

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

Preliminary Statement of Compliance with Burden of Proof

This statement is submitted by Jemal's 9th Street Gang of 3 LLC (the "Applicant"), the owner of Lot 174 in Square 368, which has a street address of 1218 9th Street, N.W. (the "Property") and is in the C-2-A District. The Applicant seeks a variance from the floor area ratio requirements in Section 771.2 of the Zoning Regulations, which permits a maximum FAR of 1.5 for non-residential uses in the C-2-A District. The Applicant proposes to expand the floor area of the rowhouse structures and connect them internally and through a rear addition in order to accommodate commercial uses. The proposed overall FAR is 2.07, all of which will be for non-residential uses. The Applicant also seeks a variance from the off-street parking requirements in Section 2101.1 of the Zoning Regulations, which requires 14 parking spaces for the proposed commercial uses. The Applicant proposes to provide no off-street parking spaces. The Property is within the boundaries of ANC 2F.

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 additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Property

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. The Property is within the boundary of the Shaw and the Blagden Alley/Naylor Court Historic Districts and is improved with three rowhouses that are contributing structures with these historic districts. The Property is zoned C-2-A. Immediately north of the Property along 9th Street are an occupied rowhouse (1228 9th Street, Bell Architects),

a vacant rowhouse (1230 9th Street); WagTime dog day care center (1232 9th Street); Long View Art Gallery (1234 9th Street); a row house with ground floor retail (1240 9th Street); and a multi-family building that is under construction (1250 9th Street). Abutting the Property on the south is a vacant parcel approved for a five-story residential project. Further south, on the other side of the public alley, is 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.

The renovations currently underway, pursuant to Building Permit No. B1403618, were 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 the approval, the three lots for the rowhouses were combined into a single record lot and the structures will connect both internally with selective penetrations through party walls and with a rear addition. The proposed connection and expansion of the structures are necessary to accommodate the prospective commercial use of the Property. As shown on Sheet 5 of the enclosed plans, the current renovations provide for 4,070 square feet of floor area at the cellar level, 6,656 square feet of floor area at the ground level of the building, 3,858 square feet of floor area on the second level of the building, and 1,118 square feet of floor area on the third floor of the building. The total floor area, including the cellar, for the current building renovations is 15,702 square feet. Of that 11,632 square feet is counted toward the FAR, which equals an FAR of 1.46.

II. Description of Development Proposal and Zoning Relief

The Applicant seeks an area variance to permit an FAR of 2.07 for non-residential uses on the Property where a maximum FAR of 1.5 is permitted in the C-2-A District under Section 771.2 of the Zoning Regulations, in order to expand the floor area of the building from 15,702 square

feet to 20,095 square feet. The additional floor area will be distributed on each level of the building as follows:

- Cellar will remain at 4,070 square feet;
- First floor will increase from 6,656 square feet to 6,817 square feet;
- Second floor will increase from 3,858 square feet to 5,558 square feet;
- Third floor will increase from 1,118 square feet to 3,650 square feet;

From the foregoing, 16,025 square feet will count toward the project FAR.

The Applicant proposes to provide zero off-street parking spaces for the project, where 14 spaces are required pursuant to Section 2101.1 of the Zoning Regulations.

III. Project Meets Standard for Approving Area Variances

The Project requires a variances from Sections 771.2 and 2101.1 of the Zoning Regulations. 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 or exceptional and undue hardship; 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, 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.

A. The Property Affected by an Exceptional 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. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990).

In this case, the Property is improved with three rowhouses that are Contributing Structures within the Shaw and Blagden Alley / Naylor Court Historic Districts. The lots for the rowhouses were subdivided into a single record lot, a rear addition and other renovations to connect the rowhouses internally have been approved for the Property and are currently under construction. While additional density can be achieved through the residential use of the Property, the Property is on a section of 9th Street – mid-block between M and N – where there are no other residential uses in the existing rowhouses. The rowhouse immediately to the north is a commercial office and Barre studio; the next rowhouse is vacant; the next rowhouse is the WagTime dog day care center; and the rowhouse on the other side of the Long View Art Gallery is vacant, but expected to have ground floor retail.

