

STATEMENT OF JUSTIFICATION
Variance Application
Washington D.C. Office of Zoning
3324 18th St. NW, Washington D.C., 20010

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Application Type:	Variance
Applicant/ Property Owner:	Community Three Development, LLC
Property Address:	435 R Street, NW Washington D.C. 20001
Square:	508
Lot Nos.:	52, 53, 66
Zone District:	C-2-A

Community Three Development, LLC ("Community Three") is seeking an area variance to allow for a reduction in the on-site parking required in association with its construction of a condominium. This property was most recently used as a dry cleaning business and has been closed for approximately 10 years. The three (3) subject lots ("the property") have remained vacant and undeveloped due to the significant cost of preparing the site for construction. It has been determined that the soil on the parcel is contaminated with the chemicals used by the dry cleaners in its over fifty (50) years of operation. The costs associated with ventilating the soil have discouraged potential investors from considering the parcel. Since the business's cessation of operations, the surrounding area has grown and developed and it is time that this parcel contributed to both the aesthetic and fiscal well-being of this neighborhood.

Now that the neighborhood has expanded to include similar multi-residential buildings, a commercial addition in this location is no longer optimal. Community Three proposes to transform the now defunct vacant lot into a condominium building. Inherent in the high standard of care are increased costs which Community Three is willing to expend if they can be confident in their investment's success. The area variance requested herein will make this possible.

The Property

The property is located at 435 R Street, N.W. Washington, D.C. 20001. Community Three intends to convert what has long been vacant lots, into an asset that contributes to the neighborhood's economic and aesthetic revitalization. The proposed concept results in a quality residential building that is sensitive to the context of the surrounding urban environment and maximizes the utility of the subject parcel.

The property is located in the C-2-A Zone on a series of three lots totaling 5,973 square feet. Lot No. 66 currently houses an abandoned dry cleaning business in a severe state of disrepair while the other two lots are empty. All three lots front on R Street and there is a 10-foot wide alley to the rear. The existing dry cleaning building will be removed to allow for the new proposed construction.

Tools from the now defunct dry cleaning business remain on-site and include old dryers and a chemical press. Otherwise, the building's interior is vacant and dilapidated. The most notable and impactful aspect of the dry cleaning business is its detrimental effect

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on the parcel's soil and air quality. Community Three has hired Icor Limited ("Icor"), an environmental consultant based in Manassas, Virginia, to evaluate the condition of the soil on all three lots. Icor has made the preliminary determination that soil remediation measures, including removal and backfill treatment, possibly requiring special permanent ventilation techniques, will likely be required to prepare the property for residential use.

Proposed Use

Community Three plans to construct a 24-unit, 4-story, multi-family residential building on the property. The proposed design allows for the restoration of a contributive use of a previously vacant parcel and at the same time, creates new livable spaces in a transit-rich area of Northwest D.C. The Applicant has already submitted its proposal to ANC 2Co2 and the East Central Civic Association.

Variance Request

As indicated on the attached Form 135 and pursuant to §3103.2 of the District of Columbia Zoning Regulations, Community Three is requesting an area variance from § 2101.1 which would allow for the provision of six (6) parking spaces in lieu of the twelve (12) required given the proposed buildout.

Section 8 of the Zoning Act, D.C. Official Code § 6-41.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), gives the District of Columbia Board of Zoning Appeals ("the Board") the power,

"[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code §6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

This provision establishes a three-prong test for the approval of an Applicant's variance request:

- I. The property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property.
- II. The strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant.

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III. Granting the variance will do no harm to the public good or to the zone plan.

As articulated by the District Court of Appeals in Palmer v. D.C. Bd. of Zoning Adjustment, the standard of review depends on the nature of the variance requested. Palmer v. D.C. Bd. of Zoning Adjustment, 287 A.2d 535 (D.C. 1972). An area variance requires that the Applicant demonstrate *practical difficulties* while a use variance demands that *undue hardship* be proven. Here, Community Three seeks only the former.

Turning to Prong I, the relevant case law makes several things clear. First, uniqueness can result from a combination of factors. As the Gilmartin Court states, “the statute does not preclude the approval of a variance where the uniqueness arises from a **confluence of factors**...the critical point is that the extraordinary or exceptional condition must affect a single property.” Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164 at 1168 (D.C. 1990), emphasis added. The size of the subject parcel coupled with the expensive and technically-sophisticated measures that must be taken due to the on-site soil contamination to ensure that the lots are suitable for habitation represent the confluence of factors which the Gilmartin Court requires in order to satisfy the first prong. The Palmer Court further clarifies that, “to support a variance it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant’s property and not to the general conditions in the neighborhood.” Palmer v. D.C. Bd. of Zoning Adjustment, 287 A.2d 535 at 539 (D.C. 1972). The presence of the dry cleaning business on this particular parcel for over fifty (50) years has created unique soil conditions that have and will continue to pose a threat to the site and adjacent properties. No other parcel in the neighborhood has been similarly affected. The increased cost to clean and redevelop this site, specifically to sensitively remediate contaminations that can affect ground water and air quality, necessitate full buildout on the parcel.

