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Via Hand Delivery

Board of Zoning Adjustment
for the District of Columbia
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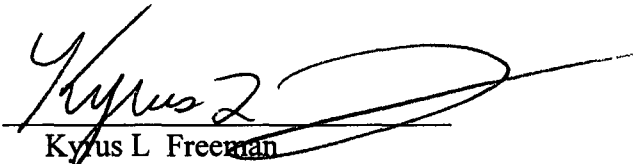
Re: BZA Application No 18734
1815 Riggs Place, N W (Square 133, Lot 818)

Dear Members of the Board

On behalf of 1815 Riggs LLC, the Applicant in the above-referenced case, enclosed please find one original and ten copies of the Applicant's prehearing submission in support of its application for zoning relief requested for the above-referenced property

Respectfully Submitted,

HOLLAND & KNIGHT LLP

By 
Kyrus L. Freeman

Attachments

cc Paul Goldstein, OP
Advisory Neighborhood Commission 2B
Mike Feldstein, Advisory Neighborhood Commission 2B01

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18734

EXHIBIT NO. 28
Board of Zoning Adjustment
District of Columbia
CASE NO. 18734
EXHIBIT NO. 28

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

**APPLICATION OF
1815 RIGGS LLC
1815 RIGGS PLACE, N.W.**

**BZA APPLICATION NO. 18734
HEARING DATE: APRIL 1, 2014
ANC 2B01**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted by 1815 Riggs LLC (the "Applicant"), the owner of property located at 1815 Riggs Place, N.W., Square 133, Lot 818 (the "Site"), in support of its application pursuant to 11 DCMR Section 3103.2 for a variance from the nonconforming structure provisions under subsection 2001.3, a variance from the open court requirements under subsections 406.1 and 2001.3(b)(2), and a variance from the Inclusionary Zoning applicability requirements under subsection 2602.1(c)(iii) to allow an addition to an existing building for residential use in the DC/R-5-B District at the Site.

**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 Section 3103.2 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>	Outline of Testimony of William Walde.

Exhibit E. Outline of Testimony of Ron Schneck.

Exhibit F: Letter of Support from adjacent neighbor

IV. BACKGROUND

The Site is zoned DC/R-5-B and is improved with an existing building used for residential use. As indicated on the portion of the zoning map showing the Site, attached hereto as Exhibit B, the Site is located in the northern portion of Square 133, which is located in the northwest quadrant of the city and is bounded by S Street to the north, 18th Street to the east, Riggs Place to the south, and 19th Street to the west. As indicated on the building plat included with the application, the Site is bounded by a 10-foot wide public alley to the north and to the east, Riggs Place to the south, and private property to the west. The Site includes approximately 3,787 square feet of land area.

The existing building has a height of 22'-6" and includes 6,252 square feet of gross floor area devoted to residential use. The existing building has an FAR of 1.65, whereas the R-5-B District permits a maximum FAR of 1.8 and 2.16 utilizing the Inclusionary Zoning bonus.

As shown on the Architectural Plans and Elevations ("Plans"), the Applicant proposes to construct a third-story addition to the Site. Upon completion, the building will have a height of 30'-9" and will include a total of 8,179 square feet of gross floor area devoted to residential use. The addition will include three residential units. The proposed residential use for the Site is consistent with the Site's 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 non-conforming structure requirements (§ 2001.3), the open court requirements (§§ 406.1 and 2001.3(b)(2)), and the Inclusionary Zoning applicability requirements (§ 2602.1(c)(iii)). 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 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 Site, 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 east, private property to the west, and has approximately 42.2 feet of frontage on Riggs Place, N W , all of which impact access to and development of the Site. The Site is considerably wider than most of the other lots in the square and surrounding neighborhood. Although other wide lots exist, the majority were built as single family homes and are approximately half the width of the Site.

