

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of
Nezahat and Paul Harrison

BZA Application No:
ANC: 3F03

STATEMENT OF THE APPLICANT

This is an application by homeowners Nezahat and Paul Harrison (the “**Applicant**”) for a) area variance relief from the lot frontage required for record lot subdivision; and b) area variance relief from the required front setback.

The requested action is made in connection with the redevelopment of the property located at Square 2041, Lot 818 (the “**Property**”), also known as 3007 Albemarle Street NW. The Property is bounded by Albemarle Street NW to the south, and on the north by Appleton Street NW as it curves and becomes 31st Street NW. It sits in the square between 30th and 32nd Streets NW to the east and west. The Property is in the R-8 Zone District, which is the Forest Hills Tree and Slope Overlay District. The property is not in a historic district, is not subject to Commission on Fine Arts review, and is not included in the list of squares subject to additional tree restrictions under 11-D DCMR § 509 of Forest Hills Tree and Slope Zone Rule. A portion of the District of Columbia Zoning Map depicting the Property is attached as Exhibit C, and a Surveyor’s plat is attached as Exhibit D. Applicant’s Statement of Public Outreach is attached as Exhibit E.

I.

Nature of Relief Sought

The Applicant requests that the Board of Zoning Adjustment (“BZA” or “Board”) approve the following relief:

1. In order to build no more than two (2) single family homes on a 30,618 sq ft lot in a zone with 7,500 sq ft lot area minimum, an area variance from Subtitle D, § 502 as applied to Subtitle C, § 303 for the minimum lot width required for record lot subdivision;
2. To maintain the existing range of blockface along Appleton Street and thereby increase mature tree preservation while allowing for afforestation, an area variance from Subtitle D, § 502 as applied to Subtitle B, § 314.2(c) for the minimum front setback distance.

The Project will conform to the Zoning Regulations in all other ways.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X, § 1000.1 of the Zoning Regulations.

III.

Information Regarding the Property and Project

A. Description of the Property and Surrounding Area

The Property is in Forest Hills in Ward 3, addressed and fronting on Albemarle Street NW to the south via vehicular and pedestrian access through a pipestem driveway that has been in place since 1924. The Property also fronts to the north onto Appleton Street NW via an unimproved 75+ foot-wide street lot line as that street travels east and transitions north onto 31st Street NW. The Property was originally developed before the relevant sections of Appleton and 31st Streets were platted and built in the mid-1950s;¹ it has accessed Albemarle Street NW exclusively via pipestem driveway for approximately a century. The pipestem is subject to right of way easements from the adjoining properties at 3009 and 3005 Albemarle Street, which have been used for garage and pedestrian access since rights of way were recorded in 1924.

The Property measures approximately 30,618 square feet of land area and is improved with a small two-story plus basement and semi-finished attic residential building (the “**Existing Building**”). A photographic exposition of the Property is attached hereto as Exhibit F. Larger single family residential buildings occupy the remainder of the square. All properties across the streets from Square 2041 are single family residential, except for the rear of the Avalon apartment building across 32nd Street to the west which in turn fronts onto Connecticut Avenue. While the Square exemplifies the Forest Hills zone focus on single family homes on large forested lots, it effectively serves as the transition to the high-density Van Ness mixed use district as the adjacent square to the west is occupied by the aforementioned large apartment complex. Van Ness’ Connecticut Avenue retail district, the Van Ness-UDC Metro

¹ While Applicant was not able to determine exactly when this happened, the 1936 zoning maps do not show these streets and the 1956 map does. See <https://maps.dcoz.dc.gov/HistoricZoning/>. In addition, the last private party deed available on the Record of Deeds’ electronic data site for the property formerly to the northwest of the Project – square 2041 lot 0806 – was executed on December 31, 1952 between Ida Kamper and Morris Marks. The DC Office of Tax and Revenue Assessment Database shows the property at 4525 31st Street as being constructed in 1956, while the property across the street at 4500 31st St NW is shown as constructed in 1958. The assumption is therefore that the site and streets were developed between 1953 and 1956.

