

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

**Application of King's Creek, LLC
2329 & 2335 Champlain Street, N.W.
Square 2563, Lots 103 and 816**

Preliminary Statement of Compliance with Burden of Proof

RECEIVED
D.C. OFFICE OF ZONING
2005 SEP 12 PM 1:40

I. Background

The subject property is zoned RC/R-5-B and is located at 2329 & 2335 Champlain Street, N.W. (Square 2563, Lots 103 and 816) (the "Site"). Square 2563 is generally bounded by Kalorama Road on the south, Ontario Road on the east, Euclid Street on the north, and Champlain Street on the west. Lot 103 consists of approximately 9,771 square feet (measured) and is occupied with a two story masonry and stone commercial/industrial building that was developed in 1924 with a footprint of 9,395 square feet. The existing lot occupancy of Lot 103 is approximately 97 percent. The height of the existing structure is 24.5 feet. The total existing building area is 18,401 square feet. The building has had uses such as office, garage, warehouse, and retail. The building currently has certificates of occupancy for retail use on the first floor and office space on the second floor. Lot 816, consisting of approximately 1,008 square feet, is located directly north of Lot 103 on Champlain Street, and is occupied with a small two story commercial building. The combined lot occupancy for Lots 103 and 816 is approximately 92.8%.

The Site is surrounded by predominantly residential uses with a variety of other non-residential uses interspersed throughout the surrounding area. North of the Site is a parking lot, row houses, and apartment buildings, some of which are between 5 and 7 stories. To the east of the Site is a 15-foot wide alley. Beyond the alley are row houses some of which are residential and some have commercial uses. Immediately south of the Site at 2327 Champlain Street is a 50' tall, 2.75 FAR, residential development approved and built in 2003-04 with 68 apartments, pursuant to BZA Order No. 16931. Directly west of the Site, across Champlain Street, is the Lofts of Adams Morgan, a 55' tall, 3.63 FAR, mixed-use development that was approved for a 325-350 space parking garage, 44-80 residential units, and 4,000 square feet of retail space (ZC Order No. 832).

The R-5 Districts are designed to permit flexibility for all types of urban residential developments along with those institutional and semi-public buildings that are compatible with adjoining residential uses. The R-5-B District permits developments of a moderate height and density. The primary purpose of the RC District is designed to protect existing housing and provide for new housing development. 11 DCMR §1400.2(a)(1).

Lot 103 was the subject of a previous BZA application in 2002. The application requested variance relief from the Height, FAR, Lot Occupancy and the non-conforming structure provisions. The Board of Zoning unanimously approved the application with a building

BZA

Board of Zoning Adjustment
District of Columbia
CASE NO. 17431
EXHIBIT NO. 5

Case No. 17431
Exhibit No. 5

height of 69' and FAR of 3.9 (BZA Order No. 16869). The Zoning Commission took *sua sponte* review of the BZA Order and reversed the Board's decision (ZC Order No. 02-37). The Commission concluded that "the FAR and height granted by the Board was extraordinary, resulting in a *de facto* rezoning of the property."

Proposal

King's Creek, LLC (the "Applicant") proposes a significantly reduced residential development on the Subject Property. The height will be four stories and 50 feet, and the proposed FAR will be 2.66. The existing 80+ year old non-conforming masonry and stone commercial/industrial building on Lot 103 will be retained and converted to a residential use. The existing structure on Lot 816 will be replaced with a building addition of the same size footprint and lot occupancy. Two additional levels of residential use will be added to the overall building. The Applicant proposes 22 residential apartments with 21 parking spaces in a new below grade garage.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing in this case. In that Statement, and at the public hearing, the Applicant will provide evidence and testimony to meet its burden of proof to obtain the Board's approval of the requested variance relief. The following is a summary statement indicating how the Applicant will meet its burden of proof.

Areas of Required Zoning Relief

The existing non-conforming structure is located in the RC/R-5-B Zone and the existing building and the addition together will contain a lot occupancy of 92.8 %, an FAR of 2.66, and a building height of 50 feet. The RC/R-5-B Zone allows a maximum lot occupancy of 60%, a maximum FAR of 1.8, and a maximum height of 40 feet.

Height

The Reed-Cooke Overlay District specifies a matter of right maximum height of 40 feet. The Applicant proposes a building height of 50 feet. The Board may grant a special exception from the requirements of the Overlay District pursuant to Sections 3104.1 and 1403.1 of the Zoning Regulations to allow a building of up to 50 feet.

Expansion of a Non-Conforming Structure

Section 2001.3 of the Zoning Regulations allows enlargements to be made to a non-conforming structure, provided that the structure conforms to the percentage of lot occupancy requirements, and that any addition or enlargement shall conform to use and structure requirements, and shall not increase or extend any existing, nonconforming aspect of the structure nor create any new nonconformity of structure and addition combined. Variance relief from Section 2001.3 is required. The existing buildings on the site together exceed the permitted lot occupancy. The additions will confirm to the use requirements, but not the structure

requirements, because the building already exceeds the permitted R-5-B FAR limitation. No new nonconformity of structure and addition combined will be created.

