

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**

**Application No. 18905 of Jemal's 9<sup>th</sup> Street Gang of 3, LLC**, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for a variance from the floor area ratio requirements of 11 DCMR § 771.2 to permit a density of 2.04 FAR for non-residential uses in the C-Z-A District where a maximum density of 1.5 FAR is permitted, and special exception relief under 11 DCMR § 2120.6 to provide zero off-street parking spaces where 21 spaces are required<sup>1</sup> in the C-2-A District at 1216-1226 9<sup>th</sup> Street, N.W. (Square 368, Lot 174) (the "Property").

**HEARING DATE:** March 10, 2015  
**DECISION DATE:** April 28, 2015

**DECISION AND ORDER**

**SELF-CERTIFIED**

Jemal's 9<sup>th</sup> Street Gang of 3, LLC (the "Applicant") submitted a self-certified application on October 14, 2014, for property located at 1216-1226 9<sup>th</sup> Street, N.W. (Square 368, Lot 174) (the "Property"). The Applicant seeks a variance from the floor area ratio requirements of 11 DCMR § 771.2 to permit a density of 2.04 FAR for non-residential uses on the Property where a maximum density of 1.5 FAR for non-residential uses is permitted, and special exception relief under 11 DCMR § 2120.6 to provide zero off-street parking spaces where 21 are required. Following a public hearing on March 10, 2015, and a public meeting on April 28, 2015, the Board of Zoning Adjustment ("Board" or "BZA") voted on April 28, 2015, to approve the application.

**Preliminary Matters**

*Notice of Application and Notice of Hearing.* By memoranda dated October 20, 2015, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP") (Exhibit 17), the District Department of Transportation ("DDOT") (Exhibit 18), Advisory Neighborhood Commission ("ANC") 2F (Exhibit 20), the ANC within which the Property is located, Single Member District 2F06 and the Councilmember for Ward 2 (Exhibit 19). A public hearing was scheduled for January 27, 2015. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the *D.C. Register*, and on October 30, 2015, sent such notice to the Applicant, ANC 2F and all owners of property within 200 feet of the Property.

On January 12, 2015, the Applicant submitted a letter to the Board requesting a postponement of the scheduled public hearing in order to have sufficient time to address comments raised by OP.

---

<sup>1</sup> The initial application requested a variance from the requirements of 11 DCMR § 2101.1 to provide zero off-street parking spaces where 14, instead of a variance, in order are required. The Applicant amended the application to seek special exception relief under 11 DCMR § 2120.6 to provide zero off-street parking spaces where 21 spaces are required.

(Exhibit 31) At the Board's public meeting on January 27, 2015, the Board's secretary announced that the hearing for the case was postponed and rescheduled to March 10, 2015.

Applicant's Case. Leila Batties and Jessica Bloomfield of Holland & Knight LLP represented the Applicant. Three persons testified on behalf of the Applicant at the public hearing: Paul Millstein of Douglas Development Corporation; Kevin Sperry of Antunovich Associates Architects, the Applicant's project architect; and Erwin Andres of Gorove/Slade Associates, the Applicant's transportation consultant. Mr. Andres testified as an expert in the area of transportation planning and traffic engineering.

OP Report. OP filed a report with the Board on March 3, 2015. (Exhibit 36.) In its report, OP stated that it was generally supportive of the application but was unable to provide a recommendation because sufficient information had not been provided related to the requested FAR relief.

DDOT Report. DDOT filed a report with the Board on March 3, 2015, stating that it had no objection to the requested parking variance. (Exhibit 37.)

ANC Report. ANC 2F submitted a report to the Board, dated December 15, 2014, stating that at its regularly scheduled public meeting on December 10, 2014, at which a quorum was present, ANC 2F voted unanimously to support the FAR and parking variance requests associated with the renovation and construction of the Property. (Exhibit 27.).

Persons and Organizations in Support. The Board received two letters in support of the application.

Alexander Padro, Executive Director of Shaw Main Streets, Inc., submitted a letter, dated March 2, 2015, in support of the project. (Exhibit 38.) Shaw Main Streets is a non-profit organization with both historic preservation and economic development in its mission. According to its letter, the organization has spearheaded the neighborhood's renaissance for the past 12 years. The letter also states that the combination of uses proposed for the Property perfectly matches the neighborhood's needs and will compliment and support other development in Blagden Alley and the immediately surrounding area. Surveys and polls conducted by the organization over the past 12 years indicate that restaurants are the number one most desired business type, with specialty bars in the top ten preferences. The demand for small office space is also high, since there is limited availability in the immediate area. The additional commercial density created by the project would accommodate new businesses, and generate additional daytime foot traffic supporting current and future retail activity. The letter also states that additional housing is not prioritized in the neighborhood's needs. By the end of 2016, there will be over 2,000 more units of housing in the neighborhood.