Station, the University of the District of Columbia's main campus, as well as the CVS and the Giant grocery are between 1,000 and 2,000 foot (0.2-0.4 miles) walks toward the south from the Property, while a northern walk on Connecticut Avenue passes many blocks of large multi-story apartment complexes.

The Property has a significant grade change between Albemarle and Appleton Streets, starting at its lowest at the Albemarle Street lot line and reaching maximum elevation at the Appleton Street lot line (the public space then descends to the Appleton Street curb). The Property is located in the Forest Hills Tree and Slope Zone, but it is not subject to the additional tree restrictions or additional minimum lot size restrictions set out in 11-D DCMR § 509.1. The lots and homes across Albemarle Street NW to the south are adjacent to Rock Creek Park's Soapstone Valley, but the Property is not subject to Commission on Fine Arts review.

The Property is currently awaiting approval of a public space permit to allow installation of a curb cut to allow vehicular access to one of the two proposed lots via the Appleton Street frontage.

B. Description of the Project

Applicant proposes to remove the current improvements for reuse and recycling and then construct two single family homes (together the "**Project**").² Two proposed site plans are attached hereto as Exhibit G to show the Project without the requested front setback variance and as Exhibit H to show it with the requested front setback variance. As part of the Project, the Applicant proposes to subdivide the Property into two record lots, Lot One and Lot Two. A proposed plat is attached hereto as Exhibit I, with Lot One indicated as 818A and Lot Two indicated as 818B.

On Lot One, House One is intended to be occupied as the family home for the Applicant's five-person multi-generational household. It will be located on the site of the current house and have its access to Appleton Street via the aforementioned new curb cut. Lot One would retain 18,404 square feet of the

² Deconstruction is proposed to be managed by local 501(c)3 Community Forklift and in addition to environmental benefits intended to employ a number of returning citizens. See, <https://communityforklift.org/donate2/deconstruction/>.

current 30,816 square foot lot. This lot will be well in excess of the minimum lot size of 7,500 in this zone. The proposed three-story home is designed as a multi-generational home with sufficient home office space for the working adults as well as a below-grade garage entered from the west side to cover all parking needs off-street. The proposed curb cut is in a zone currently regulated for no parking so there will be no impact on available street parking nor does it impact street sight lines.

On Lot Two, the second home (“**House Two**”) would retain the Albemarle Street access and address and be offered for public sale. It would be built on the remaining 12,214 square feet of the currently unimproved eastern third of the Property, again well in excess of the minimum 7,500 square foot lot size. House Two is designed as “comfortable modern” yet contextual, complementing House One’s siting on the top of the hill as well as the surrounding homes by nestling into the existing low-point of the property. House Two is also designed with three stories and a garage below grade. The current driveway will be improved as an engineered permeable surface and include other stormwater retention infrastructure to substantially improve current runoff problems caused by drainage flowing through from the neighboring properties to the North and West. It will be attractively landscaped for the benefit of House One, the adjacent properties and the neighborhood. Sufficient parking for residents, guests and deliveries will be provided via the garage and front courtyard so there should be no impact on street parking or street throughput.

Compared to the 40 feet as measured from the nearest street lot line allowed under zoning, House One will reach a maximum height of 36 feet 8 inches and House Two will be 32 feet tall. Project lot coverage will be less than 12.8% of the original lot size, with House 1 covering 11.5% of Lot One’s 18,404 square feet, and House 2 covering 14.7% of Lot Two’s 12,214 square feet. It will have less than 25% permeable surface (23% for Lot One, 28% for Lot Two), only half as much as the zoning allows. The Project will meet all setback and yard requirements other than the relief requested here.

V.

The Application Meets the Requirements for a Variance from Required Minimum Lot Width

Subtitle C, § 303 requires that “where a minimum lot width is required, the length of at least one (1) street lot line shall be at least seventy-five percent (75%) of the required lot width.” Subtitle D, § 502 requires that lots in the R-8 Zone have a minimum lot width of 75 feet. The street lot line requirement of Subtitle C, § 303 thus means that Lot Two is required to have a street lot line no less than 56.25 feet.

