

DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Applicant’s Statement of 400 Seward Square LLC

400 Seward Square, SE (Square 0819, Lot 28).

I. INTRODUCTION.

This Statement is submitted on behalf of 400 Seward Square LLC (the “**Applicant**”), owner of the property and improvements located at 400 Seward Square, SE (Square 0819, Lot 28) (the “**Subject Property**”). The Subject Property, located in the RF-3 zone district, is improved with an existing, purpose-built apartment building (the “**Building**”) with a certificate of occupancy for fourteen (14) residential units. The Building currently has fifteen (15) residential units. The Applicant is also proposing to add two (2) additional residential units in existing space on the cellar level of the Building (the “**Subject Space**”).

Pursuant to 11-E DCMR § 201.7, “an apartment house in an RF-1, RF-2, or RF-3 zone, whether existing before May 12, 1958, or converted pursuant to the 1958 Regulations, or pursuant to Subtitle U §§ 301.2 or 320.2, may not be renovated or expanded so as to increase the number of dwelling units unless there are nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new.” The Subject Property has 3,445 square feet of land area and cannot add residential units as a matter-of-right. The Applicant is therefore requesting area variance relief from E § 201.7, in order to permit two (2) additional residential dwelling units in the cellar level of the Building and make the existing fifteenth (15th) unit a legal unit, for a total of seventeen (17) residential units.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X § 1000.1 from the use requirements of Subtitle E § 201.7.

III. BACKGROUND.

A. Description of the Subject Property and Surrounding Area.

The Subject Property is located in the RF-3 Zone District and in the Capitol Hill Historic District. It is a corner lot measuring 3,445 square feet. The Subject Property is improved with a four-story, purpose-built residential apartment Building. Abutting the Subject Property to the north is a condo building. Abutting the Subject Property to the south is Seward Square, SE. Abutting the Subject Property to the west is 4th Street, SE. Abutting the Subject Property to the east is a single-family dwelling. The area is characterized by a mixture of large condo and apartment buildings, flats, and single-family dwellings.

B. Proposed Project and Requested Relief.

The Subject Property is improved with a purpose-built residential apartment Building which was constructed in 1905. The Building currently has fifteen (15) residential units, although the Certificate of Occupancy ("C of O") is only for fourteen (14) residential units. The cellar level currently houses three (3) residential units, an electrical room, and a large storage area measuring approximately 1,050 square feet. The Applicant is proposing to convert the storage space into two (2) new residential units, renovate and relocate the bathroom of one of the existing cellar units, and create a corridor leading to all units with the remaining space. The Applicant is also proposing to make an existing fifteenth (15th) unit legal, as the C of O is only for fourteen (14) units.

Pursuant to E § 201.7, an apartment house may not be renovated or expanded to increase the number of dwelling units unless there is nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new units. The Subject Property has 3,445 square feet and is not permitted to add any residential units as a matter-of-right. Accordingly, the Applicant is requesting variance relief from E § 201.7.

IV. THE APPLICATION SATISFIES THE VARIANCE REQUIREMENTS OF SUBTITLE X § 1002.

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) practical difficulty from strict application of the Zoning Regulations; and (3) no substantial detriment to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

An Applicant for area variance relief must demonstrate that, as a result of the exceptional situation or condition of the Property, it will encounter practical difficulties in strictly complying with the Zoning Regulations. See *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 a practical difficulty when compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

As described herein, the three prongs of the area variance test are met by this Application.

A. The Property is Uniquely Affected by an Exceptional Situation/Condition.

The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that “...property generally includes the permanent structures existing on the land.” *Id.* at 293–94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (i.e., the building or structure) and not just the land itself.

The Subject Property is unique because it is improved with a purpose-built apartment Building which was constructed in 1905 and became legally nonconforming upon the adoption of the 1958 Zoning Regulations. The Building contains a significant amount of now-idle space on the cellar level, adjacent to existing units on that level. The current storage space has not been used by the residents for some time and that space will continue to be vacant without the requested relief. The residents already have in-unit laundry and adequate storage space in each unit.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner.

Generally, to warrant granting area variance, it must be shown that strict compliance with area restrictions would be unnecessarily burdensome. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

A strict application of the Zoning Regulations would be unnecessarily burdensome to the Applicant and result in a practical difficulty. According to *Palmer*, the purpose of variance relief is to prevent otherwise usable land from remaining idle, which is exactly what would happen if the Zoning Regulations were strictly applied, as the Subject Space would remain unoccupied and the Applicant would be unable to dedicate the Subject Space to any meaningful use. The existing units have storage space and in-unit laundry facilities; accordingly, the Subject Space could not be used for additional amenities or storage.

Leaving this space idle does not merely waste already-existing space but also presents maintenance and security issues, as the Subject Space may be a potential attractive nuisance as it is

located on the lowest level of a corner lot and has high visibility. The Applicant has also investigated the possibility of enlarging existing units adjacent to the Subject Space, by adding that space to existing units. This option presents a practical difficulty for a number of reasons. Unit B2 is separated from the Subject Space by a load-bearing wall and Units B1 and B3 are separated from the Subject Space by the Building's stairwell. To relocate a load-bearing wall or stairwell would be extremely difficult, costly, and disruptive to the existing tenants. Even if this were feasible from a financial or construction standpoint, the Applicant would be left with overly large units in the cellar level. Regarding the existing fifteenth unit, if relief were not granted, the Applicant would have to eliminate an existing unit in which someone is living.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

Granting an area variance from 11-E DCMR § 201.7 would result in no substantial detriment to the public good. The Applicant is proposing to make an existing unit legal and convert idle space in a purpose-built apartment building into two (2) residential units. The Applicant is proposing residential use in the space—a use permitted in the RF-3 Zone.

