

**Applicant Statement-Burden of Proof
Variance Application
DCRA BZA Case #_____**

**TO: DC Office of Zoning
Board of Zoning Adjustment
Government of the District of Columbia
441 4th Street NW Suite 200S
Washington, DC 20001**

DATE: May 14, 2025

**SUBJECT: Validation of 3rd Dwelling Unit in existing 3-Unit Building –
2016 1st Street, NW (Square 3116, Lot 0011)**

I. Introduction

The Applicant, Ms. Pamela Wilson, who is also the owner of property located at 2016 1st Street, NW (the “Applicant”), hereby submits the enclosed request for a use variance from U §301.1(b) pursuant to 11 DCMR Subtitle X Chapter 10 §1000.1 , and a special exception pursuant to C §701.5 and C §703.2, for a reduction in the number of vehicle parking spaces, to validate an existing 3-unit, three-story brick apartment building at 2016 1st Street, NW (Square 3116, Lot 0011) (the “Property”). The Applicant inherited the Property following the untimely death of her brother, Michael Wilson, who had owned the property since the 1980s. Mr. Wilson died in 2019 from progressive debilitating MS and the Applicant inherited the building, not realizing that it was not zoned for three units until just recently.

It was not until the Applicant engaged a real estate broker to list the building for sale that she discovered that there is no Certificate of Occupancy for the existing third unit, and therefore, the Applicant is now seeking relief to legally validate said unit in order to obtain a Certificate of Occupancy.

This request is necessary due to the property’s non-conforming status within the RF-1 Zone District, which limits the maximum number of dwelling units to two (2) units under U §301.1(b). The applicant seeks a use variance for relief specifically under the provisions of Subtitle X, Chapter 10 §1002.1 which is further discussed below.

II. Jurisdiction of the Board

The Board has jurisdiction to grant the special exception relief pursuant to U §320.2, and the variance from U §301.1(b) pursuant to 11 DCMR Subtitle X Chapter 10 §1000.1.

III. DESCRIPTION AND HISTORY OF THE PROPERTY AND SURROUNDING AREA

A. **Chain of Title.** DC Land Records appears to only go back as far as 1921, and chain of title as far back as 1945. An Indenture was recorded February 1, 1945 where James E. Markham, an Alien Property Custodian for the US, seized property from an Italian national and conveyed the lot to Louis Sacks. Chain of title was traced from Louis Sacks through Pamela Wilson, the Applicant.

B. History of Subdivision. The history of Bloomingdale is described in the enclosed document referred to as “Exhibit 4”. It tracks the property from the Beale Estate in the early 1880s to the creation of Moore & Barbour’s Addition, which is the subdivision where the lot is located. Based on Page 15, it seems that the tract where the property was located was developed around 1899. The rest of the Exhibit 4 discusses the various architects that built homes on 1st St NW. Though this historical document did not specifically mention the 2000 block, it appears that 2016 1st St NW was likely built sometime around the early 1900s. Taken with a grain of salt, Redfin and Zillow have 1908 listed as the year the property was built.

C. Description and History of the Property. As indicated above, this request for approval of a variance is in conjunction with Building Permit #B2206546 and Certificate of Occupancy #B24055911. Upon review of said Certificate of Occupancy, it was recently determined that a variance is needed in order to validate the 3rd dwelling unit in the subject apartment building, which again, has existed at this location for at least two decades.

The Property is located in the Bloomingdale Historic District. The subject building is situated on .04-acre interior lot improved with a three-story row building constructed in 1908. The building fronts on First Street, and further east, directly across First Street is Crispus Attucks Park. Adjacent to the west, south and north are mixture of other row houses, flats and apartment buildings.

The building includes 2,859 square feet of rentable space with three separately metered units, comprised of a one-bedroom unit, a one-bedroom unit with a den and a two bedroom unit. Each of the units have energy efficient HVAC systems, new high efficiency washer and dryers, waterless tank water heaters, new luxury laminate flooring, stainless steel appliances, and granite counter tops. The building has also received a complete renovation in 2023 with a new roof, new electrical wiring, and new plumbing. See, Permitting history enclosed herewith as “Exhibit # 1” The units all have front and rear alley access including patio deck spaces on the second and third floors. There are two parking spaces with access from the alley in the rear of the building.

