

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

**Application of Williams Seven Street LLC
1547 7th Street, N.W.
Square 445, Lot 197**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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This statement is submitted on behalf of 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.

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 modifications.

I. Background Information Regarding the Site

The Site is located at 1547 7th Street, N.W. and includes Lot 197 in Square 445. 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 rectangular in shape, with approximately

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2,552 square feet of land area, and 44 feet of frontage on 7th Street and 58 feet of frontage on Q Street. The Site is located within a C-2-A District and is currently improved with a two-story building of approximately 4,818 square feet and a cellar that was originally constructed in 1910 and last utilized for retail and residential uses.¹

III. Description of Proposal and Zoning Relief

As shown on the plans included with the application, the Applicant proposes to construct an addition to, and to renovate the existing building. The project will include a total of 6,380 square feet of gross floor area devoted to commercial and residential uses. The project's renovation and incorporation of the existing building on the Site into the project creates the need for the following areas of relief from the Zoning Regulations:

1. a variance from the lot occupancy requirements of Section 772.1;
2. a variance from the rear yard requirements of Section 774.1;
3. a variance from the court area requirements of Section 776.4;
4. a variance from the nonconforming structure requirements of Section 2001.3; and
5. a special exception from the roof structure requirements of Section 411.

IV. Burden of Proof for 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 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.

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- (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 size 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 contains only approximately 2,552 square feet of land area, and there is no alley access to the Site, both of which impact access to development of the Site. In addition, as noted above, the Site includes a two-story building of

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approximately 4,818 square feet that was originally constructed in 1910 and is currently vacant. The development proposal involves the retention and restoration of this structure, which will ultimately comprise a significant portion of the final building. Developing the project around this structure on the Site creates several construction and design constraints which generate the need for zoning relief.

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

(a) Lot Occupancy Requirements of Section 772.1

The 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%. Commercial uses on the C-2-A are permitted a 100% lot occupancy. The building's current lot occupancy is 96%, and the proposed lot occupancy after completion of the project is 96%. In order to comply with the lot occupancy limitation in this case, the Applicant would have to remove an additional 36% of the existing building footprint, which would result in demolishing 1,568 square feet of the existing building, which would make it practically difficult for the Applicant to renovate and convert the existing building into commercial and residential use, while also providing a reasonable layout for the proposed uses. 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 are required to provide a rear yard with a minimum depth of 15 feet. As shown on the plans, the existing building does not provide a rear yard, and the project will not provide a rear

yard once completed. In order to comply with the minimum rear yard depth requirement in this case, the Applicant would be required to demolish the existing rear wall and building footprint by approximately 475 square feet on the existing first level and 475 square feet on the second level and would prevent the construction of 365 square feet on the proposed third level. The loss of this area would make it practically difficult to renovate and convert the existing building into commercial and residential uses, while also providing a reasonable layout for the proposed unit, and would have an adverse impact on the location and function of the building's core.

(c) Court Area Requirements of Section 776.4.

The strict application of the court area regulations will result in a practical difficulty. Although not required for zoning purposes, there is a closed court with a width of 10 and an area of 188.4 square feet in the southeast portion of the building. The existing court is a one story high area way at the cellar level and a court on ground and 2nd level. 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 go up 3 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'-2", and is thus required to have an area of 512 square feet. However, the court has an existing 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 court would need to be increased by an additional 323.6 square feet. However, strict compliance with the court area requirements would cause the elimination of approximately 742 square feet of the existing building along the southeastern property line at the ground floor level, and due to the footprint of the existing building, this space cannot be reasonably removed

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or otherwise relocated elsewhere in the building. This would result in a practical difficulty. Moreover, increasing the court area would also result in a significant number of design changes to the interior configuration of the building, including the retail space on the ground floor, the residential and office layout on the second floor, and the residential layout of the third floor.

(d) Nonconforming Structure Requirements of Section 2001.3

The existing building is nonconforming with respect to lot occupancy, rear yard, and off-street parking. 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.

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The Applicant is seeking relief from Section 2001.3 because (a) the existing structure does not conform to the lot occupancy requirements for residential use, (b) the addition extends the existing nonconformity with respect to rear yard, court area, and off-street parking, and (c) creates a new nonconformity with respect to roof structures. The practical difficulties with respect to lot occupancy, rear yard, off-street parking, 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

rear yard relief will not create any adverse impacts since the existing building on the Site currently occupies 96% of the Site and does not currently include a rear yard. In addition, the rear portion of the development abuts a sidewall and open space on the adjacent lot. With respect to the lot occupancy relief, the existing building has occupied 96% of the lot since the building was constructed in 1910. With respect to court area, the court as shown abuts an open area on the adjacent property to the southeast, and thus there will be open space between the proposed building and adjacent properties.

V. Standard for Approving 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

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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 roof structure having a height of 9'-8". The structure is necessary to provide access to the roof. The structure meets the set back requirements from the northern, southern, and western edges of the roof. However, the structure is only set back 6' from the eastern edge of the roof adjacent to the closed court, and thus relief is necessary. The structure cannot be set back any further 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 by helping to ensure adequate light and air to adjacent property and abutting streets. The location of the roof structure is based upon the configuration of the building, design requirements, and the location of the building core features. The enclosure is designed to be as small as possible, and the proposed setbacks will help to reduce the visibility of the roof structure from the street frontages. Also, the roof structure is set back over 16 feet from the eastern property line. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.

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