

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

**Application of Uzoma “Uzi” Ogbuokiri    BZA No. 20209**

**APPLICANT’S HEARING STATEMENT**

This Hearing Statement (“Statement”) outlines the existing and proposed use of the property and the manner in which the application (“Application”) complies with the specific tests and burden of proof for the special exception sought in this application before the Board of Zoning Adjustment (BZA)

**NATURE OF RELIEF SOUGHT**

This is an application pursuant to 11 DCMR Subtitle X, Chapter 9, § 900.2 for a special exception under Subtitle D, §5201.1 (a), (b) and (f) to allow an addition to an existing single-family dwelling not in compliance with the maximum permitted percentage of lot occupancy set forth under Subtitle D, Chapter 3, § 304.1; not meeting the side yard setback requirement set forth under Subtitle D, Chapter 2, § 206.7; and which extends a nonconforming side yard for an existing Row dwelling, as that term is defined, set forth under Subtitle C, Chapter 2, §202.2 for property located in the R-2 Zone District.

The application further seeks special exception relief or waiver pursuant to Subtitle U, § 253.10, from the provision set forth under Subtitle U, Chapter 2, § 253.7 (c) to permit an accessory apartment with an entrance on a wall facing a street.

**SUMMARY OF APPLICATION**

The applicant seeks special exception pursuant to 11 DCMR Subtitle X, § 900.2 in accordance with the standards set forth in X, § 901.2 (a) through (c), and as further prescribed or set forth under Subtitle D, §§ 5201.3 (a) through (e) through 5201.6.

### **JURISDICTION OF THE BOARD**

The application is properly before the BZA. The Board is authorized to grant the requested special exception under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (2) (2001), as further set forth in 11 DCMR, Subtitle X, Chapter 9, § 900.2.

As further set forth under § 901.2, the Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a). Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (b). Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c). Will meet such special conditions as may be specified in this title.

As more specifically outlined below in this hearing statement and as will be further attested in the course of the hearing, the applicant contends that the application complies with the three provisions set for the above, and with all the applicable standards prescribed under D, §5201

### **PROPERTY LOCATION AND DESCRIPTION**

The property is located at 7521 9th Street NW, and it is located in the Brightwood neighborhood in Ward 4

The subject property is located in Square 2961 and is legally described as Lot 0018. The subject property is located at the intersection of 9<sup>th</sup> and Hemlock Streets, hence a corner lot by definition.

The subject property is bounded by 9<sup>th</sup> Street to the West, a public alley to the East and Hemlock Street to its South.

The subject property is the end unit of a series of semi-detached one-family dwellings all on substandard lots less than the three thousand square feet (3,000 ft<sup>2</sup>) minimum prescribed for the type of structures located on these lots.

The existing building is a Row building, as that term is defined and set forth under Subtitle B, Chapter 1, § 100.2, given that it is constructed from lot line to lot line and provides no side yard.

At one thousand five hundred and eight-eight square feet (1,588 ft<sup>2</sup>) the subject property is one of two properties in its square of location most severely handicapped by size of lot in existence at the time of the adoption of the 1958 Zoning regulations

The lot size of subject property is only fifty eight percent (58%) of the prescribed minimum area for the R-2 Zone District.

The existing building occupies approximately thirty-four percent (34%) of the lot and therefore conforms to the maximum permitted percentage of lot occupancy (40%) for the zone district of location in its existing footprint or condition.

The proposed addition consists of a vertical third floor addition and the horizontal extension of building footprint, which result in approximately eight percent (48%) lot occupancy, in compliance with the provision set forth under D, 5201.3.

The subject property is located within the R-2 zone district

## **STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

**1. Compliance with the three standards set forth under X, § 901.2 (a), (b), and (c)**

***(a). Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;***

The subject property is currently improved by a conforming structure devoted to a conforming use for the underlying R-2 zone district within which it is located.

Although Applicant proposes to construct a third-story addition and extend the existing building footprint, the intended use of the subject property will not change and will continue to be a conforming use, notwithstanding the inclusion of an accessory apartment in the cellar as permitted under U, 253.2.

The subject property and the continued use as a principal dwelling are in harmony with the Use Group General Provision for the R Zones as more specifically set forth under U, § 201.1 (a) (2), notwithstanding that the existing building is a Row building by definition. Applicant notes that under ZR 1958, § 405.5, the existing building would have been constructed as a matter of right because a side yard was not required in the Residence District for a corner lot.

