

**Date:** 30 May 2025

**Project:** Bache-Riordan Residence Lot Adjustment BZA # 21298

**Location:** 1306 Girard St NE  
3958 // 0008 & 0009  
Washington DC 20017

**Subject:** Burden of Proof

Justin Riordan and Zach Bache, owners of 1306 Girard St NE, a single-family dwelling located in the South Brookland neighborhood (zone R-1B), hereby apply for variance from the subdivision requirements of DCMR subtitle C § 302 to allow for subdivision of a lot with nonconforming side yards and lot width, maximum building area for an accessory building of DCMR subtitle D § 5003, and side yard requirements of DCMR subtitle D § 208 pursuant to DCMR subtitle X 1001.

If relief is granted, the owners intend to subdivide the two record lots (currently Lot 0008 and 0009 of square 3958) into two new record lots with the dividing lot line between the two lots 11.5 feet west of its current location. The current single-family dwelling on the property occupies both record lots, creating one single usable lot. Granting relief will allow for both lots to be usable to provide primary residential dwelling units.

The proposed subdivision does not provide for the minimum side yard nor lot width requirements of the regulations and therefore requires a variance from DCMR subtitle C § 302.1. The western lot that results from the subdivision (herein referred to as “lot B”) does not meet the minimum lot width requirements of DCMR subtitle D § 202.1. In order to construct a dwelling consistent with the characteristics of the neighborhood, the proposed design for the 6 bed 3.5 bath, single-family detached dwelling to be constructed on lot B will also require an area variance for the side yard requirements of DCMR subtitle D § 208.2 for the eastern side yard.

The eastern lot that results from the subdivision (herein referred to as “lot A”) will contain the entirety of the existing owner-occupied principle dwelling unit as well as an existing accessory building but will not allow for a sufficient western side yard required by DCMR subtitle D § 208.2. It is typical in the South Brookland neighborhood for homes to have a driveway on one side and a non-conforming side yard on the other side. Lot A will have a driveway on the eastern side of the primary structure. The existing accessory building will also require an area variance to exceed the maximum building area for an accessory building of DCMR subtitle D § 5003.

#### **Area Variance – Subdivision to Create Nonstandard Lots and Yards**

##### **Summary**

- Pursuant to subtitle X § 1001.2 the Board may grant a variance to deviate from any area development standard in the regulation. The owners provide BZA # 20389 and 20361 as precedence for the Board considering one variance to allow for the subdivision that causes multiple nonconforming conditions.

- The proposed subdivision would create two nonconforming conditions: one for lot A (which is an owner-occupied dwelling) and one for lot B (where the new detached dwelling is proposed). Lot A would have a side yard less than the required minimum and lot B would be less than the required minimum width. DCMR subtitle C § 302.1 requires that the division of any lot shall not violate the provisions for yards or minimum lot width.
- The proposed subdivision would result in lot A having a western side yard of 6 feet. In all R zones where a lot has a detached primary structure, DCMR subtitle D § 208.2 requires two side yards of each a minimum of eight feet. The eastern side yard of lot A would remain 25 feet. It is common in the neighborhood to have a nonconforming side yard on one side of the structure and a conforming side yard on the other side.
- The proposed subdivision would result in lot B having a width of 38.5 feet, the minimum width required in zone R-1B by DCMR subtitle D § 202.1 is 50 feet. Lot width of less than the standard are common in the neighborhood. The proposed lot would meet all other requirements of § 202 and §303, include lot area, lot occupancy, and lot frontage requirements.

In accordance with DCMR subtitle X § 1002.1, the board must find the following conditions exist in order to grant this area variance to subdivide this lot with two nonconforming conditions:

The Property Is Affected by an Exceptional Situation or Condition.

The current single-family dwelling is an exceptionally unusual condition. The current property line goes through the structure 5.5 feet from its western face. Usually, structures are only on one record lot; this structure occupies two record lots. This non-conforming condition has existed since the original subdivision of the square and construction of the dwelling. (See WR Book 013, page 267.)

Strict Application Would Result in Practical Difficulty or Undo Hardship to the Property Owner.

Strict application of current lot dimension standard in zoning regulation cause undue hardship for the current owner in three ways:

First, as lot B is partially occupied with the structure from lot A, lot B is technically unusable and has been left vacant and underutilized given the current density of homes in the neighborhood. This prevents the owners from using the land for the highest and greatest use.

Second, in order to utilize lot B with strict application of the zoning regulations, the owners would have to demolish and reconstruct the existing primary structure that straddles the dividing lot line in a conforming manner. This is not financially feasible nor practical.

