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Form BZ-SV, page 4 of 8
Applicant's signature



Date 8/1/2019

STATEMENT OF PRACTICAL DIFFICULTY

revised Submittal

To obtain a variance, an applicant must show by a preponderance of the evidence, to the satisfaction of the Board of Zoning Appeals (BZA), that strictly adhering to the Zoning Code's standards would result in a "practical difficulty" for the applicant. To this end, a written statement of practical difficulty must accompany an application for a standard variance. Please complete this Statement of Practical Difficulty, **by addressing all of the factors listed below that are relevant to your situation.** Additional documents may be submitted as further proof.

In deciding whether to grant a variance, BZA will consider the following factors in determining whether a practical difficulty exists:

- A. Explain special conditions or circumstances that exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same Zoning District. (examples of this are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions):

The site is a triangle shaped property. The street curves slightly as it passes the property. An existing 3 story apartment building occupies part of the site. To the north is another 3 story apartment building of comparable size. To the south is a driveway, a strip of green space and then garages and back yards. Across the street is a body shop's parking lot.

- B. Explain how the property in question would not yield a reasonable return or there could not be any beneficial use of the property without the variance.

Without the set back and spacing variances the property is not buildable. There would be too little land outside the set back and spacing requirement in which to construct an apartment building. Similarly, without the density variance only three additional units could be constructed which would not make the project financially viable. The developer plans to take advantage of the CRA program which involves building a "green" building. The cost to build the building must be spread.

- C. Explain whether the variance is insubstantial:

The variances are not substantial. The distance between the buildings is in line with the distance between many of the existing residences in the city. In addition, the distance between the buildings increases from west to east. The proposed front yard set back would serve to keep the buildings on Middlehurst aligned. As a result there will be no visible difference in the set backs of the three apartments on Middlehurst and the street will have a uniformed set back for its buildings. In regard to the density variance, the variance is not substantial. The code permits 22 units upon the property and the variance will allow for 27 units. The existing building on the site has 19 units. The existing building to the north of the site is of similar size and has a similar number of units. Consequently, granting the density variance will not be substantial as the new building will still have far fewer units than the neighboring buildings.

- D. Explain whether the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a substantial detriment as a result of the variance.

The character of the street would be maintained by the granting of the variances and no detriment will result to adjoining properties. The adjoining properties are three story apartment buildings. The addition of an eight suite two story apartment building will maintain the density and mass of the buildings on the west side of Middlehurst Road. The neighboring property to the north is a 19

- E. Explain whether the variance would adversely affect the delivery of governmental service (e.g., water, sewer, garbage).

The variance will have no adverse affect on the delivery of government services. The addition of 5 suites will have an insignificant impact on the water and sewer systems. Garbage is not collected by the City for apartments.

- F. Did the applicant purchase the property without knowledge of the zoning restriction?

The property was purchase for the purpose of operating the existing 19 unit building. The density requirement, spacing and set back for the vacant land were not a consideration at the time.

- G. Explain whether the special conditions or circumstances (listed in response to question A above) were a result of actions of the owner.

The special conditions are not the result of the actions of the land's owner.

- H. Demonstrate whether the applicant's predicament feasibly can be resolved through a method other than a variance (e.g., a zone-conforming but unworkable example).

There is no other method to resolve the issue. Strict application of the zoning code will deprive the owner of the ability to develop the vacant land. In addition, it is not feasible to construct a building compliant with the density restrictions. Building a three family house will cause the need for other variances. If a single story three suite building were constructed, the height differences between the structures on the property would be significant. This would lead to the need for spacing and set

- I. Explain whether the spirit and intent behind the zoning requirement would be observed and/or substantial justice done by granting the variance.

The spirit and intent of the zoning code would be maintained if the variances are granted. The intent of the zoning code is to protect the health, safety and welfare of the residents, none of which will be adversely affected by the addition of five additional apartments. In addition, the City's two apartment districts MF-2 and MF-3 have vastly different densities and there is no provision for any development between the densities allowed under each district without a variance. Under the

- J. Explain whether the granting of the variance requested will or will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

In the case of the Top of the Hill development the zoning code was essentially amended to create a new district to allow for a higher density development of apartments and commercial uses than what the code would have allowed. The existing neighborhood consists of apartments not unlike those found on Middlehurst Road. The zoning for the site was amended to allow significantly larger buildings and density of units than what is currently in the area. The zoning change was granted.

If you have questions, please contact the Planning Department at 216-291-4878 or planning@clvhts.com.

The factors listed above can be found in Subsection 1115.07(e)(1) of the Cleveland Heights Zoning Code.

