

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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STATEMENT OF REASONS IN SUPPORT OF AN APPLICATION FOR A
USE VARIANCE TO PERMIT THE RENOVATION AND EXPANSION OF AN EXISTING CONFORMING
STRUCTURE DEVOTED TO NON-CONFORMING USE, AND AREA VARIANCES FROM REAR YARD,
SIDE YARD, AND LOT OCCUPANCY IN THE R-3 ZONE DISTRICT
AT 1215 31ST STREET, N.W.; SQUARE 1209, LOT 826 (THE "PROPERTY")

This Statement of Reasons is submitted on behalf of the Applicant, the United States Postal Service ("Postal Service" or "USPS"), the owner of the Property, and Pony Express LLC dba EastBanc, Inc., as contract purchaser (collectively, the "Applicant").

THE PROPERTY & SURROUNDING NEIGHBORHOOD

Current Use of the Property. The Property, which is located at 1215 31st Street, N.W., Square 1209, Lot 826, is currently improved with the historic Georgetown Post Office and Customs House, a District of Columbia Individual Historic Landmark. The Property is currently in use as a retail branch of the United States Postal Service.

Property Description. The Property is located on the east side of 31st Street N.W., just north of M Street. The site is comprised of approximately 14,850 square feet of land area.

In the 18th and 19th centuries, Georgetown was a thriving seaport, situated on the Fall Line of the Potomac River. It was a busy site for the transfer of tobacco and other goods from Maryland to ships, and for the importation of salt, sugar and molasses. The Customs House and Post Office played a significant role in the conduct of commerce in Georgetown, and were thus located close to the commercial hub, which was along Bridge Street, later renamed M Street.

Georgetown was founded in 1751, predating the establishment of the nation's capital by forty years. Indeed, the Georgetown Post Office and Customs House was constructed in 1858, when Georgetown was still an independent municipality, before it was officially incorporated as part of the District of Columbia in 1871. The building was specifically designed to house a post office on the ground floor and a customs house on the second floor. Storage and mechanical systems are located on the lowest level. A one-story addition with cellar was added to the rear of the building in 1926 (the "1926 Addition"). The Property was designated a D.C. Individual Historic Landmark on November 8, 1964, and is also located within the boundaries of the Georgetown Historic District. Additionally, the Property was individually listed on the National Register of Historic Places on September 10, 1971.

U.S. Customs remained in the building until it relocated in 1967, and the Property has been in continuous use by USPS since its construction in 1858. Today, retail postal operations continue on the ground floor and the remainder of the building is in use for storage and limited mail sorting before outgoing mail is taken to another USPS location for delivery and distribution.

The Surrounding Neighborhood. The surrounding neighborhood is characterized by a mixture of commercial and residential uses. Several single- and two-story commercial buildings line M Street, adjacent to the Property on the south side. To the north and northeast is a mixture

of row and semi-detached residential structures. Immediately adjacent to the Property on the east is a commercial parking lot accessed from M Street, which extends into the center of the square. Beyond that is the National Park Service's Old Stone House. Across 31st Street west of the property are low-scale commercial buildings. See Exhibit E1, Site Map. The entire surrounding neighborhood is located within the boundaries of the Georgetown Historic District.

Zoning. The Property is split-zoned; the vast majority of the lot is classified within the R-3 Residence District, but a narrow portion of the Property, measuring approximately 6 feet wide and extending along the southern boundary is zoned C-2-A. The existing improvements are located entirely within the R-3 portion of the Property.

The R-3 Zone District is designed primarily for row-dwellings. 11 DCMR § 320.1. Uses permitted as a matter of right in the R-3 District include, *inter alia*, row dwellings, one-family semi-detached dwellings, churches, public schools, and community-based residential facilities. Permitted special exception uses include youth residential care homes or community residence facilities. Neither a post office nor any other commercial use is permitted as a matter of right in the R-3 Zone. The Property, however, pre-dates the institution of zoning districts in the District of Columbia, and as such, the use is permitted to continue, subject to the requirements of Chapter 20 of the Zoning Regulations.¹ Specifically, 11 DCMR § 2000.4 provides:

Any nonconforming use of a structure or land, or any nonconforming structure lawfully existing on May 12, 1958, that remains nonconforming, and any use or structure lawfully existing that became nonconforming on May 12, 1958, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter.

