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May 20, 2014

VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, DC 20001

Re. BZA Application No. 18762
1547 7th Street N.W (Square 445, Lot 197)

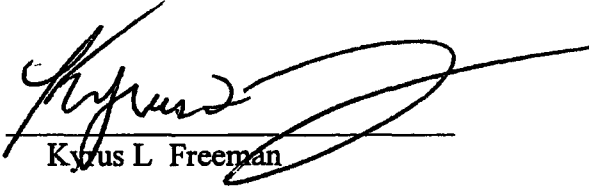
Dear Members of the Board

On behalf of Williams Seven Street, LLC, the Applicant in the above-referenced case, enclosed please find one original and 10 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: Stephen Gyor, Office of Planning
Advisory Neighborhood Commission 6E
Commissioner Kevin Chapple, ANC 6E02

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18762
EXHIBIT NO. 24

Board of Zoning Adjustment
District of Columbia
CASE NO. 18762
EXHIBIT NO. 24

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

**APPLICATION OF
WILLIAMS SEVEN STREET LLC
1547 7TH STREET, N.W.**

**BZA APPLICATION NO. 18762
HEARING DATE: JUNE 3, 2014
ANC 6E02**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted by Williams Seven Street, LLC (the "Applicant"), the owner of property located at 1547 7th Street N.W , Square 445, Lot 197 (the "Site"), in support of its application pursuant to 11 DCMR Section 3103.2 and Section 3104.1 for a variance from the lot occupancy requirements of Section 772.1; a variance from the rear yard requirements of Section 774.1; a variance from the court area requirements of Section 776.4; a variance from the nonconforming structure requirements of Section 2001.3; and a special exception from the roof structure requirements pursuant to Section 411.11, to allow the addition to, and renovation of, an existing building for commercial and 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 Zoning Map showing the Site
<u>Exhibit B</u>	Architectural Plans and Elevations
<u>Exhibit C</u>	Portion of the Baist and Sanborn Atlas plats showing the Site.
<u>Exhibit D</u>	Outline of Testimony of Warren Williams, Williams Seven Street, LLC
<u>Exhibit E</u>	Outline of Testimony and Resume of David Haresign, FAIA, Bonstra Haresign Architects
<u>Exhibit F</u>	Letter of Support from adjacent neighbor

IV.
BACKGROUND

A. Description of the Site

The Site is located at 1547 7th Street, N.W. and includes Lot 197 in Square 445. As indicated on the Zoning Map, attached hereto as Exhibit A, Square 445 is located in the northwest quadrant of the District and is bounded on the north by Q Street, on the south by P Street, on the west by 7th Street, and on the east by 6th Street. Marion Street runs north-to-south and bisects Square 445. The Site is a corner lot, rectangular in shape, with approximately 2,552 square feet of land area, and 44 feet of linear frontage on 7th Street and 58 feet of linear frontage on Q Street. The Site is currently improved with a vacant two-story building with approximately 4,818 square feet of gross floor area plus cellar. The existing building was originally constructed in 1910 and was last utilized for retail and residential uses.¹ The existing building has a height of

¹ The subject building contains 4,900 square feet of gross floor area and cellar floor area last used for retail and service uses, and 2,368 square feet of gross floor area last used as a 3 unit apartment building. See Certificate of Occupancy No B155733 and B110324. Retail and service uses in the C-2-A zone in excess of 3,000 square feet are required to provide 1 off street parking space for each additional 300 square feet of gross floor area and cellar floor area. Apartment buildings in the C-2-A District are required to provide 1 parking space for each 2 units. Thus, the existing uses generate a parking requirement of 8 parking spaces (6 retail and 2 residential). There has never been any parking provided on-site. Accordingly, there is a parking credit of 8 spaces pursuant to Section 2100.4. The proposed uses generate a parking requirement of 7 parking spaces. Applying the parking credit of 8 spaces results in no additional parking being required for the project.

approximately 29 feet and an FAR of 1.9. The Site is located within a C-2-A District (*see Exhibit A*).

B. Description of the Surrounding Area

The Site is located in the heart of the Shaw neighborhood, which is experiencing unprecedented growth and revitalization. Shaw is located in close proximity to the downtown core, has excellent transportation access, lively cultural and entertainment venues, and an expanding mix of dining and retail establishments.

The Site is located one block from the Shaw/Howard University Metrorail station, which serves the Green and Yellow Metrorail lines, and there is ample Metrobus service in the area, with five bus lines (70, 79, 96, G2, and G8) located within 0.3 miles of the Site. There are six permanent car share locations located within 0.3 miles of the Site (served by Zipcar and Hertz On Demand), and Car2Go vehicles are easily accessed from the Site and within the surrounding neighborhood. There are also three Capital Bikeshare stations located within 0.3 miles of the Site, with one station located one block from the Site at the intersection of 7th and R Streets, N.W. The Site has a walkscore of 89, and is designated by walkscore.com as "very walkable" based on its close proximity to neighborhood parks, restaurants and coffee shops, grocery stores, and other community-oriented establishments.

