

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

Application of
Deborah J. Jones-Miller
7723 Alaska Avenue, N.W.
Square 2957, Lot 13

BZA Application No. _____
ANC 4A02
Hearing Date: _____

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Deborah J. Jones-Miller (“**Applicant**”) the owner of 7723 Alaska Avenue, NW (Square 2957, Lot 13) (“**Property**”), in support of the Application for a special exception, pursuant to 11 DCMR §§ 2003 and 3104, to change the existing nonconforming use of a dental office to a residential use at the Property in the R-2 Zone District.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (“**BZA**” or “**Board**”) has jurisdiction to grant the requested special exception relief requested pursuant to 11 DCMR §§ 2003 and 3104.

III. BACKGROUND

A. The Property and its Vicinity

The Property is a 6,250 square foot rectangular lot fronting on Alaska Avenue within the Shepherd Park neighborhood of Northwest and Advisory Neighborhood Commission (“**ANC**”) 4A02. The Property is improved with a three story mixed- use building (“**Building**”) containing a medical dental office and residential units for a total gross floor area of approximately 7,488 square feet. See Surveyor’s Plat, Exhibit A. There are five parking spaces provided in the rear. The Property is not located within a historic district nor is it individually listed as a historic structure.

The Property is located within the R-2 Zone District, bordering the adjacent C-2-A Zone located directly to the north and east along Georgia Avenue. See Zone Map, Exhibit B. The main entrance of the Building is accessed from Alaska Avenue. The rear of the Building abuts a 15 foot wide public alley, which leads to Georgia Avenue. There are single family houses located to the south, along Alaska Avenue, Washington Metaphysical Church is located directly across the street and several commercial businesses are located immediately adjacent to the north. See Photos, Exhibit C.

The Alaska Avenue/Kalmia Road DC Metro bus stop, serving the S2 and S9 bus lines traveling northeast, is directly in front of the Building. The bus stop serving the S2 and S9 bus lines traveling southwest is located across the street from the Building, in front of the Washington Metaphysical Church. The Building is approximately 0.9 miles from the Silver Spring Metro Station (Red Line) and 0.9 miles from the Takoma Metro Station (Red Line).

B. History of Nonconforming Use at the Property

The Building was built in 1959. The Property is currently used as a five (5) unit apartment building (dwelling units are located on the second and third floors) and a dental office (located on the first floor), with ancillary apartment uses (storage, laundry and mechanical) located in the basement. The Certificates of Occupancy allow for these uses. See Certificates of Occupancy, Exhibit D.

A history of the Certificates of Occupancy issued for the Property are listed in the table below:

USE	FLOOR	CERTIFICATE OF OCCUPANCY INFO
Dental Laboratory	Basement	CO 61320 (1967) CO 88907 (1974)
Office Building	1st Floor	CO 14291 (1959)
Dental Office	1st Floor	CO 1089291 (2000)

USE	FLOOR	CERTIFICATE OF OCCUPANCY INFO
6 Unit Apartment Building	2nd and 3rd Floors	CO 14292 (1959) CO 105093 (1977) ¹ CO 130905 (1983)
4 Unit Apartment Building	2nd and 3rd Floors	CO 149250 (1987) CO 155926 (1988) CO 189389 (2000) CO 1501775 (2015)

Although the Certificates of Occupancy allow for the uses listed above, the Zoning Regulations do not allow apartment buildings or dental offices within the R-2 Zone District and, as a result, both uses are considered “nonconforming uses”. These nonconforming uses are valid and may be continued pursuant to the Certificates of Occupancy.

The Applicant proposes turning the existing dental office on the first floor and the ancillary apartment uses in the basement² into residential units resulting in an increase of the total number of residential units from 5 to 11 units. The D.C. Zoning Administrator confirmed that the nonconforming use of a portion of the Property presently used as a dental office may be changed to residential dwellings, a different non-conforming use, subject to approval by the BZA. See Zoning Determination Letter, Exhibit E. In addition, the Zoning Administrator found that since the basement is already used for ancillary apartment uses, no relief would be necessary to change this to residential dwellings. See Footnote 1, Exhibit E.

The Zoning Regulations allow the BZA, pursuant to 11 DCMR § 2003, to approve a change of nonconforming uses subject to certain restrictions and conditions which would allow

¹ This CofO seems to erroneously list the Apartment House use on the 1st and 2nd Floors. The corresponding CofO Application also erroneously lists the Building as having only two (instead of three) floors.

² The Applicant does not need to seek relief to change the basement into residential dwellings since the basement is already used for ancillary apartment uses.

the change from one non-conforming use (the existing dental office space) to another non-conforming use (apartment units) provided the provisions of § 2003 are met.

Specifically, a nonconforming use may be changed to a use that is permitted as a matter-of-right in the most restrictive zone district in which the existing nonconforming use is permitted as a matter-of-right. In this case, the existing office use (including dental and medical offices) is first permitted in the C-1 Zone and the proposed new apartment use is also permitted in the C-1 Zone and the more restrictive R-4 and R-5 Zones.

