

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

Application of GS U St LLC

**BZA Application No. _____
ANC 1B, SMD 1B12**

**Variance Application for Public Space,
Rear Yard, Court, and Parking Relief
to Construct a Mixed Use Building at
1355-1357 U Street, NW**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

Pursuant to 11 DCMR § 3103, GS U St LLC (hereinafter the “**Applicant**”) requests variances to construct an eight-story mixed use building with multi-family residential above retail (the “**Project**”) at 1355-1357 U Street, NW, Lots 64 and 65, Square 236 (the “**Property**”). The Property is located entirely within the ARTS Overlay of the CR Zone District. The Applicant seeks variances from the District of Columbia Board of Zoning Adjustment (“**BZA**” or “**Board**”) for public space, rear yard, court, and parking relief under, respectively, Sections 633, 636, 638 and 2101 of the Zoning Regulations. The Project will not have any ground level public space or rear yard, will have an open court that does not meet the required minimum width for open courts, and will have fewer parking spaces than are required pursuant to the Zoning Regulations. The Project will conform to the Zoning Regulations in all other ways. The Board has jurisdiction to grant the variance relief requested pursuant to 11 DCMR § 3103.

II. DESCRIPTION OF THE PROPERTY AND APPLICANT

The Property is located midblock, on the north side of U Street NW near its intersection with 14th Street NW and is located in the Greater U Street Historic District. The Property consists of approximately 5,583 square feet of land currently occupied by two existing two-story

brick buildings (the “**Existing Buildings**”). Portions of the Existing Buildings have been determined to be contributing to the Greater U Street Historic District and will be largely retained and incorporated into the Project. The Existing Buildings, which front on the commercial corridor that comprises the core of historic U Street, were originally approximately only 28.25 feet deep. Over time, the Existing Buildings were extended at their rear to occupy the entire depth of the lot, such that today there is no rear yard on the Property. The original 28.25-foot front portions of the Existing Buildings will be retained and preserved as part of the Project.

The Property is served by an existing 15-foot wide public alley with an entrance off of U Street immediately to the west of the Property, and an existing 30-foot wide public alley to the rear of the Property.

The portion of U Street NW where the Property is located is characterized by mixed-use buildings fronting immediately onto the sidewalk with limited or no setbacks. Such area is increasingly the hub of development for new construction that is much taller than the historic building stock. The square where the Property is located also contains the eight-story mixed-use building known as “The Ellington” as well as a mix of lower historic and non-historic structures, the Walker Memorial Baptist Church, and the Harrison Playground. Immediately adjacent blocks include two eight-to-ten story buildings currently under construction (“The Elysium” and “13th and U”) as well as the eight-story Reeves Center, the eight-story building known as “The Louis,” and the eleven-story project approved to replace Portner Place.

The BZA has not previously granted any zoning relief for the Existing Buildings or the Property.

The Applicant is an experienced developer of mixed use and multi-family residential projects throughout the District of Columbia and a sophisticated owner of commercial and residential real estate throughout the greater Washington region.

III. DESCRIPTION OF PROJECT

As shown on Pages 8-10 and 13-19 of Tab 7 to this application (the “**Plans**”), the Project entails restoring the historic two-story portions of the Existing Buildings, removing the non-contributing portions of those buildings, and constructing an approximately 85.3 foot tall building, the bulk of which is set back approximately 48.25 feet from U Street NW. The Project will contain a Gross Floor Area of approximately 31,220 square feet. The cellar and first and second levels of the Project will contain approximately 11,814 square feet of retail uses plus the residential lobby uses, and the upper stories will be reserved for approximately 23 multi-family residential units. The Applicant proposes to construct three parking spaces as part of the Project. These parking spaces will be located at grade at the rear of the Property, and the upper stories will cantilever over the spaces. The Project will incorporate private open space on the roof of the Existing Building and on the roof of the new mid-rise portion of the Project. Once complete, the Project will occupy approximately 100 percent of the Property, though the residential uses of the Project will occupy only approximately 80 percent of the lot.

IV. VARIANCE RELIEF SOUGHT

The Applicant has received concept design approval from the D.C. Historic Preservation Review Board (“**HPRB**”) for the Project. Therefore, the Applicant seeks zoning relief under the Zoning Regulations in effect as of the date hereof.

