

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 1919 14th Street, LLC, on behalf of 14th Street Properties, the owner of property located at 1905 - 1917 14th Street, N.W. (Square 237, Lots 179, 194, and 195) (the "Site"), in support of its application pursuant to 11 DCMR, Section 3103.2 and Section 3104.1, for a variance from the court requirements of Section 776.3; a variance from the off-street parking requirements of Section 2101.1; a variance from the compact space requirements of Section 2115.2; a variance from the off-street loading requirements of Section 2201.1; a special exception from the roof structure requirements pursuant to Section 411.11; and a special exception from the roof structure height limitation of Section 1902.1(a) to allow the construction of a new residential building with ground floor retail and service uses in the ARTS/C-3-A District at the Site.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site

The Site is located at 1905 - 1917 14th Street, N.W. and includes Lots 179, 194, and 195 in Square 237. Square 237 is located in the northwest quadrant of the District and is bounded on the north by U Street, on the east by 13th Street, on the south by T Street, and on the west by 14th Street. Wallach Place runs east-west and bisects the square. The Site is generally rectangular in shape, with approximately 15,390 square feet of land area. The Site is located within the

ARTS/C-3-A District and the 14th Street Historic District, and is currently improved with a one-story building that includes retail uses.

III. Description of Proposal and Zoning Relief

As shown on the plans included with the application, the Applicant proposes to demolish the existing structure on the Site and to construct a new residential building with ground floor retail and service uses. The project will include a total of approximately 78,253 square feet of gross floor area, which will be comprised of 144 residential units and 6,147 square feet of new retail and service space. The project also includes 34 off-street parking spaces, with 8 surface spaces and 26 spaces located in a below-grade parking garage. The project has been reviewed by the staff of the State Historic Preservation Office ("HPO"), and the Applicant is continuing to work with HPO to refine certain elements of the building's design.

The proposed uses are consistent with the Site's ARTS/C-3-A zoning designation. However, due to a number of site and design constraints, the Applicant is seeking the following areas of relief from the Zoning Regulations:

1. a variance from the court requirements of Section 776.3;
2. a variance from the off-street parking requirements of Section 2101.1;
3. a variance from the compact parking space requirements of Section 2115.2;
4. a variance from the off-street loading requirements of Section 2201.1;
5. a special exception from the roof structure requirements pursuant to Section 411.11; and
6. a special exception from the roof structure height limitation of Section 1902.1(a).

IV. **Burden of Proof for Area Variances**

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting Roumel v. District of Columbia Board of Zoning Adjustment, 417 A.2d 405, 408 (D.C. 1980)); see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

A. **The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.**

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2nd 1164, 1168 (D.C. 1990).

In this case, the Site is uniquely affected by the combination of the existing improvements on the Site, the zoning history of and prior approvals for the Site, and the Site's location on a prominent corner bounded by two major streets and a public alley. The combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the Site. Prior to construction of the existing building on the Site, and pursuant to Order No. 11070, dated June 6, 1972, the Board granted approval for use of Lot 179 as a parking lot servicing a public hall that was located at 1907 - 1909 14th Street. The Site was zoned C-M-2 at that time. However, pursuant to Zoning Commission Order No. 632, dated November 13, 1989, the Site was rezoned to the ARTS/C-3-A. The existing building on the Site was constructed in the 1980's, prior to the establishment of many of the District's planning objectives and requirements regarding the development of the 14th Street corridor.

Although the existing building on the Site is non-contributing to the 14th Street Historic District, a portion of the Site is bound by a historic structure to the northeast on Wallach Place and to the south on 14th Street. Moreover, the Site is one of the largest properties within the square, but is substantially underdeveloped compared to other lots within the square. In addition, the Site is bounded on two sides by public streets and on the third by a public alley, which impacts access to the Site and the configuration of the proposed development on the Site.

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

(a) Court Requirements of Section 776.5.

The strict application of the court regulations will result in a practical difficulty. Although not required for zoning purposes, there is an open court measuring 5' 10" along the southern property line at the 7th floor of the proposed new construction. Each of the proposed

courts and setbacks included on the plans have been provided in direct response to comments from neighbors and HPO. Section 776.3 of the Zoning Regulations provides that where a court is provided for a residential building in the C-3-A District, the court must have a minimum width of at least 4 inches per foot of building height, but not less than 15 feet. Thus, in order to comply with the court regulations, the court would need to be set back an additional 9' 2" at the 7th floor level. The court as designed has been provided to pull the building's mass back slightly along the southern property line at the 7th floor, while at the same time providing a reasonable interior configuration for use of this level. However, strict compliance with the court setback requirement would cause the elimination of a significant portion of the building along the southern property line at the 7th floor, and due to the configuration of the project, this space cannot be relocated elsewhere in the building. Increasing the setback to meet the required court width would also result in a significant number of design changes to the interior configuration of the building, including the location and layout of a units, the location of the stairways, the design of the garage, and a number of other impacts. This would result in a practical difficulty.

