

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

**APPLICATION OF
NEIGHBORHOOD DEVELOPMENT COMPANY
4308-4310 GEORGIA AVENUE, N.W.**

**BZA APPLICATION NO. 18819
HEARING DATE: SEPT. 16, 2014
ANC 4C**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted on behalf of the Neighborhood Development Company (the "Applicant") in support of its application pursuant to 11 DCMR §§ 3103.2 and 3104.1, for an area variance from the off-street 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 residential building containing 20 units in a C-2-A District at 4308-4310 Georgia Avenue, N.W., Square 2914, Lot 802 (the "Site").

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations.

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

- Exhibit A: Portion of the Zoning Map showing the Site.
- Exhibit B: Portion of the Baist and Sanborn Atlas plats showing the Site.
- Exhibit C: Architectural Plans and Elevations.
- Exhibit D: Parking Infeasibility Plans.

- Exhibit E: Letters from Nearby Parking Garages Indicating that Parking Spaces are Available for Rent.
- Exhibit F: Transportation Memorandum Prepared by Symmetra Design.
- Exhibit G: Letter of Support from Neighboring Property Owner.
- Exhibit H: Outlines of Testimonies and Resumes of Witnesses.

IV. BACKGROUND

A. Description of the Site and Surrounding Area

The Site is located at 4308-4310 Georgia Avenue, N.W., more specifically described as Lot 802 in Square 2914. Square 2914 is located in the northwest quadrant of the District and is bounded by Webster Street to the north, Georgia Avenue to the east, and Varnum Street/Iowa Avenue to the south and west. As shown on the Zoning Map, attached hereto as Exhibit A, Square 2914 is split-zoned: the properties on the east portion of the square with frontage on Georgia Avenue are zoned C-2-A and the properties on the west portion of the square with frontage on Iowa Avenue are zoned R-4.

The Site was purchased from the Latino Economic Development Corporation and is now owned by 4308 Georgia LLC, a District of Columbia Limited Liability Company wholly owned by the Neighborhood Development Company. The Site is located in the C-2-A District and includes 4,597 square feet of land area. The Site is presently improved with a two-story plus cellar building that is proposed to be razed as part of redevelopment of the Site. The Site is irregularly shaped, with approximately 60 linear feet of frontage on Georgia Avenue to the east. The Site is bounded by private property and a small, 5.65-foot portion of a public alley to the north, private property to the south, and public space and Iowa Avenue to the west. Of the properties within Square 2914 that front on the public alley, the Site is the only property with only 5.65 feet of frontage on the public alley. The Site's grade slopes from 194 feet at the front of the Site along

Georgia Avenue down to approximately 188 feet at the rear of the Site along Iowa Avenue.

The Site is located in the Petworth/Georgia Avenue neighborhood of Washington, DC, in an area that is highly walkable and rich in public and private transportation alternatives. Over the past several years, Petworth has seen an uptick in new retail businesses serving the neighborhood's growing population, including a significant number of new restaurants and food establishments, which has resulted in the area's emergence as a vibrant urban neighborhood (*See D.C. Neighborhood Profiles 2013*, Washington, DC Economic Partnership, p. 42). As further described in the Transportation Memorandum prepared by Symmetra Design and attached hereto as Exhibit E, the Site has excellent public transportation options, with ample access to the Georgia Avenue/Petworth Metrorail Station, multiple Metrobus routes, car and bike share facilities, on-street bicycle routes, and safe pedestrian infrastructure.

B. Description of Proposed Development

As shown on the Architectural Plans And Elevations (the "Plans"), attached hereto as Exhibit C, the Applicant proposes to demolish the existing building on the Site and to construct a new four-story plus cellar, 20-unit residential building with approximately 13,791 square feet of gross floor area (3.0 FAR). The building will have a maximum height of 46 feet, as permitted in the C-2-A District, and will contain a mix of unit types, ranging from studios to two-bedrooms.