The Applicant requests relief from 11 DCMR §§ 633, 636, 638, and 2101. Pursuant to Section 633, an area equivalent to 10 percent of the total lot area must be provided as public

open space at ground level for all new development in the CR Zone District and, among other things, such open space must be immediately adjacent to the main entrance to the principal building on the lot. Under these requirements the Project would be required to provide a public open space of 558 square feet. Because the contributing portions of the Existing Buildings occupy the entire frontage of the Property and will be retained as part of the Project, the Project cannot comply with this requirement and will not provide any ground level public open space.

Under Section 636, a rear yard must be provided for each residential building in the CR Zone District. Such required rear yard must be three inches per foot of vertical distance of the building above the horizontal plane upon which the residential use begins but not less than twelve feet, and the yard must be provided at and above such horizontal plane. Under these rear yard requirements, the Project would be obligated to provide a 21.3-foot rear yard in order to comply with the Zoning Regulations for the CR Zone District. As noted above, the Existing Buildings have no rear yard today, and the Project is proposed to have no rear yard.

Under Section 638, where an open court is provided for a residential building in the CR Zone District, such open court must be three inches per foot of height but not less than ten feet. The Project will include an open court at the rear of the Property which should be five feet wide, but will instead be only four feet along its narrowest dimension.

Under Section 2101, in the CR Zone District parking must be provided at a rate of one space per every 750 square feet of retail use beyond the first 3,000 square feet, one space per every 1,800 square feet of general office use beyond the first 2,000 square feet, and one space per every three residential units. Under these parking requirements, the Project would be obligated to provide approximately 15 parking spaces in order to comply with the Zoning

Regulations for the CR Zone District. As noted above, the Project is proposed to have only three parking spaces.

Because the Project will not strictly comply with Sections 633, 636, 638, and 2101 of the Zoning Regulations, the Applicant requests variances from the public space, rear yard, court and parking requirements applicable in the CR Zone District. The necessary zoning relief has been self-certified. The Applicant's satisfaction of the standards for granting area variance relief is discussed in detail in Section V of this Statement.

The requested relief from the public space, rear yard, court and parking requirements of the Zoning Regulations will allow the Applicant to develop the Property in a far more efficient manner than could be accomplished with a building that meets the strict application of the Sections 633, 636, 638, and 2101 of the Zoning Regulations. The requested public space relief is necessary for the Project to preserve the Existing Buildings, which are contributing historic structures, and will have minimal adverse effects on the surrounding properties or the neighborhood because it is consistent with the competing policy objective of retaining buildings contributing to the historic core of the Greater U Street Historic District.

The effect of the requested rear yard and court relief will have minimal adverse impacts on surrounding properties or the neighborhood generally. The Property borders a 30-foot wide alley at its rear. This existing rear alley gives the Project a greater separation from abutting properties than most rear alleys. Moreover, the existing residential building that is opposite the alley from the Property contains just four windows on that face, with much of its rear face entirely blank. The nonconforming court functions in lieu of a rear yard at the upper stories of the Project and will not have any adverse effect on surrounding properties or the neighborhood generally.

The effect of the requested parking relief will also be minimal because the Property is well-served by numerous mobility options for residents, employees and visitors. The Project is located less than a block from the U Street Metrorail station stop and is well-served by numerous bus lines. The Project contains in-building secure bike storage, and a 25-slot Capital Bikeshare rack is less than a block from the Property. The Property is located in the middle of a highly-walkable corridor with numerous restaurants, shops, grocery stores, and other amenities nearby, so it is entirely realistic to for residents of the Project to live without a car, especially given the availability of numerous car-sharing services (e.g., Uber, Lyft, Split, Car2Go, and Zipcar).

**V. THE APPLICATION MEETS THE REQUIREMENTS FOR
AREA VARIANCE RELIEF UNDER 3103.2 OF THE ZONING REGULATIONS**

An applicant requesting an area variance must prove that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant; and (iii) the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets each part of this test for the requested variance from the public space, rear yard, court and parking requirements of 11 DCMR §§ 633, 636, 638, and 2101.

