

**BEFORE THE BOARD  
OF ZONING ADJUSTMENT  
FOR THE DISTRICT OF COLUMBIA**

**APPLICATION OF  
HABITAT FOR HUMANITY  
OF WASHINGTON DC**

**BZA CASE NO. 19841  
SQUARE 5204, LOT 22  
ANC 7C  
HEARING DATE: JAN. 16, 2019**

**REVISED PREHEARING STATEMENT OF THE APPLICANT**

**I.  
NATURE OF RELIEF SOUGHT**

This prehearing statement is submitted by Habitat for Humanity of Washington DC (the “Applicant”) in support of its application for special exception relief under 11-C DCMR § 305.1 from the subdivision regulations of 11-C DCMR § 302.2, and pursuant to 11-X DCMR Chapter 10, for an area variance from the side yard width requirements of 11-D DCMR § 307.1, to replace two detached dwelling units with 17 new semi-detached and detached dwelling units on a single record lot in the R-2 Zone at premises 900-914 55<sup>th</sup> Street, NE (Square 5204, Lot 22).

**II.  
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the requested special exception relief pursuant to 11-X DCMR §§ 901.2 and 1000.1.

**III.  
WAIVER REQUESTED**

Pursuant to 11-Y DCMR § 402.1, notice of the public hearing is required to be published in the *DC Register* no less than 40 days prior to the public hearing. The notice in this case was originally published in the *DC Register* on August 31, 2018, based upon the application’s original hearing date of October 24, 2018. On October 15, 2018, the Applicant submitted a letter requesting postponement of the hearing to January 16, 2019, which was approved on October 18, 2018.

On December 4, 2018, the Applicant submitted a revised self-certification form and an additional application fee to add side yard relief to its application (Exhibits 41 and 55). Notice of the public hearing, including a description of the additional side yard variance, was sent to Advisory Neighborhood Commission (“ANC”) 7C, the Office of Planning (“OP”), District Department of Transportation (“DDOT”), and to the owners of property located within 200 feet of the Site on December 4, 2018 (43 days prior to the hearing). *See* Exhibits 44-46 and 53. However, notice of the revised application was not posted in the *DC Register* until the following Friday, December 14, 2018, which was 33 days prior to the public hearing. Therefore, the Applicant respectfully requests a waiver from 11-Y DCMR § 402.1, which requires publication no less than 40 days prior to the public hearing.

Given that the ANC, OP, DDOT, and owners of property within 200 feet of the Site were provided the updated notice more than 40 days prior to the public hearing, the 7-day delay for publishing notice in the *DC Register* will have no adverse impact on the public’s notice of this application. In addition, notice of the public hearing has been posted on the Site since October 3, 2018, and was re-posted upon the change in hearing date and to show the additional zoning relief requested. *See* Exhibits 35 and 55.

#### **IV. WITNESSES**

Outlines of testimony for the Applicant and its witness were provided in the BZA application and are included in the record at Exhibit 13. A copy of the resume for the Applicant’s expert witness – Nicholas Mroczkowski of Stoiber + Associates – is included in the record at Exhibit 14.

**V.**  
**BACKGROUND**

The Site consists of Lot 22 in Square 5204, which is bounded by private property to the northeast, 55<sup>th</sup> Street, NE to the southeast, private property and a public alley to the southwest, and private property to the northwest. The Site has approximately 62,223 square feet of land area, with approximately 207.41 linear feet of frontage on 55<sup>th</sup> Street. The Site is mostly vacant, except for two vacant single-family detached homes that will be razed as part of redevelopment. The surrounding area includes a variety of housing types, including two- and three-story detached and semi-detached single-family homes, many of which have front-loaded one-car garages.