In addition, the Site is improved with an existing building that includes two above-grade levels and one cellar level devoted to residential use, which affects development. The existing building is irregularly shaped on a rectangle lot, with the southern portion occupying the entire width of the lot and the northern portion providing open space along the north, east, and west portions of the Site. The existing building was constructed in approximately 1941 and has existing conditions that cannot be altered and must be incorporated into the proposed addition. For example, the stair in the center of the building and the existing piping and utilities cannot be relocated, since these facilities already serve the residential units on the lower floors. In addition, the central location of the building's existing stairway drives the layout and

configuration of proposed Units 2 and 3, which have been specifically designed to have direct access to the stairway

The existing building's structural envelope also directly affects the location and configuration of the proposed addition. As proposed, the addition is setback 6'-11" from the front of the existing building on Riggs Place, while the addition's eastern façade is extended directly up from the existing building's eastern façade, providing no setback from the public alley to the east. This configuration provides optimal structural support and responds directly to comments from the Historic Preservation Office, which requested setbacks at the front of the building, instead of from the public alley. The addition's layout and configuration is also impacted by the Applicant's desire to minimize impacts to existing tenants during construction. Constructing the addition to align with the existing core elements and the walls of the existing structure allows the Applicant to undertake construction of the addition in a manner that minimizes the impacts on the existing, occupied units.

In addition, the existing building is nonconforming with respect to lot occupancy, rear yard, and open court. Although the building is not a historic landmark, the development proposal involves the retention of this structure. However, given that the existing building was constructed prior to adoption of the current Zoning Regulations and is nonconforming with respect to lot occupancy and open court width, constructing any addition to the existing building would generate the need for zoning relief.

The BZA and the Office of Planning have found in other cases that similar conditions meet the first prong of the variance test (*see, e.g.* BZA Case No. 18005 (finding an exceptional or extraordinary condition based on an existing building that was non-conforming with respect to lot occupancy); BZA Case No. 18421 (finding an exceptional or extraordinary condition based

on an existing building that was non-conforming with respect to lot occupancy and rear yard); BZA Case No. 18646 (finding an exceptional or extraordinary condition based on an existing building that was non-conforming with respect to height, lot area, and lot width); BZA Case No. 18660 (finding an exceptional or extraordinary condition based on an existing building that was non-conforming with respect to side yard))

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

(a) Variance from Non-Conforming Structure Requirements Pursuant to Section 2001.3

The strict application of the nonconforming structure requirements of Section 2001.3 of the Zoning Regulations in this case would result in a practical difficulty. The existing building on the Site is presently nonconforming as to the following requirements of the Zoning Regulations:

- 1 Rear yard - Pursuant to Section 404.1 of the Zoning Regulations, in the R-5-B District, buildings are required to provide a rear yard having a minimum width of 4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet. The existing building has a measured height of 22'-6", and assuming that the height at the rear of the building is approximately the same, 4 inches per foot equals 7.5 feet. Therefore, a 15-foot rear yard would be required for the existing building under the current Zoning Regulations. However, the existing rear yard is only 3 feet, 9.5 inches.
2. Lot occupancy - Pursuant to Section 403.2 of the Zoning Regulations, the maximum permitted lot occupancy in the R-5-B District is 60%. However, the existing building

has a footprint of 3,126 square feet and 90 square feet of nonconforming court area, which equals a lot occupancy of 85%.

- 3 Open Court - Pursuant to Section 406.1 of the Zoning Regulations, where an open court is provided in the R-5-B District, the court shall have a minimum width of four inches per foot of height, but not less than 10 feet. The existing building has a height of 22'-6", and four inches per foot of height equals 7.5 feet. Therefore, a 10 foot open court would be required for the existing building under the current Zoning Regulations. However, the existing open court is only two feet wide.