The Applicant submits that since both the type of building and the continued use conform to the General Provisions for the zone district of its location, the proposed project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

***(b). Will not tend to affect adversely, the use of neighboring property in accordance With the Zoning Regulations and Zoning Maps;***

As aforementioned, the subject property is a corner lot abutting two Streets and a public alley to its West, South and East respectively and shares a lot line wall only with one adjoining neighbor at its Northern property lot line.

The subject property is the last of a series of semi-detached building on lots which constitute one-half of the West side of Square 2961 split by a public alley running North-South, bounded by Juniper Street to the North, 9<sup>th</sup> Street to the West, 8<sup>th</sup> Street to the East and Hemlock Street to the South.

The subject property shares a common division property lot line wall with only the adjoining property to the North. The proposed addition will extend ten feet (10 ft.) only beyond the rear wall of the only building it abuts, and the lot line wall will not have any openings. The net result is that the privacy of use of the only adjoining neighbor remains unchanged due to the proposed addition for which relief is sought.

All other adjoining neighboring property are separated by dedicated Streets at minimum sixty feet (60 ft.) wide West and South, and by a public alley sixteen feet (16 ft.) wide to the East. In fact, all the lots East of the alley which splits Square 2961, are perpendicularly located such that the separation distance includes rear yards facing each other

Square 2961 in entirety is within the R-2 Zone District with similarity of type of structure and use.

In light of the foregoing, the privacy of use, light and air of adjoining properties are unaffected, so if approved the relief will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

***(c). Will meet such special conditions as may be specified in this title.***

The special conditions specified are set forth under D, §§ 5201.1 through 5201.6. Applicant submits that the application complies with each special condition specified as follows:

***5201.1 The Board of Zoning Adjustment may approve as a special exception in the R zones relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:***

***(a) Lot occupancy;***

***(b) Yards;***

***(c) Courts;***

***(d) Minimum lot dimensions;***

***(e) Pervious surface; and***

***(f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.***

The instant application is for relief to allow percentage of lot occupancy in excess of the forty percent (40%) maximum permitted in the underlying R-2 Zone District, and not in excess of the fifty percent (50%) threshold set forth under D, 5201.3 to permit the application under special exception. The proposed percentage of lot occupancy for subject property is forty eight percent (48%) approximately. Hence the application complies with this special condition pursuant to 5201.1 (a).

Applicant includes additional relief under D, 5201.1 (b) and (f) in response to the Office of Planning feedback and for an abundance of caution given that the application is self-certified.

With respect to D, 5201.1 (b), the yard in question is a side yard, which would otherwise be required for a semi-detached building containing a principal dwelling, as set forth under subtitle U, Chapter 2, § 201.1 (a), (2) for Group B, R-Uses.

Applicant submits that the existing building is an existing Row building, and the provision of D, 206.5 appears to permit the extension of the lot line wall, without need for providing a side yard.

Applicant nevertheless requests relief to extend an existing nonconforming side yard as set forth under D, 206.7

Relief from D, 5201.1 (f) is predicated on the improvement on subject property being classified as a semi-detached building with nonconformity of side yard of zero feet (0 ft.) which the proposed addition extends.

Applicant submits that the additional sub-areas of relief comply with the three-prong tests set forth under X, 901 (a), (b), (c).

The side yard requirements are minimum standards for light and air to protect the public health. The requirement of a minimum eight feet (8ft.) side yard – five feet (5 ft.) in specified circumstances - results in two walls of adjoining buildings to be as close sixteen feet (16 ft.) apart.

In the case of a building located on a corner lot where the closest adjacent wall is separated by the width of the Street it adjoins, the closest wall in the instant of the subject property, is over sixty feet (60 ft.) or more away by virtue of the width of the adjoining street.

Applicant submits that the foregoing provides more than adequate light and air to be adjudged in compliance with the three elements of the Board's consideration for grant of special exception relief.

***5201.2 Special exception relief under this section is applicable only to the following:***

***(a) An addition to a building with only one (1) principal dwelling unit; or***

***(b) A new or enlarged accessory structure that is accessory to such a building.***

The instant application complies with the specified special condition because the proposed project involves an addition to a building with only one (1) principal dwelling unit, pursuant to 5201.1 (a)

***5201.3 An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:***

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

The subject property shares a common division lot line or wall with only one adjoining property located North of the subject property.

All other adjoining neighboring properties are separated by dedicated Streets at minimum sixty feet (60 ft.) wide West and South, and by a public alley sixteen feet (16 ft.) wide to the East.