B. Strict Application of the Zoning Regulations Would Cause Practical Difficulty or Exceptional and Undue Hardship.

1. FAR Relief

The additional FAR sought by the Applicant results primarily from the build out of the second and third floors. The Applicant seeks to build out the second and third floors in order to make the space suitable to lease as commercial space. To comply with the Zoning Regulations, the Applicant would need to limit the second and third floors of the building to 3,858 square feet and 1,118 square feet, respectively. However, as illustrated on Sheet 5 of the enclosed plans,

currently, the bulk of the second floor would be divided by the building stair and the remaining portion is a narrow corridor occupied primarily by elements of the building core. These features make for a very inefficient floor plate. The current plans for the third floor are even more problematic because the third floor is utilized almost completely by elements of the building core, making the space practically unusable altogether.

The Applicant would be able to achieve additional density under the Zoning Regulations with the construction of residential units in lieu of a non-residential use. However, the residential use of the building is impractical given the size, age, and location of the rowhouses. For instance, based on the current maximum building height of 50 feet, only two upper floors of residential would be possible. Creating desirable residential units within the current configuration would not be feasible given the natural daylight and egress corridor code requirements. A corridor connecting the proposed stairwells and elevator would create interior residential units barred from windows on the north due to the zero-lot line and on the south windows would have to open onto the egress corridor to receive borrowed light which is not permitted by the Building Code. Alternatively larger units could be provided to mitigate the natural light requirement but this would reduce the residential unit count, and result in unusually large units that would be extremely difficult to rent. As such, it is at least practically difficult, and more likely impossible, for the Applicant to build a residential project that is viable given the building constraints and the market conditions.

2. Off-Street Parking Relief

As described above, Section 2101.1 requires 14 off-street parking spaces to accommodate the proposed commercial for the project. Section 2116.2 of the Zoning Regulations requires parking spaces to be located either within a parking garage or on an open area on the same lot. However, due to the Property's size and dimensions, its location within the boundary of the Shaw

and the Blagden Alley/Naylor Court Historic Districts, and the contributing nature of the existing structures within the historic districts, the Applicant cannot provide any off-street parking on the Property. Specifically, there is insufficient space to locate 14 surface parking spaces at the rear of the Property, and it is infeasible to construct a parking structure below the existing historic buildings. Therefore, locating any parking spaces on the Property would result in a practical difficulty to the Applicant.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan. The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. The additional floor area is within the existing building footprint, which is compatible with the scale and design of the surrounding structures and uses on this section of 9th Street, NW. Moreover, the expansion of the floorplate would make the building suitable for commercial and retail uses, which are desired by the neighborhood along this section of 9th Street, NW.

With respect to parking, the requested relief can also be granted without harm to the public good or zone plan. The Property is well served by numerous public transportation facilities, including Metrorail, Metrobus, and car- and bike-share facilities, and is located in a walkable, mixed-use neighborhood. 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 also within convenient walking distance of numerous Metrobus routes, including the 64, 70, 79, G2, and G8, which are all located within 0.2 miles of the Property. Eight permanent car-share locations are located within 0.4 miles of the Property (serviced by ZipCar and Hertz On Demand). Taxis, Car2Go vehicles, and other point-to-point transportation services are also easily accessed throughout the neighborhood, as are Capital Bikeshare docks, which are conveniently

located throughout area. Furthermore, due to the Property's location in a walkable, mixed-use neighborhood, patrons of the commercial use are expected to be neighborhood residents, employees of local establishments, persons attending events at the Convention Center, and/or visitors staying in one of the many hotels located within the immediate vicinity. Therefore, it is anticipated that the majority of customers will walk or bike to the Property, thus eliminating any impact on the traffic network or parking availability in the neighborhood. Finally, there is ample on-street parking along this section of 9 Street.