

Burden of Proof Statement
Request for Special Exception and Variance Approval
1210 Ingraham Street NW

On behalf of the St. Thomas Group, LLC (the “Applicant”), the owner of the property located at 1210 Ingraham Street, NW (Square 2930, Lot 0071) (the “Property”), we are submitting this request for Special Exception approval under Subtitle D Section 208.2 and 5201.1 of the Zoning Regulations and Variance approval under Subtitle X Sections 1000.1 and 1002.1. Specifically, the Applicant is seeking Special Exception relief from the side yard requirements contained in Subtitle D Sections 208.2, to allow for the construction of an addition to an existing, single-family, row building to accommodate a cellar level accessory apartment. As discussed in detail below, the relief required is necessary to allow the Property to retain a zero-foot setback along the “attached” property boundaries, as is customary for row buildings. The Applicant is also seeking Variance relief from the use standards contained in Subtitle U Section 201.1(a)(1) to allow for the continuation of a residential row building in the R-1-B zone. The proposed relief will not impair the purpose or intent of the R-1-B Zone or have any adverse impacts on the surrounding community.

I. Board's Jurisdiction

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the Special Exception relief requested pursuant to Subtitle D §§ 208.2 and 5201.1 of the Zoning Regulations, in accordance with the provisions of Subtitle X § 901; and the variance relief requested herein pursuant to Subtitle X §§ 1000.1 and 1002.1.

II. Site Location and Characteristics

The Property is located on Ingraham Street, NW, approximately 95 feet west of Georgia Avenue and the neighborhood-serving commercial uses that line the corridor. The Property is zoned R-1-B (“Residential House”), which “is intended to provide areas predominately developed with detached houses on moderately sized lots.” (*emphasis added*) (See Subtitle D § 101.5). The Property is unique in that it is part of a very small section of row buildings located within the R-1-B Zone. Specifically, the Property has a net lot area of approximately 2,946 square feet and is currently improved with a two-story (with walkout basement), approximately 2,224.5 square foot, row building.

III. Requested Relief

The requested relief is driven, in part, by the fact that the Property is improved with a row dwelling, but located within a predominately detached zone. Pursuant to Subtitle U Section 201.1(a)(1), a principal dwelling units is permitted in the R-1-B zone in a detached building. As such, the existing row building, in the R-1-B zone, is a non-conforming use (by virtue of the building type). As a general rule, “[a] non-conforming use of land or structure shall not be extended in land area, gross floor area, or use intensity...” (See Subtitle C Section 204.1). As

such, the Applicant is seeking a use variance pursuant to Subtitle X §§ 1000.1 and 1002.1, from the requirement of Subtitle U Section 201.1(a)(1) to allow for an addition to the existing row building.

Subtitle D Section 208.2 provides “two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for all detached buildings.” Because Subtitle U Section 201.1(a)(1) permits a principal dwelling unit in a detached building, in the R-1-B zone, the Applicant is seeking relief from the side yard requirements for a “detached building,” under Subtitle D Section 208.2. The Applicant would note that this addition would otherwise be permitted subject to Subtitle C Section 202.2 and Subtitle D Section 208.5, absent the use classification being specific to a “detached building.”¹ As such, the Applicant is seeking Special Exception relief to allow for an addition that maintains the existing, 0’ side yard condition on the Property pursuant to Subtitle D Section 5201.1, for relief from Subtitle D Section 208.2.

IV. Existing and Proposed Use

The Property is currently improved with a row building with one principal dwelling unit. The Applicant is proposing to construct a rear addition to accommodate an accessory apartment. Pursuant to Subtitle U Section 253.2, an accessory apartment shall be permitted as a matter of right in the R-1-B Zone, subject to the following provisions:

- A. Either the principal dwelling or accessory apartment unit shall be owner-occupied for the duration of the accessory apartment use. (Subtitle U § 253.5)*

The Applicant, as owner of the Property, will occupy the principal dwelling or accessory apartment for the duration of the accessory apartment use.

