

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

1302 Pennsylvania Avenue SE, LLC

BZA No. 19206

**APPLICANT'S HEARING STATEMENT
March 15, 2016**

This Hearing Statement ("Statement") outlines the existing and proposed use of the property and the manner in which the application ("Application") complies with the specific tests and burden of proof for the variance sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3103.2 for an area variance under § 771.2, §772.1, § 774.1, § 2101.1 and § 2001.3 (a) to allow a third story addition to an existing mixed-use two-story building not in compliance with the maximum floor area ratio (FAR), maximum permitted percentage of lot occupancy, minimum rear yard, minimum required parking, for the underlying C-2-A zone district within which the subject property is located, including to allow an enlargement of a structure that is currently a nonconforming structure respectively.

The applicant seeks to construct a third story addition and reconfigure the interior of the existing structure in order to increase the intensity of the residential portion of the structure from one (1) unit to four (4) dwelling units.

The existing commercial tenant space in the cellar and first floor, now occupied by a fast food establishment, will be converted into a white shell in anticipation of a new tenant

with an objective of attracting a neighborhood facility or establishment with focus on primarily serving the immediate neighborhood as a destination point

SUMMARY OF APPLICATION

The applicant seeks variance pursuant to 11 DCMR § 3103.2 from the provisions of the Zoning Regulations itemized in the foregoing to allow the proposed project.

The subject property is located in the C-2-A zone district and the existing two-story building has historically been used as, and occupied for purposes of a fast food establishment in the cellar and first floors, and one dwelling unit on the second floor.

The existing improvement on the subject property occupies one hundred percent (100%) of the site. The proposed third floor addition is intended to match the footprint of the existing structure. The subject property is deemed a nonconforming structure with respect to the maximum percentage of lot occupancy allowed a building containing a residential use and also with respect to the minimum required rear yard for its underlying C-2-A zone district.

The proposed third floor addition will expand upon the two existing nonconformity of structure, and requests a variance to create a new nonconformity of FAR not currently in existence.

The variance from the parking requirement is with respect to the additional parking required by virtue of either a change in the residential use from a single dwelling to four dwelling units or an increase in the intensity of residential use by three dwelling units.

The applicant proposes a 3.0 FAR which is 0.5 in excess of the maximum 2.5 allowed because of design constraints related to floor space design and building aesthetics if the subject property were to be restricted to the additional 0.5 FAR buildable as a matter of right. The current FAR stands at 2.0.

The applicant proposes to reconfigure the existing second floor dwelling unit to accommodate two smaller dwelling units, while the new third floor is also designed for two dwelling units, for a total of four (4) dwelling units

The subject property has street frontage on two streets; 13th Street at its western boundary or property line, and Pennsylvania Avenue to its north, therefore it is by definition a corner lot wedged in the southeast corner of the intersections of the two streets it abuts.

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested variances under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (3) (2001), as further set forth in 11 DCMR § 3103.2

PROPERTY LOCATION AND DESCRIPTION

The subject property is located within Square 1043 and is lot 122, a pentagon-like shaped lot. As aforementioned the subject property is located in the southeast quadrant of the city and the improvement upon the subject property, which was constructed prior to the adoption of the Zoning Regulations, occupies 100% of its lot

The existing building consists of two above grade floors and a cellar, thereby constitutes a two-story structure or building. The two lower floors – the cellar and first floors – are currently occupied by a fast food restaurant, while the second floor is configured as a single dwelling unit.

The subject property is located within one block of the Potomac Avenue metro station and the area is served by a robust or comprehensive network of public transportation

Except for the reliefs which the applicant is constrained to request by the situation of the property which predates the adoption of the Zoning Regulations, the proposed project complies with other applicable provisions of the regulations.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant seeks variance relief pursuant to the Zoning Regulations, 11 DCMR § 3103.2, under §§ 771.2, 772.1, 774.1, 2101.1 and § 2001.3 (a), specifically to allow the construction of a third story addition atop an existing mixed-use building which not comply with the provisions for FAR, percentage of lot occupancy; rear yard, parking and nonconforming structure respectively set forth for the underlying C-2-A zone district within which subject premises is located

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted fourteen days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of an area variance as outlined below.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations

result in peculiar and exceptional practical difficulties to the owner of the property;

3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

While the property is affected by an extraordinary situation or condition of property in that the improvement upon the property in its existing state predates the adoption of the Zoning Regulations as of May 12, 1958, the Applicant contends that the Subject Property also demonstrates a unique physical characteristic of shape or size given its near pentagonal shape and size in area.

The extraordinary situation or condition of property hinges on the fact that the subject property has always been occupied 100% by the improvement upon it, which was constructed prior to May 12, 1958. Hence even an addition which otherwise would have captured the additional 0.5 FAR attributable to the subject property as a matter of right was foreclosed without relief from the Board of Zoning Adjustment (BZA) as of that date and the date of any applicable amendment thereafter

The subject property also demonstrates a unique physical characteristic given its pentagon-like shape wedged on all sides by improvements on adjacent properties which were either constructed prior to May 12, 1958 or recently on lots larger in size, resulting in an adjacent building abutting to its south facing 13th Street which dwarfs the existing improvement on subject property.