As shown on the revised architectural drawings attached hereto as Exhibit A, the Applicant has significantly revised the site plan that was originally proposed, based on feedback from OP, DDOT, and the ANC. However, the Applicant still proposes to redevelop the Site with 16 new single-family semi-detached homes and one new single-family detached home (17 units total) on the single record lot. The proposed homes use many of the design elements from the surrounding neighborhood, with each home having two-stories and a height of approximately 23.5 feet. Each home will have 3 bedrooms, 2.5 bathrooms, an open floor plan with a connected kitchen and living/dining area, and an internal single-car garage in order to provide on-site parking and ensure that residents of the homes will not take up on-street parking in the neighborhood.

The proposed homes will be developed by Habitat for Humanity. All of the homes will be for-sale and sold at 60% to 80% of the Median Family Income (“MFI”). Pursuant to 11-C DCMR § 1001.2, the project is subject to the Inclusionary Zoning (“IZ”) regulations, which require that two of the proposed 17 homes are developed as IZ units. With three bedrooms, and at approximately 1,860 square feet each, the proposed homes have been specifically designed to provide affordable housing for families. Indeed, Habitat’s recent projects of a similar size and

price-point in the District have successfully been sold to teachers, nurses, District employees, and other working-class families.

As specifically requested by OP and DDOT, the Applicant added a linear private drive through the center of the Site to reconnect the street grid at the termination of Jay Street, NE, between Hunt Place to the north and 55<sup>th</sup> Street to the south. In order to maintain consistency with the surrounding residential neighborhood, the Applicant also re-oriented some of the homes to face 55<sup>th</sup> Street and reduced the height of each home from three-stories to two-stories. These changes were made in response to specific requests from OP, DDOT, and the ANC, and the Applicant believes that the revised Site layout is consistent with the feedback it received since filing the application. All of the theoretical lots contain zoning-compliant lot widths, lot areas, rear yards, and lot occupancies. As described herein, 11 of the 17 theoretical lots require side yard width relief. An updated surveyor's plat showing the proposed new site layout is attached hereto as Exhibit B.

## **VI.** **SPECIAL EXCEPTION RELIEF**

Pursuant to 11-C DCMR § 302.2, each new primary building must be erected on a separate record lot, except as provided for in the theoretical lot subdivision regulations of 11-C DCMR § 305.1. Accordingly, pursuant to 11-C DCMR § 305.1, the Board may grant, through special exception, a waiver to allow multiple primary buildings on a single record lot provided that the application meets the requirements of 11-C DCMR § 305 and the general special exception criteria of 11-X DCMR, Chapter 9. The number of buildings permitted under the theoretical lot subdivision regulations is not limited, provided that satisfactory evidence is submitted that all the requirements of 11-C DCMR § 305 are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning

Regulations. As set forth herein, the application complies with all requirements of 11-C DCMR § 305 and 11-X DCMR, Chapter 9.

The Applicant's initial submission provided a detailed analysis of the general special exception standard of review (11-X DCMR, Chapter 9), the standard of review to permit multiple buildings on a single record lot (11-C DCMR § 305), and the ways that the application meets those standards. *See Ex. 10, pp. 2-6.* The project also meets all fire code and emergency vehicle access requirements, complies with all storm water management retention and detention regulations, and will not have any negative impacts on public education, recreation, parking, loading, traffic, or urban design. The project will have a positive impact on the surrounding area by taking an underutilized site with vacant, deteriorated buildings and putting it to productive use by constructing 17 new single-family homes that will be affordable to and large enough to house District families.

**A. Special Exception Standards for Multiple Primary Buildings on a Single Record Lot**

Pursuant to 11-C DCMR § 305.1, the following development standards shall apply to theoretical lots:

- a. *Side and rear yards of a theoretical lot shall be consistent with the requirements of the zone;*

The rear yards for each theoretical lot will meet the zoning requirements for the R-2 zone. As noted below, the Applicant has requested a variance from the side yard requirements of 11-D DCMR § 1001.2 to allow 11 of the theoretical lots to have side yards that are approximately 5 to 5.5 feet wide, instead of 8 feet wide as required.

- b. *Each means of vehicular ingress and egress to any principal building shall be at least twenty-four feet (24 ft.) in width, exclusive of driveways;*

The only means of vehicular ingress and egress to the buildings on the Site is a private driveway, which is 14-20 feet wide, as permitted by this subsection.

