

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

**APPLICATION OF
2002 11TH STREET LLC & INDUSTRIAL BANK
2000-2002 11TH STREET, N.W.**

**BZA APPLICATION NO. 19079
HEARING DATE: NOV. 10, 2015
ANC 1B02**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 2002 11th Street LLC and Industrial Bank (together, the “Applicant”), as owners of property located at 2000-2002 11th Street, N.W. (Square 304, Lots 27, 30, and 31) (the “Site”), in support of their application to the Board of Zoning Adjustment (“BZA” or the “Board”) for the following special exception and variance relief pursuant to 11 DCMR §§ 3104.1 and 3103.2: (i) special exception relief from the roof structure setback requirements of 11 DCMR §§ 639.1, 411, and 770.6; (ii) an area variance from the off-street parking requirements of 11 DCMR § 2101.1; (iii) an area variance from the rear yard requirements of 11 DCMR § 636.3; and (iv) an area variance from the public space at ground level requirements of 11 DCMR § 633, to allow the construction of a new multiple dwelling building with 33 residential units in the CR/ARTS District at the Site.

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception relief and variances requested herein pursuant to sections 3103 and 3104 of the Zoning Regulations.

III. BACKGROUND

A. Description of the Site

Square 304 is located in the northwest quadrant of the District and is bounded by V Street to the north, 11th Street to the east, U Street to the south, and 12th 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 11th Street, N.W. and has approximately 5,850 square feet of land area. As shown on the Zoning Map attached hereto as Exhibit A, 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, 11th 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 property 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 its south elevation, along the northern property line of the Applicant’s Site. Based on property title research, these windows are not protected by any recorded easement and therefore are at-risk of being covered as a result of new construction on the Site.

B. Description of Surrounding Area

The Site is located in the 14th & U Streets/MidCity neighborhood of the District, and is surrounded by the established neighborhoods of Logan Circle, Dupont Circle, Shaw, Columbia Heights, LeDroit Park, and Adams Morgan. *See* Washington DC Economic Partnership, DC Neighborhood Profiles 2014, p. 1. MidCity’s commercial vitality is centered along the 14th and U Street corridors, which provide diverse and growing dining, retail, residential, entertainment, and cultural establishments. *Id.* The area is one of DC’s premier walkable neighborhoods, and is located in close proximity to multiple public transportation options, including the U Street and Shaw/Howard University Metrorail stations, numerous Metrobus lines, and Capitol Bikeshare stations.

C. Existing Zoning

As indicated in the Zoning Map, the Site is zoned CR and is within the ARTS Overlay District (“ARTS/CR”). The CR zoning permits residential and commercial uses as a matter of right, with a maximum building height of 90 feet, a maximum density of 6.0 floor area ratio (“FAR”), not more than 3.0 FAR of which may be used for other than residential purposes, and a maximum lot occupancy of 75%. 11 DCMR §§ 630.1, 631.1, and 634.1. Based on the Site’s location within the ARTS Overlay and its compliance with the Inclusionary Zoning regulations, the Site may be developed with a maximum building height of 100 feet, a maximum density of 7.7 FAR, and a maximum residential lot occupancy of 80%. 11 DCMR § 1909.1(d). The Site is also subject to the public space at ground level requirements set forth in 11 DCMR § 633.1.

D. Project Description

As shown on the Architectural Plans and Elevations (the “Plans”) attached hereto as Exhibit B, the Applicant proposes to retain the existing Industrial Bank building on Lots 30 and

31, demolish the building on Lot 27, and construct a new addition to the historic building primarily located on Lot 27. The project will include a total of approximately 36,374 square feet of gross floor area, with approximately 29,419 square feet of gross floor area devoted to residential use (approximately 33 units) and approximately 6,955 square feet of gross floor area devoted to retail use. The total density for the Site will be approximately 6.2 floor area ratio (“FAR”), and the building height will be 100 feet (10 stories), excluding roof structures.

The primary retail and residential entrances will be located on 11th Street. As described in detail below, on-site parking will not be provided, thus requiring a variance from 11 DCMR § 2101.1. A secure indoor bicycle storage room will be located in the cellar with direct access from the main elevator. The Applicant is not making any changes to the Industrial Bank building on Lots 30 and 31; however, as part of the building permit process, the Applicant will subdivide the three existing lots into a new record lot.

