

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Supplemental Burden of Proof Statement of Latasha D Boone Trustee

BZA Case No. 21216

**418 Franklin Street, NE (Square 3639, Lot 28),
422 Franklin Street, NE (Square 3639, Lot 27) and
2804 5th Street, NE (Square 3639, Lot 26)**

I. INTRODUCTION.

This is a supplemental Burden of Proof Statement, filed for the purpose of adding one area of variance relief and removing the special exception requests for penthouse setback relief. The additional variance relief is for 2804 5th Street, NE, the corner lot, for minimum lot dimensions. The Applicant is asking for this relief out of an abundance of caution. Even though the current nonconforming lot dimension situation is proposed to be improved (increased), the Zoning Administrator may require the relief as if this was a new building on a new lot, and in that case a semi-detached building has a higher minimum lot area than a row building. This proposal falls short of the 3000 and the 30-foot minimum lot width. If the Applicant were to simply extend a portion of the existing building to the side lot line, the required minimum lot dimensions would be decreased and no relief would be required. However, such an extension brings with it some practical difficulty as well, and relief is therefore being requested.

The Applicant is also revising the plans to remove all stairway penthouses, which eliminates a total of five (5) areas of relief, encompassing three different penthouse requirements on the three (3) lots. In addition to the changes proposed here, the Applicant also wishes to provide additional information and discussion regarding the overall variance argument, following recent discussions with the Office of Planning.

II. Synopsis of the Application and the Elements of the Variance Argument.

After several years of litigation between the respective owners, resulting from the unique shape of the three lots, the Applicant, owner of the corner lot during the litigation, eventually acquired the two interior lots. The Applicant's proposal seeks to normalize the record lot situation, thereby solving the practical difficulties noted hereinbelow, while providing three new housing units. The rear yard setback and lot occupancy relief are all within the special exception limits. The only thing that the variance relates to is the adjustment of the lot lines to straighten or normalize the lot shapes. The subject Property consists of three separate lots with three separate,

adjoining buildings, each currently a single-family dwelling. The two interior lots, 418 Franklin and 422 Franklin, pursuant to a 1948 subdivision, are L-shaped, with narrow extensions from the rear yard, across the rear of each lot to the east of that lot, opening onto the 5th Street right-of-way.

Some of the exceptional conditions inherent in the subject Property are (i) the L-shape of the lots, with long narrow extensions, which not only limit the use of the interior lots, but also limit the use of each other of the three lots, including the corner lot; (ii) the size of the three lots, all of which are nonconforming as to lot area and lot width; and (iii) the existence of a pre-1958 building on each of the three lots, existing more in accordance with a rectangular lot scheme, rather than the pre-1958 L-shaped condition of the record lots.

This exceptional condition has: (i) substantially shortened the potential length of the corner lot building, resulting in long, narrow areas of undevelopable space behind it and behind the middle of the three lots; (ii) significantly limited the amount of housing that could reasonably be added to the existing buildings, as permitted by the RF use regulations; (iii) substantially reduces the overall accessibility to sunlight for any additional housing on these three lots; (iv) leaves usable land idle, reducing the amount of housing that might otherwise be added here; (v) incentivized a design – with longer windowless buildings in the interior lots - that would be more difficult to be approved by special exception, because it would be potentially more impactful to the adjoining property to the west; and (vi) resulted in an inherently adversarial condition among separate owners of these three lots, which recently resulted in several years of litigation (primarily because the exceptional shape of these lots did not align with the actual appearance and use thereof.

As the Board knows, the severity of the variance requested should be considered in the 'practical difficulty' argument. The severity of relief requested here is negligible. The lots, which are already legally nonconforming in lot dimensions, will simply be adjusted to fix the lot lines, make standard rectangular lots, in alignment with the actual appearance and historical use of the separate lots. The width of the lots will not change, and the width of the existing buildings will not change. The potential density for the overall property will be adjusted in a way that not only solves the practical difficulties, but also is beneficial to the adjacent property to the west. The proposed additions will move away from adjoining properties to the west, to the corner lot, where there is ample sun, light, and adjacent open space. The resulting buildings will not exceed any special

exception limits on their individual lots, and the number of units provided will be the same as is already allowed.

Regarding the public good, the Applicant enjoys unanimous support from ANC 5F, as well as six (6) support letters from the surrounding community, including the adjacent neighbor to the north at 2806 5th St., NW.

For all the reasons above, there is also no substantial detriment to the integrity of the zone plan. In case after case, this Board and the Court of Appeals have affirmed that lot shape is the type of exceptional condition for which variance relief is regularly granted. The shape of these three lots, along with the already pre-1958 nonconforming lot size, and pre-1958 buildings, present a condition so unique as to ensure protection of the integrity of the Zoning Regulations in granting the requested variance.