Granting variance relief would not result in substantial impairment to the intent, purpose and integrity of the Zone Plan. Area variance relief from the nine-hundred-foot (900 ft.) rule as it relates to purpose-built apartment buildings was specifically enumerated in the 2016 Zoning Regulations to allow apartment buildings to expand, so long as the request meets the variance test. The relief requested is minimal—only two (2) additional units—and the Subject Property is impacted by a unique situation in that the ground floor space will be vacant and cannot be put to any use as a matter-of-right without creating a practical difficulty for the Applicant.

V. Case Law.

The Board has approved similar requests for relief in Case No. 19625, Case No. 19570, and Case No. 19196.

A. Case No. 19625

In Case No. 19625 of 61 Rhode Island Avenue NE, LLC, the applicant requested area variance relief from the 900-foot rule in order to add two (2) units to an existing twenty-one (21)-unit apartment house in the RF-1 Zone at 61 Rhode Island Avenue, NE. The applicant had a vacant space in the lower level of the existing apartment building which was most recently used for commercial purposes. As the nonconformity was discontinued for over three years, commercial use was no longer permitted and the ground-floor space remained vacant. The applicant was proposing to convert the space into two (2) residential units.

The Office of Planning recommended approval, finding that the building could not meet the 900 square foot requirement except through a major reconfiguration of the building and a loss of many residential units. The Office of Planning found that other complementary uses such as laundry or storage was not appropriate because the units were on average 816 square feet and laundry facilities were provided on site. The expansion of the existing ground floor units into the space was impractical as it would be disruptive, existing tenants would have to be relocated, and it would result in odd-shaped inefficient units. The Board agreed with the Office of Planning's assessment and granted area variance relief.

The Applicant is faced with a similar situation in that there is a vacant ground floor space adjacent to other units which cannot be combined with the units above or the adjacent units without significant disruption to the existing tenants.

B. Case No. 19570

In Case No. 19570 of GWC 220 Residential LLC, the applicant requested area variance relief from the 900-foot rule to construct an additional apartment unit in an existing twelve (12)-unit apartment house in the RF-3 Zone at 220 2nd Street, SE.

The Office of Planning recommended approval, finding that the internal layout was such that the basement could not practically be incorporated into the ground floor units. Further, expansion of the ground floor units into the basement would require extensive alterations, including additional stairways. Leaving the space vacant could create nuisances that would pose safety and security risks to tenants. The Board agreed with the Office of Planning's assessment and granted area variance relief.

The Applicant is again faced with a similar situation in that it cannot practically combine the Subject Space with the units above or adjacent units and leaving the ground floor space vacant could create nuisances that would pose safety and security risks to tenants.

C. Case No. 19436

In BZA Case No. 19436 of CCA Randolph L.P. and Petworth Station LP, the applicant requested area variance relief from the 900-foot rule in order to add thirteen (13) residential apartment units to a purpose-built apartment located at 930-960 Randolph Street, NW. The Office of Planning report recommended approval, finding that the existing configuration had areas designed as common space in excess of what was necessary to perform the function of an apartment building. The Board agreed with the Office of Planning's assessment and granted area variance relief for the addition of thirteen (13) residential units.

The Applicant in the present case is faced with a similar situation in that the existing storage space is in excess of what is necessary for an apartment building. In Case No. 19436, the applicant

requested relief in order to add thirteen (13) units, whereas the Applicant in this case is only requesting to add two (2) residential units and to make an existing unit legal.

D. Case No. 19196

In Case No. 19196 of 1247 ESE, LLC, the applicant requested relief from the 900 square foot rule in order to convert a lower-level storage space into a residential unit in the RF-1 Zone at 1247 E Street, SE. The applicant was proposing to convert an unused storage space into one residential unit for a total of five (5) units. The property was originally constructed in the 1890's as a mixed-use building with commercial use on the first floor and residential use on a portion of the first floor and upper floors. The building also had a large cellar space used for storage by the commercial use. The applicant previously received relief to operate a restaurant in the first floor with storage in the cellar space.

The applicant argued, and the Office of Planning agreed, that a restaurant would not require such a large amount of storage space (1,934 square feet) in the cellar and, even with the accommodation of storage for existing residential uses (219 square feet), and the partitioning of a portion of the space for restaurant storage (1,024 square feet) a large space would remain underutilized. The Office of Planning reasoned that even though the conversion would not conform to the 900-square foot requirement, "there is no other reasonable use for the space and retaining it as a vacant space presents a practical difficulty to the owner."

Similarly, the Applicant in the present case has no reasonable use for the space and retaining it as a vacant space presents practical difficulties as described herein. The Applicant's case is even stronger in that no portion of the space can be used for any reasonable purpose, whereas at least a portion of the existing space in 19196 could be used for some commercial storage.

VI. Conclusion.

For the above reasons, the Application meets the three-prong test for variance relief.

Respectfully Submitted

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