The Property is currently a conforming structure devoted to a lawfully nonconforming use. A structure devoted to a nonconforming use may not be enlarged, except if the enlargement is to be devoted to a conforming use. 11 DCMR § 2002.5.

PROPOSED USE OF THE PROPERTY

While a retail post office is still in operation on the premises, major mail processing and delivery operations have long taken place at other, centralized facilities. As such, the site is grossly underutilized by USPS, and was in early 2009 identified as a site for potential redevelopment or sale. In July 2009, USPS initiated a consultation under Section 106 of the National Historic Preservation Act ("NHPA") regarding a proposed undertaking that will involve conveyance of ownership to a new purchaser, with a commercial condominium to be retained by USPS so that retail operations will continue on the ground floor of the Property. The remainder of the building will continue in commercial/office use, although a particular user has not yet been identified.

Pony Express LLC dba EastBanc, Inc. will renovate the interior and exterior of the existing historic building, and intends to expand the lowest level of the building, a cellar, for this as-yet unspecified commercial user, while making certain modifications to the landscape surrounding the existing building to bring light and air into the cellar, which is currently used for

¹ Title 11, District of Columbia Municipal Regulations.

storage by USPS. The USPS retail post office on the main floor will be partitioned off from the stairs providing access to the upper and lower levels of the main block of the building, and from the 1926 Addition. In addition, the installation of an elevator to make the building ADA-compliant will add approximately 200 square feet of gross floor area to the existing building.

Because the existing building is located entirely on the R-3 portion of the Property, and commercial uses are not permitted in the R-3 Zone, the Property is considered a conforming structure devoted to a nonconforming use, pursuant to 11 DCMR § 2000.4. The Proposed Development will expand the lowest level of the structure to provide daylit and occupiable space conforming to applicable building codes. Additionally, an elevator necessary to make the building ADA-compliant (for new commercial tenants) will slightly enlarge the structure. As such, the Applicant is requesting a use variance from 11 DCMR §§ 2002.5.

The proposed expansion of the lowest level of the building will be located at or below the main level of the main building, and therefore is not included in building area, which is defined as follows:

The maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width. Except for outside balconies, **this term shall not include** any projections into open spaces authorized elsewhere in this title, nor shall it include **portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property.** 11 DCMR § 199.1 (emphasis added).

Because the proposed cellar addition is not included in building area, it is not to be calculated in percentage of lot occupancy. *See Id.* (Percentage of lot occupancy is defined as "a figure that expresses that portion of a lot lying within lot lines and building lines that is occupied or **that may be occupied under the provisions of this title as building area**" (emphasis added)). Notwithstanding this clear exclusion, the Zoning Administrator has advised the applicant that the proposed expansion of the existing cellar must be calculated in percentage of lot occupancy. This is apparently based on the fact that, once expanded, portions of the adjacent grade will be more than four feet below the ceiling of the lowest level of the building. While we do not agree with the Zoning Administrator's interpretation, we are nonetheless requesting the relief he has advised is necessary to construct the Proposed Development, and ask that the Board weigh in on the necessity of the relief.

Additionally, based on the Zoning Administrator's interpretation, if the proposed expansion of the cellar is to be included in lot occupancy, variances from the required side and rear yard setbacks are also required. The proposed expansion of the lowest level will create a zero-setback along the southern side yard for approximately 40 linear feet, and a rear yard of 4'9". However, it is important to note that this expansion is only minimally visible or extended above ground. If the Board determines such relief is necessary, we hereby request that the relief be granted, and submit that the Property meets all required tests for such relief.

