

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

Application of Abdo Development, LLC
ANC 2F

BZA Application No. 18477
Hearing Date:

APPLICATION STATEMENT OF THE APPLICANT

This is the application of Abdo Development, LLC ("**Abdo**" or "**Applicant**") for variance and special exception relief to allow the construction of a mixed-use building. The property that is the subject of this application is 1400-1404 14th Street, NW (Square 210, Lots 82, 102, & 800) (the "**Property**"). The Property is included in the ARTS/C-3-A Zone District. A Surveyor's plat is attached as Exhibit C, and a portion of the District of Columbia Zoning Map is attached as Exhibit D.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve the following areas of relief:

1. Variance from Section 1902.1(b) (setback above 50 feet in height adjacent to residential zone): No portion of the building may project above a plane at a 45-degree angle 50 feet above the property line adjacent to the residential zone. Some of the Property's southern property line abuts a residential zone, and the proposed building does not set back 50 feet above the property line.
2. Variance from Section 2101.1(off-street parking): The required off-street parking is 38 spaces, and the project will provide three spaces.
3. Special exception under Section 774.2 (rear yard): The required rear yard is 16.5 feet, and the project will provide only a partial conforming rear yard.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.1 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.1 & 3104.1).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Logan Circle neighborhood of Ward 2. It is also included in the Greater 14th Street Historic District. The Property is irregularly-shaped and contains approximately 8,203 square feet of land area. The Property is bounded by a two-story commercial building to the north, 14th Street to the east, Rhode Island Avenue to the southeast, a three-story commercial building to the southwest, a 10-story apartment house to the south and west, and two public alleys to the west.

The Property is improved with three buildings. At the north end of the Property is a two-story commercial building that contributes to the historic district. The other two buildings are one-story commercial buildings that do not contribute to the historic district.

As the Surveyor's Plat and site plan illustrate, the Property is oddly shaped, with an irregular rear lot line. Because of its corner location, the Property is much wider at its front than at its rear. At its rear, some of the lot juts into the intersection of the two public alleys, and some of the rear extends further west but not into the alleys. The 10-foot public alley runs perpendicular to and north from the Property, while the 30 foot public alley runs parallel to and west from the Property. The two alleys intersect at the Property's rear, but the property line narrows the intersection of the alleys. A residential zone line partially borders the Property to the south, following the property line with the 10-story apartment building.

The surrounding area is predominantly mixed, moderate-density commercial, and high-density residential uses. Multi-unit apartment houses occupy almost all of the block of Rhode

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Island Avenue between 14th and 15th Streets, while commercial and mixed uses occupy 14th Street north of Rhode Island Avenue. Across Rhode Island Avenue to the south is a 7 Eleven store, and across 14th Street to the east are moderate density commercial buildings. To the northwest across the alleys are various retail establishments, including a Whole Foods supermarket, a CVS drugstore, and a hardware store.

IV. THE PROPOSED PROJECT

The proposed new project will be a mixed-use building containing residential, office, and retail uses. The two southernmost existing buildings will be razed, and the northernmost historic building will be preserved and incorporated into the design.¹ The southern portion of the site will contain a seven-story structure added to the existing two story historic building. The entire project will contain retail use on the first floor and office use on the second floor. The third through sixth floors will be entirely in the new addition and will contain approximately 30 apartment units. The seventh floor will contain a party/community room with access to a roof deck. Photos of the Property and plans of the proposed project are included in Exhibit F.

The project will contain approximately 39,371 square feet of gross floor area (4.8 FAR) and will have a height of approximately 75 feet, excluding the elevator penthouse. However, Section 1902.1(b) requires that above 50 feet in height, the building be set back and not project above a 45 degree plane (equivalent to a 1:1 setback). The proposed project does not have such a setback. The rear yard will extend 30 feet behind the historic building, but there will not be a rear yard behind the addition. The residential lot occupancy will be conforming at approximately 74%. The project will provide affordable residential units commensurate with the requirements of Inclusionary Zoning.