Given that the existing two-story bank building is a contributing building to the Historic District, the Applicant has gone through the historic preservation review process for the design and massing of the proposed new structure addition. As indicated in the Historic Preservation Review Board (“HPRB”) Staff Report and Recommendation, dated October 22, 2015, and attached hereto as Exhibit C, the building’s design reflects a number of features and recommendations from the HPRB, including a simplified U Street façade, a strengthened 11th Street façade and entry design, a design that accommodates the bank’s historic cornice, and the removal of projections along the southeast corner where the new construction and the existing bank building intersect. In doing so, the HPRB Report stated:

“[w]ith the adjustments to the design, the project has addressed all preservation concerns and provides an appropriate backdrop to the bank... [T]he concept is compatible with the historic district and consistent with previous Board approvals. The HPO recommends that the [HPRB] find the concept to be compatible with the

U Street Historic District and consistent with the Act and delegate final review to staff.”

See HPRB Staff Report and Recommendation, dated October 22, 2015, p. 2, attached hereto as Exhibit C. On October 22, 2015, HPRB approved the design and massing of the proposed building.

IV.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the parking requirements of § 2101.1, the rear yard requirements of § 636.3, and the public space at ground level requirements of § 633. 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 unusual because of its 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, and as will be further explained at the public hearing, the Applicant meets the three-prong 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. 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).

In this case, the Site's small size, narrow width, the existing historic structure, and the Site's relationship to the Lincoln Condominium building, 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 Plans, 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 11th Street and only 97 feet of frontage on U Street. The Site abuts the Lincoln Condominiums, which have with at-risk windows that serve existing dwelling units and which impact the layout of the Applicant's proposed building.

The existence of the Industrial Bank building on the Site also creates an exceptional situation and severely restricts the Site's development potential. The bank building is contributing to the Historic District, which limits the Applicant's ability to demolish the structure, requires review by the Historic Preservation Office ("HPO") and approval by the HPRB, and limits new construction to Lot 27 only. The existing bank building occupies approximately 2,427 square feet of land area (approximately 41% of the Site), leaving only 3,423 square feet of land area (approximately 59% of the Site) for new development before the required setbacks and open space requirements are taken into consideration.

As indicated above, the Applicant has worked closely with HPO staff to ensure that the new construction's design, height, and massing is compatible with the historically significant Industrial Bank building and the U Street Historic District as a whole. As a result, the Applicant

has incorporated a number of design and massing features in order to obtain HPRB approval. For example, the HPO's Staff Report dated October 1, 2015, and attached hereto as Exhibit C, specifically requested that the Applicant reduce the new construction's cantilever to the south over the bank building, stating that if cantilevering is to be used at the southeast corner "where a relief in scale is most needed to give deference to the bank," it should be "limited to light, compact, discontinuous bays or balconies that help reduce the overall mass, not as a continuous band five stories in height that accentuates the disparity of size and mass between the new construction and its context." *See* HPO Staff Report dated October 1, 2015, pp. 1-2. The HPO Report also stated that "[a]ny projection to the east (on the front façade of the new construction) should be shifted northward away from the historic bank building and located over public space; no part of the proposed addition should project over the corner of the bank building." *See* HPRB Report, pp. 1-2. These recommendations resulted in the Applicant shifting mass from the south side of the proposed addition to the west side of the proposed addition since that is the only space available to locate the mass and comply with HPRB's requirements.

In addition, the Applicant has voluntarily set a portion of its building back along the northern property line to maintain access to light and air for the existing dwelling units in the Lincoln Condominium with at-risk windows. Providing this setback also directly impacts and limits the Applicant's ability to provide a rear yard.

Collectively the Site's small land area, narrow dimensions, the existing historic structure, recommendations from HPO and HPRB, and the adjacency to the Lincoln Condominiums, create an exceptional situation and condition and make it practically difficult to provide the required on-site parking spaces, rear yard depth, and public space at the ground level.

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

1. Off-street Parking

Strict interpretation of 11 DCMR § 2101.1 will result in a practical difficulty to the Applicant. Pursuant to 11 DCMR § 2101.1, the building is required to provide 11 spaces for the 33 residential units, and three spaces for the proposed retail use (14 total required parking spaces). 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 attached hereto as Exhibit D, the existing north-south alley providing access to the Site from U Street is only 8 feet wide at its opening, and dead-ends.