In this case Lot Two would be accessed by the current pipestem driveway which is 16.3 feet wide rather than the required 56.25 feet. This mirrors the existing condition, where the existing one-family house is accessible solely by the 16.3-foot-wide pipestem driveway. While maintaining a 75-foot lot width through the main portion of the lot, the applicant thus requests a variance from the strict application of Subtitle D, § 502 as applied to Subtitle C, § 303 to allow the subdivision resulting in a street lot line of 16.3 feet, consistent with the current condition.

In order to obtain area variance relief, an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose, or integrity of the Zone Plan. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

A. The Property is affected by an exceptional situation or condition.

The Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors”. *Id.* In this case, the Property is affected by exceptional conditions based on a “confluence of factors.”

The Project site differs from others in the neighborhood in that a) the sole access has been via pipestem driveway since 1924, b) it is more than twice the size of any other lot in the square and is four

times the minimum lot size, and c) when the city platted/built Appleton Street and 31st Street they did not continue Appleton Street east to 31st Street and thereby stranded 141 feet of the lot's total 216.3 feet of northern boundary. Under the city's normal grid-based system that would have been the Property's street lot line and allowed as-of-right subdivision into three record lots or theoretical subdivision into four lots via Special Exception.³

B. Strict Application of the Zoning Regulations would result in a practical difficulty.

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established that the applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance" and "the severity of the variance(s) requested." *Id.*

As discussed above, the Property is subject to exceptional conditions due to the size and access. Strict application of the Zoning Regulations would require Applicants to either a) build a much larger home and then enter into the business of renting out an auxiliary apartment, b) sell the site to someone who wants that, or c) leave over 75% of the buildable lot coverage unused by building either House One or House Two by themselves neither of which uses more than 7% lot coverage. Building a larger home with or without an apartment is not Applicant's desire, nor do their finances allow it. Leaving over 75% of the buildable lot coverage unused substantially reduces the land use efficiency and the Project's viability, which will in turn a) reduce or eliminate Applicant's financial ability to activate the Appleton

³ Applicants do not claim that the city had any obligation to do otherwise, but this factor does clearly differentiate the subject property from other properties in the square, the neighborhood, and the City.

Street frontage and vehicle access, b) reduce or eliminate Applicant's financial ability to afforest and landscape the western, northern and southern boundaries, and c) reduce or eliminate Applicant's financial ability to fix the longstanding storm and groundwater issues caused in large part by inflows from the north and west onto the eastern half of the property as well as along the pipestem driveway.

These practical difficulties are not only unique to the subject property, they dramatically impact the expense and inconvenience of the Project.

C. Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan.

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variance can be granted without causing any adverse impact on the neighboring properties or to the Zone Plan as compared to either the current situation or an as-of-right build.

R-8 zoning is designed to protect neighboring properties from adverse impact through height limits, side and rear yard requirements as well as other conditions that the proposed Project meets and a much larger as-of-right project could meet. There is no impact on the neighborhood and the zoning regime because the lot width issue will simply continue allowing a single family home to have its only vehicular access to Albemarle Street through the long-established pipestem driveway. Additionally, another project developer could build a significantly more intensive project with more lot coverage, more nonporous surface, smaller setbacks and higher rooflines as-of-right.⁴ The proposed plan does not impact parking or other public resources, and indeed improves the situation by providing all parking, loading, and solid waste management on-site. In addition, the proposed plan will improve storm and groundwater

⁴ A much larger build would be well within the size range set by a number of other properties in Forest Hills. For example, 3301 Fessenden Street was recently built to 17,631 square feet at or over 30% lot coverage on a 0.4 acre lot. See <https://www.redfin.com/DC/Washington/3301-Fessenden-St-NW-20008/home/9981183>. Another example is 4410 & 4420 Linnean St NW, where two homes are proposed to cover almost 19% of a 32,553 square foot lot despite a very sensitive site immediately adjacent to Soapstone Valley and on a severe hillside.

management problems that have impacted neighboring properties since the neighborhood's inception. It will also activate a section of Appleton Street, without any change to available parking or vehicle sightlines, where neighbors have noted that the current inactive state attracts public safety problems.

