

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant’s Statement in Support of Variance Relief**

**79 81 U Street LLC**

**79 and 81 U Street, N.W.; Square 3117, Lots 68 and 69.**

**I. INTRODUCTION**

This Statement is submitted on behalf of 79 81 U Street LLC (the “Applicant”), owner of the properties located at 79-81 U Street, N.W. (Square 3117, Lots 68-69) (the “Property”). The Applicant is proposing to construct a row house on each of the two vacant record lots located at 79 U Street, NW, and 81 U Street, NW (the “Project”). Subtitle E § 307.1 states, “when a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.” This provision has been interpreted by the Zoning Administrator to apply to both proposed row houses in this Project, even though they do indeed share a common division wall with a building being constructed together with it. In this case, the Applicant first received a determination letter from the Zoning Administrator, prior to his investment in the Property and the Project, which instructed that the Project was permitted, and side yards were not required. This determination was later rescinded, after the Applicant purchased the Property and invested significant finances into the Property.

In the RF zones, special exception relief for required side yards is only permitted for an addition to an existing building, not for new construction. Therefore, the Applicant is requesting variance relief from the minimum side yard requirements of 11-E DCMR § 307.3.

**II. BACKGROUND**

A. Description of the Property.

The Subject Property, 79-81 U Street, NW is located in the RF-1 Zone. Each of the two lots is a small rectangular lot measuring 1,224 square feet. The Property is current unimproved.

This square and every other surrounding square consists entirely of lot-line to lot-line row dwellings, as demonstrated by the maps of the surrounding area submitted with this Application.

The Property fronts on U Street to the south and are abutted by a public alley to the east.

Abutting the Property to the west are and north are the rear yards of other row dwellings.

B. Proposed Project.

The Applicant is proposing to construct two otherwise matter-of-right seventeen-foot-wide (17 ft. wide) row structures, lot line to lot line, without side yard. The Applicant has been granted a minor deviation exception from the Zoning Administrator allowing him to slightly exceed the maximum permitted lot occupancy of sixty percent (60%).

**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 variance for the side yard.

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

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).

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*, 579A.2<sup>nd</sup> 1164, 1168 (D.C. 1990).

In this case, the two subject lots are each uniquely undeveloped narrow lots. In addition, the Applicant also received a determination letter from the Zoning Administrator affirming the matter of right nature of the proposed Project, without the need for side yards. This letter was later rescinded after the Applicant had already relied on it. The Applicant also relied on the plain language in the Regulations that provides that this side yard requirement of Section 307.1 does not apply to building which share a common division wall with another building being constructed together with it. This language agrees entirely with the ruling issued in the Zoning Administrator's determination letter. The Applicant does not know on what basis the Zoning Administrator rescinded his determination letter, as no explanation was provided to explain why the Project's shared common division wall did not exempt them from the side yard requirement, as is provided in Section 307.1

**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)). The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle." *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

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, to comply with this side yard requirement, the Applicant would have to construct two twelve-foot wide semi-detached buildings, one on an alley and the other backing up to rear yards. Or he would have to combine the two lots and halve his value, an obviously catastrophic economic loss of an investment made in reliance not only on specific direction from the Zoning Administrator, but also on the advice of counsel, who relied on the plain language in Section 307.1, logic, and 60+ years of no side yard being required in row house-permitted districts.<sup>1</sup>

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<sup>1</sup> "Except as provided in §§ 405.1 [detached] and 405.2 [semi-detached], a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D, or R-5-E District. However, if the yard is

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.

The uniqueness of the situation means that relief can be granted without impairing the intent, purpose and integrity of the zone plan. These are two very narrow lots, one abutting an alley. The Zoning Administrator issued a determination letter on which the Applicant relied. And the two lots are isolated from other lots, making it even more unique.

**IV. CONCLUSION.**

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

Respectfully Submitted,

*Martin Sullivan*

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provided, it shall be at least three inches (3 in.) wide per foot of height of building, but not less than eight feet (8 ft.) wide.” (§405.6, 1958 Zoning Regulations).