

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

**APPLICATION OF  
200 5<sup>TH</sup> STREET, LLC**

**200 5<sup>TH</sup> STREET SE  
ANC 6B**

**STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 200 5<sup>th</sup> Street SE, LLC (the "Applicant"), the owner of property located at 200 5th Street SE, Lot 18 in Square 843 (the "Property") in support of its application for variance relief, pursuant to 11 DCMR §3103.2, regarding the lot area requirement (§401.11) to allow the Applicant to convert a structure from four residential units and a dental office to six residential units in the CAP/R-4 District.

**II. JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

**III. BACKGROUND**

**A. Background Information Regarding the Property**

The Property, also known as Lot 18 in Square 843, contains approximately 1,011 square feet of land area and is located in southeast Washington D.C. Square 843 is bounded by Independence Avenue on the north, 6<sup>th</sup> Street on the east, Seward Square SE on the south, and 5<sup>th</sup> Street on the west (see Baist Atlas plat, attached hereto as Tab 8). The Property is located within the CAP/ R-4 District (see Zoning Map attached hereto as Tab 9). The Property is presently improved with a structure with four residential

**BOARD OF ZONING ADJUSTMENT  
District of Columbia**

CASE NO. 18515

EXHIBIT NO. 4

Board of Zoning Adjustment  
District of Columbia  
CASE NO.18515  
EXHIBIT NO.4

units and a dental office (see Certificate of Occupancy,<sup>1</sup> attached hereto as Tab 10). The Property has approximately 19 feet of frontage along 5<sup>th</sup> Street and 53 feet of frontage on Independence Avenue. The Property is located in the Capital Interest (CAP) Overlay District. The Property is located in the Capitol Hill Historic District and is listed on the D.C. Inventory of Historic Sites.

**B. Existing Nonconformities of the Existing Structure**

a. Lot Occupancy (§403.2), Rear Yard (§404.1), and Floor-to-area Ratio (§1203.3)

The existing improvements on the Property constitute an existing nonconformity which may continue its nonconformance after the proposed project. Under §2000.4, any lawfully existing nonconforming structure that remains nonconforming may be continued. Under §2001.2, ordinary repairs, alterations, and modernizations to the structure, including structural alterations, are permitted. The existing structure has a lot occupancy of 100 percent and no rear yard, both of which may be continued without zoning relief. The CAP Overlay, pursuant to §1203.3 limits total FAR to 1.8. The structure will have a total FAR of 3.0 before and after the proposed project, a nonconformity that may also be continued without zoning relief.

b. Parking (§2101.1)

The Property currently provides zero parking spaces on site. The Property is a historic resource listed on the D.C. Inventory of Historic Sites. Under §2120.3, a historic resource, and any additions thereto, are exempt from providing parking as a result of a change of use or increase of an intensity of use except when gross floor area is increase by more than 50% and the parking requirement attributed to the increase in gross floor area is at least four spaces. Thus, the Property is exempt from providing additional parking as a result in a change of use or increase of an intensity of a use.

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<sup>1</sup> The Property has two mailing addresses, 200 5<sup>th</sup> Street, SE used for the dental office and 503 Independence Avenue, SE used for residential purposes. The residential Certificate of Occupancy references the Property as Lot 18 in Square 843, Lot 18 and lists as 503 Independence Avenue, SE as the address.

**C. Description of the Improvements in the Surrounding Area**

Square 843 is made up primarily of two and three-story structures including rowhouses, flats, and multi-unit dwellings. The Property is located in a large CAP/R-4 District that includes residential properties with frontage along 2<sup>nd</sup> Street, directly adjacent to the US Supreme Court and Library of Congress, to the west. The properties to the east of this CAP/R-4 District are in an R-4 District. To the north is Stanton Park, properties in the CAP/CHC/C-2-A District along Massachusetts Avenue, and properties in the CAP/R-5-B District. To the south of the CAP/R-4 District is Interstate 695. A few blocks southeast of the Property is the Eastern Market and Barracks Row.

