

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

Kyrus Freeman
(202) 862 5978
kyrus.freeman@hklaw.com

November 5, 2013

VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N W , 2nd Floor
Washington, D C 20001

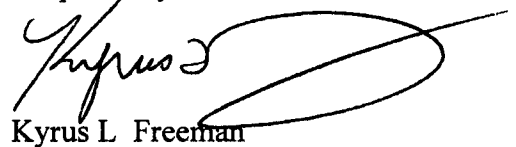
Re BZA Application No 18660
1628-1632 11th Street, N W (Square 309, Lot 51)

RECEIVED
U.C. OFFICE OF ZONING
2013 NOV -5 PM 12:39

Dear Members of the Board

On behalf of 1628 11th Street LLC, we are submitting herewith an original and ten copies of the Applicant's Prehearing Statement in support of the above-referenced application. We look forward to the Board's hearing on this matter on November 19, 2013

Respectfully Submitted,



Kyrus L. Freeman

Enclosures

cc Advisory Neighborhood Commission 2F (w/encl by mail)
Maxine Brown-Roberts, Office of Planning (w/encl by hand delivery)
Lewis Booker, District Department of Transportation (w/encl by hand delivery)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18660
EXHIBIT NO. 24

#26358867_v1

Board of Zoning Adjustment
District of Columbia
CASE NO.18660
EXHIBIT NO.24

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

**APPLICATION OF
1628 11TH STREET, LLC
1628-1632 11TH STREET, N.W.**

**BZA APPLICATION NO. 18660
HEARING DATE: NOV. 19, 2013
ANC 2F04**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted by 1628 11th Street LLC (the "Applicant"), the owner of property located at 1628-1632 11th Street, N W., Square 309, Lot 51 (the "Site"), in support of its application pursuant to 11 DCMR § 3103.2 and § 3104.1, for a variance from the compact parking space requirements of § 2115, variances from the parking space accessibility and drive aisle width requirements under § 2117, a variance from the side yard requirements under § 775.5, a variance from the nonconforming structure requirements under § 2001.3, and a special exception from the roof structure requirements under § 411 and § 777.1, to allow an addition to, and renovation of, an existing building for residential use in the C-2-A District at the Site

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

<u>Exhibit A</u>	Portion of the Baist and Sanborn Atlas plats showing the Site.
<u>Exhibit B.</u>	Portion of the Zoning Map showing the Site
<u>Exhibit C.</u>	Architectural Plans and Elevations
<u>Exhibit D.</u>	Public Hearing Presentation
<u>Exhibit E</u>	Outline of Testimony of George Chopivsky
<u>Exhibit F</u>	Outline of Testimony of Tom Lenar
<u>Exhibit G</u>	Advisory Neighborhood Commission 2F Letter of Support

IV.
BACKGROUND

A. Description of the Site

The Site is located at 1628-1632 11th Street, N W , more specifically described as Lot 51 in Square 309 Square 309 is located in the northwest quadrant of the city and is bounded by R Street to the north, 11th Street to the east, Q Street to the south, and 12th Street and Vermont Avenue to the west (*see* plats attached hereto as Exhibit A) The Site is bounded by a public alley to the north, 11th Street, N W. to the east, private property to the south, and a public alley to the west The Site is located within the C-2-A District (*see* Zoning Map attached hereto as Exhibit B), and includes approximately 10,200 square feet of land area The Site is currently improved with an existing two-story building for office uses.

B. Description of the Surrounding Area

The Site is located less than two blocks north of Logan Circle on 11th Street, N W This corridor is continuing to be redeveloped with a wide variety of residential, commercial, and mixed-use buildings The Site is well-served by public transportation For example, the Site is located a half-mile from both the U Street Metrorail Station and the Shaw Metrorail Station, both

of which serve the Green and Yellow Lines. There is also ample Metrobus service in the area, with the 63 and 64 Metrobus lines traveling along 11th Street in front of the Site, and at least six additional Metrobus lines within 0.3 miles of the Site. There are at least three ZipCar stations located within one block of the Site. In addition, two Capital Bikeshare stations are located within four blocks from the Site, one at the corner of 14th and R Streets, N.W. and one at the corner of 7th and R Streets, N.W. The Site has a walkscore of 89 and a bike score of 94 (*see www.walkscore.com*). Taxis also regularly pass the Site in both directions along 11th Street. These alternative options for commuting will provide a variety of transportation modes for building residents, thus reducing the potential impact of vehicle traffic in the surrounding neighborhood.