Regarding Prong II, the DC Court of Appeals explained the two-part test for the establishment of *practical difficulties* in Palmer v. D.C. Bd. of Zoning Adjustment. Palmer v. D.C. Bd. of Zoning Adjustment, 287 A.2d 535 (D.C. 1972). An Applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. Palmer v. D.C. Bd. of Zoning Adjustment, 287 A.2d 535 (D.C. 1972); see also Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164 at 1167 (D.C. 1990).

The width of the combined parcel is approximately 57 feet, and as a result, can accommodate a total of six legal (9 feet x 19 feet) parking spaces across its alley side. This configuration is similar to other properties adjacent to the alley on this block. The provision of additional legal (9 feet x 19 feet) parking spaces, beyond those accommodated along the alley-side of the parcel would require a drastically reduced building footprint (given the need for drive aisles and turn around spaces) and therefore make the creation of an efficiently arranged and sized building impractical. Should the area variance not be granted, parking would likely occupy over sixty percent (60%) of the site and the ancillary reduction of the building footprint renders the project both

inefficient and cost-prohibitive (from both a constructability and environmental remediation standard) therein satisfying the unnecessarily burdensome element.

In 1700 Block of N Street, N.W., and Vicinity v. District of Columbia v. Bd. of Zoning Adjustment, the Court of Appeals upheld the grant of a variance from off-street parking requirements because it would have required the YMCA to reduce the programs offered. 1700 Block of N Street, N.W., and Vicinity v. District of Columbia v. Bd. of Zoning Adjustment, 384 A.2d 674 at 678 (D.C. 1978). The Court in Gilmartin said of 1700 Block: "In 1700 Block, moreover, there were no feasible alternatives that would have complied with the regulations." Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164 at 1170 (D.C. 1990). In determining whether or not to grant an Applicant's request for a variance, the Board has several factors at their disposal which include, but are not limited to the weight of the burden of strict compliance, the severity of the variance requested and the effect of the proposed variance on the overall zone plan. A factor that does *not* bar a grant in cases like that here is prior knowledge of the practical difficulty – a fact that encourages development after the due diligence period. See A.L.W. v. District of Columbia Bd. of Zoning Adjustment, 338 A.2d 428. In short, the complete provision of parking as contemplated without a variance would render the construction of on this site impractical, cost-prohibitive, and burdensome given the configuration, orientation, and environmental constraints of the specific parcel.

The proposed variance is also in accordance with the overall zone plan and will do no harm to the public good. Increased affordable housing in accordance with the District's inclusionary zoning provisions under §§ 2602.1-2607.7 of the Zoning Regulations, the transit-rich nature of the surrounding area (a Metro rail station, nine Metro bus routes, a ZipCar car sharing location, two Capitol bike-share locations, and five streets with dedicated bicycle lanes within a five-minute walk of the parcel), the size of the residential project, and the possible provision of additional Zip Car service demonstrate that the reduced number of parking spaces will not be of substantial detriment to the public good. The Court in 1700 Block noted the importance of public transportation options in the area surrounding a parcel requesting a parking reduction - "There is also public transportation available – with twenty-two existing bus routes serving that vicinity, as well as a Metro subway stop within two blocks." 1700 Block of N Street, N.W., and Vicinity v. District of Columbia v. Bd. of Zoning Adjustment, 384 A.2d 674 at 676. Similarly, the existence of other condominium developments in the neighborhood and the proximity to Metro place the proposal squarely within the general intent and purpose of the District's Zoning Regulations and Plan. Not providing six additional on-site parking spaces will be more than outweighed by the beneficial addition of a multi-family residential building where there has long been nothing more than an attractive nuisance on a vacant lot for over a decade.

The BZA has found that soil conditions provided the requisite ground to approve area variances in several previous cases (attached). In Appeal No. 9866, the Board granted the parking reduction variance for a developer seeing to construct an apartment building "has shown a hardship within the meaning of the variance clause of the Zoning Regulations by reason of exceptional soil conditions of the subject property and that to deny the requested relief would result in exceptional practical difficulties and undue

hardship upon the owner.” In BZA Case No. 16931, the Board granted two area variances from the FAR and lot occupancy requirements to an applicant proposing to develop an apartment building where there had formerly been an Amoco gas station. The Board found that several factors combined to comprise the basis for the exceptional condition requirement – among them, the adverse subsurface conditions created by the site’s previous use as a gas station. Similarly, in BZA Case No. 17431, the Board granted an Applicant’s request for FAR, court-width and non-conforming addition area variances in order to allow for the conversion of a former garage into a residential building. The Board recognized the financial impact of the soil remediation measures when it stated that the variances would be necessary to offset the environmental costs and make the project financially viable. The BZA has even found soil contamination to be sufficient basis for the *higher* burden of undue hardship required for a use variance. In Case No. 1692, a fast food restaurant was granted a use variance on a parcel previously occupied by a gas station because “the contamination of the site is an exceptional situation which creates an undue hardship for the owner in making use of the site in compliance with the Zoning Regulations.”

For the above-noted reasons, we believe that the Board should be able to find that this request for a variance falls within the scope of § 8 of the Zoning Act, D.C. Official Code § 6-41.07(g)(3)(2001) and respectfully request that the Board grant Community Three’s variance application.

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