

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Request for a Modification with Hearing to BZA Order No. 21317
Applicant's Statement of Milu Properties, LLC
2413 I Street, NW (Square 28, Lot 96)

I. SUMMARY OF REQUEST

This Statement is submitted on behalf of Milu Properties, LLC (the "**Applicant**"), owner of the property located at 2413 I Street, NW (Square 28, Lot 96) (the "**Property**"). The Property is located in the R-3/FB zone and is improved with an existing, semi-detached, two-story with basement, principal dwelling unit. In BZA Case No. 21317, the Board approved the Applicant's request to construct a two-story with basement rear addition (the "**Addition**") to the Property, granting:

- Special Exception relief from the rear yard requirements of Subtitle D § 207.1, pursuant to Subtitle D § 5201.1 and Subtitle X § 901.2 (20 ft. minimum required; 25.9 ft. existing; 16.2 ft. proposed);
- Special Exception relief from the pervious surface requirements of Subtitle D § 211.1, pursuant to Subtitle D § 5201.1 and Subtitle X § 901.2 (20% minimum required; 13% existing; 11.9% proposed); and
- Area Variance relief from the lot occupancy requirements of Subtitle D § 210.1, pursuant to Subtitle X § 1002 (60% maximum permitted; 59.3% existing; 73.5% proposed).

The Board's Order became final on July 22, 2025 (the "**Order**"). A building permit (Permit No. B2509226) was subsequently issued for the Addition, largely consistent with the plans shown in Exhibit 9 of the original record, and construction proceeded (the "**BZA Approved Plans**"). The Property is a narrow, nonconforming rowhouse lot with 812.5 sq. ft. of land area (12.5 ft. of frontage), and the Addition was designed, and represented to the Board and the Office of Planning, to bring the Property's rear wall into line with the rear wall of the adjacent building at 2415 I Street NW.

Following the BZA case, the plans were submitted to the Department of Buildings ("**DOB**") with no substantive changes, and ultimately approved (see generally the "**Permit Plans**"). During

construction, a DOB wall check and a subsequent as-built survey revealed that the Addition, as built, projects further into the rear yard than the Board approved.

The Addition itself measures 10.1 ft. in depth from the original building's rear wall, which is 0.4 ft. beyond the 9.7 ft. depth shown in the plat. The addition itself generally matches the BZA approved plans, as the BZA approved plans and BZA approved plat were not consistent. There were errors in both the BZA approved plat and plans. The plat relied upon by the Board in the Order (Exhibit 5) appears to have understated the depth of the pre-existing, unaltered portion of the building by approximately 0.3 ft (39.1 ft. vs. 39.4 ft. in reality). The rear yard dimensions and lot occupancy calculations were based on these incorrect plat measurements. The addition was also inexplicably shown on the plat as having a width of 11.9 feet.

This discrepancy resulted in a number of issues. The primary issue is that there was a modest construction overage in the Addition itself, whereby the addition is about 3.7 inches past the rear wall of the neighbor where it was intended to line up with the neighbor's rear wall. These errors also account for the need for additional variance relief. Given that the original building was 0.3 ft. longer than originally depicted and the addition is 0.4 ft. longer than proposed on the plat, the rear yard is actually 0.7 ft. less than originally approved (16.2 ft. approved to 15.5 ft. as-built). These issues similarly result in an increase in the occupancy from the approved 73.5% to approximately 76%, subject to a formal calculation.

Because the Property is a historic resource, and because the Addition, even as built, increases lot occupancy by only approximately 15%, well under the twenty-five percent (25%) threshold at which pervious surface requirements apply to an addition to a historic resource, no revision to the pervious surface relief granted in the Order was or is required. Because the increase in lot occupancy changes a specific numeric finding underlying the Order, including a finding tied to the Board's grant of area variance relief for lot occupancy, the Applicant respectfully requests a Modification with Hearing to reconcile the Order with the as-built condition.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the requested Modification with Hearing pursuant to Subtitle Y § 704. Under Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a modification without hearing under Subtitle Y § 703.7 requires a public hearing and

must be processed as a modification with hearing. Subtitle Y § 703.7 defines "a modification without hearing" as a modification "in which the impact may be understood without witness testimony, including, but not limited to a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board," with the determination that a modification can be approved without witness testimony resting within the Board's discretion. As set forth below, the requested modification falls outside that scope, and a Modification with Hearing pursuant to Subtitle Y § 704 is the appropriate procedural vehicle for this request.