Section 2001.3 of the Zoning Regulations provides that enlargements or additions may be made to nonconforming structures if

- (a) The structure conforms to percentage of lot occupancy requirements, except as provided in § 2001.13; and
- (b) The addition or enlargement:
 - (1) Conforms to use and structure requirements; and
 - (2) Neither increases or extends any existing, nonconforming aspect of the structure; nor creates any new nonconformity of structure and addition combined

As shown on the Plans included with the application, the proposed addition conforms to the use and structure requirements, does not increase or extend the existing nonconformities with respect to rear yard or lot occupancy, and does not create any new nonconformity of structure or addition combined

However, relief is required from Section 2001.3(a) since the existing building does not meet the lot occupancy requirements. In order to add to the nonconforming building and conform to the 60% lot occupancy limitation, approximately 22% of the existing building footprint at the first floor level (687.72 square feet) would need to be removed. This would

theoretically be in the rear portion of the building. However, removing 687.72 square feet of the existing building would be practically difficult and would adversely affect the structural integrity of the existing building. Moreover, the entire building is leased to tenants, so removing 687.72 square feet of the existing building would require displacement of the existing residents in the building. In addition, the Applicant only proposes to add approximately 1,927 to the square feet of gross floor area to the building; removing 687.72 square feet of the existing building in order to accommodate this relatively minor addition would be practically difficult for the Applicant.

(b) Variance from Open Court Requirements Pursuant to Sections 406.1 and 2001.3(b)(2)

Pursuant to Section 406.1 of the Zoning Regulations, if provided, open courts must have a minimum width of four inches per foot of height, but not less than 10 feet. Based on the building's proposed height of 30'-9", the building is required to have an open court at the third level of the building with a minimum width of 10.25 feet. However, the existing open court along the eastern property line only measures approximately two feet in width, which is a nonconforming condition. Moreover, Section 2001.3(b)(2) provides that enlargements or additions may be made to structures, provided that the enlargement or addition itself does not increase or extend any existing nonconforming aspects of the structure, nor create any new nonconformity of structure and addition combined. The Applicant proposes to extend the building wall along the eastern property line to a height of 30'-9", while maintaining the existing two foot wide open court, which generates the need for relief.

Increasing the existing open court width along the eastern 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 new units along the eastern portion of the building are relatively

small. Unit 2 is only 546 square feet and Unit 3 is only 575 square feet. Increasing the open court width would decrease the size of these units by approximately 44% and 30%, respectively, which would render them infeasible in terms of layout and design, particularly given the location of the structural columns and stairway in the existing building, which cannot be relocated. Without changing the location of the common core, Unit 2 would be less than ten feet wide, which is not wide enough to provide a bedroom, let alone a bedroom and corridor. Units 2 and 3 would both need to be reduced to under 400 square feet, which is itself is not big enough for a one-bedroom unit. At the same time, the proposed addition is setback significantly from the western and northern property lines so as to not impact the adjacent building to the west or existing buildings across the alley to the north of the Site. The setback along the western property line was requested by the Historic Preservation Office and impacts the space available to construct the proposed addition.

Setting back the eastern portion of 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. The location of the addition's eastern façade directly above the existing building's eastern façade was driven by comments from the Historic Preservation Office, which requested that the proposed addition be setback from the front of the building along Riggs Place, not from the public alley to the east of the building. Constructing the addition's east façade in this location preserves the historic context and integrity of the existing structure. In addition, because the Applicant is reusing and extending the existing building's core and stairway, increasing the court width would have a significant adverse impact on the building's existing design and the location of the building's core elements, since the stairs would have to be

pushed farther back into the center of the building. Any movement of the building's core would increase the practical difficulties to the Applicant and would adversely affect the design, layout, and structural integrity of the proposed residential addition and the existing residential units. Finally, as described above, constructing the addition directly above the existing building's eastern wall minimizes impact to building residents during construction. Relocating building tenants during construction would result in additional practical difficulties to the Applicant.

(c) Variance from the Inclusionary Zoning applicability requirements under subsection 2602.1(c)(iii)

Strict application of the Inclusionary Zoning applicability requirements in this case would result in a practical difficulty. Buildings subject to the Inclusionary Zoning regulations in the R-5-B District are permitted a maximum FAR of 2.16. 11 DCMR § 2604.1. Pursuant to Section 2602.1(c)(iii) of the Zoning Regulations, the Inclusionary Zoning requirements and incentives apply to existing multiple dwelling buildings for which a new addition will increase the gross floor area of the entire development by 50% or more. In this case, the Applicant proposes to increase the gross floor area of the existing building from approximately 6,252 square feet to approximately 8,179 square feet, or an increase of 33.8%. Thus, the Applicant is seeking a variance from Section 2602.1(c)(iii) of the Zoning Regulations, since the proposed addition is less than 50% of the entire development, so that the building can become subject to the Inclusionary Zoning requirements and achieve the permissible FAR of 2.16.