A. The Property is Affected by an Exceptional Situation or Condition

The exceptional or extraordinary situation or condition that satisfies the first prong of the variance test may arise from the property generally, including existing structures on the property, and BZA may look to the totality of factors influencing such condition, but the situation or condition need not be wholly unique to the property. The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d. 291, 293-294 (D.C. 1974) that the

exceptional situation or condition standard goes to the “property”, not just the “land”, and that “property generally includes the permanent structures existing on the land.” *Id.* At 293-294. The BZA may “weigh more fully the equities in an individual case.” *National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984).

The required uniqueness need not arise out of a single situation or condition on the subject property. Rather, it may arise from a “confluence of factors.” *Gilmartin*, 579 A.2d at 1168. For example, in *French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), the Court of Appeals upheld the granting of a variance based on the Board’s findings that several circumstances existed which, when considered together, made the subject property unique. In *French*, the circumstances cited by the Board were the site’s “irregular shape, steeply sloping grade, the large size and physical configuration of the existing building, and its previous history of chancery use.” *Id.* The Board determined “the variance will ensure the preservation of and continued use of the existing structure.” *Id.*

Furthermore, it is not necessary that the exceptional or extraordinary situation or condition of the subject property be entirely unique to the property. Rather, an applicant must prove that the property is affected by a condition that is not related to general conditions in the neighborhood. In *Gilmartin*, the Court of Appeals rejected the idea that a property was not unique because the asserted exceptional condition was common to other types of properties in other zoning districts. *Gilmartin*, 579 A.2d. at 1167. The Court explained:

the rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulation themselves from the Zoning Commission. If such problems were addressed through individual variances, the effect would be a de facto amendment of the zoning regulations by the BZA because requests by other owners similarly situated would have to be granted.... [...] The test follows from its rationale. To

support a variance it is fundamental that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood.

Id. at 1169 (internal quotations and citations omitted; alterations in original).

The Property is affected by exceptional conditions that necessitate relief from the public space, rear yard, court, and parking requirements of the Zoning Regulations. The primary factors that create an exceptional condition on the Property include: (i) the presence of the Existing Buildings, which have been determined to be contributing to the historic district; (ii) the location of the Property within a designated historic district with stringent urban design objectives, and the related design review requirements imposed on the Project by the HPRB; and (iii) the Property's overall dimensions, particularly its narrow width.¹

These three factors create a set of physical constraints within which the Applicant must operate if it is to develop the Project while preserving the Existing Buildings as part of the historic preservation scheme of the Greater U Street Historic District. As set forth in more detail in the next subsection, HPRB's preservation and design requirements and the preservation objectives of the Greater U Street Historic District impose significant constraints particularly affecting the design of the upper residential floors. The lot dimensions, when combined with the

¹ The Board has previously been faced with the issue of balancing whether the narrowness of a lot truly makes it unique within its greater context. In Case No. 17936, the Board granted a 49 space variance to New York University ("NYU") for its property at 1307-1311 L Street, NW. In that case, NYU proposed a nine-story building with an additional four levels below grade. The building would be used as a dormitory and academic center to support students from the University during their semester in Washington. The use generated a parking requirement of 51 spaces, yet the University provided only two surface spaces. The Board supported NYU's request for parking variance relief, finding that the property was unique due to its small size (6,960 square feet) and narrow width (58 feet). Specifically, the Office of Planning noted that the narrow lot width was insufficient to accommodate a double-sided, below-grade parking structure. After accounting for the required aisle widths and the minimum parking space depth, only parallel spaces could be accommodated. The NYU property was not the narrowest property in the Square. It was one of 15 lots in the Square, yet three other lots had widths more narrow: one was 55 feet wide, one was 40 feet wide and one lot was 20 feet wide. Yet, the Board found that it was not a prevailing feature of the Square and was, thus, qualified as unique. In the instant case, although the Property is not one of the narrowest lots in Square 236, the vast majority (approximately 74 percent) of the lot area of the Square is comprised of lots (i.e., Lots 67, 68, 69, and 880) that are much wider than the Property.

preservation objectives, make providing the required amount of parking practically difficult. The narrow width of the Property precludes underground or structured parking.

This confluence of physical constraints results in exceptional and extraordinary conditions inherent in and unique to the Property in a way that dramatically affects the Project. Therefore, the Applicant satisfies the first prong of the area variance test.

