

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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This statement is submitted on behalf of 5th and S Streets, NW, LLC, (the "Applicant"), which owns Lot 22 in Square E-0475 at the northeast corner of the intersection of 5th and S Streets, NW (the "Property"). The Applicant seek a variance from Section 403.2 of the Zoning Regulations in order to permit a new flat that exceeds the maximum percentage of lot occupancy allowed in the R-4 District, and a variance from section 2101.1 to permit a new flat without providing one (1) parking space.

Pursuant to Section 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 additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site

The Property is zoned R-4 and consists of approximately 828 square feet. The Property is currently vacant.

II. Description of Proposal and Zoning Relief

The Applicant seeks a variance from Section 403.2 of the Zoning Regulations, which permits a maximum lot occupancy of 60% for flats in the R-4 District. In this case, the Applicant proposes to construct a 2-unit flat that occupies 70% of the lot area.

Additionally, the Applicant seeks to construct the flat without any off-street parking, where a minimum of one (1) parking space is required under Section 2101 of the Zoning Regulations.

BOARD OF ZONING ADJUSTMENT

District of Columbia

CASE NO. 18411

EXHIBIT NO. 4

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III. Burden of Proof for Variances

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 peculiar and exceptional practical difficulties if the zoning regulations were strictly applied or exceptional and undue hardship;
- (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 will be further explained in the prehearing statement and at the public hearing, all three prongs of the variance test are met. First, the Property is only 12 feet in width, which severely limits the design of a residential structure on the lot and the ability to accommodate a parking space. Second, the Applicant is not able to construct reasonably marketable units without the approval of the proposed building design. Third, the variance of the lot occupancy would not result in a building that is out of character with the surrounding residential uses; and there is ample on-street parking to accommodate the proposed structure.