

D. Application for Use Variance

Channel Square Housing LLC (the "Applicant"), the fee owner of the Channel Square Apartments, a complex of five buildings at 325 P Street, S.W. (Lot 0024, Square 547), hereby makes application to the District of Columbia Board of Zoning Adjustment (the "Board") for a use variance pursuant to § 3103.2 of the District of Columbia Zoning Regulations, 11 DCMR (February 2003)(the "Zoning Regulations") to authorize the existing occupancy of a portion of the first floor of the building located at 1400-1436 4th Street, S.W. for existing nonconforming use as offices within the R-3 Zoning District.

1. Statement of Existing Use

The Applicant owns and operates the Channel Square Apartments, consisting of five buildings containing two hundred-twenty three (223) rental apartments and townhouse units. The high-rise building located at 325 P Street, S.W. is located in the R-5-D Zoning District and the balance of Square 547 with four townhouse buildings is zoned R-3. The Applicant purchased the Channel Square Apartments on October 31, 2013, acting in concert with the tenants with the object of maintaining the property as mixed-income housing. In one of the townhouse buildings, 1400-1436 4th Street, S.W., a portion of the first floor, consisting of approximately 4,625 sq. ft. (the "subject property") was, at the time of the Applicant's purchase, and is currently occupied by the offices of Career Team, a Connecticut limited liability company that provides training, job counseling and other services to Temporary Assistance to Needy Families (TANF) recipients under contract with the D.C. Department of Employment Services. To our knowledge, Career Team has occupied the subject property since at least 2007 under a lease agreement with the prior owner. The lease agreement provides the tenant with access to thirteen (13) dedicated

parking spaces which are located in the parking lot adjacent to the subject property at the corner of P Street and 4th Street, S.W.

2. Site Description and Zoning History

The Channel Square Apartments were developed in the late 1960's under the auspices of the Southwest Urban Renewal Area and the zoning regulations applicable thereto. The approved development was subject to an order of the Board which referenced in its description of the project that it would include "5,000 square feet of neighborhood commercial space on the ground floor of one of the buildings."¹ The land was zoned UR until the expiration of the Urban Renewal legislation in 1998, when the Zoning Commission rezoned the Channel Square Apartments to its current zoning status of R-5-D and R-3.² The zoning categories adopted by the Zoning Commission for application in the Southwest Urban Renewal Area very clearly were intended to preserve the "status quo" of existing development.

3. Surrounding Area Description

The area surrounding the subject property reflects a variety of land uses. This section of the city is dominated by Fort McNair which occupies the southern end of the peninsula between the Anacostia River and the Washington Channel. Fort McNair forms the southern border across P Street, S.W. for the subject property. The land to the west of the subject property is zoned R-5-D and R-5-B and is developed with high and medium density multifamily housing. The city block directly to the north of the subject property is zoned R-3 and consists primarily of single family dwellings in semi-detached and row dwellings clustered around a series of interior

¹ *Board of Zoning Adjustment Appeal No. 9210 of D.C. Redevelopment Land Agency, appellant (December 7, 1967)*, which is attached hereto as Exhibit 6.

² *Zoning Commission Order No. 807 (Case Nos. 95-15 and 95-151 Text & Map Amendment – Southwest Urban Renewal Area – Portion of Subarea C, South of the Southwest Freeway)(October 19,1998)*.

courtyards. East and northeast of the subject property there is R-5-D, R-5-B and R-4 zoning and residential housing consistent with the zone district. One of the features of this neighborhood is the distinctive architectural style of many of the buildings located in the vicinity of the subject property, which were planned and constructed in the 1960's and early 1970's. The subject property is located within two blocks of M Street, S.W. and the Waterfront Metrorail Station.

4. Basis for Variance Relief Under Section 3103.2

Section 3102.2 authorizes the Board to grant variances in these words:

With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or **other extraordinary or exceptional situation or condition of a specific piece of property**, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or **exceptional and undue hardship upon the owner of the property**, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted **without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan** as embodied in the Zoning Regulations and Map." (emphasis added).

