

January 23, 2020

**via IZIS**

Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW  
Suite 210S  
Washington, DC 20001

**Re: BZA Case No. 20178 – 1738 Church St., NW (the “Subject Property”); Supplement to the Burden of Proof Statement Regarding Lot Occupancy Variance**

Dear Chairman Hill and Board Members:

The following is intended to supplement the Applicant’s original Burden of Proof Statement (BZA Exhibit #11), to provide additional facts and discussion regarding the applicable variance test for lot occupancy relief, and to provide a response to the Office of Planning report.

### Summary of Original Burden of Proof Statement

The original Statement focused on the proposed accessory building and the related peculiar and exceptional practical difficulties resulting from a confluence of exceptional conditions affecting the Subject Property as it relates to the proposed accessory building. Primary among these conditions is the ‘empty gap’ at the rear of the Subject Property. The Subject Property is alone among that this half of the block in having no structure along or near the rear property line (See Exhibit A). This exceptional condition with the Subject Property results in the peculiar and exceptional practical difficulties noted in the original Statement, including unauthorized parking from the nearby Keegan Theatre and possibly other of the close-by commercial uses, providing a space for the proliferation of public trash and rodents, and the typical security issues of having this inviting, open space on this otherwise almost entirely closed row of buildings.

The issues noted in the original Statement were not unlike those noted by the Applicant to the west, who received lot occupancy variance relief to construct an accessory building, in BZA Application No. 18824. The approved lot occupancy in that case was 91%.

### Additional Information

There are additional facts about the Subject Property’s condition which the Board may find helpful in considering the lot occupancy variance. One of the unique conditions affecting this property’s rear yard is that it is surrounded on three sides by buildings, as well as having larger buildings to the south across the alley. With such a shallow and narrow yard (about 13 feet between the house and the parking area), this leaves most of the Applicant’s back yard heavily shaded and virtually un-usable for any of the typical activities for which families use their yards. The photos attached hereto as Exhibit B illustrate the condition of the yard as viewed from the

grade level in the yard. From the yard, one looks up to large structures on all sides. The property to the west has a lot occupancy near 91%,<sup>1</sup> with the principal building extending well past the rear wall of the Applicant's home, and with a new accessory building and roof deck covering the rear portion of that property. The property to the east also has enclosed building which extends well past the rear wall of the Applicant's building. That property also has an accessory building; and has a total lot occupancy that appears to be at or greater than 70%.

The existence of these enclosed sections of neighbor's buildings results in a deep canyon of a yard; dark; with little light and air, and limited usability. The Applicant currently has a raised deck, which alleviates this condition. The current proposal includes reducing the size of that deck. The Applicant asserts that not allowing a reasonably-sized elevated deck (but less footprint than the existing elevated deck) between the house and new garage results in the effective loss of use of a considerable portion of the rear yard space, which would be a peculiar and exceptional practical difficulty to the Applicant. The accessory building would solve security, trash, and other concerns. It will continue to provide parking for two cars and will provide some recreation space equal to their neighbor to the west (see Exhibit C). The currently proposed deck would go a long way in resolving the practical difficulty presented by the small and isolated yard space by providing a reasonable amount of elevated recreation space at a level which is even with the main level of the Applicant's house,<sup>2</sup> while also providing safe and reasonable access to the accessory building's roof deck. While the Applicant could trim the area of that deck and still be able to access the roof deck, any deck space lost results in "lost" outdoor recreation space.<sup>3</sup> The smaller deck also causes some practical issues as well. For instance, the smaller deck alternatives would prevent the applicant from fully opening their back screen.

#### Alternatives

At the insistence of the Office of Planning, the Applicant had their architect design two alternatives. One alternative reduces the lot occupancy to approximately seventy-two-point forty-six percent (72.46%). The other reduces the lot occupancy down to OP's special exception target of seventy percent (70%). (See alternative plans included as Exhibit D.) The Applicant is

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<sup>1</sup> Changes adopted with the 2016 Regulations – relating to courts less than 5 feet in width - have presumably lowered that number.

<sup>2</sup> The Applicant's basement is not a finished basement and does not have legally compliant ceiling heights. As such, it is not a convenient ingress/egress to use the basement level to regularly access the rear yard.

<sup>3</sup> It's important to note that any deck would be pervious, as would be the ground underneath, so additional deck space does not negatively affect the stormwater drainage situation. In addition, the currently proposed deck is the minimum-size deck the architect believes necessary to make the deck wheelchair-accessible. With the limited yard space a level below the main level, this deck provides the only possible outdoor recreation space for any future owner with wheelchair-related disabilities. While this construction does not require strict accessibility accommodations, the Applicant believes that the unique conditions with this property make the construction of a deck without that accessibility a potential deficiency for another down the road. It also unnecessarily skips an opportunity to improve a deficient accessibility situation in an older building, which is undoubtedly a benefit to the public good.

presenting these alternatives in order to illustrate the peculiar and exceptional practical difficulties inherent in these alternatives. These alternatives are represented by connecting deck space which make the deck more difficult to use for real outdoor recreation space and make it primarily just a passageway from the house to the garage deck, leaving the yard idle.

Response to the Office of Planning Report

This submission provides some additional facts and analysis which the Applicant hopes may be persuasive to the Office of Planning. The Applicant does respectfully disagree with a couple of the points in the OP report. The Office of Planning notes that the lot is similar in size to adjacent lots. The Applicant agrees. The unique condition results primarily from the existing larger-footprint structures on the neighboring properties, and the accessory buildings on the neighboring properties. The exceptional condition necessary for variance relief may relate to the structures on a property; not just the property itself. In this case, the Applicant does not have enclosed building area in the rear yard, where their neighbors do have such building area. This contrasting situation impacts the Applicant and impairs their ability to use their rear yard.

The OP report states that many of the other properties on the block have accessory buildings and most of them have not required lot occupancy relief. It is true that many others have accessory buildings. This is actually a condition that contributes to the Applicant's exceptional condition. Regarding these other properties getting lot occupancy relief, the property to the west was granted lot occupancy variance relief five (5) years ago, and the property to the east clearly has a legally existing nonconformity with a lot occupancy well over sixty percent (60%).

Summary

The Applicant respectfully requests that the Board consider this additional information and urges the Board to find that the Applicant has met the variance test.

Sincerely,

*Martin P Sullivan*

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**CERTIFICATE OF SERVICE**

I certify that on January 23, 2020, I served a copy of this submission to the following, via email.

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