On November 15, 1999, a Certificate of Occupancy was issued for the following purpose(s): “Flat 2 Units, ONE UNIT 2nd FLR, ONE UNIT 3RD FLR”. A copy of the C of O is enclosed as “Exhibit #2”. At the time that the Applicant inherited the building in 2019, the building contained three (3) dwelling units. According to the Applicant, the 3rd unit may have originally been a dry cleaners or some other commercial use, but she does not know this for certain. According to a document entitled, “The History of Bloomingdale”, prepared by Prologue DC for the Bloomingdale Historic Designation Coalition:

The initial phase of rowhouse development in Bloomingdale was concentrated in the blocks closest to Florida Avenue. These are the first rows of houses built in Bloomingdale. They were built by Emily Beale’s son George N. Beale, who established the high quality of residential building that characterizes Bloomingdale. The First Street row includes the first of many distinctive corner buildings, a number of which were built for stores on their ground level.

This seems to support the Applicant’s contention that the first floor was once a commercial use.

Sometime in the early 2000s, this first floor unit was reconfigured and converted to a dwelling unit. For the last 20-25 years, the 3rd unit has operated as an apartment until around 2019 when the building caught on fire and this unit incurred fire damage. Building Permit #B2206546 was approved and issued in order to allow this 3rd unit to be re-constructed. See,

“Exhibit 3”. At this time, the Applicant is not proposing any changes to the building, either interior or exterior, but rather, is seeking to validate existing conditions.

The 3rd dwelling unit, which is the subject of this variance request, was (and still is) located on the first floor of the building. The Applicant is seeking relief to make the third unit legal in order to obtain a Certificate of Occupancy for three units, which would be consistent with the building permit that the Department of Buildings recently approved which reflects three units at this location.

D. History of the Building. In 1989, Michael Wilson submitted an application for a special exemption to change a nonconforming use from a dry-cleaning business on the first floor to a home improvement office (attached as “Exhibit 5”). The application was approved by the DC Board of Zoning Adjustment. Dating even further back, and as indicated above, there seems to have been some type of commercial use operating on the first floor where the 3rd unit is now located; however, this first floor has housed the 3rd unit for at least the last two decades.

III. NATURE OF RELIEF SOUGHT

The Applicant is requesting approval of a use variance with respect to validation of the 3rd unit in this building. The Applicant is also requesting approval of a special exception for a reduction of one parking space. The property will continue to be compliant with respect to land area and lot width. lot size.

The Board of Zoning Adjustment may grant a 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.

As set forth below, the Applicant meets the three criteria for approval of the requested variance. A variance would allow the 3rd dwelling unit to continue to exist and operate at this location as it has for decades. Two of the three units are permitted as a matter of right in the RF-1 Zone District, but the 3rd unit will require approval of a use variance.

IV. BURDEN OF PROOF FOR USE VARIANCE

The Board of Zoning Adjustment is authorized to grant a variance when a property meets the following three criteria:

1. **The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;**

In order for the Applicant to demonstrate 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. *Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082–83 (D.C. 2016). “The extraordinary or exceptional conditions

affecting a property can arise from a confluence of factors; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property.” *Id.* The uniqueness of a property can arise from a variety of factors. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C.1990). “The critical point is that the extraordinary or exceptional condition must affect a single property.” *Id.*

The subject lot was originally developed in 1908, at a time that predates the adoption of ZR16 and the May 12, 1958 Zoning Regulations. Although the current RF-1 Zone District permits up to two dwelling units, this building has operated with three dwelling units for at least two decades. Moreover, the 3rd unit, through a coalescing of facts and circumstances, has been approved under a valid building permit Building Permit #B2206546 issued by the DC Department of Buildings. See, enclosed building permit at Exhibit #3.

