

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

1325 D Street, SE (Portion of Lot 827, Square 1042)

This statement is submitted by 1325 D Street, LLC (the “Applicant”), on behalf of International Graduate University of Washington DC, the owner of the property located at 1325 D Street, SE (Square 1042, Lot 0827) (the "Subject Property"), in support of an application pursuant to 11 DCMR §§ 3104.1 and 3103.2 for a special exception from the lot width requirement of Section 2604.3; and area variances from (i) the minimum lot area requirement of Section 2604.3, (ii) lot occupancy requirement of Section 403.2, and (iii) the limitation on the number of principal buildings allowed on a single record lot under Section 3202.3, to allow development of a portion of the Subject Property for one- and two-family residential uses in the R-4 District.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the District of Columbia Board of Zoning Adjustment (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 evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background: BZA Site, Surrounding Context and Zoning

Square 1042 is located in the southeast quadrant of the District of Columbia and is bounded by D Street to the north, E Street to the south, 14th Street to the east, and 13th Street to the west (the “Square”). The Square is bifurcated by a 16-foot alley running north-south between D and E Streets, with the Subject Property being located in the western portion of the Square. The Applicant

proposes to develop the western portion of the Subject Property (the “BZA Site”) with one-family dwellings and flats. The BZA Site is zone R-4.

The neighborhood surrounding the BZA Site can be characterized as being moderate-density residential, comprised primarily of one-family row dwellings and flats interspersed with apartment buildings and neighborhood serving retail, institutional, and light-industrial uses. The area surrounding the BZA Site is primarily zoned R-4 with small areas of C-2-A and C-M-1 zoned properties located immediately east and south.

II. Proposed Development

The Applicant proposes to develop the BZA Site for residential use, with the goal of providing three-bedroom townhomes to help fulfill the increasing demand for family-sized dwelling units in the District of Columbia. The Applicant also seeks to create interesting viewsheds, including a strong visual relationship with the former Buchanan School located to the east, to create attractive open spaces that are reflective of the Capitol Hill neighborhood, and to facilitate pedestrian circulation.

To achieve these goals, the Applicant will subdivide the BZA Site into 21 separate lots and construct a total of 34 dwelling units – 30 one-family townhouses and two flats. As shown on the plat submitted herewith, the subdivision will result in nine lots fronting along D Street (identified as Lots 1 through 9) and 12 lots fronting along 13th Street (identified as Lots 10 – 21).

All of the areas of relief in this application are a direct result of the large size of the BZA Site, the depth of the BZA Site and the limited street frontage relative to the land area, which create practical difficulties in subdividing the BZA Site. If the BZA Site had a more conventional depth given the land area, it could be developed with approximately 40 dwelling units in full compliance with the Zoning Regulations. However, due to the stated constraints, the Applicant proposes only

34 dwelling units (30 one-family townhouses and two flats) within the site and needs the stated relief in order to achieve even this reduced density.

Along D Street, Lots 1 - 8 will be improved with attached, one-family dwellings, and Lot 9 will be improved with a flat. The buildings will have a height of less than 40 feet and three stories, which is consistent with that permitted by § 400.1 and measured in accordance with § 400.15. A rear yard of at least 20 feet will be provided in accordance with § 404.1. The Applicant is requesting a special exception to permit a minimum lot width of 16 feet for Lots 1 - 8, and variance relief from the minimum lot area and lot occupancy requirements for all nine lots along D Street.

Along 13th Street, the Applicant proposes to construct two separate one-family dwellings on each of Lots 10 - 20. The dwellings will be arranged such that one will face 13th Street and the second dwelling located at the rear will abut a landscaped pedestrian thoroughfare, or “mews.” Lot 21 will be improved with a flat. The buildings will have heights of less than 40 feet and three stories, which is consistent with that permitted by § 400.1 and measured in accordance with § 400.15. A rear yard of at least 20 feet will be provided in accordance with § 404.1. The Applicant is requesting a variance to include two principal buildings on a single record lot for Lots 10 through 20 (§ 3202.3) and a special exception to permit a minimum lot width of 16 feet for Lots 10- 14 and Lots 17 - 20.

