

BOARD OF ZONING ADJUSTMENT
VARIANCE APPLICATION

APPLICANT'S STATEMENT

Jonathan N. Meyer & Philip R. Lawrence, Jr.
1310 Vermont Ave, N.W.; Square 242, Lot 59

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

This Statement is submitted on behalf of Jonathan N. Meyer and Philip R. Lawrence, Jr., respective owners of the properties located at 1310 Vermont Avenue, N.W. (Square 242, Lot 59) and 1314 Vermont Avenue, N.W. (Square 242, Lot 86), and on behalf of Vermont 1310 LLC and Vermont 1314 LLC, the respective contract purchasers (collectively known with the current owners as the “Applicant”) of the properties located at 1310 Vermont Avenue, N.W. and 1314 Vermont Avenue, N.W. The Applicant plans to subdivide the property located at 1314 Vermont Avenue, N.W. and combine a portion of that lot with the existing lot at 1310 Vermont Avenue, N.W. The proposed new lot (the “Property”) would have a land area of 4,158 square feet. The Applicant intends to construct an addition (the “Addition”) to the existing building (the “Building”) at 1310 Vermont and to convert the building to nine (9) residential units. The Property is located in the RA-2 Zone, which maintains a minimum requirement of eight feet (8 ft.) for side yards (semi-detached structures) and ten feet (10 ft.) for open courts. The Property has a nonconforming side yard along its south lot line, measuring two feet and three inches (2 ft. 3 in.). The Applicant is planning to enclose the side yard, which will in turn create a nonconforming court measuring two feet and three inches (2 ft. 3 in.) wide.

As discussed more fully below, the Application meets the test for variance relief from minimum court requirements of 11-F DCMR § 202.1, and the prohibition against creating a nonconformity of 11-C DCMR § 202.2 (nonconforming side yard to nonconforming court).

II. BACKGROUND

A. Description of the Property and Surrounding Area.

The Property is located in the RA-2 Zone (formerly R-5-B under the 1958 Regulations) and in both the Greater Fourteenth Street Historic District and Logan Circle Historic District. It is a rectangular lot. It will have a land area, post-subdivision, of 4,158 square feet. The Property is improved with a three-story semi-detached structure. Abutting the Property to the north and south are other residential buildings. Abutting the Property to the east and west are Vermont Avenue and a public alley, respectively. This block of Vermont Avenue is made up of varying uses, including condominiums, institutional uses, flats, and single-family dwellings.

B. Proposed Project and Requested Relief.

The Applicant plans to subdivide the property located at 1314 Vermont Avenue, N.W. and combine a portion of that lot with the existing lot at 1310 Vermont Avenue, N.W. The proposed new lot would have a land area of 4,158 square feet. The Applicant intends to construct an addition (the "Addition") to the existing building (the "Building") at 1310 Vermont and to convert the building to nine (9) residential units. As demonstrated in the existing and proposed site plan submitted with this Application, there is currently a small nonconforming side yard on south side of the existing Property, measuring two feet and three inches (2 ft. 3 in.). The proposed rear Addition will enclose this side yard, creating a nonconforming open court measuring two feet and three inches (2 ft. 3 in.). Accordingly, the Applicant is requesting relief from the minimum court requirements and the prohibition against creating a new nonconformity (nonconforming side yard to nonconforming court).

III. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF.

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) practical difficulty from strict application of the Zoning Regulations; and (3) no harm to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variances for a nonconforming court and an addition to a nonconforming structure.

A. Unique Physical Aspect or Other Exceptional Situation/Condition.

In order 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.25 1091, 1096 (D.C. 1979). 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 Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (*i.e.*, the building or structure) and not just the land itself.

In *Monaco v. D.C. Board of Zoning Adjustment*, the Court of Appeals held that the history of a property could be considered in making the determination of uniqueness. In that case, the Court affirmed the BZA's broad interpretation of the uniqueness test and the Board's ability to consider the history of the Applicant, its traditions, as well as the existing structure on the property.

The subject Property meets the uniqueness test as a result of the existing improvements on the Property. The Building is currently nonconforming due to the side yard, which measures two feet and three inches (2 ft. 3 in.) According to tax records, the Building was constructed in 1880, prior to the adoption of the 1958 Zoning Regulations; therefore, the side yard only became nonconforming upon the adoption of those regulations.

Further, the RA Zone is also unique, in that it is the only zone where an applicant is not permitted to request special exception relief for courts or from the prohibition against enlarging nonconforming structures of 11-C DCMR § 202.2.¹ In the R and RF-Zones, an applicant is permitted to request special exception relief from lot occupancy, yards, courts, minimum lot dimensions, pervious surface and from the limitations on enlargements or additions to nonconforming structures—regardless of the number of units.² In the MU-Zones, an applicant must meet only the general special exception requirements of Subtitle X, Chapter 9 to be granted special exception relief from the development standards.³ For some reason, properties in the RA Zones are only permitted to request special exception relief from lot occupancy, yards, and the green area ratio, but not from courts, minimum lot dimensions, or from the limitations on enlargements or additions to nonconforming structures. Further, the Zoning Administrator (in consultation with the Office of Planning) has determined that Apartment Houses with three (3) dwelling units do not have a minimum court requirement in the RA Zone Districts. These apparent anomalies require the Applicant to pursue variance relief for the existing nonconforming side yard and creation of the nonconforming court.

¹ Despite this, OP approved and the Board granted relief from C-202.2 (nonconforming structure) for a Property in the RA-2 Zone in BZA Case No. 19323 of Christopher D. French.

² 11-D DCMR § 5201, 11-E DCMR § 5201.

³ 11-G DCMR § 1200.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)).

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 Application meets the practical difficulty standard with regard to the proposed court, because, in order to comply with the zoning regulations, the Applicant would have to either have to (1) fill in the existing side yard, which separates the adjacent building at 1308 Vermont Avenue and the subject Property, and which would also bring the Building over

the permitted lot occupancy and require relief from lot occupancy; (2) demolish seven feet and nine inches (7 ft. 9 in.) of building width in order to provide a ten foot (10 ft.) court, or; (3) extend the existing non-conforming side yard.

All three options would be burdensome to the Applicant. The infilling of the existing side yard would bring the proposed project over the permitted lot occupancy and require relief. The second option—to create a conforming court by demolishing seven feet and nine inches (7 ft. 9 in.) of the existing Building—would be extremely burdensome, costly, impractical and unlikely to be approved by the Historic Preservation Review Board (“HPRB”). Extending the nonconforming side yard—rather than enclosing the side yard to create a nonconforming court-- would also be burdensome to the Applicant, as it would create an issue with the layout of the proposed units. Currently, the proposed layout provides two bedrooms per unit. Without the Addition on the rear and south side of the Building, the Applicant would be unable to provide a second bedroom in those proposed units.

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

Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan. As demonstrated in the photographs provided with this Application, the proposed three-story Addition to the north will fill in the large open space between 1310 Vermont Avenue and 1314 Vermont Avenue. The large gap between the current Buildings does not match the character of the block or square. Granting relief will help bring these properties into conformity with the rest of the block and provide nine (9) quality two-bedroom units. The Applicant is also providing two (2) off-street parking spaces to mitigate any issues with parking.

IV. CONCLUSION.

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

Respectfully Submitted,

A handwritten signature in black ink that reads "Martin P. Sullivan". The signature is written in a cursive style with a large initial "M".

Martin Sullivan
Sullivan & Barros, LLP
Date: August 14, 2017