(b) Off-Street Parking Requirements of Section 2101.1.

The strict application of the off-street parking requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 2101.1 of the Zoning Regulations, retail and service establishments in the C-3-A District in excess of 3,000 square feet are required to provide 1 off-street parking space for each additional 300 square feet of gross floor area and cellar floor area. An apartment house or multiple dwelling in the C-3-A District with 50 or more units is required to provide 1 off-street parking space for each 2 dwelling units. The project includes 144 residential units, and 6,147 square feet of retail and service use, and is thus required to provide a total of 82 off-street parking spaces. However, as shown on the plans, the Applicant

is seeking a variance to instead provide a total of 34 off-street parking spaces, with 8 surface spaces and 26 spaces located in a below-grade parking garage.

The Applicant has maximized the number of surface parking spaces on the Site. However, due to the requirement of Section 1901.1 of the Zoning Regulations which provides that retail and service uses must occupy no less than 50% of the ground floor level of the building, combined with the need for a residential lobby in the proposed building, the Applicant cannot increase the number of surface parking spaces. The Applicant has also maximized the number of parking spaces that can be located in the below-grade parking garage. However, the Applicant cannot provide additional levels of below-grade parking due to the subsurface soil and groundwater conditions of the Site, which limits the Applicant's ability to construct below-grade parking on the Site. Thus, in order to avoid being impacted by the subsurface soils and groundwater condition, the Applicant is seeking relief from the parking requirements.

(c) Compact Parking Space Requirements of Section 2115.2.

Section 2115.2 of the Zoning Regulations provides that any "accessory parking area or accessory garage containing twenty-five (25) or more required parking spaces may designate up to forty percent (40%) of the parking spaces for compact cars." 11 DCMR § 2115.2. As shown on the plans, the proposed building will contain 26 parking spaces located in the below-grade garage and 8 surface parking spaces. Fifteen of the spaces located in the garage are compact, which represents approximately 44% of the total number of off-street parking spaces provided in the project. Because of the location of the building's structural columns and the area occupied by required elevators, drive aisles, storage space, stairwells, and utility rooms, there is simply not enough space to accommodate the required number of full-size parking spaces on the Site without further reducing the number of parking spaces provided. In other words, reducing the

percentage of parking spaces that are compact in size will necessarily reduce the total number of vehicles that can be accommodated in the building's garage. Such a result is clearly inconsistent with the purposes of the off-street parking requirements.

(d) Off-Street Loading Requirements of Section 2201.1.

The strict application of the loading requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 2201.1 of the Zoning Regulations, a retail or service establishment in the C-3-A District with 5,000 to 20,000 square feet of gross and cellar floor area is required to provide 1 loading berth at 30 feet deep and 1 loading platform measuring 100 square feet. In addition, an apartment house or multiple dwelling with 50 or more dwelling units is required to provide 1 loading berth at 55 feet deep, 1 loading platform measuring 200 square feet, and 1 service/delivery space at 20 feet deep.

The project includes 144 residential units, and 6,147 square feet of retail and service use and is thus required to provide 1 loading berth at 30 feet deep, 1 loading berth at 55 feet deep, 1 loading platform at 100 square feet, 1 loading platform at 200 square feet, and 1 service/delivery space at 20 feet deep. However, as shown on the plans, the project includes 2 loading berths at 30 feet deep, 1 loading platform at 300 square feet, and no service/delivery space. Thus, relief is required.

In order to meet the strict application of these loading requirements, the Applicant would have to increase the depth of one of the loading berths by an additional 25 feet, would have to eliminate one of the surface parking spaces, and would have to increase the size of that area to accommodate a service/delivery space. Increasing the size of these facilities, however, will result in a practical difficulty to the Applicant and would have an adverse impact on the layout and configuration of essential building features, including the trash rooms and elevators. In

addition, it is not feasible for a 55 foot to navigate the existing public alley system to access the proposed loading facilities.

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

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan by approving the project as proposed. The replacement of the existing one-story retail building constructed in the 1980s with a new mixed-used development will significantly contribute to the vibrancy of the neighborhood while supporting the City's goals for this area.

With respect to court width, the deficiency in the court width involves only the 7th floor of the building. The court at this level is above the height of the abutting buildings to the immediate south, and thus there will be ample open space above the abutting building to satisfy the purpose of the court width requirements. Moreover, each of the proposed courts and setbacks included on the plans have been provided in direct response to comments from neighbors and HPO. In addition, with respect to the requested parking relief, the Site is well-serviced by a number of bus routes along 14th Street, and is in convenient walking distance to the McPherson Square Metro, the U Street Metro, and the Dupont Circle Metro. In addition, according to Walkscore.com, which measures the walkability and transit access of properties, the Site is rated as a "Walker's Paradise" and scores 94 points out of a possible 100, and is rated as a "Rider's Paradise" and scores 100 points given the Site's location, access to transportation options, access to amenities and other services within close walking distance of the Site. Thus, the Applicant anticipates that the existing transit access to the Site will result in a significant amount of transit and pedestrian access to the Site, resulting in a decrease in the number of

vehicle trips that would otherwise be generated, or the number of off-street parking spaces that would be needed, if the property were not in such close proximity to public transportation. Moreover, although 15 of the parking spaces provided in the parking garage are compact spaces, the garage has been designed in a manner that will maximize the efficiency of use of the parking garage space.

