

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

AMENDED PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

**BZA CASE NO. 18876
23 46th Street, S.E. (Square 5346, Lot 4)**

This statement is submitted by Habitat for Humanity of Washington DC, Inc., the owner of property located at 23 46th Street, S.E. (Square 5346, Lot 4) (the "Site"), in support of its application pursuant to 11 DCMR §§ 3103.2 and 3104.1 for an area variance from the number of off-street parking spaces required by section 2101.1; the floor area ratio ("FAR") requirements of section 402.4; and the lot occupancy requirements of section 403.2; and special exception relief for a new residential development under section 353, to allow the construction of five new residential row dwellings in the R-5-A District at the Site.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that 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 relief.

I. Background Information Regarding the Site and Proposed Development

Square 5346 is located in the southeast quadrant of the District and is bounded by East Capitol Street to the north, 46th Street to the east, B Street to the south, and Benning Road to the west. Square 5346 is split-zoned: the northwestern corner of the square along East Capitol Street and Benning Road is zoned C-3-A; the remainder of the square is zoned R-5-A. In addition to the Site, the square is occupied by several multi-family residential buildings in the R-5-A portion of the square and a low-density commercial shopping center with surface parking in the C-3-A portion of the square.

The Site is located on the west side of 46th Street, S.E., just south of the intersection of 46th and A Streets, S.E. The Site is currently vacant, with approximately 8,936 square feet of land area and approximately 104.8 linear feet of frontage on 46th Street. The Site is bounded by four-story, ten-unit, multiple dwelling residential buildings to the north and south, 46th Street to the east, and private property to the west. A public alley connects to the Site for a width of ten feet at the Site's northwest corner.

On September 9, 2014, the Applicant submitted an application requesting a variance from the off-street parking requirements of section 2101.1 and special exception relief from section 353 to allow construction of a ten-unit multiple dwelling residential building on the Site to be sold as condominiums to households earning between 30 and 60 percent of the area medium income ("AMI"). After informal discussions with members of Advisory Neighborhood Commission ("ANC") 7D, who expressed support for single family dwellings instead of a multiple dwelling building, the Applicant revised its plans such that it now proposes to construct five for-sale row dwellings on the Site reserved for households earning between 30 and 60 percent of the AMI. However, in order to fit five row dwellings on the Site, additional relief is necessary from the FAR and lot occupancy requirements for some of the Lots.

Overall, the Site will have a maximum density of 0.73 FAR and a maximum lot occupancy of 36.2 percent, both of which are well within the zoning parameters for the Site. As shown on the architectural plans and elevations included with the amended application, each row dwelling will be located on its own record lot ("Lots 1-5") and will have an average height of 25 feet, 3.75 inches. Due to the irregular shape of the Site, which widens at the north end, each Lot will have a different density and lot occupancy calculation, as listed below:

1. Lot 1 will have a maximum FAR of 0.58 and a maximum lot occupancy of 28.9 percent;

2. Lot 2 will have a maximum FAR of 0.94 and a maximum lot occupancy of 47 percent, thus requiring relief from the FAR and lot occupancy requirements;
3. Lot 3 will have a maximum FAR of 0.92 and a maximum lot occupancy of 46 percent, thus requiring relief from the FAR and lot occupancy requirements;
4. Lot 4 will have a maximum FAR of 0.89 and a maximum lot occupancy of 44.4 percent, thus requiring relief from the lot occupancy requirements; and
5. Lot 5 will have a maximum FAR of 0.53 and a maximum lot occupancy of 26.6 percent.

As described in more detail below, the requested FAR and lot occupancy variances for some of the individual Lots are minimal, and the overall Site is well within the maximum FAR and lot occupancy requirements set forth in the Zoning Regulations.

As shown on the architectural plans, each row dwelling will have three bedrooms, one and a half bathrooms, laundry facilities, and an unfinished cellar. The main entrances to the row dwellings will be located on 46th Street facing east. The proposed residential use for the Site is consistent with the Site's zoning designation and with other uses in the neighborhood, and was designed in response to specific comments raised by neighborhood residents.

II. The Applicant Meets The Burden Of Proof For The Requested Area Variance

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, the Applicant meets all three prongs of the area variance test.

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 may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Site is a large, mid-block lot with a steep grade change and minimal alley access. These conditions create an exceptional situation or condition that directly impact the requested parking relief.

