

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

**APPLICATION OF
14 & H, LLC**

**1401 FLORIDA AVENUE NE
1402, 1404, 1406 AND 1410 H STREET NE
ANC 6A**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 14 & H Street, LLC (the “Applicant”), the contract purchaser of property located at 1401 Florida Avenue NE and 1402, 1404, 1406 and 1410 H Street NE, Lots 5, 6, 802, 803, and 804 in Square 1049N, (the “Property”) in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding lot occupancy (§772), FAR (§771), height (§770), and parking (§2101.1); and special exception relief, pursuant to 11 DCMR §3104, regarding new construction on a lot greater than 6,000 sq. ft. (§1320.4) and the roof structure setback (§770.6 and §411.11), to allow the Applicant to construct a multifamily residential building with ground floor retail in the C-3-A/HS-A Zone 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 contains approximately 6,648 square feet of land area and is located in northeast Washington D.C. See Baist Atlas Map at **Tab 9**. The Property is located within the C-3-A Zone District

and the H Street – Arts Overlay. See Zoning Map at **Tab 10**. The Property is not located in an Historic District.

B. Description of the Improvements in the Surrounding Area

Square 1049N is zoned C-3-A and is located in the H Street – Arts Overlay. Square 1049N is a small, triangular Square bounded by H Street NE to the south, 14th Street NE to the west, and Florida Avenue NE to the north. See Architectural Plans, A0.2-0.5 at **Tab 11**. Directly east of the Property is the Starburst Intersection, a complicated junction where H Street, Florida Avenue, Bladensburg Road, Benning Road, and Maryland Avenue NE intersect. Square 1049N Street is currently made up of three two-story commercial structures, surface level parking, and vacant gated areas. Across Florida Avenue are a gas station and the Delta Towers Apartments.

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 DC Streetcar will greatly enhance the walkability, bikeability, and public transportation available at the Property. DC Streetcar stops are located at 13th Street & Benning Road and 15th Street & Benning Road , both just 1 block from the Property. The Property is located approximately 1.2 miles from the Noma-Galludet Metro Station and 1.3 miles from the Union Station Metro. Moreover, Metrobus routes X3, D3, D4, and D8 stop at the intersection of Florida Avenue & Trinidad Avenue NE. Metrobus routes X1, X2, X3, X9 and B2 stop at the intersection of Benning Road and 15th Street NE. 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 13th & H Street NE (27 docks) and Bladensburg Road & Benning Road NE (14 docks). Five Zipcar spaces are located within walking distance including cars at 12th/H Street NE, behind 817 11th Street NE, behind 614 Elliott Street NE, 1600 Maryland Avenue NE, and at Galludet University. Another local car-sharing program, Car2Go, reported in July 2013 that the use of the company’s car-sharing service in the District had reached over 25,000 and that the fleet was expanded from 300 vehicles to 400 vehicles to

accommodate increasing demand. Walkscore.com labels the property as “very walkable,” “very bikeable,” and with “good transit.”

D. Description of the Proposed Development

As shown on the Architectural Plans, see **Tab 11**, the Applicant proposes to construct a 6-story multiunit dwelling with first floor retail and 34 residential units. The first story will contain a restaurant. The second through fifth stories will contain 7 units each. The sixth story will contain 6 residential units. The Property will provide covered, secure bicycle parking for residents and will include a publicly accessible outdoor bicycle rack.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding lot occupancy (§772), FAR (§771), height (§770), and parking (§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;
- (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 in the Prehearing Statement and 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 unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property has a long, narrow, triangular shape; (2) the Property has street frontage on all sides; (3) the Property has an exceptionally large “public parking” area along Florida Avenue and 14th Street NE; (4) the Property has no alley access; and (5) the location of the Property at the easternmost end of the H Street Corridor and adjacent to a Starburst Intersection.