III. DESCRIPTION OF THE MODIFICATION

A. The As-Built Condition

An as-built plat and as-built architectural drawings (Sheet A203, dated September 8, 2026) confirm that the Addition was constructed to a uniform depth of 10.1 ft. at every level, basement, main, upper, and roof. This resolves an internal inconsistency that ran through the BZA Approved Plans (Sheets DD101 through DD104, dated April 2, 2025) and the Permit Plans (Sheet A201, Proposed Conditions Plans, dated August 22, 2025, in draft and November 25, 2025, in the final version approved by DOB on January 30, 2026, under Permit No. B2509226) alike: in each version, the Addition's depth is dimensioned at 10 ft.-1 in. on the basement and main levels but 10 ft.-6 in. on the upper level. (The architectural drawings' rounded label of 10 ft.-1 in. and the Wall Check's more precise surveyed figure of 10.10 ft. refer to the same nominal dimension; the small, approximately 0.02 ft. difference between them is a rounding convention, not a separate discrepancy.) The as-built condition shows the Addition was not, in fact, built to the deeper 10 ft.-6 in. upper-level dimension shown on any of these drawings; it was built uniformly to 10.1 ft., consistent with the basement and main-level dimensions and with the Department of Buildings' wall test report (the "**Wall Check**", S.O. Receipt No. 241458, certified July 7, 2026).

B. A Plat Inaccuracy Resulting in a Construction Overage

The discrepancy between the Order and the as-built condition traces to the plat and plan errors. The pre-existing, unaltered portion of the building was not accurately measured in the documents prepared for the original application, and that inaccuracy was carried forward, inconsistently, into both the plat submitted for zoning relief and the architectural drawings used

for construction. The plat that was part of the record before the Board (Exhibit 5, dated February 24, 2025) identifies Alyssa Gorman, the Applicant's then-architectural designer with Moore Construction Group, as the agent who furnished it for preparation by the Office of the Surveyor. The discrepancy accordingly appears to originate with the design team's own measurements of the existing building, a design team no longer affiliated with the project.

That plat depicted the pre-existing portion of the building as approximately 39.1 ft. The as-built plat, however, shows the same, unaltered portion of the building as approximately 39.4 ft. approximately 0.3 ft. longer. Because the overall lot depth (65.0 ft.) is not in dispute, this indicates that the original plat understated the depth of the existing building by approximately 0.3 ft. (3.6 in.). This error is independently corroborated by direct physical evidence: field photographs taken by the Applicant, together with the Wall Check, show that the Addition's rear wall is not flush with the rear wall of the adjacent building at 2415 I Street NW, but instead extends approximately 3.7 inches beyond it, a figure that closely tracks the 0.3 ft. (3.6 in.) plat error. This same 0.3 ft. understatement correspondingly overstated the "existing" rear yard condition relied upon in the Order (approved as 25.9 ft.; recalculated using the as-built existing-structure dimension, approximately 25.6 ft.) and understated the "existing" lot occupancy condition relied upon in the Order (approved as 59.3%; recalculated, approximately 60.5%, as discussed in Section III.D below).

The same underlying measurement failure is reflected, in a different form, in the addition depth and width submitted for zoning relief. The rear yard and lot occupancy figures approved by the Board (16.2 ft. and 73.5%, respectively) were calculated using a 9.7 ft. by 11.9 ft. addition, taken from the plat. The architectural drawings prepared for the same application and carried through the permit process, by contrast, dimension the Addition at 10 ft.-1 in. on the basement and main levels (10 ft.-6 in. on the upper level, discussed in Section III.A above), with an as-built width of approximately 12.45 ft.; it is these dimensions, not the plat's 9.7 ft. by 11.9 ft. figures, that were actually built. In other words, the design team's own architectural drawings and its zoning submission were never reconciled with one another: the plat, and the relief figures calculated from it, reflect the same underlying measurement failure described above, while the architectural drawings reflect the dimensions the design team actually carried into construction, without those dimensions ever being checked against the plat submitted to the Board.

This inconsistency did not originate with the building permit submission, and it was never corrected. The architectural drawings depicting the Addition at 10 ft.-1 in. on the basement and main levels and 10 ft.-6 in. on the upper level are dated April 2, 2025, before the Board's July 22, 2025, Order and before the Office of Planning's July 2, 2025, report on the original application, which described the Addition as a 9.7-foot by 11.9-foot rear yard addition, consistent with the plat rather than the architectural drawings. The same 10 ft.-1 in./10 ft.-6 in. dimensions then carried forward unchanged through the building permit process, appearing identically on the Permit Plans in both the August 22, 2025, draft and the November 25, 2025, final version, the version DOB stamped "Plans Approved" on January 30, 2026, under Permit No. B2509226. The inconsistency between the plat and the architectural drawings therefore existed within the record from the outset of the case and persisted, uncorrected, through the Office of Planning's review, the Board's approval, and DOB's plan review at both the draft and final permit stages, only coming to light as a result of DOB's 2026 wall check.