VARIANCE CRITERIA

The Board is empowered to grant a use variance where it finds three conditions:

- (1) The property is unique because, *inter alia*, of its size, shape, topography, or other extraordinary situations or conditions thereon;
- (2) The owner would suffer undue hardship 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 zoning plan.

Roumel v. District of Columbia Bd. Of Zoning, 417 A.2d 405, 408 (D.C. 1980); *See also Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (1972) (undue hardship, rather than practical difficulties, standard applies to use variances). For area variances, the applicant must still demonstrate that the property is unique because of extraordinary situations or conditions thereon; and that the variance would not cause substantial detriment to the public good or impair the intent, purpose, and integrity of the zoning plan, but is held to the lesser standard of showing simply that the owner would suffer practical difficulties in complying strictly with the Zoning Regulations. *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). The majority of the areas of relief sought in the instant application (percentage of lot occupancy, rear yard, and side yard) are properly considered as area variances, while the expansion of existing floor area devoted to non-residential uses is treated as a use variance.

Uniqueness

The Property is unique as a result of a confluence of factors:

Individual Historic Landmark Status

The Property is a District of Columbia Individual Historic Landmark and is listed on the National Register of Historic Places. The designation of a property as an individual historic landmark reflects characteristics of exceptional design and/or historic significance requiring special treatment in the planning of any renovation. As an Individual Historic Landmark, these characteristics and requirement for special treatment constitute exceptional conditions fulfilling the first prong of the variance test. *See United Unions, Inc. v. District of Columbia Board of Zoning Adjustment*, 554 A.2d 313, 317-318 (D.C. 1989).

Obsolescence

The Property was constructed as a non-residential structure and has been in continuous non-residential use since 1858, approximately 100 years before the implementation of the District of Columbia's modern Zoning Regulations. The building was enlarged over 85 years ago to provide Postmaster's offices and to facilitate the processing and delivery of mail, functions which are no longer performed at this facility. As a result, the Property is obsolete, significantly underutilized, and falling into disrepair.

The Property served as the first permanent location of the United States Post Office in Georgetown. A national effort to construct public buildings to serve as courthouses, customs houses, and post offices took place in the 1840s and 1850s. Funds were allotted to build a Customs House and Post Office at Georgetown in the mid-1850s, and the land was purchased in 1856. Construction began in 1857, and the building was completed in 1858. In 1906 and 1907, a one-story brick and masonry addition was made to the rear of the building. Throughout the early part of the 20th Century, the Postal Service's needs for space increased. Throughout the 1920s, several plans were prepared to provide additional work room space, an office for the post master, and a new loading dock in an expansion of the 1906/1907 addition. The 1906/1907 addition was eventually doubled in size, with that work resulting in the 1926 Addition.

Reorganization and streamlining of both the Postal Service and the Customs Service in the later part of the 20th Century began a long period of underutilization of the Property. For example, in 1967, the Customs Service relocated its operations from the Property to a new office at 3180 Bladensburg Road, N.E. In 1970, President Nixon signed the Postal Reorganization Act, replacing the cabinet-level Post Office Department with the independent USPS. Since the customs functions had already been relocated, the Property became simply the "Georgetown Station" of the USPS. In the early 1990s, major sorting and delivery services were moved from the Property to a centralized facility elsewhere in the District of Columbia, obviating the need for a large workroom and loading facilities. The existing building is now far too large for the needs of the USPS, but there is a need to maintain the retail services portion of postal operations on the premises, as the Property still serves as the only post office in Georgetown.

In 2009, the USPS initially sought approval to demolish the 1926 addition to provide for a new development to the rear of the site, with retail post office on the ground floor. It was determined by the District of Columbia Historic Preservation Office and the other consulting parties in the Section 106 review process; however, that the 1926 Addition is a contributing element in the historic significance of the Property, and therefore that wing cannot be demolished to facilitate new development on the rear of the site.

USPS has experienced, and continues to experience, extraordinary financial difficulties. A nationwide effort to reduce real estate assets has been ongoing for some time. USPS cannot reasonably afford to continue operating the entire existing building as a post office.

