

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

**APPLICATION OF  
LOCK 7 DEVELOPMENT, LLC**

**1514 8<sup>TH</sup> STREET, NW  
ANC 6E**

**STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Lock 7 Development (the “Applicant”), the contract purchaser of property located at 1514 8<sup>th</sup> Street NW, Lots 830 and 831 in Square 397, (the “Property”) in support of its application for an area variance from the requirements regarding lot area (§401.3); nonconforming structures (§2001.3) with respect to lot occupancy (§403) and courts (§406); and compact parking spaces (§2115 and §2101.1) to allow the Applicant to convert a 40 person halfway house for ex-convicts to a multiunit dwelling and provide 3 compact parking spaces in an R-4 District at the Property.

**II. JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

**III. BACKGROUND**

**A. Background Information Regarding the Property**

The Property, also known as Lots 830 and 831 in Square 397, contains approximately 2,948 square feet of land area and is located in Northwest Washington, D.C. The Property has approximately 31 feet of frontage along 8<sup>th</sup> Street NW. The Property is located within the Shaw Historic District, and the existing building on the Property is listed on the D.C. Inventory of Historic Sites.

The Property is presently improved with a 3-story plus basement halfway house with 40 roomers and was owned by the Efforts From Ex-Convicts Foundation (“EFEC”) until recently purchased by the Applicant. *See Certificate of Occupancy at Tab 9.* Efforts from Ex-Convicts is a private, nonprofit halfway house intended to rehabilitate ex-convicts, help them seek employment, and reintegrate them into

society, while addressing the economic, educational, health and other social factors that underlie repeated behaviors. The Property is a community-based residential facility for zoning purposes.<sup>1</sup>

**B. Description of the Improvements in the Surrounding Area**

The Property is located in Shaw, 3 blocks from the Shaw Metrorail Station. Square 397 is a small, split-zoned square. The Square is bounded by 9<sup>th</sup> Street NW to the west, Q Street NW to the north, 8<sup>th</sup> Street NW to the east, and P Street NW to the south. The northern three-fourths of the Square, including the Property, are in the R-4 District. The bottom one-fourth of the Square is in a C-2-A Zone District that includes the commercial corridor along 7<sup>th</sup> Street NW between the Shaw/Howard University Metrorail Station and the Mt. Vernon Square/7<sup>th</sup> Street/Convention Center Metrorail Station. In fact, the southern property line of the Property abuts the C-2-A Zone District. *See Baist Atlas Map at Tab 10 and Zoning Map at Tab 11.* Across P Street to the south is the O Street Market. Across 8<sup>th</sup> Street, at the corner of 8<sup>th</sup> Street and P Street NW is the Kelsey Gardens Development.

**C. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area**

The Property is well serviced by a number of public transportation facilities and services including Metro, Metrobus routes, Capital Bikeshare, and Zipcars. The Property is located approximately 0.3 miles from the Shaw Metrorail entrance. Moreover, Metrobus routes G2, G8, and 70 stop along two bus stops on P Street NW directly south of the Property. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 7<sup>th</sup> and R Street NW/Shaw Library (15 docks) and 7<sup>th</sup> & M Street NW/Convention Center (18 docks). Four Zipcar spaces are located within walking distance with a behind 625 Rhode Island Avenue NW, a car at the Shaw Metro (7<sup>th</sup> and R Street NW), and two cars at Progression Place (1805 7<sup>th</sup> Street NW). Another local car-sharing program, Car2Go, has recently reported that the use of the

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<sup>1</sup> Under 11 DCMR 199.1, a community based residential facility is “a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. This definition includes, but is not limited to . . . facilities formerly known as convalescent or nursing home, residential halfway house or social service center, philanthropic or eleemosynary institution, and personal care home.”

company's car-sharing service had reached over 30,000 members and that the fleet was expanded from 300 vehicles to more than 450 vehicles accommodate increasing demand. Walkscore.com gives the Property a walk score of 94 and a bike score of 95 and designates the property as both a "walker's paradise" and "biker's paradise," the highest possible designations.<sup>2</sup> The Property is also designated as having "excellent transit."<sup>3</sup>

#### **D. Description of the Proposed Development**

As shown on the architectural plans, *see* Architectural Plans at Tab 12, the Applicant proposes to convert the Property from a halfway house for 40 roomers to an 9-unit dwelling. The footprint of the structure will be left unchanged. Lot occupancy will remain at 70%. The height of the structure will remain at 3 stories, with the addition of only a small mezzanine. The cellar will contain 2 units; a one-bedroom unit and a two-bedroom unit. The first floor will contain 3 units; 2 one-bedroom units and a two-bedroom unit. The second floor will contain 2 two-bedroom units. The third floor will contain 2 three-bedroom units and has a mezzanine level. In total, the unit mix is 3 one-bedroom units, 4 two-bedroom units, and 2 three-bedroom units.