- B. The total number of persons that may occupy the accessory apartment shall not exceed three (3) (Subtitle U § 253.6)*

No more than three persons will occupy the accessory apartment. In fact, the Applicant intends to occupy the accessory apartment once constructed. Should the Applicant occupy the principal dwelling unit in the future, the Applicant will ensure compliance with this requirement.

¹ Subtitle C Section 202.2 provides that enlargements or additions may be made to the non-conforming structure, provided that the addition or enlargement itself (1) conforms to the use and development standards; (2) neither increase nor extend any existing, non-conforming aspect of the structure; nor create any new nonconformity of structure and addition combined; and (3) any enlargement or addition not meeting these criteria must obtain relief from the applicable development standards. The proposed addition does not conform to the use standards as it is a residential use in a row building. Absent this fact, the proposed addition would be permitted under Subtitle C Section 202.2, as it complies with all development standards of the R-1-B Zone, including Subtitle D Section 208.5, which provides that “[n]o side yards are required for row buildings.”

C. An accessory apartment located in the principal dwelling shall be subject to the following conditions:

- i. [Subtitle U § 253.7(a) is not applicable as the Property is not zoned R-1 or R-2]*
- ii. The accessory apartment unit may not occupy more than thirty-five percent (35%) of the gross floor area of the house (Subtitle U § 253.7(b));*

Following completion of the proposed addition, the row building will be comprised of 2,920 square feet. The accessory apartment will only be 968 square feet in size and as such, will not occupy only approximately 33.2% of the overall gross floor area.

- iii. Except as provided in Subtitle U § 253.7(d), if an additional entrance is created to a house it shall not be located on a wall of the house that faces a street (Subtitle U § 253.7(c)); and*

No additional entrance will be constructed. The accessory apartment will utilize the basement entrance that faces the alley, which will be reconfigured with the proposed rear addition. No entrance to the accessory apartment will be provided along Ingraham Street.

- iv. [Subtitle U § 253.7(d) is not applicable as the Property is not zoned R-3]*

V. Proposed Construction

The Applicant is proposing to construct a rear addition to facilitate the creation of an accessory apartment in the cellar of the existing, single-family row building. Accessory apartments are an important tool in the toolbox to address the region's housing crisis, and to help meet the Mayor's goal of delivering a significant amount of additional housing units by 2025.

Given the age of the existing building, which was constructed circa 1923, there is not currently sufficient living space to accommodate an accessory apartment and a principal dwelling unit that is able to house a large family. As such, the Applicant is proposing a rear addition, which will allow for a four-bedroom principal dwelling unit on the upper floors, large enough to accommodate a larger family, and an accessory apartment in the cellar. The Applicant intends to personally reside in the accessory apartment and lease the principal dwelling unit through the District's Housing Choice Voucher Program. There is a significant need in the City for larger, family-sized affordable housing.² The Applicant plans to address this need by creating a four-bedroom unit that can be rented to families.

² See An Assessment of the Need for Large Units in the District of Columbia, by Peter A. Tatian and Leah Hendey, Urban Institute, and Scott Bruton, Coalition for Nonprofit Housing & Economic Development, dated June, 2019.

The proposed addition conforms with the required rear yard setbacks. The addition will only extend a maximum of 10 feet beyond the farthest rear wall of the adjoining residential dwellings in accordance with Subtitle D § 207.4 and be setback a minimum of 96 feet from the rear property boundary (well in excess of the 25 foot rear yard setback required). As such, the proposed addition has been strategically designed to minimize impacts on the surrounding properties, while also accommodating the necessary interior living space.

As illustrated on the proposed architectural plans submitted in the record, the Applicant is proposing a design that is compatible with the existing architecture and surrounding neighborhood. Specifically, the exterior of the addition will be constructed of materials that will complement the existing home. The Applicant proposes to use Hardie panel lap siding on the exterior of the rear addition, which is in keeping with the majority of rear facades throughout the neighborhood.

VI. Special Exception Justification

Subtitle X § 901.2 permits the Board to grant a special exception where a proposed use will (1) *be in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps*, and (2) *not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps*, subject to the specific conditions specified in the Zoning Regulations for each use. Subtitle D § 5201 of the Zoning Regulations sets forth additional criteria for Special Exception relief from the development standards of the R-1-B Zone, as discussed in detail below.