C. Description of Proposed Development

As shown on the Architectural Plans and Elevations attached hereto as Exhibit C, and the Public Hearing Presentation attached hereto as Exhibit D, the Applicant proposes to construct an addition to, and renovation of, the existing two-story office building for residential use. The project will include 33 units and below-grade parking. The Applicant is requesting flexibility to adjust the number of units in the building, so long as the project provides the minimum amount of off-street parking spaces required under the Zoning Regulations for the number of units. The proposed residential use of the existing structure is consistent with the Site's C-2-A zoning designation and with other uses within the square.

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

Variance relief in this case is required from the compact parking space requirements (§ 2115), the parking space accessibility and drive aisle width requirements (§ 2117); the side yard

requirements (§ 775), and the nonconforming structure requirements (§ 2001) 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 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 at the public hearing, all three prongs of the area variance test are met in this application

A. **The Property Is Unusual Because of its Size, Shape or Topography and is 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 conditions of the Site, combined with the size and dimensions of the existing building, combine to create a number of exceptional situations that impose significant development constraints on the Site

Development of the Site is significantly constrained due to the existing building on the Site, which was constructed in 1982. The existing building includes two cellar levels and two above-grade levels, and contains approximately 15,300 square feet of gross floor area. The development proposal involves the retention of the existing structure, which will be incorporated into the design of the new building and will ultimately comprise a significant portion of the final residential development. However, incorporating a significant portion of the existing structure creates several construction and design constraints that generate the need for zoning relief.

Furthermore, the Site is bounded by public alleys to the north and west, private property to the south, and has approximately 107.5 feet of frontage on 11th Street, N W, all of which impact development of the Site. Moreover, the Site's grade slopes from east to west, which creates additional development constraints.

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

(a) Compact Parking Space Requirements of Sections 2115.2 and 2115.4

The strict application of the compact parking space regulations will result in a practical difficulty to the Applicant. Section 2115.2 of the Zoning Regulations provides that any "accessory parking area or accessory garage containing twenty-five (25) or more required parking spaces may designate up to forty percent (40%) of the parking spaces for compact cars." 11 DCMR § 2115.2. In addition, Section 2115.4 of the Zoning Regulations provides that compact spaces must be placed in groups of at least five contiguous spaces with access from the same aisle. 11 DCMR § 2115.4

As shown on the Plans, the building will contain 21 parking spaces located in the below-grade garage. Although the garage will not contain 25 or more parking spaces, eight of the parking spaces provided are compact, which triggers the need for relief from Section 2115.2 of the Zoning Regulations. Moreover, the compact spaces are not located in groups of at least five contiguous spaces, which triggers the need for relief from Section 2115.4 of the Zoning Regulations.

Due to the existing building footprint, the location of the building's structural columns, and the area occupied by required elevators, stairwells, and other core functions, there is simply not enough space to accommodate the required number of full-size parking spaces on the Site without reducing the total number of parking spaces provided. Reducing the percentage of compact parking spaces will necessarily reduce the total number of vehicles that can be accommodated in the building's garage. The exclusion of compact spaces would decrease the total number of parking spaces by approximately 15%, from 21 to 18 spaces. Such a result is inconsistent with the purposes of the off-street parking requirements. Moreover, based on the existing building footprint, its structural columns, and the location of its core functions, it would be practically difficult for the Applicant to place the compact spaces in groups of at least five continuous spaces with access from the same aisle. As indicated on the Plans, the compact spaces indicated on the plans are located only where they can be accommodated as a means to increase the total garage parking capacity while accommodating the constraints of the existing structure. Changing the location of the compact spaces would result in a reduction of the total garage capacity. Given these constraints inherent in the existing structure and the inability to expand the building's envelope, it would be practically difficult for the Applicant to comply with Sections 2115.2 and 2115.4 of the Zoning Regulations.