Second, 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 parking spaces on the surface of 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 surface parking spaces 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. Moreover, 11 DCMR § 2115.10 requires 285 square feet of land area for each required parking space. If 14 on-site parking spaces were provided at 285 square feet each, they would collectively

take up 3,990 square feet of land area, not including required drive aisles and driveways, which is more than the 3,423 square feet of land area that is available on the Site for new construction.

Third, the Applicant cannot provide any below-grade parking on the Site or a ramp to access below-grade parking. As described above and as shown on the Parking Infeasibility Diagrams included as Sheets A21-22 of the Plans, given the 8-10 foot width of the alley, vehicles do not have adequate space to make a turn from the alley onto the Site and to access any theoretical garage ramp. Moreover, even if vehicles could make the turn, 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% (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. Further, once a vehicle were to reach the foot of the ramp, there would be insufficient area on the small site to fit parking spaces under the proposed new construction. Parking also cannot be provided below the existing bank building, since this area is currently used for storage and building mechanical equipment, supporting the bank's ongoing operations, which will continue during and after construction of the proposed addition. Thus, there is simply not enough width or 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.

If the Applicant was theoretically able to provide below-grade parking under the entire Site (including below the existing Industrial Bank building), it could only fit a maximum of four parking spaces, and doing so would create significant structural challenges and potential damage to the historic building. As indicated in the memorandum prepared by Structura, Inc., attached hereto as Exhibit E, it is impractical to provide below-grade parking spaces due to significant complications and costs associated with the existing Industrial Bank structure. A potential parking

layout—which would yield only four parking spaces—would require demolition of approximately 47 linear feet of Industrial Bank’s historic, solid brick basement wall, and the entire building above the basement (approximately 9,000 pounds per foot) would require shoring until a new concrete transfer structure could be installed. The estimated depth of the new concrete structure is 30 inches, which would severely restrict the clear height in the garage. Additionally, such a significant shoring and demolition operation carries the risk of damage to the existing historic structure.

2. Rear Yard

Section 636.3 of the Zoning Regulations provides that when 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 21.5 feet, measured from an elevation of 14 feet (elevation of the first floor of the building where the residential use begins) to an elevation of 99’-6” (elevation of the top of the main roof). The Applicant proposes to provide no rear yard. Providing a compliant rear yard would result in a practical difficulty to the Applicant.

As the Board has previously noted, “to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.” *See* BZA Order No. 17556, p. 6. In BZA Case No. 17556, the Board found a practical difficulty in satisfying the rear yard requirements based on:

the request of HPRB that the new addition be pushed to the rear of the Property in combination with the need to have an appropriate width for the residential units, the location of the building’s core elements... and the need to provide an appropriately sized internal courtyard are all factors that create a practical difficulty to the Applicant. Although HPRB’s views are advisory, a negative recommendation would require the Applicant to seek relief before the Mayor’s Agent based upon a standard even more stringent than the variance test.

Id. In this case, HPRB recommended that the Applicant push the new construction to the north, away from the historic structure, thus limiting potential locations for the building's massing.

In addition, although not required to do so under the Zoning Regulations, the Applicant is also proposing to provide a partial setback along the northern property line in order to maintain access to light and air to the habitable spaces within the existing dwelling units of the Lincoln Condominium. Doing so creates a court that measures 5 feet by 73 feet (365 square feet) on the north side of the building. The Applicant could comply with the rear yard requirement but for HPRB's recommendation to push the mass of the proposed building addition away from the Industrial Bank building and the Applicant's provision of a setback from the Lincoln Condominium.