FAR

Section 402.4 of the Zoning Regulations allows a maximum FAR of 1.8 in the R-5-B District. The existing building has an FAR of 1.9. The proposed development will measure 2.66 FAR. Thus, FAR variance relief is required.

Minimum Width of Open Court

Section 406.1 of the Zoning Regulations requires a minimum open court width of 4 inches per height of court (but not less than 10') in the R-5-B District. The height of the proposed court will be 60'. The required open width under the Regulations will therefore be 20 feet; the existing court is only 16 feet wide. Thus, variance relief from the court width regulations is required.

II. Burden of Proof

A. Variances

Section 3103.2 allows the Board to grant variances from the strict application of the Zoning Regulations. The test for variance relief is in three-parts: (1) demonstration that the property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty to the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

1. Exceptional situation or condition

The exceptional situation or condition of the Subject Property stems from a confluence of factors. The nonconforming two-story masonry and stone building on Lot 103 was originally developed over 80 years ago as an industrial/commercial building prior to the advent of zoning in the District of Columbia. The property was zoned industrial and was occupied by a variety of commercial and industrial uses for its entire life. Recently, the property was rezoned to RC/R-5-B. As a result, the building has become a nonconforming structure that does not meet the lot occupancy and FAR requirements of this residential zone.

The character of the neighborhood has changed as well, as residential uses consistent with the Reed-Cooke overlay have proliferated. The low two story building abuts a 50 foot, 2.75 FAR residential building to the south that was approved by the BZA. To the north is a vacant lot that will soon be developed with a residential use consistent with the RC/R-5-B zone. Across Champlain Street is a mixed use parking garage and residential development that measures 55 feet and 3.63 FAR, and was approved by the Zoning Commission. In the vicinity of the Site are

a number of other residential projects approved by the BZA with densities in excess of the underlying R-5-B zone.

The existing structure is one of the only remaining examples of early automotive garages built in the early 20th century that are complete and intact in this area, and as such, it is exceptional and unique in the Reed-Cooke neighborhood. Retention of this building is important from a time period perspective, but also due to the character and variety of architectural design that it gives to the neighborhood. The building brings a unique character and sense of history to the neighborhood that argues for its preservation.

This exceptional situation is further complicated by the size, configuration, and slope of the lot itself and the fact that the preserved building occupies practically the entire lot. The lot is very wide and deep; it is essentially a large rectangle. The slope of the property is such that a substantial portion of the rear of the first floor is below grade.

Another peculiar and exceptional situation affecting the Site is that there was an extensive underground petroleum leak from the former gas station to the north (uphill from the Site) that migrated to beneath the Site. The cleanup of this spill and removal of the contaminated soil has been at a tremendous cost to the owner. The Applicant has incurred substantial costs to remediate this condition while keeping the building in place. Further costs were incurred because the building needed stabilization during the soil removal and after the contaminated soil was removed. To demolish the building now would result in tremendous economic loss to owner, who has already spent millions to clean up the Site and stabilize the building.

The nonconformity of the FAR is caused by the fact that this unique building was built for a different purpose, but is now located in an overlay district that only allows residential development. This building deserves preservation, but is not suitable "as is" for the residential use that the zone district and overlay district promotes. Since the building already exceeds the maximum FAR permitted, any enlargement will only enlarge the nonconformity and will not create a new nonconformity.

The Applicant proposes to create a landscaped below grade areaway at the lowest residential level of the proposed building on the northern portion of the Site at the rear of what is currently Lot 816. This area currently exists as an open court measuring 16 feet in width. The existing court is bound by property lines to the north and east as well as by the walls of the existing buildings to the south and west with an opening out to the alley in the rear. The wall bounding the southern side of the court is of the masonry and stone building on Lot 103. This wall is a foundation wall that extends 17 feet below grade. The size of the court width is driven by the height of the court. The landscaped areaway is designed as a terrace in order to provide light and air to the proposed bedroom on the lower level of the building. The required court width is a function of its height. The inclusion of this areaway is the reason that the variance is required.

2. Peculiar and exceptional practical difficulties

Practical difficulty results from the fact that the existing two story industrial building already exceeds the maximum FAR, but is not viable as a residential development as it exists in its current configuration. The building is surrounded on the south (and soon to be) on the north by new residential development. As a result, the existing two story building would have fenestration only on the front and rear, and would be dwarfed by its neighbors. The reconfiguration of the existing building without vertical enlargement would not provide enough economic incentive to make residential redevelopment of the Site economically feasible. This would relegate the building to continued marginal non-conforming commercial retail and office use.

In order to meet the FAR requirement and build a suitable residential building, the entire rear portion of the existing building would have to be removed. The costs associated with removal the rear portion of this substantial stone and masonry building, and shoring up of the remainder, while building a new addition, would be prohibitive. Moreover, the required removal of substantial new foundation work, which was a result of the need to dig a second below grade level in order to remove the contaminated soil, would also be prohibitive.

