

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

**APPLICATION OF
CAPITAL CITY REAL ESTATE, LLC**

**BZA APPLICATION NO. 18814
HEARING DATE: SEPT. 16, 2014
ANC 1C07**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Capital City Real Estate, LLC, (the "Applicant"), owner of property located at 2341 Ontario Road, N.W. (Square 2566, Lot 841) (the "Site") in support of its application to the Board of Zoning Adjustment pursuant to 11 DCMR § 3104.1 for special exception relief under sections 2514.2, 1403.1 and 411.11 of the Zoning Regulations for the construction of a 14 unit residential condominium building on a split-zoned lot in the RC/R-5-B and RC/C-2-B zones at the Site.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the special exception requested herein pursuant to 11 DCMR § 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 Norman Smith Architecture.
- Exhibit D: Outlines of Testimony.
- Exhibit E: Resume of Expert Witness.

IV. BACKGROUND

A. Description of the Site and Surrounding Area

Square 2566 is located in the Adams Morgan neighborhood in the northwest quadrant of the District, and is bounded by Euclid Street on the north, 17th Street on the east, Kalorama Road on the south and Ontario Road on west. The Square is occupied by a mix of multi-family buildings and row dwellings, with the exception of Mary's Center for Maternal Child Care, located adjacent to the Site, and a small retail store located at the northeast corner of the Square.¹

The sloping site has an irregular pentagonal shape, roughly rectangular in the front and triangular in the rear. The Site measures 6279.88 square feet in land area and is currently used a parking lot. The Site is surrounded on three sides by Mary's Center (Lot 839), which has 24,808 square feet of land area and frontage on both Ontario and Kalorama Roads. Lot 839 and the Site are the only two lots out of the forty separate properties in Square 2566 that are split-zoned. Both of these lots are zoned RC/R-5-B for a depth of 70 feet from Ontario Road, with the remainder of the properties zoned RC/C-2-B. Due to its size and configuration, 86 percent of the Mary's Center property (Lot 839) is zoned RC/C-2-B. Conversely, 82 percent of the Site is zoned RC/R-5-B, with the remaining 18 percent in the rear zoned RC/C-2-B.

B. Project Description

Based upon discussions with ANC representatives, the Applicant has revised the plans originally filed with the application. The building has been reduced in height from 50 ft. to 43.64 ft. (el. 196.95), and from five floors above grade to three floors plus a mezzanine level; the

¹ This residential site is located in a highly walkable mixed use neighborhood, designated as a "Walker's Paradise" and a "Biker's Paradise" by walkscore.com, and rated 94 and 92 out of 100, respectively. The Site has convenient access to numerous retail establishments, grocery stores, restaurants, coffee shops, public parks, and neighborhood schools. The Site is also designated as an "Excellent Transit" location, with ten Metrobus and Circulator routes within 0.2 miles of the Site, two Metrorail stations within 0.7 miles of the Site (Green/Yellow lines at Columbia Heights; Red line at Woodley Park), ten carshare locations located within 0.3 miles of the Site (served by ZipCar and Hertz On Demand), and four Bikeshare stations within 0.3 miles of the Site.

number of units has been reduced from 20 to 14; and the gross floor area has been reduced from 20,296 sq. ft. to 14,141.38 sq. ft.

As shown on the architectural plans and elevations (the "Plans"), attached hereto as Exhibit C, the Applicant proposes to construct a 14,141.38 square foot, 14 unit apartment building of three floors (with four units per floor) plus a cellar level (with two units, plus parking). Each of the four units on the third floor will also have a mezzanine level, and each mezzanine will have a separate stairway access to a small roof terrace. The remainder of the roof will be devoted to a green roof. The stairway penthouses and rooftop storage within the roof structure will be 8.0 ft. in height from floor to ceiling. The HVAC units will be located on the roof of the roof structure, and will be enclosed with a screen wall of 4.25 ft. in height. The overall height of the roof structure will be 14.08 ft. above the highest point of the roof (el. 211.03).

The building entrance will be on Ontario Road. The building will include a mix of units types, including studio; one-bedroom; one-bedroom plus den; and two-bedroom units. The garage will include seven vehicle parking spaces and seven bicycle parking spaces, and will be accessed via a ramp from Ontario Road.

V.
THE APPLICANT MEETS THE BURDEN
OF PROOF FOR SPECIAL EXCEPTION RELIEF

A. Summary of Requested Relief

1. *Section 2514.2* - This special exception allows the use, height and bulk of the lesser restrictive zone (in this case, the RC/C-2-B zone) to be extended up to 35 ft. into the more restrictive zone (in this case, the RC/R-5-B zone).