The main building entrance will be located on Georgia Avenue. As further described below, the project will not include any on-site vehicle parking spaces. The building will be equipped with two stair towers and one elevator for vertical circulation, thus creating three separate roof structures of differing heights. Two roof structures will separately enclose the stair towers and will rise to a maximum height of 8 feet, 5 inches above the main roof level; one roof

structure will enclose the elevator override and will rise to a maximum height of 14 feet above the main roof level. The project will meet the Green Area Ratio ("GAR") requirements of Chapter 34 of the Zoning Regulations. Overall, the proposed use of the Site is consistent with the C-2-A zoning designation and with other uses within the neighborhood surrounding the Site.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

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; 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 at the public hearing, all three prongs of the area variance test are met in this application.

A. 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 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.2nd 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.2nd 1164, 1168 (D.C. 1990).

In this case, the size of the Site, combined with its irregular shape, sloping topography, mid-block location with private property on two sides, public space on one side, and limited access to a public alley, combine to create an exceptional situation and condition that directly cause the need for the requested parking relief. The Site only contains approximately 4,597 square feet of land area, and is irregularly shaped with property lines ranging from approximately 98.64 feet at the northern property line down to 5.65 feet at the rear where the Site abuts a public alley. As previously stated, of the properties within Square 2914 that front on the public alley, the Site is the only property with only 5.65 feet of frontage on the public alley. The Site slopes down approximately six feet from east to west and presently has no curb cuts from any direction. Given these constraints, there is no practical way to provide any vehicular access to the Site from any direction.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner

Section 2101.1 of the Zoning Regulations requires ten on-site parking spaces to accommodate the proposed 20 residential units at the Site. However, based upon on the Site's size, dimensions, and limited public alley access, providing on-site parking would result in a practical difficulty, and thus the Applicant is seeking a variance to provide no off-street parking spaces on the Site.

The existing building on the Site is vacant and includes 3,978 square feet of gross floor area and 1,989 square feet of cellar floor area last devoted to office use. In a C-2-A District, an office use in excess of 2,000 square feet is required to provide 1 off-street parking space for each

additional 600 square feet of gross floor area and cellar floor area, which yields a parking requirement of 7 off-street parking spaces for the existing building. However, the existing building provides no off-street parking on the Site. Pursuant to Section 2100.4 of the Zoning Regulations, except for historic resources, when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for the additional requirement in the amount necessary to conform to §2101. Application of this provision would yield a parking requirement of 3 off-street parking spaces for the proposed new building (i.e., 10 required for the new use - "credit" of 7 spaces for the prior office use = 3 required spaces). Out of an abundance of caution, the Applicant is seeking relief for 10 spaces, but application of the "credit" of 7 spaces would reduce the required amount of parking, and thus the requested relief, to 3 spaces.

i) Providing Surface Parking on the Site Would Result in a Practical Difficulty

The Applicant cannot provide any surface parking spaces on the Site since the Site is bounded by private property to the north and south, public space at the rear, has only 5.65 feet of frontage on a public alley, and has no existing curb cuts. Section 2117.8(c)(2) of the Zoning Regulations requires that driveways serving multiple parking spaces must have a minimum width of 14 feet for two-way circulation. Given that the Site only has 5.65 feet of width for a driveway, there is no practical way for vehicles to access the rear of the Site for surface parking.

As shown on Sheet 1 of the Parking Infeasibility Plans attached hereto as Exhibit D, even if the Site had a minimum of 14 feet of alley frontage (by obtaining an easement from the District for use of the public space to the south), there would be insufficient open space available at the rear of the Site to provide surface parking spaces that meet the minimum depth standard of 19 feet.

Further, section 31.2.3.3 of DDOT's Design and Engineering Manual requires that no residential driveway entrance or exit on any alley may be closer than 30 feet to a roadway. In the case of a driveway or isle located in public space, the entrance or exit to the alley would be located less than 30 feet from Iowa Avenue which would prohibit the permission of the access via the alley over public space.