C. Proposed Development

As shown on the architectural plans, the Applicant proposes to renovate the interior of the Building to provide 11 residential dwelling units (a mix of 1 bedroom, 2 bedroom, and studio apartments). See Plans, Exhibit F.

Floor	Existing Use	Proposed Use
Cellar	Ancillary Apartment Uses (Elec/Mech Room, Washer/Dryer, Storage, Laundry, etc.)	Electrical Room 2 Residential Units
First	Dental Office	3 Residential Units
Second	3 Residential Units	3 Residential Units
Third	3 Residential Units	3 Residential Units

IV. NATURE OF RELIEF AND STANDARD OF REVIEW

The Applicant seeks special exception relief pursuant to §2003 to establish a residential use on the first floor of the Property. Under D.C. Code §6-641.07(g)(2) and 11 DCMR §3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect

the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation." First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment, 423 A.2d 695, 706 (D.C. 1981 (quoting Stewart v. District of Columbia Bd. of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973))). If the applicant meets its burden, the Board must ordinarily grant the application. Id. As discussed below, the special exception standard has been met in this Application.

A. Applicant Complies with the Special Exception Standard Pursuant to Section 3104

1. Harmony with the General Purpose and Intent of the Zoning Regulations and Maps

Despite being located in the R-2 Zone District, the Property is located on the border of the C-2-A Zone District, in a neighborhood characterized by both residential and commercial uses, including offices and retail. The Building has a long history of residential and medical office use and has been continuously used for these purposes since 1959. The Applicant proposes changing a mixed-use building into a residential one, which will be more in keeping with the residential zone in which it is located. The change from the existing nonconforming medical office use to residential use will be compatible with the surrounding neighborhood.

2. No Adverse Effect on the Use of Neighboring Property

The proposed use will not adversely affect the use of the neighboring property. The property immediately to the north is commercial and the property to the south is residential. The

Building will continue to act as a buffer between the commercially zoned properties to the north and the residentially zoned properties to the south.

B. Applicant complies with Special Exception Criteria for Changing Uses in Structures Pursuant to Section 2003

Pursuant to Section 2003.1 of the Zoning Regulations, the Board of Zoning Adjustment is authorized to approve as a special exception under Section 3104.1 a change in a nonconforming use to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, subject to the conditions set forth in Section 2003. The Applicant complies with the special exception standards as follows:

1. Section 2003.1 - If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.

The existing office use (including dental and medical offices) is first permitted in the C-1 Zone and the proposed new apartment use is also permitted in the C-1 Zone and the more restrictive R-4 and R-5 Zones. Thus, the application meets the requirement of Section 2003.1.

2. Section 2003.2 - The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.

The Applicant's requested relief to convert the existing medical office space to residential uses will not adversely affect the present character or future development of the surrounding area. Since the Property is located just within the border of the R-2 Zone District and abuts the C-2-A Zone District to the north and east, the surrounding area is characterized by a mix of residential and commercial uses and structures. Although the Property is zoned R-2, the Building has a history of nonconforming commercial and apartment house uses dating back to 1959. Thus,

approval of the requested relief will have no adverse impacts on the present character or future development of the neighborhood.

3. Section 2003.3 - The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

The proposed residential use will not create any harmful external effects. As shown on the Plans, the Applicant does not propose adding any density or height to the Building.

4. Section 2003.4 - When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

The existing nonconforming uses have never been changed to a conforming or more restrictive use, and thus this section is not applicable to the current application.

5. Section 2003.5 - In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

The proposed use is an apartment house and is therefore in compliance with this section.

6. Section 2003.6 - For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:

- (a) W-0, R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;
- (b) SP-1 and SP-2;
- (c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);
- (d) W-1, W-2, and W-3;
- (e) CR; and
- (f) C-M-1, C-M-2, C-M-3, and M.

The existing office use (including dental and medical offices) is first permitted in the C-1 Zone pursuant to Section 701.6(f) of the Zoning Regulations and the proposed apartment use is also permitted in the C-1 Zone and the more restrictive R-4 and R-5 Zones. Thus, the Application meets the requirements of Sections 2003.1 and 2003.6.

7. Section 2003.7 - The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of

operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

As described above, the Application meets the applicable standards of this section.

Therefore, the Applicant does not believe that the Board needs to require any changes or modifications to the Application.

V. COMMUNITY OUTREACH

The Applicant will contact ANC 4A and the Office of Planning to discuss the Application and will provide the Board an update no less than fourteen days prior to the hearing.

VI. EXHIBITS

Exhibit A: Surveyor's Plat
Exhibit B: Zone Map
Exhibit C: Photos
Exhibit D: Certificates of Occupancy
Exhibit E: Zoning Determination Letter, dated January 11, 2016
Exhibit F: Plans

VII. CONCLUSION

For the reasons set forth above, the Applicant respectfully requests approval of the grant of a special exception to change the existing nonconforming use of a dental office to a residential use at the Property.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



By: _____
John Patrick Brown, Jr.



By: _____
Kate M. Olson

Attorneys for Applicant