David Ansell, a resident at 910 M Street, NW and local Shaw blogger, also submitted a letter in support of the project asserting his satisfaction with the Applicant's historic preservation work at the Property and its ability to appropriately maintain the integrity of the abutting street and alley. (Exhibit 40.)

Party in Opposition. On January 11, 2015, Ahmed Ait-Ghezala, a resident at 915 M Street, NW, filed a petition for party status. Nine other persons joined in said petition – Colleen Corrigan,

George Tittman, Ramona Bowden, Carolyn Beebe, Edward Horvath, Barbara Schauer, Russell Sage, Gemma Sage, and Don Lipinski – all of whom live on M Street, NW, within 200 feet of the Property. (Exhibit 30.) At the public hearing, the Board granted the party status request and consolidated the individuals into a single party (the “Party in Opposition”). Ahmed Ait-Ghezala and Barbara Schauer represented the Party in Opposition at the public hearing.

The Board did not receive any others or testimony or letters in opposition to the application.

## **FINDINGS OF FACT**

### **The Property and the Surrounding Neighborhood**

1. The Property has a land area of approximately 7,757 square feet and is located on the west side of 9th Street, NW, between M and N Streets; Blagden Alley is at the rear of the Property. The Property, which is within the boundary of the Shaw and the Blagden Alley/Naylor Court Historic Districts, is zoned C-2-A. It is improved with three row structures that are contributing to the historic districts, which originally had a combined floor area of 10,748 square feet.
2. The three row structures are currently being renovated, pursuant to Building Permit No. B1403618, to connect with selective penetrations through party walls. The renovations also include the construction of an addition at the rear of the row structures.
3. The rear addition is a three-story concrete masonry warehouse-like structure that will connect the existing buildings to a two-story garage structure located northwest of the Property in Blagden Alley. The addition is set back from 9<sup>th</sup> Street such that it will not impose on the facades of the historic structures. The alley elevation will be set back to create a series of elevated and grade-level outdoor patios for the commercial users. The east and south facades of the historic structures, and the interior walls that enclose the east/south spaces, will remain. The less-significant rear wing and fire-damaged interior of the north building has been demolished. Existing wood floor framing will be reinforced to provide increased structural capacity, and new steel framing and wood joists will add structure to the addition. All new window openings will be accented with black channel steel frames and wood planks.
4. The renovations are the subject of H.P.A. #13-215 and were approved by the Historic Preservation Review Board (“HPRB”) on April 25, 2013. In accordance with this approval, the Applicant subdivided the respective lots for the row structures into a single record lot (Lot 174). At the start of construction, the Applicant did not have any specific tenants for the site and didn’t know how the project would lease, in terms of the building layout and design. As such, the building was designed matter of right with flexible interior space, which included a high volume of space between the second and third floors of the building.
5. Despite marketing the Property for approximately a year, the Applicant was unable to lease the space. The owners of the restaurant and specialty bar planned for the building

advised the Applicant that the building needs to be re-designed in order to be more energy efficient; the volume of space in the current design is too expensive to heat and cool. In response, the project was re-designed to fill in the ceiling between the second and third floors, creating the need for FAR relief.

6. The plans for the approved renovations provide for 15,702 square feet of floor area within the building, of which 11,632 square feet is counted toward the project's FAR, which equals 1.46 FAR.
7. The Property is surrounded by a mix of uses. North of the Property, along 9th Street, is a row structure used as an office (1228 9th Street, the Bell Architects); a vacant row structure (1230 9th Street); WagTime dog day care center (1232 9th Street); Long View Art Gallery (1234 9th Street); a bar, Lost and Found (1240 9th Street); and The Colonel, a multifamily building with a ground floor restaurant currently under construction (1250 9th Street). Abutting the Property to the south is a vacant parcel approved for a five-story residential project, a public alley, and a commercial building that houses a barber shop and liquor store. The Walter E. Washington Convention Center is opposite the Property on the east side of 9th Street. Just across Blagden Alley, are the restaurant Rogue 24 and the La Colombe coffee house. The Applicant owns the buildings leased by Rogue 24, La Colombe and Longview Art Gallery.