The proposed project will provide three off-street parking spaces and approximately 12 bicycle parking spaces. The Zoning Regulations require 38 parking spaces. Loading facilities are

¹ The Historic Preservation Review Board gave concept approval to the project at its June 28, 2012 meeting. The Staff Report is included in Exhibit E.

not required since this project will be an addition to a historic building. Though the provided parking will be less than what is required, it will be sufficient for this project in this location.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the Applicant demonstrates that the Property meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

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In this case, the Property is unique because of its highly irregular shape and presence of a historic building. Since Rhode Island Avenue and 14th Street do not intersect at a right angle, the corner of the Property is a much wider angle, creating an irregular shape for the street frontage. The Property's depth varies, and the rear line of the Property does not follow a straight line, forming an "L" shape. A portion of it extends into the intersection of the two public alleys at its rear. In addition to its irregular shape, the Property contains a historic building that must be extensively preserved and incorporated into the project's design. Thus, the presence of the historic building on an irregularly shaped lot creates a situation that uniquely affects the Property and a feasible design.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty'." Increased expense and inconvenience to applicant for a variance are among the factors for BZA consideration." Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: "the severity of the variance(s) requested"; "the weight of the burden of strict compliance"; and "the effect the proposed variance(s)

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would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

In this case, the proposed project meets the practical difficulty standard. Constructing any feasible structure, residential or otherwise, on this Property is very difficult because of the considerable constraints imposed by the irregular lot configuration and presence of the historic building. In order to design a structure that incorporates necessary corridors, egress points, and a sufficient amount of retail, office, and residential space for a viable project, the design must incorporate a few elements that do not conform to the Zoning Regulations. Because of the Property’s unique characteristics, complying with the Zoning Regulations would be extremely burdensome for the Applicant, and a viable project would not be possible.

Specifically, the Applicant would face a considerable burden if it were required to set back the building at a 1:1 ratio above 50 feet in height. The unusual shape of the lot and the presence of the historic building limit how the addition may be configured to accommodate a viable design. The portion of the building that requires the setback is only 30 feet wide (the “panhandle” at the rear that borders the residential zone). If the building design were to comply with the setback requirement, then the fifth floor would be set back 10 feet, and the sixth would be set back 20+ feet, thereby leaving just a sliver of usable space. With a width of 20 feet for the fifth floor, the design would not be able to accommodate the required corridors and fire stairway as well as viable apartment units. This renders the fifth and sixth floors as completely infeasible. Without an ability to construct the fifth and sixth stories, the building is not financially viable, so the Applicant would face a considerable financial burden by complying with the required setback.

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Finally, providing the required amount of parking would be extremely burdensome, if not impossible, for the Applicant. The project will provide as much parking as is possible, but it is physically impossible to add any more spaces and to make them all directly accessible. The District Department of Transportation would not permit a curb cut from Rhode Island Avenue or 14th Street, leaving only the rear as a possible parking location. Since the historic building cannot be demolished to make way for more parking in the rear, only the two provided spaces are possible. The narrow and irregular configuration of the Property at its rear makes it nearly impossible to provide any more parking that would be directly accessible from the alley on the small portion of the lot (the “panhandle”). The Property’s narrow rear configuration and historic building all but prevent a multi-level underground parking structure that could accommodate the required parking spaces, drive aisles, and ramps. Because of the risk of damage, parking and access could not be located under the historic building, leaving only the southern portion of the site to accommodate any such underground parking. If underground parking were even possible, then at most, only a few spaces could be provided on each level because of the irregular lot shape; thus, the parking facilities would have to go many levels underground to provide the necessary number of spaces. The significant expense for constructing such an extensive underground parking structure would be prohibitive and infeasible.

C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

Granting all of the requested relief will not harm the Zone Plan. The Applicant has thoughtfully designed the new building to minimize any adverse impacts on neighboring properties. The surrounding properties will experience negligible, if any, negative impacts as a result of the requested relief.

