

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Latasha D Boone Trustee
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.

A. Overview of Relief Requested

This Statement is submitted on behalf of Latasha D. Boone Trustee, (the “**Applicant**”) owner of the properties and improvements located at: 418 Franklin Street, NE (Square 3639, Lot 28) (“**418 Franklin**”); 422 Franklin Street, NE (Square 3639, Lot 27) (“**422 Franklin**”); and 2804 5th Street, NE (Square 3639, Lot 26) (“**2804 5th**”) (hereinafter collectively referred to as the “**Properties**”). The Properties are each improved with a two-story building, each used as a single-family dwelling (the “**Buildings**” or the respective “**418, 422, 2804 Building**”). The Applicant is proposing to reconfigure the lots, requiring area variance relief, and construct additions to each respective Building, requiring various special exceptions:

Relief	418 Franklin	422	2804
<u>Area Variance-</u> Lot Area and Lot Width	X	X	
<u>Special Exception E-5201</u>			
<i>10 ft. rule</i>	X	X	X
<i>Lot Occupancy (up to 70%)</i>	X	X	X
<i>Rear Yard</i>			X
<u>Special Exception C-1506</u>			
<i>Single Penthouse Enclosure</i>			X
<i>Penthouse Rear Setback</i>		X	
<u>Special Exception C-1501.1(c)</u>			
<i>Penthouse not within the 35 ft. height limit</i>	X	X	X

B. Surrounding Area

The Properties are located in the RF-1 zone district. Abutting the Properties to the north is 2806 5th Street, NE, which consists of a single-family row dwelling. Abutting the Properties to the

south is Franklin Street. Abutting the Properties to the west is 414 Franklin Street, NE, which consists of a single-family row dwelling. Abutting the Properties to the east is 5th Street.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the variance relief requested pursuant to Subtitle X § 1000.1 and the special exceptions pursuant to X-901.2, E-5201, C-1501.1(c), and C-1506.

III. VARIANCE REQUEST

A. History of the Property and Variance Request for Proposed Lots

In 1948, these Properties, and two others to the west, were subdivided in a unique and strange configuration:



As described more fully below, the Applicant is seeking an area variance with respect to lot area and lot width – for only the 418 and 422 Franklin Lots— to reconfigure the lots in a more practical and standard rectangular lot configuration. The Applicant is proposing to do this without changing any of the lot widths, only the land areas. This will decrease the respective land areas for

both the 418 and 422 lots, which are already nonconforming, but it will not change the existing lot widths for those properties, which will remain at 16 feet. The corner lot, the 2804 Property, will continue to be compliant with respect to land area and lot width:



Franklin Street

B. The Request for Lot Area and Lot Width Area Variance Satisfies the Requirements

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of*

Columbia Zoning Comm'n, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance for relief.

1. Extraordinary or Exceptional Condition affecting the Subject Property and Practical Difficulty if the Zoning Regulations were Strictly Enforced.

To prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990). The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that "...property generally includes the permanent structures existing on the land." *Id.* at 293–94.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. It is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty'... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA's consideration." *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: "the severity of the variance(s) requested;" "the weight of the burden of strict compliance;" and "the effect the proposed variance(s) would have on the overall zone plan." Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome; not impossible.

In this case, the unique lot configuration and history is unique and leads to a practical difficulty for the Applicant in maintaining its current configuration. The lot configurations are unique, even compared to the properties directly to the west, because the configuration involves three lots with odd lot boundaries (vs. two lots that effectively have reciprocal use).

The odd configuration of the three subject Properties has already created significant issues and litigation with respect to lot boundaries. Ms. Boone, the Applicant, originally owned only 2804 5th Street- the corner lot. She purchased that Property with a fence which crossed over the 418 and

422 lots in the same configuration that is proposed by the variance (extending to the non-affiliated abutting property to the north at 2806th Franklin). Ms. Boone had enjoyed, as had the previous owner, the use of the rears of those properties in a manner consistent with an adverse possession claim. The former owner was aware of Ms. Boone's use of the land, as Ms. Boone contacted the former owner of 418 Franklin about a fallen tree along the shared privacy fence. They compared their respective surveys to determine whose responsibility it was to remove the tree and repair the fence and this is when they first noticed the respective surveys did not match.

In 2020, the former owner of 418 Franklin retained counsel and pursued the lot boundary dispute against Ms. Boone. She timed it so it was just prior to when an adverse possession claim (15-year requirement in DC) would be available to Ms. Boone who purchased her original 2804 5th Street Property in 2007. The former 422 owner also supported the 418 owner in its claim. The 422 owner passed and in order to avoid further litigation, Ms. Boone purchased that Property in 2023. Then, in April 2024, the original 2020 case brought by the 418 owner eventually settled with Ms. Boone purchasing the 418 Property. Naturally, Ms. Boone wished to correct these lot lines given the extensive litigation and conflicts it caused throughout the years. And she is now pursuing that through variance relief given how difficult the other options are and how they do not provide strong enough assurances against future boundary disputes.