The subject property is approximately 1,187 square feet in lot area or size, an area significantly less in the minimum lot area prescribed in the R-4 zone district for row dwellings or flats

PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY

The peculiar and practical difficulties imposed upon the owner of the subject property are the direct result of the extraordinary or exceptional situation or condition of the property as described which confines any addition to the existing structure to the purview of the BZA for relief.

The Zoning Regulations allows a maximum FAR of 2.5 in the underlying C-2-A zone district within which the subject property is located as set forth under § 771.2, a maximum of 1.5 of which may be devoted to allowable commercial use, or in such pro-rated manner that up to the maximum 2.5 FAR may be devoted to all residential use.

In its existing condition, 1.0 FAR each is devoted to the existing commercial use and to the one dwelling unit on the second floor, for a total 2.0 FAR. Hence the subject property could still construct 0.5 FAR of residential density in order to maximize its allowable 1.5 residential FAR. However, the applicant is restrained from constructing its allowable FAR without BZA relief as result of the nonconformity of the existing structure with respect to lot occupancy, a condition which predates the adoption of the Zoning Regulations and out of the control of the applicant.

Likewise the fact of 100% lot occupancy of the existing building which also has been in existence prior to May 12, 1958 mandates relief from both the provisions of §§772.1, 774.1, 2001.3 (a) and 2101.1 with respect to allowable percentage of lot occupancy for a building containing a residential use, rear yard setback, an existing nonconforming structure, and minimum required number of parking based on a change in residential type use or increase in intensity of use, however construed.

In order to bring the building into compliance and in position to permit any addition without need for any relief before the BZA, applicant would be compelled to demolish at minimum forty percent (40%) of existing building footprint to accommodate compliance with the required 15 feet rear yard, and conceivable provided the minimum number of requirement parking spaces on site, notwithstanding that a proposed curb cut to access such parking will not comply with the Department of Transportation (DDOT) guidelines and approval unlikely.

Such outcome as described in the foregoing is cost prohibitive, impractical and imposes undue hardship and practical difficulties upon the owner

**SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL
IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE
PLAN**

The applicant seeks to establish an apartment house use above an existing commercial use by reconfiguring an existing second floor and by constructing an additional third floor to accommodate four smaller-sized dwelling units; in other words an apartment house by definition.

An apartment house is a permitted use as a matter of right in the underlying C-2-A zone district within which the subject property is located. Hence the use is compatible and consistent with the applicable Use Provisions of the zone district.

The smaller-sized units are intended to attract non-automobile tenants or purchasers looking for an urban living experience given the close proximity of the subject property to the Potomac Avenue metro station and location on Pennsylvania Avenue, which is served by a comprehensive network of alternative transportation modes and public transportation systems, including but not limited to Bike shares, Subway, Car share and a major Metro bus route.

The total FAR devoted to residential use is 2.0 which is less than the maximum FAR the subject property could construct if the building in entirety were occupied by a residential use. Although not applicable in this instance because the proposed project is not an Inclusionary Zoning (IZ) development, the construction of up to 3.0 FAR of residential density in the underlying C-2-A zone district is not foreign to the Zoning Regulations

The third floor addition has been carefully designed not to adversely and substantially visually impact upon the character of the neighborhood. Building massing has been designed to fit into the maximum height of the adjoining row structures on Pennsylvania Avenue, and the abutting building to the south of subject property dwarfs the proposed third floor addition with its five stories.

The affected Advisory Neighborhood Commission – ANC 6B – voted near unanimously to support the application noting that design which limits the subject property only to the additional 0.5 FAR “would not be in keeping with the visual fabric of the neighborhood

For the foregoing reasons, and the fact that the proposed project has wide community support, the applicant submits that the instant relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

WITNESS

The following witness will testify in support of the Application:

1. Todd Ragimov. Owner
2. Denis Martinez

CONCLUSION

The Applicant submits that the subject property exhibits all the characteristics which merit the granting of the variances or relief sought in this application. As will be further documented the subject property is demonstrably impacted by the unique encumbrance imposed upon it and out of the applicant's control.

The proposed construction will not substantially adversely affect neighboring properties because the absence of on-site parking spaces is tempered by the proximity of the subject property to major public transportation nodes.

If limited to the 0.5 FAR, the resulting third floor results in approximately 550 ft² of which 24% or 135 ft² is usurped by the building core, which is required enclosed egress stair. As graphically illustrated, when the mechanical room is excluded, net living area is a total 375 ft², except that 120 ft² of the net living area is devoted to the kitchen, hallway and bathroom.

The foregoing scheme still requires relief from the same areas of relief the applicant seeks in this application since the building contains residential use at a horizontal second floor plane which occupies 100% of the lot

The graphic illustration of the resulting elevation when subject property is limited to the 0.5 additional FAR to which it is entitled notwithstanding that BZA relief is still required confirms its incompatibility to the visual fabric of the neighborhood

For all the foregoing reasons, the applicant respectfully request that the Board grant the relief sought in this application