This mixed-use neighborhood and the availability of multiple alternative options create a desirable location for the proposed uses for the Site without creating any negative impacts on the surrounding community.

C. Description of Proposed Development

As shown on the Architectural Plans and Elevations (the "Plans"), attached hereto as Exhibit B, the Applicant proposes to renovate the existing building on the Site and construct a third floor addition. Upon completion, the building will have a height of approximately 40 feet, 2 inches and will include a total of 6,331.2 square feet of gross floor area. Proposed uses for the Site include retail on the ground and cellar levels, office or residential use on the second floor, and residential use on the third floor. The proposed mix of uses for the Site is consistent with the Site's zoning designation and with other uses within the Square, and will continue the ongoing development of the Shaw neighborhood.

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

Variance relief in this case is required from the lot occupancy requirements (§ 772.1), the rear yard requirements (§ 774.1), the court area requirements (§ 776.4); and the nonconforming structure requirements (§ 2001.3). 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 configuration, size, and character of the existing building on the Site, combine to create an exceptional situation and condition.

Development of the Site is significantly constrained due to the existing building, which will ultimately comprise a significant portion of the mixed-use development. The existing building was constructed in 1910, includes one cellar level and two above-grade levels, and contains approximately 4,818 square feet of gross floor area The existing building occupies 96% of the land area on the Site, which is a non-conforming condition, and is currently vacant and in need of renovation and repair. Although the building is structurally sound, it is in deteriorated condition, in part due to damage that resulted from a bus that crashed into the 7th Street side of the building approximately 14 years ago. These conditions add to the complexity of redeveloping the Site.

Although the Site is not located in an historic district, and the existing building is not designated as an historic landmark, the building is one of a few remaining examples in

Washington, D C. of architecture from the Arts and Crafts movement, an architectural style that flourished during the turn of the twentieth century and emphasized simplicity and the truth of materials. As indicated in the photographs included in the Plans, the building's exposed eaves and decorative brick work demonstrate this unique style. As part of redevelopment of the Site, the Applicant will retain and restore the existing building, including these significant design elements.

Moreover, the existing lot size is relatively large compared to the other lots in Square 445, which is predominantly developed with three- and four-story row-dwellings located on significantly smaller and narrower lots. Although the Site is a corner lot with frontage on 7th Street, N.W. and Q Street, N.W., there is no alley access for practical purposes. As indicated on the Baist and Sanborn Atlas Maps, attached hereto as Exhibit C, public alleys in the western portion of the Square run north-south from Q Street, and east-west from Marion Street. However, the Site is surrounded to the east, southeast, and south, by irregularly-shaped private properties that block access to the alley system. The Site is the only lot in the Square that is surrounded by irregularly-shaped lots that block alley access in this manner. Although the improvements on the surrounding two properties are set back from their rear property lines, the Applicant cannot cross this private property in order to access the public alleys. This configuration creates an unusual condition on the Site, particularly because 98% of the other lots within the Square have direct access to an alley.

In addition, the existing building is nonconforming with respect to lot occupancy, rear yard, and court area. Although the building is not a historic landmark, the development proposal involves the retention of the existing structure. However, given that the building was constructed

prior to adoption of the Zoning Regulations and is nonconforming with respect to lot occupancy, 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 non-conforming conditions meet the first prong of the variance test. For example, in BZA Case No. 18005, the Board granted relief from the nonconforming structure requirements to allow the renovation of and third story addition to an existing apartment house in the DC/R-5-B District. In granting this relief, the Board found an exceptional or extraordinary condition based on the existing building's non-conformity with respect to lot occupancy. At the public hearing, Vice-Chairman Dettman stated that

[w]hile the preexisting condition is not in and of itself an exceptional or unique circumstance, it certainly has been entertained by the Board, in many cases, as something contributing to a unique circumstance as part of a kind of confluence of factors. And not only with the property owner, but any property owner, in order to do any kind of addition to this particular building, the strict application of the Zoning Regulations would require some kind of partial demolition of the existing building...