Without the relief the only option is to maintain the lots in their existing configuration. Maintaining these lots as configured has already led to thousands of dollars in litigation, which is likely to be repeated in the future—even if it is 15 years in the future. Another option she explored is to utilize various reciprocal easements. But as will be further detailed in a subsequent filing, the easement option is practically difficult due to cost and complexity. Further, either option ultimately devalues each respective property and makes them more difficult to sell compared to other properties which have normal lot boundaries and/or are not subject to multiple easements. And even then, easements are not fail-safe and can be litigated.

2. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

The request is to bring the lots into a typical lot configuration. The proposal will not change the lot widths, nor the appearance of how the lots and buildings are configured as you see it from the adjacent streets. Adjusting the lot lines will have no impact on any neighboring properties. The

lot areas are already nonconforming, and the Applicant is only slightly reducing the lot sizes for only the 418 and 422 lots by a total of 453 square feet (the dog legs). Ms. Boone purchased the corner lot with a fence across those dog legs, so the requested relief will adjust the lot lines approximately to where the fences were located and where the general public would think the lot lines already were located.

Further, the relief does not create any new land area where there is not any—i.e., the reconfiguration and total land area across all three lots is still the same regardless of the lot boundaries. And the additional 453 square feet allocated to the 2804 Property actually brings that property into compliance, from 1,497 sq. ft. to 1,905 sq. ft., increasing the overall compliance with the Zoning Regulations. Further, the additional 453 square feet allocated to the corner lot would barely result in an increase in permitted improvements, as 60% or even 70% of 453 square feet is only 272 square feet, or 317 square feet, respectively. And this is even smaller compared to an 1,800 square foot lot, which is the minimum required. Accordingly, this does not create any significant increased development potential for the corner lot. Accordingly, relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan.

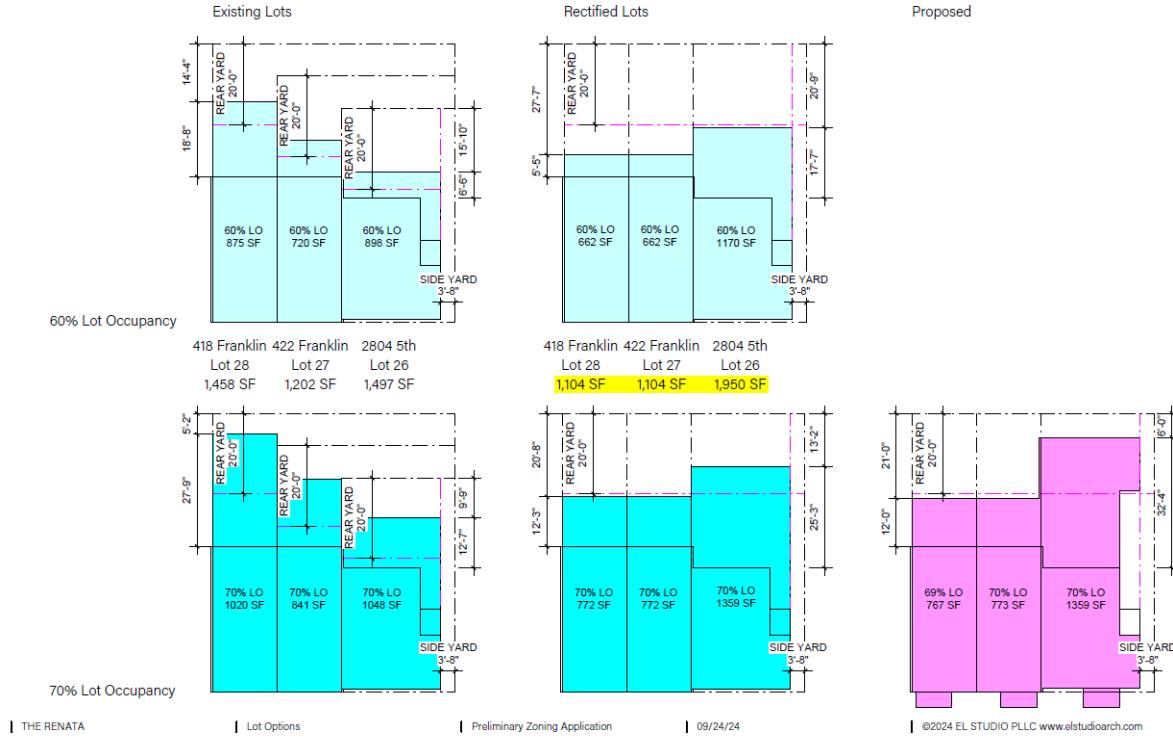
IV. PROPOSED PROJECT(S) AND SPECIAL EXCEPTION RELIEF

A. Overview

The Applicant intends to pursue a project based on the reconfigured lots and is seeking special exceptions based on the newly configured lots. Were the Applicant not granted the variance relief, it would still be able to pursue special exceptions—except that the bulk of the available lot occupancy would be on lots 418 and 422, versus 2804, and this creates its own difficulties given the dog legs. The Applicant has included a chart (on page 5 of the plans) demonstrating the various configurations available under the original lot configuration vs. the proposed, and then has compared those to what we are actually proposing. The Applicant is proposing to convert each building into a flat (2-units) and construct a rear addition to each as shown in pink. The corner building has been designed to ‘front’ on 5th Street, and the addition mirrors the existing building bulk:

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LOT COMPARISON



B. Relief Requested

Each lot requires different relief, but generally under three categories (E-5201, C-1501.1(c), and C-1506). A detailed chart has been provided on page 2 of the plans.

1. Special Exceptions pursuant to E-5201

- 10 Foot Rule Relief (all three lots)
- Lot Occupancy (all three lots)
- Rear Yard (2804 5th Street- corner lot)

C. Specific Special Exception Requirements of Subtitle E- 5201 (10-Foot Rule, Lot Occupancy).

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

5201.4: An application for special exception relief under this section shall demonstrate that the proposed addition, new principal building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

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

As will be demonstrated by shadow studies, the respective additions and requests for the: (1) 10-foot rule (2 feet, 2 feet, and 15 feet); (2) lot occupancy (69%, 70%, and 70%); and (3) rear yard (6 ft. proposed for 2804 5th), will not unduly affect the light and air to neighboring properties.

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

The respective additions and requests for the: (1) 10-foot rule (2 feet, 2 feet, and 15 feet); (2) lot occupancy (69%, 70%, and 70%); and (3) rear yard (6 ft. proposed for 2804 5th), will not unduly compromise the privacy and use of enjoyment of neighboring properties. The specific request for rear yard relief still provides 6 feet between the adjacent neighbor to the north and while there are a few windows, they are small windows located in such a way as to not provide any direct views into neighboring properties.

(c)The proposed addition or accessory structure, together with the original building, or the new principal 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 street or alley frontage;

The respective additions and requests for the: (1) 10-foot rule (2 feet, 2 feet, and 15 feet); (2) lot occupancy (69%, 70%, and 70%); and (3) rear yard (6 ft. proposed for 2804 5th), will not substantially visually intrude on the character, scale, and pattern of houses along the adjoining streets. The rear additions for the 418 and 422 lots will not be visible from any public ways. The 2804 5th Street addition has been designed to mirror the existing bulk with open space along 5th Street and 'bays' on the property to replicate the existing conditions. Further, it has frontage along 5th Street and the rear yard will appear to be a side yard.

D. Special Exceptions pursuant to C-1501.1(c)

Subtitle C-1501.1(b) permits penthouses by right on flats so long as the penthouse (1) Is not located on an alley lot; (2) Is located entirely within the matter of right permitted height for the building; (3) Is a maximum of nine feet (9 ft.) in height and one (1) story; and (4) Contains only

stair or elevator access to the roof plus a maximum of thirty square feet (30 sq. ft.) of space ancillary to a rooftop deck or terrace. Subtitle C-1501.1(c) permits a special exception for (b)(2)—the matter-of-right height requirement, subject to the general special exception criteria. The Applicant is proposing to provide a penthouse on each Building which meets all by right criteria except that it is not entirely within the 35 ft. by right as it exceeds the by-right height limit by 2 feet.

C-1504.1(b) requires a setback from any rear building wall. C-1503.1 requires that penthouses are limited to one single enclosure. The 422 Building has a penthouse not meeting the rear setback (0 provided, 8 ft. 2 in required). The 2804 5th Building has two separate enclosures. The Zoning Regulations permit special exception relief from these respective requirements pursuant to C-1506.

C-1506.1: Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment subject to:

D. The applicant's demonstration of at least one (1) of the following:

- 1) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;**

The Property is an existing building built prior to the ordinance, and additional height is now required to build a code compliant stair with code compliant structure/roof assemblies. Similarly, because of the existing layout and proposed addition, the separate penthouse enclosure on the 2804 5th Building would permit the second unit access without having to dramatically reconfigure the interior space to allow for shared access between the units.

E. General Special Exception Criteria

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special 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 proposed uses are permitted by right in the zone. The requests for 10-foot rule relief are limited to 12 feet and 15 feet. The rear yard request mirrors a side yard as the building will appear to 'front' on 5th Street. The penthouse

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relief will not cause the penthouses to be visible from any public ways. Further, as described above, the relief will not result in any undue impact on light, air, or privacy, nor result in any visual intrusion to the character, scale, and pattern of houses along 5th Street or Franklin Street.

V. CONCLUSION.

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the variance and special exception relief as detailed above.

Respectfully submitted,

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