As shown on the Rear Yard Infeasibility Diagrams included as Sheets 17-18 of the Plans, complying with these development and design constraints requires the shifting of the building's mass to the rear (west) of the Site, into the area required for the rear yard. Given the Site's depth of only 95 feet, when measured east to west, providing the required 21.5 rear yard setback from the west property line beginning at the second level of the building would leave only 73 feet of buildable depth. Providing this required rear yard depth would result in the loss of proposed floor area for dwelling units along the west side of the building (approximately 666 square feet per floor), which results in a reduction of one to two units per floor, or approximately nine units total (27% fewer units). Reducing the number of units in the project is contrary to the District's stated goals of developing and maintaining a safe, decent, and affordable supply of housing for all current and future residents of the District. *See* 10A DCMR § 501.1. Moreover, given the inability to push the massing to the north or south (or east, due to the property line along the sidewalk), the

proposed density for the Site is only 6.3 FAR, even without the rear yard setback, whereas 7.7 FAR is permitted, resulting in a development plan that is substantially underbuilt.

In addition, providing a compliant rear yard would result in an excessively low efficiency factor. Multiple dwelling buildings are typically designed with a double-loaded corridor configuration where an efficiency factor of 85% to 90% of net habitable space to total gross floor area can be achieved. With a compliant rear yard, the efficiency ratio for the new construction on the Site would be 60% due to the need for a minimum amount of buildable core space, which would be comprised of two fire egress stairs, hallways compliant with the minimum width standards of the ADA and the Fair Housing Act, a trash chute and trash storage room, vertical building mechanical and communication chases, and an ADA compliant elevator. The core has been designed to be as compact as possible, with minimum compliant dimensions for the stairs and elevators, such that the same size core would be required to serve a reduced floor plan.

Although it may vary slightly depending on the building's characteristics, the amount of core space horizontal area is effectively fixed due to building code and servicing considerations. In other words, a reduction in the proposed residential floor area resulting from compliance with the minimum rear yard requirements would not result in a proportional reduction in the amount of core space required. This would result in a large portion of the building (40%) not generating revenue to actually pay for the project; however, there would still be the cost associated with constructing this space. At this point of inefficiency, the project's costs would outweigh potential revenues and the project would become infeasible.

The Board has previously held that a low efficiency factor that results in an economic hardship to the Applicant can result in a practical difficulty as it relates to meeting the rear yard requirements. For example, in BZA Order No. 18878, attached hereto as Exhibit F, the Board

recently granted a variance from the rear yard depth requirements for property located at 1017 12th Street, N.W., finding that “[c]omplete relief from the rear yard requirement is necessary to allow a financially feasible project... a rear yard of any kind would further reduce the building’s already small footprint and would exacerbate problems associated with the building’s high core factor.” See BZA Order No. 18878, p. 7. The Board in that case also stated that the economic use of property “may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases. *Id.* at 6 (quoting *Gilmartin*, 579 A.2d at 1170-71, stating that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.”). Similarly, in BZA Case No. 18905, the Board found a practical difficulty when the proposed building would have an efficiency factor of 62% under matter-of-right renovations. See BZA Order No. 18905, p. 10.

Similar to the facts and the Board’s findings in the above-cited cases, in this case, the low efficiency factor and the costs associated with constructing an inefficient building with a reduced number of residential units results in a practical difficulty to the Applicant.

3. Public Space at Ground Level Requirements

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 (10% of the Site’s land area) 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.

As shown on the Public Space Infeasibility Diagrams included as Sheets A19-20 of the Plans, providing 585 square feet adjacent to the building's main entrance that is open to the sky would require setting back the building's front wall from 11th Street more than 16 feet. Doing so would substantially impact the building's footprint and overall floor area, and would affect the location of the stair tower and core elements, resulting in an even more inefficient building layout. The result would also eliminate approximately nine units (one unit per floor), since the dwelling units located along the east face of the building vary from 630 square feet to 637 square feet, which area is only slightly greater than the 585 square feet required at the entrance. Thus, providing the required open space would eliminate approximately 27% of the proposed 33 units.

Moreover, providing the required set back at the ground level would result in a gap on the street, interrupt the natural flow of the streetscape, and potentially create unsafe corners with poor visibility. The required public space would create a narrow, inset, overshadowed space; limit

natural light for the building due to the location of the adjoining buildings; and create a disjointed street façade, which would be detrimental to creating a coherent, pedestrian friendly environment and would not be in character with the commercial nature of the street.

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 grade level would create a space that conflicts with the guidelines for the Greater U Street Historic District, which encourage an additive building pattern approach, including the incorporation of 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 building to the south (the Industrial Bank) is situated with its face on the front property line, such that providing a 16-foot setback for the proposed building would 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 would make the retail invisible from U Street where most of the pedestrian traffic originates. A setback location in accordance with the minimum requirements would undermine the space's viability to be used for its intended purpose as a land use permitted in the zone district (retail) and encouraged through the ARTS overlay.