### **The Applicant's Project**

8. Under this application, the Applicant proposes to increase the overall floor area of the project from 15,702 square feet to 19,898 square feet (4,196 additional square feet). Of the overall floor area, only 15,828 square feet are counted toward the floor area ratio, which equals an FAR of 2.04. The building program includes a yoga studio consisting of 2,197 square feet in the cellar and 2,718 square feet on the first floor of the building; a restaurant with 1,378 square feet in the cellar and 2,800 square feet on the first floor of the building; a specialty bar consisting of 2,098 square feet on the second floor of the building; and 6,923 square feet of office on the second and third floors of the building.
9. The yoga studio will be accessed from 9<sup>th</sup> Street. The restaurant can be accessed from either 9<sup>th</sup> Street or Blagden Alley, but the main entrance will be on Blagden Alley. The primary entrance for the specialty bar will be on Blagden Alley, although there will also be a secondary access via a small stair that comes out to 9<sup>th</sup> Street. The office uses on the second and third floors of the building will be accessed via a stair from 9<sup>th</sup> Street.
10. The building does not currently have any off-street parking spaces. Pursuant to 11 DCMR § 2101.1, twenty-one off-street parking spaces are required for the project. The Applicant requested special exception relief, pursuant to 11 DCMR § 2120.6, in order to provide zero off-street parking spaces.
11. The building does not currently have any loading facilities, and the Applicant did not seek relief for loading under this application.

## **FAR Variance**

12. The Applicant seeks a variance from Section 771.2 of the Zoning Regulations to permit a density of 2.04 FAR for non-residential uses on the Property where a maximum density of 1.5 FAR for non-residential uses is permitted. The additional floor area resulted from filling in the ceiling on the second floor of the building, which generated an additional 3,577 square feet of usable floor area--increasing the useable floor area from 7,258 square feet to 10,835 square feet.
13. In order for the Board to grant an area variance, the Applicant must meet the following three-prong test: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan. The Applicant contends that it has met its burden of proof.

## **Exceptional and Extraordinary Conditions**

14. In its pleadings and at the public hearing, the Applicant asserted that there are several factors causing the Property to be unique or otherwise affected by exceptional or extraordinary conditions. The Property is improved with three row houses that are contributing structures to the Shaw and Blagden Alley/Naylor Court Historic Districts. The parcels for the three row houses have been subdivided into a single lot and the row houses have been combined into a single building that includes an addition at the rear.
15. The construction of the row houses and rear addition are currently underway, pursuant to Building Permit No. B1403618. Because the row houses are contributing structures to the Historic Districts, the renovations were subject to review and approval by the Historic Preservation Review Board ("HPRB"). In granting its approval for the building renovations, HPRB requested the elevator for the development be located in the middle of the building, away from the historic structures. HPRB also requested that active uses be pushed toward the existing windows on the second and third floors of the building, which dictated the location of the building stair. The location of both the elevator and stair affect the circulation and building efficiency.
16. All of the floors in the historic structures are at different levels. Additionally, the Property fronts on both 9<sup>th</sup> Street and Blagden Alley, which have different grade elevations. As a result, multiple stairs and ramps are required to circulate throughout the building, which decreases the building efficiency. In fact, the building can only achieve a building efficiency of 62% with the approved matter-of-right renovations, and a building efficiency of 68% with the proposed 2.04 FAR. Typically, a non-residential building has a building efficiency of 85 percent.

## **Practical Difficulty**

17. The Applicant submits that, due to the aforementioned conditions, the proposed commercial use of the Property cannot be accomplished by strictly adhering to the

requirements in Section 771.2 of the Zoning Regulations, resulting in a practical difficulty for the Applicant.

18. The currently approved plans for the project comply with the FAR requirements but provide for only a partial ceiling between the second and third floors of the building. The resulting large volume of space between the floors is not energy efficient, making it too expensive to heat and cool.
19. Based on the record, because of the unique and exceptional conditions affecting the Property, it is not possible to comply with the FAR requirement in Section 771.2 and achieve the building efficiency of a typical non-residential building, which is 85%. According to the Efficiency Study provided by the Applicant, the matter of right development currently approved for the Property yields a building efficiency of 62% with 7,258 square feet of useable floor area. (Exhibit 42.) The plans under this application yield a building efficiency of 68% with 10,835 square feet of useable floor area. (Exhibit 42.) On the other hand, if the Property were vacant (or improved with structures that could be razed), it would yield a building efficiency of 85% with only 9,800 square feet of useable floor area.
20. As depicted in the Efficiency Study, under the approved matter of right plan, the second and third floors of the building are limited to 3,858 square feet and 1,118 square feet, respectively. Only 2,284 square feet of floor area is usable on the second floor (59% of the total second floor area), and only 324 square feet of floor area is usable on the third floor (29% of the total third floor area). Under this configuration the bulk of the building's second floor is divided by the stair tower, creating a bifurcated space facing 9<sup>th</sup> Street that is not conducive for an active use as desired by HPRB, and an extremely narrow corridor on the building's south side that is occupied primarily by elements of the building core. The layout for the third floor is even more problematic due to its extremely small size and the inefficient building core that results in entirely unusable and wasted space.
21. Although additional matter-of-right density could be achieved on the Property through the construction of residential uses on the third floor of the building, providing residential use at the Property would be practically difficult for the following reasons:
  - a. Access. The project is designed with one elevator off of Blagden Alley to service the commercial uses on the Property. For the construction of residential units, the Building Code would require a second elevator off of 9<sup>th</sup> Street and a handicap lift to provide access up from the sidewalk to the first floor residential lobby. Residential use of the Property would also require shared use of the stairwells by residential tenants, office employees, and commercial patrons.
  - b. Building Code, Core Factor and Plumbing Chases. Providing two elevators would result in an even less efficient building with an exceptionally high core factor and a configuration that would not meet the 75-foot common path of egress required by the Building Code. The added network of residential