It is practically difficult for the Applicant to increase the gross floor area of the development by 50% or more. In order to do so, the Applicant would have to demolish a minimum of approximately 4,089 square feet of the existing building to then construct a building with 8,179 square feet of gross floor area, as proposed in this application. To remove this much

of the existing building would be practically difficult, given that the existing building is tenanted, and demolishing part of the building would be costly and structurally inefficient. Moreover, demolishing over 4,089 square feet of the existing 6,252 square foot building would displace many of the current tenants, making this requirement contrary to the city's goals of increasing the housing supply and providing infill development. Finally, the Applicant is only proposing to increase the gross floor area of the building by approximately 1,927 square feet. Requiring the Applicant to demolish 4,089 square feet of gross floor area, which is approximately 65% of the existing building, to add 1,927 square feet of new gross floor area to the building makes compliance with Section 2602.1(c)(iii) practically difficult.

The BZA has found in other cases that demolishing a part of an existing structure in order to construct a proposed building addition is a practical difficulty. *See, e.g.* BZA Order No 18511 ("the existing structure cannot be made to conform to the lot area, rear yard, and lot occupancy requirements . . . and therefore, strict compliance would require wasteful demolition"); BZA Order No 17637 ("strict compliance with the regulations is practically difficult because the adoption of the Zoning Regulations immediately resulted in the nonconformities that are subsumed in the requested variance. In order to comply with § 2001.3

Applicants would need to demolish 10.5% of their building to meet the 60% lot occupancy requirement"); BZA Order No 18376 ("[t]he Board finds that the exceedingly narrow open court width is an exceptional condition. . . [which] leads to a practical difficulty in Applicant's ability to expand the property. The only way to increase the open court width to meet the Regulations is to demolish a portion of the building. Thus, the first and second prongs of the variance test are met).

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 requested zoning relief. The addition of new residential units to the existing residential building will contribute to the vibrancy of the neighborhood and is consistent with the Mayor's goals for providing new residential units throughout the city. With respect to lot occupancy, the existing building and open court areas have occupied 85% of the lot since the building was constructed, and the Applicant's proposed third-story addition does not increase the existing lot occupancy. Moreover, the third floor will only have a 52% lot occupancy.

With respect to the open court requirements, there is already a large amount of open space on the top level of the building where the addition is proposed. In addition, the non-compliant court is adjacent to a 10-foot wide public alley to the east of the Site, which provides sufficient light and air to adjacent properties to satisfy the purpose of the open court requirements. To the north of the Site are existing residential buildings, but these buildings are separated from the Site by a 10-foot wide public alley and large rear yards. As described above, the proposed addition is also setback substantially from existing buildings to the west of the Site, creating even more light and air for surrounding buildings.

With respect to the Inclusionary Zoning applicability requirements, the proposed development will not have a substantial detriment to the public good because the building will still meet the height and FAR requirements of the Zoning Regulations. Moreover, the massing of the building will be consistent with the other buildings on the north side of Riggs Place, which are primarily three-stories and taller than the existing building on the Site. In addition, the Comprehensive Plan encourages the development of new affordable housing throughout the city.

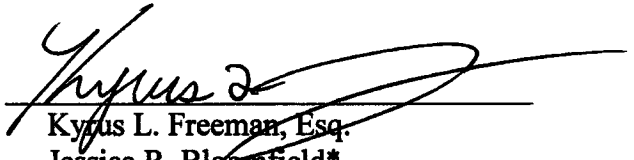
If the Board approves the requested variance from the Inclusionary Zoning applicability regulations, the Applicant would be providing approximately 1022.49 square feet of gross floor area devoted to new affordable housing that would not otherwise be added (*see* 11 DCMR § 2603 1).

IV. **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,

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