1. Triangular Shape of the Property and Square

The Property, which occupies the entire Square, is an exceptionally long and narrow triangular shape. The Property, a right-triangle, comes to an extremely narrow point where H Street NE and Florida Avenue NE meet. Development in this portion of the lot is severely limited on each floor. Additionally, the Square on which the Property sits is a larger triangular shape with substantial open public space between the property line and the curb.

2. Street Frontage on All Sides

The Property is also unique in that it has frontage on all sides. The triangular Property is bounded by H Street NE to the south, 14th Street NE to the west, and Florida Avenue NE to the north. The Property narrows sharply toward the eastern end of the Property, from 85 feet at its widest point on the west end and tapers to a point at the eastern end of the Property.

3. Large Public “Parking” Area Along Florida Avenue and 14th Street

The frontage along both Florida Avenue NE and 14th Street NE has an exceptionally large public parking area. The public parking area is 34 feet wide along Florida Avenue NE and 23 feet wide along 14th Street NE. The public parking areas are in addition to standard sidewalks along Florida Avenue and 14th Street NE. Currently these large public parking areas are very unkempt and covered with trash and debris. The space is used for parking cars off of a very wide curb cut off of Florida Avenue. See Diagram of Public Parking Area at **Tab 12.**

4. The Property Has No Access to a Public Alley

The Property has no public alley. Square 1049N is unusually small. The distance between 14th Street and Florida Avenue is very short and the Square is atypical shape and size due to Florida Avenue cutting through it. For this reason, there is not space for a public alley at the rear of the Property as is often the case.

5. Location at Eastern End of H Street Corridor

The Property is uniquely located at the eastern end of the H Street Corridor. The property is prominently located and serves as a gateway onto H Street NE. Directly adjacent to the Property is the Starburst Intersection, which is surrounded by large multi-story residential development. The Starburst Intersection is a highly trafficked, complex intersection at the intersection of H Street, Florida Avenue, Bladensburg Road, Benning Road, and Maryland Avenue NE.

B. Strict Application of the Zoning Regulations Results in Practical Difficulty to the Owner

1. Lot occupancy (§772)

Under §772 and §2604, the maximum permitted commercial lot occupancy is 100% and the maximum permitted residential lot occupancy is 80%. The proposed structure has a commercial lot occupancy of 99% on the first story and a residential lot occupancy of 99% on the upper floors.

Pursuant to the design requirements in the HS-Arts Overlay, 75% of the street wall must be constructed to the property line abutting the street of a height of not less than 25 feet. With respect to corner lots, an additional requirement is imposed that the building must be constructed to both property lines abutting public streets. In this instance, with the unique circumstance of having street frontage on all three sides, it is extremely difficult to design a structure that is limited to 80% lot occupancy on the second story while effectuating the design requirements associated with the H Street Overlay. Furthermore, as a matter of structural efficiency, the Applicant seeks to maintain the 99% lot occupancy on the residential floors. Due to the triangular shape of the lot, and the narrowness of the Property in the corners, particularly as the Property tapers to a point toward the eastern portion of the lot, the resulting structure is very inefficient with respect to use of space. Therefore, strict application of the zoning regulations with respect to lot occupancy at the Property would result in a practical difficulty to the Applicant.

The Property is uniquely capable of visually accommodating the residential lot occupancy of the proposed structure. Despite the 99% lot occupancy, the Property, which occupies the entire Square, has street frontage on all three sides and provides ample open space. Furthermore, as the only structure on the Square, it occupies only 33 % of the Square due to the exceptionally large public parking area along Florida Avenue and 14th Street NE. See Diagram of Public Parking Area at **Tab 12**. While the rear yard requirement accounts for lots with street frontage on all three sides of the Property, by measuring the rear yard from the center line of the street, the lot occupancy requirement does not. Due to the Property's exceptional shape and the unique composition of the block, the Property is uniquely capable of accommodating the lot occupancy proposed.

