

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

**Application of Triangle Development Associates LLC
1375 Kenyon Street, N.W.
Square 2843, Lot 78**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Triangle Development Associates LLC (the "Applicant"), the owner of property located at 1375 Kenyon Street, N.W. (Square 2843, Lot 78) (the "Site"), in support of its application pursuant to 11 DCMR Sections 3103.2 and 3104.1 for an area variance from the floor area ratio requirements of Section 771.1; an area variance from the lot occupancy requirements of Section 772.1; and a special exception under Section 2108 to reduce the amount of parking spaces required for the nonresidential uses to allow the addition to an existing residential building in the C-3-A District at the Site.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site and Proposed Addition

The Site is located at 1375 Kenyon Street, N.W. and includes Lot 78 in Square 2843. Square 2843 is located in the northwest quadrant of the District and is bounded by Park Road on the north, 13th Street on the east, Kenyon Street on the south, and 14th Street on the west. The Site includes approximately 40,709 square feet of land area, and has frontages on Park Road and Kenyon Street, N.W. The Site is located in a C-3-A District, and is improved with a building that includes 117 apartment units and 18,000 square feet of ground floor retail space. The

building's current FAR is 3.8, and the building has a maximum height of 65 feet. The building also includes 110 off-street parking spaces, with 83 spaces located in a below-grade garage, 10 spaces on the first floor of the building, and 17 spaces on the second floor of the building.

As shown on the plans included with this application, the Applicant proposes to reconfigure exiting units within the existing building envelope, and to construct an addition at the southeast corner of the building to add new units. Upon completion, the building will include 133 residential units, with no change in the number of parking spaces. The building's gross floor area will increase from 154,379 square feet to 174,479 square feet, which equates to 4.3 FAR in order to accommodate the additional units.

II. Burden of Proof for Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

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A. The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2nd 1164, 1168 (D.C. 1990). In this case, the location of the Green Line metro tunnel below the site, combined with the size and layout of the existing building on the property, create an exceptional situation and condition. The Green Line metro tunnel runs directly beneath the site. The location of the tunnel beneath the site limits the depth of any below-grade excavation, and would require extensive coordination with WMATA for any construction. In addition, due to the existence of the tunnel, the Applicant had to locate 27 off-street parking spaces on the first and second floors of the building, which is an exceptional condition for residential buildings in the District.

B. Strict Application of the Zoning Requirements Would Result in a Practical Difficulty to the Owner

a. Floor Area Ratio (Section 771.1)

The strict application of the floor area ratio ("FAR") requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 771.1 of the Zoning Regulations, the maximum FAR in the C-3-A District is 4.0. The building's current FAR is 3.8, and the proposed FAR after completion of the project is 4.3. As shown on the plans, the existing building includes a total of 27 off-street parking spaces on the first and second floors of the building. Since these spaces are above-grade, the square footage devoted to these spaces is

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charged against the building's FAR. The parking areas have a combined square footage of approximately 18,956 square feet, which amounts to approximately 0.4 FAR. In a typical building, parking is located below-grade and thus not charged against FAR. However, in this case, due to the existence of the Green Line metro tunnel directly beneath the Site, and WMATA's restrictions regarding constructing near metro tunnels, the Applicant cannot construct another garage level to relocate the parking spaces such that they are not charged against FAR. Moving these parking spaces below-grade would decrease the building's FAR to less than 4.0, however it is not feasible to do so in this case. Accordingly, it is practically difficult for the Applicant to comply with FAR requirements in this case.

b. Lot Occupancy (Section 772.1)

The strict application of the lot occupancy requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 772.1 of the Zoning Regulations, the maximum percentage of lot occupancy in the C-3-A District is 75%. The building's current lot occupancy is 74.8%, and the proposed lot occupancy after completion of the project is 82.9%. The increased footprint of approximately 3,250 square feet occurs at the southeast corner of the building. As shown on the plans, the existing building complies with the applicable height requirements, and therefore the additional square footage cannot be achieved by increasing the height of the building. Thus, the only way to achieve the permitted residential density in this case is to expand the footprint of the building, and given the Site's constraints, it would be practically difficult for the Applicant to add any additional area to the building while still complying with both the building height and lot occupancy limitations. Therefore, the Applicant is seeking a variance from the lot occupancy limitations in this case.

