

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

APPLICATION OF:)	
)	
Kara Benson)	BZA Case No. 20027
)	
for special exceptions and/or variances)	Hearing Date: July 17, 2019
from the requirements of Subtitle E § 5203.1)	
(building height), and Subtitle E § 5201.2(c))	ANC 6C04
(reduction in setback requirements for)	
an alley lot))	
)	

APPLICANT’S SUPPLEMENTAL STATEMENT

I. Introduction

Applicant Kara Benson (“Applicant”) seeks zoning relief from the height, setback, and nonconforming structure provisions for alley lots (Subtitle E §§ 5201.2(c) and 5203.1; Subtitle C § 202.2) to construct a two-story side addition to her existing alley dwelling at 520 Groff Court, N.E., Washington, D.C. (Square 779, Lot 179) (“Property”). The property is located in the RF-3 District in the Capitol Hill Historic District. The new addition will match the height and massing of the historic alley dwelling that once existed on the Property in order to restore a component of this distinctive collection of diminutive rowhouses in Groff Court. The Applicant proposes a maximum height of 23 feet, 8 inches to match the existing house on the lot, where only 20 feet is permitted pursuant to Subtitle E § 5203.1. Because the existing house exceeds the permitted alley lot height by 3 feet, 8 inches, it is deemed a nonconforming structure, thus requiring the Applicant to seek relief from the nonconforming structure provisions Subtitle C § 202.2. Finally, the addition will be set back less than 12 feet from the centerline of two of the three adjacent alleys, as required under Subtitle E. As a result, the Applicant seeks the following zoning relief:

- Special exception relief for height exceeding 20 feet in an alley lot, pursuant to Subtitle E §§ 5203.1-5203.2, 5108.1; and
- Special exception relief for a setback less than 12 feet from the center alley line, pursuant to Subtitle E §§ 5201.2-5201.4, 5108.1.

The five surviving row dwellings exceed the permitted alley centerline setback and do not have a front setback in order to maintain the line of adjacent historic row houses of which this addition will be a part. It will also be constructed flush with up to the lot line on the north along the 10' wide public alley, consistent with the existing garden wall and other properties within the alley system. The overall height of the building will be 23 feet 8 inches, which is consistent with the existing structure and the neighboring property. It will occupy approximately 54% percent of the lot.

II. Jurisdiction of the Board

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant special exception relief pursuant to 11-X DCMR § 901.2, and 11-Y DCMR § 100.3.

III. Background

A. Description of the Site and Surrounding Area

The Property is located at 520 Groff Court, N.E., Washington, DC 20002 (Square 779, Lot 179) in the Capitol Hill neighborhood. It is presently improved with a two-story corner rowhouse, with a parking space occupying the portion of the lot to be improved upon. The Property is zoned RF-3, as shown on the excerpt of the zoning map attached as Exhibit A. It is located on a corner alley lot within the alley system of Square 779, fronting on Groff Court to the east, and public alleys to the north and west. The Property is contiguous with the next four rowhouses to the south. Square 779’s internal alley system contains two rows of single family homes, all of which have addresses listed on Groff Court N.E. Square 779 is bounded by 3rd Street, N.E. to the west, F Street, N.E. to the north, 4th Street, N.E. to the east, and E Street, N.E. to the south.

The present structure occupies only 26.5% of the lot, and features a large rear garden enclosed by a brick retaining wall. The existing structure also provides a 11'-11" side yard where another historic rowhouse once stood. The side yard currently provides a single parking space.

B. Description of Proposal

The Applicant proposes to construct a two-story side addition to the existing two-story alley dwelling. The new building will have an overall height of 23 feet, 8 inches with two stories and will occupy approximately 54 percent of the lot. The proposed side addition will be similar in size to the existing alley dwelling and will therefore not be setback 12 feet from the centerline of the alley. The front of the side addition will follow the same line of buildings as the existing alley dwellings, with a setback from the centerline of 10 feet. The proposed side addition will go to the property line and will therefore be setback only 5 feet from the side alley centerline. The side addition will be an extension of the existing structure, and will have a height of 23 feet and 8 inches. This height follows the pattern of the historic alley rowhouses in Square 779.