- c. *The height of a building governed by the provisions of this section shall be measured from the finished grade at the middle of the building façade facing the nearest street lot line; and*

The height of the proposed buildings are measured from the finished grade at the middle of the front of the building façades facing 55<sup>th</sup> Street, which is the nearest street lot line.

- d. *The rule of height measurement in Subtitle C § 305.3(c) shall supersede any other rules of height measurement that apply to a zone, but shall not be followed if it conflicts with the Height Act.*

The proposed building height, measured consistent with 11-C DCMR 305.3(c) does not conflict with the Height Act.

Pursuant to 11-C DCMR § 305.4, for a theoretical subdivision application, the information listed in 11-C DCMR § 305.4 is required to be submitted to the BZA, in addition to other filing requirements pursuant to 11-Y DCMR § 300. The required information was submitted as part of the Applicant's initial application, and supplemented herein.

Pursuant to 11-C DCMR § 305.5, before taking final action on a theoretical subdivision application, the BZA shall refer the application to OP for coordination, review, and report, including the following:

- a. *The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:*

- i. *Public safety relating to police and fire concerns including emergency vehicle access;*

The proposed site plan complies with all fire code and emergency vehicle access requirements.

- ii. *The environment relating to water supply, water pollution, soil erosion, and solid waste management;*

The project complies with all applicable storm water management retention and detention regulations. In addition, each home will receive EarthCraft certification, which is a green building certification program that addresses the same broad categories as LEED (site, materials, water and energy efficiency, durability, and indoor air quality) but focuses primarily on the energy efficiency of individual buildings. Thus, the EarthCraft certified homes on the Site will utilize multiple green building initiatives, including continuous slab insulation and insulated ducts, which are not otherwise required; will use a high-quality and recycled insulation that is safe and eco-friendly; will install windows with a high efficiency factor; and will also provide all EnergyStar lights and appliances.

A key component of the EarthCraft program involves independent inspections to ensure quality installations – ensuring that items are installed well, not just present during initial plan review. The result is that an EarthCraft home is on average 40% more efficient than other new homes built to the current International Energy Conservation Code requirements.

*iii. Public education;*

The addition of 17 new dwellings will not have a perceptible impact on the public education system. The Site is assigned to Burrville Elementary School, Kelly Miller Middle School, and Woodson High School. It is the Applicant's understanding that the D.C. public school system has adequate capacity to accommodate any future children living in the proposed development at the Site.

*iv. Recreation;*

The addition of 17 new dwellings will not have a perceptible impact on recreation facilities in the area. The Site is located in close proximity to the Marvin Gaye park and Woodson High School's recreation facilities, and the Site will be well-sited to provide easy access to these community facilities. In addition, each of the theoretical lots has significant yard space, such that families living in the homes will have outdoor recreation space on their own lot.

*v. Parking, loading, and traffic;*

Each home will have an internal garage that accommodates one parking space, which meets the parking requirement of 11-C DCMR § 701.5 and the anticipated parking demand. Each lot will also have sufficient space in front of the garage for a second car. Parking will not be permitted on the private drive. Given that the Applicant is now proposing a private

drive through the Site, as requested by DDOT and OP, existing vehicular traffic will have a new alternative route through the neighborhood, which will disperse cars and ease existing traffic conditions. Thus, traffic will not be negatively impacted by the proposed project, which will generate a nominal number of vehicular trips and will improve neighborhood circulation.

Loading is not required or provided for the 17 dwelling units.

*vi. Urban design;*

As shown on the revised architectural drawings, the project includes an attractive urban design that is compatible with the surrounding single family neighborhood and provides adequate light and air for future residents of the project and of adjacent properties. Since the original filing, the Applicant incorporated suggestions from OP and the ANC to reorient some of the homes so that they face 55<sup>th</sup> Street and to reduce the height of the homes from three-stories to two-stories. These modifications improve the project's urban design and create a site plan and building design that is consistent with the surrounding residential context that contains two-story and three-story detached and semi-detached homes, many of which have front-loaded internal garages.

