

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

**APPLICATION OF 2002 11<sup>TH</sup> STREET LLC AND INDUSTRIAL BANK  
2000-2002 11<sup>TH</sup> STREET, N.W.  
SQUARE 304, LOTS 27, 30 AND 31**

**PRELIMINARY STATEMENT OF THE APPLICANT**

This Preliminary Statement of the Applicant is submitted on behalf of 2002 11<sup>th</sup> Street LLC and Industrial Bank (together the “Applicant”), as owners of property located at 2000-2002 11<sup>th</sup> Street, N.W. (Square 304, Lots 27, 30 and 31) (the “Site”), in support of their application to the Board of Zoning Adjustment (“Board” or “BZA”) pursuant to 11 DCMR § 3103.2 for area variances from (i) the off-street parking requirements of 11 DCMR § 2101.1; (ii) the rear yard requirements of 11 DCMR §636.3; and (iii) the public space at ground level requirements of 11 DCMR § 633, to allow the construction of a new multiple-dwelling building with ground floor retail in the CR/ARTS District at the Site.

Pursuant to 11 DCMR § 3113.8, the Applicant will file its prehearing statement with 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 Information Regarding the Site and Proposed Development**

Square 304 is located in the northwest quadrant of the District and is bounded by V Street to the north, 11<sup>th</sup> Street to the east, U Street to the south, and 12<sup>th</sup> Street to the west. All of the lots within Square 304 are zoned CR/ARTS District. The Site is within the Greater U Street Historic District (the “Historic District”).

The Site is located at 2000-2002 11<sup>th</sup> Street, N.W. and has approximately 5,850 square feet of land area. The Site is located in the CR District and is within the ARTS Overlay District. The Site is rectangular in shape and is presently improved with (i) a two-story structure that is a contributing building to the Historic District (Lots 30 and 31) and is used as a branch of Industrial Bank, and (ii) a two-story structure that is not contributing to the Historic District and which will be razed as part of redevelopment of the Site (Lot 27). The Site is a corner lot bounded by private property to the north, 11<sup>th</sup> Street to the east, U Street to the south, and a public alley to the west that varies in width from 8 feet to 10 feet. The building currently located across the alley to the west of the Site is presently improved with a two-story commercial structure.

The private property to the north of the Site is improved with the Lincoln Condominium building. The Lincoln Condominium has at-risk windows on the south elevation of the building. These windows are located along the northern property line of the Applicant's Site. Based on property title research these windows are not protected by any easement and therefore are at-risk to being covered as a result of new construction on the Site.

As shown on the plans included with the application, the Applicant proposes to retain the existing building on Lots 30 and 31, demolish the building on Lot 27, and construct a new addition to the historic building located on current Lot 27.<sup>1</sup> The project will include a total of approximately 36,910 square feet of gross floor area, with approximately 29,784 square feet of gross floor area devoted to residential use and approximately 7,126 square feet of gross floor area devoted to retail use. The Applicant is not making any changes to the existing bank

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<sup>1</sup> The Applicant will be subdividing the existing three lots into a new record lot as part of the building permit process.

building on Lots 30 and 31. The total density for the Site will be approximately 6.3 floor area ratio ("FAR"). The retail and residential entrances will be located on 11<sup>th</sup> Street.

## **II. Burden of Proof for Area Variances**

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 all 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 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. D.C. Board of Zoning Adjustment*, 320 A.2<sup>nd</sup> 291, 294 (D.C. 1974). The unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2<sup>nd</sup> 1164, 1168 (D.C. 1990).

In this case, the Site's small size, narrow width, relationship to the Lincoln Condominium, and the existing historic structure combine to create an exceptional situation and condition that directly impact the ability to provide zoning-compliant parking spaces, rear yard depth, and public space at the ground level on the Site. As shown on the materials included with the application, the Site is exceptionally small with only 5,850 square feet of land area. The Site is also very narrow, with only 61 linear feet of frontage on 11<sup>th</sup> Street. The Site abuts an existing building – the Lincoln Condominium – with at-risk windows that serve existing dwelling units which has impacted the layout of the Applicant's proposed building. Lastly, the Site is improved with an existing building that will be retained. The existing building is contributing to the Historic District, which limits the Applicant's ability to demolish the structure.

As a result, the Site's development potential is severely restricted, since new construction can only occur on Lot 27 and/or over the existing structure on Lots 30 and 31. The existing building occupies approximately 2,427 square feet of land area (41% of the Site), leaving approximately 3,423 square feet of land area, which is approximately 60% of the Site, for new development before the required setbacks and open space requirements are taken into consideration. Moreover, the Applicant has voluntarily set a portion of its building back along the northern property line to maintain access to light and air for a number of existing dwelling units in the Lincoln Condominium.

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

1. Off-street Parking

Section 2101.1 of the Zoning Regulations requires a total of 14 standard-size parking spaces: 11 spaces for the 33 residential units and three spaces for the new retail. Required parking spaces must be located either within a parking garage or on an open area on the lot (*see* 11 DCMR

§§ 2101.1 and 2116.2). In this case, the Applicant cannot fit any parking spaces on the Site, and therefore requests a variance from 11 DCMR § 2101.1.

