

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

**APPLICATION OF
DITTO RESIDENTIAL, LLC**

**BZA APPLICATION NO. 18785
HEARING DATE: JUNE 24, 2014
ANC 5D06**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Ditto Residential, LLC, the applicant and contract purchaser of property located at 1326 Florida Avenue, N.E., Square 4068, Lot 835 (the "Site") in support of its application to the Board of Zoning Adjustment pursuant to 11 DCMR §§ 3103.2 and 3104.1 for an area variance from the parking space requirements of Section 2101.1, and a special exception pursuant to 11 DCMR § 411.11 from the roof structure requirements of Section 770.6, to allow the construction of a new four-story plus cellar 45-unit residential building in the C-2-A District at the Site.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance relief requested herein pursuant to 11 DCMR §§ 3103 and 3104.

**III.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION**

- Exhibit A: A portion of the Zoning Map showing the Site.
- Exhibit B: A portion of the Baist Atlas and Sanborn Map showing the Site.
- Exhibit C: Updated Architectural Plans and Drawings Prepared by DEP Designs.
- Exhibit D: Parking and Loading Statement Prepared by Gorove/Slade Associates.

- Exhibit E: Theoretical Parking Diagram.
- Exhibit F: P2 Level Construction Feasibility Memorandum Prepared by Eichberg Construction.
- Exhibit G: Structural Feasibility Evaluation of P2 Level Construction Memorandum Prepared by SK&A Associates.
- Exhibit H: Outlines of Testimonies.
- Exhibit I: Resumes of Expert Witnesses.

IV. BACKGROUND

A. Description of the Site and Surrounding Area

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 of 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 four city blocks in size, and is bounded by Florida Avenue and H Street to the south, Trinidad Avenue to the west, Morse Street to the north, and Bladensburg Road to the east. As indicated on the Zoning Map, attached hereto as Exhibit A, 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 predominantly zoned R-4, with a portion along Bladensburg Road zoned C-3-A. The Square is occupied by a mix of uses, including single-family dwellings, flats, apartment houses, a gas station, retail uses, and a fire station. The fire

station 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 to the south, Trinidad Avenue to the west, a 20-foot wide public alley to the north, and the fire station to the east. The Site includes 9,941 square feet of land area and is located one block north of H Street, N.E. The H Street corridor has become a thriving commercial hub in the District, and is home to a diverse mix of uses, including a revitalized visual and performing arts scene, numerous bars and restaurants, art galleries and music venues, and retail establishments (*see* D.C. Neighborhood Profiles 2013, Washington D.C. Economic Partnership). The area also incorporates historic residential row dwellings with new multiple dwelling condominiums and apartment houses. Together, this mix of uses is reshaping the existing historic neighborhood into a highly desirable, walkable destination.

The Site has excellent public transportation options. The Site is located 0.9 miles from Union Station, which provides local, regional, and interstate access via Metrorail, Metrobus, the D.C. Circulator Bus, Amtrak, intercity buses, Capital Bikeshare, and later this year, the H Street streetcar. The Site is well served by Metrobus as well, with nine bus routes located within 0.2 miles of the Site (B2, D3, D4, D8, X1, X2, X3, X8, and X9), four of which have bus stops located directly in front of the Site, on Florida Avenue (X3) and on Trinidad Avenue (D3, D4, and D8). Four permanent car share spaces are located within 0.4 miles of the Site, serviced by Zipcar and Hertz on Demand, and Car2Go¹ vehicles are easily accessed throughout the surrounding neighborhood. Moreover, the Site is located within two blocks of the 13th Street/H Street station of the H Street/Benning Road line of the new D.C. Streetcar system, which will

¹ Car2Go features one-way point-to-point rentals anywhere in the District. Cars are user-accessed wherever parked via a downloadable smartphone app, and users are charged by the minute with all-inclusive rates that cover gas, insurance, maintenance, and parking in authorized areas.

initially run between Union Station and Oklahoma Avenue/Benning Road. As planned, the streetcar line will eventually expand to connect the Georgetown Waterfront on the west with the Metrorail Station at Benning Road and East Capitol Street on the east.

In addition to public transportation options, the Site is within proximity to bicycle lanes and routes that traverse the City. The Site is within 0.2 miles of three Capital Bikeshare stations, with three additional stations within 0.5 miles of the Site. As described above, the Site is located in a highly walkable, mixed use neighborhood, with retail and service establishments, grocery stores, restaurants, parks and recreation centers, and schools within easy walking distance. Based on these attributes, the Site has been deemed "very walkable" (see www.walkscore.com).

B. Project Description

As shown on the architectural plans and elevations (the "Plans"), attached hereto as Exhibit C, 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 total gross floor area of the building is 29,823 square feet (3.0 FAR). Each floor level is approximately 7,400 square feet. The building will include a mix of unit types, with an average unit size of 600 square feet.

