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STATEMENT IN SUPPORT OF A VARIANCE FOR PROPERTY LOCATED AT 1913 13TH STREET, N.W.

September 25, 2001

Background. This Application by Sheila R. Strain requests a variance to allow conversion of a rooming house to an apartment house in the R-4 district for property at 1913 13th Street, N.W. Ms. Strain has lived as a tenant in this four-unit building since 1997, and purchased the property in July 2001. She continues to reside in Unit No. 4 as the owner-occupant and manager. For a conversion to apartment use, the R-4 use provisions at 11 DCMR 330.5(c) require the subject building to have been constructed prior to 1958. Second, by cross-reference to Subsection 401.3, the subject lot must have at least 900 square feet of land for each apartment unit. In this case, the building qualifies as a pre-1958 building but lacks the necessary lot size to allow conversion to four apartment units. Hence the request for an area variance from the 900 square foot requirement. Additional critical facts are that the existing Certificate of Occupancy ("C of O") is for a "rooming house" of four units, whereas the building was converted in the 1980s to four apartments, several owners prior to the current owner. Finally, no relevant building permit and C of O records relating to the 1980s renovation and conversion are on file at the Department of Consumer and Regulatory Affairs ("DCRA").

The Subject Property and the Surrounding Area. The subject property is 1913 13th Street, N.W. (Lot 128, Square 274, the "Property"), located on the east frontage of 13th Street between T and U Streets, N.W. It is one-half block from the "U Street corridor" and is within the Greater U Street Historic District, within which the Property is deemed a "contributing" building to the character of the historic district. The western entrance to the U Street/Cardozo Metrorail station is only one block from the property. The Property is within the boundaries of Advisory Neighborhood Commission is ANC 1B.

The existing zoning for the Property as well as an extensive area to the south, east and west of the Property is R-4, encompassing the heart of the Shaw neighborhood. Existing buildings and uses include single-family row dwellings or townhouses, flats and conversions to apartments -- the primary uses allowed in R-4. The great majority of the buildings in the general vicinity of the Property have the appearance of townhouses, regardless of the number of units on the interior. This is also true of the Property, an

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attractively maintained building. Existing development also includes a small number of buildings originally constructed as garden or low-rise apartment buildings.

Both frontages of U Street are commercially zoned -- C-2-A and C-2-B -- in combination with the Uptown Arts overlay zone. These are respectively moderate and medium density neighborhood commercial and mixed-use zones, in which development is predominantly retail, restaurant and office uses in one-to-three-story buildings. In the subject Square 274 the midrise, historic landmark, True Reformer building is located at the corner of 12th and U Streets. It was recently restored and occupied by the Public Welfare Foundation.

Variance Required. The R-4 zone allows detached, semi-detached, row dwellings and flats as a matter of right. Conversions of pre-1958 existing buildings to apartments are permitted subject to a minimum land area of 900 square feet per dwelling unit. The Zoning Administrator's memorandum dated May 21, 2001[1], a copy of which is attached as *Exhibit C*, sets forth the basic requirements under Paragraph 330.5(c). These are, first, that the building must have existed prior to May 12, 1958. The Property meets this requirement. According to the District of Columbia's tax assessment records as reflected in the *Experian* real estate data base, 1913 13th Street, N.W. was constructed in 1890.

The second requirement is that "the premises must meet the lot area requirements of Section 401.3 (900 square feet per apartment unit)" for conversion of a pre-1958 building to apartments. The Property does not comply with this standard. Lot 128 has a land area of 1,667 square feet, substantially less than the lot size of 3,600 square feet that would allow four apartments as a matter of right.

Justification for the Requested Variance. The three-part test for approval of an area[2] variance may be summarized as follows:

There must be an exceptional condition that creates a significant practical difficulty in using or developing the property under the strict application of the existing zoning;

The variance relief "can be granted without substantial detriment to the public good;" and

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[1] The memorandum is addressed to Richard Gordon, Jr., from whom the Applicant in this case purchased the Property in July 2001. Sheila R. Strain, the Applicant, also met with Mr. Toye Bello, Chief of the Zoning Review Branch, about the requirements of the Zoning Regulations applicable to the Property.

[2] Mr. Bello confirmed to Ms. Strain and to me that, although the Zoning Administrator's memorandum refers to relief from the "use provisions" of the R-4 zone, the actual variance is an area variance only from the 900 square foot requirement, not a use variance. That is, the use is allowed in the zone, however, the lot does not meet the 900 square foot requirement.

The relief "can be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map."

These three criteria will be addressed in order.

1. Practical Difficulty. Two significant and related practical difficulties affect the Property. First, the conversion to apartments *has already been completed* -- by a previous owner in the 1980s. Second, District of Columbia records of building permit and Certificate of Occupancy related to this conversion are not in the files at DCRA. Mr. Bello's search included the files from Archives, which showed only two permits applied for over a period of years, one of them for a two-unit flat. In addition to the April 28, 1957 C of O for rooming house cited in the Zoning Administrator's Memorandum, we have attached to this Application as *Exhibit D* a C of O dated February 20, 1998, again for a "rooming house with four units, one per floor." This reportedly was issued when Mr. Thomas Brown, a prior owner, applied to change the C of O from rooming house to apartments. The Applicant does not know why a rooming house rather than apartment house C of O was issued. However, Applicant offers the following documentation of several other relevant facts indicating that the 1988 construction was professionally done and probably inspected.