First, the Site cannot be accessed at the rear via an improved alley that meets the minimum width standard of ten feet (*see* 11 DCMR § 2117.4). As shown on the building plat issued by the District of Columbia Office of the Surveyor, and included with the application, the existing north-south alley providing access to the Site from U Street is only 8 feet at its opening and dead-ends.

Due to the Site's rear width of only 36 feet (not including the area where the historic building is located), it would be impractical and impossible to locate 14 standard-size surface parking spaces on the Site. Lined side-by-side in a row perpendicular to the alley, fourteen 9 x 19-foot parking spaces would require a minimum width of 126 feet, which is significantly wider than the width of the Site. Alternatively, providing a drive aisle that meets the drive aisle width and turning requirements to access a row of spaces on the Site would utilize the entire Site, thus leaving no space for any type of new development. (*See* 11 DCMR § 2117.5, which requires a clear width of 20 feet for accessibility and maneuvering space between rows of parking spaces and between parking spaces and the perimeter of the area devoted to parking spaces.)

The Applicant also cannot provide any below-grade parking on the Site or a ramp to access below-grade parking. Due to the Site's narrow width and small land area, it is impossible to construct a ramp that could meet the maximum permitted ramp slope of 12 percent (11 DCMR § 2117.8(a)) and the minimum ramp width of 14 feet (11 DCMR § 2117.8(c)(2)) and still provide the 14 required parking spaces. Moreover, once a vehicle were to reach the foot of the ramp, there would be insufficient room for vehicle turning movements to reach a row of parking spaces. There is simply not enough width and length on the Site for a vehicle to drive down a safe and zoning-compliant ramp and make a turn to access below-grade parking spaces.

## 2. Rear Yard

Section 636.3 of the Zoning Regulations provides that when the residential use begins above grade, the minimum depth of rear yard shall be three inches per foot of vertical distance from the horizontal plane upon which the residential use begins to the highest point of the main roof, but not less than 12 feet. In this case, the minimum required rear yard depth for the proposed building is 21.6 feet, measured from an elevation of 14' which is the first floor of the building where the residential use begins, to elevation 99'-6", which is the top of the main roof. The Applicant proposes a rear yard depth of 10 feet, measured from the face of the building at the second floor to the rear property line. Providing a compliant rear yard would result in a practical difficulty to the Applicant.

Because of the Applicant's intent to provide access to air and light for a number of the existing dwelling units of the Lincoln Condominium by setting back a large portion of the Applicant's proposed building from the northern property line, full compliance with the rear yard standard would result in a highly infeasible structure. Setting the building back 21.6 feet from the rear (west) property line beginning at the second level of the building, as well as from the northern property line, would result in the loss of proposed floor area for dwelling units along the west side of the building. But for providing the set back along the northern property line, the Applicant would be able to meet the rear yard requirement. Further, as the proposed floor plans demonstrate, the project's ratio of core spaces (i.e., egress stairs, elevator core, trash chute, and hallway space) to habitable space, as proposed, is less than optimal as the most efficient floor plan has an efficiency of only 71% of net habitable space to total gross floor area. Under most situations a multi-family building is able to be designed with a "double-loaded" corridor configuration and an efficiency of 85% to 90% of net habitable space to total gross floor area is achievable. Full

compliance with the rear yard requirements while maintaining the northern setback to ensure access to air and light for the Lincoln Condominium would make the building even more inefficient than it already is with respect to its ratio of common area space to habitable space. Moreover, a 21.6 foot setback would result in the loss of 1-2 units per floor, or approximately nine units.

### 3. Public Space at Ground Level

Strict interpretation of the public space at ground level requirements of the Zoning Regulations would result in a practical difficulty to the Applicant that arises as a result of the Site's exceptionally small land area and the historic building that cannot be demolished or altered. Pursuant to 11 DCMR § 633, the Applicant is required to devote approximately 585 square feet of land area (ten percent of the Site) to public space. Section 633 further provides the following:

*633.1 – An area equivalent to ten percent (10%) of the total lot area shall be provided for all new development;*

*633.2 – The area for new development shall be located immediately adjacent to the main entrance to the principal building or structure on the lot, and shall serve as a transitional space between the street or pedestrian right-of-way and the building or structure;*

*633.3 – The area for new development shall be open to the sky or have a minimum vertical clearance of one (1) story or ten feet (10 ft.);*

*633.4 – The area shall be suitably lighted and landscaped for public use, and may be utilized for temporary commercial displays;*

*633.5 – The space shall be open and available to the general public on a continuous basis; and*

*633.6 – The area shall not be charged against the gross floor area of the building.*

Due to the existence of the historic building on the Site, which takes up approximately 2,427 square feet of land area (41% of the Site), there is only 3,423 square feet remaining for new construction. Removing 585 square feet from the available lot area leaves only 2,838 square feet for new construction, which is less than 50% of the Site's total land area, and makes development practically difficult.