A. The Special Exception Request Meets the General Special Exception Requirements of Subtitle X § 901.2

The proposed building addition is consistent with the general purpose and intent of the Zoning Regulations and Zoning Map. The Property is located in the R-1-B Zone. The R zones are intended to, among other things, recognize and reinforce the importance of housing affordability, and low- and moderate-density housing to overall housing mix and health of the city. As discussed above, accessory apartments are an important mechanism to address the housing supply and affordability crisis in the region. As such, the proposed construction, which will facilitate the creation of an accessory apartment and rental of a family-sized unit, will help promote these important goals.

The purpose of the R-1-B Zone is, among other things, to stabilize the residential areas and promote a suitable environment for family life. (See Subtitle D § 101.3). Following completion of the proposed project, the Property will continue to be used for residential use, as recommended by the General Plan. The Property is located in the Rock Creek East Planning Area of the Comprehensive Plan (the “Plan”). The Plan specifically recommends “[m]aintain[ing] and strengthen[ing] the neighborhoods of the Rock Creek East Planning Area while providing new housing opportunities for a range of incomes and household sizes.” (See Policy RCE-1.1.1). Additionally, the Plan “[s]trongly encourage[s] the rehabilitation and renovation of existing

housing in Rock Creek East, taking steps to keep housing affordable for current and future residents with a range of ages and household sizes.” (See Policy RCE-1.1.5). The proposed addition implements these objectives through the Applicant’s reinvestment in the existing building, in a manner that will allow for the creation of an accessory apartment and a family-sized principal dwelling unit. This will promote housing that is able to serve a range of household sizes and promote housing affordability.

As discussed in greater detail below, the proposed Special Exception will not tend to affect adversely the use of neighboring properties. The existing side-yard setbacks will not change as a result of this Special Exception. The Special Exception from the side yard requirement merely seeks to allow for the continuation of the zero-foot lot line condition, which is customary for row buildings. As such, the proposed addition is in keeping with the character of the surrounding neighborhood and will not adversely impact the use of the adjacent properties.

B. The Applicant Meets the Specific Requirements of Zoning Regulation Subtitle D § 5201.1 for Zoning Relief from Development Standards of the R-1-B Zone.

Exceptions to the development standards of the R-1-B Zone are permitted, pursuant to Subtitle D § 5201.1, if the requirements of Subtitle X § 901.2 are met and subject to the following additional provisions:

- i. *Section 5201.1. Special Exception relief is applicable only to an addition to a building with only one (1) principal dwelling unit.*

The Property is improved with a single-family, row building with one principal dwelling unit. The proposed addition is necessary to facilitate the creation of a cellar level accessory apartment. As discussed herein, there will continue to be only one principal dwelling unit.

- ii. *Section 5201.4. The proposed addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (a) *The light and air available to neighboring properties shall not be unduly affected;*

The light and air available to the neighboring properties will not be unduly affected by the requested side-yard relief. As discussed herein, the proposed rear addition will not extend more than 10 feet beyond the farthest rear wall of the adjacent dwellings, and the rear addition substantially exceeds the required rear yard setback (96.5’ feet proposed; as compared to 25 feet required). The proposed side yard relief requested will have no impact on the light available to the neighboring properties. The proposed addition will maintain the existing zero-foot side yard condition, as exists today and as is customary for row buildings. Based on the helpful orientation of the Property, the proposed addition will not unduly affect the light available to neighboring properties. The Applicant has submitted shadow studies, concurrent with this Statement, which demonstrate that the proposed addition will have a modest impact on the adjacent neighbors. Specifically, the rear addition, which conforms to the 10’ rule, will only cast marginal additional

shadows on the western neighbor's backyard in the morning hours and on the eastern neighbor's backyard in the afternoon.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The proposed addition has been designed to ensure that the privacy, use and enjoyment of the neighboring properties will not be unduly compromised. As discussed above, the side-yard zero-foot setbacks will remain unchanged. No windows are proposed on either of the side façades, which will be constructed as party walls, along these shared lot lines. As such, the proposed addition has been designed so as to not unduly compromise the use and enjoyment of neighboring properties.

