

BOARD OF ZONING ADJUSTMENT
APPLICANT’S STATEMENT

3317 16th Street LLC (Owner)

1301 H St., N.E.; Square 1027, Lot 156

I. INTRODUCTION/NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of 3317 16th Street LLC (the “Owner” or “Applicant”), the owner of the property located at 1301 H Street, NE, Square 1027, Lot 156 (the “Property”). The Property is zoned HS-A/C-2-A, and has a land area of 6,100 square feet. The Applicant is proposing to raze the existing structure on the Property and construct a new four (4) story mixed-use building (the “Building”) with retail and residential (the “Project”).

Because the proposal is for new construction and the Property’s land area exceeds 6,000 square feet, the Project requires special exception approval pursuant to 11 DCMR §1320.4 (f). The Project also requires area variance relief (A) from the parking requirements of 11 DCMR § 2101.1 as the parking requirement will be fourteen (14) spaces – five (5) for the residential portion and nine (9) for the retail portion; whereas, the Project will provide two (2) parking spaces; and (B) from the access requirements of 11 DCMR § 2117.5, which requires a distance of twenty (20) feet between a row of two or more spaces and the property line - the distance between the row of two parking spaces and the south property line is sixteen (16) feet; and (C) from the loading requirement of 11 DCMR § 2201.1.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant variance relief and special exception relief pursuant to §3103.2 and §3104.1 of the D.C. Zoning Regulations (the “Zoning Regulations”).

III. BACKGROUND

A. Property Description

The Property is located at 1301 H St. N.E. and is in the HS-A/C-2-A zone district (a copy of the Zoning Map for the Property is included with the Application). The Property was previously the site of St. John's Church of God, and included a building built around 1981. This building will be razed to make way for new construction. The Property, with a land area of approximately 6,100 square feet, is located on the southeast corner of the intersection of H Street, N.E. ("H Street") and 13th Street, N.E. ("13th Street"). It has street frontage on the south side of H Street, and the east side of 13th Street. Abutting the property to the south is an end-row dwelling with frontage on 13th Street. Abutting the property to the east is a row structure with frontage on H Street. The property is L-shaped. The Property has forty (40) feet of frontage on H Street and one-hundred (100) feet of frontage on 13th Street. Photographs of the Property are included separately with this Application.

The rear of the Property is subject to a five-foot wide easement along the rear line of the Property for the benefit of the property located at 1311 H Street, NE, for pedestrian access for the purposes of trash removal, deliveries, and emergencies.

B. Proposed Project

The Applicant is proposing to raze the vacant former church building and build a new four (4) story mixed-use building with commercial retail space on the cellar and first floors and residential condominium on the upper three (3) floors. The commercial space will total 5,619 square feet. The residential space will include nine (9) units, ranging in size from 1,035 square feet to 1,098 square feet. Six (6) of the condominiums will be three-bedroom units and three (3)

of the condominiums will be two (2) bedroom units. The proposed structure will have an open driveway at the ground level, providing access to two (2) parking spaces.

C. Description of Improvements in Surrounding Area

Square 1027 is located in the recently revitalized Atlas District neighborhood. This section of H Street is zoned HS-A/C-2-A, and is occupied by a variety of uses, including retail, residential, and offices. The Project represents the continuing extension of the revitalization of the H Street Corridor. The expected make-up of the commercial space would be general retail and possibly restaurant space.

IV. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF

The burden of proof for an area variance is well established. The Applicant must demonstrate three (3) elements: (A) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (B) practical difficulty from strict application of the Zoning Regulations; and (C) no substantial detriment to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As the D.C. Court of Appeals has noted, the variance procedure “is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

As set forth below, the Applicant meets the three (3) part test for the requested area variances.

A. The Property is Uniquely Affected by an Exceptional Situation/Condition.

The unique or exceptional situation may arise from a confluence of factors that affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

In this case, the Property is uniquely affected by several exceptional conditions: (1) its irregular lot shape; (2) its location on H Street and in the HS-A Overlay; (3) a driveway easement benefitting an adjacent property; and (4) the limited size and location of the Property make underground parking infeasible.

