

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

**APPLICATION OF
2800 SHERMAN, LLC
HEARING DATE: DEC. 8, 2015**

**BZA APPLICATION NO. 19127
SQUARE 2857, LOT 818
ANC 1B09**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 2800 Sherman, LLC (the “Applicant”), in support of its application to the Board of Zoning Adjustment (“BZA” or “Board”), pursuant to 11 DCMR 3103.2 and 3104.1, for area variances from 11 DCMR §§ 401.3, 403.2, 404.1, and 2115.2, and special exception approval under 11 DCMR §§ 2604.3 and 2116.5, to permit the construction of 11 two-family dwellings (flats) in the R-4 District at 2800 Sherman Avenue, N.W. (Square 2857, Lot 818) (the “Site”).¹

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception and variance relief requested herein pursuant to 11 DCMR §§ 3103 and 3104.

¹ The original application also requested special exception approval from section 400.23 of the Zoning Regulations, which relief is no longer necessary. On September 10, 2015, the Zoning Commission took final action on Z.C. Case No. 14-11 to amend Section 400.1 of the Zoning Regulations to state that new construction of both one- and two-family row dwellings in groups of three or more may be built to a height of 40 feet. Because the Applicant proposes to construct two-family dwellings that are built in groups of three or more and are less than 40 feet in height, the project no longer needs a special exception from section 400.23 and the Applicant hereby removes its request for this area of zoning relief.

III. **BACKGROUND**

A. Description of the Site

The Site consists of Lot 818 in Square 2857 and has a total land area of 13,900 square feet. Square 2857 is bounded by Harvard Street to the north, Sherman Avenue to the east, Girard Street to the south, and 11th Street to the west. The Site is located in the southeast portion of Square 2857 and is bounded by private property to the north, Sherman Avenue to the east, Girard Street to the south, and a 15-foot wide public alley to the west. The Site was most recently occupied by a non-conforming commercial/industrial use as the headquarters of Foote's Plumbing and Heating. A two-story commercial building is located at the southeast corner of the Site, with surface parking surrounding the building to the north and west, and a one-story garage building on the west side of the Site, abutting the alley, which can accommodate nine vehicles. As shown on the Zoning Map attached hereto as Exhibit A, the Site is zoned R-4 and is located within Advisory Neighborhood Commission ("ANC") 1B.

B. Description of Surrounding Area

The Site is located in Columbia Heights, one of the District's most diverse and dense urban neighborhoods. "The neighborhood's urban character, walkability, amenities and new residential construction continue to draw young professionals... to move to this area. The neighborhood's stability, access to public transportation, and proximity to the downtown core offer retailers a wealth of opportunities." *See* Washington DC Economic Partnership, DC Neighborhood Profiles 2014, p. 14. Sherman Avenue is one of the major north-south corridors in the District and in Columbia Heights in particular. The majority of the area surrounding the Site is zoned R-4 and is primarily developed with one- and two-family row dwellings. The

proposed dwellings on the Site were designed to fit into this existing residential neighborhood context.

C. Project Description

As shown on the architectural plans and elevations (the “Plans”) attached hereto as Exhibit B, the Applicant proposes to remove the existing commercial building and garages and to subdivide the Site into 11 individual record lots in order to construct 11 two-family row dwellings (flats). The six new lots fronting Girard Street are referred to herein as “Lots A-F” and the five new lots fronting Sherman Avenue are referred to herein as “Lots G-H and J-L.” The project will be subject to the Inclusionary Zoning (“IZ”) requirements set forth in Chapter 26 of the Zoning Regulations. One of the row dwellings will include two three-bedroom IZ units.

Fifteen surface parking spaces will be provided on the Site, all of which will be accessed from the public alley. Thirteen spaces will be located in the north-south stem portion of the flag lot located along the alley, and two spaces will be located behind Lots C and D. Two centralized trash areas will be provided on the Site for use by all dwellings: one will be located to the rear of Lot A and one will be located to the rear of Lots F and L.

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

Variance relief in this case is required from sections 401.3, 403.2, 404.1, and 2115.2 of the Zoning Regulations.

