Holland & Knight

2099 Pennsylvania Avenue, N W , Suite 100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www hklaw com

Kyrus L. Freeman
kyrus.freeman@hklaw.com
202-862-5978

June 12, 2012

VIA HAND DELIVERY

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: Application No. 18372 - PreHearing Statement of the Applicant

Honorable Members of the Board:

On behalf of the Applicant in the above-referenced case, enclosed please find one original and twenty copies of the Applicant's prehearing submission in support of its application pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a variance from the loading berth minimum vertical clearance height requirement under subsection 2201.6, to allow the construction of a new residential apartment building with ground floor retail and service uses in the C-3-A District at 2321 4th Street, N.E. (Square 3629, Lot 808).

Thank you for your attention to this application.

Sincerely,

Kyrus L. Freeman

Enclosures

cc: Stephen J. Mordfin, Office of Planning (Via Hand, with enclosure)
ANC 5C (Via U.S. Mail, with enclosure)

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF
2321 4TH STREET LLC
ON BEHALF OF
H STREET COMMUNITY
DEVELOPMENT CORPORATION

BZA APPLICATION NO. 18372
HEARING DATE: JUNE 26, 2012
ANC 5C

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This Statement of the Applicant is submitted by 2321 4th Street LLC (the "Applicant"), on behalf of H Street Community Development Corporation, the owner of property located at 2321 4th Street, N.E. (Square 3629, Lot 808) (the "Site"), in support of its application pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a variance from the loading berth minimum vertical clearance height requirement under subsection 2201.6, to allow the construction of a new residential apartment building with ground floor retail and service uses in the C-3-A District at the Site.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance relief requested herein pursuant to Section 3103.2 of the Zoning Regulations.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Sanborn Atlas and Building Plat showing the Site;
Exhibit B:	Zoning Map showing the Site;
Exhibit C:	Architectural Plans and Elevations;
Exhibit D:	Subsurface Exploration and Geotechnical Engineering Analysis Summary Letter Prepared by ECS Mid-Atlantic, LLC;
Exhibit E:	Traffic Impact Study Prepared by Symmetra Design;
Exhibit F:	Outline of Testimony and Resume of Kenton Drury;
Exhibit G:	Outline of Testimony and Resume of Bill Bonstra; and
Exhibit H:	Outline of Testimony and Resume of Nicole A. White, P.E. PTOE.

IV.
BACKGROUND

A. Background Information

The Site is located on the east side of 4th Street, N.E., between Rhode Island Avenue, N.E. and Bryant Street, N.E., and consists of Lot 808 in Square 3629. (See plats attached hereto as Exhibit A). The Site contains approximately 39,190 square feet of land area and is currently unimproved. The Site is located within the C-3-A District (See Zoning Map attached hereto as Exhibit B).

As shown on the Architectural Plans and Elevations (the "Plans") attached hereto as Exhibit C, the Applicant proposes to construct a new residential building with ground floor retail and service uses. The project will include a total of approximately 154,442 square feet of gross floor area, which will be comprised of 155 - 160 residential units and approximately 5,173 square feet of retail and service uses. The proposed uses are consistent with the Site's C-3-A zoning designation. The project also includes 43 off-street parking spaces.

V.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the lot occupancy (§772), off-street parking (§2101.1), loading (§2201.1), and the loading berth minimum vertical clearance height (§2201.6) requirements of the Zoning Regulations.

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 a combination of factors, including the Site's dimensions, grading, and subsurface conditions, and the amount of street frontage relative to the Site's land area. As shown on the plats and Plans attached hereto as Exhibit A and Exhibit C, the Site is generally triangular and has dimensions of approximately 219 feet along 4th Street, approximately 323 feet on the north side and approximately 387 feet on the south side. The Site's width narrows from 219 feet at 4th Street down to approximately 19 feet at the rear of the Site. The Site is bounded by private property to the north, east, and south, and thus the only public frontage is on 4th Street. Moreover, although the Site is relatively large and contains approximately 39,190 square feet of land area, the amount of street frontage is small in comparison to its perimeter of approximately 835 feet. The Site also has significant topography changes, with grade changes of approximately 11 feet across the Site, with the high point at elevation 112.53 at the eastern edge of the Site and the low point at approximately elevation 101.31 at the southwestern edge of the Site.

