

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

**APPLICATION OF
JEMAL'S HOLLAND, LLC**

**BZA APPLICATION NO. 18813
HEARING DATE: SEPTEMBER 9, 2014**

STATEMENT OF THE APPLICANT

This is the statement of Jemal's Holland, LLC (the "Applicant") for relief from Section 771.2 of the Zoning Regulations, which permits a maximum FAR of 1.5 for non-residential uses in the C-2-A District. The subject property has a street address of 1301 Pennsylvania Avenue, SE, more particularly described as Lot 139, Square 1045, (the "Property") and is currently improved with a vacant building originally constructed prior to 1958. The Applicant proposes to expand the floor area of the building in order to accommodate retail/commercial uses on the Property; the proposed non-residential FAR for the project is 1.77. The Property is located within the boundaries of ANC 6B-07.

This Prehearing Statement supersedes the Preliminary Statement submitted to the Board on June 9, 2014, and is submitted in accordance with Section 3113.8 of the Zoning Regulations.

**I.
NATURE OF RELIEF SOUGHT**

The Applicant requests that the Board of Zoning Adjustment (the "BZA" or the "Board") approve a variance, pursuant to Section 3103.2, from the requirements of Section 771.2 of the Zoning Regulations in order to develop the Property at a density of 1.76 non-residential FAR where a maximum density of 1.5 non-residential FAR is permitted.

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2 and 3104.1).

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

- Exhibit A: Revised Architectural/Engineering Drawings
- Exhibit B: ANC 6B Letter of Support
- Exhibit C: Letter of Support from Property Owners/Residents at 716 13th Street, SE
- Exhibit D: Resume and Outline of Testimony of Paul Millstein, Douglas Development Corporation
- Exhibit E: Resume and Outline of Testimony of Colline E. Hernandez-Ayala, GTM Architects

IV.
BACKGROUND AND PROJECT DESCRIPTION

A. Overview of Subject Property and Surrounding Area

The Property is an irregularly shaped parcel that consists of approximately 6,239 square feet of land at the southeast corner of the intersection of Pennsylvania Avenue and 13th Street, SE; it is in the C-2-A District and is improved with a three-story vacant building that is currently being renovated. The building, which was originally constructed prior to 1958, was previously occupied with office use at the cellar and ground levels and six residential units on the floors above. There are four off-street parking spaces at the rear of the Property.

Like the Property, the remainder of the intersection at Pennsylvania Avenue and 13th Street, SE is in the C-2-A District. The parcels to the west of the Property, on the west side of 13th Street, are zoned R-5-B. Directly across the street to the west are the DC Housing Authority's Potomac Gardens Apartments. Also, the boundary of the Capitol Hill Historic District runs along the west side of 13th Street. There is a stretch of commercial uses along Pennsylvania Avenue immediately east of the Property. This block of Pennsylvania Avenue on the east (at Potomac Avenue) is anchored with a mixed-used project that consists of a Harris

Teeter grocery store with the Jenkins Row apartment building above, which is in the C-2-B District.

The building on the Property is currently being renovated under Building Permit No. B1311149. Under the permit, the floor area for each level of the building is as follows: cellar -- 4059 square feet; first floor -- 4059 square feet; second floor -- 3615 square feet; and third floor -- 1628 square feet. The total floor area is 13,361 square feet. Of that, 9302 square feet is counted toward the FAR,¹ which equals an FAR of 1.49.

B. Project Description

The building expansion proposed under this application increases the third floor of the building from 1,628 square feet to 3,361 square feet, increasing the overall gross floor area of the building from 9,302 square feet to 11,035 square feet, which is equal to an increase in the FAR for the Property from 1.49 FAR to 1.77 FAR. Adding 1,733 square feet to the third floor makes this space more suitable for leasing.