(b) Parking Space Accessibility Requirements

The strict application of the parking space accessibility requirements would result in a practical difficulty. The Applicant is requesting relief in this case to enable the use of a mechanical lift instead of a ramp, and because the proposed drive aisle widths measure less than 20 feet.

Pursuant to Section 2117.4 of the Zoning Regulations, each required parking space must be accessible at all times directly from improved alleys with a minimum width of 10 feet, or from improved public streets via graded and unobstructed private driveways that form an all-weather surface. As shown on the Plans, the proposed parking spaces will be accessed from the public alley located to the west of the Site. However, the Applicant is proposing that the spaces be accessed by a mechanical lift, thus requiring relief from Section 2117.4 of the Zoning Regulations.

The Applicant is proposing to locate the parking spaces on the lowest cellar level of the building, and to provide residential units on the first cellar level. Thus, due to the placement of residential units and the building's existing envelope, structural columns, and core functions, it would be practically difficult to construct a ramp that provides access from the alley to the lowest level of the cellar while maintaining a feasible layout for the proposed residential units. Furthermore, if the Applicant provided a ramp, it would be physically impossible to construct all of the required parking spaces and to comply with the applicable parking space size, turning radius, and access requirements of Sections 2115, 2116, and 2117 of the Zoning Regulations. Moreover, given the nature of the existing building, it is impractical to construct a ramp in the available space that would meet the maximum ramp slope of 12% and the minimum ramp width

of 14 feet (*see* 11 DCMR § 2117.8), and still provide an adequate number of parking spaces and a feasible layout of residential units

The BZA and the Zoning Commission have both previously granted flexibility from Section 2117 4 of the Zoning Regulations by approving the installation of mechanical car lifts to provide access to below-grade parking garages in order to preserve space for vehicle parking and to minimize the impact to usable space on upper levels. *See, e g* BZA Application No 16498, BZA Application No 18144, and Z C Order No 07-21 ("the Applicant's proposal to use an elevator for parking access . is directly consistent with Policy T-3 2 2. Employing Innovations in Parking, which policy encourages the implementation of new technologies to increase the efficiency, management, and ease of use of parking ")

If relief is not granted and the existing ramp is maintained, both below-grade levels would have to be used for parking and storage, which is not necessary given the number of units in the proposed development Providing a ramp would result in fewer developable units and significantly underutilized space Moreover, because of the relatively small building footprint and high 10 foot, 6 inch clear ceiling heights, maintaining the existing ramp would result in the majority of the existing first cellar level area being used to accommodate the ramp leading down to the second cellar level If the Applicant were required to provide a ramp down to access the first cellar level, approximately 10,000 square feet on the cellar 2 level would be unuseable

In addition, Section 2117 5 of the Zoning Regulations requires that drive aisles in parking garages have a clear width of not less than 20 feet The existing cellar level that will house the parking garage contains drive aisles that range in width from 18 feet, 9 inches to 18 feet, 11 inches at various points. Accordingly, the Applicant requests a variance from Section 2117 5 of the Zoning Regulations

The building's existing layout limits the design of the parking garage and limits the drive aisle widths that can be provided in portions of the garage. The existing concrete columns are spaced approximately 16 to 26 feet apart from column face to column face, and cannot be feasibly relocated without compromising the structural integrity of the existing building. The proposed parking spaces and drive aisles have been designed and located based upon the locations of the columns. Furthermore, the drive aisle widths cannot be increased while still providing an adequate number of off-street parking spaces. Thus, strict application of the drive aisle width requirements of Section 2117.5 of the Zoning Regulations would result in a practical difficulty to the Applicant.