- a. *Use* - A residential use is permitted in both zones. No relief is necessary for use.
 - b. *Height* - The RC/C-2-B zone allows a maximum 50 ft. building height. The RC/R-5-B zone allows a maximum 40 ft. building height. The proposed building height is 43.64 ft.
 - c.. *Bulk* - The special exception would allow a maximum of 21,125.46 sq. ft. of gross floor area and 71.8% lot occupancy on the split-zoned Site. The matter-of-right bulk permitted on the Site is 15,929.58 sq. ft., 80% lot occupancy in the RC/C-2-B zone, and 60% zone, and 60% lot occupancy in the RC/R-5-B zone. The proposed bulk is 14,141.38 sq. ft. and 71.7% lot occupancy. The special exception is not requested to increase the overall gross floor area on the site, but rather to allow the matter-of-right gross floor area to be distributed in a way that allows a more practical and functional building layout.
2. *Section 1403.1* - This special exception will allow an increase in the height of the remainder of the building, beyond the 35 foot extension, from 40 ft. to 43.64 ft.
 3. *Section 411.11* - This special exception will allow the southwest corner of the roof structure to exceed the required setback.

A special exception is deemed compatible with other uses permitted in a particular zoning district provided that the specific regulatory requirements 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 ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695 (1981).

B. Special Exception Per Section 2514.2 To Allow The Height and Bulk of the RC/C-2-B Zone to Extend into the RC/R-5-B Zone

The Board may grant a special exception under Section 2514.2 of the Zoning Regulations, to allow the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land to extend into that portion of the lot in a more restrictive use zone district, provided that the four conditions of section 2514.2 described below are met. In this case, the Applicant requests that the height and bulk regulations applicable to the RC/C-2-B portion of the Site be extended into the RC/R-5-B portion of the Site. Special exception relief will allow the matter-of-right gross floor area of the split-zoned site to be better distributed in order to provide a more practical and functional building layout. No relief is necessary to extend the permitted use, as a permitted use is permitted in both zones. The project complies with section 2514.2 as follows:

1. *Section 2514.1(a) - The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet (35 ft.).*

The Plans and zoning calculations illustrate the requested extension. The RC/C-2-B zone allows a maximum height of 50 ft., 80% lot occupancy, and 4.2 FAR, in order to accommodate IZ units. The RC/R-5-B zone allows a maximum height of 40 ft., 60% lot occupancy, and 2.16 FAR, to accommodate IZ units. The proposed height is 43.64 ft. The proposed lot occupancy is 71.7%. The maximum gross floor area allowed on the Site using Section 2514.2 is 21,125.46 sq. ft. (3.36 FAR). The combined matter of right density allowed on the Site, without using Section 2514.2, is 15.929.58 ft. (2.54 FAR) as shown on the chart included on the first page of the Plans.

The proposed building will measure 14,141.38 sq. ft. (2.25 FAR). Section 2514.2 is being used to better to distribute the matter-of-right gross floor area on the Site and thus allow a more practical and functional building layout. A special exception for the increase in height from 40 ft. to 43.64 ft. for the portion of the building, beyond the 35 ft. extension line, is also required under Section 1403.1 as further addressed below.

2. *Section 2514.1(b) - In authorizing an extension, the Board shall require compliance with § 2514.1(d).*

This section deals with the R-1 through R-4 zones, and is not applicable in this case.

3. *Section 2514.1(c) - The extension shall have no adverse effect upon the present character and future development of the neighborhood.*

The proposed extension will not adversely affect the present character or future development of the neighborhood. The extension will allow only a modest increase in height, and a more functional distribution of the permitted density. The maximum building height will increase by 3.64 ft. but the roof structure will be only 14.08 ft. in height above the roof. The building and roof structure together will measure 43.64 plus 14.08, or 57.72 ft., which is less than the combined matter of right height of 40 ft. plus 18.5 ft., or 58.5 ft. for the RC/R-5-B portion of the building, and less than the combined matter of right height of 50 ft. plus 18.5 ft., or 68.5 ft. for the RC/C-2-B portion of the building. The proposed gross floor area of the building will actually be less than that permitted as a matter of right.

4. *Section 2514.1(d) - The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.*

The building has been designed to carefully blend with its surroundings in terms of building envelope, design, and materials. The permitted height in the RC/C-2-B portion is 50 ft. This height may be extended across the rear of half of the building per Section 2514.2. The permitted building height in the RC/R-5-B portion of the building, adjacent to the Building Height Measuring Point, is 40 ft. to the highest point of a flat roof, plus a parapet not exceeding 4 ft. in height. The proposed height will be 43.64 ft. to the highest point of the flat roof (in the middle of the building), with a parapet with a maximum height of 2.16 ft. above that level. The roof structure will be 14.08 ft. in height, which is below the maximum permitted roof structure height. The Applicant believes that no other requirements are necessary in order to protect adjacent or nearby property.

C. Special Exception Per Section 1403.1 to Allow a 43.75 ft. Height for the Portion of the Building that Extends Beyond the 35 Foot Extension Line

Section 1403.1 is the general special exception provision for the Reed-Cooke ("RC") Overlay District, and would allow a 43.64 ft. height for the front half of the building that is in the RC/R-5-B zone and beyond the 35 foot extension authorized in Section 2514.2, subject to the conditions described below.