Most importantly, we have a statement in *Exhibit E* from a prior property owner, Elizabeth Lussenhop, who renovated the Property in 1988. She states, in summary, that:

- She renovated the Property in 1988;
- The building had already been converted to four units without kitchens when she purchased it;
- She "worked with several contractors to install separate electrical meters, kitchen areas, central air, as well as upgraded the utilities, fire alarm, plumbing, and installed the fire escape;"
- Ms. Lussenhop worked closely with several officials of the Department of Consumer and Regulatory Affairs ("DCRA") in the renovation process; and
- She sold the Property 10 years ago, and accordingly has not retained her permit records.

Other present-day, physical evidence supports Ms. Lussenhop's statements. The good quality of work performed in the 1988 renovation is reflected in the color photographs attached in *Exhibit F*. One photograph shows four electric meters, which were installed by Pepco. Rooming house units would not be separately metered. A good quality, steel fire escape at the rear is present and shown in the photographs. A kitchen is present in each apartment unit, as shown in the photographs. Kitchens are prohibited in rooming units, as the Board is aware. These building elements have apparently existed since the 1988 renovation, as stated by Ms. Lussenhop. Finally, *Exhibit G* is a copy of an exemption from the provisions of the Rental Accommodations ("Rent Control") Act and regulations obtained by Mr. Thomas Brown (the co-owners after Ms. Lussenhop) in 1988 on the basis of four or fewer units owned by the property owner.

The Applicant does not know what city permit records would show regarding the 1988 conversion if they were available, but the facts indicated above suggest that the then property owner applied for permits and carried out a good quality renovation and conversion from rooming house to apartments. *The Property is thus subject to a dual practical difficulty. First, the four apartment units already exist, and the building would have to be converted back to a rooming house if this variance application is denied. Second, there are no District of Columbia records that would document the factual situation regarding permits at the time of conversion.* This variance application requests relief from these practical difficulties. Applicant further notes that a required reconversion to a rooming house might even constitute undue hardship. The cost of such reconversion would be high, and the existing tenants would probably need to be evicted during the work. Also, if the exterior design were affected, the historic status of the property would require exterior design review by the Historic Preservation Review Board, a further practical difficulty in using the Property under existing zoning.

2. No Substantial Detriment to the Public Good. The building has been operating as a small, attractive, well-maintained, four-unit apartment house since 1988 with no known adverse effects on neighbors. Attached to this Application in *Exhibit G* are letters in support from immediate neighbors of the Property. The Property is in a mid-block location and has a similar and compatible exterior appearance to other townhouse structures in the vicinity. There will be no overcrowding of the neighborhood and no adverse traffic effects as a result of this building having four units instead of two units or being a rooming house.

3. Integrity of the Zone Plan. The existing density of the building is in keeping with the purposes of the R-4 zone to accommodate (primarily in older, existing buildings) various types of moderate-density residential buildings -- principally row houses, flats, conversions to apartments and garden apartments. R-4 districts are almost entirely older, historic neighborhoods surrounding the central commercial core of the city and improved with row houses, conversions to apartments, garden apartment buildings and flats. This density of land use is further reinforced by the Property's and neighborhood's land use designation on the Generalized Land Use Map of the *Comprehensive Plan for the National Capitol* as "Moderate Density Residential." This classification is defined in the map's legend as, "Row dwellings and garden apartments are the predominant uses; may also include low density housing." The Property is also located only a block from a Metrorail station, a fact that further suggests that continuation of four apartment units will be consistent with the intent of the Zone Plan. Finally, the apartment units themselves are not cramped but are ample in size, averaging 844 square feet of floor area per unit, with one unit on each floor and the basement.

CONCLUSION

Based on the analysis and evidence presented in this Application, the Applicant submits that the Property is affected by exceptional conditions that create a practical difficulty for the owner and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the purposes and

integrity of the Zoning Regulations and Map. The Applicant respectfully requests approval of the requested variance.

Respectfully submitted,

Nathan W. Gross, AICP

Attachments

EXHIBITS

The following Exhibits are attached as evidence in support of this Application.

EXHIBIT A	Zoning and Site Location Map
EXHIBIT B	Surveyor's Plat
EXHIBIT C	Zoning Administrator's Memorandum
EXHIBIT D	1998 Certificate of Occupancy
EXHIBIT E	Letter from Prior Owner of Property
EXHIBIT F	Photographs of the Property
EXHIBIT G	Rent Control Exemption Form
EXHIBIT H	Letters of Support
EXHIBIT I	Names and Mailing Addresses of Lessees in the Building