Providing a set back at the ground would result in a “gap” on the street and would interrupt the natural flow of the streetscape. Moreover, providing 585 square feet adjacent to the building’s main entrance that is open to the sky would result in moving the front wall back from the street more than 16 feet. In addition to the loss of approximately nine units, having to provide the setback of the stair penthouse to the roof would result in a substantive impact on the footprint of the building and its overall floor area. As the plans demonstrate, the dwelling units located along the east face of the building vary from 630 square feet to 637 square feet. This area is only slightly greater than the 585 square feet required at the entrance. Complying with this standard would effectively eliminate nine units – approximately one third of the proposed 33 units.

The alternative manner of compliance with 11 DCMR § 633 would be to provide a public space that is only one story or ten feet in height, in accordance with 11 DCMR § 633.3. Providing such a space at the grade level building story would eliminate the potential for a functional residential entrance due to the limited area of the buildable portion of the Site and the minimum requirements for a functional building core (i.e., egress stairs, elevator core, trash area, hallway and lobby space). Further, a one-story public space at the grade level story would create a space that would conflict with the guidelines for the Greater U Street Historic District. The Historic District guidelines encourage an additive building pattern approach, which would include incorporating building elements that are common in the Historic District, elements such as bays and cornices. Providing an inset vestibule, as prescribed in 11 DCMR § 633.3, would be a subtractive building pattern approach, which is inconsistent with the existing building patterns in the Historic District.

Moreover, the flanking buildings are situated with their face on the front property line, so providing a 16-foot setback at this building will create a gap and a unique situation that will be



counterproductive to the goal of providing desirable retail space. Since the existing Industrial Bank building fronts on the property line, having the storefront windows of the proposed new construction pushed back 16 feet from the property line will make the retail invisible from U Street where most of the pedestrian traffic originates.

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

Relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan, as embodied in the Zoning Regulations and zoning map. The construction of a new mixed-use building with 33 residential units and ground floor retail will significantly contribute to the vibrancy of the neighborhood while supporting the District’s housing goals for the area. Demand for housing is growing rapidly along the U Street corridor, and the proposed development will replace a vacant, underutilized building with much needed new residential units.

First, providing no on-site parking will not create adverse impacts to on-street parking demand or to existing traffic conditions. The Site is exceptionally well served by public transportation. It is located one block from two entrances to the U Street Metrorail station, which services the Green and Yellow lines, and is within convenient walking distance of numerous Metrobus routes and stops. According to walkscore.com, which measures the walkability, transit, and bicycle access of properties, the Site is rated as a “Walker’s Paradise,” and is an “Excellent” transit location, given the variety of public transportation options and the Site’s location in a mixed-use walkable neighborhood with convenient access to restaurants and bars, shopping, recreation, and other neighborhood services and amenities. The Site is also rated a “Biker’s Paradise,” due to the flat topography surrounding the Site, the prevalence of bicycle lanes and routes connecting the neighborhood to the rest of the city, and the existence of three Capital

Bikeshare docks located 0.3 miles of the Site. Ten car-share facilities are also located within 0.4 miles of the Site, and Car-2-Go vehicles, which are operated as a city-wide point-to-point car-share service, are easily accessible throughout the neighborhood. Together, the variety of transportation options and the mixed-use neighborhood will attract residents, visitors, and retail employees who do not need or want to own a car, thus eliminating any detriment to the public good or impairment to the zone plan. Moreover, the Applicant will work with DDOT to develop transportation demand management (“TDM”) measures that adequately mitigate any impacts.

Second, with respect to rear yard depth, the portion of the Site where the building addition will occur backs up to a 10-foot wide public alley, and the residential portion of the building is set back another 10 feet from the second level up, which results in a sufficient amount of open space between the rear of the building and the western edge of the alley line. This setback will provide substantial light and air to the rooms that will face the proposed rear yard. Furthermore, most of the units on the west side of the building will have permanent direct access to air and light via the south facing windows, which have views across/over the Industrial Bank building.

Third, with respect to the public space at ground level requirements, there is a substantial amount of area in the neighborhood that is open, available, and more useful than 585 square feet on the Site. The vibrant U Street corridor has substantial access to amenities, restaurants, nightclubs, and parks, including the Harrison Playground and Recreation Center, Westminster Playground, Garriston Park, and the Seventh Street Park, all of which are in close proximity to the Site.

Subsection 633.2 requires that the public space “shall be located immediately adjacent to the main entrance to the principal building or structure on the lot, *and shall serve as a transitional space between the street or pedestrian right-of-way and the building or structure*” (emphasis

added). The entrance to the new construction will be located on the 11<sup>th</sup> Street NW side of the building. The existing sidewalk on 11<sup>th</sup> Street, N.W. is 35 feet deep, when measured between the curb line and the 11<sup>th</sup> Street, N.W. property line. This space will effectively meet the intent of providing a “transition between the street or pedestrian right-of-way and the building or structure,” and will serve as the transition between the existing building, the new construction, and the public space intended primarily for pedestrian passage.