(c) Side Yard Requirements of Section 775.5

Strict application of the side yard requirements in this case would result in a practical difficulty. Pursuant to Section 775.5 of the Zoning Regulations, if provided, side yards in the C-2-A District are required to be at least two inches wide for each foot of height of building, but not less than six feet. Based on the building's proposed height of 50 feet, the building is required to have a side yard with a minimum width of 8 feet, 4 inches. However, the existing side yard along the northern property line only measures approximately 1 foot, 6 inches, which is a nonconforming condition. The Applicant proposes to extend the building wall along the northern property line to a height of 50 feet, while maintaining the existing 1 foot, 6 inch side yard, which generates the need for relief.

Increasing the side yard width along the northern property line would result in a number of practical difficulties and design changes to the interior configuration of the building. As shown on the Plans, the units along the northern portion of the building are relatively long and narrow. For example, the typical "T-07" unit has a width of approximately 15 feet, 3 inches, and

a length of 52 feet, 3 inches and the typical "T-08" unit has a width of 40 feet, 5 inches, and a length of 17 feet, 9 inches at its deepest point. Increasing the side yard width would decrease the size of these units by approximately 31%, which would render them infeasible in terms of layout and design, particularly given the location of the existing structural columns, which cannot be relocated.

Furthermore, setting back the new upper floors would result in the added practical difficulty of needing to construct additional shoring and structural support for the existing floors below the new structure, and would adversely impact the layout of the remaining units on the lower existing floors. Finally, the Applicant is attempting to reuse the existing building core, and increasing the side yard width would have a significant adverse impact on the building's design and the location of the building's core, as the stairs and elevator shaft would have to be pushed further back into the center of the building, or else increase the degree of relief required for the rooftop penthouse setback. However, any movement of the building's core would add further practical difficulties to the Applicant and would adversely affect the design, layout, and structural integrity of the proposed residential development.

(d) Nonconforming Structure Requirements of Section 2001.3

Strict application of the nonconforming structure requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 2001.3 of the Zoning Regulations, enlargements or additions to a nonconforming structure devoted to a conforming use may be made to the structure, provided

- (a) the structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13;
- (b) the addition or enlargement itself shall

- (1) conform to use and structure requirements, and
- (2) neither increase or extend any existing, nonconforming aspect of the structure, nor create any new nonconformity of structure and addition combined

The existing and proposed structure complies with the lot occupancy requirements. However, the Applicant is seeking relief from Section 2001.3 of the Zoning Regulations because (a) the existing structure does not conform to the side yard requirements for residential use, (b) the proposed addition extends the existing nonconformity with respect to side yard width, and (c) the proposed addition creates new nonconformities with respect to the compact parking space, parking space accessibility, and roof structure requirements. The reuse of the existing structure without relief granted from these requirements would result in a practical difficulty for the Applicant since the current building layout is not sufficient to support the layout of new residential units. As described in detail above, the Applicant meets the standards for relief from the side yard width, compact parking space, parking space accessibility, and roof structure requirements.

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 by approving the project as proposed. The redevelopment of the existing office building originally constructed in the 1980s with a new residential development will significantly contribute to the vibrancy of the neighborhood while supporting the city's housing goals for the area.

With respect to the compact parking space requirements, the relief requested is completely internal to the existing building. The garage has been designed to maximize the

efficiency and use of the existing space, and vehicles accessing parking spaces in the garage will have sufficient maneuverability for both ingress and egress. Furthermore, the existence of nearby Metrorail Stations, ample Metrobus service, taxis, carshare, and Capital Bikeshare stations will reduce the impact of the new residential building on the transportation network.

With respect to the parking accessibility requirements, replacing the driveway ramp with a mechanical car lift will maximize the amount of off-street parking within the building. The mechanical lift will provide efficient access to the parking spaces, particularly because the traffic volume will be relatively nominal and the garage will be used exclusively by building residents. The Applicant is currently reviewing several companies that design mechanical parking lifts, all of which use technology that facilitates efficient vehicle entrance and exit and optimizes performance and safety. Moreover, as noted above, the BZA and the Zoning Commission have both previously granted relief from Section 2117.4 of the Zoning Regulations to allow for the installation of mechanical car lifts to provide access to below-grade parking garages since the relief is consistent with Comprehensive Plan Policy T-3.2.2 ("Employing Innovations in Parking"), which encourages the implementation of new technologies to increase the efficiency, management, and ease of parking.

