

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

**Application of 14th STREET APARTMENTS
1326 & 1334 14th Street, N.W.**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 14th Street Apartments, on behalf of Irwin Edlavitch, the owner of the property located at 1326 & 1334 14th Street, N.W. (Square 211, Lots 864 and 867) (the "Site"), in support of its application pursuant to 11 DCMR §§ 3103.2 and 3104.1, for an area variance from the off-street parking requirements under § 2101.1; an area variance from the compact space requirements under § 2115.2; an area variance from the loading requirements under § 2201.1; and a special exception pursuant to § 411.11 for multiple roof structures with walls of unequal height to allow the construction of a new residential building with ground floor retail use in the ARTS/C-3-A District at the Site.

Pursuant to § 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

The Site is located at 1326 & 1334 14th Street, N.W and includes Lots 864 and 867 in Square 211. Square 211 is located in the northwest quadrant of the District of Columbia and is bounded on the north by Rhode Island Avenue, on the south by N Street, on the west by 15th Street, and on the east by 14th Street. The Site is rectangular in shape, with approximately 10,423 square feet of land area. The Site abuts 14th Street on the east, a public alley on the west, and historic structures on the north and south. The Site is located within the ARTS/C-3-A District and the 14th Street Historic District. Lot 867 is currently improved with a one-story commercial structure and Lot 864 is a vacant lot.

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

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retail uses. The Applicant will be subdividing the existing lots into a single lot of record. The project will include a total of approximately 49,000 square feet of gross floor area, which will be comprised of 55 residential units and 4,135 square feet of retail use. The project also includes 16 off-street parking spaces, with three (3) surface spaces and 13 spaces located in a below-grade parking garage. The project complies with all ARTS Overlay District requirements.

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. An area variance from the off-street parking and compact space requirements of §§ 2101.1 and 2115.2;
2. An area variance from the off-street loading requirements under § 2201.1; and
3. A special exception from the roof structure requirements pursuant to § 411.11.

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II. Burden of Proof

A. Variance Relief

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 condition or situation;
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 Capital 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.

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(1) The Site 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. District of Columbia Board of Zoning Adjustment*, 320 A.2d 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. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

In this case, the Site is uniquely affected by the combination of the Site's long and narrow shape and the fact that it is immediately adjacent to historic buildings to the north and south and located in the 14th Street Historic District. The combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the Site. The Site is bounded by a major street and a public alley, which impacts access to the Site and the configuration of the proposed development of the Site. The shape of the site, in particular, its relative narrowness, severely limits the depth of any below-grade excavation for the development. Finally, the presence of adjacent historic structures also restricts the type of shoring and underpinning techniques that can be employed on the Site while the development is being constructed.

(2) Strict Application Would Result in a Practical Difficulty to the Owner

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant.

(a) 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 § 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 one (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 is required to provide one (1) off-street parking space for each two (2) dwelling units. The project includes 55 residential units, and approximately 4,135 square feet of retail use, and is thus required to provide a total of 32 off-street parking spaces (28 residential and 4 retail). However, as shown in the plans, the Applicant is seeking a variance to instead provide a total of 16 off-street parking spaces, with three (3) surface spaces and 13 spaces located in a one level below-grade parking garage.

The Applicant has maximized the number of surface parking spaces on the Site. However, due to the requirement of § 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. The Applicant cannot provide additional levels of below-grade parking due to the narrowness of the site, which limits the Applicant's ability to construct below-grade parking. The Site is too narrow to efficiently accommodate the required parking ramp width and slope that would be necessary to construct additional below-grade levels for parking. Constructing additional levels of below-grade parking would lead to an inefficient garage layout. Additionally, deeper below-grade excavation would require additional underpinnings and shoring. The impact of that work could compromise the stability and integrity of the adjacent historic buildings to the north and south of the Site. Thus, in order to avoid being severely restricted in the design and construction of the development by the shape of the Site and its proximity to historic structures, the Applicant is seeking relief from the off-street parking requirements.

