

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

Application of Horizon Hill Ventures
for Special Exception and Variance Relief for New
Multi-Family Residential Development in the R-5-A Zone District

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**STATEMENT OF EXISTING AND INTENDED USE AND PRELIMINARY
STATEMENT OF SATISFACTION OF BURDEN OF PROOF FOR SPECIAL
EXCEPTION AND VARIANCE RELIEF**

I. STATEMENT OF EXISTING AND INTENDED USE

This is an application of Horizon Hill Ventures (“Applicant”) for special exception approval pursuant to 11 DCMR Section 353.1 to construct additions to two existing apartment buildings and renovate a third building, located at the intersection of Savannah Street, SE and 13th Street, SE and known more specifically as 3232-3242, 3310-3318 13th Street, SE and 1301-1305 Savannah Street (Square 5914, Lot 1; Square 5915, Lots 1 and 2). The Applicant is the contract purchaser of the Property and intends to renovate the existing residential units and add a third floor duplex to two of the buildings. The proposed project will also require variance relief from the parking requirements of Section 2101.1 and the nonconforming structure requirements of 2001.3, the aisle width requirements of Section 2117.5, and the loading requirements of Section 2201.1. As depicted on Exhibit D, the Property is bounded by 13th Street, SE to the west, apartment buildings to the north and south, and the Malcolm X Recreation Center and residential uses to the east. As depicted on Exhibit F, the Property is located in the R-5-A Zone District.

II. NATURE OF RELIEF SOUGHT

In order to develop new multi-family residential units in the R-5-A Zone District, special exception relief must be granted by the Board of Zoning Adjustment (“BZA”) pursuant to Section 353. The Applicant is seeking Section 353 special exception approval in order to

construct 45 new residential units on the Property. The Applicant also seeks variance relief from the parking requirements of Section 2101.1, aisle width requirements of Section 2117.5, loading requirements of Section 2201.1 and the nonconforming structure requirements of Section 2001.3 as more specifically defined below.

III. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations.

IV. DESCRIPTION OF THE PROPERTY AND THE SURROUNDING AREA

The Property is located in the residential Congress Heights neighborhood of Southeast Washington. The Congress Heights Metrorail station is located just north of Alabama Avenue and one block north of the Property. Though the primary use in the immediate vicinity is multi-family residential, there are a number of institutional uses in the area, including the Malcolm X Recreation Center to the east, the Washington Hebrew Congregation Cemetery and St. Elizabeth's Hospital to the north, and Oxon Run Park to the south.

The Property is comprised of three separate record lots and consists of approximately 107,163 square feet of land. Square 5914, Lot 1 ("**Parcel 1**") consists of 50,782 square feet. Square 5915, Lot 1 ("**Parcel 2**") consists of 17,425 square feet. Square 5915, Lot 2 ("**Parcel 3**") consists of 38,956 square feet. The Property is improved with three apartment buildings. The buildings on Parcels 1 and 3 are three stories in height and each steps down to two stories along 13th Street. There are a total of 65 existing residential units among the three buildings: Parcel 1 is improved with 31 units, Parcel 2 is improved with 8 units, and Parcel 3 is improved with 26 units.

V. DESCRIPTION OF THE PROJECT

The Applicant proposes to renovate the existing residential units and to construct third story duplex units on Parcels 1 and 3. This addition will accommodate 45 additional units on the Property: an additional 29 units on Parcel 1 and another 16 units on Parcel 3. No additional units are proposed for Parcel 2.

In addition to the duplex addition, the Applicant is proposing interior renovations, including the provision of management office space, upgrading the communal laundry spaces, providing green roofs on all buildings, and improving and updating the building facades to better integrate with the neighborhood (collectively referred to as “**Project**”).

The Applicant is increasing the amount of parking on-site but is simultaneously seeking variance relief from the parking requirements for Parcel 1. Parcel 1 is currently non-conforming with respect to parking and also requires relief from Section 2001.3. The Project is not modifying the existing circulation of the site. Parking for the Property will be accessed from Savannah Street with egress for Parcels 2 and 3 onto 13th Street. With the exception of parking and loading, the Project will be consistent with all zoning requirements, including height, density and set back restrictions.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF PURSUANT TO SECTION 353 OF THE ZONING REGULATIONS

The Project is in harmony with the intent and purposes of the Zoning Regulations and is generally consistent with the requirements of Sections 353 and 3104.1.