Third, the current mailing address for the property only results in property records showing details for lot A, rather than both lots which has caused challenges with government agencies and financial institutions.

Strict application of the zoning regulations to maximize the width of lot B using an irregular shape would be inconsistent with other lots in the square. Nearly all lots in the South Brookland neighborhood are rectangular. All lots in square 3958 are rectangular. Any deviation

from a rectangular shape in order to achieve a greater average lot width would be inconsistent with the neighborhood and cause practical difficulty.

Similarly, strict application of the zoning regulations requirement for an eight-foot side yard for lot A when dividing the lot would cause practical difficulty and still require variance. If lot A were to have an eight-foot side yard, the width of lot B would be 36.5 feet rather than 38.5 feet. In addition to increasing the variation required for the lot minimum width, this condition would also create a nonconforming lot frontage for lot B as DCMR subtitle C § 303.2 requires a lot frontage of 37.5 feet in the R-1B zone on Girard Street.

**No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose, and Integrity of the Zone Plan.**

Granting this variance would allow for lot B width consistent with many of the homes in the neighborhood. Despite being in R-1B, numerous properties in South Brookland have a lot width less than the required 50 feet, including properties on the same square as the subject property. In a two-square radius of the subject property, there are at least 23 lots with nonconforming widths; eight of which are in the same square as the subject property (1300, 1304, 1322, 1324, 1328, and 1330 Girard; 2909 and 2905 of 13<sup>th</sup> Street) equating to 33 % of the lots in the square. Even still, granting this relief and constructing the proposed dwelling will maintain other area development standards including the lot area, lot occupancy, and lot frontage standards. Some of the other nonstandard lots in the neighborhood not only have nonconforming widths, but also lot area.

Additionally, granting this variance will actually further the intent and purpose of the R-1B zone in the South Brookland neighborhood, rather than impair the regulation. The purpose of R-1B is to provide areas predominantly developed with detached houses on moderately sized lots. The detached single-family home proposed for lot B furthers that objective by providing an additional detached single-family dwelling. The current dimensions of the combined Lot A and B is much larger than a medium sized lot similar in the neighborhood. Additionally, Lot B is also within walking distance of two metro rail stations, an area which the Office of Planning has explicitly targeted to increase housing density.

Lastly, the relief sought does not negatively impact any public or private adjacent properties. The light, air, and privacy of all neighbors will not be diminished if relief is granted compared to if both lots were developed by right.

**Area Variance – Lot A Maximum Building Area for an Existing Accessory Building**

**Summary**

- Pursuant to subtitle X § 1001.2 the Board may grant an area variance to deviate from any area development standard in the regulation. While the regulation allows for special exceptions to the maximum building area for new or enlarged accessory buildings (subtitle D § 5201.2), the accessory building is a pre-existing condition and is not being modified, therefore an area variance is required.

- The accessory structure on lot A has a building area of 650 sq ft. DCMR subtitle D § 5003 sets the maximum building area for an accessory structure as the greater of 30 % of the required rear yard or 450 sq ft. If relief is granted and the two record lots are subdivided into two new lots, lot A will have a width of 61.5 feet. The required rear yard for R-1B is 25 feet (§207), making the required rear yard 1,538 sq ft; 30 % of which is 461 sq ft. However, the existing accessory structure has a building area greater than 461 sq ft, requiring an area variance.

In accordance with DCMR subtitle X § 1002.1, the board must find the following conditions exist in order to grant an area variance:

The Property Is Affected by an Exceptional Situation or Condition.

The current single-family dwelling is an exceptionally unusual condition. The current property line goes through the structure 5.5 feet from its western face. Usually, structures are only on one record lot; this structure occupies two record lots. This non-conforming condition has existed since the original subdivision of the square and construction of the dwelling. (See WR Book 013, page 267.)

Strict Application Would Result in Practical Difficulty or Undo Hardship to the Property Owner.

The current accessory structure is an existing condition. In order to make lot B usable while complying with the maximum building area for the accessory building, the building would have to be torn down and re-built.

No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose, and Integrity of the Zone Plan.

The current zoning plan allows for accessory buildings in the R-1B zone. The principle intent of the maximum building area limitation in the regulation is to limit overall building density in certain zones. Granting this area variance is in keeping with that intent. The overall lot occupancy for lot A would be 23%, which is significantly below the 40% maximum.

Additionally, the actual depth of rear yard is 89 feet (25 feet is required) for a total rear yard of 5,473 sq ft for the proposed 61.5-foot-wide lot. The current building area of the accessory building is 12 % of the proposed actual rear yard. Furthermore, the accessory structure is located 72 feet behind the primary structure, therefore a special exception for the accessory structure being in the required rear yard is not required.