C. **The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a 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.

1. Off-street Parking

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 Metrorail 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 within 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 accessed throughout the neighborhood. Together, the variety of

transportation options and the mixed-use neighborhood will attract residents, visitors, and retail employees and patrons who do not need or want to own a car to access the Site, thus eliminating any detriment to the public good or impairment to the zone plan.

In addition, and as described in detail in the Comprehensive Transportation Review (“CTR”) Report, prepared by Gorove/Slade Associates and attached hereto as Exhibit G, the Applicant has worked with DDOT to develop the following transportation demand management (“TDM”) measures that will adequately mitigate any impacts of the development, including hiring a transportation management coordinator; creating an alternative transportation marketing program; offering transportation incentives to help encourage non-auto transportation uses; and providing on-site bicycle amenities and brochures on bicycling in the District and for Capital Bikeshare.

In the unlikely event that additional parking is needed for residents, visitors, patrons, or employees of the retail space, parking will be available in nearby off-street parking facilities for daily use. As noted in the CTR, there are a number of parking garages located within 5-6 blocks of the Site, including one garage located directly across the street from the Site and one garage located a half block south of the Site on 11th Street. Collectively, the nearby parking garages can absorb any additional parking demands created by the proposed development. Moreover, as indicated in the letters attached hereto as Exhibit H, a number of owners and operators of parking facilities in close proximity to the Site are willing to provide parking spaces for the project if needed.

2. Rear Yard

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. This alley creates a sufficient amount of open space

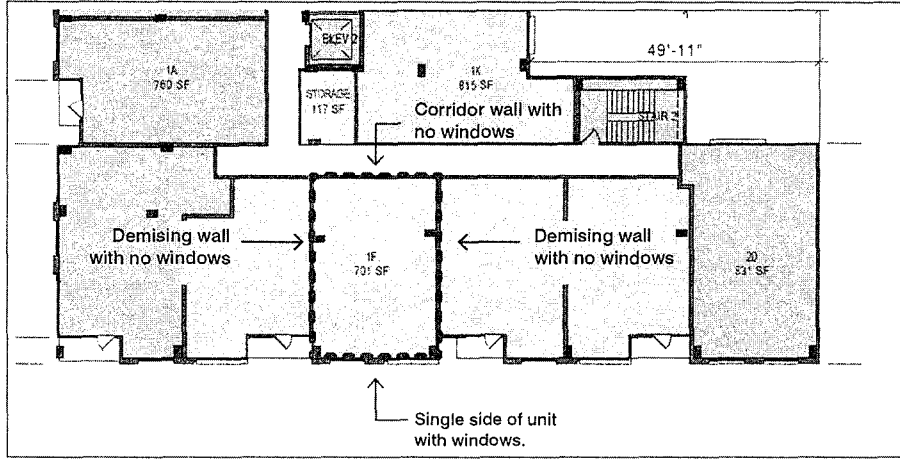
between the rear of the building and the western edge of the alley, thus providing adequate light, air, and ventilation for building residents and for occupants of adjacent buildings. (*see* Z.C. Order No. 06-31, Finding of Fact No. 82a, stating that the project’s proposed courtyard “provides light and air for the residential units and is essentially relocated open space, achieving the goals of the rear yard requirement”). As the Board noted in BZA Order No. 17604, in which it granted rear yard relief, an adjacent alley and proposed court provided “ample distance to allow sufficient light and air to the buildings surrounding the proposed... building and will protect... the privacy of building occupants and allow sufficient light and air for both buildings.” *See* BZA Order No. 17604, Finding of Fact No. 23. Similarly, in BZA Order No. 16871, the Board granted rear yard relief, finding that a courtyard in lieu of a rear yard provided more light and air to neighboring residential buildings than would the required rear yard, and that the courtyard provided better design results for the building and its neighbors. *See* BZA Order No. 16871, Finding of Fact 13.