A summary of the lot dimensions and building size and type is provided in Table A attached hereto.

As required by Section 2101.1, each dwelling proposed for the BZA Site will provide one parking space. With the exception of Lots 9 and 21, the parking for each dwelling is provided within a garage located in the lowest level and accessed from the rear of the structure. The parking

for Lots 9 and 21 is provided on the surface within the rear yard. A new private driveway connecting to 13th Street will provide access to the required parking through a series of recorded easements. The driveway will be constructed of permeable pavement.

III. The Applicant Meets The Burden of Proof For Special Exception Relief

As a new residential development with greater than ten dwelling units, the proposal is subject to the Inclusionary Zoning (“IZ”) requirements set forth in Chapter 26 of the Zoning Regulations. Section 2604.3 permits IZ developments located within the R-4 Zone District to reduce the required minimum lot width to 16 feet if approved as a special exception in accordance with 11 DCMR 3104.1, which authorizes the Board to grant the relief where the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property.

The Applicant requests a special exception to permit 19 of the 21 lots in the BZA Site to have a minimum lot width of 16 feet. No special exception is requested for Lots 9 and 21, which will each be developed with a flat and have a lot width of at least 20 feet, in accordance with Section 401.1.

The requested special exception can be granted as the proposed lot widths are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties. The purpose and intent of the minimum lot width requirement is to establish an appropriate development scale and character for an area, in addition to controlling density and overcrowding. The proposed widths for these lots are consistent with many of the lots found in the blocks surrounding the BZA Site. Therefore, development of these particular lots with attached and semi-detached dwellings would result in a building type that

is compatible in character with the existing moderate density residential development that surrounds the BZA Site.

Granting the requested special exception will also not adversely affect the use of neighboring properties. None of the lots abut an existing dwelling, and the slightly narrower lot width is consistent with the lot width of the existing dwellings located across D Street. Finally, as described below, the overall development of the BZA Site does not result in overcrowding of the land because it is being developed with less density than would be permitted as a matter of right based on the land area of the BZA Site and assuming it were more regularly shaped.

IV. The Applicant Meets the Burden of Proof for the Requested Area Variances

The Applicant is requesting area variances from the requirements of Section 2604.3 (minimum lot area), Section 403.2 (lot occupancy) and Section 3202.3 (number of principal buildings on a single record lot). Specifically, the variances from lot area and lot occupancy are requested for Lots 1 - 9. While Section 2604.3 requires a minimum lot size of 1,500 square feet for IZ developments, the areas proposed for Lots 1 - 9 range from 1,080.75 square feet to 1,310 square feet. Regarding lot occupancy, Section 403.2 permits a maximum lot occupancy of 60%. The Applicant requests a variance to permit a lot occupancy of 61% for Lots 1 – 8 and 69% for Lot 9. Finally, the Applicant is requesting a variance from the number of principal buildings allowed on a single record lot for Lots 10 – 20.

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 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, the Applicant meets the three prongs of the area variance test.

A. The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Subject Property is improved with two three-story brick buildings, one two-story building and one single story building that are currently vacant. The buildings were constructed in 1895, 1922 and 1930 respectively as a District of Columbia Public School, the Buchanan School, until it closed in 1994. Due to the location of the former school buildings, the portion of property available for redevelopment to the west is exceptionally large and deep and has access challenges.

First, the BZA Site contains approximately 37,500 square feet out of the approximately 93,000 square foot Subject Property. The BZA Site is exceptionally large compared to typical R-4 zoned properties. In fact, only six other properties exist within a quarter mile of the BZA Site that

are zoned R-4 and of similar or greater size, five of which are currently used for institutional or recreational purposes.

Second, the BZA Site is exceptionally deep, caused by the manner in which the former school building is situated on the Subject Property, which creates an unbalanced relationship between the amount of land area and the street frontage available to establish lots. The former school building that will remain is generally rectangular in shape and oriented in a north-south direction with frontage along E Street. The building extends approximately 245 feet into the Subject Property, or about 66% of the distance between D and E Streets. This size and orientation results in the BZA Site being exceptionally deep, measuring approximately 136 feet from 13th Street to the BZA Site's east boundary and 160 feet to the former school building. This exceptional depth presents challenges to efficiently subdivide the BZA Site without leaving a considerable amount of underutilized land at the interior of the site, even after taking into account access needs.