The Site has an irregular rectangular shape that widens at the north end, has approximately 104.8 feet of frontage on 46th Street, S.E., and is surrounded by private property to the north, south, and west. The Site has a significant grade change that slopes from an approximate elevation of 108.0 feet at the midpoint of the Site along 46th Street to an elevation of approximately 92.0 feet at the alley at the northwestern property limits. With this approximate 16 foot drop in elevation and a very narrow area (approximately ten linear feet) to provide access

onto the Site along the public alley, the physical constraints preclude the Applicant from being able to locate parking behind the row dwellings.

In addition to the grade change, there is an existing retaining wall along the western property line that ranges from approximately four feet in height to approximately ten feet in height. As part of the proposed development, the Site's existing drainage condition will have to be protected and preserved so as not to adversely impact the adjacent properties. Consequently, walls ranging from approximately four inches to 18 inches are required near the multiple dwelling building to the north of the Site, and walls ranging from approximately eight inches to ten feet are required along the existing alley. Moreover, as shown on the plat included with the application, there is a building restriction line located 15 feet to the west of the Site's eastern property line.

Collectively, these conditions make it nearly impossible to locate vehicle parking on the Site and negatively impact the ability for each of the record lots to comply with the FAR and lot occupancy requirements of the Zoning Regulations, therefore resulting in an exceptional situation or condition.

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

1. Off-Street Parking

Section 2101.1 of the Zoning Regulations requires one parking space for each dwelling unit in the R-5-A District, or in this case five parking spaces. Based on the Site's mid-block location, its steep topography, retaining walls, and its minimal alley access, it is practically difficult to locate any parking spaces on the Site. Furthermore, after taking into account the 15 foot building restriction line on the east side of the Site, the required 20 foot rear yard setback on the west side of the Site, the side yards, and the footprints of the proposed buildings, the land

area that remains on the Site is insufficient to accommodate surface parking. However, there is ample on-street parking available on the streets surrounding the Site that can accommodate parking for residents and visitors of the Site.

Parking spaces cannot be located in the front yards of the row dwellings, between the building restriction line and the lot line abutting 46th Street, due to section 2116.4(a) of the Zoning Regulations, which prohibits parking spaces from being located between a building restriction line and a lot line abutting a street. Parking spaces also cannot be located in either of the side yards provided for the northern-most and southern-most row dwellings, due to the Site's steep slope that prevents direct access and maneuverability and makes it nearly impossible to provide a flat surface to accommodate parking spaces. Finally, parking spaces cannot be located in the rear yard due to the topography at the rear of the Site and the need to maintain the existing retaining wall and install additional retaining walls.

Even if the Applicant could provide parking spaces on the Site, providing access from the public alley onto the Site is impractical and practically difficult. The Site has only ten feet of frontage on the alley, which is insufficient based on the zoning requirement that driveways serving multiple parking spaces must have a minimum width of 14 feet for two-way circulation (*see* 11 DCMR § 2117.8(c)(2)). It is also practically difficult to maneuver a vehicle from the public alley down the steep elevation at the rear of the Site. Therefore, it is practically difficult to locate parking on the Site for any of the record lots, or to provide zoning-compliant access.

2. Floor Area Ratio

Overall, the Site will have a maximum density of 0.73 FAR, which is well within the maximum permitted density of 0.9 FAR set forth in section 402.4 of the Zoning Regulations. However, due to the size of the Site and its irregular shape, the location of the building

restriction line, the steep grade change and the need for multiple retaining walls, and the presence of private property on three out of four sides, individual Lots 2 and 3 will have non-compliant densities of 0.94 FAR and 0.92 FAR, respectively, thus requiring a variance from section 402.4 of the Zoning Regulations. The Applicant notes, however, that the proposed deviance from the permitted maximum density is 0.04 FAR (4.25 percent) and 0.02 FAR (2.2 percent), for Lots 2 and 3, respectively.

Strict application of the FAR requirements on Lots 2 and 3 would result in a practical difficulty because the Applicant would be required to reduce the size of the bedrooms or remove one of the bedrooms in each row dwelling. Doing so would contradict the Applicant's mission to provide affordable housing and homeownership opportunities to families, many of whom need a minimum of three or more bedrooms. After meeting with the community, the Applicant undertook extensive redesigns of the row dwelling configuration to try to meet the density requirements on each record lot; however, it is practically difficult to design five row dwellings on the Site that are each within the maximum FAR requirements.

3. Lot Occupancy

The Site occupies 36.2 percent of the Site, which is well within the maximum lot occupancy permitted by section 403.2 of the Zoning Regulations. However, the Applicant requests relief from the lot occupancy requirements for individual Lots 2, 3, and 4. Strict compliance with the lot occupancy requirements on Lots 2, 3, and 4 would result in a practical difficulty to the Applicant. Section 403.2 of the Zoning Regulations requires a maximum lot occupancy of 40 percent for the site. However, each of Lots 2, 3, and 4 provide slightly higher lot occupancy calculations than the 40 percent maximum.

