

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of 1332 HARVAR LLC
1332 Harvard Street, NW (Square 2855, Lot 66)

I. INTRODUCTION AND SUMMARY OF RELIEF.

This Statement is submitted on behalf of 1332 HARVAR LLC (the “**Applicant**”), the owner of the property located at 1332 Harvard Street, NW (Square 2855, Lot 66) (the “**Property**”). The Property is currently improved with an existing three-story + basement, four-unit apartment building (the “**Building**”). As discussed in more detail herein, the Applicant’s former business partner originally managed the subject Property until his departure in 2020. At the time of purchase, the Building was in the process of being renovated, and the basement unit was being improved along with the upper three units. The Applicant’s partner was in charge of finalizing the plans and obtaining the proper permits and licensing. The Applicant assumed this had been done given his assurances. The Applicant only recently discovered that the Certificate of Occupancy never included the existing fourth unit and is now seeking relief to make the fourth unit legal in order to obtain a Certificate of Occupancy. The Applicant is not proposing any changes to the layout of the units and the as-built floor plans have been included with this Application.

The Building is a purpose-built apartment building. Subtitle U-301.5 permits, as a matter of right, the expansion of purpose-built apartment buildings, so long as the Property has 900 square feet of land area per unit. The Property has 2,543 square feet of land area, less than 900 square feet of land area per unit. Accordingly, the Applicant must seek area variance relief¹ from U-301.5(b) and (c).

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the area variance from U § 301.5(b) and (c) pursuant to 11-DCMR Subtitle X § 1002.1(a).

III. BACKGROUND.

¹ 900-foot rule relief is listed as an example of an area variance in X § 1002.1(a).

A. History of the Property and Applicant's Purchase and Operation.

The Property is located in the RF-1 Zone District and has 2,543 square feet of land area. It is an interior lot improved with an existing three-story + basement row Building constructed c. 1903 in its current envelope, according to History Quest. Also noted on History Quest is that the original purpose was as an 'apartment.' The existing Building has had four rental apartment units, with four separate meters since 2010. This includes the three legal dwelling units, one on each of the first, second, and third floors and the fourth one that has existed since 2010, on the lowest basement level. The lowest level was converted into a fourth dwelling unit during a comprehensive renovation of the Building, which was already underway at the time of the Applicant's purchase of the Property. Prior to that, it was an open space not used for any purposes, except occasional storage.

The Property is owned by an ownership group, and, at the time of purchase, the group was working with a managing partner who took the lead on the acquisition and was responsible for finalizing all required plans and securing the necessary permits. At the time of purchase, the other stakeholders in the ownership group fully trusted the managing partner and took his word that everything was taken care of with the construction and rentals. After the purchase and renovation, completed c. 2010, all four units were successfully rented and managed by the former partner. The former partner managed this Property until his buyout and departure from the larger ownership group in 2020. The remaining stakeholders continued to operate the building as a four-unit apartment without any indication that there were outstanding zoning or permitting issues.

It was not until 2022, when the current owners sought to update ownership documents to reflect the new ownership regime, that they discovered the fourth unit was never included on the Certificate of Occupancy and needed to apply for a permit revision to add the fourth unit. This was the first time the other stakeholders became aware that the basement unit was not approved by the District and came as quite a surprise to the owners given that the unit had been successfully rented without any enforcement issues for over a decade.

It appears that the former partner, possibly in conjunction with the contractor, submitted floor plans only showing floors 1-3 as being renovated. The approved plans showed the basement with no changes, labeled storage space (See 2008 Plans). While the Applicant is grateful that the upper floors were at least properly permitted, it sought to remedy the former partner's failures

regarding the fourth unit. Accordingly, the Applicant has already submitted updated plans for the basement unit, reflecting the as-built conditions, and is currently awaiting a second round of review comments from the District.

B. Description of the Surrounding Area.

The Property is located in the Columbia Heights area and is approximately 800 feet/0.1 of a mile from the Columbia Heights Metro. The square in which the Property sits is bounded by 14th Street to the west, 13th Street to the East, Harvard Street to the North, and Girard Street to the South. The Property fronts on Harvard Street to the north. Abutting the Property to the south is a public alley. Abutting the Property to the west is a 3-unit purpose-built apartment building. Abutting the Property to the east is a single-family row dwelling. There are several other apartment buildings on this block, also zoned RF-1, including 1336 Harvard, 1320 Harvard, 1300 Harvard, and 1301 Harvard.

The surrounding area is made up of a mix of uses, including lower and moderate-density residential uses and daycares along Harvard Street and 13th Street, and larger multi-family buildings to the north on Columbia Road. To the west, along 14th Street are mixed-use buildings, commercial buildings, and institutional uses. Along Harvard Street one block to the east is a Public Charter School. The area is made up of a mix of uses. The Property is also well-served by public transportation given its proximity to the metro and 14th Street.

IV. THE APPLICATION MEETS THE STANDARDS FOR AREA VARIANCE APPROVAL

The Applicant is requesting variance relief from the 900 square foot rule (U-301.5(b) and (c)). 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 relief.

