

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

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PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 1617 14th Street, LLC, (the "Applicant"), which owns the parcel located at 1617 14th Street, NW, more particularly described as Lot 160 in Square 240 (the "Property"). The Applicant seeks special exception approval from Sections 1902.1 and 411.5 of the Zoning Regulations and variances from Sections 2101.1 and 2115.1 of the Zoning Regulations in order to redevelop the Property with a mixed-use project that consists of ground floor retail and a six-story apartment house above.

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 Property.

The Property consists of approximately 7,343 square feet, and is located at the northeast corner of the intersection of 14th and Corcoran Streets, NW, south of the U Street corridor. Formerly the site of an Amoco gas station, the site is currently vacant and used as a parking lot for Zip Car. There are four existing curb cuts along the perimeter of the Property. With the redevelopment of the site, the Applicant will close the existing curb cuts, which will generate approximately eight on-street parking spaces along 14th and Corcoran Streets.

A. C-3-A/ARTS Overlay District. The Property is in the C-3-A/Uptown Arts-Mixed Use (ARTS) Overlay District. The C-3-A District is intended to permit medium density

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development with a density incentive for residential development within a general pattern of mixed-use development. 11 DCMR § 740.4.

The ARTS Overlay District is applied to the commercial and mixed-use Districts in specific squares in the 14th and U Street, NW, area. The purposes of the ARTS Overlay District are to:

- Encourage a scale of development, a mixture of building uses, and other attributes such as safe and efficient conditions for pedestrian and vehicular movements, all of which will be as generally required by the Comprehensive Plan;
- Require uses that encourage pedestrian activity, especially retail, entertainment, and residential uses;
- Provide for an increased presence and integration of the arts and related cultural and arts-related support uses;
- Expand the area's housing supply in a variety of rent and price ranges;
- Expand business and job opportunities, and encourage development of residential and commercial buildings;
- Strengthen the design character and identity of the area by means of physical design standards;
- Encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings; and
- Foster eighteen (18) hour activity and increased public safety.

B. 14th Street Historic District. The Property is also located within the 14th Street Historic District. As such, the project design must be reviewed by the Historic Preservation Review Board (HPRB). At its June 28, 2012 meeting, HPRB unanimously approved the concept design and delegated final approval to staff. In its report, HPRB staff stated that the height, masonry materials and formal façade organization are complementary and compatible with the surrounding mix of uses and successfully relate to the character of the adjoining townhouses. The report also described the use of setbacks for the upper floor as unusual and exemplary

because "the top floors don't appear as begrudgingly recessed simply in an effort to squeeze additional space while trying to make the building appear smaller. Instead, the setbacks and unusual geometry are an integral part of the design, resulting in a harmonious juxtaposition of elements and a distinctive roofline that simultaneously celebrates its height while ensuring that it is compatible with and enhances its context."

II. Description of Proposal and Zoning Relief

The Applicant proposes to redevelop the Property with ground floor retail and a 6-story apartment house above (the "Project"). The retail space will have a floor area of approximately 4,000 square feet. The apartment house will consist of approximately 36,600 square feet and contain approximately 35 dwelling units. The main lobby of the residential building will be on Corcoran Street, near the east end of the Property, and the dwelling units will be on levels 2 through 7 of the building. The Project will have a maximum building height of 75 feet and an FAR of approximately 5.3. As noted above, the Applicant will close the four existing curb cuts around the perimeter of the Property, which will generate approximately eight on-street parking spaces along 14th and Corcoran Streets.

The following areas of relief must be granted by the Board to facilitate the proposed redevelopment of the Property:

A. **Building Height.** Pursuant to Section 1906.1, the Applicant seeks special exception approval from Section 1902.1 of the Zoning Regulations, which limits the height of buildings in the underlying C-3-A District to 75 feet, provided that no roof structure shall exceed a height of 83.5 above the measuring point used for the building. In this case, the building height is 75 feet but the elevator overrun extends to a height of 90 feet above the measuring point.

B. **Roof Structure Enclosures.** The Applicant seeks special exception approval from Section 411.5 of the Zoning Regulations, pursuant to Section 3104.1, which states that enclosing walls from roof level shall be of equal height. In this case, the roof structure has three different heights in a single enclosure. The elevator overrun extends 15 feet above the roof; the penthouse, which includes the stair, elevator and mechanical equipment, and restroom, extends 10 feet above the roof; and there is a 6-foot high screen wall around the emergency generator.

C. **Number of Residential Parking Spaces.** In addition, the Applicant seeks a variance from Section 2101.1 to provide 10 residential parking spaces for the Project where 21 are required. The regulations require an apartment house in the C-3-A District to have 1 parking space for each 2 dwelling units, or in this case 18 spaces. The Applicant has provided 10 residential spaces. Also, the Applicant is not providing any retail parking spaces where three are required. Specifically, Section 2101 of the Zoning Regulations requires in the C-3-A District, in excess of 3,000 square feet, one parking space for each additional 300 square feet. The Project has 4,000 square feet of retail, so three retail parking spaces are required.

