

Burden of Proof

Variance Application

2644 10th Street NE

The burden of proof for an area variance is well established. I the owner and applicant must demonstrate three prongs: (1) the property is affected by an exceptional or extraordinary situation or condition of the property; (2) practical difficulty from strict application of the Zoning Regulations; and (3) no substantial detriment 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, I the applicant meet the three part test for the requested variance.

A. The Property is Affected by and Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board 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 293-294. The Court repeatedly rejected the notion that the exceptional situation and practical difficulty variance justification must arise from the physical aspects of the land. See *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

The Property is unique, as it was built in 1925 located in an R-2 zone that is currently over the lot occupancy of 40% allowed by right. The existing home has a lot occupancy of 42%, which would increase with the deck. Specifically when my home was built and when all homes in my square added an addition or bump-out during the 20th century the lot occupancy was exceeded. Thus, my property is both unique and exceptional that it demonstrates limits from its inception, though the deck would still allow for majority of the rear yard to remain within the intent of the zone. Furthermore, the side yard requirements pursuant to C-202.2 are not being met due to how the row home was constructed, and thus the deck attached to the rear of the home would be in alignment with the property design and structure. Lastly, without the ability of the Board to consider reasonable variations such as a deck consistent with properties within my square and surrounding areas, the Board would never be allowed to grant any variances and this variance will not only increase the value of my home, but also be consistent with the features on surrounding homes.

Moreover, property is unique and exceptional because the usable rear yard space is extremely limited. This is highlighted by the fact that the Property surpasses the 40% lot occupancy requirement by only 2%. This combined with the fact that the property abuts a public alley way to the south severely restrains the amount of space that can be utilized. However, the properties in my square are substantially over the maximum lot occupancy requirement due to decks, car ports, etc., which demonstrates an undeniable and unavoidable need to fully utilize a portion of the remaining lot space. A need that is shared by all property owners in the neighborhood including my property. Accordingly, a strict application of the lot occupancy requirement would deny me full and reasonable use of my property’s rear yard space not comparable with that enjoyed by the surrounding properties. Due to these conditions and the resulting lack of side yards, the nonconforming rear yard remains the only feasible space in which to construct a deck.

B. Strict Application of the Zoning Regulation would Result in a Practical Difficulty to the Applicant

To satisfy the second prong of an area variance standard, the applicant must demonstrate “practical difficulty”. The D.C. Court of Appeals has established that the applicant must demonstrate that “compliance with restriction would be unnecessarily burdensome” *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that 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” *Id.* At 1171. “Increased expense and inconvenience to applicants for a variance are among the proper factors of [the] BZA’s consideration” *Id.* Some other factors that the BZA may consider are “the weight of the burden of strict compliance” and “the severity of the variance(s) requested” *Id.*

Moreover, the current zone regulations for the aforementioned Property results in an inability for full use and enjoyment of the rear yard. The Property is unique for the block, as it is one of the few properties that does not have a deck, carport or other structure on the lot. In addition, the rear of the Property is adjacent to MU-6, which allows for the structures directly behind this property to develop their land by going up additional stories and extending the rear of the home. Thus, the Property is unique that surrounding properties are held to different zoning regulations and results in a practical difficulty with the strict application of the current zoning regulation. Additionally, the strict compliance is a burden to me as a property owner as it limits my use and enjoyment of the land, and through this processes has added expense and inconvenience.

C. No Substantial Detriment to the Public Good nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

Granting an area variance from the lot occupancy requirements, side yard requirements, and minimum lot area requirements would result in no substantial detriment to the public good, nor substantial impairment to the intent purpose and integrity of the Zone Plan. The Property will be comparable to the surrounding properties. Granting relief from the minimum lot area requirements will also preserve the character of the neighborhood, as most of the residential properties in this square do not meet the minimum lot dimension requirements. Since the construction of the deck would not use the entire rear allotment, the property would still remain within the spirit of the law. Furthermore, my neighbors on either side of me are in support of this relief. See attached letters of support.

For the above reasons, the Application meets the three-prong test for variance relief.

Respectfully,

Kara Chernet
Applicant, property owner and D.C. constituent.