Since the time of filing its application on March 24, 2019, the Applicant has revised portions of the proposal at the request of the neighbors, the ANC 6C, and the Historic Preservation Office ("HPO"), attached as Exhibit B. The changes include modification of the second floor windows on the north elevation to mitigate privacy concerns raised by neighbors. The windowsills have been raised in order to reduce visibility. The window facing south on the second floor rear bay has also been modified to mitigate privacy concern raised by the adjacent neighbor at 518 Groff Court, N.E. In order to alleviate concerns about the turn at the alley, the northeast corner has been shown with a curve and a steel corner guard. A construction management agreement has been circulated to neighbors on the alley, with the assistance of the ANC 6C. The Applicant will describe these changes in greater detail at the hearing.

IV. Scope of Relief Requested

A. Special Exception Relief for an Addition to a Nonconforming Structure

The Applicant originally requested special exception relief for an addition to an existing nonconforming structure, pursuant to Subtitle E § 5201.1(f) and Subtitle C § 202.2. After filing its application and providing the requisite notice to the public for relief under § C-202.2, the Office of Planning (“OP”) indicated that such relief was unnecessary. Under the guidance of OP, the Applicant revised its application to remove relief under this section.

However, upon further examination of the Zoning Regulations and the project, the Applicant believes that special exception relief may nevertheless be required from C-202.2, as the addition will extend the height of the nonconforming structure. Normally, additions to nonconforming structures that enlarge or extend an existing nonconformity — here, the nonconforming height of 23.66 feet — may only be granted through variance relief. Subtitle E § 5201.1(f), however, reduces the burden of proof to a special exception. Out of an abundance of caution, the Applicant respectfully requests the Board to confirm whether relief is necessary and grant the special exception.

RF-3 Zone	Regulation	Existing	Proposed	Relief
Height E § 5102	20 ft. max./2 stories	23.667 ft /2 stories	23.667 ft /2 stories	3.667 ft. requested as extension of existing non-conforming
Lot Width E § 201.1	18 ft. min.	24.667 ft.	No change	None required
Lot Area E § 201.1	1,800 sq. ft. min.	1,345 sq. ft.	1,345 sq. ft.	Existing nonconforming
Lot Occupancy E § 5103	N/A	26.535 %	54.014 %	None required
Rear Yard E § 5104	5 ft. min.	26.67 ft.	22.67 ft.	None required
Side Yard E § 5105	5 ft. min. from any lot line of abutting non-alley lots	N/A	N/A	None required
Alley Centerline (fronting to west) E § 5106	12 ft. min.	10 ft.	10 ft.	2 ft. requested
Alley Centerline (fronting to north) E § 5106	12 ft. min.	16.917 ft.	5 ft.	7 ft. requested
Pervious Surface E § 5107	10% min.	73.3%	50%	None required

B. Variance versus Special Exception Relief for Alley Setback and Height Relief

After further review of the regulations, the Applicant also believes that the alley height and setback requirements may be approved as special exceptions rather than variances. With respect to setbacks from the center line of the alley, Subtitle E § 5201.2(c) specifically provides that special exception relief is applicable to “a reduction in the minimum setback requirements of an alley lot.” However, in discussions with OP, the Applicant was advised that the Zoning Administrator and OP interpret Subtitle E § 5204 to limit special exception relief for alley lots only to the minimum *yard* requirements, as suggested by the heading of the section, “Special Exception Criteria for Alley Lots.” That section provides that the “Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements on an alley lot in an RF zone [] pursuant

