



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

Application of LENJESWIL LLC

APPLICANT'S PRE-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 variance 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 10, § 1000.1 for area variance from the provisions of Subtitle D, Chapter 3, §302.1 to permit the reconfiguration subdivision of the subject property which will not comply with the minimum lot width provisions and ostensible create new side yard not in compliance with the minimum prescribed under Subtitle D Chapter 2, § 206.2.

As set forth under Subtitle X, Chapter 10, §1001.3 (a), applicant requests area variance relief in order to permit the reconfiguration subdivision of the existing subject property four record lots into two record lots.

SUMMARY OF APPLICATION

The applicant seeks area variance relief pursuant to 11 DCMR Subtitle X, Chapter 10, more specifically from the provisions set forth under §302.1 and §206.2 respectively to permit the reconfiguration of property which for zoning purposes comprise of three (3) record lots and a sliver of an unidentifiable lot into two record lots, which result in a vacant lot upon which a fully compliant new single-family detached structure is proposed and a newly reconfigured lot upon which the existing improvements are isolated.

Although the subject property is described for tax assessment purposes as tax lot 0841, the subject property comprises four record lots – lot numbers 9, 10 and 11 – and portion of what was lot 8 in the block survey records as existed as of January 28, 1907 (see attached DC Surveyor's records)

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested special exception and variance 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 10, § 1000.1.

As set forth under § 1000.1, the Board is authorized to grant variances where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exist exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;

2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and practical difficulties to the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

In accordance with the provision set forth under Subtitle X, Chapter 10, §1002.1 (a), “an applicant for area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of the Zoning Regulations would result in exceptional and peculiar practical difficulties to the owner of the property”

PROPERTY LOCATION AND PROPOSED SUBDIVISION DESCRIPTION

The subject property is located in the Michigan Park neighborhood at 1915 Shepherd Street, NE in Washington, DC. The property is located in Square 4194, and comprises three valid record lots and a portion of what was previously record lot 8, notwithstanding that the subject property is also known for purposes property tax assessment as tax lot number 0841. Tax lot number 0814 is not recorded in the DC Surveyor’s records

There is a two-story, plus cellar, detached single family house and garage located on the property. Each record lot is twenty-five feet wide, and as shown in graphic representation, labelled “Site Plan of Baist’s Map Record Lots” the existing record lots staddle portions of the main building and the existing accessory building

The property is in the R-1-B zone district. Whereas tax lot number 0841 is 12,491sf, applicant notes that the Plat of Computation which created this tax lot was effected after May 12, 1958 and that the tax subdivision ceded a portion of the combined lot area of

record lots 9, 10 and 11 to the adjacent lot West of the subject property – that is record lots 39 and 40, also now known as tax lot number 0836

The property was initially made up of 4 separate lots, record lots 9, 10, 11 and one unidentified lot, but a five-foot (5 ft.) sliver of former record lot 8.

The existing house was located on record lots 9 and 10, while the existing garage on record lots 10 and 11. The owner is proposing to create 2 lots out of the 4 original lots.

Lot A is proposed by deliberate reconfiguration to isolate the existing main building and its accessory garage on a separate lot of record, which at 7,323 square feet (ft²) complies with the minimum lot area required for the R-1-B zone district, but at 48.8 feet in average lot width, fall short of the minimum 50 feet prescribed (see average width of lot diagram). The location of the proposed side lot line results in a nonconforming side yard of but as graphically represented and as applicant will testify, the side yard setback varies from 2.40 feet to 7.45 feet.

Lot B is rectangular in shape and complies with the minimum lot area minimum requirement for the underlying R-1-B at 5,011 square feet (ft²). The noncompliant width of lot of 39 feet is unavoidable due to the necessity of the irregular shape of lot A, which in itself is driven by the necessity to isolate the existing main building and accessory garage on its separate lot of record.

A new two-story, plus cellar, detached single family home with detached garage and home office above is proposed for Lot B. The proposed building complies with all applicable development provisions prescribed for its underlying zone district of location.

SUBDIVISION HISTORY OF LOTS WITHIN SQUARE 4194 FACING SHEPHERD STREET

As of May 28, 1907, the block of reference consisting of all lots facing Shepherd Street starting from the abutting public alley to the North comprised eleven (11) lots (lot numbers 1 through 11) of which seven (7) lots (lots 4 through 11) were twenty-five feet (25 ft.) wide while lots 2 and 3 were twenty feet (20 ft.) and lot 1 twenty-one feet plus respectively (see DC Surveyor's Plat of record)

When this survey is compared to the Baist's Map for this same block, which froze in time the existing boundaries of these same lots as of May 12, 1958, it is without dispute that all other lots had undertaken some form of recordation as tax lots and reconfiguration which increased lot width from the twenty-five feet (25 ft.) for each lot of record to forty feet (40 ft.) or greater.