A. Extraordinary or Exceptional Condition Affecting the Subject Property Resulting in a 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.2d 1164, 1168 (D.C. 1990). 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 particular case, the variance test is being applied to the current situation, and also reviewed de novo, as if the basement had remained ‘storage’ space.

Regarding the current situation, the Applicant is faced with an exceptional situation due to the history of the property and existing configuration. Prior to the Applicant’s purchase, the basement unit was being converted to a separate unit and the current ownership team was given assurances regarding its use. The Property was, in the Applicant’s mind, legally approved. The unit has existed and been operated in good faith for over a decade since the initial renovation, without notice or enforcement action by the District. The current ownership was unaware of any permitting deficiencies and continued operating the Property as a four-unit apartment building following the departure of the former managing partner. The Applicant has acted promptly and transparently upon learning of the issue and is actively engaged in resolving it through proper

channels. These circumstances weigh heavily against requiring reversal of longstanding conditions that have existed without challenge or notice for many years.

The practical difficulties associated with complying retroactively are related to the cost and difficulty of combining units, and loss of rent. Requiring two of the units to be combined would come at increased expense to the owner.² Additionally, the result would be an overly large unit, with approximately 3,000 square feet, 4 bedrooms, 4 full baths and 2 half baths. The cost, in addition to the loss of rental income, loss of a unit of housing, and generally reconfiguring this house by, at a minimum, tearing out a kitchen³ together create the practical difficulties.

Moreover, the proposed use is a permitted use as a matter of right and the 900-foot rule is a restriction based on land area, not the use. The Property has a land area of 2,543 square feet and is shy of the requirement by about 1,057 square feet, or about 265 square feet per unit. Given that the properties on either side are each improved with an existing building, the Applicant does not have the ability to purchase the requisite land without creating nonconformities on the respective adjacent properties. Accordingly, purchasing land to meet the land area requirement is not an option.

De Novo Review

Another way to view the request is as if no work had ever been done on the basement and it was in its original configuration as storage space. If the Board were to consider this application as a request to add a new unit in existing, unoccupied basement space, it would be in the same vein as previous cases brought for expansions of existing purpose-built apartments in the RF zones.⁴

The purpose-built apartment building was constructed in 1903 and became legally nonconforming upon the adoption of the 1958 Zoning Regulations. The 2008 Plans indicate the basement level was vacant storage space prior to the renovation—about 1,300. Each unit is about 1,300 square feet, too, and has ample storage space as well as in-unit laundry. Even in 2008, combining the first-floor unit and the basement would have been costly and disruptive. The Building is over 100 years old and removing floors to create internal connections would have resulted in costly construction.

² The Board and OP have found that considerable renovation and expense can be considered practical difficulties (See Case No. 19517, 20116, 20002, 19574)

³ DOB does not permit two ranges in one single dwelling unit.

⁴ See BZA Cases: 20289, 19625, 19570 and 20306.

The only other legal option at that time would have been to leave the ground floor vacant. Had the case come before the Board at that time, the argument would be that it is an unduly inefficient use of existing space in a residential building, and could result in maintenance and security issues in the building. The basement space is at ground level, on a street that is heavily traversed by pedestrians and near a metro station and major transportation corridor in the District. And using the space for other uses complementary to the residential use such as laundry or storage is not necessary given that each unit has in-unit laundry. The units run an average of 1,300 square feet, making the need for additional storage space unnecessary.⁵

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

The Applicant is requesting relief based on the unique circumstances affecting this Property, namely the creation of the fourth unit, and effective inheritance of an existing nonconforming condition. The proposal is not to increase the size of the units nor the existing Building but rather maintain the status quo. The Applicant acted in good faith and is now taking the right steps to ensure the unit is legally occupied, unlike the previous partner. Further, the use itself is permitted in the RF-1 zone as a matter-of-right, this was purpose built as an apartment building, and the lowest level was an idle, vacant space. Even reviewed de novo, the existing basement was sitting vacant and unused. And maintaining conditioned vacant, unused space in an existing apartment building is a practical difficulty as described above.

The Applicant is not seeking relief related to use but rather an area restriction related to land area. Further, the location so close to public transit and a major thoroughfare—14th Street—facilitates this density without creating additional congestion or traffic. It is an appropriate location for multiple units of housing. Accordingly, granting relief shall not be a substantial detriment to the public good, nor impair the intent, purpose, and integrity of the zone plan.

V. CONCLUSION.

⁵ The average size of a 2BR unit in the area is about 900 square feet. And the Board and Office of Planning have found that units as small as 816 square feet were large enough to make the need for additional storage unnecessary. See OP Report for Case No. 19625: <https://app.dcoz.dc.gov/CaseReport/ViewExhibit.aspx?exhibitId=137276>

Applicant's Statement
1332 Harvard Street, NW

For the reasons outlined in this statement, the Applicant respectfully requests the variance relief as detailed above.

Respectfully Submitted,

Alexandra Wilson

Alexandra Wilson
Sullivan & Barros, LLP