to Subtitle X, Chapter 9.” The interpretation advanced by OP and the Zoning Administrator, however, seems to unnecessarily write out of the regulations E § 5201.2(c), which the Zoning Commission expressly adopted as part of the Zoning Regulations. Under the rules of statutory construction, which require that seemingly conflicting regulations be harmonized so that both have meaning, the Applicant believes a more prudent interpretation is available.¹ The special exception relief permitted under Subtitle E § 5201.2(c) is limited to *additions* to existing buildings, as evidenced by the title of that section, “Addition to a Building or Accessory Structure.” In contrast, Subtitle E § 5204 applies to new construction on unimproved alley lots. When new construction is proposed on an alley lot, an applicant may seek special exception relief to deviate from yard requirements only; in all other instances, variance relief is required to exceed the requirements for lot occupancy, courts, minimum lot dimensions, or other zoning provisions.

The Applicant also reviewed the nature of relief for the building height on alley lots and believes that relief from the height provision is also permitted by special exception, pursuant to § E-5203.2. Subtitle E § 5203.1 specifically allows the Board to “grant as a special exception a maximum building height for a principal residential building and any additions thereto of forty feet (40 ft.),” subject to the enumerated conditions of (a) through (f). Condition (a) provides that the building cannot be on an alley lot, which would seem to preclude special exception relief in this

¹ The Court of Appeals has consistently held that “[i]n interpreting [] regulatory provisions, we keep in mind the primary rule of statutory construction that the intent of the lawmaker is to be found in the language that he [or she] has used.” *Whitfield v. United States*, 99 A.3d 650, 656 (D.C. 2014) (citing *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C.1983) (citations and internal quotation marks omitted)). “Thus, if the statute's or regulation's language is “plain” and allows for no other meaning, we will generally look no further and give the words used the meaning ordinarily attributed to them.” *Whitfield* at 656 (citing *Sullivan v. District of Columbia*, 829 A.2d 221, 224 (D.C.2003) (internal quotation marks omitted)).

case. However, Subtitle E § 5203.2 allows the Board to waive or modify two of the enumerated conditions in (a) through (f), thereby recasting the relief back to a special exception.

The Applicant discussed this provision with OP, as well, and OP expressed its strong disagreement with the Applicant's interpretation. It advised the Applicant that inclusion of paragraph (a) in the enumerated waiver list was an error, noting that there has never been the intention to allow height relief as a special exception.

The Applicant has great respect for OP and appreciates their guidance on the regulations and this application in particular. For that reason, the Applicant has analyzed the areas of relief needed under both the variance test and special exception standards, which carry a lesser burden of proof. The Applicant respectfully requests the Board to clarify which standard applies. Because the Applicant originally followed the determination of the Office of Planning staff that the relief needed would be variances, this application has provided sufficient legal notice to the public and is properly before the Board now for its consideration. The lesser-required relief for special exception approval is subsumed by the notice for variances.

V. The Applicants Meet the Standards for Special Exception Relief under the Zoning Regulations

A. Standard of Review

A special exception use is a use deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. To grant special exception relief, the Board must find that the project:

- (1) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) will meet any special conditions required for each special exception requested, as specified in the Zoning Regulations.

11-X DCMR § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the relief requested are satisfied. The D.C. Court of Appeals has consistently emphasized the narrow scope of the Board's discretion in reviewing special exception applications:

In evaluating requests for special exceptions, the Board is limited to a determination of whether the exception sought meets the requirements of the particular regulation on which the application is based The applicant has the burden of showing that the proposal complies with the regulations; but once that showing has been made, the Board ordinarily must grant the application.

National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment, 753 A.2d 984, 986 n.1 (D.C. 2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995)); *see also Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973) (noting that "[s]pecial exceptions, unlike variances, are expressly provided for in the Zoning Regulations"). If the specific requirements of the regulation are met, the Board is generally precluded from denying an application for special exception relief.

