

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

Statement of
ANC 2B05

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of Red A&W I, which together with the Planned Parenthood Association of DC, the property owner, comprises the "**Applicant**". The Applicant is proposing a mixed-use residential and commercial office building at 1108 16th Street, NW (Square 183, Lot 111) ("Property"). The Applicant seeks special exception relief to expand an existing office building in the SP-2 Zone District and to reduce the amount of required parking; and it seeks variance relief from the court requirements.

The Property is located on the west side of 16th Street between L Street and M Street. It is located in the SP-2 Zone District as well as the Sixteenth Street Historic District. This proposal is simultaneously being reviewed by the Historic Preservation Review Board to confirm that the proposed design is compatible with the character of the Historic District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve variance relief pursuant to Sections 536.2, 536.4, 536.5, and 3103.1 of Title 11 of the District of Columbia Municipal Regulations as well as special exception relief pursuant to Sections 508.1, 2101.1, 2120.3, 2120.6, and 3104.1 of the Regulations.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations.

III. BACKGROUND AND PROJECT DESCRIPTION

Red A&W I is the contract purchaser of the Property and is proposing to construct a mixed-use commercial office and residential building. The Property is currently improved with a four-story office building, which is currently used by the Planned Parenthood Association of Washington, DC. The improvements on the Property date back to 1880 when three rowhouses were constructed on the Property. The buildings were ultimately refaced with a limestone façade in 1920. In connection with that project, the rowhouses lost their integrity when the rowhouses were consolidated to function as a single building. The upper two floors of the building were replaced in 1954. The first and second story 1920 façade contribute to the historic district and will be retained.

The Property is located entirely within the SP-2 Zone District. The Property is located on the western side of 16th Street and is approximately 5,725 square feet in size. The site is located along a stretch of 16th Street that consists primarily of institutional uses. The Planned Parenthood organization is relocating so the Applicant is taking this opportunity to transform the building into Class A space. The Applicant is proposing a significant amount of work in order to make it marketable and to create a building that reflects its prime 16th Street address.

The Applicant is proposing to construct a mixed-use residential and commercial office building. The building will be comprised of eight above-grade floors, four of which will be dedicated to residential uses and four of which will be dedicated to office space. There will also be a cellar level that is dedicated to residential use. The building will include 20 residential units. The office space can accommodate a single office tenant or can be broken down into smaller spaces. The office and residential uses will share a lobby and core that is accessed from an entrance on 16th Street.

The existing office building consists of approximately 14,000 square feet of office space; the Applicant is now proposing a total of 18,620 square feet of office use and 18,380 square feet of residential use. Because the building is located in the SP-2 Zone District, special exception relief is required for any office addition. The project also triggers the need for parking relief. As a building with features that contribute to the historic district, parking is required only if an addition greater than 50% of the existing building is constructed and if that addition requires at least 4 parking spaces. The proposed addition exceeds this threshold and a total of 14 parking spaces will be required for the mixed-use building, yet only three spaces will be provided. Finally, the project requires court relief for a closed court that is being provided along the southern property line.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In examining the first two elements, the BZA may apply a more flexible standard for determining difficulty when a public service or nonprofit entity is the applicant, such as Holy Trinity. *See National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984); *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979). The D.C. Court of Appeals has applied the more flexible standard to area variances as well as use variances. *See Draude v. D.C. Board of Zoning Adjustment*, 582 A.2d 949, 956

(D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested parking variance.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See National Black Child Development*, 483 A.2d at 690; *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). Instead, the BZA may "weigh more fully the equities in an individual case." *National Black Child Development*, 483 A.2d at 690.

The Property is unique in that it is improved with a building, a portion of which is considered contributing to the Sixteenth Street Historic District. As such, the Applicant is limited in what work it can undertake on the site. The Applicant is retaining the first and second story façades, which stretch for the entire width of the lot. The existing building does not provide any side yards; all of the open space is located in the rear yard, where parking is located. There is an alley that runs along the western lot line and across the alley is a 13-story building. The lot is only 50 feet wide; this fact, coupled with the lack of side yards and the provision of a rear yard facing a 13-story building creates challenges in providing adequate light and air for the residential units. Accordingly, the Applicant has set the building back from the southern lot line

in an effort to create a source of light and air for its residents. The courtyard is 14 feet wide and 26.5 deep, which is sufficient for providing the necessary light to residents and tenants.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.* The BZA also may consider the needs of a public service organization that "has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership" *Draude*, 582 A.2d at 956.

As noted above, the small shape of the lot creates a practical difficulty in complying with the court width requirements. The court is required to have a width of over 34 feet for the residential portion and a width of nearly 26 feet for the commercial portion; the required area of the court ranges from 1,326 (commercial portion) to 2,357 (residential portion) square feet; yet, the Applicant is providing a court that is only 14 feet wide and has an area of 371 square feet. It would be inefficient and expensive to provide varied floorplans to accommodate the required

width for the residential portion and the width required for the commercial portion; thus, the court width requirement is essentially 34 feet.¹ The most significant challenge in providing a compliant court is that the Property is only 50 feet wide. Providing a 34-foot wide court would leave a remaining depth that is only suitable for a corridor. Such a court would result in an inefficient floor plan that would essentially bifurcate the building into a western wing and an eastern wing; it would not function as a single building. It would also require a significant reduction in the number of residential units, as well as office space, undermining the efficacy of the renovations. Providing the requisite court would be at the expense of the units the court is intended to serve.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. The requested variance can be granted without harm to the public good or the Zone Plan. The Applicant is proposing a court that is set back from the southern property line by fourteen feet and each wing is set back from the other by 26.5 feet. By comparison, the Building Code has deemed a setback of 10 feet to be sufficient for windows built along a lot line; here, the Applicant is setting back the windows for the residential and office uses by an additional four feet for a total setback of 14 feet. Further, the SP-2 Zone District does not require any setbacks from the side lot lines; the fact that the Applicant is setting back will not create a detrimental situation for any of the neighbors.