*vii. As appropriate, historic preservation and visual impacts on adjacent parkland;*

The Site is not located within an historic district and does not impact views to any adjacent parkland.

*b. Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear setbacks; density and open space; and the location, design, and screening of structures;*

The existing lot is significantly larger than any of the surrounding residential lots, which range in size from approximately 2,000 square feet to approximately 5,000 square feet, whereas the Site has approximately 62,223 square feet of land area. The proposed project would create lots with detached and semi-detached dwellings, similar in scale to the majority of the other lots and homes within the square and neighborhood. The minimum lot areas, lot widths, rear yards, lot occupancies, and pervious areas will be well within the requirements of the R-2 District and consistent with the surrounding residential development. The private driveway meets the access requirements set forth in the Zoning Regulations and all fire safety egress requirements. Each theoretical lot will have significant open greenspace for families to enjoy.

*c. Considerations of traffic to be generated and parking spaces to be provided, and their impacts;*

The project provides the required number of parking spaces for the proposed development. Given the few number of new residences, the project will not create any perceptible impacts on traffic volumes in the surrounding neighborhood. Moreover, the revised site layout and new vehicular connection through the site will better disperse traffic and improve traffic patterns in the area. In conversations with DDOT prior to filing the application, DDOT indicated that a traffic study would not be required for this project.

*d. The impact of the proposed development on neighboring properties;*

As noted above, the project has been designed to be compatible with the surrounding single family residential neighborhood, and has been sited and designed to not create any adverse impacts on surrounding properties. Significant setbacks are provided from the closest residential homes.

*e. The findings, considerations, and recommendations of other District government agencies.*

The Office of Zoning circulated this application to relevant District agencies.

*The proposed development shall comply with the substantive intent and purpose of this title and shall not be likely to have an adverse effect on the present character and future development of the neighborhood (11-C DCMR § 305.6).*

As noted above, the project complies with the purpose and intent of the theoretical subdivision regulations and will not have an adverse effect on the present character or future development of the neighborhood. Indeed, the project will put a dilapidated and underutilized lot to productive use by constructing 17 new dwellings that will be affordable to and large enough to house District families.

*The Board of Zoning Adjustment may impose conditions with respect to the size and location of driveways; floor area ratio; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations (11-C DCMR § 305.7).*

The Applicant does not believe that any additional conditions are needed for the project, since it has already been designed to protect the purpose and intent of the Zoning Regulations and in accordance with specific recommendations from OP, DDOT, and ANC 7C.

## **B. General Special Exception Standards under 11-C DCMR § 901.2**

The Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

In this case, the subdivision of the Site into 17 separate theoretical lots is in harmony with the purpose and intent of the Zoning Regulations and Zoning Map and will not affect adversely the use of neighboring property because it will enable development of new semi-detached and detached dwellings in a neighborhood that is otherwise already developed with detached and semi-detached dwellings. The proposed dwellings meet the development and use standards of the Zoning Regulations for the R-2 District, except as noted below where a side yard relief is requested. The project will improve the neighborhood by providing new affordable housing on an underutilized and mostly-vacant site, and the buildings and site plan will be designed to avoid any negative impacts on surrounding properties. The homes will be for-sale and priced at between 60% to 80% of the MFI.

Therefore, the proposed project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property.

## **VII.** **VARIANCE RELIEF REQUESTED**

Pursuant to 11-X DCMR § 1000.1, the Applicant requests an area variance from the side yard width requirements of 11-D DCMR § 307.1. Pursuant to 11-D DCMR § 307.1, a minimum side yard of 8 feet is required in the R-2 District. In this case, the lots fronting the private driveway have side yard widths of between 5 feet and 5.5 feet, thus necessitating zoning relief.

## **A. Burden of Proof for Variance Relief**

Under D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant an area variance where it finds that three conditions exist:

1. the property is affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation;
2. the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
3. the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). *See also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong variance test.