In addition, as indicated in the subsurface exploration and geotechnical engineering summary letter prepared by ECS Mid-Atlantic, LLC ("ECS") attached hereto as Exhibit E, ECS was retained to provide geotechnical engineering services for the Applicant's proposed mixed-use development project at the Site. ECS completed ten test borings at the Site, and analysis of the test borings indicated the existence of below-grade, variably dense, heterogeneous fill materials across the Site to depths ranging from 6 to 13 feet. ECS' report indicated that it would be economically infeasible to dig out and replace the fill, and therefore recommended that instead of doing below-grade excavation work, the Applicant should install shallow spread and

continuous footings found on aggregate piers in order to construct the proposed building's foundation. This existing condition compounds the "exceptional situation or condition" resulting from the Site's dimensions, grading, and amount of street frontage relative to the Site's land area.

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

The D.C. Court of Appeals has held that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome." *Gilmartin v. District of Columbia Board of Zoning Adjustment,* 579 A.2d at 1170 (D.C. 1990). In that case, the Court noted that "the severity of the variance(s) requested;" "the weight of the burden of strict compliance;" "the effect the proposed variance(s) would have on the overall zone plan;" and the "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." *Id.* at 1171.

(a) Lot Occupancy Requirements of Section 772.1

The strict application of the lot occupancy requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 772.1 of the Zoning Regulations, the maximum percentage of lot occupancy for residential use in the C-3-A District is 75%, and 80% utilizing the Inclusionary Zoning bonus.

As shown on the Plans, the project includes amenity space and retail use on the ground floor level. The lot occupancy measured at the level of the second floor, which is the lowest level on which residential units are shown on the plans, is 66.67%, which meets the applicable lot occupancy requirement. However, the Applicant is seeking the flexibility to convert the proposed retail use into residential use in the future in the event that the retail spaces cannot be leased. Converting the proposed retail use into residential units would require the percentage of lot occupancy to be measured at the level of the first floor, which would increase the lot

occupancy to approximately 96.72%. Therefore, the Applicant is seeking relief from the lot occupancy requirements to cover the contingency if the retail space is converted to residential units.

As described above, the Site is uniquely shaped and has significant topography changes, with grade changes of approximately 11 feet across the Site. As a result of these constraints, the Applicant has located parking, loading and service uses on the ground floor of the building. These uses account for nearly 67% of the ground floor level of the building, whereas only approximately 33% of the ground floor level would be devoted to typical residential uses. Moreover, in order to meet the lot occupancy requirement, the Applicant would have to either decrease the footprint of the building by approximately 15.4%, which would result in a loss of units and a significant reconfiguration of the building given the Site's dimensions, or significantly reduce the amount of space devoted to parking, loading and service uses, either of which would be practically difficult for the Applicant.

(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. An apartment house or multiple dwelling in the C-3-A District is required to provide 1 off-street parking space for each 2 dwelling units. Retail and service uses 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 the gross floor area and cellar floor area. The project includes 155 - 160 residential units and 5,173 square feet of retail space, and is thus required to provide a total of 87 off-street parking spaces. However, as shown on the Plans, the Applicant is seeking a variance to instead provide a total of 43 off-street parking spaces.

The Applicant has maximized the number of parking spaces on the Site. As shown on the plans, the Applicant has designed the building such that the retail and service uses front on 4th Street and such that the parking, loading and service uses are not visible to the general public. Moreover, nearly 67 percent of the ground floor level of the building is already devoted to parking, loading and service uses and is partially charged against FAR. Therefore, the Applicant cannot increase the number of parking spaces on the ground floor level while still providing desired service and retail uses.

The Applicant cannot provide below-grade parking for a number of reasons. First, as discussed above, the Site is impacted by the existence of below-grade, variably dense, heterogeneous fill materials across the site to significant depths, which limits the Applicant's ability to perform any significant below grade construction on the Site. Secondly, the construction costs for a multi-level garage due to the above-mentioned subsurface conditions would be significantly greater than a similar site without the above-mentioned conditions, and given that this is an affordable housing project, such costs would render the project infeasible. Finally, even if below-grade construction were not practically difficult, the grading and triangular shape of the Site would result in a very inefficient parking garage given the garage ramp, accessibility, and maneuvering requirements.

(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 Section 2201.1 of the Zoning Regulations, 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 155 to 160 residential units. The project includes the required

loading platform and service/delivery spaces; however, as shown on the plans, the project includes a 30 foot loading berth instead of the required 55 foot loading berth. Thus, relief is required.

In order to meet the strict application of the loading berth depth requirement, the Applicant would have to increase the depth of the proposed loading berth by an additional 25 feet, and would have to reduce the size of the proposed loading platform. The location of the trash and recycling areas would also be impacted. Providing clear space to accommodate the turning radius of a 55 foot truck would required a substantial increase in structural depth, which would be practically difficult and would reduce the amount of ceiling clearance even further. In addition, given the size of the proposed units, with no more than two bedrooms and an average unit size of less than 800 square feet, there would be no practical need by residents for a 55-foot loading berth.