The exceptional conditions that exist as it relates to the Property concern how the building is currently configured with three units, and the building permit that was approved to re-construct the building with a 3rd unit after the building caught on fire. The Applicant is faced with conflicting approval documents, that being the Certificate of Occupancy that reflects two units, and a building permit that was for three units. Under approved building permit, the 3rd unit was re-constructed and brought back on line in a legal fashion.

The Applicant contends that the building permit approval for the 3rd unit is an exceptional situation that warrants approval of a variance in this instance. Approval of the requested variance will eliminate the confusion that surrounds the Certificate of Occupancy being at odds with the recently approved building permit. The Applicant contends that fire and the issuance of the building permit, which recognized the building as a 3-unit building and approved the re-construction of the 3rd unit after the fire, has presented an exceptional situation arising from a confluence of factors which affect the subject property.

The Applicant will provide additional information regarding the costs of reconstructing the 3rd unit, which again, was done under a valid building permit. The only option the Applicant has to bring the Property into compliance with the RF-1 zoning would be to somehow reconstruct the space again into a permitted use. The cost of another reconstruction project, coupled with the loss of what was just recently invested in rebuilding after the fire, creates a practical difficulty for the Applicant.

2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property.

Strict application of the Zoning Regulations would result in a practical difficulty for the Applicant. The Applicant maintains that strict compliance with the regulations is extremely burdensome. In this case, the exceptional circumstances and history of this property and leads to practical difficulties for the Applicant.

In order to prove that an applicant suffers from ‘practical difficulties’ two elements must be proven: (1) compliance with the area restriction would be unnecessarily burdensome; and (2) the practical difficulties are unique to the particular property. *Fleischman v. D.C. Bd. of Zoning Adjustment*, 27 A.3d 554, 561–62 (D.C. 2011) (citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d at 1170 (quotations and citations omitted)). “Economic use of property has been considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases.” *Id.*

The Applicant's deceased brother originally owned the subject property in the same configuration that is proposed under this variance request. Her brother passed in 2020 and she inherited what she believed to be a 3-unit apartment building. It was not until after the building caught fire and the 3rd dwelling unit was damaged by the fire that the Applicant discovered through the C of O process that the Zone District only allowed two of the three dwelling units, even though the 3rd dwelling unit had existed for decades and was re-established under the approved building permit.

Naturally, Ms. Wilson desires to continue to use the building as a 3-unit building for a number of reasons, namely because the building has been operating with three units for some time, and there is a valid building permit that approved the re-construction of this unit. Ms. Willson respectfully seeks variance relief as an alternative to the difficult and expensive option of re-constructing and re-configuring the space that the 3rd dwelling unit currently occupies.

Without the requested relief the only option for Ms. Wilson, who does not live in the subject building, would be left with wasted space that she is unable utilize in its current state as a dwelling. This predicament ultimately devalues the property and makes it more difficult to sell compared to other properties which do not have the same unique history and circumstances. Allowing the 3rd unit is the only practical solution based on the existing circumstances. Without approval, the Applicant would face unreasonable hardship in fully utilizing the property.

The 3-unit building is compatible with the surrounding neighborhood, which is predominantly improved with, flats predominantly on approximately sixteen feet (16 ft.) wide lots and large apartment houses. The Applicant contends that the unusual facts, including the length of time the 3rd dwelling unit has existed at this location, the occurrence of the fire that damaged the building, and the issuance of a building permit that approved the reconstruction of the 3rd dwelling unit, converge to result in peculiar and practical difficulties upon the owner, if the Zoning Regulations were strictly applied.

This limitation on the number of units permitted would create substantial practical difficulties, including losing a dwelling unit that was recently approved under a valid DC Building Permit. It would be a practical difficulty to re-construct or re-purpose the dwelling unit after it was just recently renovated.