## **B. The Applicant Meets the Variance Test Pursuant to 11-X DCMR § 1000.1**

### **1. Exceptional Situation and Condition**

The phrase “exceptional situation or condition” in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Site is a very large residential lot. At 62,223 square feet, the Site has significantly more land area than the surrounding residential properties, which range in size but generally have between approximately 2,000 and 5,000 square feet of land area. Thus, the Site is substantially larger than the residential properties in the immediately surrounding area. If the Site’s land area was divided to accommodate individual lots consistent with the surrounding lot sizes, it could fit many more units than the single dwelling unit and one accessory apartment permitted as a matter-of-right in the R-2 zone. *See 11-D DCMR*

§ 201. Thus, although the Site's land area is large enough to accommodate one single family dwelling at 4,000 square feet and 23 semi-detached dwellings at 2,500 square feet each, for a total of 24 units, the Applicant is only proposing to develop 17 units on the Site. The size and shape of the lot cause this inefficiency, and even with the reduction in the number of units, the Applicant still requires a variance from the side yard width requirements for 11 of the semi-detached homes.

In addition, the Site is an unusual 6-sided shape with dimensions that create difficulties in meeting the strict side yard width requirements for some of the theoretical lots. As shown on the architectural drawings, the Site is generally rectangular with a large "tail" on the Site's west side that is approximately 86 feet wide x 126 feet in length. The tail creates a separated area on the Site, and the dimensions of this "tail" prevent the Applicant from fully complying with the side yard requirements for the homes in that location. Thus, unlike the surrounding residential lots which are all rectangular in shape, the irregular shape of the Site creates an exceptional condition.

The Site is also extremely deep at 248 feet, which is significantly deeper than the surrounding residential lots that range in depth from approximately 90 feet to 120 feet. The Site's depth at 128 to 158 feet deeper than the surrounding lots creates an exceptional condition.

The Site's depth is also much greater than its street frontage. As shown on the architectural drawings, the Site's frontage on 55<sup>th</sup> Street is approximately 207 linear feet, but the Site otherwise has no other public street frontage. Thus, if the Site was subdivided according to the typical subdivision requirements such that each lot had street frontage, six lots could fit on the Site (assuming non-IZ, semi-detached homes), each of which would still have lot sizes over 10,000 square feet, which is considerably larger than the land area of the surrounding residential lots. Moreover, given DDOT's request to extend the street grid through the Site from Hunt Place to 55<sup>th</sup> Place, significantly less land area would be available to locate homes with frontage on 55<sup>th</sup> Street.

Therefore, the Site’s street frontage and the request to connect the street grid through the Site create an exceptional condition in the Site.

Finally, to the north of the Site is a rectangular portion of public space that has been used as open space for many years (the “Vacant Lot”). Because the Site abuts the Vacant Lot, the Applicant has the ability to apply for a public space permit to improve the Vacant Lot as a private driveway and create a connection through the Site between Hunt Place and 55<sup>th</sup> Street. As noted above, DDOT’s report stated no objection to the application so long as the Applicant provides a connection through the Site in the approximate location of the Vacant Lot. *See* DDOT Report, Exhibit 36, p. 2. Thus, the existence of the Vacant Lot and DDOT’s specific request to provide a connection through the Site at the Vacant Lot together create another exceptional condition.

Collectively, the Site’s extremely large land area, irregular shape, minimal street frontage compared to its depth, and the existence of the adjacent Vacant Lot make a regular theoretical lot site layout practically difficult to achieve. Thus, these exceptional conditions on the Site directly impact the Applicant’s ability to comply with the side yard width requirements for some of the theoretical lots.

In addition to the physical aspects of the Site that create an exceptional situation or condition, courts have also recognized that the “public need for the use is an important factor in granting or denying a variance and the apparently objective standards of the enabling acts are applied differently to the several kinds of uses.” *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979). In *Monaco*, the D.C. Court of Appeals “permitted the BZA to apply a more flexible standard for determining hardship when a ‘public service’ or nonprofit entity is the applicant.” *National Black Child Dev. Inst. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Similarly, in BZA Order No. 17316, the Board approved an application from Randle

Highlands Manor LP and the Anacostia Economic Development Corporation, stating that “the area variances are not sought to ensure any profit, but rather to enable the development of affordable housing at a site designated by the District of Columbia government for that purpose.” BZA Order No. 17316 p. 12; *see also* BZA Order No. 18272, p. 8 (“the burden of proof for variance relief as to the first two elements is lessened for non-profits or public service organizations”).