Finally, the BZA Site lacks public alley access and has limited street frontage when compared with the depth of the BZA Site. The ability to extend the existing alley in the Square to the west is constrained due to the presence of the former school building. Accordingly, the site planning for the BZA Site has unique access considerations.

B. Strict Application Would Result in a Practical Difficulty to the Owner

1. Minimum lot area (§2604.3)

Section 2604.3 of the Zoning Regulations permits a minimum lot area of 1,500 square feet for IZ developments in the R-4 District. The strict application of this minimum lot area requirement results in a practical difficulty for Lots 1 – 9. The proposed individual lots do not technically comply with the minimum lot area due to the constraints relating to the site plan based on the size and depth of the lot and the limited street frontage relative to the land area. The total lot area for

these 9 lots is 9,726,75. In the R-4 District, a total of 12 units would be permitted within this lot area. However, the Applicant proposes a total of only 10 units within this lot area.

If the Applicant had to comply with the lot area – despite the fact that the number of units is reduced when compared to what is permitted as a matter of right, the site plan would be adversely impacted and the result would be excess area for the vehicular circulation. Thus, there is a practical difficulty in complying with the regulation.

2. Lot Occupancy (§403.2)

The strict application of the 60% lot occupancy requirement of Section 403.2 results in a practical difficulty. With regard to Lots 1 – 8, the extent of lot occupancy relief requested by the Applicant is *de minimus*, and within the Zoning Administrator's authority to allow a 2% deviation under 11 DCMR § 407.1. The 61% lot occupancy is a result of locating the required parking within the cellar-level of the proposed building. Locating the parking within the lowest level¹ requires a slightly larger building footprint to accommodate the size of the parking space and provide adequate circulation. Providing parking at the rear is a direct result of the lack of public alley access within the BZA Site. The parking is provided within the buildings to create convenient access for the units and to create important visual connections through the site from 13th Street and appropriate vehicular.

The larger lot occupancy variance requested for Lot 9 is a result of the proposal to improve this lot with a flat and the lot's corner location. A slightly larger building footprint is necessary to accommodate the internal circulation required for a flat and to create the cellar level unit. In addition, architecturally, the extended building footprint is also necessary to establish a strong corner condition and help seamlessly transition from the D Street frontage to the 13th Street

¹ The lowest level is part basement and part cellar given the relationship of ceiling height and adjacent finished grade.

frontage of the BZA Site without having an unnecessarily wide gap in the streetwall. A reduction of the building width or depth to meet the lot occupancy requirement would make it practically difficult to design the structure as a flat, and it would have a detrimental effect on the ability of the structure to define the corner and on the overall site plan of the proposal.

3. Number of principal buildings on a single lot (§3202.3)

Restricting the proposed lots along 13th Street to one principal building would result in a practical difficulty to the Applicant as a result of the BZA Site's size, depth, and amount of available street frontage. Given the considerable depth of the BZA Site, approximately 136 feet, a single building on each lot would result in either an unreasonably large rear yard or a substantial amount of underutilized land at the interior of the BZA Site. The "dead space" that would result in the central portion of the Subject Property, especially as it abuts the existing Buchanan School building to the east, would lack pedestrian activation. Siting townhouses near the pedestrian mews will allow for the creation of a safer and well-illuminated, new mid-block pedestrian connection between D and E Streets. In addition, requiring only one principal building to be constructed on these lots would be unnecessarily burdensome on the Applicant as it would result in very long and narrow building footprints that are exceedingly large for one-family dwellings and difficult to design as flats. Instead, splitting the flat into two one-family dwellings with a court between them creates better circulation within the BZA Site, results in a superior site plan and leads to no additional units than would otherwise be permitted.