bathroom and kitchen plumbing throughout the building would need to be collected and routed down through commercial spaces, losing headroom and floor space for the commercial tenants below.

- c. Leasing, Amenities and Parking. Given the limited size of the building, a design that incorporates residential units would necessarily forego amenities commonly available in today's residential market, thus reducing residential marketability. Residential tenants would have to walk trash down to the ground floor of the building because the building could not accommodate a trash chute or a separate residential trash room. Approximately three residential parking spaces would be required in addition to the commercial parking, but could not be provided.

#### No Harm to Public Good or Zone Plan

22. The requested relief can be granted without harm to the public good and without threat to the integrity of the Zone Plan. The additional FAR is within the approved building's envelope, which is compatible with the scale and design of the surrounding structures and uses. The additional FAR would not affect the facades of the historic structures or the mass of the building, but would simply allow the Applicant to provide desirable and functional commercial and office space for local businesses.
23. According to the letter by Shaw Main Streets (Exhibit 38), the combination of uses proposed for the Property perfectly matches the neighborhood's needs and will compliment and support other development in Blagden Alley and the immediately surrounding area. Surveys and polls conducted by the organization over the past 12 years indicate that restaurants are the number one most desired business type, with specialty bars in the top ten preferences. The demand for small office space is also high, since there is limited availability in the immediate area. The additional commercial density created by the project would accommodate new businesses, and generate additional daytime foot traffic supporting current and future retail activity. The letter also states that additional housing is not prioritized in the neighborhood's needs. By the end of 2016, there will be over 2,000 more units of housing in the neighborhood.

#### Party in Opposition Testimony on Variance

24. The Party in Opposition argued that the application does not meet the three-part test for granting the requested FAR variance.<sup>2</sup>
25. As it relates to the first prong of the variance test, the Party in Opposition testified that the Property is not unique or affected by an exceptional and extraordinary condition because, like the Property, many of the buildings in the Shaw and Blagden Alley/Naylor Court Historic Districts are contributing structures.
26. The Party in Opposition also argued that there is no practical difficulty in complying with the FAR requirements because the Applicant already has an approved, viable, matter-of-

---

<sup>2</sup> The party in Opposition mistakenly referred to the project FAR as 2.07, instead of 2.04.



right development project under construction. They argued that the location and design of the building's core elements and the resulting building inefficiency is a self-created hardship; and the building inefficiency is not a factor that can be considered when evaluating a request for a variance. The Party in Opposition dismissed the claim that it would be practically difficult to construct residential units in the project. They contend that the project could have been designed with the necessary access and service facilities to accommodate both non-residential and residential uses, and that the lack of amenities for the residential units is not a practical difficulty for the Applicant.

27. Finally, the Party in Opposition argued that the density increase from 1.47 to 2.04 FAR effectively permits the Property to be developed with C-3-A high density commercial.
28. On rebuttal, the Applicant refuted this assertion by stating that in the C-3-A District the maximum permitted FAR is 4.0, of which 2.5 FAR can be for non-residential uses. The Applicant also noted that the proposed project is below the maximum FAR permitted in the C-2-A District, which is 2.5 and 3.0 for a residential project utilizing a 20% density bonus under the Inclusionary Zoning regulations.

### **Special Exception Relief for Parking**

29. The Applicant proposes to have zero parking spaces for the project where 21 parking spaces are required for the proposed non-residential uses at the Property.
30. Pursuant to 11 DCMR § 2120.6, the Board may grant relief from all or part of the parking requirements if the owner demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The Board shall grant only the amount of relief needed to alleviate the difficulty proved. The applicant shall also demonstrate compliance with the general special exception standard set forth in 11 DCMR § 3104 and shall address each of the following criteria as part of its presentation to the Board:
  - a. Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
  - b. Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;
  - c. Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and
  - d. 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 of Columbia Department of Transportation.