B. Description of Requested Special Exception Relief

1. Height

Pursuant to 11-E DCMR § 5102.1, alley lots may reach a maximum height of 20 feet and 2 stories as a matter of right. The Applicant proposes extending the height of the existing building to the new addition at a height of 23.667 feet.

2. Alley Centerline Setback

Pursuant to 11-E DCMR § 5106.1, the matter of right setback from the centerline of an alley is 12 feet. The Applicant proposes extending the existing non-conforming alley centerline setback to the east of 10 feet, and providing a setback of 5 feet from the alley centerline to the north.

3. Addition to nonconforming structure as set forth in Subtitle C § 202.2

The existing structure is nonconforming with respect to height and setback from the alley centerline. Pursuant to 11-E DCMR § 5201.1 (f), special exception relief is available for the limitations on such additions. Special exception relief is applicable to additions to residential buildings and for reductions in the minimum setback requirements for alley lots. 11-E DCMR § 5201.2 (a), (c).

C. The Applicant Satisfies the Burden of Proof for a Special Exception for Height as an Addition to a Nonconforming Structure.

The Applicant seeks special exception relief for the proposed addition to reach 23 feet and 8 inches. The proposal complies with the requirements for special exception relief of Subtitle X § 901.2 and the conditions of Subtitle E §§ 5203 *et seq.* required for a special exception to exceed the maximum permitted height.

1. A special exception for height will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

Square 799 is dense with many existing alley dwellings. The proposed side addition will be within the scale of the existing alley dwellings, and will be visibly the same height as the rest of the existing building. The proposed addition will be constructed with high quality materials similar to those on the existing dwellings. Additionally, historically a structure existed within the same footprint, at likely the same height.

2. *A special exception for height will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.*

The project will not affect adversely the use of neighboring properties. The Applicant has conducted a shadow study which has determined that the light and air available to the neighboring properties shall not be unduly affected, attached as Exhibit C. Shadows from the addition will only reach the rear yards of neighbors to the north, and only in winter afternoons. According to the study, shadows from the addition will not reach any neighboring windows at any time.

3. *The proposed height meets the requirements for a special exception under Subtitle E §§ 5203.1-5203.2.*

Pursuant to § E-5203.1 – E-5203.2, the Board may grant a special exception for height up to 40 feet, as long as no more than two of the following conditions are met.

(a) The building is not on an alley lot;

The building is on an alley lot. Accordingly, this would be the single condition requiring a waiver.

(b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;

The addition will not block or impede the functioning of any chimney or other external vent on an adjacent property required by any municipal code.

(c) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator;

The addition will not interfere with the operation of an existing or permitted solar energy system on an adjacent property.

(d) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or sizes;

The application will not remove or alter any roof top architectural element original to the house such as a turret, tower, or dormers.

(e) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(1) The light and air available to neighboring properties shall not be unduly affected;

As described above, the project will not affect adversely the use of neighboring properties.

The light and air available to the neighboring properties shall not be unduly affected.

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

The project will not adversely affect the privacy of use and enjoyment of neighboring properties. In response to concerns from neighbors, the Applicant made substantial changes to windows that would have faced neighboring properties to alleviate privacy concerns.

(3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley; and

The project will be entirely consistent with the character, scale, and pattern of houses along the subject alley. The project is likely to obtain approval from the Historic Preservation Review Board due to its consistency with the Capitol Hill Historic District. The proposal will recreate a rowhouse structure within this alley similar to how it would have existed historically.

(f) In demonstrating compliance with Subtitle E § 5203.1(e) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways.

The Applicant has provided plans, photographs, elevation and section drawings that comply with the requirements of this section.

Accordingly, the Applicant has satisfied the burden of proof for a special exception for height as an addition to a nonconforming alley structure.