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

The requested area variances can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose or integrity of the zone plan. Overall, the density and number of dwelling units proposed is consistent with what is permitted

by-right in the R-4 District. Furthermore, the proposal to subdivide the BZA Site and construct one-family dwellings and flats is a compatible use with the surrounding neighborhood. Finally, the proposed development will contribute to the vibrancy of the neighborhood and activate an underutilized property through thoughtful architectural design and sensitive site planning, and support the city's housing and affordable housing goals by providing much-needed family-sized housing in an area that is adjacent to Watkins Elementary School and well-served by transit and amenities.

The variance from the minimum lot area requirement of §2604.3 and lot occupancy requirement of 403.2, is only requested for nine of the proposed 21 lots. The individual lot areas and lot occupancies proposed are characteristic of the surrounding neighborhood and will result in a better utilization of land area and additional dwellings to help meet the growing demand for family-sized dwellings. Furthermore, with an average lot area of approximately 1,785 sf, and overall lot occupancy of approximately 57%, development across the entire BZA Site is within the matter-of-right limits of the Zoning Regulations. The proposal will not overcrowd the BZA Site and will result in a scale and pattern of development that is compatible with the surrounding neighborhood.

In addition, notwithstanding the smaller lot areas for Lots 1 - 9, the extent of lot occupancy relief requested is largely *de minimus*, and falling within the minor flexibility authority granted to the Zoning Administrator under Section 407. With regard to the slightly higher lot occupancy variance for Lot 9, located at the corner of 13th and D Streets, the larger building footprint will help establish a strong presence for this corner unit which is commonly seen in the Capitol Hill neighborhood. It will also reduce the gap in the streetwall along 13th Street and screen the rear view of the lots along D Street, specifically of the rear garages.

Granting the variance from the limitation on the number of principal buildings allowed on a single lot will result in a much more efficient use of the BZA Site and an overall better site plan, especially along the proposed pedestrian mews. Rather than combine the proposed buildings into unreasonably large one-family dwellings, or poorly configured flats, with vehicular access adjacent to the mews, the dwellings are separated such that the rear dwellings will abut the mews providing a more welcoming environment for residents and the neighborhood. This configuration results in a more efficient use of the interior of the BZA Site and prioritizes the pedestrian by hiding vehicular access between the two structures.

The variance from §3202.3 can also be granted without substantially impairing the intent, purpose, and integrity of the Zone Plan. A two-family dwelling, or flat, is a matter-of-right use in the R-4 Zone District. As proposed, rather than both dwellings being located in the same structure, or connected in some manner that would make them one building for purposes of zoning, the proposal locates them in separate structures to make better use of available land area in this unique circumstance. No increase in the number of dwelling units would result from granting the variance, and apart from being located in two separate structures, all other applicable use and area requirements such as density, rear yard, courts, and lot occupancy will be met.

Table A

Table A: Lot Calculations for the BZA Site (Parcel A)						
Lot #	Width (ft)	Depth (ft)	Area (sf)	Bldg. Footprint (sf)	Lot Occupancy	Dwelling Type
1	16.5	65.5	1,080.75	660	61%	One-family
2	16	65.5	1,048	640	61%	One-family
3	16	65.5	1,048	640	61%	One-family
4	16	65.5	1,048	640	61%	One-family
5	16	65.5	1,048	640	61%	One-family
6	16	65.5	1,048	640	61%	One-family
7	16	65.5	1,048	640	61%	One-family
8	16	65.5	1,048	640	61%	One-family
9	20	65.5	1,310	900	69%	Flat
10	16.5	135.5	2,235.75	1,347	60%	One-family*
11	16	135.5	2,168	1,280	59%	One-family*
12	16	135.5	2,168	1,280	59%	One-family*
13	16	135.5	2,168	1,280	59%	One-family*
14	16	135.5	2,168	1,280	59%	One-family*
15	23	135.5	3,151.81	1,347	43%	One-family*
16	23	135.5	3,151.81	1,347	43%	One-family*
17	16	135.5	2,168	1,280	59%	One-family*
18	16	135.5	2,168	1,280	59%	One-family*
19	16	135.5	2,168	1,280	59%	One-family*
20	16.5	135.5	2,235.75	1,347	60%	One-family*
21	20.44	98.55	1805.02	900	50%	Flat

* Two separate one-family dwellings proposed for Lots 10 - 20.