

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

Application of Dila Development and Construction Company
ANC 6B

STATEMENT OF THE APPLICANT

This is the application of the Dila Development and Construction Company (“**Applicant**”) for a modification of an order approving a use variance for retail use in a historic building in a residential zone. The use variance was granted in BZA Order No. 18275. The property that is the subject of this application is 1200 Potomac Avenue SE (Square 1021, Lot 34) (“**Property**”). The Property is included in the R-5-B Zone District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) approve a modification of Order No. 18275 so that an office use may occupy the first floor and basement of the building.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the modification requested pursuant to Section 3129.7 of the Zoning Regulations (11 DCMR § 3129.7).

III. DESCRIPTION OF THE PROPERTY AND APPROVED USE VARIANCE

The Property is located in the Capitol Hill neighborhood of Ward 6. The Property is improved with a two-story building with basement constructed in 1900 for mixed-use with a commercial space on the first floor. The first floor had been previously used as a grocery store. The building is a contributing building in the Capitol Hill Historic District that was vacant at the time of Case No. 18275.

In BZA Case No. 18275, the Board granted a use variance from § 350.1 to allow a coffee shop on the first floor of the building. In Order No. 18275, which became effective on January

17, 2013 (attached as Exhibit B), the Board found that the Property is affected with an exceptional condition: the first floor is improved with two sets of show windows. The Board found that “show windows, in general, are designed to encourage pedestrians to look in, and are not conducive to residential use.” The Board found that there is undue hardship because the first floor space is undesirable for residential because of the lack of privacy and the exposure resulting from the show windows. Also, the Board found an undue hardship because “it is not feasible to use the first floor for residential use without eliminating the windows and building entrance and completely renovating the first floor of the building.” Finally, the Board found that there would be no adverse impact by granting the variance. The Board found that the privacy of neighboring property owners will not be adversely impacted because “the first floor space is designed with its entrance away from the adjacent residential properties, shifting any activity associated with the proposed coffee shop towards the corner.” Also, the Board found that the coffee shop would be an improvement because the building was abandoned.

Pursuant to the approval in BZA Order No. 18275, the then-applicant obtained a building permit (No. B1213063) for the alteration of the first floor for the coffee shop. After commencing construction, the then-applicant subsequently offered the Property for sale.

IV. PROPOSED MODIFICATION

The Applicant in this case is the contract purchaser of the Property, and it proposes a different commercial use for the first floor. The Applicant requests a modification to BZA Order No. 18275 to allow the first floor and basement of the building to be used as an office and showroom instead of a coffee shop. The proposed office on the basement and first floors will be an administrative office and showroom for Dila Development and Construction, a local development and contracting firm. The second floor will remain residential. Approximately

five employees will work in the office, and the hours of operation will be approximately 9:00 am to 5:00 pm, Monday through Friday.

The Applicant will conduct only administrative business for the company and its role as a cabinet distributor. As part of its contracting business, the Applicant is a local distributor for three brands of cabinets. Thus, the proposed use will be general office space, with a small part for a cabinet showroom. The cabinet showroom will be by appointment only.

No construction staging, construction storage, or any other construction-related use will occur in the office or at the Property. Construction-related traffic will not go to the Property. The Applicant expects few visitors, other than for occasional business meetings and the customers who have appointments to see cabinets. The Applicant expects approximately one showroom appointment per day. Nearly all traffic to and from the Property will be employees arriving in the morning and leaving in the evening.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR A MODIFICATION OF AN APPROVED USE VARIANCE

In order to obtain a use variance, the Applicant must prove the following: (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 undue hardship 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. Under § 3129.8, the evaluation of the proposed modification shall be limited to the impact of the modification on the subject of the original application and shall not permit the Board to revisit its original decision.

In this case, the first two prongs of the variance test continue to be met as described in Order No. 18275 because the Property's characteristics have not changed. The exceptional condition affecting the Property remains: the first floor show windows in a building originally constructed for mixed-use. In addition, the undue hardship remains. The show windows continue to make residential use on the first floor of the building infeasible. Therefore, the scope of this case is limited to the third prong of the variance test – impact of the proposed use.

The Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1167 (D.C. 1990). In this case, the proposed use of the first floor as an office, as opposed to a coffee shop, will not have an adverse impact because it will be a small business office operating during normal business hours.

Traffic to and from the Property will be very limited because only five employees will work there. Appointments to see cabinets in the showroom will be limited and during the day. Outside of morning arrival and evening departure for employees, there will be very little traffic generated by the proposed use, and only people with appointments will occasionally visit the office. Indeed, the proposed office use will generate far less traffic than a coffee shop, which would have a constant flow of patrons throughout the day.

The proposed office will be for administration of a small business, so it will be quiet and unassuming to the neighborhood. As a small office with few employees and occasional visitors, it will not generate any excessive noise or other disruptive effects. Similarly, the proposed office use will not impact the privacy or the enjoyment of neighboring properties because employees and visitors will remain indoors with infrequent arrivals and departures. And, like the coffee

shop, the office entrance will be at the corner, which will maintain privacy for the adjacent property. Therefore, approving the modification will not cause substantial detriment to the public good or impair the zone plan.

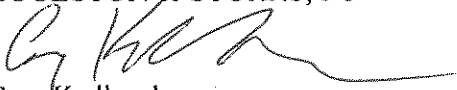
VI. EXHIBITS

EXHIBIT A	APPLICATION, SELF-CERTIFICATION, AUTHORIZATION LETTERS
EXHIBIT B	BZA ORDER NO. 18275
EXHIBIT C	LIST OF PROPERTY OWNERS WITHIN 200 FEET

VII. CONCLUSION

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

Respectfully submitted,
GOULSTON & STORRS, PC


Cary Kadlecek