Supplement to Standard Variance Application Form

B. Without the set back and spacing variances the property is not buildable. There would be too little land outside the set back and spacing requirement in which to construct an apartment building. Similarly, without the density variance only three additional units could be constructed which would not make the project financially viable. The developer plans to take advantage of the CRA program which involves building a "green" building. The cost to build the building must be spread over more apartments than 3. Strict adherence to the zoning code would provide for the construction of a three family dwelling unit. A three family house would be out of character for the strip of apartment buildings on the west side of Middlehurst and not a beneficial use of the property. Furthermore, a three family home would be less marketable to prospective occupants than apartments that would be comparable in quality to the new construction in University Circle and anticipated at the Top of the Hill.

D. The character of the street would be maintained by the granting of the variances and no detriment will result to adjoining properties. The adjoining properties are three story apartment buildings. The addition of an eight suite two story apartment building will maintain the density and mass of the buildings on the west side of Middlehurst Road. The neighboring property to the north is the 19 suite apartment building. To the south of the new building will be a driveway that is adjacent to the garages and rear yards of the properties on Hampshire Road. There is a strip of green space between those properties and the driveway which will be maintained. Consequently there will no impact to those properties. In addition, across the street is a parking lot for a body shop and auto dealership. No detriment will result to the land across the street. The houses across Middlehurst and to the south of the site will also not be affected by the new building.

H. There is no other method to resolve the issue. Strict application of the zoning code will deprive the owner of the ability to develop the vacant land. In addition, it is not feasible to construct a building compliant with the density restrictions. Building a three family house will cause the need for other variances. If a single story three suite building were constructed, the height differences between the structures on the property would be significant. This would lead to the need for spacing and set back variances. Also, the construction of a small three family home is out of character with the neighboring building.

I. The spirit and intent of the zoning code would be maintained if the variances are granted. The intent of the zoning code is to protect the health, safety and welfare of the residents, none of which will be adversely affected by the addition of five additional apartments. In addition, the City's two apartment districts MF-2 and MF-3 have vastly different densities and there is no provision for any development between the densities allowed under each district without a variance. Under the MF-3 zoning the subject site would be entitled to have a total of 52 units which means the addition of 33 units. Under MF-2, the site only supports an additional 3 units under the code. Yet there is no significant difference in the height or massing of most of the apartments that exist in MF-2 verses MF-3. Granting the variance will not be contrary to the purpose and intent of the zoning code. The variance will allow for a building to be constructed that is in character with the other apartment buildings on Middlehurst Road. The building will have substantially far fewer units than that neighboring apartment but still maintain a consistency among the properties on the street. Further, it will serve as a transition to the single family residences to the south of the property.

J. In the case of the Top of the Hill development the zoning code was essentially amended to create a new district to allow for a higher density development of apartments and commercial uses than what the code would have allowed. The existing neighborhood consists of apartments not unlike those found on Middlehurst Road. The zoning for the site was amended to allow significantly larger buildings and density of units than what is currently in the area. The zoning change was granted because the city found that the additional units would not be adverse to the neighboring properties. The buildings are proposed on vacant lots that adjoin existing multifamily and commercial structures. Similarly, the proposed structure on Middlehurst will fill in a long vacant lot adjacent to an apartment building. The variances being requested in this matter are only a minor variation from what the code currently allows and will allow for a building to be built in character with the neighboring properties. There will be no special privilege conferred.

**Board's Notes From Preliminary Review Of The
Architectural Board of Review**

CLEVELAND HEIGHTS
ARCHITECTURAL BOARD OF REVIEW

- PRELIMINARY REVIEW
- APPROVED
- APPROVED AS NOTED
- NOT APPROVED/RESUBMIT

DATE: 6-18-2019

SIGNED _____ CHAIR

- Development of rendering is heading in right direction
- Study detail around recess at porches
- Study larger dormers
- Like direction of mountings in windows - look at width of windows in front / shutters

variances required

ZONING APPROVAL

BY: _____

CLEVELAND HEIGHTS
ARCHITECTURAL BOARD OF REVIEW

PRELIMINARY REVIEW

APPROVED

APPROVED AS NOTED

NOT APPROVED-RESUBMIT

DATE 6-19-2019

SIGNED _____

[Signature]
CHAIR

Develop further based on renderings
show detail at recessed porch
Larger dormer as shown in rendering
muntins in windows per rendering
Larger front windows

ZONING APPROVAL

BY: _____ VARIANCES REQUIRED

Topographical Survey

Computer Generated Renderings







Pictures of Existing Buildings On Street