31. In its pleadings, the Applicant contends that providing the required on-site parking spaces would require the Applicant to demolish major portions of the historic structures. Further, if parking were provided through the courtyard for the project, the Applicant would have to relocate an underground transformer vault that was installed to provide power to the Property and eliminate the commercial uses in the cellar and first floor of the project. Parking would also not be feasible from 9<sup>th</sup> Street because (i) providing access would require a new curb cut from 9<sup>th</sup> Street which is not likely to be approved by DDOT, (ii) the only feasible entry point is south of the brick carriage house, which has been preserved for historic purposes, and (iii) the entry would need to be at least 20 feet wide and this space is not available. Below-grade parking would also require the majority of the building's floor plate to be dedicated to drive aisles and parking spaces, yielding approximately six parking spaces per level and requiring four levels below grade to achieve 21 parking spaces.
32. The Applicant addressed the other criteria in Section 2120.6 as follows:
- a. The office tenants will have approximately 46 employees; the specialty bar will have 10 to 20 employees; the restaurant will have a seating capacity of 141 seats and 25 to 40 employees; and the yoga studio will have capacity for 56 persons. The floor plan for the specialty bar has not been designed so the Applicant could not testify to the maximum occupancy for that use, which will consist of approximately 2,098 square feet on the second floor of the building. The office uses are expected to be day time uses. The restaurant and specialty bar will serve patrons in the evening. The yoga studio is expected to be open from the morning to early evening.
  - b. Mr. Andres testified that based on the census data for journey to route information for the neighborhood, approximately 25% of the employees for the project will have an opportunity to drive to work, and this potential traffic impact is addressed with the transportation demand management measures proffered by the Applicant. Mr. Millstein testified that one of the office tenants' existing location has no off-street parking and most of its employees bike or walk to work. The specialty bar proposed for the Property previously operated inside the Passenger on 7<sup>th</sup> Street, a few blocks from the Property, and had no parking. Its patrons walked to the establishment.
  - c. There are several public parking garages a few blocks south of the Property, and there is a public parking garage at the O Street Market, located 2.5 blocks north of the Property. Valet parking will be available on 9<sup>th</sup> Street for the restaurant patrons. A letter from U Street Parking, which currently provides valet parking services for businesses on 9<sup>th</sup> Street, was submitted into the record. (Exhibit 41.) The letter states that U Street Parking utilizes garages located at the Cambria Suites Hotel at 899 O Street, NW, and CityCenterDC at 870 9<sup>th</sup> Street, NW, for valet operations on 9<sup>th</sup> Street. The parking garage at the Cambria Suites Hotel has 80 parking spaces, and CityCenterDC has capacity for 1,500 parking spaces.

- d. The Applicant submitted a Parking and Loading Statement (Exhibit 34D.) Property is located approximately 0.1 miles from the Mount Vernon Square Metrorail Station, which services the Green and Yellow lines, and approximately 0.5 miles from the McPherson Square Metrorail station, which services the Orange, Blue, and Silver lines. The Property is within convenient walking distance of numerous Metrobus routes, including the 64, 70, 79, G2, and G8 lines, which are all located within 0.2 miles of the Property. Eight permanent car-share locations are located within 0.4 miles of the Site. Taxis, Car2Go vehicles, and other point-to-point transportation services are easily accessed throughout the neighborhood. Nearby Capital Bikeshare docks are located adjacent to the Mount Vernon Square Metrorail station and at the intersection of 11<sup>th</sup> and M Streets, N.W.

### **Community Outreach**

33. The Applicant engaged in significant community outreach with ANC 2F and other neighborhood residents and stakeholders, including the Party in Opposition. The Applicant learned about the petition in opposition of the project after obtaining unanimous support from ANC 2F on December 10, 2014. Immediately after learning about the petition in January, the Applicant reached out to every person on the petition through certified mail and hand delivered mail. The Applicant hosted a community meeting in Blagden Alley on February 11, 2015, where it presented the project and answered questions from the community. The Applicant attended a meeting on February 18, 2015 hosted by the Single Member District Commissioner for ANC 2F06, where it also presented the project and invited questions and comments about any potential impacts to Blagden Alley. The Applicant continued to reach out through the Office of Planning, and forwarded the petitioners copies of its prehearing submission materials, which prompted further dialogue and conversation with the community, including an individual meeting with Ms. Schauer on March 9, 2015, a day before the public hearing.
34. As a result of its discussions with the community, the Applicant proffered the following list of conditions to address the comments raised about loading operations and vehicular traffic in Blagden Alley:
  - a. Loading for the Property shall be restricted as follows:
    - i. Loading hours shall be restricted to 7:30 am to 4:00 pm Monday through Friday, and 10:00 am to 4:00 pm on Saturdays and Sundays, excluding trash service;
    - ii. No delivery trucks over 30 feet shall be allowed to make deliveries in the alley, with the exception of construction vehicles; and
    - iii. Delivery vehicles shall enter Blagden Alley from N Street only.
  - b. The Applicant agrees to work with ANC 2F to establish a process for regularly monitoring the circulation and loading operations of Blagden Alley

and, to the extent necessary, establish a comprehensive circulation and management plan for the alley.