D. The Applicant Satisfies the Burden of Proof for a Special Exception for Alley Centerline Setback Relief.

1. The alley centerline setbacks will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The proposed alley centerline setback will be in harmony with the purpose and intent of the zoning regulations and related maps. A rowhouse structure historically existed within the same footprint, and the proposed side addition is consistent with regard to setbacks to the alleys with other structures in the alley. The proposed addition will be constructed with high quality materials similar to those on the existing dwellings.

2. The alley centerline setbacks will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

The alley centerline setbacks wall will not tend to have an adverse impact on the use of neighboring properties. The only adjacent neighbor supports the project. There are row dwellings across the alley to the north which front on F Street, N.E., which are separated from the Property by their existing large rear yards and the existing 10-foot wide public alley. The proposed addition will line up with the existing property and line of dwellings to the east. Given the existing large rear yards and existing structures, the proposed addition will have little impact on the use of neighboring properties. The alley system will be unchanged, and the alleys will not become more

narrow due to the addition within the bounds of the Applicant's lot. Thus, it cannot be seriously disputed that the addition will not affect the neighboring properties owner's ability to park their vehicles.

3. *Conditions Relating to Building and Surrounding Area Make Full Compliance Unduly Restrictive or Unreasonable.*

In addition to meeting the general conditions for being granted a special exception for alley centerline setback relief pursuant to Subtitle E § 5201.2 (c), the applicant must further demonstrate that the addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, as listed below. 11-E DCMR § 5201.3.

(a) The light and air available to neighboring properties shall not be unduly affected;

As described above, the project will not affect adversely the use of neighboring properties. The light and air available to the neighboring properties shall not be unduly affected.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The project will not adversely affect the privacy of use and enjoyment of neighboring properties. In response to concerns from neighbors, the Applicant made substantial changes to windows that would face neighbors to alleviate privacy concerns.

(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage;

The project will be entirely consistent with the character, scale, and pattern of houses along the subject alley. The project is likely to obtain approval from the Historic Preservation Review Board due to its consistency with the Capitol Hill Historic District. The proposal will recreate a rowhouse structure within this alley similar to how it would have existed historically.

(d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and

The Applicant has provided plans, photographs, elevation and section drawings that comply with the requirements of this section.

(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).

The proposed addition will only have a lot occupancy of approximately fifty-four percent (54%).

Accordingly, the project meets the standards for special exception relief for setback from the alley centerline.

VI. The Applicants Meet the Standard for Area Variances under the Zoning Regulations.

A. Overview

The Applicant requests in the alternative, variances from the height and alley centerline setback requirements. As stated above, the Zoning Regulations provide that the maximum height for a structure on an alley lot is 20 feet and 2 stories. 11-E DCMR § 5102.1. The proposed addition will be 23 feet and 8 inches, and 2 stories.

The RF zones restrict structures on alley lots to maintain a setback of 12 feet from the centerline of an alley. 11-E DCMR § 5106.1. Here, the proposed addition will be built up to the lot line, providing a 10 foot setback to the west on the front of the building, consistent with the rest of the building and the neighboring properties, and a 5 foot setback to the north on the side of the building, consistent with other properties on the square built up to their lot lines against the 10 foot wide alley.

B. Standard of Review for Area 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 situation or condition;
- (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)); *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987); *see also St. Mary's Episcopal Church v. District of Columbia Zoning Comm'n*, 174 A.3d 260, 269 (D.C. 2017) (“the District’s zoning authorities are authorized to grant an area variance . . .”).

As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met for the relief requested.

C. The Application Meets the Standard for Variance Relief

1. *Extraordinary or exceptional situation or condition*

Under the first prong of the variance test, an applicant must demonstrate that “the property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property.” *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941 (D.C. 1987). An exceptional or extraordinary situation or condition may arise from many factors, including history, shape, and location; may encompass the buildings on a property, not merely the land itself; and a “confluence of factors” may combine to

give rise to the exceptional condition. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (1990). It is not necessary that the property be unreservedly unique to satisfy this prong. Rather, the applicant must provide that a property is affected by a condition unique to the property and not related to the general conditions in the neighborhood. *Id.*

Here, the Property has several extraordinary or exceptional conditions that affect the Applicant's ability to comply with exact alley height and setback parameters of the Zoning Regulations. These include its unique historic qualities, its position at the end of the row of dwellings, the unusual configuration of this particular alley, and the Property's frontage on three alleys of differing widths.

