

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

**APPLICATION OF
DISTRICT OF COLUMBIA CVS PHARMACY LLC
6-7 DUPONT CIRCLE, N.W.**

**BZA APPLICATION NO. 18887
HEARING DATE: JAN. 6, 2015
ANC 2B02**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

District of Columbia CVS Pharmacy, LLC (“CVS” or the “Applicant”), through undersigned counsel, submits this statement in support of its application to the Board of Zoning Adjustment (“BZA” or “Board”) pursuant to 11 DCMR § 3104.1 for special exception relief from the roof structure enclosure requirements of 11 DCMR §§ 411 and 770.6 as part of an interior fit-out and expansion of the CVS Retail Pharmacy in the existing two-story building located at 6-7 Dupont Circle, N.W. (Square 114, Lot 25) (the “Site”).

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the special exception requested pursuant to D.C. Code § 6-641.07(g) and 11 DCMR § 3104.

**III.
BACKGROUND**

A. Site Vicinity Characteristics

1. The Site

The Site is located on Dupont Circle between P Street to the north and 20th Street to the west. The Site is one of two lots located in Square 114 and encompasses approximately 7,544 square feet of land area. The Site is improved with an existing two-story historic commercial

building that contributes to the Dupont Circle and Massachusetts Avenue Historic Districts. It is owned by the Applicant, which operates a CVS Retail Pharmacy on the ground floor. The second floor of the building is presently vacant and was most recently used as office space for the CVS. The building occupies 100 percent of the Site, with approximately 117.58 linear feet of frontage on P Street; approximately 63 linear feet of frontage on Dupont Circle; and approximately 60 linear feet of frontage on 20th Street. The Site abuts private property to the south. As shown on the Zoning Map, attached as Exhibit A, the Site is located in the DC/C-3-C District.

B. Project Description

As shown on the architectural plans and elevations (“Plans”) attached as Exhibit B, the Applicant proposes to expand the CVS retail store into the second floor of the building and incorporate a new CVS Minute Clinic that will offer walk-in medical services staffed by nurse practitioners and physician assistants. As part of the proposed renovations, the Applicant will upgrade the building’s mechanical, plumbing, and electrical systems, including removing and replacing the existing mechanical units on the roof. Pursuant to sections 411.3 and 411.6 of the Zoning Regulations, mechanical units are required to be placed in a single enclosure.

As shown on the Plans and on the Surveyor’s Plat, attached as Exhibit C, there are presently four roof structures on the building that house mechanical equipment (“RTUs” 1, 2, 3, and 4). Due to their age and deteriorated condition, the Applicant proposes to replace these units with new units of approximately the same size and in the same locations, using the same roof framing and curbs that were constructed for the original units. The Applicant also proposes to install a fifth new mechanical unit (“RTU 5”) to replace the outdated split system heat pumps that are presently on the roof and do not have the capacity to support the existing and expanded uses. RTU 5 will rise to a height of 3 feet, 10 inches, and is therefore not considered a roof

structure for zoning purposes. 11 DCMR § 411.17. All of the other four roof structures are more than four feet in height, are set back 1:1 from the building's exterior walls, and are not visible from the street. The Applicant requests special exception relief because there will be four individual roof structures instead of a single structure, as required by section 411.3 of the Zoning Regulations.

In 2014, the Applicant submitted a proposed roof design to the District of Columbia Historic Preservation Office ("HPO") that presented a single large enclosure over the four individual mechanical units. Due to the Site's location in two historic districts and the building's contributing character to those districts, the HPO disapproved the Applicant's plan since the large structure would be visible from the street. *See* emails dated July 22-23, 2014, attached as part of Exhibit D. The Applicant therefore seeks special exception relief to allow the individual mechanical units to remain separate and unenclosed. Staff at HPO have informally expressed their support for the project as proposed. *See* emails dated December 11, 2014, stating HPO's approval of the individual rooftop units, attached as part of Exhibit D.

IV.

The Application Meets the Standards for Special Exception Relief under the Zoning Regulations

A. Standard of Review

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." *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995) (*quoting Stewart v. District of Columbia Bd. 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.*

Pursuant to 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 there will be multiple roof structures on the single building.

B. Compliance with Special Exception Standards

The Applicant's full compliance with the single roof structure requirements is impractical because of the negative visible impacts it would create on the surrounding Dupont and Massachusetts Avenue historic districts. As described above, the Applicant attempted to enclose the individual replacement units into a single large structure that would comply with the Zoning Regulations. This design resulted in a massive structure that was visible from the street and ultimately rejected by HPO staff. A steep mansard style roof wraps an interior flat roof where the mechanical equipment is located. The roof's features include large eaves and terracotta shingles, with a high front along Dupont Circle and P Streets. The roof's slope can hide some rooftop elements, but any structure that disrupts the roof line will be incompatible with the historic districts.

Each proposed roof structure is a necessary feature of the building. The number and location of roof structures is driven by the existing mechanical system within the building and the layout of the building's core functions. The Applicant is providing the greatest set backs possible given the size and dimensions of the existing roof, the internal configuration of the building, and the location of the existing mechanical units. There is a limited amount of flat roof space available to locate the units in one enclosure with the required 1:1 set backs from all of the building's exterior walls. The units cannot be moved closer together or combined into a single structure because space is needed between the units to allow airflow.

Based on the above-described conditions relating to the building and its location in two historic districts, a compliant roof plan that encloses all of the mechanical units into a single structure was disallowed by the HPO. However, HPO staff approved the alterations to the roof as proposed in this application (*see Exhibit D*). The requested locations and design of the mechanical units will not affect adversely the light and air of adjacent buildings and will not be visible from the surrounding streets. The Applicant will essentially maintain the exact same configuration on the roof that currently exists, plus the addition of a new unit that is less than 4 feet in height. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

V. **Community Support**

The application was referred to ANC 2B on September 29, 2014, and notice of the hearing was provided on October 7, 2014. The Applicant also contacted the ANC on December 11, 2014. To date, however, the ANC has not taken action on the application.

VI.
Witnesses

The following witnesses may be called to testify at the Board's public hearing on the application:

1. Representative of District of Columbia CVS Pharmacy, LLC
2. Timothy Henrie, Larson Design Group

VII.
Exhibits in Support of the Application

The following exhibits are attached to this statement in further support of the application:

- Exhibit A: Portion of the Zoning Map illustrating the Site
- Exhibit B: Architectural plans and elevations
- Exhibit C: Surveyor's Plat
- Exhibit D: Email exchange with HPO staff regarding approval of separate rooftop units
- Exhibit E: Outlines of witness testimony
- Exhibit F: Resume of expert witnesses

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for a special exception under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

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