

**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 GA Views Management, LLC, (the "Applicant"), the owner of the parcel located at 3357-3359 Georgia Avenue, NW, more particularly described as Lot 89 in Square 3033 (the "Property"). The Applicant seeks special exception approval for roof structures that do not comply with Sections 770.6 and 411 of the Zoning Regulations and variances from the parking requirement in Section 2101.1 and the rear yard requirement in Section 774.7 in order to redevelop the Property with a mixed-use project that consists of ground floor retail and twenty (20) dwelling units 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 4,986 square feet and is located at the southeast corner of the intersection of Georgia Avenue and Otis Place, NW. The site is currently vacant. The Property is in the Georgia Avenue Commercial (GA) Overlay /C-3-A. The C-3-A District 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 GA Overlay applies to all properties zoned C-2-A and/or C-3-A along both sides of Georgia Avenue, N.W., from the north side of the intersection of Georgia Avenue and Kenyon Street to the south side of the intersection of Georgia Avenue and Varnum Street. 11 DCMR §

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1327.1. The purposes of the GA Overlay District include encouraging additional residential uses along the Georgia Avenue corridor; encouraging improved commercial uses; and encouraging vertically-mixed uses (ground floor commercial and residential above) within a quarter mile of the Georgia Avenue-Petworth Metrorail Station along Georgia Avenue, from Park Road to Shepherd Street.

The design requirements of the GA Overlay applicable to the proposed development are as follows:

- Buildings shall be designed and built so that not less than 75% of the street wall at the street level shall be constructed to the property line abutting the street right-of-way. Building on corner lots shall be constructed to all property lines abutting streets. (§1328.2)
- Each building on a lot that fronts on Georgia Avenue, NW, shall devote not less than 50% of the surface area of the street wall at ground level to entrances to commercial uses or to the building's main lobby and to display windows have clear or clear/low emissivity glass. Decorative or architectural accents do not count toward the 50% requirement. (§1328.5)
- Each commercial use with frontage on Georgia Avenue shall have an individual public entrance directly accessible from the public sidewalk. (§1328.7)
- The ground floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of 14 feet. (§1328.9)
- Buildings subject to §1328.9 shall be permitted an additional five feet (5 ft.) of building height over that permitted as a matter of right in the underlying zone. (§1328.10)

II. Description of Proposal and Zoning Relief

The Applicant proposes to redevelop the Property with ground floor retail and a 5-story apartment house above (the "Project"). The retail space will have a floor area of approximately 2,138 square feet. The apartment house will consist of approximately 16,800 square feet and contain approximately 20 dwelling units. The main lobby of the residential building will be on

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Georgia Avenue near the southwest corner of the Property and the dwelling units will be on levels 2 through 6 of the building. The Project will have a maximum building height of 70 feet and an FAR of approximately 3.8.

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

A. **Roof Structures.** The Applicant seeks special exception approval, pursuant to Section 3104.1, to permit multiple roof structures with enclosures of unequal height, and a stair tower that does not meet the 1:1 setback. Section 411 of the Zoning Regulations require that all penthouses and mechanical equipment be place in a single enclosure with enclosing walls of equal height. In this case, the elevator overrun and the stair tower are separated. Additionally, Section 770.6(b) of the Zoning Regulations states that if housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be set back from all exterior walls at a distance at least equal to its height above the roof upon which it is located. In this case, the stair tower has a height of 8'-3" from the roof of the building, but is setback only 4'-3" from the south wall of the building.

B. **Number of Residential Parking Spaces.** In addition, the Applicant seeks a variance from Section 2101.1 of the Zoning Regulations in order to have no off-street residential parking for the project where 10 spaces are required. The Zoning Regulations require an apartment house in the C-3-A District to have 1 parking space for each 2 dwelling units. In this case the project will have 20 units, so 10 spaces are required.

C. **Rear Yard Setback.** The Applicant seeks a variance of the rear yard requirement in Section 774.1 of the Zoning Regulations for that portion of building above a horizontal plane of 20 feet above the mean finished grade. Specifically, the Applicant proposes a rear yard width

of 7' where a net required setback of 13'- 9 1/2" is required. Under this section, in a C-3-A District where a lot upon which a building or other structure abuts an alley, the rear yard, as required by §§774.1 through §§774.6 is measured as follows:

In a C-1, C-2, or C-3-A District, where a lot upon which a building or other structure is located abuts an alley, the rear yard, as required by §§ 774.1 through 774.6, may be measured as follows:

- (a) For that portion of the structure below a horizontal plane twenty feet (20 ft.) above the mean finished grade at the middle of the rear of the structure from the center line of the alley to the rear wall of the portion; and
- (b) For that portion of the structure above the horizontal plane described in § 774.7(a), the depth of rear yard shall be measured from the rear lot line to the rear wall of that portion immediately above the plane.

11 DCMR §774.7.

In this case, the project design complies with 774.1 based on the measurement requirement in Section 774.7(a). However, because the building does not step back above the second story, it does not meet the required rear yard width based on the measurement prescribed in Section 774.7(b).

III. Standards for Approving Special Exception Relief

A. Section 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.

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B. **Section 411.11.** 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 proposed project meets the foregoing standards for special exception approval for the roof structures for the following reasons:

1. The elevator overrun and stair tower are located in a manner that complies with the Building Code and are separated in order to minimize the bulk of the roof structures as much as possible. Additionally, there is a 4' high parapet that will significantly shield the view of these structures from the public realm and the adjacent residences. Thus, the proposed location and design of the roof structures is not contrary to the intent and purpose of the Zoning Regulations, nor are the light and air of the adjacent buildings adversely affected.

V. **Burden of Proof for Area Variances**

The Project requires a variance in order not to have residential parking spaces where 10 are required. 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;

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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 small footprint, which results, in large part, from the building restriction lines that extend along the west and north sides of the Property. The building restriction line is 7'-6" wide along the west side of the Property (along Georgia Avenue) and 12'-6" wide along the north side of the Property (along Otis Place).

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 and rear yard requirements. As it relates to the parking, the small footprint of the Property, coupled with the infill nature of the proposed development, makes the construction

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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 cost of the project, which would significantly impact its financial feasibility. Also, because of the small footprint of the Property, the Applicant must maximize the floor area of the building. Pulling the building back further from the property line in order to comply with the rear yard requirement causes a practical difficulty in that it would reduce the overall floor area of the building and adversely affect the feasibility of the project. The Applicant proposes 20 units only, already making this a relatively small project.

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 parking and rear yard variances. The parking waiver is mitigated by the fact that the Property is located just three blocks south of the Georgia Avenue-Petworth Metrorail Station and is also well-served by Metrobus lines. With regard to the rear yard, as shown on the Site Line Diagram on Sheet 11 in the enclosed plans, there is only a nominal difference in impact between the proposed project with a rear yard variance and a project that is constructed as a matter of right. As a mixed-use project with ground floor retail and residential above, located just three blocks south of the Georgia Avenue-Petworth Metrorail Station, the proposed development advances the purposes of the GA Overlay and is consistent with the intent of the C-3-A District.

Application of GA Views Management, LLC
Square 3033, Lot 89
3357-3359 Georgia Avenue, NW

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STATEMENT OF EXISTING AND INTENDED USES

The Property is vacant. The Applicant intends to redevelop the Property with a mixed-use project that includes approximately 2,138 square feet of ground floor retail and approximately 20 residential units above.