

Holland & Knight

800 17th Street, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Norman M. Glasgow Jr.
(202) 419-2460
norman.glasgowjr@hklaw.com

April 1, 2016

VIA IZIS AND HAND DELIVERY

Board of Zoning Adjustment
of the District of Columbia
441 4th Street, N.W., Suite 200S
Washington, DC 20001

Re: **Application to the Board of Zoning Adjustment (BZA Case No. 19229)
1503-1505 Pennsylvania Avenue, N.W. (Square 221, Lot 810)**

Dear Board Members:

On behalf of FOTP, LLC (the “Applicant”) we hereby submit the Applicant’s post-hearing submission in support of BZA Case No. 19229 and in response to the comments raised at the public hearing on March 29, 2016.

1. Updated Self-Certification

Attached please find an updated Form 135 (Self-Certification). The Applicant respectfully requests an area variance from the open court requirements of 11 DCMR § 776.1.

2. Statement of Compliance with the Burden of Proof

Section 776.1 of the Zoning Regulations states that where an open court is provided the width of the court shall be a minimum of three inches per foot of building height, measured from the lowest level of the court to the highest elevation; provided that in no case shall the width of the court be less than 12 feet. The existing nonconforming open court measures 6 feet in width. The proposed additions will increase the height of the existing building to 79 feet. The height of the court as measured from the bottom of the areaway to the top of the bounding wall is 96 feet, 10 inches. As a result an open court width of 24 feet, 2.5 inches is required. If the height of the court is measured from the bottom of the court excluding the areaway, then the court measures 79 feet in height and an open court width of 19.75 feet is required.

Board of Zoning Adjustment
District of Columbia
CASE NO.19229
EXHIBIT NO.33

Pursuant to 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, the Applicant meets all three prongs of the area variance test. In addition, as was stated at the public hearing, the Office of Planning supports the granting of this relief.

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). 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).

The property is affected by an exceptional situation or condition since it is presently improved with a 5-story building known as the Riggs National Bank, which is listed as an Historic Landmark in the DC Inventory of Historic Sites. In addition, the building is a contributing structure in the 15th Street Financial Historic District and Lafayette Square Historic District. The property is also located adjacent to the Treasury Annex and across the street from the US Treasury.

Since 100% lot occupancy is permitted in the C-4 zone, and the building is well under the maximum permitted FAR, the court could be filled in with no court relief being required. However, the exterior historic walls that abut the court would be lost. The Applicant already requested a rear yard waiver so no additional relief would be required for the construction. The Applicant submits that these facts also contribute to the uniqueness.

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

The owner would encounter practical difficulties if the Zoning Regulations were strictly applied since in order to comply with the Zoning Regulations a significant portion of the existing historic building would have to be demolished to accommodate an open court width of 24 feet, 2.5 inches. The other option would be to fill in the court which would result in the loss of historic fabric.

C. No Substantial Detriment to the Public Good or Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The variance would also not cause a substantial determinant to the public good and would not substantially impair the intent, purpose and integrity of the zone plan. The existing building was constructed prior to May 12, 1958 and does not currently comply with the open court width requirements of the Zoning Regulations. The 5th Floor expansion and 6th Floor addition will not increase the existing encroachments upon any adjacent building and the proposed expansion will be occupied by office space on the 5th Floor and office or mechanical space on the 6th Floor.

The proposed 5th Floor expansion and 6th Floor addition will be separated from other buildings to the north, east, and west a sufficient distance to provide adequate light and air and to protect the privacy of building occupants. Since the 6th Floor will only contain mechanical equipment or office space in the area extending into what otherwise would be the rear yard, there will be no effect on the privacy of building occupants or on the amount of light and air. There are no habitable rooms in the subject building or in the building to the north. In addition, the 5th Floor expansion will not affect the privacy of building occupants or the amount of light and air provided since: (i) the windows facing north will be separated 20 feet, 9 inches from the building to the north; (ii) the windows facing west will be separated 23 feet, 4 inches from the Treasury Annex to the west; and (iii) a stairwell located above the adjacent roof abuts the American Security and Trust Company Building to the east. Furthermore, the proposal will increase the amount of light and air provided to the building as a whole, since the proposed 6th Floor addition and 5th Floor expansion will be open to the floors below. No residential buildings are affected by this application.

We believe that this submission fully responds to the questions raised at the public hearing, and remain hopeful of the BZA's favorable consideration of this application.

Very truly yours,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.
Joseph O. Gaon

Attachments

Cc: Joel Lawson, D.C. Office of Planning (w/ attachments via Hand Delivery)
Steve Cochran, D.C. Office of Planning (w/ attachments via Hand Delivery)
Robyn Jackson, DDOT (w/ attachments via Hand Delivery)
Advisory Neighborhood Commission 2B (w/ attachments via U.S. Mail)
Abigail Nichols, ANC 2B05 (w/ attachments via E-Mail)



BEFORE THE BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA



FORM 135 – ZONING SELF-CERTIFICATION

Project Address(es)	Square	Lot(s)	Zone District(s)
1503-1505 Pennsylvania Avenue, NW	221	810	C-4

Single-Member Advisory Neighborhood Commission District(s): 2B05

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to:

Relief Sought	☐ §3103.2 - Use Variance	☒ §3103.2 - Area Variance	☒ §3104.1 - Special Exception
Pursuant to Subsections		§ 776.1	411.11, 774.1

Pursuant to 11 DCMR §3113.2, the undersigned agent certifies that:

- (1) the agent is duly licensed to practice law or architecture in the District of Columbia;
- (2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
- (3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self certified in order to obtain, for the above referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22-2405)

		Owner's Name (Please Print) LAWRENCE LESSER	
		Agent's Name (Please Print) Shalom Baranes Associates, P.C.	
Date	03/31/2016	D.C. Bar No.	
or	Architect Registration No.	ARC2858	

FOR OFFICIAL USE ONLY

Based upon review of the application and self-certification, the Office of Zoning determines, pursuant to 11 DCMR §3113.2, this application is

☐	Accepted for filing.
☐	Referred to the Office of the Zoning Administrator within DCRA, for determination of proper zoning relief required.
☐	Rejected for failure to comply with the provisions of ☐ 11 DCMR §3113.2; or ☐ 11 DCMR - Zoning Regulations. Explanation _____

Signature		Date	
-----------	--	------	--

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Case No. _____

INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on this form. All certification forms must be completely filled out (front and back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of 8 1/2" x 11" paper to complete the form.
2. Complete one self-certification form for each application filed. Present this form with the Form 120 - Application for Variance/Special - Exception to the Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. (All applications must be submitted before 3:00 p.m.)

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	9,692	N/A	N/A	9,692	N/A
Lot Width (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Lot Occupancy (building area/lot area)	100%	N/A	100%	100%	N/A
Floor Area Ratio (FAR) (floor area/lot area)	3.39	N/A	10.0	3.99	N/A
Parking Spaces (number)	0	0	N/A	0	N/A
Loading Berths (number and size in ft.)	0	0	N/A	0	N/A
Front Yard (ft. to the tenth)	0	0	N/A	0	N/A
Rear Yard (ft. to the tenth)	0	15'10"	N/A	0	15'10"
Side Yard (ft. to the tenth)	0	0	N/A	0	N/A
Court, Open (width by depth in ft.)	6'-0"	24'-2 1/2"	N/A	6'-0"	18'-2 1/2"
Court, Closed (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Height (ft. to the tenth)	65'	N/A	80'	79'	N/A

If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.