The ten feet (10 ft.) addition will extend a lot line wall which will not feature any opening, as such the light and air available to neighboring properties will not be unduly affected, and in fact results in a no net change to the existing condition

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

The proposed addition, including the proposed third floor, will not feature any openings on the lot line wall adjoining the common division lot line of the only property the subject property adjoins. Neither the vertical nor the horizontal (footprint extension) extension proposed results in a change of the fenestration or opening scheme as exists currently on the common division wall.

Because there will be no net change in the opening scheme, and the third-floor addition overlooks the roof of the adjoining property which features no roof deck or any other assembly use, the privacy of use and enjoyment of neighboring properties will not be unduly compromised.



***(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;***

Although the character, scale and pattern of the houses along the subject street frontage consists of two-story structures or buildings, the third-story addition will not substantially visually intrude upon the character as viewed along the street frontage.

Going by the official address of the subject property, street frontage is on 9<sup>th</sup> Street. All buildings along 9<sup>th</sup> Street setback an approximate ten feet (10 ft.) from the front property lot line. The design not only respects and preserves the building front, it further sets back the proposed third-floor addition a distance approximately eight feet (8 ft.) to temper the visual impact of the additional floor as viewed from the subject street frontage.

The existing building and proposed addition are removed an approximate distance of twenty-five feet (25 ft.) from the curb on Hemlock Street consisting of public space, tempering the visual intrusion of the addition substantially.

The project provides an approximate twenty-eight feet (28 ft.) rear yard in zone district which requires a minimum twenty feet (20 ft.), thereby substantially minimizing the potential visual impact of the third-floor addition as viewed from the alley

***(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 submits that the concept design drawings constitute appreciable graphical representations sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways, and shall provide into the case folder such additional representation as may be necessary to augment the relationship.

Building façade design has been altered at the recommendation of the office of planning (OP), to ensure compatibility with the architectural fabric of the neighborhood.

*(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot as specified in the following table:*

**TABLE D § 5201.3: MAXIMUM PERMITTED LOT OCCUPANCY**

**Zone**

**Maximum Lot Occupancy**

**R-3 R-13 R-17**

**70%**

**R-20 – attached dwellings only 70%**

**R-20 – detached and semi-detached dwellings All Other R zones**

**50%**

The instant application complies with this condition because it is located in the R zone and the proposed percentage of lot occupancy is, at forty-eight percent approximately, less than the fifty percent (50%) maximum prescribed.

**5201.4 The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.**

The Applicant is not averse to any special treatment the Board sees fit. Design changes recommended by OP have been incorporated in the final design submissions.

***5201.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.***

The instant application does not seek to introduce and expand on a nonconforming use as a special exception. The existing and proposed use are use permitted as a matter of right

***5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.***

The instant application will not introduce or expand nonconforming height or number of stories as a special exception.

### **Special Exception Pursuant to Subtitle U, Chapter 2, § 253.10**

Application further request special exception relief from the provision set forth under U, 253.7 (c), to allow the location of a door to an accessory apartment on a wall facing a street, pursuant to the waiver provisions set forth under U, 253.10.

Applicant submits that the waiver sought, relating to the location of the entrance to an accessory apartment, is not waiver the Board is not authorized to grant pursuant to U, 253, (a), (b) and (c), including that applicant seeks only one waiver.

As aforementioned, the subject property is a corner lot with main building entry or access located on 9<sup>th</sup> Street. The proposed accessory apartment entrance is located on a wall facing Hemlock Street, but the entry door is below grade and shielded from public view by a retaining wall; hence not visible.

The foregoing is not inconsistent with the provision set forth under D, 257.3 (d) wherein such entry door is permitted in specified R Zones, including the next less restrictive zone (R-3) to the R-2 zone district the subject property is located in

## **Conclusion**

As set forth under § 901.2, the Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) Will meet such special conditions as may be specified in this title.

The Applicant submits that the instant application complies with all conditions for the granting of the requested special exception set forth in Subtitle X, § 901.2 by virtue of the representations set forth under “Statement of Compliance with the Burden of Proof”

The Applicant submits that the application complies with the special conditions set forth under D, §§ 5201.1 through 5102.6 as represented above in the Statement.

Applicant respectfully requests for all the foregoing reasons that the Board approve the application for the relief sought.

## **Witness**

1. **Uzoma “Uzi” Ogbuokiri**