

BOARD OF ZONING ADJUSTMENT
VARIANCE APPLICATION

PREHEARING STATEMENT- BZA Case No. 19608

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

I. INTRODUCTION

This Prehearing 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 and forty-one feet (41 ft.) deep.

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. THE APPLICATION MEETS THE VARIANCE TEST:

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.

1. Unique Physical Aspect or Other Exceptional Situation/Condition which Leads to a Practical Difficulty if the Regulations were Strictly Applied.

As discussed in the Applicant's Statement (Exhibit 13), while the fact that the regulations permit special exception relief for a nonconforming court and for expanding or creating a nonconforming situation in every zone except for RA Zones, this alone does not create the unique condition impacting this Property. The Property is unique because of the existing conditions on the Property, specifically the existing nonconforming side yard. According to tax records, the Building was constructed in 1880, prior to the adoption of the 1958 Zoning Regulations. The Property is also impacted by restrictions placed on it by the Historic Preservation Review Board ("HPRB"). If not for HPRB restrictions, the Applicant would be permitted, as a matter-of-right, to infill the existing side yard and the proposed Addition at the rear would also be permitted as a matter-of-right.

The Board has recently approved court relief in an RA-2 Zone based on the fact that an existing nonconformity prevented any additions to the building. In case No. 19538 of Avamere 3317 16th LLC, the Office of Planning approved relief for a nonconforming court and for the expansion of a nonconformity in the RA-2 Zone, finding that the "home and courtyard were built prior to current zoning regulations, the

extent of modifications that would be required to make the court conforming would either result in an impractical project scope, or the elimination of a court altogether. Because the existing lot width is only 20', achieving a conforming courtyard for even the existing building would require a courtyard of 15' in width, leaving a buildable area width of only 5'. Considering that a court yard is not required in the RA-2 zone, providing a complying courtyard would effectively occupy 75% of the total lot width, resulting in a practical difficulty which would deter any change or improvements." The Board agreed with the Office of Planning's recommendation, and approved the relief."

Similarly, the subject Building and side yard were built prior to the Zoning Regulations. This Property is also further affected by HPRB restrictions. Due to the existing side yard and HPRB restrictions, the Applicant must obtain relief to alter the Building in any way.

In initial discussions with the Historic Preservation Office ("HPO"), the Applicant asked if there was any way to enclose the side yard. The Applicant offered several solutions, all of which were rejected by HPO. The Applicant explored other options, such as extending the nonconforming side yard in order to pursue special exception relief instead of variance relief. However, extending the nonconforming side yard—rather than enclosing the side yard to create a nonconforming court—would be burdensome to the Applicant, as it would create an issue with the efficiency of the proposed units, and would still require variance relief in order to expand a nonconforming situation.¹

Currently, the proposed layout provides two bedrooms per unit for the proposed units on the south side of the proposed Building. The rear Addition is only seven feet by twenty-eight feet (7 ft. x 28 ft.), or 196 square feet per floor. Over the four levels of the building, the requested relief permits the Applicant to add 784 square feet. If the relief is not granted, the Applicant will be unable to add this area to the Building and it becomes difficult to provide a floor plan that offers a second bedroom within the existing footprint.

¹ While side yard relief is permitted by special exception, the Applicant would still need variance relief, as relief from C-202.2, as relief for creating or expanding an existing nonconforming situation is not permitted by special exception in the RA Zones.

Therefore, due to the restrictions placed by HPRB and the existing conditions on the Property, it appears that all avenues that would otherwise be available to add the additional space for a bedroom that would ordinarily be allowed as a matter-of-right for this property are impossible.

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 for relief is *de minimis*, as there is an existing nonconforming side yard and there is no difference in impact from a two-foot, three-inch (2 ft. 3 in.) nonconforming side yard and a two-foot, three-inch (2 ft. 3 in.) nonconforming court. The Addition will only be at the rear of the Building and will not impact the adjacent properties. Therefore, relief can be granted without substantial detriment to the public good. Courts are not required in the RA Zones, and every other zone permits special exception relief for nonconforming courts and for creating a nonconforming situation, therefore the relief can be granted without impairing the intent, purpose, and integrity of the Zone Plan.



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