The case law and BZA precedent referenced above is directly applicable to the present application. The Applicant developer is Habitat for Humanity of Washington, DC, which has a stated mission of “reducing poverty housing and homelessness in the nation’s capital by building decent, affordable, energy-efficient homes for those in need.” *See* [\*https://dchabitat.org/about-us/\*](https://dchabitat.org/about-us/). The proposed homes on the Site will be sold to residents earning between 60% and 80% of the MFI, and are constructed to provide affordable, for-sale, family-sized housing for District residents. Affordable family housing is one of the Mayor’s most important priorities for the city, such that there is a true “public need for the use” proposed in this application. *See Monaco* 407 A.2d at 1098.

Moreover, Habitat typically does not generate a net profit from the sale of its homes, since the cost to buy and develop land, obtain approvals, and build the homes themselves is often greater than the sale price of each home. Since sale prices are determined primarily by the MFI, Habitat cannot generate extra income through market forces that for-profit developers can. Thus, consistent with BZA Case No. 17316, the side yard variance is “not sought to ensure any profit” for the Applicant.”

Finally, Habitat is a not-for-profit 501(c)(3) charitable organization. Thus, if the Board determines it to be necessary, the Board should apply the “more flexible standard for determining

hardship when a... nonprofit entity is the applicant" or when there is a "public need for the use" as set forth in *Monaco*.

2. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Applicant

The Applicant will demonstrate that the exceptional situations and conditions described above make it practically difficult to comply with the strict side yard width requirements for some of the theoretical lots.

To meet the standard for practical difficulty, "[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." *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as the variance requested in this case, 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.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (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'...." *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

As shown on the architectural drawings, all of the theoretical lots fronting the private drive have 5 to 5.5-foot side yards, instead of the minimum required 8-foot side yard. This variance is a direct result of the Site's unusually large size, irregular and asymmetrical shape, street frontage and depth, and the need to extend the street grid through the Site, as well as the Applicant's goal

in maximizing the number of affordable housing units on the Site while staying generally within the confines of the Zoning Regulations.

In accordance with the theoretical lot subdivision regulations, the Applicant divided the Site into 17 theoretical lots with various dimensions, all with frontage on either 55<sup>th</sup> Street or the private drive as suggested by OP. Specifically, on the west side of the private drive, the Applicant proposes to locate five theoretical lots in the “tail” portion of the Site. The tail is approximately 125 feet wide, leaving approximately 25 feet in width for each lot. With each proposed home being approximately 20 feet wide, only five feet is left on each theoretical lot for the side yard. Thus, the side yard variance is a direct result of the Site’s irregular shape and the dimensions of this “tail.” If the “tail” was a few feet wider, the relief would not be needed.

Similarly, on the east side of the private drive, the Applicant proposes to locate six theoretical lots within approximately 150 linear feet, again leaving approximately 25 feet in width for each theoretical lot. With each proposed home being approximately 20 feet wide, only five feet is left on each theoretical lot for the side yard in this location as well. The Applicant could theoretically extend the 150-foot width to the south to provide zoning-compliant side yards for each of the six lots, but doing so would prevent it from providing vehicular access to the homes that front 55<sup>th</sup> Street. Thus, if the Site’s depth was a few feet greater the relief would not be needed.

