

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Prehearing Statement of TMT Services, LLC
2340 Ainger Place, SE (Square 5740, Lot 349).

I. INTRODUCTION.

This Statement is submitted on behalf of TMT Services, LLC, the owner of the property located at 2340 Ainger Place, SE (Square 5740, Lot 349) (the “**Property**”). The Property is located in the RA-1 zone district and is currently improved with a detached single-family dwelling. The proposed project (the “**Project**”) consists of razing the existing building and constructing two new buildings, each on its own theoretical lot. Building A will have 13 units and Building B will have 8 units for a total of 21 new dwelling units. As a new multifamily residential development, the Project requires special exception approval pursuant to Section U-421.1 of the D.C. Zoning Regulations.

The Applicant is also requesting the following additional relief:

- Special Exception Approval pursuant to C-305 for the theoretical lot subdivision
- Variance relief from the 24-foot-wide driveway requirement of C-305.3(b)
- Special Exception Relief from the screening requirements pursuant to C-714.3

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception approval requested pursuant to Subtitle X-901, U-421, C-305.1, and C-714.3; and to grant the variance relief pursuant to X-1001.

III. BACKGROUND.

A. Description of the Property and Surrounding Area.

The Property is zoned RA-1 and is an interior lot with 29,044 square feet of land area. Abutting the Property to the southeast is 2348 Ainger Pl., SE, an apartment complex. Abutting the Property to the northwest is 2316 Ainger Pl., SE, an apartment complex. Abutting the Property to the northeast is 2501 25th St., SE, an apartment complex. Abutting the Property to the southwest is Ainger Place, SE.

The Property is located near priority Metrobus route 92, which stops at the intersection of Ainger Pl., SE, and Alabama Ave., SE, about 635 feet to the southeast. The closest recreation center—Fort Stanton Recreation Center—is only four-tenths of a mile away. The recreation center can also be accessed via the W2 and W3 bus routes which stop directly in front of the subject Property. A shopping center with amenities such as a Safeway grocery store, drugstore, bank, retail, and dining, is located approximately one-half mile to the northeast, accessed via Good Hope Road.

B. Description of the Proposed Project.

The Applicant proposes to raze the existing detached single-family dwelling and construct two new Buildings, each on its own theoretical lot. One of the buildings will have 13 townhouse style single-family dwelling units, (“**Building A**”) the other will have eight stacked flats (“**Building B**”) (collectively known as the “**Buildings**”), for a total of 21 new residential dwelling units. The development will be considered an apartment development.

When reviewing development standards for a theoretical lot subdivision, the Zoning Regulations require that each individual theoretical lot meet the setback requirements for the zone but that lot occupancy and FAR be calculated based on the entire lot area. The development is well under the permitted lot occupancy and FAR for the RA-1 Zone and meets the development standards as follows:

Development Standard	Requirement	Proposed-Total Lot	Proposed-Building A	Proposed Building B
FAR	1.08	0.81	NA	NA
Lot Occupancy	40%	32.65%	NA	NA
Height	40 ft., 3 stories	NA	20 ft. 6 in.	23 ft. 5 in.
Rear Yard	20 ft.	NA	20 ft. 9 in.	20 ft. 1 in.
Side Yard	Two, 8 ft.	NA	Two, 8 ft.+	Two, 8 ft.+
Parking	6 spaces	21 spaces	NA	NA

IV. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE X § 901.2, U § 421, C-305.1 AND C-714.3.

A. Overview.

Pursuant to Subtitle X-901.2 of the Zoning Regulations, 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; subject also, in this case, to the specific requirements for relief under Subtitle U-421, C-305.1, and C-714.3 of the Zoning Regulations

The RA-1 Zone provides for areas predominately developed with low to moderate density development, including multi-family residential buildings. The proposal is for a new multi-family development. Accordingly, the granting of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The area is made up of multi-family residential buildings. The proposed buildings and development conform to the development standards of the RA-1 Zone. Accordingly, the granting of the special exception will not tend to adversely affect the use of neighboring properties.

