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2011 OCT -7 PM 1:51

Statement of Burden of Proof for 701 10th St NE

Redshift LLC, the owner of the property at 701 10th St NE (Square 0959 Lot 39), seeks a variance from §2101.1, which requires one on-site parking space for a 2-unit flat. As explained below, the application meets the high burden of proof for a variance (§3103.2) because 1) there are exceptional conditions at the site that do not allow on-site parking 2) the strict application of the zoning regulations would prevent the site from being used as a flat and 3) relief to the one-space on-site parking requirements won't negatively impact the public good nor impair the intent, purpose or integrity of the Zoning Regulations.

1. Historic Context for the Requested Zoning Relief

701 10th St NE is a corner property that lacks alley access, as shown in Figure 1. When Redshift LLC purchased the property at foreclosure auction in August 2009, it was unaware that the ANC was appealing an improperly permitted curb cut at the site.

Redshift subsequently learned that the original builder had filed inaccurate plans with DCRA showing a curb cut and driveway accessing the rear of the property. Figure 2 shows the plat containing the curb cut and driveway that was submitted to DCRA in their building permit application. In actuality, no curb cut or driveway existed at the time the plans were filed. If the builder had filed accurate plans, the Zoning Administrator would have required the property owner to seek variance relief from §2101.1.

After obtaining building permits based on the inaccurate plans, the original builder constructed the existing structure and subsequently petitioned DDOT for a public space permit to construct a curb cut and driveway. In a staff level decision, DDOT issued a permit for a 24-foot driveway over the strenuous opposition of the local ANC. The ANC appealed this decision claiming that DDOT violated many of its own guidelines, which require curb cuts to be in the public interest and comply with the technical requirements of the DDOT Design and Engineering Manual. (See Attachment A, Exhibit 2) Among the issues identified by the ANC were:

a. The curb cut would eliminate more on-street parking spaces than would be provided on-site.
b. Traffic entering and exiting the proposed curb cut would present an unnecessary risk to children walking to the Sherwood Recreation Center directly across the street.
c. The curb cut violated the technical requirements of the DDOT Design and Engineering Manual for being too close to the neighboring property and too close to the stop sign at 10th and G St.
d. The curb cut would unnecessarily eliminate a significant amount of green space.

DDOT's issuance of the public space permit is still under active appeal by ANC 6A. If the appeal is successful, the owner would need to convert the 2-unit flat to a single family residence.

Redshift LLC would like to correct the mistakes of the previous owner and remove the legal uncertainty surrounding the curb cut by applying for a variance from the on-site parking

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requirements. Redshift is taking these actions at the request of the local ANC representative and understands that the surrounding community supports this application. If this application is granted, the owner will apply for a public space permit to remove the improperly permitted curb cut and driveway and, if that permit is granted, will then remove the curb cut.

2. Justification for Granting a Variance to On-site Parking Requirements

Because the extant curb cut and driveway are not properly permitted, we ask the Board to consider this application as if there was no street or alley access to the rear yard – the conditions that existed at the time the original plans submitted to DCRA in 2005.

The application meets the three tests for a variance as explained below:

a. There are exceptional conditions at the site that do not permit vehicular access to the site.

As demonstrated in Figure 1, the site does not have alley access. Nor does it have a properly permitted curb cut and driveway from the street. Without alley or street access to the site, on-site parking cannot be provided. In addition, it does not appear that a curb cut and driveway can be constructed that complies with existing DDOT guidelines for the reasons mentioned above. Lastly, the ANC has made it very clear in their appeal of the DDOT permit that they would prefer a parking variance for the site to a curb cut.

b. A denial of the request for a variance would impose undue hardship on the owner of the property.

Redshift purchased the property in 2008 for $825,000 with the understanding that the property could be resold as two separate units (a flat). However, a successful appeal of the improperly issued curb cut permit by ANC 6A would eliminate on-site parking and require the owner to convert the property to a single-family residence. This would greatly lower the property's value and result in severe financial hardship for the owner. On the other hand, a variance from the parking requirements would allow the owner to remove the curb cut and sell the building as two separate units.

c. The requested relief can be granted without negatively impacting the public good or impairing the intent, purpose or integrity of the Zoning Regulations.

Far from negatively impacting the public good or impairing the intent of the Zoning Regulations, the granting the proposed relief actually enhances the public good because eliminating the curb cut would add three spaces of on-street parking while only eliminating two on-site spaces. In addition, curb cuts are specifically discouraged in the 2006 Comprehensive Plan which seeks to "...minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas. (Policy T-1.2.3)" The elimination of the curb cut would enhance the safety of pedestrians walking to the Sherwood Recreation Center and restore

nearly 100 square feet of green space to the corner. Finally, corner properties in Capitol Hill lacking alley access typically do not have curb cuts, so removing the improperly permitted curb cut at this property would not unfairly disadvantage the building's occupants.