

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

Application of Murillo Malnati Group
ANC 1C

STATEMENT OF THE APPLICANT

This is the application of Murillo Malnati Group (“**Applicant**”) for variance relief to permit the renovation and expansion of an existing building to convert it into an apartment building. The property that is the subject of this application is 1724 Kalorama Road NW (Square 2567, Lot 851) (“**Property**”). A Surveyor’s Plat is included in Exhibit B. The Property is included in the C-2-B Zone District and the Reed-Cooke (RC) Overlay District. An excerpt of the Zoning Map is included in Exhibit C.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) approve the following:

1. Variance from Section 2101.1 (number of required parking spaces). The proposed number of spaces is seven (7), and the requirement is 16.
2. Variance from Section 2116.12 (20-foot setback for enclosed above-grade parking). The provided parking spaces will be above-grade but they will not be fully set back from the street property line.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the northwest quadrant of the District and in the Adams Morgan neighborhood of Ward 1. The Property is rectangular shaped and contains approximately 8214 square feet of land area. It is roughly bounded to the north by Kalorama Road, to the south and east by a mixed-use condominium and arts building, and to the west by a 10-foot public alley.

The Property is improved with three-story building constructed circa 1923 that occupies approximately 90% of the lot and contains approximately 22,260 gross square feet (“**Building**”). It is currently used as an office building and has no basement or cellar.

The surrounding area contains an eclectic mix of uses. Within two blocks of the Property are large retail uses, small retail uses, arts uses, small and large apartment buildings, flats, and row dwellings.

The neighborhood contains a myriad of services and retail (restaurants, bars, supermarket, drugstores, cleaners) within short walking distance. The neighborhood also has good access to Metrobus (on 16th Street and 18th Street), car sharing facilities, and bicycle facilities.

IV. PROJECT DESCRIPTION

The Applicant proposes to renovate and construct an addition to the Building to create a apartment building (“**Project**”). As shown on the plans attached as Exhibit D, the Project will rise to five stories (approximately 50 feet), will contain 47 residential units, and will provide seven parking spaces off the alley. The Building footprint will not expand, so the lot occupancy, though nonconforming for residential use, will remain, and the additional two stories will have a conforming lot occupancy of approximately 80%. The Project will expand the Building by

12,189 gross square feet and will have an overall FAR of 4.19. Except for parking, the Project will conform to all applicable requirements of the Zoning Regulations.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variances from the side yard, court width, lot occupancy, and parking requirements.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adj.*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See Monaco v. D.C. Board of Zoning Adj.*, 407 A.2d 1091, 1097 (D.C. 1979). The Court in *Monaco* went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in *Gilmartin*, 579 A.2d at 1167, that it is

not necessary that the exceptional situation or condition arise from a single situation or condition on the property. *Id.* Finally, it is not necessary that the property be unreservedly unique. Rather, an applicant must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

In this case, the Property is affected by an exceptional condition because of the existing building that will be adaptively reused. The presence of the existing building on a comparatively small lot that occupies approximately 90% of the lot is a condition that is rare in the neighborhood and, particularly, in the District. Combined with the presence of a narrow 10-foot alley on only one side, the Building is affected by an exceptional condition. Thus, it is the environmentally-sensitive decision of the Applicant to retain and reuse the existing unique Building that gives rise to a practical difficulty.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate a "practical difficulty" from strict application of the Zoning Regulations. The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict

compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

The practical difficulty from complying with the parking requirements results from the comparatively small size of the lot, the approximately 90% lot occupancy by the Building, and the narrowness of the adjacent alley. Any parking spaces on the ground floor would have to be inside the existing structure, but it is impractical and inefficient to provide parking on the ground floor because it would result in the loss of all ground-floor residential units, and it would render the first floor as a parking garage without any pedestrian interaction. Therefore, underground parking is the only theoretically possible location to accommodate all required parking. However, this, too, would be hugely inefficient and exceedingly costly, so, for all intents and purposes, it is not possible.