Although the Applicant could technically remove one of the five theoretical lots in the “tail” or one of the six theoretical lots on the east side of the private drive (and thus fully comply with the side yard width requirements in these locations), Habitat’s mission is to maximize the number of affordable units that can be developed on any given site in order to provide quality and affordable for-sale housing for district families. As noted above, the Site constraints have already reduced the R-2 lot’s yield based on the land area from 24 homes to 17 homes, which is a 30%

reduction. This reduction is significant, given that Habitat is a non-profit organization that does not generate profit revenue in building its homes. Thus, in designing the Site's layout, Habitat sought to build houses that can realistically accommodate families with three bedrooms, 2.5 bathrooms, an open living and kitchen/dining area, and an internal one-car garage. In doing so, Habitat also sought to maximize the number of units on the Site while staying generally within the confines of the lot area, width, occupancy, and setback requirements and maintaining desirable lots with outdoor space.

In addition, the Applicant could theoretically reduce the width of each home to create compliant side yards. However, if the homes were narrower they could not accommodate all three proposed bedrooms, the open kitchen and living floor plan, and/or the internal garage, and therefore would be a significantly sub-standard product to deliver to families. Alternatively, the Applicant could increase the height of each unit to three stories, and narrow each unit to provide compliant side yards, thus providing the same square footage as currently proposed but in taller and narrower structures. However, the ANC specifically requested that the Applicant reduce the height of the homes from three-stories originally proposed to two-stories to better accommodate handicapped individuals and to fit in better with the homes in the surrounding neighborhood. Thus, in designing the 11 units with substandard side yards, Habitat first prioritized the needs of the future homeowners and the desire to maximize the number of family-sized affordable units on the Site.

The proposed site layout and resultant side yard variance is also a direct result of working with OP and DDOT, who specifically requested development of the private drive and the 55<sup>th</sup> Street-facing lots. *See* DDOT Report, Exhibit 36, p. 2, stating that “[i]t is unlikely DDOT will approve public space permits for the project’s curb cut on 55<sup>th</sup> Street NE if the driveway doesn’t

also connect through the Jay Street right-of-way stub at Hunt Place,” and OP Report, Exhibit 37, p. 8, stating that “[a]nother key would be to have units fronting directly onto 55<sup>th</sup> Street... in continuance of the existing development pattern... This would make the development more walkable and increase the attractiveness of the front of the houses, by placing some parking pads or garages at the rear.” Thus, while the Applicant could have provided fully zoning-compliant theoretical lots under its original proposal (*see* Exhibits 11 and 34A), OP and DDOT specifically requested changes to the layout that result in the side yard variance requested herein.

3. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the zone plan. The proposed development plan is a logical layout given the Site’s physical constraints, and each theoretical lot is now consistent with the dimensions and character of the surrounding community. Although side yard relief is needed as a result of the revised site plan, the request is *de minimis*, consisting of a maximum of three feet. Because the proposed theoretical lots are compatible with those found in the surrounding neighborhood they will not result in any substantial detriment to the public good or substantial impairment to the zone plan. Moreover, the Applicant generated this revised plan based on specific feedback and recommendations from OP, DDOT, and the ANC, who requested that the layout be brought into greater consistency with the surrounding residential development. Prior to changing the plan, the side yard variance was not required. Thus, the minor variance needed to create a plan that is consistent with the surrounding neighborhood, addresses the ANC’s specific design concerns, provides quality, affordable housing for families, and connects the street grid, will not result in a substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the zone plan.

**VIII.**  
**COMMUNITY ENGAGEMENT**

The Site is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 7C. The Applicant sent the BZA application and follow-up presentation materials to the ANC and has had preliminary discussions about the project. The Applicant presented the project at ANC 7C’s Executive Committee meeting on September 27, 2018, and at the ANC’s full October 11, 2018 public meeting. The Applicant has continued to work with the ANC since that time and incorporated specific recommendations from the ANC in to the revised site plan. The Applicant is scheduled to present at the ANC’s January meeting for a formal vote on the application, and will present an update on the outcome of the ANC meeting at the public hearing.

**IX.**  
**CONCLUSION**

For the reasons stated above, the Applicant respectfully requests that the Board approve its requests for special exception relief to permit multiple primary buildings on a single record lot, and a variance from the side yard width requirement for some of the proposed new theoretical lots.