

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

**APPLICATION OF
PIERCE INVESTMENTS, LLC**

**1124-1126 FLORIDA AVENUE, NE
ANC 5D**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Pierce Investments, LLC (the “Applicant”), the contract purchaser of property located at 1124-1126 Florida Avenue NE, Lot 808 in Square 4070 (the “Property”), in support of its application for an area variance from the requirements regarding FAR (§771), height (§770), rear yard (§774), and residential loading (§2201) to allow the Applicant to construct a multifamily dwelling in the C-2-A District.

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, also known as Lot 808 in Square 4070, contains approximately 12,893 square feet of land area and is located in Northeast Washington, D.C. The Property is located 0.9 miles from the Noma-Galludet Metro Station. The Property is large and irregularly shaped and has approximately 71 feet of frontage along Florida Avenue NE. The Property is presently improved with an auto mechanic shop. The Property is not located within any historic District, and the existing buildings are not listed on the D.C. Inventory of Historic Sites.

B. Description of the Improvements in the Surrounding Area

Square 4070, located in the Trinidad Neighborhood, is bounded by Florida Avenue NE to the south, Virginia Avenue to the west, Morse Street to the north, and Montello Avenue to the east. See Baist Atlas Map at **Tab 9**. Square 4070 is split-zoned, with a C-2-A Zone in the southern end of the Square along Florida Avenue and an R-4 Zone in the northern portion of the Square. See Zoning Map at **Tab 10**. The Square is occupied by a number of uses including commercial uses and religious uses along Florida Avenue. Also on the Square are attached rowhouses, flats, and apartments. Directly west of Square 4070 is southeast corner of the Gallaudet University Campus.

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 Property is located approximately 0.9 miles from the Noma-Galludet Metro Station. Moreover, Metrobus routes D3, D4, D8 and X3 stop at Florida Avenue and Montello Avenue 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 Neal Street & Trinidad Avenue NE (15 docks) and at Gallaudet, at 8th Street and Florida Avenue NE (19 docks). 4 Zipcar spaces are located within walking distance including a space at Gallaudet University and two spaces behind 817 11th Street NE. Another local car-sharing program, Car2Go, reported in August 2014 that the use of the company's car-sharing service in the Washington Metropolitan Area had reached over 33,000 and that the fleet was expanded to more than 450 cars to accommodate increasing demand. Walkscore.com labels the property as "very walkable," "bikeable," and as having "good transit."

D. Description of the Proposed Development

As shown on the architectural plans, see Architectural Plans at **Tab 11**, the Applicant proposes to raze the existing automotive repair shop at the Property and construct a multifamily residential building. The structure will be 5 stories and contain 52 residential units. The first floor will contain 8 residential units and the residential lobby. The upper floors will contain 11 residential units each. The project will provide the required parking with 8 surface parking spaces at grade at the rear of the Property and 19 spaces in an underground parking garage accessed from the alley. The cellar will also provide secure, covered bicycle storage, trashroom, and utility rooms. The Applicant also anticipates providing approximately 4-5 affordable dwelling units through the District's Inclusionary Zoning program.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding height (§770), FAR (§771), rear yard (§774), and residential loading (§2201). 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 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 characterized by an exceptional situation and condition as a result of a confluence of the following factors: (1) the large size of the lot; (2) the unusual shape of the lot; and (3) the prior use of the Property requires substantial environmental remediation at the Property.

1. Large Size of the Property

At 12,893 square feet, the Property is the second largest lot on Square 4070, second only to the New Samaritan Baptist Church. The remaining lots on the Square are far smaller.

2. Unusual Shape of the Property

The Property is an unusual shape, with the northeast portion of the lot extending beyond a typical lot. The Property was previously two lots that were later combined through subdivision to allow additional space for parking and storing vehicles at the automotive repair shop.

3. Prior Use of the Property Requires Substantial Environmental Remediation

The Property is presently improved with a one-story automotive repair shop. As a result of the prior use, the Applicant must take the necessary precautions to remediate environmental hazards at the Property. The Property has a long history, dating back to the 1940s, of being operated as a gasoline and oil service station. The environmental hazards require abatement and remediation to allow habitability.

As indicated by the Letter from ICOR, Ltd., the Phase II indicated that several environmental hazards, including soil and groundwater contamination, exist at the Property due to the Property's prior use as an automotive repair shop and service station. The environmental hazards at the Property result, in larger part, from the storage, and petroleum release, of eighteen underground storage tanks ranging from 550 gallons to 25,000 gallons that were used at the site. ICOR indicated that these environmental conditions will substantially impact development of the Property. See Letter from ICOR, Ltd., p 6-7, at **Tab 13.**

To address environmental conditions at the Property, and meet regulatory requirements, ICOR has recommended several measures. These measures included close coordination with DDOE; development a Corrective Action Plan and/or Hazardous Materials Management Plan; incorporation of appropriate engineering controls, such as a vapor barrier, into the building design to prevent petroleum vapors from migrating into the building; health and safety measures by environmental professionals during construction; and obtaining all required DDOE and other regulatory agency permits and approvals prior to construction.

