

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

**PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

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I. Introduction

The Property is identified as Square 2857, Lot 818, and is zoned R-4. The Property is located at the northwest corner of Sherman Avenue and Girard Street, NW in Columbia Heights and was most recently occupied by a non-conforming commercial/industrial use as the headquarters of Foote’s Plumbing and Heating. There is a two story commercial building on the corner, with surface parking surrounding the building to the north and west, and a one-story garage on the west side of the Property abutting the alley. The applicant proposes to remove the existing commercial building and to subdivide the Property into 11 lots (Lots A-F fronting Girard Street and Lots G-H and J-L fronting Sherman Avenue) in order to construct 11 two-family dwellings (“flats”) without side yards. The project will be subject to Inclusionary Zoning (“IZ”).

II. Variance Relief

The Applicant requests area variances from subsections 401.3, 403.2, 404.1, and 2115.2 of the Zoning Regulations.

A. The Property is Affected by Exceptional Situations or Conditions

The Property is affected by exceptional narrowness, shallowness, and shape. The Property measures 13,900 sq. ft. of land area, and is roughly comprised of two rectangles, as shown on the attached plans. The main portion of the Property, at the corner of Sherman and Girard, includes former Lots 800 and 808, and measures 75 ft. along Sherman Avenue and 120 ft. along Girard Street. Abutting those lots to the west is former Lot 816, a long, narrow rectangle, with 35 ft. of frontage on Girard Street, and 140 ft. of frontage extending north along the alley to the west. The two rectangles together create an irregularly-shaped flag lot.

B. The Strict Application of the Zoning Regulations Would Result in Practical Difficulties

The size, shape, and dimensions of the Property present limited options for appropriate development with matter of right residential dwellings in accordance with the Zoning Regulations. The architects considered a number of factors in developing a proposed plan that fits into, and is consistent with, the fabric of the surrounding R-4 District. Important factors included:

-maximizing the orientation of dwellings facing Sherman Avenue, rather than having the buildings all facing Girard Street with one long side wall and a rear yard mid-block “gap” along Sherman Avenue;

-minimizing the rear yard “gap” along the Girard Street frontage;

-keeping the height, building width, design, rhythm and overall size of the buildings and lots consistent with the character of the surrounding residential neighborhood; and

-minimizing, or eliminating, the need for curb cuts and parking access along the streets.

The proposed plan presents the most logical layout and orientation of the development, and is in keeping with the character and fabric of the neighborhood. As shown by the orange highlighted dwellings on Sheet 4 of the architectural drawings, virtually all of the row dwellings in the surrounding neighborhood are nonconforming as to lot width and lot area. Collectively, the average lot width is 17.1 feet, and the lot area is 1,465 SF, with a range of 1120 to 3000 SF for lot area and 12.5 feet to 26 feet for lot width. The average lot area in the proposed project is 1,265 sq. ft., whereas 1,500 sq. ft. is permitted by special exception for IZ developments in the R-4 zone under Section 2604.3. The proposed average lot width is 16 ft., which is permitted for IZ projects in the R-4 zone. The proposed average rear yard depth is 19 ft. 2 in., whereas 20 ft. is required. The proposed average lot occupancy is 54%, whereas the R-4 zone allows a maximum of 60% for flats. Eleven off-street parking spaces are required, and 15 will be provided. However, to accommodate this development on the irregularly-shaped Property, up to three variances are required for some of the individual lots. A variance is also required for the use of compact parking spaces. Although not a zoning issue, cross-easements will also be provided for access to the parking and trash areas.

#### A. Variances for Lots G, H, J, K and L

Virtually all of the row dwellings along this section of Sherman Avenue front on Sherman. With 75 ft. of frontage along Sherman Avenue, the Property is only five feet short of the ability to accommodate five 16 ft. wide record lots along Sherman. Per subsection 2604.3 of the IZ regulations, 16 ft. wide lots are permitted for flats in the R-4 zone by special exception. However, because the five lots are only 15 ft. wide, a variance from the lot width requirement of 11 DCMR § 401.3 is necessary for the dwellings fronting on Sherman Avenue (Lots G, H, J, K and L).

The lots along Sherman Avenue would need to have a depth of 100 ft. in order to measure 1500 sq. ft., which is permitted for IZ units in the R-4 zone. However, based on the proposed 41-42 ft. depth of the buildings along Sherman, which is shallower than many other row dwellings fronting this section of Sherman Avenue, this would result in a 58-59 ft. wide rear yard gap along the streetscape of Girard Street. The plan proposes 17-18 ft. rear yards, in order to minimize that gap along the streetscape. As a result, variances from lot area, lot occupancy and rear yard are required for the dwellings fronting on Sherman Avenue.

## B. Variances for Lots D, E, and F

Because of the irregular shape of the Property, the three westernmost proposed lots fronting on Girard Street (Lots A, B and C) are all irregular in shape and size, but they all comply with (and exceed) the minimum required lot dimensions for IZ units in the R-4 zone. Lots D, E and F, also fronting on Girard, match Lots A, B and C in the permitted lot width, but because of the shallow north-south depth of 75 ft. in this portion of the Property, Lots D, E and F require variances from lot area. In order to provide the minimum required 1500 sq. ft. lot area, and retain the 16 ft. width of the façade, in keeping with the three lots to the west, Lots D, E and F would need to be 93.75 ft. deep. The applicant is not able to purchase 19 ft. of the neighboring property to the north to allow this to happen. Alternatively, Lots D, E and F would need to be 20 ft. wide in order to meet the 1500 sq. ft. lot area requirement. This dimension would be inconsistent with the three lots to the west of the Property and with the surrounding development in the neighborhood. In addition, adding 12 ft. in total width for Lots D, E and F would significantly encroach on the rear yards of Lots G, H, J, K and L.

