

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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This statement is submitted by 1628 11th Street LLC, 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 Sections 3103.2 and 3104.1 for: (1) an area variance from the compact parking space requirements of § 2115; (2) an area variance from the parking space accessibility and drive aisle width requirements under §2117; (3) an area variance from the side yard requirements under §775.5; (4) an area variance from the nonconforming structure requirements under §2001.3; and (5) 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.

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 evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site and Application

The Site is zoned C-2-A and is improved with an existing building used for office uses. Square 309 is located in the northwest quadrant of the city and is bounded by R Street, N.W. to the north, 11th Street, N.W. to the east, Q Street, N.W. to the south, and 12th Street, N.W. and Vermont Avenue, N.W. to the west. As indicated on the building plat included with the application, the Site is bounded by a 10 foot public alley to the north, 11th Street, N.W. to the

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east, private property to the south, and a 10.17 foot public alley to the west. The Site includes 10,200 square feet of land area.

As shown on the plans included with the application, the Applicant will be constructing an addition to, and renovation of, the existing building for residential use. The building will include a total of 33 residential units and will have a maximum building height of 50 feet. The project also includes 21 off-street parking spaces located in a below-grade garage accessed from the public alley located to the west of the Site. The proposed residential use for the Site is consistent with the Site's zoning designation and with other uses within the square.

II. The Applicant Meets The Burden Of Proof For The Requested Area Variances

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, the Applicant meets all three prongs of the area variance test.

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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 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 on the property, combine to create an exceptional situation and condition. As shown on the materials included with the application, 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 access to development of the Site. Moreover, the Site's grade slopes from east to west. In addition, as noted above, the Site is improved with an existing, 30 foot building that includes two levels of cellar space and two above grade levels. The existing building was constructed in approximately 1982. The development proposal involves the retention of this structure, which will ultimately comprise a significant portion of the final building. However, developing the project around this structure on the Site creates several construction and design constraints which generate the need for zoning relief.

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

(a) Compact Parking Space Requirements

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." Moreover, Section 2115.4 provides that compact spaces must be placed in groups of at least 5 contiguous spaces with access from the same aisle. As shown on the plans, the proposed building will contain 21 parking spaces located in the below-grade garage. Eight of the spaces are compact, which represents

38% of the total number of off-street parking spaces provided in the project. Moreover, the compact spaces are not located in groups of at least 5 contiguous spaces. RECEIVED
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Due to the existing building footprint and column locations, there is simply not enough space to accommodate the required number of full-size parking spaces on the Site without reducing the number of parking spaces provided. In other words, reducing the percentage of parking spaces that are compact in size will necessarily reduce the total number of vehicles that can be accommodated in the building's garage, which result is inconsistent with the purposes of the off-street parking requirements. Moreover, it would be practically difficult for the Applicant to comply with compact parking space requirements in this case given the existing building's column locations.

(b) Parking Space Accessibility Requirements

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

Section 2117.4 of the Zoning Regulations provides that each required parking space must be accessible at all times directly from improved alleys with a minimum width of 10 feet or 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 10.17 foot public alley located to the west of the Site. However, the Applicant is proposing that the spaces be accessed by a mechanical lift, and thus relief is necessary. 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 existing column locations of the building and the

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proposed layout of the residential units, it would be practically difficult to construct a ramp that provides access from the existing alley to the lowest level of the cellar while maintaining a feasible layout for the proposed residential units.

In addition, Section 2117.5 of the Zoning Regulations requires that parking drive aisles in the parking garage have a clear width of not less than 20 feet. The existing cellar level of the building that will house the parking garage contains drive aisles that range in width from 18'9" to 18'11" at various points. Accordingly, the Applicant requests a variance from Section 2117.5. The Site's existing structure limits the design of the parking garage, and results in the reduction of the drive aisle width for portions of the garage. The building was originally built as an office building and the existing concrete columns are spaced approximately 16 to 26 feet apart from column face to column face. The existing concrete columns cannot be feasibly relocated without compromising the structural integrity of the existing building, and the drive aisle widths cannot practically be increased while still providing an adequate amount of off-street parking spaces.