Thus, due to the limited alley frontage, the size and configuration of the Site, and the lack of access to the Site, there is no practical way to provide a compliant driveway onto the Site or surface parking spaces at the rear of the building.

ii) Providing Below-Grade Parking on the Site Would Result in a Practical Difficulty

The Applicant also cannot provide any below-grade parking or a ramp to access below-grade parking due to the Site's constraints described above. Given DDOT's policy of not permitting new curb cuts on major streets, such as Georgia Avenue or Iowa Avenue, the only potential location for a curb cut to access a ramp and parking garage would be from the public alley. However, as described above, the Site's 5.65 feet of alley frontage is insufficient to provide zoning compliant access, and even if the Site had the minimum require 14 feet of alley frontage, it would still be practically difficult for the Applicant to construct any below grade parking spaces and still comply with all of the applicable parking size, turning, and access requirements of sections 2115, 2116 and 2117 of the Zoning Regulations.

Even if the Applicant was able to install a curb cut in Iowa Avenue, it would still be practically difficult to construct a parking garage that complies with the Zoning Regulations. For example, as shown on Sheets 2 and 3 of the Parking Infeasibility Plans, due to the Site's irregular dimensions, it is impractical to construct a ramp in the available area which could meet the maximum permitted ramp slope of 12 percent (§ 2117.8(a)) and the minimum ramp width of 14

feet (§ 2117.8(c)(2)), and still provide an adequate number of parking spaces per garage level. In addition, once a vehicle reaches the foot of the ramp, the resulting amount of accessibility and maneuvering space required by section 2117.5 would not meet the requirements of the Zoning Regulations, while still providing enough parking spaces per level.

Moreover, Section 31.2.3.3 of DDOT's Design and Engineering Manual requires that the edge lines of any driveway must be located a minimum of 24 feet from the edge lines of any adjacent driveway or alley. In this case, there is an existing public alley curb cut at the north of the Site, and thus the only space that meets the required 24 foot separation is along the southern portion of the Site. However, there is an existing tree with a 74 inch circumference located where the driveway would access the site. In accordance with the Urban Forest Preservation Act of 2002, a tree greater than 55 inches in circumference qualifies as a Special Tree by the definition included in the act. Special Trees are eligible for removal on private property, subject to the regulations of Chapter 27 of Title 24 of the D.C. Municipal Regulations. However, because this tree is located within public space, and does not meet the definition of a Hazard Tree, in accordance with the Urban Forest Preservation Act, there is no basis for its removal under the regulations.

If the Applicant was theoretically granted a permit to access the lot within the twenty-four foot alley/driveway separation requirement, the driveway to access the garage would have a slope of 17%, which is 5% greater than the maximum permitted ramp slope of 12%, as required by section 2117.8(a), and would result in significant safety and construction challenges. As illustrated in Sheets 2 and 3 of the Parking Infeasibility Plans, even if a 17 percent driveway slope was permitted, the turning radius required at the bottom of the ramp, which would require a minimum ramp landing width of 14 feet, combined with the required drive isle width of 20 feet, would result in an area not large enough to provide the minimum parking space depth of 19 feet. Moreover,

such a scenario would impede stairways required for fire safety egress and the ability of the elevator to access the below grade portion of the building as required by the building code for purposes of providing access for persons with disabilities. Lastly, this scenario, as presented in the illustrations, does not reflect an actual structural plan for the portion of the building that supports the building above. To provide the necessary structural support for the four stories above the theoretical below grade parking garage some form of columns would be necessary. These columns would only further constrain the ability to provide automobile parking and circulation below grade.

C. 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 residential building with 20 units will significantly contribute to the vibrancy of the neighborhood while supporting the city's housing and affordable housing goals for the area.

Although the Applicant will not provide any on-site vehicle parking spaces, many building residents will not need or want to own a car given the excellent public transportation options in the immediate vicinity of the Site and the walkable, mixed-use nature of the neighborhood. As described in the Transportation Memorandum, attached as Exhibit H, the Site is located less than a half-mile from the Georgia Avenue/Petworth Metrorail station, which services the green and yellow Metrorail lines, and is within 0.3 miles of five Metrobus stops servicing routes 60, 62, 63, 64, and 70. The Site is located within 0.6 miles of nine permanent car share "home sites" (serviced by Zipcar and Hertz On Demand), three of which are within 0.1 mile of the Site. The Site also is conveniently located one block from a Capital Bikeshare station. Given this easy accessibility to multiple public transportation options, walkscore.com rates the Site as an "Excellent Transit"

location (Transit Score 76) and "Very Walkable," (Walkscore 78) given its convenient access to neighborhood shopping, grocery stores, restaurants, parks, and schools. Thus, the Site's excellent location and available alternative modes for commuting will provide a variety of transportation options for building residents, thus reducing the potential impact of vehicle parking and/or traffic in the surrounding neighborhood.