In this case, although the court in lieu of a rear yard requirements do not apply to the CR District, the same concept holds true. The Applicant proposes to provide two large courts on the Site: one court to the north of the proposed building along the shared property line with the Lincoln Condominiums, and one court to the south of the proposed building, over and above the Industrial Bank building. Together, these courts provide more light and air to the proposed building and to the adjacent building than would a compliant rear yard.

Moreover, most of the units on the west side of the building will have permanent direct access to air and light via their south facing windows, which have views across/over the Industrial Bank building. In fact, most of the units on the west end of the building will have access to more light and air than typical central units located in a double-loaded corridor multiple-dwelling building. Typical central units have windows on a single side, with two of the other walls serving

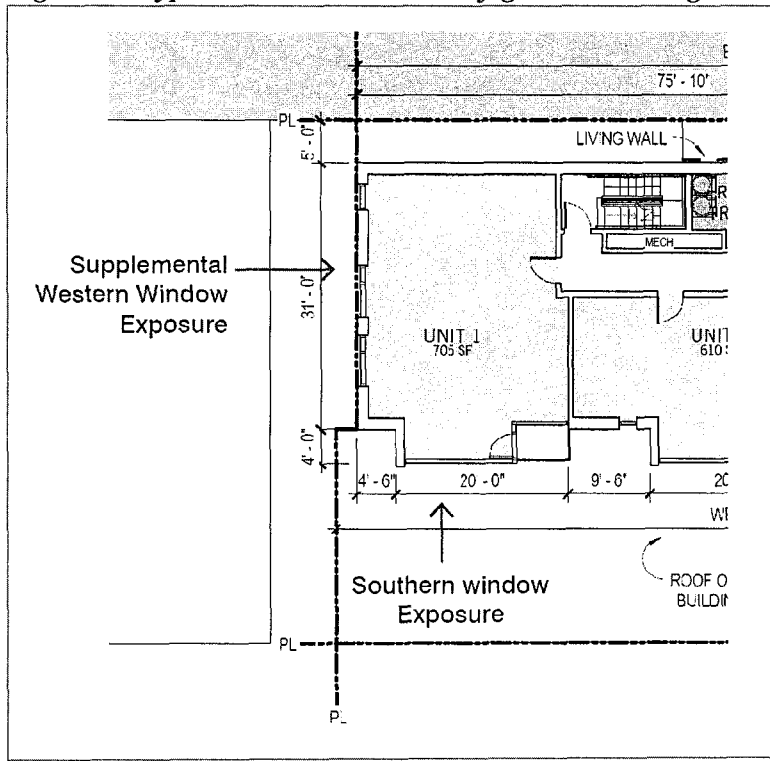
as demising walls between other neighboring units and the fourth wall facing a common corridor (see Figure 1).

Figure 1: Typical Double Loaded Corridor Central Unit Configuration



However, most of the units proposed on the west end of the building will have large southern window exposures with additional supplementary windows on the west face of the building (see Figure 2).

Figure 2: Typical Western Unit Configuration Along Rear Lot Line



Finally, although the Applicant is not providing a rear yard, it is providing two courts, which will offer the same benefits as a rear yard. As stated in BZA Order No. 16871, the proposed project's courtyard would "greatly enhance the light and air of the units of the adjacent buildings," and requiring the applicant to provide a rear yard "would render it infeasible to provide such a courtyard and, as such, constitutes a practical difficulty." See BZA Order No. 16871, Finding of Fact No. 10. In this case, the court along the northern property line and the substantial open space above the existing bank building will enhance the light and air to the occupants of the buildings on the Site and to those in the adjacent building to the north. If the Applicant was required to provide the rear yard setback, it would not be able to also provide the court setback on the northern side of the proposed building.

3. Public Space at Ground Level

Regarding 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 11th Street NW side of the building. The existing sidewalk on 11th Street is 35 feet deep, when measured between the curb line and the 11th Street 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. Moreover, the façade as proposed will allow for a welcoming and appealing retail entrance, will enhance the pedestrian experience by adding variety and rhythm to the streetscape, will follow the historic building line, and will allow for a viable retail and residential floor plan.