2. FAR (§771)

Under §771 and §2604, the maximum permitted FAR at the Property is 4.8 FAR. The proposed project has an FAR of 6.0. Because of the inefficiency of the structure toward the corners of the triangular lot, strict application of the zoning regulations with respect to FAR at the Property would result in a practical difficulty to the Applicant. The cone-shape toward the eastern end of the Property reduces the useful square footage that can be provided by the Applicant. While the awkward cone-shape contributes to toward FAR, it has limited practical use or marketability to potential residents. The cone-shape of the lot provides few options for locating the building core. Any attempt to comply with FAR creates practical difficulty in designing efficient double loaded corridors and layouts with plausible unit configurations. Therefore, the Applicant requests an increase in FAR of 1.2.

3. Height (§770)

Under §770 and §1324.13, the maximum permitted height is 70 feet. The proposed project has a height of 75 feet. With a 14-foot ground floor level to accommodate the minimum clear floor-to-ceiling height required under H Street Overlay design requirements, in conjunction with the design inefficiencies associated with a triangular lot described above, the Applicant seeks just an extra foot of height on each

residential floor to account for the practical difficulty associated with the Property. The extra foot is necessary to allow adequate ceiling space for the Applicant to provide properly located mechanical systems in what are otherwise atypically shaped units with inefficient layouts.

4. Parking (§2101.1)

Pursuant to §2101.1, the structure has a parking requirement of 29 parking spaces. Providing the required parking underground or at grade is not feasible without a significant reduction in the footprint of the building. The development potential of the lot is already substantially limited by the triangular shape and narrowness of this lot. Providing at grade parking would reduce the already limited buildable area at the Property and would be in direct conflict with specific H Street Overlay requirements. Similarly, providing underground parking would be extremely burdensome, if not impossible, for the Applicant. Underground parking at the facility would be extremely inefficient with respect to use of space and on a cost-per-parking space basis as a result of the size and dimensions of the Property. As shown on the attached diagram, due to the shape of the lot, in combination with the location of the existing curb cut and need to provide a compliant ramp and drive aisles, underground parking cannot be provided at the Property. See Parking Garage Diagram at **Tab 12**. For these reasons, an underground parking structure or surface parking would be unviable for all intents and purposes.

C. No Substantial Detriment to the Intent, Purpose and Integrity of the Zoning Plan

The requested variance is in furtherance of the public good and zoning regulations. The existing unkempt commercial structures and fenced in concrete will be replaced with a stunning, mixed-use structure that is in keeping with the surrounding pattern of development on this stretch of H Street NE. Based on the location of the Property adjacent to the complicated Starburst Intersection and with street frontage on all three sides, including two wide commercial avenues, the requested flexibility with respect to lot occupancy, FAR, and height will not be a substantial detriment to the Zone Plan or neighboring properties. Specifically with respect to lot occupancy, a reduction of the relief requested would create an

aesthetically awkward break in street frontage, which the H Street Overlay’s design requirements specifically try to prevent. The proposed structure suits the prominence of this corner as the gateway onto H Street. While the Applicant is seeking parking relief at the Property, the exceptional proximity to available transit options, including the new DC Streetcar, mitigates parking demand generated by the project. For these reasons, approval of the variance relief requested will not cause a detriment to the public good or zone plan.

VI. NATURE OF SPECIAL EXCEPITON RELIEF AND STANDARD OF REVIEW

Special exception relief is required to allow new construction on a lot greater than 6,000 sq. ft. See 11 DCMR 1320.4(f). Under D.C. Code §6-641.07(g)(2) and 11 DCMR §3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. 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 regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981 (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.*

VII. APPLICANT MEETS BURDEN OF PROOF FOR SPECIAL EXCEPITON RELIEF

1. New Construction on a Lot Greater than 6,000 sq. ft. (§1320.4)

Under 1325.1, the buildings, structures, and uses listed in §1320.4 and exceptions from the requirements of the H Street Overlay District are permitted by special exception if approved by the Board of Zoning Adjustment after public hearing, based on §3104, provided that several criteria are met.

