

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

**APPLICATION OF
H STREET LEGACY, LLC**

**1371-1375 H STREET NE
ANC 6A**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of H Street Legacy, LLC (the “Applicant”), the owner of property located at 1371-1375 H Street NE, Lot 848 in Square 1027, (the “Property”) in support of its application for variance relief, pursuant to 11 DCMR §3103.2, from the parking requirement (§2101.1); and special exception relief, pursuant to 11 DCMR §3104, regarding 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 and 3104 of the Zoning Regulations.

III. BACKGROUND

A. Background Information Regarding the Property

The Property contains approximately 5,040 square feet of land area and is located in northeast Washington D.C. See Baist Atlas Map at **Tab 8**. The Property is located within the C-3-A Zone District and the H Street – Arts Overlay. See Zoning Map at **Tab 9**. The Property has 51 feet of frontage along H Street NE and has no rear alley access. The Property is not located in an Historic District.

B. Description of the Improvements in the Surrounding Area

Square 1027 is zoned C-3-A and is located in the H Street – Arts Overlay. Square 1027 is an irregularly shaped Square bounded by H Street NE to the north, 13th Street NE to the west, G Street to the

south, and 14th Street to the west. Maryland Avenue NE cuts off the southeast corner of the Square, creating an atypical alley within the Square. See Zoning Map, at **Tab 9**.

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 the DC Streetcar, Metro, Metrobus routes, Capital Bikeshare, and Zipcar. Walkscore.com deems the property a “walker’s paradise,”¹ “very bikeable,”² and as having “good transit.”³ The opening of the DC Streetcar will further enhance the walkability, bikeability, and public transportation options available at the Property. A DC Streetcar stop is located on the same block as the Property. The Property is located just over a mile from the Noma-Galludet and the Union Station Metros. Metrobus routes X1, X2, X9 and B2 stop at the intersection of 14th & H Street NE just steps from the Property.

In addition, the Property is within close proximity to a number of the District’s bikesharing and carsharing programs. A Capital Bikeshare station is located at 13th & H Street NE (27 docks). Three Zipcar spaces are located within a short walk including two cars behind 817 11th Street NE, one car at 10th and H Street NE, and one car at 1600 Maryland Avenue, NE. Another local car-sharing program, Car2Go, has recently reported that the use of the company’s car-sharing service had reached over 30,000 members and that the fleet was expanded from 300 vehicles to more than 450 vehicles accommodate increasing demand.

Furthermore, DDOT and the Office of Planning continue to promote transit alternatives along the H Street Corridor and Florida Avenue NE. In addition to the DC Streetcar, DDOT’s Florida Avenue Multimodal Transportation Study will promote “safety, streetscape, and operational enhancements to improve safety for pedestrians and bicyclists while ensuring all users have safe access within and through this important corridor.”

¹ “Walker’s Paradise” means “daily errands do not require a car.”

² “Good Transit” means there are “many nearby public transportation options.”

³ “Very Bikeable” means “flat as a pancake, some bike lanes.”

D. Description of the Proposed Development

As shown on the Architectural Plans, see **Tab 11**, the Applicant proposes to construct a 6-story mixed-use multifamily structure with 27 residential units and first floor retail. The first story will contain a retail space as well as residential lobby, indoor trash area, and bike room. The second through fifth stories will contain 6 units each. The sixth story will contain 3 residential units. The Property will provide approximately 21 interior secure bicycle parking spaces for residents.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding 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 lacks access to an alley; (2) the Property lacks a curb cut; and (3) the Property is exceptionally deep with limited street frontage.

1. **The Property Has No Access to a Public Alley**

The Property lacks access to an alley. While the remainder of the Square has a common alley pattern, the Property does not have access to an alley at the rear of the Property. Nearly every other lot on the Square has alley access.

2. The Property Has No Curb cut

Given the Property's location in the HS-Arts Overlay District, any such curb cut would directly conflict with the stated goal locating vehicular access and egress to "encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways...and create no dangerous or otherwise objectionable conditions."

3. The Property is Exceptionally Deep with Limited Street Frontage

The Property has a lot area of 5,040 square feet and 50 feet of frontage on H Street. This Property is the fourth largest in a Square of roughly 95 lots. All the larger lots, including the Atlas Performing Arts Center and The Maryland, a large, new 84-unit Condominium Building along Maryland Avenue NE, have alley access at the rear.

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

Pursuant to §2101.1, the structure has a parking requirement of 14 parking spaces. The Applicant seeks variance relief from the parking requirement. Providing the required parking at grade is not feasible without a significant reduction in the footprint of the building. In addition, providing at grade or underground parking is not possible due to the lack of an alley at the Property and no curb cut. Particularly with the DC Streetcar on H Street, a curb cut to provide vehicular access to at grade or underground parking is not viable. Even if a curb cut were possible, the resulting reduction in street frontage available for retail uses envisioned by the HS-Arts Overlay would be significant.

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 project's mix of uses, massing and treatment of public space are consistent with the Design Requirements of the HS-Arts Overlay and its architectural design will enhance the urban design of the immediate vicinity. The existing vacant structure will be replaced with a stunning, mixed-use structure that is in keeping with

the surrounding patterns of development on this stretch of H Street NE. The lack of a curb cut and inclusion of ground floor retail uses with substantial amounts of show windows will enhance the pedestrian environment on H Street as envisioned by the HS-Arts overlay. Based on its location in a transit-rich urban neighborhood – soon to become richer with the opening of the DC Streetcar - the requested relief with respect to parking will not be a substantial detriment to the Zone Plan or neighboring properties. 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 flexibility from the one-to-one setback requirement for a roof structure. See 11 DCMR §§ 770.6 and 411.11. 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

Pursuant to §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, as shown on the Roof Plan sheet included in the plans the roof structure will not meet the setback requirements at the rear of the Property. The Applicant is not able to provide a setback given the size and dimensions of the roof and the internal configuration of the proposed building. The Property to the rear is a large, 84-unit condominium building, which will not be impacted by the special exception relief requested. The applicant’s plans for the Property include a rear yard well in excess of the applicable rear yard requirement. 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 the requested relief is at the rear of the structure and 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,

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