C. The Discrepancy Does Not Reflect a Change in Design Intent

The Applicant's understanding is that this discrepancy does not reflect any change to the Board-approved design intent. Both the BZA Approved Plans and the Permit Plans were prepared with the shared intent, confirmed in the Office of Planning's report on the original application, of bringing the Property's rear wall into line with the adjacent building at 2415 I Street NW. The as-built result does not perfectly achieve that alignment; as discussed above, the Addition's rear wall is measured at approximately 3.7 inches beyond the neighboring rear wall rather than flush with it. That outcome, however, is itself a product of the same measurement failure described above, not evidence of a different or enlarged design: the Addition was built to the first-floor dimensions shown on the drawings prepared for the original application and carried through the permit process, and the departure from true flush alignment traces directly to the design team's understatement of the existing structure's dimensions on the plat. The Applicant notes that it is no longer working with the design and construction professionals who prepared the BZA Approved Plans and the Permit Plans, and that it did not identify the discrepancy described in this Section until it was brought to light by DOB's 2026 wall check.

D. Effect on the Board's Approved Findings

As reflected on the as-built plat, the rear yard adjacent to the Addition is 15.5 ft., where 20 ft. is the base requirement from which the Board granted special exception relief, and where the Order approved a proposed rear yard of 16.2 ft. Considering both sources of discrepancy described above, including the Addition's as-built width of approximately 12.45 ft., the Applicant estimates the combined as-built footprint of the Property (the existing structure together with the Addition) at approximately 617.7 sq. ft., or approximately 76% of the 812.5 sq. ft. lot, an increase from the previously approved 73.5%. The "existing" (pre-Addition) lot occupancy, recalculated using the as-built dimensions of the unaltered portion of the building, is approximately 60.5%, rather than the 59.3% relied upon in the Order.

No revision to the Board's grant of pervious surface special exception relief is required. Pervious surface requirements apply to an addition to a historic resource, such as the Property, where the addition increases lot occupancy by twenty-five percent (25%) or more. Subtitle C § 501. The Addition, even as built, represents an increase in lot occupancy of only approximately 15% (125.8 sq. ft., the as-built footprint of the Addition, divided by the 812.5 sq. ft. lot), well under that threshold. Accordingly, the Addition does not trigger pervious surface requirements at all, and the Applicant does not seek, and does not require, any modification to the pervious surface relief granted in the Order.

E. No Redesign of the Approved Addition

The as-built condition does not reflect any intentional redesign of the Addition, any change to its architectural form or materials, or any change to the use of the Property. As discussed above, the Addition is, in physical fact, modestly deeper than the Board approved and not perfectly flush with the neighboring building. That outcome, however, arises entirely from measurement and dimensioning errors in the documents prepared in connection with the original application and the permit, not from any decision by the Applicant, or by its then-design team, to build a different or larger addition than the Board approved.

IV. WHY THE REQUESTED MODIFICATION REQUIRES A HEARING

Subtitle Y § 703.7 permits a modification without hearing only where the impact "may be understood without witness testimony." The modification requested here does not merely adjust a condition of the Order or relocate an architectural element within an otherwise unchanged design;

it changes the specific numeric findings the Board relied upon in granting special exception relief from the rear yard requirements, and, most significantly, in granting area variance relief from the lot occupancy requirements. Because an area variance requires a showing of practical difficulty arising from an exceptional condition of the property, and because the requested modification would increase the degree of lot occupancy relief beyond what the Board found, in the Order, to satisfy that standard, the impact of the modification cannot be understood without an opportunity for the Board to evaluate updated evidence and, if necessary, testimony. The Applicant accordingly requests that this matter proceed as a Modification with Hearing under Subtitle Y § 704.

V. RELIEF REQUESTED

The Applicant respectfully requests that the Board modify the Order to approve the Addition as built, including the following revised relief:

Standard	Permitted / Limitation	Existing (Pre-BZA)	Approved (BZA Order No. 21317)	Requested via Modification
Rear Yard (Subtitle D § 207.1)	20 ft. min.	25.9 ft. [or ~25.6 ft.; see Section III.B]	16.2 ft.	15.5 ft.
Pervious Surface (Subtitle D § 211.1)	20% min.	13%	11.9%	NA- no relief was ever required
Lot Occupancy (Subtitle D § 210.1)	60% max.	59.3% [or ~60.5%; see Section III.D]	73.5%	~76%

As shown above, two of the three approved standards move in the same direction, toward a greater degree of relief, as a result of the as-built condition: the rear yard special exception increases in degree, and the lot occupancy area variance increases in degree. The pervious surface special exception, by contrast, is unaffected and being removed effectively: as discussed in Section III.D, the Addition does not trigger pervious surface requirements at all, given the Property's status as a historic resource, and the Applicant does not seek any change to that relief.