(c) The addition, together with the original building, as viewed from the street, alley and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;

The addition will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage. As mentioned above, this block of Ingraham Street is in somewhat of a transition zone – the Property is located only four doors west from the mixed-use corridor along Georgia Avenue, with the street transitioning to single-family detached west of 13th Street. The proposed rear addition will not be visible from Ingraham Street. Furthermore, given the depth of the rear yard (with a proposed rear yard setback of 96 feet) and many mature trees along the alley, the rear addition will not substantially visually intrude upon the character scale and pattern of houses along the alley frontage. Architecturally, the proposed addition is in keeping with the style of the existing structure and will continue to be compatible with the surrounding neighborhood.

(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the Applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways;

The photographs and architectural elevations submitted concurrently with this Statement demonstrate that the proposed addition is compatible with the surrounding area and will not have any adverse impacts on the adjacent property or surrounding neighborhood.

VII. Variance Justification

The Applicant is seeking variance relief from the Board to allow for the expansion of an existing non-conforming structure in the R-1-B Zone. The R-1-B Zone permits a principal dwelling unit and accessory apartment by-right in the R-1-B zone. However, a row building is not

permitted by-right. Pursuant to Subtitle C Sections 201.2 and 204.1, as an existing, non-conforming use, the row building may be continued, operated, occupied or maintained but cannot be “extended in land area, gross floor area, or use intensity.” The Board is authorized to grant variance relief, pursuant to Subtitle X §§ 1000.1 and 1002.1(b), as authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), where it finds that: (1) the Property is affected by exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition; (2) as a result of these specific attributes of the property, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the Property; and (3) the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. As demonstrated below, the Applicant meets these required findings:

A. The Property is affected by exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition.

The phrase "other extraordinary or exceptional situation or condition" applies to both the characteristics of land and the existence of improvements on the land. *See Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974) (*emphasis added*). The "extraordinary or exceptional situation or condition" may also arise from a confluence of factors that affect a single property. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). Here, the Property is characterized by an exceptional situation and condition arising from the existence of a row building on an exceptionally narrow lot in the R-1-B zone.

B. The strict application of the zoning regulations would result in exceptional and undue hardship.

Strict application of the Zoning Regulations will result in exceptional and undue hardship to the Applicant by prohibiting the Applicant from making any expansion of the existing home. Although the R-1-B zone recognizes that no side yard setback is required for row buildings (see Subtitle D Section 208.5), because a principal dwelling unit is only permitted in a “detached building” in the R-1-B zone, absent variance relief, the Applicant would need to provide 8’ side yard setbacks for the proposed addition. This would render any addition infeasible, as the lot itself is only 18’-6” wide.³ Thus, the presence of a row building in the R-1-B Zone is an extraordinary and exceptional situation and condition of the Property. The strict application of the Zoning Ordinance will result in an undue hardship on the Applicant.

³ There are only 17 row homes on the south side of Ingraham Street that are located in the R-1-B Zone. The row homes on the north side of Ingraham Street are located in the R-3 Zoning District.

C. The Variance relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The variance will allow for the continued use and expansion of the existing residential, row building located on the Property. As discussed herein, the Property is a part of a small number of row buildings located in the R-1-B Zone (a predominately residential detached zone). The proposed addition will allow the Applicant to re-invest in the existing building and facilitate the creation of a cellar level accessory apartment and family sized principal dwelling unit. As detailed above, this will promote many goals and objectives of the Zone and the City, as expressed through the Plan, and as such, will not substantially impair the intent, purpose and integrity of the zoning regulations and map. The Property will continue to be used for residential use and as such, the variance will not cause substantial detriment to the public good.

VIII. Conclusion

For the reasons set forth above, we respectfully request the Board of Zoning Adjustment's approval of the requested Special Exception and Variance. The proposed Application will allow the Applicant to reinvest in the existing Property in a manner that facilitates the creation of additional housing choices, to help address the City's goal of providing housing for families of various sizes and incomes.

Respectfully submitted,



Elizabeth Rogers