A. Standard for Approving an Area Variance

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.

B. 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. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Site is affected by exceptional narrowness, shallowness, and shape. The Site has approximately 13,900 square feet of land area and is roughly comprised of two rectangles. The main portion of the Site, at the corner of Sherman Avenue and Girard Street includes former Lots 800 and 808, and measures approximately 75 feet along Sherman Avenue and approximately 120 feet along Girard Street. Abutting these lots to the west is former Lot 816, which has a long, narrow, rectangular shape, with 35 feet of frontage on Girard Street and 140 feet of frontage extending north along the alley to the west. The two rectangles together create an irregularly-shaped and sized flag lot, which significantly impacts matter-of-right development of the Site.

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

The size, shape, and dimensions of the Site present limited options for appropriate development with matter-of-right residential dwellings in accordance with the Zoning Regulations. The architects studied a variety of factors and configurations in developing a plan for the Site that fits into, and is consistent with, the fabric of the surrounding R-4 District.

Important factors in developing the proposed plan include the following:

- Maximizing the orientation of dwellings to face Sherman Avenue, rather than positioning them to face Girard Street, which would result in one long side wall and a large rear yard “gap” located mid-block along Sherman Avenue;
- Minimizing the rear yard “gap” along the Girard Street frontage;
- Maintaining the height, width, design, rhythm, and overall size of the buildings and lots to be consistent with the character of the surrounding residential neighborhood;
- Providing adequate off-street parking and on-site location for trash storage; and
- Eliminating the need for curb cuts and parking spaces along both streets.

The proposed plan for the project is the most logical layout and orientation for the development, consistent with the character and fabric of the existing neighborhood. As shown on Sheets 4 and 5 of the Plans, many of the row dwellings in the surrounding neighborhood are nonconforming as to lot width and lot area, with dimensions far smaller than those of the proposed project. The average lot width for the proposed development is 16 feet, which is permitted for IZ developments in the R-4 District, and the average lot area for the proposed development is 1,265 square feet, whereas 1,500 square feet is permitted by special exception for IZ developments in the R-4 District under section 2604.3 of the Zoning Regulations. The proposed average rear yard depth for the new lots is 19 feet, 2 inches, whereas a rear yard depth of 20 feet is required. The proposed average lot occupancy is 54% for the new lots, whereas

60% is required. Thus, to accommodate the proposed development on the irregularly-shaped Site, up to three variances are required for some of the individual lots. A variance is also required for the use of compact parking spaces, since all fifteen of the off-street parking spaces on the Site will be compact in size.

1. Variances for Lots G, H, J, K, L

a. Lot Width

Virtually all of the row dwellings along this section of Sherman Avenue have their frontage facing Sherman Avenue. With 75 feet of frontage along Sherman Avenue, the Site is only five feet short of the ability to accommodate five 16-foot wide record lots along Sherman Avenue. Pursuant to Section 2604.3 of the IZ Regulations, 16-foot wide lots are permitted for flats in the R-4 District by special exception. However, because the five proposed record lots are only 15 feet wide each, a variance from the lot width requirement of Section 401.3 is necessary for the dwellings fronting on Sherman Avenue (Lots G, H, J, K, L).

b. Lot Area, Rear Yard, and Lot Occupancy

In addition, the lots along Sherman Avenue would need to have a depth of 100 feet in order to measure 1,500 square feet each, which is the required lot area for IZ units in the R-4 District. However, based on the proposed depth of 41 to 42 feet for the buildings on Lots G, H, J, and K, which is shallower than the depth of many other row dwellings fronting this section of Sherman Avenue, providing 1,500 square foot lots would result in a 58 to 59-foot deep rear yard gap along the Girard Street streetscape, which is undesirable for the urban context. Thus, the Applicant proposes to provide lots of 885 square feet, with 17 to 18-foot deep rear yards for Lots G, H, J, and K, in order to minimize that gap along the streetscape and maintain the architectural

rhythm. As a result, the project requires variances from the lot area, rear yard, and lot occupancy requirements for the dwellings fronting on Sherman Avenue.