(b) 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

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on the plans, the proposed building will contain 13 parking spaces located in the below-grade garage and 3 parking spaces. Six of the spaces located in the below-grade garage are compact, which represents approximately 38% of the total number of off-street parking spaces provided in the project. Due to the narrowness of the site and the area occupied by required drive aisles, garage entry ramp, elevators, 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. In addition, the Applicant cannot increase the number of parking spaces located in the garage for the reasons set forth in section (2)(a) of this statement.

(c) 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 § 2201.1 of the Zoning Regulations, an apartment house or multiple dwelling with 50 or more dwelling units is required to provide one loading berth at 55 feet deep, one loading platform measuring 200 square feet and one service/delivery space at 20 feet deep. Because the proposed retail establishment is less than 5,000 square feet, the Zoning Regulations do not impose any loading requirements.

The project includes 55 residential units, and approximately 4,135 square feet of retail use, and is thus required to provide one loading berth at 55 feet deep, one platform measuring 200 square feet and one service/delivery space at 20 feet deep. However, as shown on the plans, the project includes one loading berth at 30 feet deep and one platform measuring 100 square feet. Thus, relief is required.

In order to meet the strict application of these loading requirements, the Applicant would have to increase the depth of the loading berth by an additional 25 feet, eliminate at least one of the surface parking spaces and 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

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building features, including the stair wells which provide Building-code compliant ingress and egress. As with the layout of the parking spaces, such a reconfiguration would similarly impact the building's structural columns. In addition, it is not feasible for a 55-foot tractor trailer to navigate the existing public alley system to access the proposed loading facilities.

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**(3) 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 construction of a residential building with ground-floor retail in the ARTS/C-3-A District will significantly contribute to the vibrancy of the neighborhood while supporting the City's goals for this area.

With respect to the requested parking relief, the proposed development will include a number of elements designed to promote effective and safe vehicular and pedestrian access, transportation management measures and connections to public transit services. The Site is well-served by a number of bus routes along 14th Street, including the McPherson Square-Adams Morgan-Woodley Park Circulator bus route and is in convenient walking distance to the McPherson Square Metro, U Street Metro and 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 out of a possible 100 given the Site's location, access to transportation options, access to amenities and other services within close walking distance to the Site. See <http://www.walkscore.com/score/1326-14th-Street-N.W.-Washington-DC>. Several Zipcar car sharing locations are also within blocks of the Site. Further, the proposed development will incorporate retail and residential bicycle storage; and a Capital Bikeshare station is presently located within steps of the Site, along Rhode Island Avenue. 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 options. Moreover, although six 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. The project also proposes to include approximately 40 spaces for residential bike parking the below grade parking level.

With respect the 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 and on-site personnel will be responsible for coordinating loading/deliveries when necessary and can easily schedule such activities so that additional space is not necessary.

B. 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.* In order to accomplish the proposed development, the Applicant seeks special exception approval pursuant to § 411.11 of the Zoning Regulations regarding roof structure requirements in commercial zoning districts.

(1) Relief from Roof Structure Requirements

Under § 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

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light and air of adjacent buildings shall not be affected adversely." *Id.* In this case, special exception approval is required because, as shown on the Roof Plan sheet included in the plans: (a) there will be three roof structures (§ 411.3) and (b) the enclosing walls of the roof structures are not of an equal height (§ 411.5).

Each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for roof decks and in order to provide space for mechanical equipment, as well as the desire to break up massing on the roof. The placement and number of penthouses is driven by the layout and design of the residential units within the building, as well as the location of the core features such as the elevators. In addition, the Applicant designed the two penthouses adjacent to the northern wall of the building to have walls of unequal height in order to help reduce the visibility of the structures.

The proposed penthouses comply with the setback requirements, as well as with the spirit and intent of the roof structure provisions of 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 penthouse from the surrounding areas. Furthermore, this special exception is requested in order to further minimize the bulk of the roof structure. For all these reasons, special exception from the roof structure setback provisions is appropriate.

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