No Permitted Re-Use

There are no uses permitted as a matter of right in the R-3 Zone that would be consistent with the size and character of the existing building or the Property's landmark status. The R-3 Zone was designed primarily for row dwellings. As the existing historic improvements on the Property may not be demolished, the only residential use that could practically be made of the building would be for multiple dwellings, which are not permitted either as a matter of right or by special exception in the R-3 Zone District. Moreover, in order to maintain security for its postal operations only other non-residential uses are permitted on the Property.

Modest Expansion Required for Re-Use

In order to re-use the premises for ongoing non-residential use, significant renovations will be required, and additional commercial square footage is required to adaptively re-use the space. The decision by the Postal Service to retain the use of the ground level for their retail postal operations, and to wall off that level for security purposes greatly complicates the adaptive re-use of the top and cellar level space. The top floor is only approximately 2,700 square feet, severely limiting the potential users. The lower level is only 7,600 square feet, and with the minor addition discussed in this application, still will only be enlarged to 12,700, but even this modest addition is key to expanding the range of possible tenants who might be interested in leasing the Property. The Applicant has spent over two years vetting various development plans including single- and two-story additions to the existing building, but such development plans were met with significant opposition at the staff level at the District's Historic Preservation Office, the United States Commission of Fine Arts, and from neighbors. As a result, the only historically-acceptable way to add square footage to the site for adaptive re-use is an expansion of the lower level that does not impact the understanding of the historic significance of the building or block light and air to adjacent properties. Thus, the Applicant proposes to excavate around the existing foundation wall of the 1926 addition, expand the lowest level footprint by approximately 2,350 square feet and provide a network of skylights along the roof of this space, which would essentially be at grade. *See Sheet A.12, Proposed Garden Level, Exhibit E7, and R.1 through R.5 (Renderings) at Exhibit E10.* A green roof will be installed between the two ribbons of skylights. While this alteration of the lowest level of the building does not expand the gross floor area of the building, as that term is defined in the Zoning Regulations, the floor plate will be larger, thus constituting an expansion of the building, and requiring a variance from 11 DCMR § 2002.5.

In addition, fire-separated walls will be required to separate the retail post office on the ground floor from the remainder of the space on the ground and upper levels. In order to renovate the remaining space in the 1926 Addition for other tenants, existing walls and partitions will need to be removed, (*See Architectural Plans, Elevations, Sections, and Renderings at Exhibit E*) and, in order to provide accessibility under the Americans with Disabilities Act (“ADA”), an elevator must be installed. Installing an elevator into the main block of the historic building is not feasible because it would significantly reduce the amount of space required for USPS needs. To install an elevator in the one-story 1926 Addition, as proposed, requires a connection to the second floor of the main block of the building. *See Proposed Upper Level Plan, Sheet A.13, at Exhibit E7.*

Finally, as discussed above, under the Zoning Administrator's interpretation, the expansion of the cellar floor would be calculated into lot occupancy and viewed as a projection into the required rear and side yards. Thus, area variances are required from Sections 403, 404, and 405.

Undue Hardship.

Use variances require a showing of hardship, a greater burden than that required of area variances, because while an area variance can be granted without altering the character of the zoned district, a use variance seeks a use ordinarily prohibited in the particular district. *Palmer v. Board of Zoning Adjustment*, 287 A2d 535, 541 (1972). In order to prove hardship, the

Applicant must show that a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. *Id.*, at 542.

The District of Columbia Court of Appeals addressed the standards for granting a use variance in allowing the conversion of a religious seminary in an R-1-B zone to a nursing home in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974). In that case, the Court considered the historic decline in religious vocations and the departure from the traditional seminary concept of theological education, and held that the existence of an obsolete seminary building on R-1-B property constituted an extraordinary or exceptional situation or condition of the property, supporting the variance relief, where the property owner was unable to transfer the property to another religious or educational institution and would suffer undue economic hardship if the property were to be limited for development only for a permitted R-1-B use. The Court also cited *Banister v. Board of Appeals*, 65 N.Y.S. 2d for the proposition that “the existence of an obsolete structure on a parcel of land constituted the hardship basis for the granting of a variance.” *Clerics*, 320 A.2d at 294.