(d) Loading Berth Minimum Vertical Clearance Height Requirement of Section 2201.6.

The strict application of the loading berth minimum vertical clearance height requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 2201.6 of the Zoning Regulations, all required loading berths must have a minimum vertical clearance of 14 feet. However, the Applicant's proposed loading berth will have a minimum clearance of 12 feet, and thus relief is required.

The ground floor level of the new construction will have a clearance height of approximately 12 feet. However, due to the proposed construction method for the project, increasing the vertical clearance for the loading berth would also require increasing the overall height for the entire first level of the building. Provision of a ceiling height of 14 feet on the ground floor of the building would require reducing the uniform ceiling heights for all residential

units on the floors above from 8 feet clear to a code minimum of 7.5 feet clear, which would make them less-attractive and out of scale with the ceiling heights provided in new residential developments in the City. In addition, increasing the vertical clearance would add significantly to the project's cost, without any meaningful benefit to the residents. Alternatively, increasing the loading berth clearance while also maintaining the proposed residential ceiling heights of 8 feet would result in the building exceeding 65 feet, which would trigger the need for variance relief from the maximum building height requirements.

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 vacant site with a new mixed-used development serving low and moderate income residents with household incomes from approximately $35,000 to $70,000 will significantly contribute to the vibrancy of the neighborhood while supporting the City's goals for this area.

With respect to lot occupancy, in the event that the Applicant converts the proposed retail space into residential space, the actual useable residential area on the ground floor level of the building will only be approximately 28%. In addition, the proposed lot occupancy will not have any adverse impacts on any abutting neighbors. The retail or residential floor plans are identical in how the building meets the property lines, and the only material difference in compliance is the proposed uses on the ground floor. Moreover, commercial buildings in the C-3-A District are permitted a maximum lot occupancy of 100%. Finally, there is a substantial courtyard beginning at the first full level of residential use on the second level of the building, which

results on a lot occupancy of approximately 66.67% on the second through sixth floors of the building.

With respect to the requested parking relief, as indicated in the Traffic Impact Study prepared by Symmetra Design attached hereto as Exhibit E, the Site is well-serviced by a number of bus routes along Rhode Island Avenue, and is in convenient walking distance to the Rhode Island Metrorail Station. For example, a Metrobus stop is located on 4th Street immediately in front of the proposed building. In addition, according to Walkscore.com, which measures the walkability and transit access of properties, the Site is rated as "Very Walkable" and as an "Excellent Transit" location given the Site's access to transportation options, access to amenities, and other services within close walking distance of the Site. Moreover, a ZipCar Station and Capital BikeShare Station are located near the intersection of Rhode Island Avenue and 4th Street, NE, which is only steps from the Site. The Applicant is also providing 53 bike parking spaces in the ground level of the building. Thus, the Applicant anticipates that a significant number of the residents will not own vehicles, and 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 off-street parking spaces that would be needed, if the property were not in such close proximity to public transportation. Moreover, the Traffic Impact Study prepared by Symmetra Design also concludes that the amount of off-street parking provided by the project is sufficient to accommodate users. Finally, in response to concerns raised by neighbors concerning the potential for spill-over parking on neighboring streets, the Applicant has committed to restrict residents of the proposed development from obtaining residential parking permit ("RPP") stickers.

With respect to loading, 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. For example, a typical 17 foot U-Haul truck can accommodate the moving needs for a home of up to 2 bedrooms and a typical 20 foot U-Haul truck can accommodate the moving needs for a home of up to 3 bedrooms. Moreover, the typical overheard clearance required for a U-Haul truck is approximately 10 to 11 feet. In addition, a member of the building's management will manage trash pick-up, deliveries and other loading activities for the building, and the Applicant will be applying for a loading zone adjacent to the building along 4th Street for use when necessary to accommodate any unanticipated, larger trucks. Thus, the Applicant's proposal to provide a 30 foot loading berth and a minimum vertical clearance of 12 feet would be sufficient to meet the needs of the building's users.

VI.
COMMUNITY SUPPORT

The Applicant has the support of the community for the requested zoning relief. Advisory Neighborhood Commission ("ANC") 5C, the ANC in which the site is located, voted 10-1-1 to support the requested zoning relief at its meeting on May 8, 2012.

VII.
WITNESSES

A. Kenton Drury, PMP, E & G Group

B. Bill Bonstra, FAIA, LEED AP, Bonstra Haresign Architects LLP

C. Nicole A. White, P.E. PTOE, Symmetra Design

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____

Norman M. Glasgow, Jr.
Kyrus L. Freeman, Esq.
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000