- c. Valet parking will be available for the restaurant use within the project that will be provided curbside along 9<sup>th</sup> Street and not within Blagden Alley. The valet parking company will be prohibited from parking vehicles within Blagden Alley and will utilize off-street parking locations in the vicinity of the development.
- d. Employees of the project shall be prohibited from parking vehicles in Blagden Alley.
- e. The project shall provide at least six long-term covered and secure bicycle parking spaces and ten short-term bicycle spaces for the proposed office uses on the Property, as set forth in the DDOT recommendation.

### **Office of Planning Testimony**

- 35. The Office of Planning testified that it is generally supportive of the project. OP acknowledged that additional FAR is needed to support the proposed re-use of the Property and that it is practically difficult to have a residential use in the building. OP also agreed that the project is well below the typical building efficiency for a non-residential project that could be developed on the Property as a matter of right, despite have more useable floor area than a project that could be developed a matter of right if the Property were vacant. Furthermore, OP testified that the proposed building is within the permitted FAR limits of the C-2-A District and the proposed FAR is not an unreasonable request.

### **DDOT Testimony**

- 36. DDOT testified in support of the requested parking relief, subject to the following conditions stated in its report:
  - a. The Applicant will continue to coordinate with DDOT to (i) develop a loading management plan consistent with DDOT standards; (ii) achieve approvals for improvements to public space that meet DDOT standards; (iii) accommodate all utility vaults on private property; and (iv) provide greater specificity regarding the design of long-term bicycle parking.
  - b. The Applicant will incorporate the following TDM measures:
    - i. Install of a TransitScreen displaying real-time transportation schedules.
    - ii. Establish a marketing program highlighting transportation alternatives.

- iii. Provide at least six long-term (covered and secure) bicycle parking spaces and ten short-term bicycle parking spaces.
37. DDOT's support of the parking relief was also contingent upon the conditions proffered by the Applicant, except that DDOT prefers the Applicant not restrict trucks from loading only from N Street. DDOT also requested six long-term, secure, and covered bicycle parking spaces, and noted that short-term bicycle parking spaces should be publicly accessible and not just for the proposed office uses as proffered by the Applicant. Also, while DDOT does not consider valet parking a TDM measure, the Agency acknowledged that valet service could be effective in reducing on-street parking.

## CONCLUSIONS OF LAW

### **FAR Variance from FAR Requirements in §771.2**

#### Standard of Review

1. Under section 8 of the Zoning Act (D.C. Code § 6-641.07(g)(3) (2012 Repl.), the Board is authorized to grant an area variance where it finds that three conditions exist: "(1) the property is unique because, *inter alia*, of its size, shape or topography; (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 zoning plan." *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. D.C. 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. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).
2. In this case, the Applicant seeks a variance from 11 DCMR § 771.2 to permit a density of 2.04 FAR for non-residential uses in the C-2-A District where a maximum density of 1.5 FAR is permitted. The Board concludes that the Applicant has met its burden of proof for an area variance from 11 DCMR §771.2 for the reasons discussed below.

#### Exceptional and Extraordinary Conditions

3. The Board finds that the Property is affected by exceptional and extraordinary conditions for the reasons discussed below.

4. The Property is improved with three row structures that are contributing to the Shaw and Blagden Alley/Naylor Court Historic Districts. The structures were on three separate lots that the Applicant subdivided into a single record lot. A rear addition and other renovations to connect the structures have been approved by HPRB and are currently under construction.
5. The construction of the row houses and rear addition are currently underway, pursuant to Building Permit No. B1403618. Because the row houses are contributing structures to the Historic Districts, the renovations were subject to review and approval by the Historic Preservation Review Board (“HPRB”). In granting its approval for the building renovations, HPRB requested that the elevator for the development be located in the middle of the building, away from the historic structures. HPRB also requested that active uses be pushed toward the existing windows on the second and third floors of the building, which dictated the location of the building stair. The location of both the elevator and stair affect the circulation and building efficiency.
6. All of the floors in the historic structures are at different levels. Additionally, the Property fronts on both 9<sup>th</sup> Street and Blagden Alley, which have different grade elevations. As a result, multiple stairs and ramps are required to circulate throughout the building, which decreases the building efficiency. In fact, the building can only achieve a building efficiency of 62% with the approved matter-of-right renovations, and a building efficiency of 68% with the proposed 2.04 FAR. Typically, a non-residential building has a building efficiency of 85 percent.