Apex has prepared a Corrective Action Plan, on behalf of the Applicant, outlining the measures the Applicant must take to resolve the environmental hazards to develop on the contaminated site. Remediation strategies include excavation and off-site disposal of non-hazardous petroleum contaminated soil, dewatering/treatment of impacted groundwater during the site redevelopment, and installation of engineering control to mitigate vapors. In addition, five underground storage tanks that are closed in place will be removed concurrently with the redevelopment. Moreover, the Property will require interim monitoring include monthly gauging of onsite wells and quarterly groundwater sampling to assess existing conditions and prevent further environmental degradation of the site and/or surrounding properties pending site redevelopment. A Health and Safety Plan (HASP) will also be prepared to address risks to construction workers associated with implementation of the planned correcting actions. See Corrective Action Plan at **Tab 14**.

The environmental hazards at the Property, and extreme measures required to develop the site for any habitable use, are a result of the unique history of the Property and have substantial impacts on the Applicant's ability to strictly comply with the Zoning Regulations.

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

Strict application of the zoning regulations with respect to the requirements regarding height (§770), FAR (§771), rear yard (§774) and residential loading (§2201) would result in a practical difficulty to the Applicant.

1. FAR Requirement (§771)

Under §771, and pursuant to the Inclusionary Zoning Regulations ("IZ"), the total FAR permitted is 3.0 FAR, with up to 1.5 FAR being devoted to nonresidential use. The proposed structure has an FAR of 3.5. Thus, the Applicant is seeking zoning relief with respect to total FAR for an additional 0.5 FAR.

The need for FAR relief is a direct result of the need to offset the impacts of the environmental contamination at the Property. Under ordinary circumstances, the first floor of residential use could be located in the cellar and thus not count toward FAR. In this instance, the Applicant has no such option as a result of the exceptional soil contamination and remediation required at the Property. The additional excavation required to allow the residential units to be lowered is not a recommended alternative. The petroleum impacted soil and the presence of hazardous materials requires special handling and proper disposal and treatment at a permitted facility. Thus, the Applicant, while providing the required parking underground, seeks FAR relief to avoid additional excavation due to the challenges associated with proper environmental remediation. Thus, strict application of the FAR requirement would result in a practical difficulty for the Applicant as a direct result of the challenges associated with the environmental remediation required at the Property.

2. Height Requirement (§770)

Under §770, the maximum height in the C-2-A district is 50 feet, with no limitation on the number of stories. The proposed structure is 53 feet. Thus, the Applicant is seeking zoning relief with respect to height for a minor additional 3 feet of height. The need for the minimal height relief is a direct result of the difficulty associated with excavation and the required environmental remediation at the Property.

Under ordinary circumstances, the first floor could simply be lowered through additional excavation by 3 feet to allow compliance with strict application of the zoning regulations. The Applicant, needing to cautiously excavate due to the environmental contamination, seeks zoning relief to allow a deviation of just 3 feet in height. Furthermore, adding residential units partially below grade in a cellar level is not reasonable here. Thus, strict application of the height requirement would result in a practical difficulty for the Applicant as a direct result of the challenges associated with the environmental remediation required at the Property.

3. Rear Yard (§774)

Under §774, the minimum rear yard in the C-2-A District is 15 feet. The rear yard is measured from the center line of the alley to the rear wall below 20 feet and from the rear lot line to the rear wall above 20 feet. Thus, the rear yard is complaint with the rear yard requirement below 20 feet but relief has been requested for the rear yard above 20 feet. Complying with the rear yard requirement creates a practical difficulty for the Applicant due to the location of the core features. The front façade is set back 4 feet from the front property line to compliment the other properties along this block of Florida Avenue. The majority of the rear yard relief on the upper floors is attributed to this front setback. Furthermore, while the rear yard requirement on the upper floors is not being met, the Applicant is providing the same amount of square footage at the rear of the Property as would ordinarily be provided by rear yard. Due to dogleg shape of the Property, a portion of the lot toward the rear is unbuildable. When the space within the dogleg is included in the rear yard provided, the total square footage is equal to that of a compliant rear yard.

4. Residential Loading (§2201)

Under §2201, the loading requirement for a residential structure with 50 or more units is a 55-foot loading berth, a 200 square foot platform, and a 20 foot deep loading space. In place of the required loading facilities, the Applicant will be providing a designated loading berth of 10 ft x 30 ft to accommodate the residential loading needs at the Property. Thus, while the loading needs of the project have been adequately addressed, the Applicant is seeking zoning relief from strict application of the loading requirement. It is not feasible for the Applicant to provide the required 55-foot loading berth, a 200 square foot platform, and a 20 foot deep loading space at the Property. The Applicant is already excavating to the extent possible in order to provide below-grade parking. To provide sufficient clearance and ramping for a 55 foot truck, in addition to space for the platform and loading space, additional excavation would be required which, as described above, is practically difficult due to environmental

concerns. Furthermore, additional levels of excavation would be required to allow the Applicant to accommodate both the parking requirement and the loading requirement.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning Plan

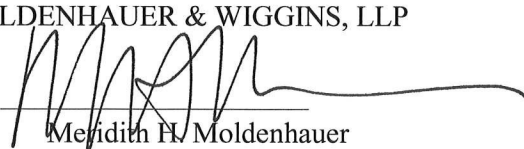
There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed project replaces an automotive repair shop with a much needed residential use. The project also remediates the environmental condition at the Property to allow for residential use at the Property. The loading at the Property has been carefully addressed to accommodate the residential loading needs at the Property. Furthermore, by closing the two unsafe curb cuts along Florida Avenue, and providing underground parking accessible through the alley at the rear, the proposed project improves pedestrian, bicycle, and vehicle safety and is in keeping with alternatives proposed in the Florida Avenue Multimodal Transportation Study. For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

VI. 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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