Despite the excellent transit options, as described in the Transportation Memorandum, there is sufficient on-street vehicle parking capacity and availability on the streets surrounding the Site, such that any potential use of on-street parking spaces by building residents or visitors would not cause an adverse or perceptible impact.

Based on four total surveys conducted over two different twenty-four hour periods at two different times of day the following on street vacancy rates were determined over the entire study area:

Date	Time of Survey	Level of On-street Vacancy in the study area
July 21th, 2014	6:00 PM	47% (362 spaces)
July 22th, 2014	12:00 AM	38% (292 spaces)
August 6th, 2014	6:00 PM	45% (347 spaces)
August 7th, 2014	12:00 AM	40% (309 spaces)

There are also several nearby parking garages with available parking spaces that can be rented daily or monthly by future building residents (*see* letters from parking garage operators, attached hereto as Exhibit E). For example, the operator of the Park Place Apartments, located at 850 Quincy Street, N.W., indicated that it has 49 vacant parking spaces available for rent. The owner of Mary's Center, which is located at 3912 Georgia Avenue, N.W., indicted they have 18 off-street parking spaces available for rent. The owner of 4100 Georgia Avenue indicted they have 35 parking spaces in their garage, some of which could potentially be rented to residents at the

Site.

Therefore, due to the Site's proximity to transit, the anticipated low demand for on-site parking, and the availability of nearby on- and off- street parking options, the development will not cause any detrimental impacts to parking or traffic conditions in the neighborhood.

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

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

Under Section 411.11 of the Zoning Regulations, the Board may grant special exception relief 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 Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.* In this case, special exception approval is required because, as shown on the Roof Plan included in the Plans, there will be three roof structures with enclosing walls of

unequal heights.

The Applicant's proposal provides rooftop access via two stair towers, each rising to a maximum height of 8.5 feet above the main roof level, and one elevator, rising to a height of 14 feet above the main roof level. All of the structures are necessary when providing access to the rooftop for use by building occupants and visitors. The two stair towers are required to provide the minimum number of fire exits from the roof, while the elevator must access the roof level in order to provide access to the rooftop for persons with disabilities. The structures have been designed at different heights to break up massing on the roof and to minimize any impact the stair towers, which can be built to a lower height, may have on neighboring properties. The structures are all located at least a 1:1 distance from all exterior walls, thus minimizing their appearance from the street and any potential impact on light and air. Furthermore, the location and number of proposed roof structures is driven by the layout and design of the residential units and exiting requirements within the building, as well as the location of the building's core features and utilities, such as the elevator.

A single, 14-foot roof structure could theoretically be built to enclose both stair towers and the elevator shaft in compliance with the requirement of providing a single roof structure with enclosing walls of an equal height. However, to require this would be unduly restrictive and unreasonable, given that it would add unnecessary mass to the roof and would undermine the purpose of the regulations, which is to exercise a degree of architectural control over roof structures (*see* 11 DCMR § 411). In this instance, the desired result is better achieved by providing varying heights for the roof structures to minimize their appearance, protect the visual quality of the building from the street, and help to ensure adequate light and air to adjacent property and abutting streets.

VII.
WITNESSES

- A. Diarra McKinney, Neighborhood Development Company.
- B. Aubrey Grant, Emotive Architecture.
- C. Nicole White, Symmetra Design.

IX.
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,

HOLLAND & KNIGHT, LLP

A handwritten signature in black ink, appearing to read 'Kyrus L. Freeman', with a long horizontal flourish extending to the right.

By: _____

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