It is practically difficult to increase the size of the open court at this location. The existing wall which is bounding the court is made of masonry and stone and is more than 1 foot thick extending 17 feet below grade level. This wall supports the building as a foundation wall. Attempting to remove or relocate this wall to increase the size of the court would result in exceptional practical difficulties and possibly compromise the structural integrity of the building. Without the use of the below grade areaway it would be impossible to bring light and air to the proposed bedroom.

3. No substantial detriment to the public good or zone plan

The proposed variance relief will not be detrimental to the public good or the zone plan. The existing building has existed in this neighborhood for over 80-years. Retaining the existing building and adding residential uses will be consistent with the goals of the Comprehensive Plan and the Reed-Cooke Overlay to encourage new residential developments in the community.

The request to increase the FAR of the building will not be detrimental to the public good or the zone plan. In fact, it will be consistent with prior approvals of the Board in this area. Furthermore, it will allow for the addition of residential uses as envisioned and encouraged by the Reed-Cook Overlay. The proposed increase in FAR will allow for an addition that will minimize visual impacts along Champlain Street and the surrounding area, by setting back each additional level from the parapet line. This allows for additional light to the street, as well as to each unit and consistent with the intent, purpose and integrity of the Zoning Regulations to provide adequate light and air for quality of life for the residents of the development will be enhanced.

A variance from the court width requirements will not be detrimental to the public good or zone plan. The landscaped area will not be visible to the public. It is behind the existing

building approximately mid-way between the front and the back of the site. The existing court is 16 feet wide and the requested relief of 3'11" is de minimis.

B. Section 1403 – Special Exception to allow height increase from 40 to 50 feet

Section 1403.1 (a) - The use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the Reed-Cooke Overlay District.

The purposes of the Overlay include:

- Protection of current housing in the area, and provision of new housing development;
- Maintaining heights and densities at appropriate levels;
- Protection of adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts.

The proposal satisfies the purpose of the Overlay District as the development will not displace any existing residences, but in fact will be increasing the level of housing and adding to the residential character envisioned for the Reed-Cooke area. The proposal will protect nearby residences from adverse impacts by converting the commercial use to residential. The proposal provides ample parking on site and therefore will not impact the chronic shortage of parking in the Reed-Cooke area. The proposed height and density are consistent with surrounding developments as approved by the Board. The residential development is not feasible without this modest increase in height.

Section 1403.1 (b) - Vehicular access and egress shall be designed and located so as to minimize conflict with pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic condition;

No parking is required for this proposed use, based upon the fact that the existing buildings currently do not provide any on-site parking, and their parking credits exceed the parking requirements. However, the Applicant will provide 21 below-grade parking spaces in the proposed garage. The parking garage for the building will be accessed at the rear of the building through the alley and will have no impact on pedestrian passageways along the sidewalk. The alley can be accessed from Ontario Road, Kalorama Road and further north on Champlain Street, allowing for efficient access to the parking area. With 21 parking spaces, this development will not introduce a significant amount of traffic into the alley and will not cause any objectionable traffic condition.

Section 1403.1(c) - Adequate off-street parking shall be provided for employees, trucks, and other service vehicles;

This is an entirely residential project. There will little demand for parking for employees, trucks, and service vehicles. There is an open area at the rear of the building adjacent to the alley that is available if necessary for service vehicles.

Section 1403.1 (d) - *If located within a C-2-B zone, the use shall not be within twenty-five feet (25 ft.) of a Residence District, unless separated therefore by a street or alley;*

Not applicable.

Section 1403.1 (e) - *Noise associated with the operation of the proposed use will not adversely affect adjacent or nearby residences;*

There will be no excessive noise associated with the proposed residential use.

Section 1403.1 (f) - *No outdoor storage of materials, nor outdoor processing, fabricating, or repair shall be permitted; and*

Not applicable.

Section 1403.1 (g) - *The use, building, or feature at the size, intensity, and location proposed will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.*

The proposed residential use is in keeping with the objectives of the Reed-Cooke Overlay to provide for the development of new housing. The development represents a reuse of an underutilized building, and a return to productive use consistent with District policies. The addition on the existing building will not adversely affect the surrounding community. The proposed increase in height over that permitted by the Overlay District is consistent with the height of the neighboring building to the south that was granted by the Board, as well as across Champlain Street in the project approved by the Zoning Commission. The unique architecture will allow the upper floors to be setback and allow light to the street. The building will provide parking for its residents and therefore will not adversely impact the parking availability in this area. The design of the building provides for private open space areas.

Section 3104.1 - *authorizes the Board to grant special exceptions as provided in the Zoning Regulations, where the Board determines such grant(s) of special exception to be in harmony with the intent and purpose of the zone plan and which does not tend to adversely impact the use of neighboring property.*

The requested special exception is in harmony with the intent and purpose of the zone plan, and will not tend to adversely impact the use of neighboring properties. The R-5 Districts are designed to permit flexibility for all types of urban residential developments along with those institutional and semi-public buildings that are compatible with adjoining residential uses. The R-5-B District permits developments of a moderate height and density. Generally, the purpose of the RC District is designed to protect existing housing, provide for new development, and encourage small-scale business development that does not affect the residential uses.