#### **IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW**

Variance relief is required from the requirements regarding lot area (§401.3); nonconforming structures (§2001.3) with respect to lot occupancy (§403) and courts (§406); and compact parking spaces (§2115 and §2101.1). 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;

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<sup>2</sup> Being designated as a "walker's paradise" means that "[d]aily errands to not require a car." Being designated as a "biker's paradise" means the terrain is "flat as a pancake, excellent bike lanes."

<sup>3</sup> Being designated as having "excellent transit" means that "[t]ransit is convenient for most trips."

- (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 Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). 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.

## **V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF**

### **A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exception 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. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the

unique or exceptional situation may arise from a confluence of factors which affect a single property.

*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Property is characterized by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property was previously used as a halfway house with 40 residents; (2) the presence of a common stairwell that divides the existing structure into a front and rear portion; (3) the existing nonconformities of the Property; and (3) the Property was originally constructed in 1956 as an apartment building

#### 1. Previous Use of the Property as a Halfway House

The Property has historically been used as a halfway house for ex-convicts operated by the Efforts From Ex-Convicts Foundation. The presence of a halfway house this large in an R-4 District is unique. There are no other halfway houses in Square 397 and none in the immediate area. The building's existing configuration as halfway makes adaptive reuse of the Property for residential purposes extremely difficult and presents design challenges with respect to conversion of the structure back to a matter-of-right residential use. The existing structure lacks basic features, presenting exceptional challenges for the Applicant. The Applicant must extend the plumbing and other needs associated with installing kitchen and bathroom facilities for residential units. The existence of an obsolete structure on a parcel of land constitutes an exceptional situation or condition for variance relief. *See Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974).<sup>4</sup>

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<sup>4</sup> In *Clerics of St. Viator*, the decrease in enrollment at a religious seminary, due to historical circumstances and a change in the form of religious education, prevented the seminary from being able to sell or transfer the property to another similar use. The court held that the existence of the obsolete seminary use constituted an exceptional situation or condition for variance relief, and permitted the granting of a use variance to convert the seminary to convalescent or nursing home use. We are not submitting that a halfway house is obsolete, but rather that one of this size and in this location is rare.

## 2. The Existing Common Stairwell

Substantial design constraints stem from the need to work around the existing common stairwell, which divides the Property into a front section and a rear section. For the most part, the proposed project provides one unit on either side of the common stairwell on each of the existing floors. Moving the stairwell is logically and financially impractical.

## 3. The Existing Nonconforming Structure

The existing building at the Proeprty is a nonconforming structure. The halfway house has a lot occupancy of 70% and an open court that does not meet the court width standards. Furthermore, the Property has a rear yard of 14'-10.5" where the rear yard requirement is 20 feet. Few other lots on the Square are faced with the existing nonconformities that exist at the Property.

## 4. Constructed as an Apartment Building in 1956

Prior to use as a halfway house, the structure was used as an apartment building. Use as an apartment building dates back to the structures construction in 1956, prior to 1958 when the Zoning Regulations went into effect, and operated legally as a matter of right. *See* 1956 Building Permit at Tab 13. A 1979 certificate of occupancy lists use of the Property as "Halfway House – 40 roomers." *See* Certificate of Occupancy at Tab 9. The Property has been operated as a halfway house since that time. *See* EFEC Foundation Affidavit at Tab 14. Thus, the project entails reversion to the historically residential use. A reversion from a halfway house to a previously existing apartment use is also unique.

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

Strict application of the zoning regulations regarding lot area (§401.3); nonconforming structures (§2001.3) with respect to lot occupancy (§403) and courts (§406); and compact parking spaces (§2115 and §2101.1) would result in a practical difficulty to the Applicant. The D.C. Court of Appeals has held that to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" *Gilmartin, supra* at 1170. In

*Gilmartin*, the Court noted that “the severity of the variance(s) requested,” “the weight of the burden of strict compliance,” “the effect the proposed variance(s) would have on the overall zone plan,” and the “increased expense and inconvenience to applicants for a variance” are among the proper factors for the BZA’s consideration. *Id.* at 1171.