B. Specific Requirements of U § 421, C-305 and C-714.3.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

1. New Residential Developments- U-421

The Zoning Regulations require that all new residential developments in the RA-1 Zone, except those comprising all one-family detached and semi-detached dwellings, be reviewed by the Board of Zoning Adjustment as special exceptions under Subtitle X, in accordance with the standards and requirements in this section:

Section 421.2: The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendation as to the adequacy of the following:

(a) Existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and

It is expected that the Office of the State Superintendent of Education will not have an issue with the addition of residents from the development. According to DC Public Schools online Enrollment Boundary System Information, the following public schools are considered "in-boundary" schools for the Building: Stanton Elementary School, Kramer Middle School, and Anacostia High School. All DC public students eligible for grades K-12 have a guaranteed right to enroll in their respective in-boundary schools.

(b) Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.

It is expected that the relevant District of Columbia agencies shall find that the public streets, recreation, and other services in the area can accommodate the residents expected to reside in the project. The Property is located near priority Metrobus route 92, which stops at the

intersection of Ainger Pl., SE, and Alabama Ave., SE, about 635 feet to the southeast. The closest recreation center—Fort Stanton Recreation Center—is only four-tenths of a mile away. The recreation center can also be accessed via the W2 and W3 bus routes, which stop directly in front of the subject Property. A shopping center with amenities such as a Safeway grocery store, drugstore, bank, retail, and dining, is located approximately one-half mile to the northeast, accessed via Good Hope Road.

Section 421.3: The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects.

The Applicant has provided—or will provide as requested by the Office of Planning—sufficient information for the Office of Planning to comment and make recommendations on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects.

Section 421.4: In addition to other filing requirements, the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plan (existing and final), landscaping plan, and plans for all new rights-of-way and easements.

The Applicant has submitted a site plan and set of typical floor plans and elevations. The Applicant will provide a grading (existing and final), landscaping plan, and plans for all new rights of ways and easements.

C. Specific Requirements of C-305.

Subtitle C- 305.1 states that “in the R, RF, and RA zones, the Board of Zoning Adjustment may grant, through special exception, a waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot provided that, in addition to the general special exception criteria

of Subtitle X, Chapter 9, the requirements of this section are met.” The Applicant is seeking to have two primary buildings on a single record lot. The proposal meets the applicable requirements of Subtitle C, Section 305, as follows:

305.3: 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 side and rear yards of each proposed theoretical lot are consistent with the requirements of the RA-1 zone.

(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 Applicant is requesting variance relief from this requirement as more thoroughly discussed below in Section V.

(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 each building has been measured from the finished grade at the middle of the building façade facing 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 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.

305.4: For a theoretical subdivision application, the following information is required to be submitted to the Board of Zoning Adjustment, in addition to other filing requirements pursuant to Subtitle Y § 300:

- (a) Site plans including the following information:**
- (1) A plat of the record lots proposed for subdivision;**
 - (2) The location of proposed streets and designated fire apparatus roads;**

- (3) Location of proposed easements;
 - (4) Lot lines of proposed theoretical lots, and the delineation of the lot lines shared by theoretical lots that will serve as private drives or easements;
 - (5) Existing grading and proposed grading plans;
 - (6) Existing landscaping and proposed landscaping plans, including the sizes and locations of all trees on or adjacent to the property on public or private lands;
 - (7) Plans for the location of building footprints on theoretical lots; and
 - (8) Required yards (rear, side and front) based on the regulations applicable to a zone or any modifications to regulations provided through this section;
- (b) Typical or individual floor plans and elevations for the proposed buildings and structures; and
 - (c) A table of zoning information including required and proposed development standards.

The Applicant has provided the relevant information as required by C-305.4.

305.5: Before taking final action on an application under this section, the Board of Zoning Adjustment shall refer the application to the Office of Planning for coordination, review, and report, including:

- (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:
 - (1) Public safety relating to police and fire concerns including emergency vehicle access;
 - (2) The environment relating to water supply, water pollution, soil erosion, and solid waste management;
 - (3) Public education;
 - (4) Recreation;
 - (5) Parking, loading, and traffic;
 - (6) Urban design; and
 - (7) As appropriate, historic preservation and visual impacts on 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;
- (c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

(d) The impact of the proposed development on neighboring properties; and

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

The Applicant has provided—or will provide—sufficient information for the Office of Planning to review the above-referenced criteria.

305.6: 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.

The proposed project will comply with the substantive intent and purpose of the title and will not have an adverse effect on the present character or future development of the neighborhood.