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

To satisfy the second prong of the area variance standard the Applicant must demonstrate “practical difficulty” in complying with the Zoning Regulations. The practical difficulty element of the area variance test has two parts: the applicant must demonstrate first that “compliance with the area restriction would be unnecessarily burdensome” and second that the practical difficulty is “unique to the particular property.” *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d at 1170 (D.C. 1990). The nature and extent of the burden warranting an area variance is fact-specific. *Id.* At 1171. However, the D.C. Court of Appeals has listed factors that the BZA may consider to determine whether the practical difficulty standard has been satisfied. These factors include “the severity of the variance(s) requested,” “the weight of the burden of strict compliance,” and “the effect the proposed variance(s) would have on the overall zone plan.” *Id.* In addition to the factors listed above, the Court in *Gilmartin* stated that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.” *Id.* At 1171. In general, the BZA may also consider “... a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’....”. *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). An applicant is required to show only that it would be unnecessarily burdensome to

satisfy the strict requirements of the Zoning Regulations, and an applicant is not required to show that it is *impossible* to satisfy the strict application of the Zoning Regulations. The Applicant meets this practical difficulty standard with respect to the relief requested for the Project.

It would be practically difficult for the Applicant to comply with the ground level public space requirement of the Zoning Regulations because such requirement directly conflicts with the historic preservation objectives of the neighborhood, and the historic preservation condition of the Property is an inherently unique element of the Property. Likewise, it would be practically difficult for the Applicant to comply with the Zoning Regulations' rear yard, court, and parking restrictions applicable to the Property because such restrictions would render the Project economically infeasible. Such economic infeasibility makes strict compliance with the Zoning Regulations unnecessarily burdensome and thereby satisfies the first element of the practical difficulty prong. The economic infeasibility flows directly from the unique exceptional conditions of the Property, satisfying the second element.

With respect to the rear yard and court requirements, in order to conform the design of the Project to the urban design and historic preservation objectives of the greater historic corridor, HPRB requested that the upper stories of the Project be set back significantly from U Street NW. As a result, such upper floors are generally set back at least 48.25 feet and at most 84 feet from U Street NW, all as shown on Page 8 of the Plans. This setback from the front of the Property accomplishes the objective of maintaining a low profile along the historic U Street corridor, but the setback compresses the depth of the overall floorplate of the proposed structure. The presence of the historic structure and the objective of preserving the Existing Buildings and maintaining a setback from the street on the front lot line of the Property necessitates building into the required rear yard in order for the Project to offer economically-feasible residential floor

plates on the upper stories. If the Project was required to comply with the strict requirements of the Zoning Regulations with respect to the rear yard requirements, the residential floors would be too small to be marketable. In fact, the eighth story would have a depth of only 39.7 feet if it complied with the rear yard requirement, given the setback from U Street NW required by HPRB. Such a small floor plate is impractical. Furthermore, the Existing Buildings do not present any rear yard today. To require a rear yard for the Project is practically difficult for the Applicant, and the difficulty is exceptional with respect to the Property because the Property is unique in containing historic structures and in being located within a historic district.

With respect to the nonconforming court, HPRB required extensive revisions to the Project so that the new portions of the Project “read” as independent of the historic portions Existing Buildings. One of the ways HPRB and the Applicant agreed such independence could be achieved was through the use of extensive articulation on the upper stories, and such articulation is exhibited through several courts, including the one nonconforming court. To require fully conforming courts would undermine the historic preservation objectives and the HPRB requirements and would be practically difficult for the Applicant. Such difficulty of complying with the historic preservation and HPRB requirements is unique to the Property because the HPRB order with respect to the Project applies to the Property only.

With respect to the parking requirements, the historic elements of the Property and neighborhood again create exceptional conditions. The Property is simply not large enough to accommodate the quantity of surface parking required under the Zoning Regulations given the policy objectives of providing ground floor retail space along the U Street frontage. Devoting for parking uses any more of the ground level beyond the three spaces at the rear of the Property either renders the ground floor too shallow for economically-viable retail space use or creates