**D. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area**

The Property is well serviced by a number of public transportation facilities and services along both Pennsylvania Avenue and East Capitol Street. Metrobus routes, such as the 32, 34, 36, A11, and DCN22 as well as the DC Circulator are available along Pennsylvania Avenue. Routes 96 and 97 are available along E. Capitol Street. In addition, Capital Bikeshare Stations are located at 4<sup>th</sup> & East Capitol Street NE; Eastern Market/7<sup>th</sup> & North Carolina Ave SE; and 3<sup>rd</sup> & D St SE. Car-sharing continues to expand in the nearby area. Over ten Zipcar spaces are located within walking distance, including 1 Zipcar space at 6<sup>th</sup>/North Carolina Street SE and 9 Zipcar spaces at Eastern Market at 600 Pennsylvania Avenue SE. The expansion of Car2Go in the District provides an additional car-sharing options in the area. Car2Go, seeing consistent growth in use and membership, recently reported that the use of the company's car-sharing service had reached over 6,000 trips per week. Moreover, the Property is located approximately 0.4 miles (roughly 4 blocks) from the Eastern Market Metrorail entrance, 0.5 miles (roughly 5 blocks) from the Capitol South Metrorail entrance, and 1.0 miles from Union Station, which provides access to Metro, Amtrak, MARC, Metrobus and other transit services.

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**E. Description of the Proposed Development**

As shown on the Architectural Plans and Elevations (attached hereto as Tab 11), the Applicant proposes to convert the existing structure from four residential units and a dental office into six residential units. Lot occupancy, FAR, and height will not change. The cellar will remain a storage room and an efficiency. The first floor, currently a dental office and an efficiency, will be a two-bedroom unit and an efficiency. The second floor, currently one awkward unit divided by the common stairwell will be split into a one-bedroom unit and an efficiency. The third floor will remain a two-bedroom unit.

**IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW**

The Applicant seeks variance relief from the lot area requirement under §401.11. 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; and
- (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 Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

**V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF**

**A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception 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.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case the Property is affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the presence of a common stairwell that divides an existing residential unit in an unconventional and inconvenient manner (2) prior use as a dental office, and (3) the lack of an alternative configuration due to existing nonconformity with respect to the lot occupancy and rear yard requirements.

The second floor of the structure is currently an awkward apartment with a living/dining room and bedroom on one side of a common stairwell and the kitchen on the other side of the common stairwell. Thus, to go to and from the kitchen to the bedroom or living/dining room, a resident would be required to enter and exit the common stairwell. This unconventional layout severely impairs the

habitability, marketability and rental value of that unit and is in violation of the Building Code. A far more logical and commercially appropriate layout, as has been proposed by the Applicant, is to separate the floor into two units with a one-bedroom unit on one side of the common stairwell and an efficiency on the other.

The first floor of the structure was previously a dental office and an efficiency. The dental office consisted of exam rooms, a waiting area, reception area, and x-ray room. An R-4 District is designed to include areas developed with row dwellings within which there have been a substantial number of conversions for two or more families. The presence of a dental office, and the accompanying clients and staff associated with such a use, is not permitted as a matter of right and is less common than the proposed use as a residential unit. To replace the dental office with a marketable residential unit, the layout must be completely reconfigured, including tearing down several walls, at great expense to the Applicant.

Finally, the Property is also unique due to the existing nonconforming structure. The Property has 100% lot occupancy and no rear yard. No other lot in Square 843 has 100 percent lot occupancy and only lot 34 has no rear yard. The lack of available space and nonconforming elements severely limit the ability of the Application to modify the structure as a matter-of-right. The Property is listed on the listed on the D.C. Inventory of Historic Sites, which limits the options for alternative development or configuration.

**B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty to the Owner**

Strict application of the Zoning Regulations with respect to lot area would result in a practical difficulty to the Applicant. Under §401.11, renovation or expansion of an apartment house in an R-4 district is a permitted use, but requires a minimum of 900 square feet of lot area per apartment unit. The existing structure, with four units and a dental office, is an existing nonconforming structure with respect

to lot area. The proposed project, which removes the dental office use but increases the space devoted to residential use from 4 units to 6 units, extends the nonconforming lot area by 1800 square feet. Thus, a variance has been requested with respect to minimum lot area. Due to the location of the common stairwell, the economic feasibility of developing a structure as a matter of right, and the developmental constraints caused by the nonconformities of the existing structure, strict application of the zoning regulations would result in a practical difficulty.