C. Specific Requirements of C-714.3.

A strict reading of C-714.2(a) means that it would be required to place screening where the paved parking area meets the curb and sidewalks as “screening shall be provided around the entire perimeter of the surface parking area.” The surface parking area is defined as “The area of a lot, building, or structure devoted to parking spaces, attendant driveways, aisles, queuing lanes, and landscaping. All such areas on a lot shall be considered to constitute a single parking area, even if the areas are not contiguous.” As there are a number of areas with curbs adjacent to the parking area, it is not possible to provide the required screening; therefore, the Applicant is requesting special exception relief pursuant to C-714.3. The Board of Zoning Adjustment may grant, as a special exception, a modification or waiver of these screening requirements. In addition to the general requirements of Subtitle X, the Board of Zoning Adjustment may consider:

(a) Impacts on the pedestrian environment within adjacent streets, sidewalks, and other public areas;

The parking area is located at the side of the Subject Property and does not intersect with any public areas except at the driveway, which has a fence adjacent and only has a gap for a 20-

foot driveway in accordance with the screening requirements. The relief is for screening around the driveway and parking area on the Subject Property itself, not for screening adjacent to public areas. A strict enforcement of this rule would mean that the driveway and parking area would have to have a fence surrounding it-- that would impede egress by increasing the distance between residents' parking spaces and their respective homes. It creates a dangerous situation where the residents would have to walk much further through a parking area to go around a fence through an opening to get to their respective front doors. It would create the most direct path to each respective residential entrance.

(b) Existing vegetation, buildings or protective and screening walls located on adjacent property;

The Applicant will have a fence between the parking area and the adjacent property to the east/southeast.

(c) Existing topographic conditions;

Does not apply.

(d) Traffic conditions; and

The parking area is surrounded by sidewalks and islands which are separated from the parking area by a curb up to the sidewalks and island as clearly shown in the plans. As there are a number of areas with curbs, it is impossible to provide the required screening between the curb area/sidewalk and still have room for people to walk. And the screening cannot go in front of the curb or else it would impact the vehicular egress.

(e) In granting a modification or waiver, the Board of Zoning Adjustment may require any special treatment of the premises that it deems necessary to prevent adverse impacts on neighboring properties or the general public.

The Applicant will comply with special treatment if the Board deems it necessary.

V. THE APPLICATION SATISFIES THE REQUIREMENTS FOR VARIANCE RELIEF

The Applicant is seeking an area variance from the theoretical street width requirements of C-305.3(b).

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) resulting in practical difficulty in complying with a strict application of the Zoning Regulations; and (3) no harm to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested area variance.

A. The Property is Subject to an Exceptional Condition which would Lead to Practical Difficulties if the Regulations were Strictly Enforced.

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.25 1091, 1096 (D.C. 1979). A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id.* at 1098. Furthermore, the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the property. Rather, it may arise from a "confluence of factors."

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that "[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.” In area variances, 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.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (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 1711. 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.”

Subtitle C-305.3(b) requires that all new driveways must be at least 24 feet in width. DDOT requires a 14-foot-wide entrance, and the Applicant is already providing a 20-foot-wide driveway. Widening the driveway any more would reduce the transition and walkway path to a two-foot zone that is not usable and will not allow for circulation between units and the neighborhood without walking in the drive isle. This results in significant safety issues for pedestrian egress and ingress. The Applicant cannot further reduce the depth of the buildings or side yard without compromising living space or requiring relief. The 20-foot-wide driveway is appropriate for the development and complies with the drive aisle requirements of C-711.6.

B. Relief Can be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the zone plan as embodied in the Zoning Regulations and Map.

The project overall meets the intent and purpose of the RA-1 zone. Instead of providing 40+ units in a typical 3 story apartment complex, the Applicant is actually under the FAR and lot occupancy for the zone and is providing townhome style units, three of which will be IZ units.

The requested relief will not impact adjacent neighbors as it relates only to the subject property, and other buildings have driveways of similar width.

The request for relief from the driveway width will not impact the intent, purpose, and integrity of the zone plan. It appears that the goal of the 24-foot driveway requirement is to ensure that any new easements created are as wide as a new street would be required to be, per DDOT regulations. In this case, the driveway will only be 4 feet shy, at 20 feet, and is sufficient to permit two-way traffic. If this were not a theoretical lot subdivision, the driveway would otherwise meet the width requirements of Subtitle C, Chapter 7.

VI. CONCLUSION.

For the reasons stated above, this Application meets the requirements for special exception and variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

Alexandra Wilson

Alexandra Wilson
Sullivan & Barros, LLP
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