing tax lot has 2,556 square feet of land area. In order to make any improvements on the lot, the Applicant is required to convert it to a record lot.<sup>1</sup> The minimum land area for a record lot in the R-1B zone is 5,000 square feet. Accordingly, the Applicant is seeking relief to convert the tax lot to a record lot with 2,556 square feet.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the area variances pursuant to 11-DCMR Subtitle X § 1002.1(a).

**III. BACKGROUND.**

**A. Description of the Property and Surrounding Area.**

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<sup>1</sup> A-301.3 states that “a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record.”

The Property is located in the R-1B Zone District and has 2,556 square feet of land area. It is a rectangular lot with frontage on N Street, SE to the south and Anacostia Road, SE to the north. To the west is a single-family dwelling (1220 30<sup>th</sup> Street, SE). To the east is a single-family dwelling (3016 N Street, SE). The surrounding area is made up of a mix of residential uses, including lower-density residential uses on the south side of the block and larger multi-family buildings across Anacostia Road, to the north. While the Property is located in the R-1B zone, the surrounding properties are generally smaller than typical R-1B properties.

**B. Proposed Project Description.**

The Applicant is proposing to construct a new, 3 story + cellar, single family home on the Property.<sup>2</sup> Due to the topography of the land, the building has been designed to occupy the eastern portion of the lot. The footprint itself occupies 40% lot occupancy; however, the exterior landing increases the lot occupancy to 44.9%. Typically, the landing would not count towards the lot occupancy because it would be designed to be less than 4 feet above grade. But the topography makes that highly impractical, so the landing therefore counts towards the lot occupancy. The proposal meets the height, story, side yard and front setback requirements for the R-1B zone. Despite having only 2,556 square feet of land area, it has 100 feet of lot frontage. Also, there is a relatively large amount of public space—approximately 2,500 square feet, in front of the property. This public space makes the property appear larger in size, closer to the 5,000 square foot requirement for typical R-1B properties.

**IV. THE APPLICATION MEETS THE STANDARDS FOR AREA VARIANCE APPROVAL:**

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*,

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<sup>2</sup> B-317.3 states that “No rear yard is required for through lots.” A through lot is defined as: ‘Lot, Through: An interior lot having frontage on two (2) or more streets where the streets differ in direction by forty-five degrees (45°) or less.’ DOB has confirmed this is a through lot and no rear setback is required.

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 relief:

**A. Extraordinary or Exceptional Condition Affecting the Subject Property Resulting in a Practical Difficulty if the Zoning Regulations were Strictly Enforced**

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.2d 1164, 1168 (D.C. 1990). 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.

The Property is faced with an exceptional condition due to its shape, unimproved status, topography, and tax lot status. It is a long, shallow rectangular through lot with a depth ranging between 23 to 30 feet. Without the area variance for land area and the conversion to a record lot, no project is possible because a record lot is required to make any improvements on the Property. This is unique to the Property because it is the only unimproved tax lot in the area—all other lots are record lots and can be improved without this variance.

The lot occupancy variance is driven by a variety of factors. The narrowness of the lot, the shape of the lot, the topography of the lot, proximity to trees on the property and neighbor’s property essentially predetermine the location of the house. The Applicant is proposing what is effectively a deck or landing to the west of the house—only 4.9% lot occupancy or about 125

additional square feet. It is a relatively small degree of relief, which can be taken into consideration by the Board.<sup>3</sup>

Typically, this type of deck could be excluded from lot occupancy by locating it less than 4 feet above grade (and making sure it was uncovered). However, this cannot be done at this location given the topography and steep drop off towards that side of the property. Even without the cover, the deck would count towards lot occupancy due to the adjacent grade. This steep drop off is also why the deck is necessary as it provides an intermediate point for the residents to exit their home and have a small amount of outdoor space. Without the deck, there would just be a steep drop off into the yard or an extremely tall staircase. Or alternatively, to make the western side yard accessible, a substantial amount of grading would be required. The alternative would be to further reduce the interior living space to create this sort of landing.

Reducing the livable area would negatively impact the ability to provide an appropriately sized kitchen and living area on the first floor as well as bedrooms on the second floor. The deck allows for a small amount of space to exit the property without a steep drop off and allows outdoor space that would not otherwise be possible given the topography of the rest of the lot.

This issue is also unique to the subject Property as surrounding properties that are already improved would be able to achieve the requested lot occupancy via special exception only. And even the other unimproved record lots in the area could seek special exception relief.<sup>4</sup>

**B. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.**

The proposal is to construct a single-family home on an existing vacant lot. The area is made up of a mix of properties, most of which are single-family homes on smaller lots than would typically be expected in the R-1B zone. The Applicant is requesting relief based on the unique aspects of the lot. The Applicant is still providing the required side yards, and the Property is buffered by about 2,500 square feet of public space to its south, which will remain mostly

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<sup>3</sup> The Court of Appeals considers the degree of relief a factor when determining whether the Applicant meets the variance test. In *Washington Canoe Club*, the Court explained the relevant factors in considering a request for variance relief, including the severity of the requested relief. In considering whether to grant or deny a variance, various factors are relevant. They include: “1) the weight of the burden of strict compliance; 2) the severity of the variance(s) requested; and 3) the effect the proposed variance(s) would have on the overall zone plan.” *Washington Canoe Club v. D.C. Zoning Comm'n*, 889 A.2d 995, 1001 (D.C. 2005).

<sup>4</sup> Special exceptions from lot occupancy in the R-1B zone under D-5201.1 are permitted for additions to existing principal structures and for new principal structures on substandard record lots existing at the time of the enactment of the 2016 regulations.

unimproved. The side yards coupled with the significant adjacent public space help to meet the intent of the lot occupancy regulations, which promote open space. The public space border is not discernible from the property line from the street and therefore mitigates the already imperceptible lot occupancy deviation of 5%. With the 2,500 square feet of public space up front, the improvements will also appear to occupy approximately 22% of the lot. Accordingly, the relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan.

**V. CONCLUSION.**

For the reasons outlined in this statement, the Applicant respectfully requests the special exception and variance relief as detailed above.

Respectfully Submitted,

*Alexandra Wilson*

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