VI. THE MODIFICATION CONTINUES TO SATISFY THE APPLICABLE SPECIAL EXCEPTION AND VARIANCE STANDARDS

A. General Special Exception Criteria of Subtitle X § 901.2

Pursuant to Subtitle X § 901.2, the Board is authorized to grant special exception relief where, in its judgment, the exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. The Board made these findings in the Order, and the Office of Planning's report specifically found that the Addition would not unduly affect light and air (based on a submitted sun study), would not compromise the privacy of neighboring properties (no windows face neighboring properties, and the Addition is screened by an expansion of the existing privacy fence), and would not visually intrude on the character of the block because it aligns the Property's rear wall with that of the adjacent building at 2415 I Street NW and uses matching brick materials. The modest additional depth reflected in the as-built condition (3.7 inches more than what the sun study portrayed), with a corresponding incremental change in lot occupancy, does not alter any of these findings; it does not change the sun study conclusions, introduce new windows or visibility, or meaningfully change the Addition's alignment with the neighboring rear wall that was the specific design intent underlying the original approval.

B. Area Variance Criteria: Practical Difficulty

The exceptional condition of the Property that supported the Board's grant of area variance relief for lot occupancy in the Order is unchanged. As found by the Office of Planning, the Property is an undersized, nonconforming rowhouse lot of only 812.5 sq. ft. (where 2,000 sq. ft. is the minimum lot area for row houses in the R-3 zone), with only 12.5 ft. of frontage. The Office of Planning found that a conforming addition, without lot occupancy relief, would yield only approximately 6 sq. ft. of by-right addition area, or approximately 77 sq. ft. by special exception alone, not a workable addition size, and that the practical alternative of a third-story addition would create its own difficulties, including inadequate circulation space and potential additional impacts on neighboring properties. These same physical constraints on the Property continue to support the requested relief; the modification does not introduce a new or different practical difficulty, but reflects a modest increase in the degree of the same relief the Board already found warranted on the same lot, for the same reasons.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Zone Plan

The relief requested here, like the relief originally granted, can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Office of Planning found that the original relief would bring the Property's rear wall into line with the adjacent building at 2415 I Street NW and would not result in a building form, bulk, height, or use unanticipated by the Zoning Regulations. The additional rear yard encroachment reflected in the as-built condition, 0.7 ft. in total, is modest in scale and does not change that basic relationship or any of the findings underlying the Board's original approval. ANC 2A supported the original application without raising issues or concerns (Exhibit 26), and the Office of Planning recommended approval of the original application (Exhibit 27); nothing about the modest increase reflected in the as-built condition alters the basis for that support.

D. The Burden of Strict Compliance Is Disproportionate to the Negligible Difference from Full Compliance

In evaluating practical difficulty, the Board can weigh the nature and extent of the burden that strict compliance would impose against the degree of relief actually requested; this determination is made on a case-by-case basis. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170-71 (D.C. 1990). That balance weighs decisively in favor of the modification requested here. If the Addition were cut back to strictly match the rear yard and lot occupancy approved by the Board, the Addition's rear wall would no longer reach the rear wall of the adjacent building at 2415 I Street NW at all; it would instead fall short of it, further from the shared design intent of the original application and the reason the Board granted the original relief. The as-built condition, by contrast, comes within approximately 3.7 in. of that same flush alignment, a difference the photographs of record show to be imperceptible. Strict compliance would accordingly require the Applicant to demolish and reconstruct a portion of a completed two-story addition, not to achieve flush alignment with the neighboring building, but to move even further from it. That burden is entirely disproportionate to the negligible, visually imperceptible difference between the Addition as built and a mathematically exact flush alignment, and weighs in favor of granting the modest additional relief requested here should be granted.

VII. CONCLUSION

For the reasons stated above, the Applicant respectfully requests that the Board grant this Modification with Hearing to BZA Order No. 21317, to reconcile the Order with the as-built condition of the Addition.

Respectfully Submitted,

Alexandra Wilson

Alexandra Wilson
Sullivan & Barros, LLP
September 28, 2026