

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

**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 parking spaces required by section 2101.1, and a special exception for a new residential development under section 353, to allow the construction of a new three-story, ten unit multiple-dwelling residential building 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. The property to the west is separated from the Site by a public alley that connects to the Site's northwest corner for a length of ten feet. The Site is located in the R-5-A District.

As shown on the architectural plans and elevations included with the application, the Applicant proposes to construct a new 30.5-foot, three-story, ten-unit residential building on the Site. All of the units will be for-sale to households earning 30 to 60 percent of the area medium income ("AMI"). The building will contain three one-bedroom units, with an average size of approximately 708 square feet, and seven two-bedroom units, with an average size of approximately 975 square feet. The main entrance will be located in the center of the building on the east side of the Site facing 46th Street. No parking will be provided on-site. The proposed residential use for the Site is consistent with the Site's zoning designation and with other uses in the neighborhood, particularly the other ten-unit multiple dwelling residential buildings adjacent to the Site.

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 is rectangular in shape, with approximately 104.8 feet of frontage on 46th Street, S.E. 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 on the Site.

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 about 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 due to the steepness of the extreme grade shift at the rear of the Site.

Moreover, as shown on the plat included with the application materials, 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 thus result in an exceptional situation or condition.

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

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 ten parking spaces. Based on the Site's mid-block location, its steep topography and required retaining walls, and its minimal alley access, it would be practically difficult to locate ten parking spaces on the Site. Furthermore, after taking into account the 15 foot building restriction line on the east side of the Site, the 20 foot rear yard setback on the west side of the Site, and the proposed building footprint, the land area that remains on the Site is insufficient to accommodate ten surface parking spaces. At most, one drive aisle and one row of approximately six compact parking spaces could be provided; however, given the Site's topography, it would be nearly impossible to access the parking spaces, as described below.

The Applicant cannot provide surface parking on the Site for the following reasons: First, parking spaces cannot be located in the front yard, 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. Second, parking spaces cannot be located in either of the side yards (north and south of the proposed building), due to the Site's significant grade change that prevents direct access and maneuverability and makes it nearly impossible to provide a flat surface to accommodate parking spaces. Furthermore, there is insufficient space in the side yards to comply with section 2117.5 of the Zoning Regulations, which requires drive aisles to have a minimum width of 17-20 feet. Third, parking spaces cannot be located in the rear yard due also to the topography at the rear of the Site and the need to maintain the existing retaining wall and locate additional retaining walls, as described above.

Moreover, 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 at the rear of the Site, 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, locating parking on-site and providing zoning-compliant access is practically difficult.

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 a new three-story multiple dwelling building with ten residential units will

significantly contribute to the vibrancy of the neighborhood while supporting 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 should the need arise. However, 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. Finally, 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

("Board" or "BZA") as special exceptions under section 3104 and in accordance with the four 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 development 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 building on the Site such that it provides 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 development 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.