

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Ditto Residential, LLC, the Applicant and contract purchaser of the property located at 1326 Florida Avenue, N.E., Square 4068, Lot 835 (the "Site"), in support of its application pursuant to 11 DCMR § 3103.2 for an area variance from the number of parking spaces required by Section 2101.1, to allow the construction of a new four-story plus cellar 45-unit residential building in the C-2-A District at the Site.

I. Background

A. Description of the Site

The Site is located at the northeast corner of Florida Avenue, N.E. and Trinidad Avenue, N.E. The Site is owned by Florida Avenue Joint Venture, LLC, and the Applicant has a contract to purchase the Site. The Site is zoned C-2-A and is improved with a vacant, one-story building with approximately 7,500 square feet of gross floor area. The existing building dates from 1937 and is constructed from reinforced concrete, steel, and masonry materials, with a slab-on grade foundation. The building is currently subdivided into three units (1324, 1326, and 1328 Florida Avenue) on the single tax lot. The building was most recently occupied by Earth Things 4U, and was previously occupied as a restaurant and an African art gallery.

Square 4068 is located in the northeast quadrant of the city and is bounded by Florida Avenue to the south, Trinidad Avenue to the west, Morse Street to the north, and Bladensburg Road to the east. Square 4068 is split-zoned: the southern portion of the Square along Florida Avenue, N.E. is zoned C-2-A, C-3-A, and C-2-C; the northern portion of the Square is zoned R-4. The Square is occupied by a number of uses, including single-family dwellings, flats,

apartment buildings, a gas station, and a fire station. The fire station, nicknamed "House of Pain" due to the large volume of calls to which it responds, abuts the Site to the east and houses Engine Company 10 and Truck Company 13, which are two of the busiest fire companies in the District of Columbia (see www.10engine.com).

The Site is bounded by Florida Avenue, N.E. to the south, Trinidad Avenue, N.E. to the west, a 20-foot wide public alley to the north, and the fire station to the east. As shown on the building plat included with the application, the Site includes 9,941 square feet of land area.

B. Description of the Proposal

As shown on the architectural plans and elevations included with the application, the Applicant proposes to construct a new 50 foot, four-story plus cellar 45-unit residential rental apartment building with one level of below-grade parking. The garage will include 16 off-street parking spaces and 18 bicycle parking spaces, and will be accessed from the public alley via a ramp along the east side of the building. The proposed residential use for the Site is consistent with the Site's zoning designation and with other uses in the neighborhood.

II. The Applicant Meets The Burden Of Proof For The Requested 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 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, the Applicant meets all three prongs of the area variance test.

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 Site is a small, narrow, corner lot that abuts an active fire house. These conditions together do not exist anywhere else in the neighborhood, and create an exceptional situation or condition.

The Site is rectangular in shape, with 80 feet of frontage on Florida Avenue, N.E. and 124.22 feet of frontage on Trinidad Avenue, N.E. With these dimensions and 9,941 square feet of land area, the Site is too small to efficiently accommodate the 23 parking spaces required for this otherwise matter of right 45-unit rental apartment house. To fit 23 parking spaces within these lot dimensions, the Applicant would have to construct a multi-level garage with ramping outside of the building footprint. Due to the Site's shape and dimensions, approximately one-quarter of its land area must be devoted to an exterior ramp to provide access to the underground parking garage. In addition, the Site's location on a corner lot and its position abutting an active fire station together dictate the location of the building footprint, the required rear yard, and the vehicular access ramp into the garage. Together these unique factors result in an exceptional situation or condition for the Site.

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

Section 2101.1 of the Zoning Regulations requires 23 parking spaces for the 45 residential rental units. Based on the lot size and dimensions, and the location of the building footprint with the required rear yard located at the east side of the lot to provide maximum separation from the abutting fire station, the below-grade parking garage can only accommodate a maximum of 16 vehicle parking spaces on a single level. The garage as proposed would yield approximately one parking space for every three rental apartment units, instead of one space for each two units as required by the Zoning Regulations. The Applicant's studies show that this ratio is sufficient to accommodate the anticipated demand at this location in this rental building. Excavation of more than one garage level to fully comply with the Zoning Regulations would create a practical difficulty for the Applicant, and eliminating one level of residential units to provide all of the required parking is impractical and unnecessary given the market demand.