USPS does not own or control any other property within Georgetown, and wishes to maintain retail postal operations to serve this portion of the city on the premises. Due to security and other operational concerns, residential development on the remainder of the premises is not feasible. Moreover, the only residential development that might be technically feasible within in the building is multi-family residential, which is not permitted in the R-3 Zone District.

The continued non-residential use of the Property requires several structural alterations to adaptively re-use the building and reasonably separate the space for additional users. While, admittedly, the inability to put property towards a more profitable use or loss of economic advantage is not sufficient to warrant the grant of a variance, the premises must be able to be put to a conforming use with a fair and reasonable return. *Palmer, supra*, at 542. It is also worth noting that the owner, the US Postal Service, is an independent governmental agency, and, as such, its ability to convert the Property to another use can be considered, consistent with *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (When a public service organization has inadequate facilities and applies for a variance, the Board of Zoning Adjustment may consider the needs of the public and the organization as other possible extraordinary or exceptional situation or condition of a particular piece of property. In this case, the Post Office’s need to dispose of the Property in an effort to address its ongoing financial concerns, but to maintain retail postal operations in Georgetown may be considered as an extraordinary or exceptional condition).

Given the operational needs of the Postal Service and the extraordinary financial constraints the Postal Service is under, USPS has entered into a development agreement with Pony Express that will ensure a fair and reasonable economic return to USPS and will allow retail postal operations to continue on the site. The Proposed Development’s retail and office uses are the only permitted uses under the development agreement that will likewise ensure a fair and reasonable economic return to the contract purchaser, given the level of structural alterations required to continue retail postal operations and adaptively reuse the remainder of this Individual Historic Landmark.

As to the area variances requested from lot occupancy, side, and rear yards, the modest expansion of the building is, as argued above, necessary to provide a reasonable re-use of this historic commercial building. If the Board should determine such relief is necessary, the Applicant submits that, for the reasons described above, it has certainly demonstrated that the Applicant would face significant practical difficulties in re-using this historic building if required to strictly comply with the Zoning Regulations.

No Adverse Impact. The proposed project will not substantially impair the intent, purpose and integrity of the zone plan or adversely affect the surrounding neighborhood. To the contrary, the requested relief will allow for the renovation of an underutilized site in the heart of Georgetown, and facilitate the renovation of an Individual Historic Landmark. The continued non-residential use of the Property will not upset the *status quo* of the surrounding neighborhood; in fact, it will be consistent with a more than 150 year old tradition of commercial use of the property, and with the commercial uses that are on three sides of the Property: to the south, to the east, and across the street to the west. The Generalized Policy Map indicates the site as Federal, immediately adjacent to a Regional Center, which is defined as having the “largest range of commercial functions outside of the Central Employment Area” and notes that “A large office component is also associated with regional centers,” while the Future Land Use Map identifies the adjacent area as “low density commercial”, adjacent to moderate density residential, which is the designation for the site itself. The Proposal will also promote an increase in tax revenues, as the Property is currently not taxed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that, upon receipt of all of the Applicant's proof and all other support of record for the variance requested, such relief may be granted.

Respectfully Submitted,

ARENT FOX LLP

By:



Kinley R. Bray

EXHIBIT LIST

- A. Application Form and Authorization Letter
- B. Self-Certification Form (Form 135)
- C. Plat
- D. Names of Property Owners within 200' of Property
- E. Plans & Drawings
 - 1. Site Map
 - 2. Survey
 - 3. Site Context Photographs
 - 4. Area Key
 - 5. Existing Building Plans
 - 6. Existing Elevations
 - 7. Proposed Building Plans
 - 8. Proposed Elevations
 - 9. Proposed Sections
 - 10. Proposed Renderings