D. **Size of Residential Parking Spaces.** The Applicant seeks a variance from Section 2115.1 of the Zoning Regulations. Under this section, a required parking space must have a minimum dimension of 9 feet by 19 feet. The Project provides 10 of the 18 required residential parking spaces. However, of the 10 spaces, only 4 meet the minimum size requirements. The remainder are compact car parking spaces.

III. **Standards for Approving Special Exception Relief**

A. **Sec. 3104.1.** The Board is authorized to grant special exceptions where, in its judgment, the special exception 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 in accordance with the Zoning Regulations and Zoning Maps. 11 DCMR § 3104.1.

B. ARTS Overlay District. The Board may grant exceptions under Section 3104.1 of the Zoning Regulations from any of the requirements or limits of the ARTS District, other than § 1901.6, based upon the following criteria; except that the Board shall apply criteria (c) and (d) only if relevant to the relief sought:

- (a) The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area;
- (b) Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purpose of this chapter and the Comprehensive Plan;
- (c) The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report;
- (d) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and
- (e) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the ARTS Overlay District.

C. Roof Structures. Section 411.11 of the Zoning Regulations states that where impracticable because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly or unreasonable, the Board shall be empowered to approve, as a special

exception, the location, design, number and all other applicable aspects of the roof structures provided that the intent and purpose of the Zoning Regulations shall not be materially impaired by the structure, and the light and air of adjacent building shall not be affected adversely.

IV. Project Meets Standards for Special Exception Approval.

The Project meets the foregoing standards for special exception approval for the following reasons:

1. In order to provide the roof deck as an amenity for residents, all residents must have access to it, including those persons with disabilities. Therefore, elevator access must be available to the roof deck. Any elevator to the roof deck of a 75-foot high building would exceed the 83.5 feet height requirement because 8.5 feet is only enough height to allow for the actual roof “stop” and not enough for any of the elevator overrun.

2. The multiple height of the roof structures results from the need to accommodate the elevator overrun while at the same time minimizing the bulk of the remaining roof structures as much as possible. The roof structures design is not contrary to the intent and purpose of the Zoning Regulations, nor are the height and air of the adjacent building adversely affected. As noted above, HPRB found that the Project successfully relates to the character of the adjoining townhouses.

3. HPRB has granted conceptual approval of the Project design. In its report, HPRB staff stated that the height, masonry materials and formal façade organization are complementary and compatible with the surrounding mix of uses and successfully relate to the character of the adjoining townhouses. The report also described the use of setbacks for the upper floor as unusual and exemplary because "the top floors don't appear as begrudgingly recessed simply in an effort to squeeze additional space while

trying to make the building appear smaller. Instead, the setbacks and unusual geometry are an integral part of the design, resulting in a harmonious juxtaposition of elements and a distinctive roofline that simultaneously celebrates its height while ensuring that it is compatible with and enhances its context."

4. The proposed design will substantially advance the purposes of the ARTS Overlay District by providing a mixed-use project that includes ground floor retail and new housing on a prominently located site that is currently vacant. Further, the Project will not adversely affect neighboring property or be detrimental to the health, safety, convenience or general welfare of persons living, working, or visiting in the area, to the contrary. The Project will contribute to the continued revitalization of the area. Among other things, the new housing and new retail will bring more pedestrian activity which will contribute to improving the safety of the neighborhood.

V. Burden of Proof for Area Variances

The Project requires a variance to provide 10 residential parking spaces where 21 are required and to permit 6 parking spaces that do not comply with the minimum size requirements.

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 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 discussed below, and as will be further explained in the prehearing statement at the public hearing, all three prongs of the area variance test are met in this Application.

A. The Property Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990). In this case, the Property has a relatively small footprint (71 feet wide along 14th Street). This, coupled with the infill required for this type of construction, makes locating parking on-site very inefficient. Further, the Property is well-served by public transportation and is located in a very pedestrian-oriented/friendly neighborhood.

B. Strict Application Would Result in an Exceptional and Undue Hardship to the Property Owner

The Applicant would encounter practical difficulties if required to comply with the residential parking requirement and the requirement for the size of parking spaces. As noted above, size of the Property coupled with the infill nature of the proposed construction makes the construction of on-site parking very inefficient. After locating the building core, required below-grade building utility spaces, and the required garage ramps, very little space remains for parking. Additional levels of below grade parking continue to be inefficient as most of the space

is taken up by the ramps needed to access each level. Further, to construct additional levels of parking would significantly increase the project costs.

C. 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 if the Board grants the requested area variances for the number of residential parking or the size of the parking spaces. In fact, the proposed development promotes the intent, purpose and integrity of the zone plan and the public good. First, the Property is in the C-3-A ARTS Overlay District, which is intended to permit medium density development with a density incentive for residential development within a general pattern of mixed-use development. 11 DCMR § 740.4. The proposed development is a mixed-use project employing the bonus density available under the Inclusionary Zoning Regulations. Second, the proposed development is consistent with the purposes of the ARTS Overlay District. Specifically, the Project encourages pedestrian activity through retail and residential uses; it expands the area's supply of mixed-income housing; and it incorporates exceptional design as noted by HPRB. Finally, with the redevelopment of the Property, the Applicant intends to close the four existing curb cuts along the perimeter of the Property, which will generate approximately eight on-street parking spaces along 14th and Corcoran Streets.