1. *Section 1403.1(a) - The use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the RC Overlay District.*

The stated purposes of the RC Overlay in section 1400.2 of the Zoning Regulations include providing for the development of new housing; maintaining heights and densities at appropriate levels; and protecting adjacent and nearby residences from damaging traffic, parking, environmental, social and aesthetic impacts. This special exception will allow development of new housing with ceiling heights consistent with other residential developments, and with appropriate height and density for the area.

The maximum permitted building height is 40 ft. to the high point of a flat roof, plus parapet height not to exceed 4 ft. The proposed height is 43.64 ft., to the high point of the flat roof. The roof height will be 42.97 ft. at the front edge of the building (at the building façade), with a parapet height above that point, varying between 0.78 ft. and 2.83 ft. The maximum height of the building and parapet together at the front façade will be 45.8 ft., whereas a combined height of 44.0 ft. is permitted as of right. This additional 1.8 ft. in height will be imperceptible when viewed from the street below.

This modest addition to the overall height will allow for appropriate development of a new housing with floor to ceiling heights comparable to other multifamily residential buildings in the area. The increase in height will allow the ceiling heights to be approximately 10 inches higher than otherwise permitted on each floor if the building height in the front half of the building was limited to 40 ft. In addition, a permitted height in the rear half of the building at 43.64 ft., with 40 ft. for the front half, would essentially split the building into two parts, with lower ceiling heights in the front half, and six of the 14 units having two different ceiling heights, with the central stair being required to have six above-grade landings rather than three. The proposed additional height will not adversely affect adjacent and nearby residences due to traffic, parking, environmental, social or aesthetic impacts.

2. *Section 1403.1(b) - Vehicular access and egress shall be designed and located so as to minimize conflict with pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.*

This modest increase in building height, to accommodate appropriate floor to ceiling heights, will not affect vehicular access and egress.

3. *Section 1403.1(c) - Adequate off-street parking shall be provided for employees and for trucks and other service vehicles.*

This modest height increase will not affect off-street parking.

4. *Section 1403.1(d) - If located within a C-2-B District, the use shall not be within twenty-five feet (25 ft.) of a Residence District, unless separated there from by a street or alley.*

This sub-section does not apply. The proposed modest height increase requested under this section is within the RC/R-5-B zone.

5. *Section 1403.1(e) - Noise associated with the operation of a proposed use will not adversely affect adjacent or nearby residences.*

The proposed modest increase in height will not generate noise that would adversely affect adjacent or nearby residences.

6. *Section 1403.1(f) - No outdoor storage of materials, nor outdoor processing, fabricating, or repair shall be permitted.*

This sub-section does not apply. No outdoor storage of materials or outdoor processing, fabricating, or repair will be undertaken at the Site.

7. *Section 1403.1(g) - The use, building, or feature at the size, intensity, and location proposed will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.*

The proposed modest increase in building height will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of

persons living, working, or visiting in the area. The proposed height of the building and roof structure combined will be lower than that permitted in the RC/R-5-B zone.

D. Special Exception Per Section 411.11 to Allow a Roof Structure of Unequal Heights

Under Section 411.11 of the Zoning Regulations, the Board may grant a special exception from the strict roof structure setback requirements of Section 400.7(b), provided that the intent and purpose of the Zoning Regulations “shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR § 411.11.

The Applicant requests relief from the roof structure setback requirement for the southwest corner of the roof structure, adjacent to the exterior wall of the open court where the garage entrance is located. Although set back 25.375 ft. from the front façade of the building, the roof structure will be 7.82 ft. from the closest exterior wall of the open court. The roof structure height is 14.08 ft., and therefore a 14.08 ft. setback is required. The location of the southwest corner of the roof structure is dictated by the location of the circular stair from the unit 304 mezzanine to the roof structure. Based upon the interior configuration of the building improvements, and the desire to place the roof structure as far back from the front of the building as possible, the circular stair locations dictates the roof structure footprint.

The intent and purpose of the Zoning Regulations will not be materially impaired by the location of the roof structure, nor will the light and air of adjacent buildings be adversely affected. The vast majority of the roof structure meets or exceeds the setback requirements from the exterior walls. The roof structure is set back 25.375 ft. from the front façade, thus meeting the intent of the Zoning Regulations. For those same reasons, the light and air of adjacent buildings will not be adversely affected.

E. Special Exception Under Section 3104.1

Based on the foregoing, the grant of special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

**VI.
WITNESSES**

- A. Christian Cronin, representative of the Applicant
- B. Norman K. Smith, AIA, LEED AP, Norman Smith Architecture, architect for the project

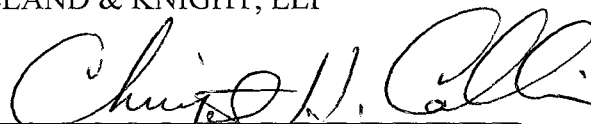
**VII.
CONCLUSION**

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

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____



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