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First, the lack of a building setback above 50 feet in height will not have an impact on neighboring properties. The reason for the required setback is to protect shorter residential properties in adjacent less dense zones from the impacts of taller buildings in adjacent higher density zones. This is not the case here. The Property borders a residential zone only where it abuts a 10-story apartment building. This existing building is taller than the maximum height of the proposed building, so it will not adversely impact the existing apartment building. If anything, the apartment building's height will have an adverse impact on the proposed building.

The provision of less than the required amount of off-street parking will not adversely impact the availability of parking on neighborhood streets. The Property is in an extremely transit-rich and walkable location. Metrobus and Circulator routes are literally in front of the Property on 14th Street. A Capital Bikeshare station is across the street at the corner of 14th and Rhode Island. The Property is also within a 15 minute walk of the McPherson Square and Farragut North Metro stations. Many Zipcar stations are within a few blocks of the Property. Because building residents will have abundant transportation options, they will be less inclined to have cars. In addition, many offices, restaurants, supermarkets, and other service options are within walking distance of this location. In general, residents of this area are less inclined to own cars than in many other parts of the city. Furthermore, the project will provide at least 16 bicycle parking spots. Because car parking demand will be low for this project, the available on-street parking will be unaffected. It will be highly unlikely that residents will need to use on-street parking in the surrounding neighborhood.

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VI. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF

Sections 774.3-774.5 set forth the special exception criteria that the Application must satisfy for the Board to waive the requirements for a rear yard. As described below, this project satisfies these requirements.

A. Windows Must be Separated a Sufficient Distance from Other Buildings with Facing Windows (Section 774.3)

No other buildings face the Property's rear from a reasonable distance. Only the historic building portion of the project will have rear windows, and these windows will face the 30-foot perpendicular alley. The windows in the adjacent apartment building will not face the rear of the proposed building since they face perpendicular to the Property.

B. Facing Windows Sight Lines Shall Provide Sufficient Privacy (Section 774.4)

Since no nearby buildings have windows facing windows in the proposed building's rear, this section is inapplicable.

C. The Building Plan Must Provide Provisions for Adequate Off-Street Service Functions (Section 774.5)

The Project will provide space in the rear yard for parking and for delivery and trash pickup access. The parking will be located so that the access to the rear door for pickup and delivery will not be blocked and will be easily accessible. Because of the "L" shape of the Property's rear line, pickup and deliveries can occur without obstructing traffic in the alley. Although the project will not provide the required amount of parking (as discussed above in the variance request), it will otherwise accommodate adequate off-street functions.

D. The Requested Relief will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps and will not Tend to Affect Adversely the Use of Neighboring Property

The lack of a complying rear yard will not adversely impact neighboring properties. Much of the Property's rear at the historic building is bordered by the 30-foot perpendicular alley, so there are no properties to the west of the historic building that will experience any impacts from the smaller rear yard. Also, the rear of the new addition (the "panhandle") does not have any properties immediately to the west, so the proposed building will not encroach on available light and air to any

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such properties. Since the project will satisfy the requirements for special exception relief set forth in Sections 774.2 – 774.6, the requested relief will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Map.

VII. EXHIBITS

EXHIBIT A	Application Form, Self-Certification Form, and Letter of Authorization
EXHIBIT B	Applicant's Statement in Support of Requested Relief
EXHIBIT C	Surveyor's Plat
EXHIBIT D	Excerpt of Zoning Map
EXHIBIT E	HPO Staff Report
EXHIBIT F	Architectural Plans and Site Plan, including Photos of Property
EXHIBIT G	Property Owners List

VIII. CONCLUSION

Based on the foregoing analysis and conclusions, the Applicant respectfully requests that the Board grant the variance and special exception relief requested.

Respectfully submitted,
GOULSTON & STORRS, P.C.


Allison C. Prince


Cary R. Kadlec

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