With respect to Lot L (the fifth lot fronting on Sherman Avenue), the calculations are slightly different. The gross floor area of the overall project will be approximately 30,044 square feet, resulting in an IZ requirement for the project of 3,004.4 square feet. The Applicant proposes to locate two three-bedroom IZ units on Lot L. In order to accommodate the required IZ square footage in the building on Lot L, the building's footprint (and the IZ units themselves) need to be slightly larger than the footprints of the other buildings and units along Sherman Avenue on the Site. As a result, the larger footprint affects the lot occupancy and rear yard dimensions of Lot L, relative to those dimensions for the other lots along Sherman Avenue.

2. Variances for Lots D, E, and F

a. Lot Area

Due to the irregular shape of the Site, the three western-most lots fronting on Girard Street (Lots A, B, and C) are all irregular in shape and size, but all comply with (and exceed) the minimum required lot dimensions for a project with IZ units in the R-4 District. Lots D, E, and F (also fronting on Girard Street) match Lots A, B, and C in the permitted lot width, but because of the shallow north-south depth of 75 feet on this portion of the Site, Lots D, E, and F require variances from the lot area requirements. In order to provide the minimum required lot area of 1,500 square feet and maintain the 16-foot lot width requirement, consistent with the three lots to the west, Lots D, E, and F would need to be 93.75 feet deep each, which depth would encroach on the adjacent property to the north by approximately 19 feet. Alternatively, Lots D, E, and F would need to be 20 feet wide in order to meet the 1,500 square foot minimum lot area requirement, which would be inconsistent with the three lots to the west of the Site and with the

surrounding development in the neighborhood. Moreover, adding 12 feet in width in total for Lots D, E, and F would significantly encroach on the rear yards of Lots G, H, J, K, and L.

3. Variance from the Compact Parking Space Requirements

A variance is also required for the use of compact parking spaces, as set forth in Section 2115.2 of the Zoning Regulations. Fifteen surface parking spaces are proposed to be located on the north-south stem of the Site along the alley and behind Lots C and D. The Applicant proposes that all of the parking spaces will be compact in size in order to provide sufficient drive aisle widths, to accommodate the on-site trash areas, and to prevent the need for any new curb cuts onto the Site or a variance from the number of required parking spaces. Since the required number of full-sized parking spaces could not fit in the same area, a variance to provide compact spaces is required.

D. 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

The requested relief can be granted without substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the zone plan. The proposed development plan is a logical layout given the Site's physical constraints, and is consistent with the dimensions and character of the surrounding community. Although up to three variances are required for some of the proposed new record lots, many of the variance requests are *de minimis*, consisting of several feet at most for the rear yard depth, lot width, and parking dimensions. The proposed lot areas and lot occupancies are compatible with those found in the surrounding neighborhood, and therefore will not result in any substantial detriment to the public good or substantial impairment to the zone plan. Moreover, as described below, the ANC and the surrounding neighborhood residents supported the proposed design for the Site.

V.
THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION APPROVAL

The Applicant seeks special exception relief from Sections 2604.3, and 2116.5 of the Zoning Regulations.

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.*

B. Lot Width

Lots A, B, C, D, E, and F are all 16 feet wide, which is permitted by special exception, pursuant to Section 2604.3 of the Zoning Regulations for IZ developments in the R-4 District. As noted above, the average lot width in the surrounding area is 17.1 feet (a range of 12.5 to 26 feet). Accordingly, the proposed 16-foot lot widths would be consistent with lot widths found in the surrounding neighborhood. Therefore, the grant of this special exception will be in harmony

with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property.

C. Parking Other than on the Lot Where the Principal Use is Located

Section 2116.5 of the Zoning Regulations permits off-site parking for flats by special exception. Given the size, shape, and dimensions of the Site, and the layout of the proposed development, all of the parking for the project is located on the western portion of the Site adjacent to the alley. Some lots will have more than one parking space, others will have a portion of a parking space, and the remainder will have no parking spaces. Cross-easements will be recorded to allow access and use of the parking by the residents of the project. The proposed parking layout is the most efficient use of land, and complies with Section 2116 as follows:

- 2116.5 Except as provided in § 2117.9, if approved by the Board of Zoning Adjustment pursuant to § 3104 for special exceptions, open parking spaces accessory to any building or structure may be located anywhere on the lot upon which the building or structure is located, or elsewhere, except in the case of a one-family dwelling, in accordance with §§ 2116.6 through 2116.9.