A. The Application is in Harmony with the General Purpose and Intent of the Zoning Regulations

The main purpose of Section 353 is to minimize any adverse impact on surrounding properties which may occur as a result of the Project. Accordingly, the proposed additions are thoughtfully designed and placed to ensure the Project will not adversely affect neighboring property owners or the greater community.

1. The Area Schools can Accommodate the Number of Students Expected to Reside in the Project

The Applicant is adding approximately 45 units; however the proposed renovations will reduce the number of two and three bedroom units, thereby reducing the number of anticipated children living in the building. The proposed unit mix is predominantly 1-bedroom and studio units, indicating that there will not be a significant burden on area schools arising from an increase in the number of children living in the building. Nevertheless, the Project is proximately located to both Charles Hart Middle School and Ballou Senior High School. Both schools are well equipped to absorb additional children from the community.

2. The Public Streets, Recreation and Other Services are Adequate to Accommodate the Residents of the Project

The Applicant is maintaining the existing circulation pattern that currently serves the Project. As such, the Project will not have an impact on the public street grid. The Applicant does not anticipate that the addition of a modest number of units to the community will alter the number of trips the Project generates or the amount of parking spaces the residents demand. In fact, the Applicant believes the existing parking will continue to accommodate the parking needs of its residents given its proximity to the Metrorail. Nevertheless, the Applicant has retained a transportation consultant who is undertaking a comprehensive analysis to confirm that the proposed work will not have a detrimental effect on existing traffic patterns.

There are numerous recreational resources for the new residents of this Project. The Project is immediately adjacent to the Malcolm X Recreation Center. It is also located in close proximity to at least two other recreation centers: Mary Church Terrell Recreation Center and Hayden-Johnson Recreation Center. The recreation centers offer both indoor and outdoor activity areas to entertain and engage the children. Again, the proposed renovations will decrease the number of two and three bedroom units and increase the number of one-bedroom and studio units.

This is a residential community and it has a strong infrastructure for providing public services. The number of residents that will be added by this Project is modest in comparison to the number of residents in the greater area. The existing infrastructure for public services will be able to accommodate the additional residents.

3. The Site Plan, Arrangement of Buildings and Provisions of Light, Air, Parking, Recreation, Landscaping and Grading are Appropriate

The existing site plans for the parcels maximize the light and air and minimize the impact on the community. Parcels 1 and 3 include “u” shaped buildings that insulate the central portion of the building on the interior of the Property. It provides two large green spaces in the middle of the Project, which provide maximum light and air for the units. The buildings are also set back significantly from lot lines, further providing units maximum access to natural light.

As noted above, the existing parking supply will accommodate the additional units; the Applicant is undertaking a parking analysis to confirm that no additional spaces are necessary to serve the building’s needs. The Project is located just over one block away from the Congress Heights Metrorail Station and the Applicant estimates that many of its residents will not own cars and will use Metrorail as their primary form of transportation.

B. Relief Can Be Granted Without Adversely Affecting the Use of the Neighboring Property in Accordance with the Zoning Regulations and Zoning Maps

The addition of 45 units is modest in the context of a neighborhood with a population of over 10,550 individuals. The proposed additions are thoughtfully designed to integrate into the existing site plan with little disruption to views, light, air, and current traffic patterns.

Accordingly, there will be no detrimental effects on neighboring properties.

VII. THE APPLICATION SATISFIES THE VARIANCE STANDARD FOR RELIEF FROM PARKING REQUIREMENTS

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the Applicant demonstrates that the Property meets the three-part test for area variance relief.

A. The Property is affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness, as well as its location in relation to the Capitol. Specifically, the Court held “[t]he site’s proximity to the Capitol made it uniquely valuable to the Republican National Committee, a public service

organization. The previously constructed buildings and the contiguous subject site can be considered together in applying the test especially because the past acts of the zoning authorities led interveners to rely in good faith on their eventual consent to the final stage of the building. This case, like *DeAzcarate*, illustrates that extraordinary circumstances can encompass the past zoning history, as well as the physical features, of the property.” *Id.* at 1099-1100. Furthermore, the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” *Id.* Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood

Here, like in *Monaco*, there are a series of factors that contribute to the uniqueness of the Property. As described above, there are several limiting factors on the Applicant’s ability to provide the requisite amount of parking. The primary considerations are the existing footprints of the buildings and the existing circulation plan.