¹ The cellar level will be used for residential use, floors 1-4 will be office use and floors 5-8 will be residential use; to change the floor plate at both the first floor and fifth floor levels to accommodate the varying size of the required court would be extremely costly.

**VI. THIS APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL
EXCEPTION RELIEF FOR PARKING AND AN OFFICE ADDITION IN
THE SP-2 ZONE DISTRICT**

The Applicant is seeking special exception relief pursuant to Section 3104.1 from the requirements of Sections 508.1, 2101.1, and 2120.3. The Property is located in the SP-2 Zone District, which requires special exception relief for any addition to a commercial office building. The existing building consists of approximately 14,375 square feet of office space. The Applicant will be constructing a total of 18,618 square feet of office space, which is an increase of 4,243 square feet; accordingly, the Applicant requires relief from Section 508.1.

The Applicant also seeks special exception relief from the parking requirements for a building that contributes to the Sixteenth Street Historic District. The existing building provides five parking spaces; however, seven spaces would otherwise be required for a commercial office building its size. As such, the Property has a parking credit of two spaces. The new construction proposed by the Applicant triggers a requirement of 14 spaces (five spaces for the residential portion and nine spaces for the office portion), yet will only be providing three zoning-compliant spaces. When taking into account the two space parking credit, the Applicant requires zoning relief for nine spaces. Since a portion of the building contributes to the Sixteenth Street Historic District, this relief can be granted as a special exception under Section 2120.6.

A. The Requested Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR Section 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted; and must be

designed to encourage the stability of districts and land values. Id. at Section 101.2. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether a special exception should be granted.

In this case, the Applicant seeks relief pursuant to Section 508.1 to provide an office addition on the Property. Section 508.1 states that the proposed use, height, bulk, and design shall be in harmony with the existing uses and structures on neighboring property; the use shall not create dangerous or other objectionable conditions and the Board may require special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it deems necessary to protect the value of neighboring property.

The Applicant is proposing a height, bulk and use that is consistent with the SP-2 Zone District and its immediate neighbors. In fact, the properties to the west are located in the C-4 Zone District and far exceed the height and bulk that is being proposed in this case. The instant project maintains the 90 foot height roofline typically found along 16th Street. The project is simultaneously undergoing review by the Historic Preservation Review Board, which is charged with confirming that the height, bulk, and design of a project are consistent with the Historic District within which it is located.

The project requires parking relief. Pursuant to Section 2120.6, the Applicant must demonstrate (1) the maximum number of employees and guests who can reasonably be expected to use the proposed building or structure at one time; (2) the amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood; (3) the quantity of existing public, commercial or private parking, other than curb parking, on the property or in the neighborhood that can be reasonably be expected to

be available when the redevelopment is complete; and (4) the proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area or a ride sharing program approved by the District Department of Transportation. The Applicant will supplement its application to provide a transportation analysis that addresses each of these items. The Property is conveniently located just a few blocks away from the Farragut North Metrorail Station and along the 16th Street bus line, which provide easy access for both residents and employees. Given the quality of the public transportation options available for this site, the Applicant does not anticipate that there will be a high vehicular demand for parking or congestion from the trips generated by the site. Nevertheless, given the Property's proximity to the downtown core, there are numerous commercial lots located in the immediate vicinity of the Property that can accommodate such demand.

B. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

The proposed project is consistent with the zoning designation for the Property, as well as with the neighboring properties. The project is simultaneously undergoing review by the Historic Preservation Review Board to confirm that the proposal is consistent with the context of the Property. Accordingly, the proposed height, bulk and design of the additional office use will not have a negative effect on neighboring properties. Similarly, the requested parking reduction will not have a negative effect on neighboring properties. As noted above, the site is well served by public transportation, which will greatly reduce both the residential and commercial parking demand at the site. Most employees and residents will be able to take public transportation, which will alleviate the need to bring a car to the site. Even if the project does generate trips, there are many commercial parking lots in the immediate vicinity that can accommodate the parking demand.

VII. EXHIBITS

1. EXHIBIT A Architectural Plans including Surveyor's Plat of Property and Photographs of Property
2. EXHIBIT B Application Form, Self-Certification and Agent Authorization
3. EXHIBIT C Excerpt of Zoning Map and Plat of Property
4. EXHIBIT D Property Owner List

VIII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance and special exception relief requested in this case.

Respectfully submitted,



Allison C. Prince



Christine A. Roddy

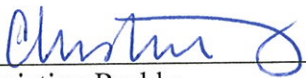
Certificate of Service

I hereby certify that I sent a copy of the foregoing document to the following addresses on August 29, 2014, by first class mail or hand delivery:

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