The gross floor area of the project will be 30,044 sq. ft. Thus, the IZ requirement will be 3004.4 sq. ft. The Applicant proposes to locate two IZ units on Lot L. In order to accommodate the required IZ square footage in that building, the building footprint (and the IZ units themselves) will need to be slightly larger than that of the other buildings and units along Sherman Avenue in this project. As a result, the larger footprint will affect the lot occupancy and the rear yard dimensions for Lot L, relative to those dimensions for the other lots along Sherman Avenue.

A variance is also required for the use of compact parking spaces, as set forth in subsection 2115.2 of the Zoning Regulations. The north-south stem of the Property, along the alley, is the most logical location for the parking. Compact parking spaces are used in order to be able to provide sufficient driveway and aisle widths, and to accommodate trash areas, all without the need for a single new curb cut for the development. The same number of full-size parking spaces would not fit in this area. Because full size spaces are required, a variance to use compact spaces is necessary.

## C. Relief Can Be Granted Without Substantial Detriment To The Public Good And Without Substantially Impairing The Intent, Purpose Or Integrity Of The Zone Plan

The development plan is a logical layout given the constraints of the Property and is consistent with the character of the surrounding community. Although up to three variances are required for some of the lots, and a variance is required for the use of compact spaces, many of the variance requests are de minimis, consisting of several feet at most for the parking dimensions, the rear yard depth, and the lot width. The lot areas and lot occupancies provided are compatible with the lot areas and lot occupancies found in the surrounding neighborhood, and therefore will not result in any detriment to the public good or zone plan.

### III. Special Exception Relief

The Applicant requests special exception relief from subsections 400.23, 2604.3, and 2116.5 of the Zoning Regulations.

A. Building Height—According to Section 400.1, “new construction of three or more immediately adjoining row dwellings built concurrently on separate record lots” is permitted to be built to a height of 40 ft. As written, the same rule does not apply to flats<sup>1</sup>, which are limited to a height of 35 ft. The flats are proposed at 36 ft., and therefore require special exception relief for one foot of height. The applicant meets the special exception criteria of Section 400.23:

- (a) The applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular
  - (1) The light and air available to neighboring properties shall not be unduly affected;
  - (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised,
  - (3) An addition shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code,
  - (4) An addition shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator, and
  - (5) The resulting building or structure height, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage,
- (b) The applicant shall demonstrate that overall building or structure height or an upper addition resulting from the additional five feet (5 ft) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features, and
- (c) In demonstrating compliance with §§ 400.23(a) and (b), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways

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<sup>1</sup> Based upon a discussion with Office of Planning, the Applicant understands that the quoted text of Section 400.1 was originally intended to apply to both single family dwellings and flats. However, the term “row dwellings” is a defined term, meaning a single family dwelling. The Applicant also understands that a proposal to modify that language to include flats may be filed with the Zoning Commission. If that language is modified prior to the public hearing in this case, the Applicant will withdraw this special exception request.

The additional foot of proposed height will not substantially adversely affect the use or enjoyment of any abutting or adjacent dwelling or property, and will be practically unnoticeable from the street. Because this is new construction, Section 400.23(a)(3),(a)(4) and (b) do not apply. Similarly, the grant of this special exception for one additional foot of height 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.

B. Lot Width—Lots A, C, D, E and F are all 16 ft. in width, which is permitted by special exception pursuant to Section 2604.3 for IZ developments in the R-4 zone. The 16 ft. lot widths are consistent with lot widths found in the neighborhood. 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 permits off-site parking for flats by special exception. Given the size, shape and dimensions of the Property and the layout of the proposed development, the plan provides all of the parking on the western portion of the Property, adjacent to the alley. This is the most efficient use of the land. The proposal complies with Section 2116.5:

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.

The proposed parking plan meets the tests of subsections 2116.6 through 2116.9. The location of the parking spaces will result in a more efficient use of land, better design, safer ingress and egress to the street, and less impact on neighboring property, since all ingress and egress will occur from the public alley and will result in the closure of two existing curb cuts, with no garage entrances or curb cuts in front of the proposed dwellings. Moreover, the location of the parking spaces is conveniently located for occupants of the proposed development. Additionally, per 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.

D. Proposed Section 411.5—Roof Structure Special Exception for R-4 Zone

The new penthouse regulations were published in a Notice of Proposed Rulemaking in the August 7, 2015 edition of the DC Register. Although not currently effective as of the date of this application, it is possible that the new regulations could be effective by the time of the public hearing on this application. If so, Section 411.5 of the proposed rulemaking would require special exception approval for a penthouse on a flat in the R-4 zone. Specifically:

**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 ten feet (10 ft.) in height and contains no more than one (1) story, and**
- (b) Contains only stair or elevator access to the roof and maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.**

The proposed penthouses on the buildings will not exceed 10 ft. and one story in height, and will meet or exceed all setback requirements. They will contain stair access to the roof and a maximum of 30 sq. ft. of storage space ancillary to the rooftop deck. Per 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.