

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

Preliminary Statement of Compliance with Burden of Proof

This statement is submitted by Jemal's Holland LLC (the "Applicant"), the owner of Lot 139 in Square 1045, which has a street address of 1301 Pennsylvania Avenue, SE (the "Property") and is in the C-2-A District. The Applicant seeks a variance from the floor area ratio requirements in 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 Applicant proposes to expand the building on the Property in order to accommodate with a mix of retail and office uses. The proposed overall FAR is 1.76.

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 additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Property

The Property is an irregularly shaped parcel that consists of approximately 6,290 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 currently improved with a three-story building. The building, which was originally constructed prior to 1958, previously contained 3,726 square feet of office at the cellar and ground levels and six residential units on the two floors above. There are four off-street parking spaces at the rear of the Property.

The building is currently being renovated with a mix of retail and office uses. As shown on Sheet A100a of the enclosed plans, there is 1,091 square feet of retail space at the cellar level, 3,177 square feet of retail space at the ground level of the building, 2,411 square feet of office on

the second level of the building, and 403 square feet at the third level of the building. The total floor area, including the cellar, for the current building renovations is 13,359 square feet. Of that, 9,300 square feet is counted toward the FAR, which equals an FAR of 1.49.

The Applicant has carried the Property through the current building renovations, but is no longer able to do so. In seeking financing for the project, the Applicant learned that it is not financeable with less than 15,000 square feet of gross floor area. In response, the Applicant proposes to increase the gross floor area of the building from 13,369 square feet to 15,126 square feet by building out the third level of the building and the triangular portion of the building near the corner of 13th Street and Pennsylvania Avenue. The cellar, ground and second levels of the building will also increase slightly, as noted on Sheet A100 of the enclosed plans. For purposes of calculating FAR, the floor area for the proposed building expansion is 11,053 square feet, which equals an FAR of 1.76.

II. Description of Development Proposal and Zoning Relief

The building expansion proposed under this application includes approximately 6,246 square feet of retail at the cellar and ground levels and approximately 4,530 square feet of office on the second and third levels above. The retail frontage will be along Pennsylvania Avenue. The entrance to the office of the lobby will be at the rear of the building off of 13th Street. As shown on Sheet A100 of the enclosed plans, the floor area will increase on each level of the building as follows: the cellar will increase from 3,478 square feet to 4,074 square feet; the first floor will increase from 3,796 square feet to 4,074 square feet; the second floor will increase from 3,562 square feet to 3,619 square feet; and the third floor will increase from 564 square feet to 3,569 square feet. Overall, the building will expand from 13,369 square feet to 15,126 square

feet. Excluding the cellar, the resulting floor area will be 11,052 square feet, which equals an FAR of 1.76.

The Applicant seeks an area variance to permit an FAR of 1.76 where a maximum FAR of 1.5 is permitted for non-residential use in the C-2-A District under Section 771.2 of the Zoning Regulations.

III. Project Meets Standard for Approving Area Variances

The Project requires a variance from the FAR requirements set forth in Section 771.2 of the Zoning Regulations. 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 or exceptional and undue hardship; 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 in the prehearing statement and at the public hearing, all three prongs of the area variance test are met in this application.

A. The Property 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.2d 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.2d 1164, 1168 (D.C. 1990). In this case, the exceptional condition arises from the fact that the Property is improved with a building that was originally constructed prior to 1958 and construction is well underway to renovate the building with retail at the cellar and ground levels of the building and office space on the two floors above.

B. Strict Application of the Zoning Regulations Would Cause Practical Difficulty or Exceptional and Undue Hardship. The Applicant would encounter practical difficulties if the Zoning Regulations were strictly applied to the Property. The Applicant has carried the Property through construction to date, but cannot continue to do so. In seeking financing, the Applicant has been advised that the project is not financeable with less than 15,000 square feet of gross floor area. For this reason, the Applicant seeks to expand the building from 13,369 square feet to 15,125 square feet, resulting in an FAR of 1.76.

The Applicant would be able to achieve the permitted FAR with the construction of residential units in lieu of office use. However, given the age and size of the building and the Building Code requirements, the building layout and design for residential use is less efficient than that of an office use and cost approximately \$1 million more to construct. Moreover, as depicted on Sheet G102 of the enclosed plans, there are six residential projects constructed or approved in immediate proximity to the Property -- 1311 Pennsylvania Avenue (3 units); Jenkins Row at 1391 Pennsylvania Avenue (247 units); 1500 Pennsylvania Avenue (41 units); 1600 Pennsylvania Avenue (77 units); 732 15th Street (6 units); and The Iridium at 1306 Pennsylvania Avenue (10 units). Of the six, four are significantly larger than the residential project and provide amenities that cannot be accommodated at the Property because of its size and building

footprint. This would make any residential units at the Property less marketable than those in the immediate area.

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 if the Board grants the requested FAR variance. The scale and design of the building expansion will be compatible with the immediately surrounding structures. Also, while there are several residential projects in proximity to the Property, the Applicant is unaware of any office projects approved or under construction in the immediate area. Based on initial feedback, ANC 6B should be supportive of the proposed office use.