

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

**Prehearing Statement of Stanton View Development LLC**  
**1724 Gainesville Street, SE; Square 5822, Lot 103**

**I. INTRODUCTION.**

This Statement is submitted on behalf of Stanton View Development LLC (the “Applicant”), owner of the property located at 1724 Gainesville Street, SE (Square 5822, Lot 103) (the “Subject Property”). The Subject Property is one of thirteen (13) separate lots, on which new one-family row dwellings are proposed (1700-1724 Gainesville Street, SE (the “Project”). In September 2017, the Zoning Administrator approved the construction on twelve (12) of the thirteen (13) lots contingent on the thirteenth lot—the Subject Property—receiving BZA approval for relief from the side yard requirements of Subtitle D § 307.4.

Subtitle D § 307.4 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 the alley-adjacent row house lot at 1724 Gainesville Street, even though it does indeed share a common division wall with a building being constructed together with it (1722 Gainesville Street, SE). In the R 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 D § 307.4.

**II. BACKGROUND.**

A. Description of the Subject Property and Proposed Project.

The Subject Property, 1724 Gainesville Street, SE, is located in the R-3 Zone. It is one of twenty-five (25) identical lots (1600-1724 Gainesville Street SE), each measuring 2,850 square feet in land area and twenty feet (20 ft.) in width. The first group of lots, 1600-1622 Gainesville Street, SE, were approved and constructed in 2016. The second group of lots, 1700-1722 Gainesville Street, SE, were approved and constructed in 2017. The Subject Property is the easternmost in this second group of thirteen lots (1700-1724 Gainesville).<sup>1</sup> The subdivision of the lots was approved and platted in 2016 and no issue was raised as to the sufficiency of twenty-foot (20 ft.) wide lots. The proposed building (the “Building”) is identical to the other buildings on lots 1700-1722 Gainesville, all of which were approved by DCRA and are already constructed.

**B. Surrounding Area.**

The Subject Property is surrounded by a mix of row dwellings, unimproved property, apartment complexes, and semi-detached structures. To the west of the Subject Property are thirty-one (31), one-family row dwellings. To the east of the Subject Property is an alley which serves as the border for the R-3/R-2 Zones. The closest structure to the east, located at 1734 Gainesville Street, SE, is separated from the Subject Property by this alley, the unimproved lot at 1730 Gainesville Street, SE, and a side yard on its western lot line. Abutting the Subject Property to the north are unimproved lots. To the south of the Subject Property is Gainesville Street, SE, which serves as the border between the RA-1 and R-3 Zones. Across the street to the south are large condominium buildings.

**III. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF.**

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<sup>1</sup> The 1600 Block and 1700 Block were previously separated by 17<sup>th</sup> Street, which has since been closed. The 1700 Group was permitted separately from the 1600 group, but all lots are identical.

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area 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.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at \*2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance for the side yard.

A. Extraordinary or Exceptional Condition affecting the Property.

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.2d 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).

As explained in the Applicant’s original submission, the Subject Property is a uniquely undeveloped narrow lot—every other lot of this size on the 1600-1700 blocks of Gainesville Street, SE, has been developed as a matter-of-right without the need for a side yard. Because this lot directly abuts an alley and not another developable lot, the Applicant is forced to obtain variance relief or provide a fifteen-foot (15 ft.) wide row dwelling. The Applicant relied on the

approval of every other similarly situated lot in the previous development, as well as plain language in the Regulations.

The rule is being uniquely applied to this particular end unit, as no other end unit was required to obtain relief. In 2016, the Applicant completed another development comprised of 1600-1622 Gainesville Street, SE and 2550-2562 16<sup>th</sup> Street, SE. The Applicant also developed 1601-1605 Frankford Street, SE on the other side of the square. The Applicant was never required to obtain variance relief for those respective end units. The other end unit for the 1700-1724 Gainesville Development—1700 Gainesville Street, SE, was not required to obtain BZA relief because a petition to close 17<sup>th</sup> Street was pending approval.

B. Practical Difficulties will occur if the Zoning Regulations are Strictly Enforced.

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 only satisfy “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, a five-foot (5 ft.) reduction in the width of the Building (15 ft. wide structure) would result in a loss of a parking space, loss of a bathroom, a reduction of five feet (5 ft.) in the living room, dining room, and kitchen, and the loss of at least one bedroom. The Applicant has provided a detailed presentation demonstrating the impact using photos of already-constructed row dwellings adjacent to the Subject Property that would be nearly-identical to the proposed Building. As demonstrated by the presentation, a loss of five-feet (5 ft.) would severely impact the internal configuration of the Building and reduce much-needed living space.

Any side yard would force the Applicant to re-design this one Building which would then be out of the character, scale and pattern of the now-existing dwellings on the block. The living space would have to be moved towards the rear of the lot. This would result in a longer and narrower end unit than the identical twelve (12) units which were approved with the Subject Property, and all other buildings on the 1600 block as well, which would undoubtedly impact the views of the adjacent properties to the west.

While it possible to construct a fifteen-foot (15 ft.) wide dwelling, it would be unnecessarily burdensome to the Applicant. To meet the test for an area variance, the Applicant

must show that complying with the regulations would result in a “practical difficulty” and that doing so would be “unnecessarily burdensome”, not “impossible.” Re-designing one unit on a block of otherwise identical units would clearly result in a practical difficulty and be unnecessarily burdensome for the Applicant.

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 Subject Property is an end-unit directly abutting an alley—not another property. The closest residence to the east, located at 1734 Gainesville Street, SE, is separated by this alley, the unimproved lot at 1730 Gainesville Street, SE, and a small side yard on its western lot line. Accordingly, granting relief for the side yard will not impact the light and air or privacy available to that property.

The uniqueness of the situation means that relief can be granted without impairing the intent, purpose and integrity of the zone plan. This is the only undeveloped lot of this size on the 1600-1700 blocks of Gainesville Street. Moreover, the side yard requirement is unique to this lot because it abuts an alley and not another developable property.

IV. CONCLUSION.

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

Respectfully Submitted,

*Martin P Sullivan*

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