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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 project as proposed. Overall, the Applicant is seeking variance relief in order to recapture a portion of the residential gross floor area permitted for the Site. If approved, the useable residential area is only increasing by approximately 7,613 square feet, which is only approximately 4% of the total proposed building area. In addition, the Site is located in the Columbia Heights area, and the Applicant's proposal is consistent with District policies for increasing housing opportunities, particularly in transit-oriented neighborhoods. Moreover, the location of the proposed infill addition will help to fill in a gap in the streetwall along Kenyon Street, which is consistent with sound urban planning principals.

III. **Burden of Proof for Special Exception**

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the requested relief are satisfied. The D.C. Court of Appeals has consistently emphasized the narrow scope of the Board's discretion in reviewing special exception applications:

In evaluating requests for special exceptions, the Board is limited to a determination of whether the exception sought meets the requirements of the particular regulation on which the application is based. ... The applicant has the burden of showing that the proposal complies with the regulations; but once that showing has been made, the Board ordinarily must grant the application.

National Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment, 753 A.2d 984, 986 n.1 (D.C. 2000). See also *Stewart v. D.C. Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C.

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1973) (noting that "[s]pecial exceptions, unlike variances, are expressly provided for in the Zoning Regulations").

Section 2108.2 of the Zoning Regulations requires that the amount of required parking space not be reduced by more than twenty-five percent. In this case, the building requires 71 parking spaces for the residential uses, and 51 spaces for the existing retail uses, which amount to a total of 122 off-street parking spaces. However, the Applicant is seeking relief to provide 39 spaces for the existing retail uses, which is a reduction of approximately 24 percent, which is less than a reduction of 25 percent. Section 2108.3 of the Zoning Regulations requires the Board to give consideration to the following, all of which are satisfied as stated below:

(a) Nature and Location of the Structure

The Site is improved with a building that currently contains 117 apartment units and 18,000 square feet of ground floor retail space. The building is located in the Columbia Heights area and within close proximity to a Metrorail line and to numerous bus routes. Specifically, the entrance to the Columbia Heights Metrorail Station is only approximately 450 feet away from the Site.

In addition, as shown on the excerpt of the WMATA map below, there are a number of widely available public transit options in close proximity to the Site, including a number of Metrobus routes such as the H1, H2, H3, H4, H8, 52, 53, 54, D32, W47, and the Circulator bus:

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- (b) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structures at one time

The Applicant is seeking relief to reduce the amount of parking required for the existing 18,000 square feet of ground floor retail on the Site. Based upon observations by the Applicant's property management company, the Applicant's proposal to provide 39 parking spaces on the Site for the existing retail uses is sufficient to accommodate the actual parking demand for the retail tenants. Moreover, the parking provided for the retail uses, combined with the availability of other parking facilities in the area, the anticipated number of pedestrian walk trips, and the availability of public transportation, support the requested parking reduction and will result in no adverse parking demand impacts.

- (c) Amount of traffic congestion existing or that the building or structure can reasonably be expected to create in the neighborhood

The project will have a minimal impact on traffic and parking conditions within the local area given that the Applicant is not proposing to create any additional retail uses which would increase parking demand for the Site, but is rather proposing to reconfigure the existing parking spaces to meet the parking needs for the uses on the Site. In addition, the Applicant is providing the amount of parking required for the residential units on the Site.

- (d) Quantity of existing public, commercial or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use

There is an adequate amount of off-street, public parking in the vicinity of the Site which is available, if necessary, for users of the building on the Site. For example, the DC USA project is located immediately across 14th Street and has 1,000 parking spaces. These parking spaces are open to the public and are available if necessary for visitors to the Site.

- (e) Proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area

As discussed above, the Site is situated within close proximity to an extensive variety of transportation options. The entrance to the Columbia Heights Metrorail Station is only approximately 450 feet away from the Site. In addition, there are a number of widely available options for public transport in the area, and the Site is serviced by a number of Metrobus Routes, including the H1, H2, H3, H4, H8, 52, 53, 54, D32, W47, and the Circulator bus. In addition, there is a Capital Bike Share location near the intersection of Park Road and Holmead Place, which is less than a minute walk from the Site.

Finally, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of

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neighboring properties. The requested parking reduction is consistent with the District's and DDOT's goals of reducing parking near MetroRail stations. In addition, the proposed 39 retail parking spaces will be sufficient to accommodate the retail parking demands for this building. Accordingly, the requested relief will not adversely affect adjacent or nearby property and will serve to benefit this redeveloping area.

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