Finally, with respect to loading, and as the Board has recognized in a number of other cases, due to the anticipated needs of the residential use, it is unlikely that the building will be serviced by 55 foot tractor-trailer trucks, thus there is no need for a 55 foot berth for this project. In addition, delivery trucks will be able to use the loading berths when necessary.

V. Standard for Approving Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

A. Standard of Review for Roof Structure Special Exception

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11.

The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

B. Relief from Roof Structure Enclosing Wall Requirements

The Applicant requests relief from Section 411.5 of the Zoning Regulations. That section requires the enclosing walls of roof structures to be of equal height. However, in order to reduce the mass of the roof structure to the greatest extent possible, the structure incorporates enclosing walls having heights of 8'6", 10' 6", 13'6" and 17 feet. The 8'6" portion encloses a fairwell necessary to provide access to the roof. The 10'6" foot portion of this structure encloses the mechanical equipment area, and there is a 3 foot screen wall utilized to block views of equipment. The 17 foot portion encloses the elevator penthouse. The elevator is required to go to the roof of the building to provide handicapped access to the roof deck and ancillary amenity space.

The proposed roof structure does comply, however, with the setback requirements, as well as with the spirit and intent of the roof structure provisions and the Zoning Regulations by helping to ensure adequate light and air to adjacent property and abutting streets. The step downs in height helps to reduce the visibility of the roof structure from the surrounding areas. Furthermore, this special exception is requested in order to further minimize the bulk of the roof structure. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.

C. Relief Pursuant to Section 1906.1 Regarding The Roof Structure Height

The Uptown Arts Overlay limits any roof structure to a maximum height of 83' 6' where a building achieves the maximum permitted height of 75 feet. Here, the Applicant proposes that a

portion of the roof structure, which will accommodate the elevator override equipment, to rise to a height of 17 feet on a building that is 73 feet in height, resulting in an overall height of 90 feet. The elevator penthouse of this height will allow access to a roof terrace. The rooftop terrace will further the purposes of the Arts Overlay to encourage residential development and strengthen the architectural character of the 14th Street corridor. Pursuant to Section 1906.1 of the Zoning Regulations, the Board may grant relief from the requirements of the Arts Overlay as a special exception, provided certain criteria are met, as set forth below.

1. Section 1906.1(a): The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.

The proposed height of the roof structures will substantially advance the purposes of the Arts Overlay District by allowing the necessary mechanical equipment for the building and by providing access to a communal rooftop terrace. Among other things, the purposes of the Arts Overlay District are to encourage residential development, strengthen the design character and identity of the area. 11 DCMR § 1900.2(e), (f) and (h). Here, the rooftop terrace is a major amenity to this residential development and a significant design feature that strengthens the Arts Overlay and 14th Street corridor. It provides a safe recreational gathering space for residents of the building and fosters increased activity in the overlay district. Without relief from the penthouse height restrictions, this important feature of the building and the design character of the Arts Overlay District would have to be eliminated.

The height of the roof structure will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting the area. The penthouse will be clad in complementary materials to ensure its successful integration into the overall design of the building.

2. Section 1906.1(b): Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan.

As noted in the section above discussing the variance test, the Site is uniquely affected by the combination of the existing improvements on the Site, prior zoning approvals on the Site, and the Site's location on a prominent corner bounded by two major streets and a public alley. These factors combine to create an exceptional situation and condition. Without the additional penthouse height, no elevator roof access can be provided and a key amenity for residents of the building would be lost.

3. Section 1906.1(c): The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report.

The proposed roof terrace -- and the elevator providing access to this amenity -- are exceptional urban design features for a building in the 14th Street corridor, which enhance the quality of life in the Arts Overlay District. The elevator penthouse has been located to protect the street views of the building and the historic district. The project has been reviewed by the staff of the State Historic Preservation Office ("HPO"), and the Applicant understands that HPO supports the proposed penthouse design and location.

4. Section 1906.1(d): Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.

As shown on the plans, all loading and vehicular access and egress occur via an existing public alley and are designed to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions. Moreover,

the proposed extension of the roof structure height will have no impact on vehicular access and egress.

5. Section 1906.1(e): The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the Arts Overlay District.

The modest extension in the roof structure height will only be as tall as necessary to allow elevator access to the roof. This portion of the roof structure will be significantly set back from adjacent property lines and public ways, so that it will not be readily visible from public space. As such, the Applicant believes that the proposed modest extension of the roof structure height will not require any additional requirements or conditions from the Board.

2011 SEP 21 PM 12:01
OFFICE OF ZONING