The Applicant has maximized the number of parking spaces on the garage level. In order to reach the garage level, which is two levels below grade, the 120-foot long parking ramp is located outside of the building footprint on the east side of the Site, in the rear yard setback area. From the ramp, vehicles will then turn 180 degrees inside the garage to access the parking spaces on both sides of the center drive aisle. Only 16 vehicle parking spaces, and the required bicycle spaces, can fit on this level. In order to provide 23 parking spaces to conform with the Zoning Regulations, the Applicant would need to construct a second parking level, with a second ramp that goes back outside of the building footprint and below the ramp above, leading down to a second parking level.

Creating the minimum required drive aisle width to provide a ramp from the first parking level down to a second parking level would require elimination of parking space #16 and the

adjacent bike storage area at the north end of the garage, as shown on the parking plan, due to column spacing and location in the building, and the desire to maintain the proposed stairway location. A second garage level would require both egress stairways, in order to comply with the Building Code. The bike storage area would be relocated to existing parking space #11, thus resulting in a total of only 14 spaces on the first garage level, with the need for a second garage level to provide the required 23 vehicle spaces.

Although the required 9 additional parking spaces could theoretically fit on a partially excavated theoretical second parking level, construction of additional foundation support just to eliminate the surplus area on a theoretical second parking level would not be economically justified. Thus, in order to provide seven additional spaces in the building to meet the minimum number of parking spaces required by the Zoning Regulations, the Applicant would have to excavate and construct an entire second garage level, which creates a practical difficulty.

The additional excavation and construction required to support a ramp going down to a second garage level would also add significant costs to the project. The single level ramp will be built on the compacted earth, with an appropriate foundation but no other need for structural support. A ramp to a second parking level would require the first ramp to bridge over the lower ramp, adding additional excavation, structural support and materials, and significant additional costs. The extra materials, excavation, and construction costs would be unnecessary for a single ramp and garage level, which could be built on and supported by the earth under the building. With a second level, additional costs would be incurred for excavating another subsurface level, resulting in the need to haul and dispose of more soil, and to provide more concrete, larger foundation walls with more reinforcing steel, larger slab beams, and a larger mat slab.

In addition, a second below grade parking level would require additional ventilation equipment, including a larger shaft and more powerful fans to provide adequate air circulation. There would also be more lighting, more sprinkling, more plumbing, more water proofing, and more concrete testing and inspections. Additional costs would also be incurred to provide an elevator stop at the second garage level. The cost per elevator stop will remain relatively constant throughout the building, but an additional stop will cost approximately \$25,000.

The floor slab for a theoretical second parking level would be approximately four feet below the water table, according to the soil borings, which will result in additional expense for de-watering mechanisms. Furthermore, deeper excavation adds complexity in the support of excavation. While a single level excavation that needs sheeting and shoring can often be accomplished with a simple cantilevered pile-driven system and lagging, a deeper excavation, in addition to the additional square footage of support, typically requires the addition of cross-bracing, concrete heel blocks, and steel kickers or tie-backs. The increase in cost as depth increases is not linear, and instead rises geometrically. Moreover, construction of an additional parking level would result in approximately 30-45 additional days of construction, which translates into approximately \$60,000 of additional cost.

The additional costs associated with constructing a second garage level will directly impact the rental price of the residential units. Under the current plan, the cost to build 16 parking spaces on a single garage level is approximately \$35,000 per parking space, or \$560,000 for 16 spaces. A second parking level would increase the price of the garage construction to approximately \$52,000 per space, or \$1,200,000 for the 23 spaces. The net difference between providing 16 spaces on one level and 23 spaces on two levels is \$640,000, or \$91,500.00 for each of the additional seven parking spaces.