The elements of entitlement for a use variance are emphasized in the language quoted above. As articulated in *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (1979), these elements form a three-part test which an applicant must satisfy: "(1) unique physical aspects ... of a specific piece of property; (2) undue hardship; (3) no harm to the public or to the zone plan."³ As discussed more fully below, the Applicant can meet the use variance test.

³ *Monaco*, 407 A.2d at p. 1096

Extraordinary or Exceptional Situation or Condition

The land underlying the subject property was owned by the D.C. Redevelopment Land Agency (the “RLA”) pursuant to the Southwest Urban Renewal Plan. Land use within the Southwest Urban Renewal Area was controlled by its own regulations, quite apart from the Zoning Regulations governing the rest of the city. At the time the five buildings were built, RLA requested relief in BZA Appeal No. 9210 from certain regulations affecting the location of driveway entrances and parking spaces. In the course of the appeal, RLA described the project and that description was repeated in the decisional document, as follows:

It is proposed to erect residential structures, high rise, row house and walk-up living units. **There will be 5,000 square feet of neighborhood commercial space on the ground floor of one of the buildings . . .**⁴ (emphasis added)

The commercial space referred to is the first floor space currently leased by Career Team at the subject property at 1412 4th Street, S.W. From the context of the decisional document, it is evident that the use as neighborhood commercial space was a permitted use of the land. The very first Certificate of Occupancy (B73173, March 9, 1970) issued for this address was to Safeway Stores, Inc., which operated a scaled-down grocery store at this location for a number of years. The permit history of the subject property demonstrates the almost continuous non-residential use of the 1412 4th Street, S.W. address: Miniature World Academy (B140725, September 22, 1983); Barbara Pennington (child development center) (B140725, December 7, 1984); Samuel E. Pope (beauty salon, t/a Head to Toe Unisex Salon) (B168388, May 3, 1994); Washington DC Network Services, Inc. (CO39135, August 12, 2002).

⁴ BZA Appeal No. 9210, at p. 2.

Exceptional and Undue Hardship

The effect of the Zoning Commission's zoning of the Southwest Urban Renewal Area was to render the intended and actual uses of the 1412 4th Street, S.W. space as nonconforming in the new R-3 zone district. Although contained within a building that included fifteen (15) residential housing units, the space known as 1412 4th Street, S.W. was structurally and visibly separate from the residential portions of the building. The space is rectangular (approximately 40' x 115') with its longest side parallel to 4th Street, S.W. The space has a floor plate completely different from the residential units above it and there is no rear access as the first floor abuts the upper part of the underground garage structure.

The Applicant's architect has estimated that a minimum expenditure of \$475,000 would be necessary to reconfigure the space for residential use. It is doubtful that more than one or two habitable, residential units could be created from this space as the only light and air would be on the west side of the building. For the Applicant to be compelled to reconstruct the first floor space, which was plainly purpose-built as a "neighborhood commercial space", represents a significant economic investment with a dubious and unrealistic object.

No Harm to the Public or to the Zone Plan

The subject property was developed under the auspices of the Southwest Urban Renewal Plan and the neighborhood commercial space was a matter-of-right use. For over forty years, this commercial use has functioned in the community without adverse impacts. The small size and physical constraints of the first floor space are self-limiting features that protect adjacent residential uses. The proximity to the Waterfront Metrorail Station and the Metrobus service along 4th Street, S.W. reduce the site generation of automobile trips and any pressure on

available parking on street. The fact that 4th Street terminates at Fort McNair and is not a through street also works to minimize the traffic load on public streets in the vicinity.

E. Community Contacts

The Applicant will request to meet with Advisory Neighborhood Commission 6D at its regular monthly meeting in April, 14, 2014 or May 12, 2014.

F. Conclusion

Based upon the foregoing discussion, the Applicant requests that the Board grant a use variance to permit the use of the ground floor space at 1412 4th Street, S.W. as offices.

Respectfully submitted,

JORDAN & KEYS, PLLC

By: 