Hence, record lots 7 and 8 had metamorphosed into tax lot 0822, having ceded approximately five feet (5 ft.) of a sliver of lot width to what is now tax lot 0841; parts of record lots 6 and 5 had become tax lot 0823; portions of record lots 5 and 4 had become tax lot 0813, and record lots 3 and 4 to tax lot 0813; and parts of 3 and 2, tax lot 0815.

Save for record lot number one which metamorphosed into tax lot 0816, which reduced the existing lot width, all the tax lot reconfiguration had in common, the increase of subsisting lot width from 25 feet to 40 and 45 feet.

The only existing record lots which uniquely did not undertake the foregoing tax lot reconfiguration are the record lots (lots 9, 10 and 11) associated with the subject property of application.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

Applicant seeks area variance relief to reconfigure three record lots (9, 10 and 11) and what was previously part of record lot number 8 now known in part as Assessment & Tax (A&T) lot 0841 into two lots of records; one to accommodate the existing principal building and an accessory structure, and the other to accommodate the construction of a new single-family detached dwelling.

As more specifically outlined below in this Pre-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 for the grant of the requested relief as follows

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY/UNIQUE PHYSICAL CHARACTERISTIC OF SHAPE OR SIZE

Applicant contends that the subject property demonstrates an extraordinary or exceptional situation or condition of property by virtue of its “subdivision” or Plat of Computation history unique to it within its block of existence in its Square of location.

For purposes of the Zoning Regulations and as attested by District of Columbia Corporation Counsel opinion (see attached) the subject property still exists in respective per-1958 record lot (lots 9, 10 and 11; including the 5 feet sliver of former lot 8) configurations, more so that the current tax lot – tax lot 0841 – did not exist as of May 12, 1958 and was not established until after May 12, 1958.

As aforementioned, each record lot is twenty-five feet (25 ft.) in width and the following in lot area respectively:

Lot # 9 = 4,263 ft²

Lot # 10 = 4,307 ft²

Lot # 11 = 4351 ft²

Part of Former record lot # 8 = 851.64 ft²

Total = 13,772.64 ft²

Applicant will provide evidence to the record to the effect that not only was tax lot 0841 established through a Plat of Computation which is expressly an instrument of the Tax Assessor for its own purpose after May 12, 1958, but also that the Plat of Computation ceded approximately, 1,281.64 square feet (ft²) of the combined lot area of the record lots to arrive approximately at 12,491 square feet (ft²)

The Zoning Regulations distinguishes tax lots in existence prior to its May 12, 1958 adoption date from those subsequently established after. Whereas a tax lot in existence prior to May 12, 1958 enjoys grandfather protection of specified nonconformities of minimum lot dimensions, use and structure, not so a tax lot established or created after that date.

Whereas the other record lots underwent reconfiguration before May 12, 1958, albeit by way of tax lots, the subject property include those record lots which uniquely did not undertake the same process, resulting in the anomaly of lot widths (25 ft. each) and the largest lot area combined in its Square of location, by a wide margin.

Applicant contends that the subject property demonstrates an extraordinary or exceptional situation or condition of property by virtue of the history of the “subdivision” and/or Plat of Computation establishing the tax lot resulting in an unusually large minimum lot dimensions combined, relative to the average property size for all other lots within its Square of location

PECULIAR AND PRACTICAL DIFFICULTIES TO THE OWNER OF PROPERTY

The applicant contends that the extraordinary and exceptional situation or condition of property described above result the peculiar lot configuration anomaly compared to

neighboring lots and is foreclosed, without the granting of the reliefs sought, from availing itself lot reconfiguration consistent with the prevailing conditions within its Square of location.

SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE PLAN

That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map for the following reasons:

- The proposed subdivision is in fact a reconfiguration of the boundaries of four record lots which are substandard but will result in lot configuration consistent with the average width and area of lots within its Square or location
- The proposed lots comply with the minimum lot area requirement for its R-1-B zone district of location
- The proposed subdivision eliminates lot lines which straddle existing structures
- The proposed subdivision results in an additional single-family detached dwelling
- That portion of side yard closest the new subdivided side lot line (2.4 ft. versus 7.45 ft.) is only 38% of the depth of the side yard and as will be graphically represented, is wholly an open porch part of the existing building.
- The distance between the two adjoining walls (that is 62%) of the depth of the existing building and the wall of the new building is approximately 15.45 feet apart; ample distance for light and air in compliance with all applicable municipal regulations

For all the foregoing reasons, the applicant respectfully requests that the requested relief be granted.

Witnesses

1. Mercedes Bien (Owner/Applicant)
2. Greg Kearley (Design Architect)