The Court of Appeals has repeatedly held that “economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases” *Tyler, et. al. v. District of Columbia Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992)(internal citations removed)(*Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990)(Reiterating in the context of an FAR and height variance that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.”). In *Association for Preservation of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, the Court confirmed that at a given point economic harm becomes sufficient, when coupled with a significant limitation on the utility of the existing structure or property, to satisfy the variance standard. 384 A.2d 674 (D.C. 1978)(Finding practical difficulty where a YMCA *could* build a structure that complied with off-street parking requirements by reducing its size and programming but was not economically feasible or cost-effective). In *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals upheld a Board decision granting an area variance to permit conversion to a three-unit rental apartment where “marketability” of the property would otherwise be “unfeasible” and investment would yield loss rather than profit. 397 A.2d 936 (D.C. 1979)(Upholding approval of a lot area variance for conversion of a two-family dwelling to a three-unit apartment building where a two-family dwelling was not marketable and monthly expenses would out pace annual rental income).

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In this instance, strict application of the zoning regulations will result in practical difficulty to the Applicant as a result of economic infeasibility. The Applicant will testify, based on the Profit and Loss Analysis attached hereto as Tab 12, that there is no economically feasible alternative for rehabilitation of this property because compliance with the Zoning Regulations with respect to lot area will not provide a reasonable return. Maintaining the use as a dental office is not practical. In addition, due to the location of the common stairwell, the existing layout due to prior use as a dental office, and the developmental constraints caused by the nonconformities of the existing structure, strict application of the zoning regulations with respect to lot area would result in a practical difficulty.

Maintaining the use as a nonconforming dental office or one of the non-dwelling uses in an R-4 District is not a practical option. Use of a dental office is permitted as a special exception in the SP-1 and as a matter of right beginning in the C-1 District.<sup>2</sup> Thus, the dental use is a nonconforming use in the R-4 District. The Applicant intends to replace the nonconforming use with a residential use. The building is in need of significant renovations and the Applicant has no familiarity with the dental business. Bringing the existing dental office up to modern standards for a dental office would be prohibitively expensive and beyond the expertise of the Applicant. Attempting to adapt the dental office or other space for the non-dwelling uses allowed in an R-4 District, such as a church, private school, or community center, would be unreasonable and is not practical.

In the current structure, a common stairwell partitions the roughly 230 square feet at the rear of the property from the roughly 490 square feet at the front of the property. For this reason, both the first and second floor must be divided into two units or the Applicant must *significantly* reduce the price of the unit to find a resident willing to live in a unit divided by the common stairwell. In addition, to replace the dental office with a marketable residential unit, the layout must be completely reconfigured, including tearing down several walls, at great expense to the Applicant. Further practical difficulty is caused by the

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<sup>2</sup> A dental office is permitted as a matter of right in the R-1 District as a home occupation; however that circumstance is not relevant here.



existing nonconforming structure on the property. The Property has 100% lot occupancy and no rear yard. The lack of available space and nonconforming elements severely limit the ability of the Applicant to modify the structure as a matter-of-right. Furthermore, to relocate or redesign the building to create only 4 units is practically difficult due to the existing common staircase, existing plumbing, and existing exterior doors. Any alternative design or layout would result in excessive waste, impractical layouts and excessive costs beyond the feasibility for this project. As a result of these exceptional circumstances, the Applicant simply cannot develop the property as a matter-of-right.

**C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning 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 by approving the zoning relief requested by the Applicant. The proposed project replaces a dental office with a residential use. In an R-4 District, the residential use is more in keeping with the surrounding neighboring and intention of the zoning code than a dental office. In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. Finally, the additional residential units help address the well documented shortage of housing in the Washington D.C. area.<sup>3</sup> For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

**D. WITNESSES**

1. Jeff Levine, on behalf of 200 5<sup>th</sup> Street SE, LLC.
2. James Killelte, on behalf of Killelte & Associations.

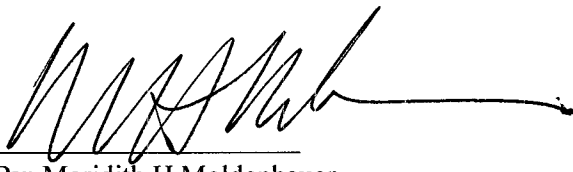
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<sup>3</sup> Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year to keep up with predicted population growth. However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about ¾ that much. Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing*. October 17, 2012. Greater Greater Washington. Found at: <http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/>.

**E. CONCLUSION**

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted  
GRIFFIN & MURPHY, LLP

A handwritten signature in black ink, appearing to read 'M. H. Moldenhauer', with a long horizontal flourish extending to the right.

By: Meredith H Moldenhauer

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