- a. *The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;*

The proposed structure complies with the requirements and effectuates the intent of the §1324 and the H Street N.E. Strategic Development plan. Section 1324 ensures sufficient, and adequately high streetwalls; proper display windows; regular ingress and egress to enhance the pedestrian experience; 14-foot floor to ceiling heights at the ground level for preferred commercial spaces, and other design requirements to promote the goals of the HS-Arts Overlay. The H Street N.E. Strategic Development Plan designates the Property as part of the “Arts & Entertainment District.” The Development Plan states that “[r]ecommendations for this area include initiatives to attract new investment, encourage the renovation of storefronts and buildings, attract small office and apartment uses in upper story spaces, encourage infill development on vacant and underutilized sites.” See H Street Development Plan, p34. The hope, as indicated by the Development Plan, is that the area will provide support for cultural activities in the area with new restaurants to serve the needs of theatergoers and residential uses on upper-floors. See H Street Development Plan, p34. The proposed project, by providing a ground-floor restaurant and residential units above, will effectuate the intentions of both §1324 and the H Street Development Plan by enhancing the pedestrian experience, providing space for those enjoying the cultural activities, and bringing residents to support the prosperity of the businesses at the eastern end of the corridor.

- b. *The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board;*

The experienced team of architects has carefully designed a structure that promotes urban design features at the eastern end of the H Street Corridor. The Property is not in a historic district and is not a historic landmark.

- c. Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;*

The ingress and egress to the Property promotes safe and efficient pedestrian movement. In seeking parking relief, the Applicant will be closing an existing nonconforming curb cut on Florida Avenue NE, just off of the Starburst Intersection, that consistently causes conflicts with other vehicles and pedestrians. Furthermore, because the Property has street frontage on all three sides, the design requirement that there be a pedestrian entrances every 40 feet, on average, conflicts with a proposal that maintains the existing curb cut. Pedestrian/vehicular conflicts would be inevitable along Florida Avenue.

- d. Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;*

The area is both extremely walkable and transit-rich with the new DC Streetcar stopping at the Property, as well as bikeshare and carshare facilities. Thus, the demand for nearby street-parking will likely be unaffected by the proposed project. Furthermore, because the project is separated from nearby residences by Florida Avenue, H Street, and 14th Street NE, the impact on adjacent properties is minimal.

- e. Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and*

The residential and restaurant use will not adversely affect adjacent or nearby residences. Residential and ground-floor residential uses will not generate a substantial amount of noise. Furthermore, the Property is located at the complex Starburst Intersection, which already generates considerable noise, and the H Street Corridor, which is a bustling, active commercial corridor.

- f. The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N.E. Strategic Development Plan.*

Other than potentially a typical sign associated with the ground floor restaurant use and apartment use, the proposed project will not have any signs. The size, type, scale, and location of signs, if any, will be compatible with the surrounding neighborhood and consistent with the H Street N.E. Strategic Development Plan.

2. Roof Structure Setback (§§ 770.6 and 411.11)

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 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, as shown on the Roof Plan sheet included in the plans the roof structure will not meet the setback requirements in two very small locations. The Applicant is providing the greatest setbacks possible given the size and dimensions of the roof and the internal configuration of the proposed building. The roof structures meet the setback requirements except for two small locations facing Florida Avenue NE. Thus, the requested roof structure will not adversely affect the light and air of adjacent buildings and will not be visible from the surrounding streets, since each element has been located and designed to minimize visibility. 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.

VIII. 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,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP

By:

A handwritten signature in blue ink, appearing to read 'Merldith H. Moldenhauer', written over a horizontal line.

Merldith H. Moldenhauer

Eric M. Daniel

1912 Sunderland Place, N.W.

Washington, D.C. 20036

(202) 429-9000