Similar to the variance requested from the FAR requirements, a practical difficulty arises from the conditions of the Site, including its irregular shape, the building restriction line, the grade change and retaining walls, and its mid-block location with private property on three sides. If the Applicant was required to strictly comply with the lot occupancy requirements, it would have to reduce the size or number of bedrooms, which, as previously stated, directly contradicts the Applicant's mission to provide affordable homeownership opportunities for families. Despite its best efforts, the Applicant was unable to design five row dwellings on the Site that each comply with the maximum lot occupancy requirement.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose or integrity of the zone plan. The construction of five new row dwellings at the Site will significantly contribute to the vibrancy of the neighborhood, infill a vacant site, and support the city's housing and affordable housing goals for the area.

Based on the location of the Site near multiple public transportation options and the anticipated demographics of future residents, it is likely that most building residents will not need or want to own a car. The Site is located approximately 0.1 miles away from the Benning Road Metrorail Station, which services the Orange and Blue Metrorail lines and the RSLV line, and is within 0.1 miles of six Metrobus lines (96, 97, U5, U6, U8, and W4). The Site is located within 0.9 miles of nine permanent car share locations operated by ZipCar and Hertz On Demand, including three that are within 0.3 miles of the Site. The Site also has ample access to Car2Go vehicles, which operate as a one-way car share service throughout the District.

Moreover, the Site is situated in a mixed-use, walkable neighborhood, adjacent to a shopping center that has various retail and service amenities.

In addition, there is significant and underutilized on-street parking in the neighborhood surrounding the Site, which will provide adequate parking for building residents and visitors should the need arise. Given the small number of residential units proposed, the development will not burden the existing available street parking and will not create any perceptible traffic impacts in the area.

With respect to FAR and lot occupancy, the requested relief is minimal and applies to only some of the individual Lots on the Site. The overall Site complies with FAR and lot occupancy requirements, as well as with all of the necessary set backs required by the Zoning Regulations. Moreover, the public good will be served by a high-quality, infill residential development project in this area of the city, which the District is seeking to revitalize through public and private investment.

III. The Applicant Meets The Burden Of Proof For Special Exception Relief

A special exception is required under section 353 of the Zoning Regulations. Section 353.1 requires that all new residential developments in the R-5-A District, except detached and semi-detached single-family dwellings, shall be reviewed by the Board of Zoning Adjustment as special exceptions under section 3104 and in accordance with the standards set forth in section 353.

First, under subsection 353.2, the BZA is required to refer the application to the D.C. Board of Education for comment and recommendations as to the adequacy of existing and planned area schools to accommodate the number of students that can be expected to reside in the project. The Site is currently assigned to Nalle Elementary School, Kelly Miller Middle

School, and Dunbar, Eastern, and H.D. Woodson High Schools (*see* dcatlas.dcgis.dc.gov/schools). It is the Applicant's understanding that the D.C. public school system has adequate capacity to accommodate any future children living in the proposed new buildings at the Site.

Second, under subsection 353.3, the BZA is required to refer the application to the D.C. Department of Transportation ("DDOT") and the Department of Housing and Community Development ("DHCD") for comment and recommendation as to the adequacy of public streets, recreation, and other services to accommodate the residents of the project and the relationship of the proposed project to public plans and projects. In this case, the public streets in the vicinity of the Site are paved in compliance with the District's standards and have capacity to serve the needs of the Site. The Applicant notes that nearby parks and recreation centers include Fletcher-Johnson Park and Recreation Center, Fort Chaplin Park, Fort Dupont Park, and the Kelly Miller Recreation Center, and the new development will be well-sited to provide easy access to these community facilities.

Third, under subsection 353.4, the BZA is required to refer the application to the D.C. Office of Planning for comment and recommendation of the site plan, arrangement of buildings and structures, and provision of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood. The Applicant will ensure that the Site maintains DDOT-compliant sidewalks and appropriate landscaping in the public space in front of the Site. The Applicant will position the buildings on the Site such that they provide adequate light and air for future residents of the project and those in the surrounding buildings. As noted above, the Site is located in close proximity to numerous parks and recreation centers. The Applicant is currently coordinating with the Office of Planning to

ensure the project is appropriately designed. To date, the Office of Planning has not raised any objections to the proposed development.

Finally, in conformance with subsection 353.5, the Applicant has submitted the requisite site plans and typical floor plans and elevations, grading plans, landscaping plans, and plans for all new rights-of-way and easements.