First, the property is part of a distinctive row of small-scale, two-story alley dwellings in the Capitol Hill Historic District. Originally comprised of nine houses, only five remain. Three of the units at the south end of the row were demolished as well as the northernmost unit, the site of which is now part of the Property and where the addition will be built. Constructed in the late-nineteenth century, the remaining five houses are among the last alley dwellings of their kind in Capitol Hill. Based on a review of Capital Hill properties in HistoryQuest DC,² the only other similar historic alley row dwellings are found in Terrace Court, N.E., in the block bounded by 2nd Street, N.E., on the west and East Capitol Street, N.E., on the south.

The diminutive nature of the Groff Court alley dwellings and their substandard lots is also distinguishing. The remaining houses average only 12-feet wide and approximately 28 feet deep; the lots are likewise small at 12 feet wide and 54 feet deep. By comparison, the current Zoning Regulations require row dwelling lot in the RF Districts to be 18 feet wide and 100 feet deep.

² <https://dcdgis.maps.arcgis.com/apps/webappviewer/index.html?id=4892107c0c5d44789e6fb96908f88f60>.

The addition will be built on what was the end lot of this historic row, which has frontage on three alleys. The north alley and west alleys are each 10 feet wide; the east alley is 20 feet wide. It is also unusual to find an interior of a square configured with five alleys: three running north-south and two running east-west.

As described in greater detail below, the confluence of these exceptional and extraordinary conditions inherent in the Property create practical difficulties in meeting the strict application of the Zoning Regulations, thereby necessitating the specific variance relief sought.

2. *Practical Difficulties Created by the Exceptional Conditions*

Applicants for an area variance must demonstrate they will encounter “practical difficulties” in the development of the property if the variances are not granted. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *Gilmartin*, 579 A.2d at 1170. The nature and extent of the burden that will warrant an area variance is best left to the facts and circumstances of each particular case. *Palmer*, 287 A.2d at 542. 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. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976)); see also *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). 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.” *Gilmartin*, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

Here, these distinctive, small-scale alley dwellings dictate an addition that respects the quality of the historic row and their rarity in the Capitol Hill. The addition has been designed to replicate the massing, scale, rhythm and character of these exceptional buildings. If the Applicant were forced to comply with the strict application of the alley setback requirements, the addition could only be five feet wide and would be setback two feet from the character-defining front building line of the historic row. Similarly, the height would need to be reduced 3 feet, 8 inches, in order to comply with the 20-foot height limit.

Both efforts would destroy the historic qualities of this important collection of alley dwellings. Historic plats demonstrate that the original house at 522 Groff Court, N.E., was built to its front and side lot lines, immediately abutting the alleys. The cornice line of these historic houses, their brick corbelling and overall height are critical to the historic composition and uniformity of this block. The Applicant worked with the staff of the Historic Preservation Office (“HPO”) to develop the most appropriate design for the addition. HPO advised the Applicant to replicate the historic footprint of the house that was once on the Property and match the height of the existing row dwellings. While HPO staff recognized that the exterior design elements did not have to mimic the historic row and, in fact, should be readily distinguishable from the original houses, it advised the Applicant that the two-story massing should otherwise follow the historic pattern in order to achieve a harmonious relationship with the row. This Historic Preservation Review Board will vote on the proposed addition as a consent calendar item at its June 27, 2019, meeting.