1. *Lot Area (§401.3)*

Under §401.3, the conversion of a building or structure to an apartment house in the R-4 District is permitted, but requires a minimum of 900 square feet of lot area per apartment unit. In light of the existing halfway house on the Property, the existing nonconformities, and existing common stairwell, the Applicant proposes a conversion to a 9-unit multifamily dwelling. The unit size, location, and configuration proposed in the application is dictated by the size and configuration of the original apartment layout, the market demand for units of a certain size, in this neighborhood, and the physical limitations imposed by the existing common stairwell. Given the physical configurations, and the market demand, the Applicant has proposed 9-units. For the reasons detailed above, strict application of the zoning regulations with respect to lot area would result in a practical difficulty.

2. *Nonconforming Structure Requirements - Lot Occupancy (§403) and Courts (§406)*

The existing halfway house on the Property is a nonconforming structure with respect to lot occupancy and the open court width requirement. The lot occupancy of the existing structure is 70%. Under 403, the maximum lot occupancy in the R-4 District is 60%. The existing court is 7'-6" wide. The minimum court width is 4 inches for every 1 foot of height but not less than 10 feet. Compliance with the lot occupancy or court requirement would require wasteful demolition of a portion of the existing structure. Under §2001.3, any addition to a structure that is noncompliant as to lot occupancy requires variance relief and any increase in height extends the nonconformity of the open court. While neither the building footprint nor the dimensions of the court have changed, the Applicant seeks relief from the nonconforming structure provision to allow a small mezzanine addition on the third story.

### 3. *Compact Parking Spaces (§2115)*

The Property may be entitled to parking credits. Based on the prior use as a halfway house, a type of community-based residential facility, the Property had a previous parking requirement of between 2-4 parking spaces.<sup>5</sup> The Property could provide 1 legal 9 ft. x19 ft. parking space at the rear of the Property. Thus, there are between 1-3 parking credits at the Property.

Pursuant to §2101.1, the proposed project has a parking requirement of 3 parking spaces. As a result of the existing nonconforming rear yard, 3 legal parking spaces cannot be provided. Compact spaces, which are 8ft x 16 ft in depth, are allowed in certain circumstances articulated in §2115. The Applicant seeks relief from §2115 to allow 3 compact spaces at the rear of the Property.

### **C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning 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 by approving the zoning relief. The proposed project returns a 40-bed halfway house to the apartment use for which the structure was originally constructed. The footprint of the structure and number of stories will be left unchanged. While in an R-4 Zone District, the Property's southern property line abuts a large C-2-A Zone District and is in close proximity to several apartment buildings and commercial properties.

Furthermore, the conversion will result in a reduction in the number of persons residing on the Property. The EFEC houses 40 persons at a time. The 9-unit dwelling, which has 17 bedrooms, will likely house between 17 and 34 residents. Thus, even based on a very conservative estimate, the number of persons residing at the Property will be reduced substantially. Moreover, the EFEC houses short term

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<sup>5</sup> Under 2101.1, a community-based residential facility in the R-4 District is required to provide 1 parking space if 1-8 persons are housed, 2 parking spaces if 9-15 persons are housed, and the parking requirement is determined by the BZA if 16 or more persons are housed. In the C-3, C-4 and C-5 District, 1 parking space is required for every 10 persons housed. Therefore, in a 40 person CBRF, between 2 and 4 parking spaces were likely required.

tenants, with stays of roughly 3 months or more, while residents at the proposed project will be long-term residents.

In addition, the proposed project adequately balances the zoning regulations' goals of ensuring adequate space for residents, providing a diverse and adequate housing stock, and permitting property owners to create marketable units. The additional residential units help address the well documented shortage of housing in the Washington D.C. area.<sup>6</sup> The 2 three-bedroom units are a rare but important part of a housing stock lacking in family-style units.

For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

## VI. CONCLUSION

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

Respectfully submitted

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<sup>6</sup> Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year to keep up with predicted population growth. However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about  $\frac{3}{4}$  that much. Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing*. October 17, 2012. Greater Greater Washington. Found at: <http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/>.