#### Practical Difficulty

7. The Board finds that due to the unique and exceptional conditions affecting the Property, strict adherence to the requirements in Section 771.2 of the Zoning Regulations, would result in a practical difficulty for the Applicant as discussed below.
8. The currently approved plans for the project comply with the FAR requirements, but provide for only a partial ceiling between the second and third floors of the building. The resulting large volume of space between the floors is not energy efficient, making it too expensive to heat and cool.
9. Based on the record, because of the unique and exceptional conditions affecting the Property it is not possible for the Applicant to comply with the FAR requirement in Section 771.2 and achieve the building efficiency of a typical non-residential building, which is 85%. According to the Efficiency Study provided by the Applicant, the matter of right development currently approved for the Property yields a building efficiency of 62% with 7,258 square feet of useable floor area. The plans under this application yield a building efficiency of 68% with 10,835 square feet of useable floor area. On the other hand, if the Property were vacant, it would yield a building efficiency of 85% with only 9,800 square feet of useable floor area.
10. As depicted in the Efficiency Study, under the approved matter of right plan, the second and third floors of the building are limited to 3,858 square feet and 1,118 square

feet, respectively. Only 2,284 square feet of floor area is usable on the second floor (59% of the total second floor area), and only 324 square feet of floor area is usable on the third floor (29% of the total third floor area). Under this configuration the bulk of the building's second floor is divided by the stair tower, creating a bifurcated space facing 9<sup>th</sup> Street that is not conducive for an active use as desired by HPRB, and an extremely narrow corridor on the building's south side that is occupied primarily by elements of the building core. The layout for the third floor is even more problematic due to its extremely small size and the inefficient building core that results in entirely unusable and wasted space.

11. Although additional matter-of-right density could be achieved on the Property through the construction of residential uses on the third floor of the building, providing residential use at the Property would be practically difficult for the following reasons:
  - a. Access. The project is designed with one elevator off of Blagden Alley to service the commercial uses on the Property. For the construction of residential units, the Building Code would require a second elevator off of 9<sup>th</sup> Street and a handicap lift to provide access up from the sidewalk to the first floor residential lobby. Residential use of the Property would also require shared use of the stairwells by residential tenants, office employees, and commercial patrons.
  - b. Building Code, Core Factor and Plumbing Chases. Providing two elevators would result in an even less efficient building with an exceptionally high core factor and a configuration that would not meet the 75-foot common path of egress required by the Building Code. The added network of residential bathroom and kitchen plumbing throughout the building would need to be collected and routed down through commercial spaces, losing headroom and floor space for the commercial tenants below.
  - c. Leasing, Amenities and Parking. Given the limited size of the building, a design that incorporates residential units would necessarily forego amenities commonly available in today's residential market, thus reducing residential marketability. Residential tenants would have to walk trash down to the ground floor of the building because the building could not accommodate a trash chute or a separate residential trash room. Approximately three residential parking spaces would be required in addition to the commercial parking, but could not be provided.

*No Substantial Detriment to Public Good or Substantial Impairment of the Zone Plan*

12. The Board finds that the requested FAR relief can be granted without harm to the public good and without threat to the integrity of the Zone Plan as discussed below.
13. The additional FAR is within the approved building's envelope, which is compatible with the scale and design of the surrounding structures and uses. The additional FAR would not affect the facades of the historic structures or the mass of the building, but



would simply allow the Applicant to provide commercial and office space for local businesses, which is desired by persons in the neighborhood.

**Special Exception Relief for Parking**

14. The Board concludes that the Project meets the standards set forth in 11 DCMR § 2120.6 such that special exception approval for parking relief can be granted as discussed below.
15. Providing the required on-site parking spaces would result in significant architectural and structural difficulties in maintaining the structures' historic integrity and appearance because it would require the Applicant to demolish major portions of the historic structures.
16. The office tenants proposed for the building will have approximately 46 employees; the specialty bar will have 10 to 20 employees; the restaurant will have a seating capacity of 141 seats and 25 to 40 employees; and the yoga studio will have capacity for 56 persons. The floor plan for the specialty bar has not been designed so the Applicant could not testify to the maximum occupancy for that use, which will consist of approximately 2,098 square feet on the second floor of the building. The office uses are expected to be day time uses. The restaurant and specialty bar will serve patrons in the evening. The yoga studio is expected to be open from the morning to early evening.
17. Based on the census data for journey to route information for the neighborhood, approximately 25% of the employees for the project will have an opportunity to drive to work, and this potential traffic impact will be mitigated by the transportation demand management measures proffered by the Applicant.
18. There are several public parking garages within a few blocks of the Property, including CityCenterDC to the south and the O Street Market to the north available for persons who opt to drive to the Property. Also, valet parking will be available on 9<sup>th</sup> Street for the restaurant patrons, subject to review and approval by the Public Space Committee.
19. The Property is located approximately 0.1 miles from the Mount Vernon Square Metrorail Station, which services the Green and Yellow lines, and approximately 0.5 miles from the McPherson Square Metrorail station, which services the Orange, Blue, and Silver lines. The Property is within convenient walking distance of numerous Metrobus routes, including the 64, 70, 79, G2, and G8 lines, which are all located within 0.2 miles of the Property. Eight permanent car-share locations are located within 0.4 miles of the Site. Taxis, Car2Go vehicles, and other point-to-point transportation services are easily accessed throughout the neighborhood, as are Capital Bikeshare docks.