Moreover, relief from the public space at ground level requirements has been granted in other cases where projects include interior space open and available to the public. For example, in Z.C. Order No. 07-21, the Zoning Commission granted flexibility from 11 DCMR § 633 since the proposed hotel included a lobby that was designed as an open, publically-accessible feature, adjacent to the main entrance of the building, with a minimum vertical clearance of one story or 10 feet, provided lighting suitable for public use, and was open and available to the general public. *See* Z.C. Order No. 07-21, Finding of Fact 37(a). In this case, the ground floor retail space will also be open and publically accessible, adjacent to the building’s main entrance, will have a vertical clearance of one story and suitable lighting, and will be open and available to the general public. Therefore, although the retail space is part of the building itself and there is no formal transitional space outside of the entrance doors, there will be no adverse impact on the public good by filling in the 10% public space requirement with a retail storefront.

V.
THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION RELIEF

The Applicant seeks special exception relief from the roof structure setback requirements of 11 DCMR §§ 639.1, 411, and 770.6.

A. Standard for Approving Special Exception Relief

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

Under 11 DCMR § 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.* In this case, special exception approval is required because, as shown on the roof plan sheet included in the Plans, the roof structure will not be set back 1:1 from the southern edge of the roof upon which it is located.

However, the roof structure meets all other setback requirements, including being setback from 11th and U Streets.

The Applicant proposes to provide a small amenity space and roof deck on the roof, plus stair and elevator access and mechanical equipment. As indicated on the Penthouse Setback Infeasibility Diagrams included as Sheets A23-24 of the Plans, the roof structure is setback 7 feet from the southern edge of the roof upon which it is located, whereas 14.5 feet is required. The reduced setback from this roof edge will not create any adverse impacts and will not result in the loss of light or air to any adjacent buildings. Although a 14.5 setback is required, the roof structure will have a 7 foot setback from the roof on which it is located, a 33 foot setback from the southern edge of the new construction, and a 18 foot setback from U Street.

Approval of the setback relief will not result in any adverse impacts. The enclosure over the mechanical equipment has been sized to accommodate the amount of mechanical equipment necessary for the proposed uses within the building. Moreover, providing the amenity space is consistent with most new residential buildings in the District. At a 7 foot setback, the requested relief is *de minimis*. The penthouse's FAR is only 0.21 (1,240 square feet), whereas the Zoning Regulations allow an FAR of 0.37. Moreover, if the main façade continued upward, the penthouse would comply with the 1:1 setback requirement. Therefore, the setbacks as proposed will allow for a usable amenity space and roof deck without creating any adverse impacts.

VI. **COMMUNITY SUPPORT**

The Applicant has worked with the community and is pleased to have support for the project. On September 3, 2015, at its regularly scheduled, duly noticed Advisory Neighborhood Commission ("ANC") 1B meeting, with a quorum of commissioners present, ANC 1B voted 11-0 to support the application for variance and special exception relief. At the same meeting, ANC

1B also voted to support the Applicant's application for conceptual design review and approval to the HPRB. These votes were taken after ANC 1B's Zoning Preservation and Design Committee voted on August 17, 2015, to recommend support of the BZA application by the full ANC. A copy of the ANC's resolution in support is attached as Exhibit I.

VII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

- Exhibit A: A portion of the Zoning Map showing the Site
- Exhibit B: Updated Architectural Plans and Elevations for the Project
- Exhibit C: Historic Preservation Review Board Staff Reports
- Exhibit D: Surveyor's Plat
- Exhibit E: Structura, Inc. Memorandum
- Exhibit F: BZA Order No. 18878
- Exhibit G: Comprehensive Transportation Review Report
- Exhibit H: Letters from Parking Lot Operators
- Exhibit I: ANC 1B Resolution in Support
- Exhibit J: Outlines of Testimony
- Exhibit K: Resumes of Expert Witnesses

VIII.
WITNESSES

- A. Adrian Washington and Michael Giulioni, Representatives of the Applicant
- B. Bill Bonstra, Bonstra Haresign Architects, architects for the project
- C. Erwin Andres, Gorove/Slade, traffic consultant for the project

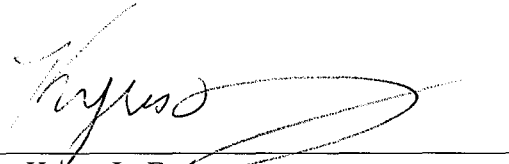
IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____



Kyrus L. Freeman
Jessica R. Bloomfield