The lot is large enough (by one-hundred (100) sf) to require special exception approval, and large enough to have a fourteen (14) space parking requirement, largely due to the provision of first floor and cellar space for retail use. At the same time, since the lot is too small to be able to meet the extraordinary parking requirement for the Project. This irregular lot configuration creates an exceptional situation in which the Applicant is unable to efficiently maximize the permitted FAR without the requested parking and loading relief.

Additionally, the Property is located in the HS-A overlay. The HS-A overlay was created to help implement the goals and policies of the Comprehensive Plan and the H Street, N.E. Strategic Development Plan, to encourage the development of residential uses along the H Street Corridor, and to encourage the clustering of uses into a unique destination district along the corridor. As a result of the policies the District has implemented, the H Street Corridor has experienced incredible growth. However, as a part of the HS-A overlay, the Applicant is required or encouraged to provide active retail on the ground floor as well as new residential uses on the remaining floors. The parking requirement would be significantly reduced if the Applicant were permitted to build solely residential. However, due to the HS-A overlay requiring commercial space, the parking requirements are increased.

These unique characteristics, along with the size and shape of the Property, place substantial restrictions on potential parking configurations and on the Applicant's ability to provide any more than two (2) parking spaces, as well as the Applicant's ability to provide the required 20-foot aisle width for those parking spaces.

B. Strict Application of the Zoning Laws would Result in a Practical Difficulty.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)).

11 DCMR § 2101.1 requires one (1) parking space for every two (2) dwelling units and one (1) parking space for every three-hundred (300) square feet of retail space in excess of 3,000 square feet. Strict application of the regulations would require the Applicant to provide fourteen (14) parking spaces, including nine (9) spaces for the 5,619 square feet of retail floor area and five (5) for the nine (9) residential units. The Project will provide two (2) parking spaces. The lot size and its shape and location make it nearly impossible for the Applicant to fit more parking

spaces on the Property, therefore strict enforcement of the parking regulation would be unnecessarily burdensome.

Providing underground parking is not possible for several reasons. First, the legs of this "L" shape lot are too narrow to provide a circular ramp. The width along H Street is forty (40) feet, while the width of the leg fronting on 13th Street is only thirty-five (35) feet wide. The Zoning Regulations require that ramps have no more than a twelve percent (12%) incline. *See*, 11 DCMR § 2117.8(a). To provide a straight ramp that has no more than a twelve percent (12%) incline, the Property would need at least one-hundred (100) linear feet for the ramp. The Property's entire depth is only one-hundred (100) feet. Consequently, there is not enough space to get vehicles onto the property and have a ramp with an acceptable incline. Moreover, the lot is not wide enough to provide drive aisles, parking spaces *and* access ramps and even if it were, a wider curb cut would be required to even attempt to fit drive aisles, parking spaces and access ramps on the Property and it is unlikely that DDOT would support a wider curb cut in this area.

The shape of the lot also creates a practical difficulty in terms of providing surface parking. To provide parking for fourteen (14) vehicles, the Applicant would have to reduce the size of the proposed structure dramatically. The result would be a structure that covers less than half the lot area, with the remaining area used for parking. Even this would be burdensome, however, due to the aforementioned easement along the rear of the Property. For the same general reasons, loading facilities are not feasible for the proposed Project, which is just barely over the 5,000 square foot threshold for requiring such facilities.

For the reasons stated, strict application of the zoning requirements with respect to the parking requirement and the access requirement would result in a practical difficulty to the Applicant.