See BZA Public Hearing Transcript from Tuesday, December 8, 2009, pgs 137-139. In BZA Case No 18660, the Board granted relief from the non-conforming structure requirements to allow an addition to, and renovation of, an existing building for residential use. In this case, the Board found an exceptional condition related to the existing building, which was non-conforming with respect to side yard and had to be incorporated into the design of the proposed redevelopment because it comprised a significant portion of the final residential development. In BZA Case No. 18421, the Board approved the renovation of an existing dwelling into a four-unit apartment house based on an exceptional or extraordinary condition created by an existing building that was non-conforming with respect to lot occupancy, rear yard, and FAR. In BZA Case No. 18646, the Board found an exceptional or extraordinary condition based on an existing

building that was non-conforming with respect to height, lot area, and lot width. Similar to these previous cases, the Site's nonconformity with respect to lot occupancy, rear yard, and open court creates an exceptional situation or condition

Based on the foregoing, incorporating the existing structure into the design and program proposed for 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) Variance from Lot Occupancy Requirements of Section 772.1

Strict application of the lot occupancy requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 772.1 of the Zoning Regulations, the maximum percentage of lot occupancy for a building that includes residential use in the C-2-A District is 60%. The maximum percentage of lot occupancy for a building that includes commercial use is 100%. The building's current lot occupancy is 96%, and the proposed lot occupancy after completion of the project is 96%. However, the lot occupancy of the third floor addition is only 60%, which complies with Section 772.1 of the Zoning Regulations

In order to comply with the lot occupancy limitation in this case, the Applicant would have to remove 36% of the existing building footprint, which would result in demolishing approximately 1,568 square feet of the existing building. Removing such a large portion of the building would make it practically difficult for the Applicant to renovate and adaptively reuse the existing building for commercial and residential uses, while also providing a reasonable layout for the proposed uses. Removing 1,568 square feet would also have major structural and design implications. The existing building's framing is a mix of load-bearing masonry and numerous wood framing interventions that have been added to, modified, and rebuilt throughout the years.

Removing any of the load-bearing masonry would require restructuring that portion of the building, as well as potentially removing and replacing any adjacent wood framing that is no longer adequately supported or anchored. Eliminating 36% of the existing building would also jeopardize the retail tenant interested in leasing the ground floor of the building as it currently exists, making the project infeasible. Moreover, adaptively reusing the existing structure would permit the Applicant to reuse and restore the existing building materials and preserve the unique Arts and Crafts motif. Therefore, the Applicant is seeking a variance from the lot occupancy limitations in this case.

(b) Rear Yard Requirements of Section 774.1

The strict application of the rear yard requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 774.1 of the Zoning Regulations, all structures in the C-2-A District are required to provide a rear yard with a minimum depth of 15 feet. As shown on the Plans, the Site does not currently have a rear yard and the Applicant does not propose to provide a rear yard once it completes renovation of the building.

Given that the property has frontage on both 7th Street and on Q Street, either street could be selected as the "front" for the purpose of establishing the rear yard. In order to comply with the minimum rear yard depth requirement in this case, the Applicant would have to demolish the existing rear wall either along the eastern property line or along the southern property line. Demolishing either portion of the existing building would reduce the building footprint by approximately 475 square feet on the existing first level and 475 square feet on the existing second level. The Applicant would also be required to eliminate construction of approximately 365 square feet on the proposed third level addition. The loss of this area would make it practically difficult to renovate and convert the existing building into functional commercial and

office spaces, while also providing a reasonable layout for the proposed units. For example, creating a compliant rear yard would have an adverse impact on the location and function of the building's core, including both the existing and proposed stairways.

Moreover, making any changes to or removing the existing bearing walls will have structural implications for the entire building. Everything that is supported by those walls, from the cellar to the roof, would have to be restructured. Enlarging the rear yard would increase inaccessible space, which would be difficult to maintain and secure once the building is occupied.

In addition, the Applicant is constructing the proposed third story addition directly on top of the southern portion of the existing building in order to extend the existing load-bearing structural walls directly up. Setting back the new upper floor 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 floor below. If the Applicant removed the third floor structure from all existing bearing walls and vertical load points, the Applicant would have to strengthen the existing roof level (second floor ceiling) structure. Doing so would likely require adding steel beams and columns through the second floor, ground floor, and cellar, ending in new footings. Setting back the wall would also require the Applicant to move the vertical circulation and chases towards the center of the existing structure, which is an inefficient use of space. Making these changes would greatly add to the financial burden of the project and would significantly change the layout of the floor plans to the point that laying out a restaurant at the ground floor and maximizing seating would be significantly more difficult.

(c) Court Area Requirements of Section 776.4.

Strict application of the court area requirements would result in a practical difficulty to the Applicant. Although not required for zoning purposes, there is a closed court in the southeast corner of the building, with a width of ten feet and an area of 188.4 square feet. This existing court is a one-story high areaway at the cellar level and a court on the ground and second levels. As part of the project, the existing areaway at the cellar level will be filled in. The new court will start at the ground floor level and will extend up three floors.

Section 776.4 of the Zoning Regulations provides that closed courts must have a minimum area equal to at least twice the square of the width of court based upon the court height, but not less than 350 square feet. In this case, the court has a height of 40 feet, 2 inches, and is thus required to have a minimum area of 512 square feet. However, the existing court has an area of 188.4 square feet, and the Applicant is not proposing to expand this area as part of the project.