Other factors the Board may want to consider include the fact that 1) the Fire Department has reviewed the site plan and does not object, 2) capacity at zoned schools is sufficient to enroll new in-bounds students, 3) the plan does not create pollution concerns and mitigates existing stormwater and groundwater concerns, 4) storage for trash and recycling will be provided inside the garages in climate-controlled space, 5) despite the neighborhood's ample park and recreational amenities, the project is not immediately adjacent to or viewable from any of them, and 6) the sites provide ample parking and space for off-street deliveries by up-to-26-foot box trucks. Communications from the Fire Department and zoned schools are attached hereto as Exhibit J.

Additionally, the Project helps achieve the District's goals related to housing and will contribute a significantly above-average amount to the city's property tax rolls. The Project will benefit the public by efficiently developing an underutilized parcel to provide additional housing in accordance with the Mayor's goals to increase both the number of residents and the degree of homeownership by families in the District. The Project also will further the goals and policies of the Zoning Regulations related to the increase of housing while staying well within – and in fact enhancing – the specific goals of the R-8 zone.

IV.

The Application Meets the Requirements for a Variance from the Required Front Setback

Applicants also respectfully request area variance relief in order to maintain the current Appleton Street setback without resorting to incorporating more than 40% of the existing building's substantially-depreciated structure up to four feet above grade.

Subtitle D, § 505, establishes that front setbacks in the R-8 zone are measured by the "range of blockface" standard. Subtitle B, § 314.2(c) establishes that "[b]y an "existing range of blockface" cited

for a zone; buildings and structures in the zone must be set back from the street lot line by at least as much as the existing building on the blockface closest to the street, and no more than the existing building on the blockface furthest from the street.” In this case, the current building to be removed is the closest to the street lot line. Deconstructing or otherwise razing the existing building without attempting to incorporate 40% or more of the structure up to four feet above grade into the new construction would reset the “closest to street lot line” reference point so that it is 3128 Appleton Street (construction completed within the last year) and require the new House One to be built 7.25 feet further away from Appleton Street than the existing building.

Applicant therefore seeks variance relief from the range of blockface standard due to the Property’s unique situation involving a lot line that does not run parallel to the curb as well as the impacts that strict application of the zoning will have on the ecosystem of mature trees whose preservation is the primary purpose of the R-8 zoning.

Again, to obtain area variance relief, an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose, or integrity of the Zone Plan. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

A. The Property is affected by an exceptional situation or condition.

The Project’s situation is exceptional as related to front setback because normal Washington streets maintain a consistent distance between the street curb and the street lot line except when turning. In this case, the roadbed of Appleton Street consistently trends north as it travels east from 32nd Street to 31st Street, resulting a significantly wider distance between the street curb line to the lot line and then the building façade at the Project than at the relevant closest blockface reference point at 3128 Appleton Street. Specifically, the existing building has a bigger distance between the street lot line (10.25 feet from

the house) compared to the street curb (27.5 feet from the house) versus 3128 Appleton Street (17.5 feet and 30.5 feet, respectfully). See Site Plan with setbacks indicated, attached hereto as Exhibit F.

In addition, the straight north-south distance from the existing building to the house across Appleton (4500 31st St) is only ten inches different than the distance between the reference point property at 3128 Appleton Street and its opposite across the street to 3127 Appleton Street, so the result of strict application of the rule would be to substantially increase the house-to-house distance above parity (please note that because of the east-west offset the distance between the existing building and 4500 31st Street is actually substantially larger than the 3128-3127 Appleton comparison, further amplifying the difference).

In addition, the current site is exceptional because it is improved with a house that now sets the “closest to lot line” measurement for the block. Based on conversations with the Zoning Administrator, Applicants could alter the build plan to maintain 40% of the existing building’s foundation wall up to 4 feet above grade to maintain the existing front setback, but this would add significant cost to the Project while adding no structural or aesthetic benefit to the Project or the neighborhood.⁵ These conditions establish the Project’s uniqueness compared to its neighbors and residential properties across the city.