Even setting aside these important historic preservation constraints, strict application of the regulations would result in such a small addition as to not create any meaningful, practical space for the Applicant. As previously noted in the Applicant’s May 20 supplemental statement, a compliant

addition would only allow a five-foot wide addition with only four feet of useable interior space. The proposed separate dining room would be eliminated, and no meaningful space would be achieved on the second floor. In order to incorporate the narrow four-foot space, the Applicant would need to remove substantial sections of the existing solid masonry bearing wall. The exiting stairs and kitchen are located along the masonry wall and would need to be relocated or substantially modified in order to utilize the narrow, four-foot addition. The cost of these alterations alone would significantly exceed the practical and economic value of such a small expansion, creating extreme practical difficulties for the Applicant.

3. *No harm to the public good or to the zone plan*

The requested variances can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, and integrity of the Zoning Plan. The project will adhere to the residential character of the alley system, and will in fact enhance the row of single family homes. As detailed above, a rowhouse structure historically existed within the same footprint, and the proposed side addition is consistent with regard to setbacks to the alleys with other structures in the alley. HPO has recommended approval of the design compatible with the Capitol Hill Historic District due in large part to the “clear evidence that a match-line row home existed at 522 Groff Court, and this project would undertake a reconstruction of sorts.” The proposed addition will be constructed with high quality materials similar to those on the existing dwellings. As such, it would be a benefit to the historic character of the area.

Additionally, as described throughout, the proposed addition will not cause safety issues, or have an adverse effect on the light, airflow, or privacy of the abutting neighbor or neighbors across the alley. The alley will not decrease in width, and will thus have no effect on vehicle maneuverability. At present, the space where the proposed addition will go is vacant and used for

parking. However, the Applicant's lot is obviously not considered part of the public alley and is not traversed across. The requested variances will thus have no effect on the ability of vehicles to make turns within the alley. The proposed addition falls within the zoning parameters of existing adjacent buildings and thus does not impair the intent, purpose, and integrity of the Zoning Plan to create safe, liveable residential units along alleys. The deviation from the height limit is modest and the variance from the alley setbacks will allow a project that is consistent with historical development in a manner consistent with the intent and purposes of the regulations and Zone Plan.

VII. Community Outreach

The Applicant has had numerous discussions, email communications and meeting with individual neighbors, groups of neighbors and the Advisory Neighborhood Commission ("ANC") 6C. The Applicant has agreed to adhere to a construction management agreement, which was originally provided by the ANC 6C.

The Applicant has discussed this proposal with Historic Preservation Office ("HPO") staff, who recommended to the Historic Preservation Review Board ("HPRB") that the proposal be approved as a consent item. In discussions with HPO staff, and from the HPO staff report, the proposed addition will be compatible with the Capitol Hill Historic District, conditioned on changes made to the windows, cornice, and rear bay. See Exhibit D.

VIII. Witnesses

The following witnesses may provide testimony at the Board's public hearing on the application:

1. Kara Benson, Applicant, owner and resident
2. Jennifer Fowler, expert in architecture (resume provided as Exhibit E)

IX. Exhibits

The following exhibits are included in support of this submission:

Exhibit A Excerpt from Zoning Map showing Property

Exhibit B Revised Architectural Drawings

Exhibit C Shadow study for proposed addition

Exhibit D HPO Staff Report and Recommendation for HPRB meeting of June 27, 2019

Exhibit E Resume of Jennifer Fowler, expert in architecture

X. Conclusion

For the reasons stated above, the Applicant requests the Board to accept the determination that special exception relief is available for height and alley centerline setbacks for additions to alley dwellings. The proposed application meets the standards for special exception relief and, alternatively, for variance relief, under the Zoning Regulations. The Applicants therefore respectfully request that the Board grant the application.

Respectfully submitted,

DONOHUE & STEARNS, PLC

By: 
Mary Carolyn Brown

Michael W. Cabrera
1750 K Street, N.W., 12th Floor
Washington, D.C. 20006
(202) 763-7538

Counsel for Applicants

DATE: June 26, 2019