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

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed Project replaces a vacant, non-historic, church building with a mixed-use building that complies with the design requirements of the HS-A overlay. The proposed structure furthers the goals of the Comprehensive Plan and the H Street, N.E. Strategic Development Plan by transforming this Property into a productive structure that will help continue the revitalization of the H Street Corridor. Though the project requires parking relief, a stop for the DC Streetcar is located directly outside the Property. Additionally, several Metrobus routes, the Metrorail at Union Station, car-share locations, and Capitol Bikeshare locations are nearby. As the current Zoning Regulations recognize, the proximity to public transportation significantly reduces the need to provide off-street parking. *See*, 11 DCMR 2104.1, Exceptions to the Schedule of Requirements Near Metrorail Stations. For those times that residents will need a vehicle on-site, the proposed project has access to a loading zone along 13th Street, so that even when residents need to move into the structure there will be no negative impact to the public good. It is also important to note that the currently proposed new Regulations would lead to a parking requirement of only three (3) spaces for the Project, further demonstrating that reduced parking at the Property is in line with current planning principles for the City.

For these reasons, approval of the zoning relief requested will not cause a detriment to the public good, nor will it impair the integrity of the Zone Plan.

V. THE APPLICATION SATISFIES THE SPECIAL EXCEPTION REQUIREMENTS OF §§ 3104.1, §1325, and 1304

Section 1320.4(f) of the Zoning Regulations requires special exception review by the Board for all new buildings located on a lot that has six thousand square feet (6000 sq. ft.) or more of land area. The Property has a land area of six thousand one hundred (6,100 sq. ft.). Pursuant to §3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under § 1325 of the Zoning Regulations. Additionally, within § 1325 is a requirement that the Application also comply with § 1304, a section which applies to all special exception requests within any Neighborhood Commercial (“NC”) Overlay District.

In reviewing applications for a special exception under the Zoning Regulations, the Board’s discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat’l Cathedral Neighborhood Ass’n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

A. Requirements of §3104.1.

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property...” (11 DCMR § 3104.1), as described herein.

B. H Street Overlay Special Exception Requirements

In addition to complying with the general special exception provisions of §3104 addressed above, the proposed project must also comply with special conditions specifically for properties in the Neighborhood Commercial Overlay, pursuant to § 1304, and with conditions specifically for the H Street Overlay District pursuant to § 1325. Each set of requirements are addressed in turn.

1) The Proposed Structure Complies with the conditions for Neighborhood Commercial Overlay Special Exceptions (§ 1304).

- (a) *The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity*

The Project complies and advances goals of the NC Overlay by providing a commercial use on the ground floor of the structure. Moreover, the proposed Project advances the stated purposes of the H Street Overlay and complies with the design requirements of that district. The proposed use of the building is similar to other uses in the HS-A Overlay; the only reason the Applicant is seeking a special exception is due to the large lot size, which is only 100 square feet over the threshold for requiring special exception relief. Therefore, as the proposed structure and the intended use align with permitted uses in the neighboring vicinity, neighboring properties will not be adversely affected by the proposed project. Nor will the project be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.

- (b) *Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver*

As described in detail above, the Property is exceptional due to the shape of the lot and due to the location of the lot in the HS-A overlay. However, the special exception the Applicant is seeking is unrelated to the unique features of the lot. The lot is just barely over 6,000 square feet and is required to obtain special exception relief for new construction. The existing structure on the lot is a church that was constructed in 1981, which pre-dates the creation of the H Street Overlay. The church is presently vacant, and without the special exception the lot will continue to sit unutilized. New construction on this site is warranted as the church does not pre-date the Zoning Regulations, is not a historic structure, and does not comply with the current HS Overlay design guidelines.

- (c) *Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions*

The Property has an existing curb cut along 13th Street. The project proposes to provide a fifteen foot (15')-wide driveway that provides access to the two (2) parking spaces on-site. The location of the driveway on 13th Street, a side street, and not H Street, the main thoroughfare, is ideal as it minimizes the interaction between pedestrians and vehicles.

- (d) *The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.*

The Applicant will comply with any requirements the Board imposes.

2) The Proposed Structure Complies with the Special Exception Conditions Specific to the H Street Overlay District (§ 1325)

1325.1 "The buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District shall be permitted as a special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided the following criteria and the requirements of § 1324 are met:"

(a) "The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;"

The Strategic Development Plan designates the Property as part of the "Arts and Entertainment District" and as "Type II Development." This type of development is intended to promote active uses at the ground floor and the buildings are set up to allow for limited parking. See Strategic Development Plan pp. 4-3, 5. The project is consistent with the design intent of the design requirements of §1324 and the design guidelines of the H Street N.E. Strategic Development Plan.