III. Exceptional Practical Difficulty

The practical difficulty related to the proposed Addition is best understood in comparing the scenario of matter of right, or even maximum 70% special exception additions under the existing configuration with the possible redevelopment under the proposed lot configuration. In addition to providing significant redevelopment of the interior lots in a way that is more beneficial to the neighbors to the west, the proposal shifts dwelling space to the corner lot, in an area that allows for the maximum accessibility to the available sunlight to these properties and solves the problem of a significant amount of idle space that could not be developed or used with the current lot configuration. In addition, normalizing the record lot lot lines to align with the real-life situation ensures that the recent neighbor conflict that resulted from the current lot configuration will not be repeated.

Regarding the exceptional practical difficulty argument for the new area of relief for lot dimensions on the corner lot, this could be avoided if we amended the design to eliminate the side yard. However, this change would be detrimental to the massing of the building. The proposed addition mirrors the existing 2804 5th Street property, which has a side yard. If we extend the addition to the property line, we break from the existing conditions in a way that makes for awkward, illogical massing and public space.

IV. **Exceptional Conditions**

Regarding exceptional practical difficulty for the project overall:

- The L-shape of the lots, with long narrow extensions, which not only limit the use of the interior lots, but also limit the use of each of the other three lots, including the corner lot;
- The size of the three lots, all of which are nonconforming as to lot area and lot width; and
- The existence of a pre-1958 building on each of the three lots, existing more in accordance with a rectangular lot scheme, rather than the pre-1958 L-shaped condition of the record lots.

As recognized in *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979), a property can be unique due to its physical characteristics, history, or a combination of factors. Similarly, *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974), confirmed that uniqueness can derive from a property's structures and configuration. The confluence of these factors establishes the requisite uniqueness here.

V. **Resulting Practical Difficulties**

- Substantially shortens the potential length of the corner lot building, resulting in long, narrow areas of undevelopable space behind it and behind the middle of the three lots;
- Significantly limits the amount and quality of housing that could reasonably be added to the existing buildings, as permitted by the RF use regulations (the variance allows for approximately 30% more bedrooms);
- Substantially reduces the overall accessibility to sunlight for any additional housing on these three lots;
- Leaves some usable land idle, reducing the amount of housing that might otherwise be added here (the architects estimate this unused land to be approximately 580.32 square feet, as demonstrated in drawing 2 on page 4 of the plans);
- Incentivizes a design – with longer windowless buildings in the interior lots - that would be more difficult to be approved by special exception, because it would potentially be more impactful to the adjoining property to the west;

- A matter of right re-subdivision would require the demolition of these pre-1958 buildings and the loss of two dwelling units; and
- Results in a continued inherently provocative condition among separate owners of these three lots, which recently resulted in several years of litigation (primarily because the exceptional shape of these lots did not align with the actual appearance and use thereof). Subdividing the lots will resolve the L-shaped configuration on the deeds, which deviates from how the lots have been used for decades.

Structural Constraints of Existing Buildings: The existing buildings are over a century old and feature load-bearing party walls that cannot be moved without razing the structures entirely. This restriction makes reallocation of the lot widths impossible and creates an unnecessary burden for the Applicant. As noted in *Neighbors for Responsive Gov't, LLC v. District of Columbia Bd. of Zoning Adjustment*, 195 A.3d 35, 56 (D.C. 2018), the Board has previously determined that existing physical limitations, such as load-bearing walls, can create a practical difficulty when compliance with zoning regulations would require unnecessarily burdensome reorganization of the structure. This is particularly relevant here, where maintaining the party walls preserves the historic character of the properties and minimizes disruption to the neighborhood fabric.

In addition to structural constraints, the Board has also acknowledged that a minimal variance request can weigh in favor of granting relief. The relief sought here involves only a slight reallocation of land. As emphasized in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990), the Board may consider the severity of the variance request when evaluating practical difficulty. Here, the reconfiguration resolves the unique challenges while requesting only minimal relief.

VI. Conclusion

The Applicant has demonstrated that the subject properties are unique due to their irregular subdivision, structural constraints, and resulting inefficiencies. Strict application of the zoning regulations would impose undue practical difficulties, including inefficient designs, diminished housing quality, and continued legal risks. The proposed relief resolves these challenges while

maintaining neighborhood character. For the reasons discussed herein and the application overall, the Applicant respectfully requests that the Board approve the requested relief.

Respectfully Submitted,

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