In order to comply with the court area regulations, the Applicant would need to increase the court area by 323.6 square feet. Doing so, however, would eliminate approximately 742 square feet of the existing building along the southeastern property line at the ground and second floor levels. Due to the existing building's footprint, structure, and layout, the court area cannot be reasonably expanded without creating significant design and structural changes to the interior configuration, including the layout of the retail, office, and residential spaces and the location of the core functions. Similarly to creating a rear yard, restructuring the building to provide a compliant court would require the Applicant to install new footings and bearing walls at the cellar level, new rear walls and floor framing, and new roof structure and slope adjustment, since

the roof currently drains towards the court. Changing the existing structure in this manner would create an economic hardship that would make development practically difficult.

(d) Nonconforming Structure Requirements of Section 2001.3

The existing building is nonconforming with respect to lot occupancy, rear yard, and court area. Section 2001.3 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

- (a) The structure conforms to percentage of lot occupancy requirements, except as provided in Section 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 Applicant is seeking relief from Section 2001.3 because (a) the existing structure does not conform to the lot occupancy, rear yard, or court requirements, (b) the proposed third floor addition extends the existing nonconformity with respect to lot occupancy, rear yard, and court area, and (c) the proposed addition creates a new nonconformity with respect to roof structures. The practical difficulties with respect to lot occupancy, rear yard, and court area are discussed above.

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 of new retail, office, and residential uses in the existing vacant building will contribute to the vibrancy of the Shaw neighborhood and is consistent with the Mayor's goals for providing

new residential units throughout the city. With respect to the lot occupancy relief, the existing building has occupied 96% of the Site since the building was constructed in 1910. Moreover, the lot occupancy of the third floor addition is only 60%, which complies with Section 772.1 of the Zoning Regulations. Similarly, with respect to the rear yard relief, redevelopment of the Site will not create any adverse impacts since the existing building does not currently include a rear yard and the rear portion of the building abuts a sidewalk and open space on the adjacent lot to the east. Moreover, given that this is a corner lot, providing a rear yard would create a gap in the street frontage along either 7th Street or Q Street, which would be contrary to urban planning principles. With respect to court area, the court abuts an open area on the adjacent property to the southeast, and will therefore maintain sufficient open space between the proposed building and adjacent properties. Overall, the proposed redevelopment and adaptive reuse on the Site will not create a substantial detriment to the public good or a substantial impairment to the zone plan.

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, 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 Setback Requirements

The Applicant requests relief pursuant to Section 411 11 from the requirement that roof structures must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located (§ 770.6(b)). As shown on the Plans, the project includes a single roof structure that rises to a height of 9 feet, 8 inches. This roof structure is necessary to provide access to the roof, which will include storage space and amenities for building residents. The structure meets the set back requirements from the northern, southern, and western edges of the roof. However, the structure is only set back six feet from the eastern edge of the roof adjacent to the closed court, and thus relief is necessary. The roof structure cannot be set back any further from the court walls due to the location and design of the building's mechanical equipment, the location of the building's core, and the proposed circulation within the building.

Although special exception relief is required, the proposed roof structure does comply with the spirit and intent of the roof structure provisions and the Zoning Regulations because it ensures adequate light and air to adjacent properties and abutting streets. The location of the roof structure is based upon the configuration of the building, the layout of the multiple uses within the building, design requirements, and the location of the building's core features. The

roof structure enclosure is designed to be as small as possible, and the proposed set backs on the north, south, and west building edges will reduce visibility of the roof structure from the street. Moreover, the roof structure is set back more than the required 1:1 ratio from the two street frontages, the only location where set back relief is necessary is from the court wall. However, the structure is set back 16 feet from the eastern property line. Accordingly, the proposed roof structure is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.

IV. COMMUNITY SUPPORT

The Applicant has the support of the community for the requested zoning relief. On May 6, 2014, the Applicant presented the application to Advisory Neighborhood Commission ("ANC") 6E, and with a quorum present, ANC 6E voted unanimously to support the application. The Applicant also presented the proposed development plans to the abutting residential property owner on Q Street, and as shown in the letter attached hereto as Exhibit F, the adjacent property owners support the application.

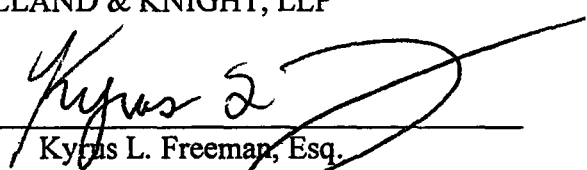
V.
CONCLUSION

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,

HOLLAND & KNIGHT, LLP

By: _____


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*Admitted to practice in Pennsylvania. Practicing in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8).