### **Great Weight to ANC and OP**

20. Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 2F recommended approval of the requested relief. (Exhibit 27.) At the request of the Party in Opposition, the Applicant notified ANC 2F of the amended request for parking relief. The Board accords the ANC recommendation the great weight to which it is entitled and concurs in its recommendation.
21. The Board is required under Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP recommendations. In this case, OP stated its general support of the application, even though it did not formally support the requested FAR relief. The Board concurs with OP's general support for the project.
22. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception approval, pursuant to 11 DCMR §§ 3104.1 and 2120.6, respectively, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.
23. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for an area variance from 11 DCMR § 771.2, that there exists an exceptional or extraordinary situation or condition related to the Property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT** to the following **CONDITIONS**:

1. Loading for the Property shall be restricted as follows:
  - a. Loading hours shall be restricted to 7:30 am to 4:00 pm Monday through Friday, and 10:00 am to 4:00 pm on Saturdays and Sundays, excluding trash service.
  - b. No delivery trucks over 30 feet shall be allowed to make deliveries in the alley, with the exception of construction vehicles.

2. The Applicant shall work with ANC 2F to establish a process for regularly monitoring the circulation and loading operations of Blagden Alley and, to the extent necessary, establish a comprehensive circulation and management plan for the alley.
3. Valet parking shall be available for the restaurant uses within the project that will be provided curbside along 9th Street and not within Blagden Alley. The valet parking company will be prohibited from parking vehicles within Blagden Alley and will utilize off-street parking locations in the vicinity of the development.
4. Employees of the project shall be prohibited from parking vehicles in Blagden Alley.
5. The project shall provide at least six long-term covered and secure bicycle parking spaces and ten publicly accessible short-term bicycle spaces.
6. The Applicant shall continue to coordinate with DDOT to (i) develop a loading management plan consistent with DDOT standards; (ii) achieve approvals for improvements to public space that meet DDOT standards; (iii) accommodate all utility vaults on private property; and (iv) provide greater specificity regarding the design of long-term bicycle parking.
7. The Applicant shall incorporate the following TDM measures into the project:
  - a. Install of a TransitScreen displaying real-time transportation schedules.
  - b. Establish a marketing program highlighting transportation alternatives.
  - c. Provide at least six long-term (covered and secure) bicycle parking spaces and ten publicly accessible short-term bicycle parking spaces.

**VOTE:**

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**ATTESTED BY:**

\_\_\_\_\_  
**Sara Bardin**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:**\_\_\_\_\_

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD. PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**

**BZA APPLICATION NO. 18905**

As Director of the Office of Zoning, I hereby certify and attest that on \_\_\_\_\_, 2015, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Leila Jackson Batties, Esq.  
Holland & Knight LLP  
800 17th Street, N.W., Suite 100  
Washington, D.C. 20006

Matthew Le Grant  
Zoning Administrator  
Building and Land Regulation Administration  
Department of Consumer and Regulatory Affairs  
1100 4th Street, S.W., Room 3100  
Washington, DC 20024

Ahmed Ait-Ghezala  
915 M Street, N.W.  
Washington, D.C. 20001

Eric Shaw, Acting Director  
D.C. Office of Planning  
1100 4<sup>th</sup> Street, S.W., Suite 650E  
Washington, D.C. 20024

Chairperson John Fanning  
Advisory Neighborhood Commission 2F  
5 Thomas Circle, N.W.  
Washington, D.C. 20005

Acting General Counsel  
Department of Consumer and Regulatory Affairs  
1100 4th Street, S.W., 5th Floor  
Washington, D.C. 20024

The Honorable Jack Evans  
Councilmember – Ward 2  
1350 Pennsylvania Avenue, N.W., Suite 106  
Washington, D.C. 20004

**ATTESTED BY:**

\_\_\_\_\_  
**Sara Benjamin Bardin**  
**Director, Office of Zoning**