B. Strict Application of the Zoning Regulations would result in a practical difficulty.

When Applicants spoke to the Zoning Administrator and learned that House One would need to be shifted 7.25 feet back from the existing front setback, it became apparent that the design would have to be altered to avoid impacting the critical root zone of a healthy oak tree that is a tree of significance but not a heritage tree. This majestic specimen stands in front of and buffers two additional trees of significance that are also mature oaks. All three trees are healthy, a striking contrast to many of the oaks in the neighborhood that are suffering and often dying after being weakened by a drought-deluge pattern in the past decade. The tree sits near to where the plan requires a cut and retaining wall to allow below-grade access to a basement garage that is designed to be unobtrusive from the street view. Both the

⁵ <https://dcra.dc.gov/publication/zoning-administrator-interpretation-10-demolition-vs-raze-zoning-purposes>

Applicants and their neighbor to the west wish strongly to preserve and support these trees even though they are not heritage trees. Applicants have retained a certified arborist to prepare an advanced Tree Protection Plan under the oversight of the city arborist, and they have already adjusted the Project plan to make the driveway smaller and reduce the garage bays to avoid impacting the trees. However, strict application of the zoning code would move the building foundation and driveway retaining wall to be 7.25 feet closer to the tree's structural and critical root zones, significantly reducing the likelihood that the tree and its compatriots will survive and thrive. Strict application of the zoning rule would therefore result in a practical difficulty – and also do damage to the stated purpose of the R-8 zoning – because it would reduce the chance that the tree(s) survive even with proper care under a Tree Protection Plan.

In addition, the plan was developed so that House One fits approximately on the same north-south footprint as the existing building. This would maintain the southwest-facing view and light situation of the house to the west. Strict application of the rule would require shifting the new House One 7.25 feet into the neighbor's southwestern light and view. The neighbors have noted this would cause detriment to their experience. Therefore, strict enforcement would create a practical difficulty for the Applicants in their ability to build a new home that does not have adverse impacts on neighbors.

Finally, moving House One back 7.25 feet reduces the project's ability to have both active landscaped areas and significant afforestation along the south boundary to create a forest buffer between the Project and its southern neighbors that creates a tree corridor between mature trees on the properties to the west and east. Applicants have directed their landscape architects to emphasize local biodiversity and sustainability, but strict application of the rule will cause practical difficulty by reducing the rear yard by approximately 1,000 square feet and thus reducing the Project's ability to create a continuous corridor of native woodland vegetation and trees to buffer it from neighbors to the west and south while reducing or eliminating the forest "edge effect" caused by discontinuous forest cover.⁶

⁶ See, e.g., <https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/edge-effects>

C. *Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan.*

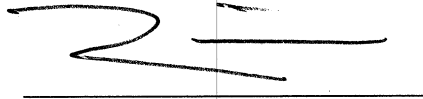
Maintenance and improvement of Forest Hills' sylvan character is the primary focus of the Forest Hills Tree and House Residential Zones, with Subtitle D, § 500 establishing the goal of [p]rotecting and enhancing the park-like setting" and focusing on "preserving mature trees to the maximum extent possible." The proposed relief maintains the existing front setback lines while allowing Applicants to not only preserve several mature trees that can otherwise be removed under the regulations as well as making it more likely they will survive and thrive. Furthermore, Applicants will use the avoided tree removal and permit costs to plant mature additional trees along the southern, northern, western and central (between the two proposed Houses) boundaries of the Project. The proposed relief therefore not only has no detriment to the public good as compared to the current situation or available as-of-right build plans, it frees up resources (money and space) to explicitly advance the goals of the zoning beyond that which is required.

VII.

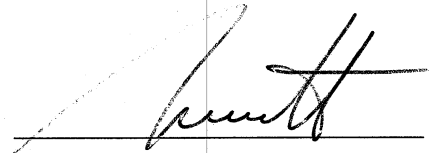
Conclusion

For all of the above reasons, the Applicant is entitled to the variance relief requested in this case.

Respectfully submitted,



Paul E Harrison



Nezahat O. Harrison