**V.
COMMUNITY SUPPORT**

At its regularly scheduled meeting on July 8, 2014, ANC 6B voted 9-0-0 to support the application. A copy of the ANC letter is attached as **Exhibit B**. Also, throughout the building renovations, the Applicant has maintained regular communication with the owners/residents at 716 13th Street, SE, which is located immediately south of the Property, Laura Skopec and Jeff Noel. Ms. Skopec and Mr. Noel have written a letter in support of the application, a copy of which is attached as **Exhibit C**.

¹ This excludes the floor area for the cellar.

V.
**THE APPLICATION MEETS THE REQUIREMENTS FOR
VARIANCE RELIEF**

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the application satisfies the three-part test for area variance relief.

A. The Property is affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a "confluence of factors." Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

In this case, the Property is an irregularly shaped corner lot that is improved with a vacant building constructed prior to 1958. At approximately 6,290 square feet, the corner lot is relatively small for a commercial/residential development on a major thoroughfare; the same is true of the existing building footprint, which is only 4,059 square feet. It is also the only

irregular shaped lot along this stretch of Pennsylvania Avenue, SE, that is in the C-2-A District; it is also the only vacant site.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 28 A.2d 535, 542 (D.C. App. 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. (Footnote omitted.)

The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration." Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include; "the severity of the variance(s) requested"; "the weight of the burden of strict compliance"; and "the effect the proposed variance(s) would have on the overall zone plan." Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant meets this standard.

In this case, the additional FAR results from the build out of the third floor of the building. The Applicant seeks to build out the third floor of the building in order to make the floor suitable to lease. To comply with the Zoning Regulations, the Applicant would need to limit the third floor to 1,628 square feet. However, as illustrated on Sheet 7 of the enclosed plans, if the third floor were limited to 1,628 square feet, a significant amount of the space would be utilized by components of the building core, making it impractical to lease the remainder.

The Applicant would be able to achieve additional density under the Zoning Regulations with the construction of residential units on the third floor in lieu of a non-residential use. However, the residential use of the building is impractical given the size, configuration and age of the building and, therefore, financially infeasible. For instance, based on the current maximum building height of 50 feet, only two floors of residential would be possible. To meet the egress requirement of the Building Code, the residential square footage would further be reduced by the construction of two rated egress stairs within this small floorplate. Additionally, the construction of these vertical stair towers, along with the locations of vertical plumbing risers connecting to incoming utility services below grade, would compromise the continuity of the proposed grade level retail space. Alternatively, in a single egress unenclosed stair configuration, the Building Code limits the maximum vertical travel distance for building occupants. This would limit the construction to only a single level of residential space above the proposed grade level retail. In order to accommodate the building core, the Applicant would have to construct relatively small residential units and forego amenities desired in today's market. As shown on Sheet 03 of the enclosed plans, there are multiple residential projects in proximity to the Property that are significantly larger than what can be constructed at the Property. As such, it is at least

practically difficult, and more likely impossible, for the Applicant to build a residential project that is financial viable given the market conditions.

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

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. The additional floor area is within the existing building footprint, which is compatible with the scale and design of the building expansion are compatible with the surrounding structures and uses on this stretch of Pennsylvania Avenue between 13th Street and Potomac Avenue. ANC 6B and the property owners/residents immediately to the south of the Property have issued letters in support of the Application and are eager to have the building occupied with retail/commercial use(s) that serve the immediate neighborhood.

VII.
WITNESSES

1. Paul Millstein
Douglas Development
702 H Street, NW, Suite 400
Washington, DC 20001
2. Colline Hernandez-Ayala
GTM Architects
7735 Old Georgetown, Suite 700
Bethesda, MD 208014

Ms. Hernandez-Ayala will be proffered as an expert witness in the area of architecture/building design.

IX.
CONCLUSION

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

Respectfully Submitted,

Leila Batties

Leila M. Jackson Batties, Esq.
Holland & Knight, LLP
800 17th Street, NW
Washington, DC 20006