Lastly, the relief sought does not negatively impact any public or private adjacent properties. With such large lots in the South Brookland Neighborhood and exceptionally deep lots on the square compared to other squares, the accessory building is much further from adjacent structures compared to other neighborhoods in the District. The light, air, and privacy of all neighbors will not be diminished if relief is granted as the distant from each principle structure to the accessory building will remain unchanged.

Variance – Required Side Yard for Lot B

- Pursuant to subtitle X § 1001.2 the Board may grant an area variance to deviate from any area development standard in the regulation.

- To keep with the overall general dimensions of homes in South Brookland, the newly constructed dwelling on lot B is proposed to have an eastern side yard of 6 feet, which is less than the 8 feet required by subtitle D § 208.2. While the regulation allows for special exception to yard requirements by DCMR subtitle D § 5201.1(b) when constructing a new principal residential building, the lot created by the subdivision does not qualify for this relief as it was not a nonstandard lot at the time the title was adopted, as required by DCMR subtitle C § 301.1.

In accordance with DCMR subtitle X § 1002.1, the board must find the following conditions exist in order to grant an area variance:

The Property Is Affected by an Exceptional Situation or Condition.

Given the required lot width provided in the subdivision to allow for the maximum lot width while maintaining a reasonable side yard for lot A, lot B is affected by an exceptional condition of a lot width less than the standard for the R-1B zone, similar to other properties on the square. For other nonconforming lots on the square (1322, 1324, 1328, and 1330 Girard), each has a width of 36.5 feet and the primary structures on those lots have an average width of 24 feet, with smaller than required side yards. By comparison, the proposed structure for lot B is 24.5 feet wide, with one smaller side yard.

Strict Application Would Result in Practical Difficulty or Undo Hardship to the Property Owner.

Strict application of the zoning regulation to require two eight-foot side yards makes the construction of a contemporary dwelling practically difficult given the required thickness of exterior walls to meet current energy standards, the proportions of the lot, and home configuration to produce a dwelling that is typical for contemporary design:

First, construction of a new structure in compliance with current energy standards requires much thicker walls than older homes, diminishing the usable floor plate for providing and configuring an optimal dwelling for the contemporary market compared to renovated homes in the neighborhood.

Second, the proportion of the lot width to lot depth makes constructing a structure that is proportional to other structures in the square practically difficult. Most structures in the South Brookland neighborhood are generally square with a broad face on the lot frontage. Strictly applying side yard requirements would result in a structure that is not as proportional as other dwellings in the neighborhood. Further, a deeper dwelling to compensate for a narrower structure under the strict application of the zoning regulation would result in a structure that protrudes into the rear yard further than adjacent properties and would only exacerbate the nonconformity compared to other dwellings in the neighborhood.

Third, while a second story of the proposed dwelling could be designed with a double loaded corridor with 7-foot-wide bedrooms, those minimally size bedrooms are not optimal given the contemporary design style for single family detached homes.

Lastly, strict application of the zoning regulations would limit the structure to be only 22.5 feet wide, causing undo hardship on not only the property owners, but the entire neighborhood

that had to look at the street scape. At this width, this structure would be the second narrowest structure on the square. Most structures on the square are 24 to 30 feet wide. Requiring such a narrow structure would not only seem out of place in the neighborhood but would be amplified by being in between a 32-foot wide (1306 Girard) and 28-foot wide (1304 Girard) structure.

No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose, and Integrity of the Zone Plan.

Granting this variance will actually further the intent and purpose of the R-1B zone in the South Brookland neighborhood, rather than impair the zoning plan. The purpose of R-1B is to provide areas predominantly developed with detached houses on moderately sized lots. The South Brookland neighborhood is heavily occupied with families with 2 or more children as the neighborhood has a substantial number of dwellings ranging from 4 to 6 bedrooms with 3 to 5 baths with 2,100 to 2,800 square feet above grade. Very few of this sized structure are available in the District as a majority of new housing units are predominately 1 or 2 bedrooms with no more than 2 bathrooms and less than 1,500 square feet.

The western side yard will be conforming, therefor the light, air, and privacy of the neighbor on the western side will not be impaired. While the variance would permit the structure to be closer to the structure on lot A, the combined distance of the two side yards is proposed to be 12 feet, which is enough distance to ensure the light, air, and privacy of the eastern neighbor is also not impaired. Furthermore, both lot A and B has substantial rear yards which would be predominantly used by both occupants for access to light, air, and enjoyment.

**Conclusion**

For the reasons stated above, the requested relief meets the applicable standards for zoning relief under the regulations. Accordingly, the owners respectfully requests that the Board grant the application.