There is no other way to configure the single garage level to accommodate more parking spaces. The access ramp to the garage cannot be located in a different position or configuration. The ramp must be accessed from the public alley to the north of the Site, not from Florida or Trinidad Avenues. DDOT policy will not allow a curb cut from a street into required parking if there is alley access to the site. The ramp must be located along the north-south length of the Site, because the Site's east-west width is too short at 80 feet to accommodate a ramp with a sufficient length to reach two levels below grade. Furthermore, in order to provide windows on all four sides of the proposed residential building, and to locate the building as far as possible from the fire station, the rear yard is located on the eastern side of the Site. This set back provides a natural location for the ramp, which must have a grade suitable for both vehicle and bicycle access. If the ramp was instead located along Trinidad Avenue not only would the setback area for the ramp at this location be contrary to good urban design, but the building would have to be pushed against its eastern property line, resulting in at-risk windows on the lot line and providing no buffer area between the units on the east side of the building and the fire house property.

If the Applicant provided only 32 larger units, it could comply with the minimum parking space requirements on a single garage level. However, there is an unserved market demand in this area for rental apartment units in the 500 to 700 square foot range as proposed in this project. Market research indicates that residents will be attracted to the many public transportation options in the neighborhood, and will not want or need to own a car. The Applicant's studies show that the anticipated demand for on-site parking in this rental building at this location will be approximately one parking space for every three apartment units, or in this case, 16 spaces for 45 units. With 16 spaces, the Applicant expects to obtain approximately 93.75 percent

occupancy of the garage (15 out of 16 spaces), given anticipated tenant rollover, with a rent of \$150 per month, which is the current market rate for rental of residential parking spaces.

If the Applicant provided the required number of 23 parking spaces, adding supply without demand, the Applicant would need to open the garage to public parking to recoup its extraordinary investment in building the second garage level. Leasing parking spaces to the public would raise additional property management concerns, defeat the Applicant's plan for controlled security access to the building (which is typical in rental apartment buildings), and undermine the true demand for parking in the area.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose or integrity of the zone plan. The construction of a new four-story plus cellar rental apartment house with 45 residential units will significantly contribute to the vibrancy of the neighborhood while supporting the city's housing goals for the area.

At approximately one space for each three units, the proposed number of parking spaces is sufficient to serve the building's residents. Although the Applicant proposes to provide seven fewer parking spaces than what is required under the Zoning Regulations, many building residents will not need or want to own a car, given the Site's easy accessibility to multiple alternative transportation options and its location in a mixed-use neighborhood. The Site is located approximately 0.9 miles away from the NoMA-Gallaudet University Metro Station, which services the Metrorail Red line. There is a Metrobus stop in front of the site on Florida Avenue, and another one in front of the site on Trinidad Avenue. Four Metrobus lines (D3, D4, D8, and X3) stop at the Site, and five additional Metrobus lines (B2, X1, X2, X8, and X9) are

located within 0.2 miles of the Site. The Site is located within 0.6 miles of eight permanent car share parking spaces (ZipCar and Hertz On Demand), and has ample access to Car2Go vehicles. The Site is within 0.2 miles of three Capital Bikeshare stations, and three others are within 0.5 miles of the Site. The Site is also located two blocks from the 13th St./H St. station of the H/Benning line of the new D.C. Streetcar system, which will initially run between Union Station and Oklahoma Ave./Benning Rd., and eventually expand to connect the Georgetown Waterfront on the west with the Metrorail Station at Benning Rd. and East Capitol Street on the east. The Site is located in a mixed-use, walkable neighborhood, two blocks from the H Street corridor, with a walkscore of 78 out of 100 (see www.walkscore.com). Moreover, the public good will be served by a high-quality, infill residential development project in this area of the city, which the District is seeking to revitalize through public and private investment.