The small size of the Property cannot efficiently accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense. Providing underground parking results in an extraordinarily high rate of inefficiency that would require multiple below-grade levels of parking because of the amount of the lot area that would be consumed by circulation. Because so many levels would be necessary, the construction cost per parking space would be prohibitively high, and such parking would add an unnecessary cost to the Project. Constructing parking that will go unused will lead to unnecessarily higher prices for the units that would ultimately render the Project non-viable.

Also, excavating to such a great depth under an existing building that occupies nearly all of the lot would be exceedingly difficult. Because the Building exterior some of the interior fabric will be retained, extensive excavation would have to occur from within the Building while

the walls and remaining fabric is held up. The logistical and structural challenge of this task would all but render it impossible.

Furthermore, if the provided parking spaces were required to be set back by at least 20 feet from the street property line, then even fewer would be provided. Three of the parking spaces would be lost from strict compliance with the Zoning Regulations, so the Applicant would encounter an even greater burden to supply parking if it were to comply with Section 2116.12.

Therefore, the strict application of the parking regulations would result in a practical difficulty for the Applicant. Because of the size of the site and the retention of the existing building, providing more than six parking spaces, as proposed, would be extraordinarily burdensome.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variances can be granted without substantial detriment to the public good or the zone plan.

Granting the requested parking variance will not adversely affect the availability of on-street parking in the neighborhood or the transportation network in the neighborhood. The Applicant will submit a transportation study prior to the public hearing to demonstrate the lack of impacts, but the characteristics of the neighborhood and likely residents indicate that the provided parking will be sufficient for the demand. The requested relief for number of parking spaces will not adversely affect the availability of on-street parking in the neighborhood. The provided amount of parking is sufficient for the target market of young, professional and singles

and couples looking to live in a transit-rich location with nearby amenities. This demographic is less likely to own and use automobiles. Furthermore, the amount of provided parking is consistent with the requirement in the Zoning Regulations for only the 1-bedroom and 2-bedroom units. These larger units will be more likely to attract tenants with cars because of the higher price point. The studio units will be small and will attract residents at a lower price point and with a much lower likelihood of car ownership. Therefore, providing parking for the larger units consistent with the zoning requirement indicates the appropriate supply of parking for the building.

Also, the building will provide a significant amount of secure bicycle storage in the cellar to easily facilitate bicycle ownership by residents. Access to this bicycle storage will be via the elevators. The Applicant will undertake the significant cost of excavating a small portion of the site to accommodate this below-grade bicycle storage.

Further, the Property is in a very pedestrian-friendly and transit-oriented location. Multiple Metrobus lines run down nearby 16th and 18th Streets. Multiple Capital Bikeshare stations are within several blocks. Many services, such as a grocery store, a drug store, restaurants, and other retail are within ¼ mile (and a short walk) of the Property. The Property scores a 97 out of a possible 100 on the Walk Score scale, an 82 out of a possible 100 on the Transit Score scale, and an 89 out of a possible 100 on the bike score scale. Accordingly, the Applicant expects that few residents will own cars and that the demand for off-street parking will be very limited. In addition, the Applicant will submit a robust transportation demand management plan to create incentives for non-automobile transportation and disincentives for automobile use. Therefore, it is not likely that there will be a substantial detriment to the public good from the parking variance.

Granting the variance from the setback requirement will not cause substantial detriment to the public good. First, all parking will be entirely within the building and not visible from Kalorama Road. Second, it will allow the Applicant to provide the limited amount of parking that it does anticipate will be necessary for the Project. Granting of the variances will not substantially detriment the zone plan. The intent of the Zoning Regulations is to require parking where necessary. However, as the Applicant will further demonstrate with its transportation study, the full amount of required parking will not be necessary for the Project. Also, the intent of the setback requirement is to reduce the visibility of above-grade parking spaces, but the provided spaces will not be visible from the street.

VI. EXHIBITS

EXHIBIT A	Application Form, Self-Certification Form, and Authorization Letter
EXHIBIT B	Surveyor's Plat
EXHIBIT C	Excerpt of Zoning Map
EXHIBIT D	Architectural Plans and Drawings, including Photos of Property
EXHIBIT E	Names and Addresses of all Property Owners within 200 Feet of the Property

VII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance relief in this case.

Respectfully submitted,
GOULSTON & STORRS, PC


Paul Tummonds


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