With respect to the side yard relief, the deficiency involves only the northern portion of the building. The side yard requirement is generally intended to provide adequate light and air between structures that share a lot line. However, in this case, the side yard location abuts a public alley that is itself wider than the required side yard, and thus there is ample open space and light adjacent to the building to satisfy the purpose of the side yard requirements.

VI.
**THE APPLICANT MEETS THE BURDEN
OF PROOF FOR SPECIAL EXCEPTION RELIEF**

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D C 1981) (quoting *Stewart v District of Columbia Board of Zoning Adjustment*, 305 A 2d 516, 518 (D C 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id*

A. Standard of Review for Roof Structure Special Exception

Under Section 411.11 of the Zoning Regulations, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR § 411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id*

B. Relief from Roof Structure Enclosing Wall Requirements

The Applicant requests relief from Sections 400.7, 411, and 777.1 of the Zoning Regulations. These sections require (1) all penthouses and mechanical equipment shall be placed in one enclosure (11 DCMR § 411.3); (2) enclosing walls from the roof level shall be of equal

height (11 DCMR § 411.5), and (3) housing for mechanical equipment or a stairway or elevator penthouse shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located (11 DCMR § 400.7). In this case, special exception approval is required because, as shown on the roof plan sheet included in the Plans: (a) there will be two roof structures, (b) the enclosing walls of the roof structures are of an unequal height, and (c) one of the roof structures does not meet the setback requirements.

Each roof structure is a necessary feature of the building and the structures have been designed to break up the massing on the roof and reduce visibility from the street. The location and number of roof structures is driven by the building's existing core functions and the proposed layout and design of residential units. The Applicant is providing two roof structures in order to comply with the Building Code, which requires separate means of egress for buildings, including an elevator to provide handicapped access to the roof deck and ancillary amenity space. To reduce the roof structures' mass to the greatest extent possible, the north stair tower has walls of unequal height: the portion that encloses the mechanical equipment and the rooftop lobby measures 13 feet, 6 inches, while the portion that encloses the elevator penthouse measures 18 feet, 6 inches. Designing this roof structure with walls of unequal height will help reduce its visibility and break up the overall massing on the roof.

Furthermore, the Applicant is providing the greatest setbacks possible, given the size and dimensions of the roof and the internal configuration of the building. The roof structures meet the setback requirements from the northern, southern, and western roof edges. However, the northern roof structure's eastern edge is setback 13 feet, 3 inches to 14 feet from the eastern roof edge, instead of the required dimension of 18 feet, 6 inches, and thus requires setback relief. The location of this roof structure is based on the layout of the existing building and the location of

the building's core elements, which cannot be moved or eliminated. The proposed setback will not adversely impact the light and air of adjacent buildings, since it has been located and designed to minimize its mass and visibility. Therefore, the proposed roof structures are in harmony with the purpose and intent of the Zoning Regulations and meet the test for special exception relief under Section 411 of the Zoning Regulations.

VII. **COMMUNITY SUPPORT**

The Applicant has the support of the community for the requested zoning relief. On September 25, 2013, the Applicant presented the application to the Advisory Neighborhood Commission 2F ("ANC 2F") Community Development Committee, which voted to recommend support for the application to the full ANC. At its regularly scheduled public meeting on October 2, 2013, at which a quorum was present, ANC 2F voted unanimously (8-0-0) to support the application. A copy of ANC 2F's letter of support is attached as Exhibit G.

VIII. **WITNESSES**

- A George Chopivsky, 1628 11th Street, LLC
- B Tom Lenar, R2L Architects

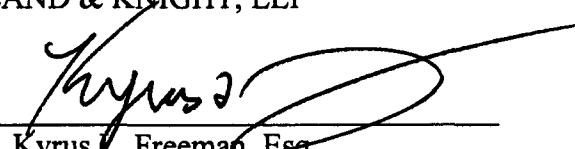
IX.
CONCLUSION

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

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By



Kyrus L. Freeman, Esq
Jessica R. Bloomfield
800 17th Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 862-5978