

## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Elisa Vitale, AICP, Development Review Specialist  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** October 22, 2021

**SUBJECT:** BZA Case 20389: Request for area variance relief pursuant to Subtitle X § 1000.1 to allow the subdivision of property at 1915 Shepherd Street NE.

---

### I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) continues to recommend **denial** of the following variance relief pursuant to Subtitle X § 1000.1:

- D § 302.1, minimum lot dimensions (50 feet required; 80 feet existing; Lot A – 41 feet and Lot B – 39 feet proposed).

OP recommends **denial** of the following special exception relief pursuant to Subtitle D § 5201.1 and X § 901.1, as it is directly linked to the above variance relief for which OP is unable to recommend approval:

- D § 206.2, side yard (8 feet required; Lot A – 2.4 feet proposed).

OP notes that the following relief may be needed but has not been requested by the Applicant at this time.

- C § 302.1, subdivision (any lots created must conform to the regulations for yards and minimum lot width; conforming lot existing; two nonconforming lots proposed).

### II. BACKGROUND

The Applicant is proposing to re-subdivide the property to create two new record lots. The existing detached building at 1915 Shepherd Street NE would remain, along with the accessory building on new record lot A. A new detached residential building and accessory building would be constructed on new record lot B. In our original report (Exhibit 37), OP noted the same additional relief that appeared to be required, and recommended denial of both the lot dimension and side yard variance relief. Since then, the Applicant has amended the application to request special exception, rather than variance relief, for the substandard side yard on Lot A. The Applicant has not submitted compelling justification for the relief or addressed the unresolved C § 302.1 relief issue. A summary of the proposal can be found in the OP Report at Exhibit 37.

**III. ZONING REQUIREMENTS and RELIEF REQUESTED**

<b>R-1-B Zone</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed Lot A<sup>1</sup></b>	<b>Proposed Lot B</b>	<b>Relief</b>
Height D § 303.1	40 ft. max. / 3 stories	Not provided	Not provided	32 ft. 9 in. / 2 stories	Not requested
Lot Width D § 302.1	50 ft. min.	80 ft. <sup>2</sup>	<b>41 ft.</b>	<b>39 ft.</b>	<b>Variance, both lots</b>
Lot Area D § 302.1	5,000 sq. ft. min.	12,491 sq. ft.	7,323 sq. ft.	5,011.5 sq. ft.	None required
Lot Occupancy D § 304.1	40% max.	Not provided	Not provided	Not provided	Not requested
Rear Yard D § 306.1	25 ft. min.	Not provided	Not provided	Not provided	Not requested
Front Setback D § 305.1	Within range of existing front setbacks	Not provided	Not provided	Not provided	Not requested
Side Yard D § 206.2	8 ft. min.	Not provided	<b>East – Not provided West – 2.4 ft.</b>	East – 8 ft. West – 8 ft.	<b>Special Exception for Lot A</b>
Pervious Surface D § 308.1	50% min.	Not provided	Not provided	Not provided	Not requested
Parking C § 701	1 space/du min.	Not provided	Not provided	Not provided	Not requested
Accessory Bldg. Height D § 5002.1	20 ft. / 2 stories max.	Not provided	Not provided	Not provided	Not requested
Accessory Bldg. Rear Yard D § 5004.1	12 ft. from alley centerline	Not provided	Not provided	Not provided	Not requested
Maximum Bldg. Area D § 5006.1	Greater of 30% of req. rear yard or 450 sq. ft.	Not provided	Not provided	Not provided	Not requested

**IV. OP ANALYSIS**

**a. Area Variance Relief from Subtitle D § 302.1, Minimum Lot Dimensions**

The Applicant is proposing to subdivide an existing tax lot in the R-1-B zone that measures 80 feet in width and approximately 12,491 square feet in area into two non-conforming record lots – one for the existing detached residential building and accessory garage (Lot A) and one for a new detached building for single-household residential use and accessory building (Lot B).

**i. Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties to the Property Owner**

<sup>1</sup> Information provided by DCRA Referral, Exhibit 3, dated July 24, 2020.

<sup>2</sup> Exhibit 2, DC Surveyor’s Plat, dated October 8, 2020, lists the property width as 78 feet.

**a. Extraordinary or Exceptional Situation or Condition**

The Applicant has not demonstrated an exceptional condition that results in an exceptional practical difficulty. The existing tax lot being large is not an extraordinary or exceptional situation or condition of the subject property. Although there are four, and a portion of a fifth, record lots underlying the existing tax lot, this situation is found throughout Square 4194 with other large tax lots superimposed over underlying record lots. The Square has 13 record lots ranging in size from 4,536 square feet to 8,625 square feet; 19 tax lots ranging in size from 2,022 square feet to 13,783 square feet; and one parcel measuring 888 square feet in area.

The existing tax lot is conforming, satisfies the minimum lot width and lot area requirements for the R-1-B zone, and is currently improved with a detached building intended for single-household residential use.

**b. Exceptional Practical Difficulties**

As the Applicant has not demonstrated an extraordinary or exceptional situation or condition with the lot, no practical difficulty to development of this property has been shown. The subject property is currently improved with a detached building and accessory garage.

**ii. No Substantial Detriment to the Public Good**

A subdivision to allow the construction of a new detached building for single household residential use in the R-1-B zone would not typically result in a substantial detriment to the public good, and would provide an appropriate level of infill development. As such, this proposal would not likely have a significant impact on the public good, although the proposed subdivision creates new nonconformities for the existing building at 1915 Shepherd Street NE on proposed Lot A and would result in two record lots that are non-conforming for lot width.

**iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations**

The creation of two substandard lots that do not meet the minimum lot width requirements of the R-1-B zone and would result in the building on Lot A requiring side yard relief would not be consistent with the purpose and intent of the Zoning Regulations.

The regulations are intended to discourage the creation of new non-conforming lots, and to not create new nonconformities for existing buildings. The Subdivision Regulations at Subtitle C § 302.1 state, *“Where a lot is divided, the division shall be effected in a manner that will not violate the provision of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created...”*

**b. Special Exception Relief pursuant to Subtitle D Chapter 5201 for an Addition to a Building or Accessory Structure from Subtitle D § 206.2, Side Yard**

The Applicant is requesting relief from the side yard requirements in D § 206.2, which require an 8-foot side yard. The property currently provides a 41.4-foot side yard and the Applicant is proposing to subdivide the property, which would result in a 2.4-foot side yard for Lot A and conforming side yards for Lot B.

OP questions whether side yard relief for the existing building is available via the special exception provisions in Subtitle D, Chapter 5201 as the Applicant is not proposing an addition to the building on Lot A nor is the Applicant proposing a new building on Lot A. OP has not analyzed the

requested special exception relief because the Applicant has not met the variance test for the requested relief from the minimum lot dimensions, which directly results in the need for side yard relief.

**V. OTHER DISTRICT AGENCIES**

The District Department of Transportation (DDOT) filed a report at Exhibit 36 indicating that it did not object to the approval of the application.

**VI. ADVISORY NEIGHBORHOOD COMMISSION**

ANC 5B submitted petitions at Exhibits 40, 41, and 42 and a resolution in opposition at Exhibit 55.

**VII. COMMUNITY COMMENTS TO DATE**

Two letters in opposition were filed at Exhibits 39 and 56.

Attachment: Location Map

**Location Map:**



**1915 Shepherd Street NE**