The existing building on Parcel 1 is built in a “u-shape”, with an expansive courtyard opening onto 13th Street. The south side of the property has a building restriction line, which requires a 15 foot setback from the property line. In addition to the building restriction line, the building footprint is staggered, which creates a very narrow strip where parking could be located on the southern end of the lot. Even if parking spaces could fit in the area, the strip is too narrow to accommodate a drive aisle without projecting beyond the building restriction line. The north side of the building can accommodate compact spaces, but cannot extend any farther north than is currently proposed due to the stagger of the building footprint. Finally, the west side of the

building provides the most space for parking; however the parking would be located in the central courtyard. This would not be ideal for a number of reasons, namely that it does not comport with the Zoning Regulations, which prohibit parking in the front yard or between a building façade and a lot line. It also is not consistent with sound planning practices in converting the primary passive recreation space to surface parking. Finally, it would require an additional curb cut for access from 13th Street and would expose three arms of the building to the parking area. Centralizing all parking primarily at the rear of the building eliminates these issues; however, there is no room for additional parking on the east side of the building.

Similarly, given how tight the east side of the building is for space, the Applicant cannot accommodate a 55 foot loading berth on the site. It is providing a berth for a 30 foot truck in the northeast corner of the site, but it cannot extend any further due to site limitations. If the berth were extended any further, it would block the drive aisle accessing the other parking spaces. Accordingly, the Applicant also seeks relief from the loading requirements.

Parcel 1 is nonconforming with respect to parking. Parcel 1 currently provides 18 spaces for 31 units. The existing nonconformity bolsters the fact that there is no room to provide additional parking.

Parcel 3 provides the bulk of the parking that serves the Property; however, it does not provide conforming aisle widths to access that parking. There are currently 23 spaces on Parcel 3, all of which are located on the south and east sides of the building. The Applicant is proposing to locate an additional 21 parking spaces on Parcel 3; however, the drive aisles that access those spaces will not meet the 20 foot minimum width. Again, this is due to the tightness of the site that results from large footprint of the building. The only way to accommodate the requisite aisle width would be to reduce the existing footprint of the building, which would

undermine the need for the renovations and be overly burdensome to accommodate. It would also likely result in a reduction in the size of the central courtyard, eliminating passive recreation space as well as diminish the available light and air.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171.

Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. Here, the Applicant meets this standard. In

the first prong of the variance test, the Applicant demonstrated that there is limited space available for providing the requisite parking. Strict compliance with the Zoning Regulations would require the Applicant to either locate the parking in a space that would require additional relief from the Zoning Regulations or reducing passive recreation area on the Property. Neither option is ideal and both would require relief from District regulations.

Given the buildings' proximity with the Congress Heights Metrorail Station, the Applicant is confident that the existing parking will serve the needs of the building without needing to compromise the passive recreation space on the Property. The Applicant also believes that the 30 foot loading berth will accommodate the loading needs of the building just as a 55 foot berth. As noted, the proposed unit mix is largely 1-bedrooms and studios, thus tenants are likely to use a 30-foot truck for the move-in process.

C. Relief Can Be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. The reduction in parking will not have a negative effect on the community because the existing parking will serve the needs of the Project. The Property is located a little over one block from the Metrorail Station and many existing residents use Metro as a primary mode of transportation and do not own a vehicle. The Applicant anticipates that these practices will hold true with new residents and it is undertaking a transportation analysis to confirm this. The transportation analysis will also offer a transportation demand management plan to encourage use of alternative modes of transportation such as Metrorail or bike to further mitigate any impacts from the reduction in parking.

VIII. EXHIBITS IN SUPPORT OF APPLICATION

- Exhibit A: Application forms and agent authorization letter.
- Exhibit B: Architectural and civil plans – Site plan, lot plans, floor plans, elevations of the proposed development, and floor plans of the proposed residential units.
- Exhibit C: Statement in support of requested relief.
- Exhibit D: Plat with the Property outlined in red and Surveyor's Plat.
- Exhibit E: Site context photographs.
- Exhibit F: Zoning map with the Property outlined in red.
- Exhibit G: Property Owner List.

IX. CONCLUSION

For all of the above-mentioned reasons, the Applicant has satisfied the legal standards for special exception and variance relief and respectfully requests that the BZA approve this application.

Respectfully submitted,

GOULSTON & STORRS

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