3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The neighborhood in which the Property is located consists of a mix of single-family houses, apartment buildings and flats. The granting of the variance will not cause substantial detriment to the public good. The allowance of a 3rd dwelling unit at this location aligns with the character of the neighborhood and does not negatively impact any other properties in the surrounding area. In fact, there are approximately nine other properties in close proximity to the Property that contain unit count ranges from three units (2) to eight units, which are also zoned RF-1. See, Buildings Nearby enclosed as "Exhibit 4"

It is important to note that this request does not introduce a new use at this location, but rather, validates an already existing use which has existed at this location for decades. The existence of the 3rd dwelling unit has resulted in no impacts on light, air, or privacy with respect to adjacent homes, nor has it increased traffic or congestion. Approval of the variance would allow the Applicant reasonable use of the property, without interference with neighboring properties and without contributing to congestion. Over the last couple of decades, the Property has not drawn complaints

from neighbors, and thus, this 3rd unit is not adverse to public interest nor would it detract from the public good.

Granting the variance will not undermine the intent of the zoning regulations. The use is allowed in the RF-1 through conversion. The 3rd unit supports functional residential use, consistent with the objectives of zoning regulations, while maintaining the residential character of the area. Approval of the requested variance will be in harmony with the general purpose and intent of the Zoning Regulations. As indicated above, a stated purpose of the RF-1 Zone is to “encourage a generally compatibility between the siting of new buildings or construction and the existing neighborhood.” See, 11-D DCMR Section 5001.(d). Further, the residential zones are designed to provide for stable, low-to moderate-density areas suitable for family life and supporting uses. See, 11-D DCMR Section 100.0.

The purpose of the RF-1 zone is to provide for areas predominantly developed with row houses on small lots. In general, the RF-1 zone permits single-family homes, flats, religious institutions, certain type of schools and certain parking uses as a matter of right. While the RF-1 is primarily intended for two-unit dwellings, the intent of the zone recognizes that there will be limited buildings with more density. See, Subtitle E §100.1, 100.2. As demonstrated above, several properties in the neighborhood that are also located in the RF-1 zone have more than two units. Further, one of which is located just across the street from the Applicant’s property. See, “Exhibit #4”.

Thus, the Applicant’s proposal is in harmony with the general purpose and intent of the zone in which the Property is located.

V. SPECIAL EXCEPTION REVIEW STANDARDS UNDER SUBTITLE X § 901.2.

Pursuant to Subtitle X § 901.2, the Board of Zoning Adjustment may grant a Special Exception when the following standards are met:

(a) The proposed special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

As detailed in greater depth above, the proposed special exception will bring an existing use into conformance. The RF-1 zone promotes residential neighborhood use, and the existing 3-unit building fits neatly into the residential character of the zone. The RF-1 zone permits use of the building as an apartment building through conversion, and contemplates that some buildings in the zone may have more than two units; as such, the size of the existing building is expressly considered to be in alignment with goals of the RF-1 zone. Thus, the proposed special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

(b) The proposed special exception will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

The existing property has operated as a multi-unit rental building for approximately two decades, without disturbance to the neighbors. The surrounding properties are of a similar density, as several properties in the neighborhood also have more than two units. The inclusion of the 3rd unit will not adversely affect the use of neighbors’ property, as evidenced by the community support for the Applicant’s request.

(c) The proposed special exception will meet such special conditions as may be specified in this title.

The Applicant has included in this request for a special exception a simultaneous request for a variance where it is not feasible to meet the conditions of the special exception, due to the exceptional circumstances of the Property. With approval of the simultaneous variance request, the proposed special exception will meet the special conditions specified by this title.

C. OUTREACH TO ANC

Pursuant to Subtitle Y § 300.8(1) the Applicant has contacted the local Advisory Neighborhood Commission (“ANC”) 5C as well as nearby neighbors to seek their feedback on this application.

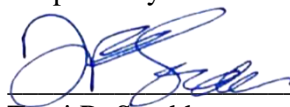
F. Testimony Summary

The Applicant, Ms. Pamela Wilson, and her representative, Ms. Traci Scudder, will provide testimony at the hearing.

G. Conclusion

For the reasons stated above, Applicant satisfies the variance requirements to allow the 3rd dwelling unit that exists at the subject location. The Applicant has demonstrated that the property has exceptional conditions, that the requested relief will not adversely affect the public good, and that the proposal complies with the criteria set forth in the Zoning Regulations. The Applicant respectfully requests that the Board grant approval of the variance.

Respectfully Submitted,



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