

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

**Application of 2321 4th Street LLC, on behalf of H Street Community Development Corp.
2321 4th Street, N.E. (Square 3629, Lot 808)**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 2321 4th Street LLC, 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 Section 3103.2 for a variance from the lot occupancy requirements of Section 772.1; a variance from the off-street parking requirements of Section 2101.1; a variance from the off-street loading requirements of Section 2201.1; and a variance from the loading berth minimum vertical clearance height requirement of Section 2201.6 to allow the construction of a new residential building with ground floor retail and service uses in the 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 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. The Site contains approximately 39,190 square feet of land area and is currently unimproved. As shown on the plans included with the application, the Applicant proposes to construct a new residential building with ground floor retail and service uses. The project will include a total of approximately 155,287 square feet of gross floor area, which will be comprised of 155 residential units and approximately 12,072 square feet of retail and service uses. The project also includes 40 off-street parking spaces.

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

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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.

(1) The Site Is Unusual Because of Its Size, Shape or Topography and Is Affected by an Exceptional Situation or Condition

The Site is uniquely affected by the combination of the Site's dimensions, grading subsurface conditions, and the amount of street frontage relative to the Site's land area. As shown on the building plat and plans included with the application, the Site is generally triangular and has dimensions of approximately 219 feet along 4th Street, approximately 303 feet on the north side and approximately 387 feet on the south side. The Site's width narrows from 219 feet at 4th Street and 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 19,190 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. In addition, a subsurface and geotechnical analysis was conducted for the site, and the analysis indicated that development of the Site will be impacted by the existence of below-grade, variably dense, heterogeneous fill materials across the Site to significant depths.

(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. 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

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space and retail use on the ground floor level. However, the Applicant is seeking the flexibility to convert the proposed retail use into residential use in the future in the event the retail spaces cannot be leased. 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 68%, which meets the applicable lot occupancy requirement. Converting the proposed retail use into residential units would require lot occupancy to be measured at the level of the first floor, which would increase the lot occupancy to approximately 95.4%. Therefore, the Applicant is seeking relief from the lot occupancy requirements. 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%, 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. The project includes 155 - 160 residential units, and is thus required to provide a total of 80 off-street parking spaces. However, as shown on the plans, the Applicant is seeking a variance to instead provide a total of 40 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.

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(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. In addition, given the size of the proposed units, there would be no practical need by residents for a 55-foot loading berth given that there are no units larger than 2 bedrooms, and the average unit size is approximately 800 square feet.

(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.

(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 replacement of the existing vacant site with a new mixed-used development serving low and moderate income residents with household incomes from \$30,000 to \$65,000 will significantly contribute to the vibrancy of the neighborhood while supporting the City's goals for this area.

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If approved, the actual useable residential area on the ground floor level of the building will only be approximately 28%. Moreover, commercial buildings in the C-3-A District are permitted a maximum lot occupancy of 100%.

With respect to the requested parking relief, 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. In addition, the Applicant is providing 50 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.

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 overhead clearance required for a U-Haul truck is approximately 10-11 feet. Thus, the Applicant's proposal to provide a minimum vertical clearance of 12 feet would be sufficient to meet the needs of the building's users.

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