(c) Side Yard Requirements

The 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. The existing building is required to provide a six foot side yard. However, the existing side yard along the northern property line only measures approximately 1'6", which is a nonconforming condition. The Applicant is proposing to extend the building wall along the northern property line to a height of 50 feet, while maintaining the existing 1'6" side yard condition, which generates the need for relief of from the side yard requirements.

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Increasing the width of the side yard along the northern property line would result in a significant number of practical difficulties and design changes to the interior configuration of the building. As shown on the plans, the units in this portion of the building are relatively long and narrow. For example, the typical "T-07" unit having a width of approximately 15'3" and a length of 52'3", and the typical "T-08" unit having a width of 40'5" and a length of 17'9" at its deepest point. Increasing the side yard width at this portion of the building would decrease the size of these units by approximately 31%, which would severely impact the layout of these units and render them infeasible in terms of unit layout, particularly given the location of the existing columns. Furthermore, setting back the new upper floors would result in the added practical difficulty of having to construct additional shoring and structural support for the existing floors below the new structure, and would also adversely impact the layout of the units on the lower, existing floors. Finally, increasing the side yard width would adversely impact the location of the building's core. Thus, it would be practically difficult for the Applicant to comply with the side yard requirements in this case.

(d) Nonconforming Structure Requirements of Section 2001.3

The existing building is nonconforming with respect to side yard width. Section 2001.3(b) of the Zoning Regulations provides that enlargements or additions to a nonconforming structure devoted to a conforming use may be made to the structure, provided that 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 Applicant is seeking relief from Section 2001.3 because (a) the existing structure does not conform to the side yard requirements for residential use, (b) the addition extends the existing nonconformity with respect to side yard, and (c) the addition creates new nonconformities with respect to the compact parking space, parking space accessibility, and roof structure requirements. The Applicant meets the standards for this relief as described herein.

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 addition to and renovation of the existing office building constructed in the 1980s with a new, residential development will significantly contribute to the vibrancy of the neighborhood while supporting the City's goals for this area.

With respect to the requested compact parking space and parking accessibility relief, this relief is completely internal to the building. Moreover, the garage has been designed in a manner that will maximize the efficiency of use of the parking garage space, and the cars accessing spaces in the garage will have sufficient maneuverability for both ingress and egress to the spaces. Furthermore, the Applicant is proposing to maximize the amount of off-street parking on the site in order to minimize any spillover parking on adjacent residential streets. Finally, with respect to the side yard relief, the deficiency in the side yard width involves only the northern portion of the building, which abuts an existing alley. Thus, there will be ample open space abutting the building.

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III. The Applicant Meets The Burden Of Proof For The Requested 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." *Gladden v. District of Columbia Board of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995) (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.*

Under Section 411.11, 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.* 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 not of an equal height, and (c) one of the roof structures does not meet the setback requirements.

Each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The location and number of the roof structures is driven by the layout and design of the residential units within the building. Moreover, with respect to

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the enclosure wall heights, the north stair tower incorporates enclosing walls having heights of 13'6" and 18'6". The 13'6" portion encloses mechanical equipment and a lobby to provide access to the roof, and the 18'6" portion encloses the elevator penthouse. The elevator is required to go to the roof of the building to provide handicapped access to the roof deck and ancillary amenity space. The Applicant designed the roof structures to have walls of unequal height in order to help reduce the visibility of the structures.

In addition, the Applicant is providing the greatest setbacks possible given the size and dimensions of the roof and the internal configuration of the proposed building. The roof structures meet the setback requirements from the northern, southern, and western roof edges. However, the eastern edge of the northern roof structure is only setback 13'11" from the eastern roof edge, instead of the required dimension of 18'6", and thus requires set back relief. The requested roof structure location and design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

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