loading challenges for parking off of a 15-foot wide alley. Devoting to parking the entire ground floor or even more of the ground floor than the three spaces at the rear of the Property is inconsistent with the planning and historic preservation objectives for the U Street corridor. Such objectives seek to ensure ground floor uses are present to provide an “18 hour” use of the corridor, and providing exclusively or predominantly parking at grade is inconsistent with such objectives. Thus, the Applicant is currently maximizing the amount of surface parking it can provide at grade on the Property, and the only possible alternative would be to provide a multi-level below-grade garage. However, the Property is not wide enough to accommodate a garage and moreover, the garage entry itself would eliminate two surface spaces. A garage must accommodate the garage ramp, a drive aisle and the parking space depth. A garage ramp and the drive aisle must each be 20 feet in width, but the Property is less than 40 feet wide. As a result the garage would not be wide enough to provide parking spaces, which must have a depth of at least 19 feet. Structured or underground parking is practically difficult because of the narrow width of the lot, and the lot width and historic preservation conditions are unique to the Property.

Taken together, compliance with the public space, rear yard, court, and parking requirements of the Zoning Regulations would be practically difficult in a manner unique to the Property.

In light of the factors identified in *Gilmartin*, strict application of the Zoning Regulations’ public space, rear yard, court, and parking requirements would create a practical difficulty that is unique to the Property because it is created by the preservation constraints and the dimensions of the lot.

C. **Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan**

This request for relief from the public space, rear yard, court, and parking requirements will neither result in substantial detriment to the public good, nor will it substantially impair the intent or integrity of the Zoning Regulations and Zoning Map. As depicted on the Future Land Use Map of the District of Columbia Comprehensive Plan, the Property is within the “Mixed Land Use” “Medium Density Residential/Medium Density Commercial” category. The requested relief will support a project that is not inconsistent with the Comprehensive Plan.

Moreover, the general purposes of the ARTS Overlay District include “encourag[ing] a scale of development, a mixture of uses, and other attributes such as safe and efficient conditions for and pedestrian and vehicular movement . . . ; requir[ing] uses that encourage pedestrian activity, retail, entertainment, and residential uses; expand[ing] the area’s housing supply; strengthen[ing] the design character and identity of the area by means of physical design standards; [and] encourag[ing] adaptive reuse of older buildings in the area and an attractive combination of new and old buildings” The requested relief advances each of these objectives of the ARTS Overlay District and is therefore consonant with the intent, purpose, and integrity of the Zone Plan.

The requested relief from the ground level public space requirements is not inconsistent with the Comprehensive Plan and the purposes of the ARTS Overlay District because the relief accommodates the preservation of the contributing portions of the Existing Buildings, and historic preservation is a key policy objective of both the Comprehensive Plan and ARTS Overlay District. The Project’s preservation of the Existing Buildings is not detrimental to the policy objectives for the neighborhood notwithstanding the competing policy objective of complying with the ground level public space requirements of the Zoning Regulations.

As noted above, because of the existing 30-foot alley and the proposed setback for the top two floors of the Project, the requested relief will create no adverse effects on light and air with respect to the rear yard requirements. It is important to note that the effect of the requested variance relief will be minor pragmatically. The existing 30-foot rear alley provides ample separation from the building to the rear of the Property, mitigating the impact of no rear yard. In addition, the existing approximately 1.25 acre Harrison Playground to the rear of the Property allows for significantly more light and air penetration than the rear yard requirement would.

Likewise, the presence of the upper story rear court is in part mitigation for the lack of rear yard on that façade. The Project's thoughtful design and ample windows and private outdoor space for residents compensate for the court's nonconforming dimensions.

Finally, the demand for parking spaces is mitigated by the Project's highly-walkable and transit-friendly location. The relief from the parking requirements will reduce vehicular traffic to and from the Property below what would be required for a project built in compliance with the minimum parking requirements. Such reduction in traffic will benefit pedestrian and vehicular safety in the U Street corridor generally. The Project's mix of uses, retail street presence, encouragement for pedestrian activity, expansion of the neighborhood housing supply, strengthening of the area's design character, and adaptive reuse of historic buildings benefit the public good and are all made possible or enhanced by the grant of the requested relief. The Project will not undermine the Zone Plan because the result will be consistent with the development in the neighborhood and the objectives of the ARTS Overlay.


VI. CONCLUSION

For the reasons stated above, this application meets the variance requirements for the proposed Project. Accordingly, the Applicant respectfully requests that the BZA approve this application for variance relief.

Respectfully submitted,

GOULSTON & STORRS, PC

By  _____
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By  _____
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