(b) "The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board;"

The architectural plans show that the design of the proposed project enhances the urban design features of the immediate vicinity. The Property is not in a historic district nor is it a historic landmark.

(c) "Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;"

The Property has an existing curb cut along 13th Street and the proposed Project will provide a fifteen foot (15')-wide driveway that provides access to two (2) on-site parking spaces. This design of vehicular access and egress are located and designed to encourage safe and efficient pedestrian movement. The location of the driveway is at a safe distance from the entrance of the commercial space in order to ensure minimum interactions between pedestrians and vehicles. The design is efficient and creates no dangerous or otherwise objectionable traffic conditions.

(d) "Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;"

The parking and traffic conditions associated with the nine (9) condo units and commercial ground and cellar space will not adversely affect adjacent nearby residences. The Property is located in an extremely walkable area with direct access to multiple forms of public transportation including several Metrobus routes, the Metrorail at Union Station, car-share locations, Capitol Bikeshare locations, and the DC Streetcar line, which will operate directly adjacent to the site. Additionally, the Project will provide five (5) parking spaces, and residents will have access to the loading zone on 13th Street at the front of the property for move-ins and move-outs.

(e) "Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and"

The noise associated with the operation of the condominium residence and commercial space will not adversely affect adjacent or nearby residences.

(f) "The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N.E. Strategic Development Plan."

There is currently no signage for the residences or commercial space. However, all signs will be consistent with the design guidelines of the H Street N.E. Strategic Development plan.

C. Design Requirements of §1324

Pursuant to §1325.1(a), as mentioned above, a project seeking a special exception must be consistent with the design intent of the design requirements of §1324 and the design guidelines of the H Street N.E. Strategic Development Plan. For the following reasons, the proposed project complies with the design requirements of §1324.

(a) Buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets.

The Property is a corner lot. The Building as designed is built to both of the property lines abutting public streets and therefore complies with this requirement.

- (b) *In C-2 Districts within the HS Overlay District, a seventy percent (70%) residential lot occupancy shall be permitted.*

The Property is located in the C-2-A Zoning District and has a proposed residential lot occupancy of 63%.

- (c) *Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.*

As detailed in the architectural plans, the H Street façade has more than fifty percent (50%) of the streetwall surface area devoted to display windows and entrances.

- (d) *Security grilles shall have no less than seventy percent (70%) transparency.*

The proposed structure does not have security grilles.

- (e) *Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street N.E., 14th Street, N.E., or 15th Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one (1) primary entrance on H Street directly accessible from the sidewalk.*

The proposed structure has a commercial entrance on H Street and an entrance to the lobby for the residential building on H Street.

- (f) *Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby.*

As the architectural plans show, the entrance for the lobby of the residential structure is approximately eighteen (18) feet from the entrance of the commercial space on the ground floor. Therefore, the proposed structure complies with this requirement.

- (g) *The ground floor level of each new building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.) if the building fronts H Street, N.E.; or fronts Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. and would have ground floor space occupied by one (1) or more service, retail, or office uses permitted as a matter of right in the underlying zone.*

The Project includes a floor-to-ceiling height of fourteen feet (14 ft.).

- (h) *Projection signs shall have a minimum clearance of eight feet (8 ft.) above a sidewalk and fourteen feet (14 ft.) above a driveway, project no more than three feet, six inches (3 ft., 6 in.) from the face of the building, and end a minimum of one foot (1 ft.) behind the curbline or extension of the curbline.*

The proposed structure does not have projection signs.

- (i) *Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12 in.) from the face of the building*

The Applicant has not designed signs for building. The signs that will be placed at the Property will comply with this requirement.

- (j) *Roof signs are prohibited*

The proposed project does not have a roof sign and thus complies with this requirement.

VI. CONCLUSION.

For the reasons stated above, this application meets the requirements for variance relief and special exception approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,



Martin Sullivan
Sullivan & Barros, LLP
Date: October 12, 2015