- 2116.6 The Board shall determine that it is not practical to locate the spaces in accordance with § 2116.2 for the following reasons:
 - (a) Unusual topography, grades, shape, size, or dimensions of the lot;
 - (b) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets;
 - (c) Traffic hazards caused by unusual street grades; or
 - (d) The location of required parking spaces elsewhere on the same lot or on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties

- 2116.7 When the accessory parking spaces are to be located elsewhere than on the lot upon which the building or structure they are intended to serve is located, the parking on adjacent lots or lots separated only by an alley

from the lot upon which the building or structure is located, shall be preferred.

2116.8 The accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures that they are designed to serve.

2116.9 The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it deems necessary to protect adjacent or nearby property. It may also impose other conditions it deems necessary to assure the continued provision and maintenance of the spaces.

In this case, the proposed parking plan meets the standards of Subsections 2116.5 through 2116.9. The location of the parking spaces will result in the most efficient use of land, better design, safe ingress and egress to the street, and less impact on neighboring property. All ingress and egress will occur from the public alley, will result in the closure of an existing curb cut, and will not require or provide any vehicle entrances or curb cuts onto the Site from the surrounding streets. Moreover, the location of the parking spaces is conveniently located for occupants of the proposed development. Thus, pursuant to Section 3104.1 of the Zoning Regulations, the grant of this special exception will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property.

D. Roof Structures

On November 9, 2015, the Zoning Commission voted to take final action to adopt amendments to the roof structure regulations. If these new regulations are published in the *DC Register* before the Board renders its decision in this application, they will be applicable to this case.

Section 411.5 of the newly adopted penthouse regulations states:

“Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail for a roof deck required by the Building Code, shall not be

permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in any zone, however, the Board of Zoning Adjustment may approve a penthouse as a special exception under § 3104, provided the penthouse (a) is no more than 10 feet in height and contains no more than one story, and (b) contains only stair or elevator access to the roof and a maximum of 30 square feet of storage space ancillary to a rooftop deck.

The proposed flats on the Site will have penthouses, thus requiring a special exception according to section 411.5. However, none of the penthouses will exceed 10 feet and one story in height, and all of the penthouses will meet or exceed the setback requirements. The penthouses will contain only stair access to the roofs and a maximum of 30 square feet of storage space ancillary to the adjoining rooftop decks. Thus, pursuant to section 3104.1, the grant of this special exception will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property.

VI. COMMUNITY SUPPORT

The Applicant has worked with the community and is pleased to have support for the project. On November 5, 2015, at its regularly scheduled, duly noticed ANC 1B meeting, with a quorum of commissioners present, ANC 1B voted 8-0 to unanimously support the application.

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: Outlines of Testimony

VIII. WITNESSES

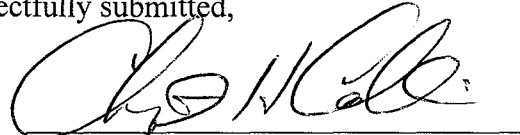
- A. Jerry Zayets, Capital City Real Estate
- B. David Bagnoli, McGraw Bagnoli Architects, architects for the project

IX.
CONCLUSION

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

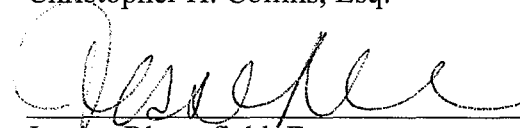
Respectfully submitted,

By:



Christopher H. Collins, Esq.

By:



Jessica Bloomfield, Esq.

HOLLAND & KNIGHT, LLP
800 17th Street, N.W.
Suite 1100
Washington, DC 20006
(202) 955-3000