The main building entrance and lobby will be on Florida Avenue. The garage will include 16 off-street parking spaces and 18 bicycle spaces, and will be accessed from the public alley via a ramp along the east side of the building. The building will have a roof structure of 14 feet, 8.75 inches in height. The main roof and penthouse roof will both be green roofs, designed to meet the storm water management and green area ratio ("GAR") requirements.

The building will be equipped with one elevator and two stair towers, from the garage level to the penthouse, for vertical circulation. The building's utility spaces are on the cellar level.

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

A. Standards for Granting 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 unusual because of its 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 Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. 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.

1. 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. Bd. of Zoning Adjustment*, 579 A.2d 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 square or 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 the required rear yard, which will also be the location of the exterior ramp to provide access to the proposed underground parking garage. The Site's small size, location on a corner lot, and position abutting an active fire station together dictate the location of the building footprint and the required rear yard, as well as the location of the vehicle access ramp. Together these unique factors result in an exceptional situation or condition for the Site.

2. Strict Application Would Result in a Practical Difficulty

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 yields approximately one parking space for every three rental apartment units, instead of one space for each two units, as required by the Zoning Regulations. As indicated in the Parking and Loading Statement prepared by Gorove/Slade and attached hereto as Exhibit D, the proposed ratio is

sufficient to serve the needs of the residents in this rental building, based on the Site's location near a variety of transportation options, the implementation of transportation demand management ("TDM") measures, and the anticipated market demographic of building tenants.

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 set back 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 18 proposed bicycle parking spaces can fit on this level. In order to provide 23 vehicle 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.

As indicated on the Theoretical Parking Diagram, attached hereto as Exhibit E, 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 bicycle storage area at the north end of the garage, 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 bicycle storage area would have to be relocated to existing parking space #11, thus resulting in a total of only 14

parking spaces on the first garage level, with the need for a second garage level to provide the remaining nine vehicle parking spaces.

Although these nine additional parking spaces could theoretically fit on a partially excavated second parking level, construction of additional foundation support just to eliminate the surplus area at that 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.

As described in the P2 Level Construction Feasibility Memo, prepared by Eichberg Construction and attached hereto as Exhibit F, and in the Structural Feasibility Evaluation of P2 Level Construction, prepared by SK&A Associates and attached hereto as Exhibit G, the additional excavation and construction required to support a ramp going down to a second garage level would 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, resulting in additional excavation, structural support and materials, and significant additional costs. The Applicant would have to haul and dispose of more soil, and provide more concrete, larger foundation walls with more reinforcing steel, larger slab beams, and a larger mat slab. 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.

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 required 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, as required by the Building Code. The cost per elevator stop will remain relatively constant throughout the building, but an additional stop at this P2 level 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 an 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, but instead rises geometrically. Moreover, construction of an additional parking level would result in approximately 30-45 additional days of construction, which would add approximately \$60,000 to the construction 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. Due to the size of the Site and its location as a corner lot adjacent to a fire house, 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, since 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 also be located along the north-south length of the Site, because the Site's east-west dimension 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 east 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 set back area for the ramp at this location be contrary to good urban design, creating an empty space along the sidewalk and breaking up the street wall, but the building would have to be pushed against its eastern property line, resulting in at-risk windows on the east lot line and providing no buffer area between the units on the east side of the building and the fire house property.

In the alternative, if the Applicant provided 32 larger units it could comply with the minimum parking space requirements on a single garage level. However, these units would need to average 844 square feet. Market studies show that there is an unserved market demand in the surrounding area for rental apartment units in the 500 to 700 square foot range as proposed by this project. Market research indicates that District residents seeking units of this size will be attracted to the many public transportation options and community-serving retail and service establishments in the neighborhood, and will not want or need to own a car. The Parking and Loading Statement indicates 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 proposed, the Applicant expects to obtain approximately 93.75 percent occupancy of the garage (15 out of 16 spaces), given anticipated tenant rollover, with a parking space 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 the public 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. Based on the foregoing, excavation of more than one garage level to fully comply with the parking requirements of the Zoning Regulations would create a practical difficulty to the Applicant.

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

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. 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 parking space for each three residential units, the proposed number of parking spaces is sufficient to serve the building's residents. The proposed parking requirement in the Office of Planning's latest draft of the ZRR at Subtitle C, Section 1901.5 is one space for each three units for an apartment building. That requirement may be reduced by up to 50% for this site, per proposed Section 1901.2, given its close proximity to a streetcar line

for which a construction contract has been awarded. Thus, the Office of Planning has already determined that the proposed number of parking spaces is sufficient for a building of this type.

