

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

**Application of Capital City Real Estate LLC
on behalf of
2341 Ontario Road LLC
2341 Ontario Road, N.W. (Square 2566, Lot 841)**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 2341 Ontario Road, LLC, (the "Applicant"), owner of the property located at 2341 Ontario Road, N.W. (the "Site") for special exception relief under Sections 2514.2, 1403.1 and 411.11 for the construction of a 20 unit residential building on a split-zoned lot in the RC/R-5-B and RC/C-2-B zones.

I. Background

Square 2566 is bounded by Euclid Street on the north, 17th Street on the east, Kalorama Road on the south and Ontario Road on west. The Site has an irregular pentagonal shape, roughly rectangular in the front and triangular in the rear. The Site measures 6,272 square feet in land area and is surrounded on three sides by lot 839, a 24,808 square foot lot owned by Mary's Center for Maternal Child Care. Mary's Center has 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 property zoned RC/C-2-B. Due to its size and configuration, 86% of lot 839 is zoned RC/C-2-B. Conversely, 82% of the Site is zoned RC/R-5-B, with the remaining 18% in the rear zoned RC/C-2-B.

Square 2566 is occupied by a mixture of multi-family buildings and row dwellings, with the exception of Mary's Center, (which also occupies Lot 837 at the corner of Ontario and Kalorama Roads) and a small retail store at the northeast corner of the square. The Site is

currently used as a parking lot. The Applicant will construct a 20,296 square foot, 20 unit apartment building of four stories in height, stepping back to five stories at the rear of the building. Eight parking spaces and seven bicycle spaces are located in the lower level.

The Applicant respectfully request zoning relief, as further set forth below.

II. Burden of Proof

A special exception is required under Section 2514.2 of the Zoning Regulations to extend the permitted height and bulk of the RC/C-2-B zone 35 feet west into the RC/R-5-B zone. In addition, a special exception under Section 1403.1 is required for the portion of Unit 5-C/503 on the fifth floor that is beyond the 35 foot extension, as shown on Sheet A.3.0.5 of the plans. Special exception relief from Section 411.11 is also required in order to allow a roof structure of unequal heights.

A special exception is deemed compatible with other uses permitted in a particular zoning district provided that the specific regulatory requirements are met. 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).

The Applicant will file its Statement of the Applicant with the Board no less than 14 days prior to the public hearing on this Application. In the Statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested special exception and variance relief. The following is a summary indicating how the Applicant will meet its burden of proof.

A. 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

Section 2514.2 - If approved by the Board of Zoning Adjustment as a special exception under § 3104, 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 may be extended to that portion of the lot in a more restrictive use zone district.

Comment: 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.

(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.).

Comment: The building plans and zoning calculations submitted with this application illustrate the extent of the height and bulk extension. The proposed plan uses only 84% of the gross floor area that would otherwise be allowed with a 35 ft. extension. As for height, the majority (87.5%) of the fifth floor will extend only about 29 ft. into the RC/R-5-B zone, and about 4% of the fifth floor will extend beyond that point to the 35 ft. extension line. The remaining 189 sq. ft. of the fifth floor (which includes a portion of the living/dining area of Unit 5-C/503) is proposed to be located beyond the 35 ft. extension line as shown on Sheet A.3.0.5. A special exception for the location of this portion of Unit 5-C/503 is required under Section 1403.1, as further addressed below. The roof structure on the roof of the fourth floor is permitted as a matter of right, and is not subject to this provision.

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

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

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

Comment: The proposed extension will not adversely affect the present character or future development of the neighborhood. The extension will provide only a modest addition to the rear of the building. The gross floor area of the building will increase by only 4,366 sq. ft. as a result of the extension authorized in this Section.

The fifth floor is at the rear of the building, and is set back approximately 24 ft. from the Ontario Road frontage at its closest point. The fifth floor and the roof structures will all be set back from the Ontario Road frontage a distance greater than their height above the fourth floor, and will thus not be readily visible from the street below.

- (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.*

Comment: The building has been designed to carefully blend with its surroundings in terms of building envelope, design and materials. The fifth floor is at the rear of the building, and is sufficiently set back from the front of the building that it will not be readily visible from the street below. The Applicant believes that no other requirements are necessary in order to protect adjacent or nearby property.

B. Special Exception per Section 1403.1 For the Location of a Portion of Unit 5-C/503 on the Fifth Floor Beyond the 35 ft. Extension Line.

Section 1403.1 is the general special exception provision for the Reed-Cooke Overlay, and would allow the location of the portion of Unit 5-C/503 on the fifth floor that is beyond the 35 ft. extension authorized in Section 2514.2. The application complies with this section, as further set forth below.

Section 1403.1 - An exception from the requirements of the Reed-Cooke Overlay shall be permitted, subject to the following criteria:

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

Comment: The stated purposes of the RC Overlay in Section 1400.2 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 small portion of the building is a part of the new housing development on the site. This modest addition of 188.52 sq. ft. on the fifth floor for the living room/dining room area will allow Unit 5-C/503 to be of an appropriate size and configuration, with a building height and density that is consistent with what is permitted in the RC overlay, and will not adversely affect adjacent and nearby residences due to traffic, parking, environmental, social or aesthetic impacts.

- (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.*

Comment: The inclusion of this space on the fifth floor for the living room/dining area in Unit 5-C/503 will not impact vehicular access and egress.

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

Comment: The inclusion of this space on the fifth floor for the living room/dining area in Unit 5-C/503 will not affect off-street parking.

- (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.*

Comment: This sub-section does not apply. The portion of the living room/dining room area of Unit 5-C/503 which is subject to this provision is within the RC/R-5-B zone.

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

Comment: The operation of the portion of the building that includes the living room/dining area in Unit 5-C/503 will not generate noise that would adversely affect adjacent or nearby residences.

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

Comment: Not applicable.

- (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.*

Comment: The portion of the building which is subject to this provision (the living room/dining area in Unit 5-C/503) is modest in size, and 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.

C. Special Exception to Allow Roof Structures of Unequal Heights

No portion of the roof structure will extend more than 18.5 ft. above the roof of the fourth floor. The top of the elevator penthouse will extend approximately 13.66 ft. above the roof of the fourth floor. In order to reach the two units on the fifth floor at the rear of the building, the elevator penthouse is proposed to be higher than the stair penthouses on the roof of the fourth floor. Thus, the roof structure walls will not be of equal height, and special exception relief is required under Section 411.11.

Section 411.11 - Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction

used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

Comment: Section 411.5 requires that roof structure enclosing walls from the roof level must be of equal height. Special exception relief is required from that provision. The intent and purpose of the roof structure regulations will not be materially impaired, and the light and air of adjacent buildings will not be adversely affected. The Applicant is asking for permission to put less mass on the roof than would otherwise be required for full compliance. The stairway enclosures on the roof of the fourth floor are only as high as they need to be. To meet the strict letter of the roof structure regulations, the height of these two enclosures would need to be raised and connected with the elevator penthouse, in order to meet the height of the elevator penthouse. In such a configuration, they would meet the letter of the regulations, but would result in more mass on the roof than necessary. The proposed configuration will meet the intent and purpose of the roof structure regulations, to make the roof structure as unobtrusive as possible, and would have less potential adverse impact on the light and air of adjacent buildings than the matter of right scenario.

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