Although the Applicant proposes to provide seven fewer parking spaces than what is required under the current 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. As previously described, and as detailed in the Parking and Loading Statement, the Site is located in close proximity to Metrorail, Metrobus, car and bike-share locations, and the future D.C. Streetcar system. The Site is also located in a mixed-use, walkable neighborhood, less than two blocks from the H Street corridor. The public good will be well-served by this high-quality, infill residential development project in this area of the city, which the District is seeking to revitalize through public and private investment. As a result, relief can be granted without substantial detriment to the public or to the Zone Plan.

VI.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF

A. Background

The architectural plans submitted herewith indicate a building height of 50 feet, measured from the level of the curb at the middle of the front of the building, to the top of parapet. The parapet is a solid wall, as shown on those plans, and appears as a continuation of the exterior wall of the building that extends approximately four feet above the level of the roof. The roof structure is set back from the exterior walls a distance at least equal to its height above the roof on the north and south sides of the building. The roof structure is set back from the exterior walls a distance at least equal to its height above the parapet on the east and west sides of the building. Therefore, special exception relief is required to allow portions of the roof structure on

the east and west sides of the building which do not meet the normal set back requirements of Section 770.6.

B. Standard of Review for Roof Structure Special Exception

Under Section 411.11 of the Zoning Regulations, the Board may grant a special exception 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 the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

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 Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. 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.*

C. Relief from the Roof Structure Set Back Requirements

The Applicant requests relief under Section 411.11 of the Zoning Regulations, which allows the Board to waive the roof structure setback requirement of Section 770.6. As shown on the Architectural Plans and Drawings, attached hereto as Exhibit C, the Applicant proposes to provide a single roof structure that rises to a height of 14 feet, 8.75 inches from the top of the

main roof. The roof structure serves the building with a utility room, mechanical equipment for use by the building engineer, and a tele-data room that includes necessary telecommunications and low voltage equipment for the building. This roof structure will not be set back from the east or west exterior walls at a distance at least equal to its height above the roof, thus resulting in the need for relief.

Full compliance with the normal setback requirement of Section 770.6 would be impracticable because of operating difficulties and the size of the building lot, and would tend to make full compliance unduly restrictive and unreasonable. As set forth more fully above, the narrow building dimension is dictated by the dimensions of the site, the depth and location of the required rear yard, and the location of the garage ramp along the east side of the building.

Full compliance with the normal setback requirement on the east side of the roof structure would require the elevator and stairs to be shifted approximately four feet to the west. However, this would adversely impact the interior layout of the building at all levels. It would shift the stairways, elevator and elevator lobby four feet into the central corridor, which in turn would shift the corridor four feet to the west, causing a significant reduction in the size and efficiency of the units along the west side of the building. In addition, moving the elevator and stairways to the same extent in the garage would narrow the width of the center drive aisle to less than the minimum required dimension. Alternatively, it would require the shift of a portion of the drive aisle to the west side of the garage, thus resulting in a further reduction in the number of parking spaces, and a further reduction in the efficiency of the garage layout.

Full compliance with the roof structure setback requirement on the west side would require the west wall of the penthouse to shift approximately 3.25 feet to the east, thus reducing the enclosed area where the individual rooftop mechanical units will be located. Due to the

minimum required spacing between those units for ventilation purposes, as dictated by the Building Code, this would impose an operating difficulty on the building.

The intent and purpose of the roof structure setback requirements will be met in this Application. The roof structure height is well below the maximum permitted height. The intent of the setback requirement is to provide at least a one for one setback of the roof structure from the exterior walls of the building, which will also be met in this case. The parapet above the roof is merely a continuation of the exterior wall of the building, as shown on the plans submitted as Exhibit No. 12. Strict compliance with the roof structure setback requirement could be met by artificially raising the height of the roof approximately four feet, to match the height of the parapet wall, on those portions of the roof where the strict setback requirement is not met. However, this would be unnecessary and unreasonable. Although this would reduce the dimension between the roof of the building and the top of the roof structure, it would otherwise have no effect on the height elevation of the roof structure, or the setback of the roof structure from the exterior walls.

As viewed from the street, at the one for one set back vantage point, the level of the roof relative to the level of the top of the exterior wall will be imperceptible to the public. Therefore, because the one for one setback requirement from the exterior wall is met, the intent and purpose of the regulations will not be materially impaired. Likewise, the light and air of adjacent buildings will not be adversely affected.

VII. **WITNESSES**

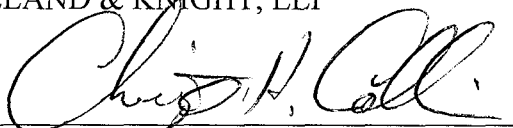
- A. Martin Ditto, representative of the Applicant
- B. Chuong Cao, DEP Designs, LLC, architect for the project
- C. Erwin Andres, Gorove/Slade Associates, Inc., traffic and transportation consultant

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

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