

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

**APPLICATION OF
ALLEGRO II, LLC**

**1714-1716 STREET NW
ANC 2B**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Allegro II, LLC (the “Applicant” or “Barbaricum”), the contract purchaser of the property located at 1714-1716 N Street NW (Square 159, Lots 829 and 830) (the “Property”), in support of its application for variance relief pursuant to 11 DCMR § 3103.2, from the requirements regarding floor-area-ratio (“FAR”) (§ 531.1) and additions to nonconforming structures (§ 2001.3), and a special exception pursuant to §§ 3104.1 and 411.11 for the rear setback requirement for penthouses under § 411.18(b), in order for the Applicant to combine Lots 829 and 830 into one record lot, renovate and combine the existing office buildings and construct a new, code compliant exterior exit staircase and a penthouse (the “Project”).

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance and special exception relief requested pursuant to D.C. Code § 6-641.07(g)(2) and (3).

III. BACKGROUND

A. Barbaricum LLC

Barbaricum LLC is a Service-Disabled Veteran-Owned and HUBZone Small Business (SDVOSB) technology company headquartered in Washington, D.C. Barbaricum was named as

one of the *Washington Post*'s Top Workplaces for 2015. The company has strong ties to the District, and over 35% of its employees live in the District of Columbia.

Barbaricum is currently operating in two separate office spaces in the District and desires to consolidate its workforce into one office. To that end, Barbaricum has selected the Property as its new headquarters. However, to do so and provide the open layout that is the industry standard for technology companies, the two lots and buildings must be combined, which necessitates the relief required.

B. The Property

The Property consists of two tax lots in Square 159 with a combined land area of approximately 3,747 s.f. Square 159 is bounded by N Street NW to the north, 17th Street NW to the east, Rhode Island Avenue NW to the south, and Connecticut Avenue and 18th Street NW to the west. See Zoning Map at **Tab A**. The Property fronts on N Street and backs up to a 10-foot rear alley that separates the Property from the YMCA building.

The Property is mid-block, consisting of two tax lots with mailing addresses at 1714–1716 N Street NW. The Property is located in the Dupont Circle Historic District and is improved with two four-story buildings that are considered contributing buildings (referenced separately herein as either the “1714 Structure” or the “1716 Structure,” and referenced collectively as the “Structures”). The Structures have been used as offices since at least 1988. As documented by the 1988 Certificates of Occupancy attached at **Tab B**, on October 13, 1988, the first C of O for office use in the 1716 Structure was issued to the American Foreign Service Protective Association, Inc. On December 12, 1988, DCRA issued the first office C of O for the 1714 Structure to the African Educational Foundation, Inc. Accordingly, general office use by

Barbaricum would be permitted as a matter of right in the Structures as a replacement for the prior approved office use pursuant to 11 DCMR § 501.3.

The Structures are both currently used as offices for the American Foreign Service Protection Association. While the two lots and structures remain separate for tax purposes, there is a fire door that currently connects the offices in the two Structures. Also, as described more fully below, the FAR of the 1714 Structure exceeds the SP-1 Zone's maximum for non-residential FAR. Accordingly, that building is nonconforming as to FAR in the Zone.

C. The Surrounding Area

The Property is zoned SP-1 and is located within the Dupont Circle ("DC") Overlay District. The Property is situated between Scott Circle to the east and Dupont Circle to the northwest. The 1700 block of N Street NW is characteristic of this area, with buildings ranging from three to 10 stories and devoted to a variety of uses, including office buildings, embassies, and two hotels. Just off the west end of the block runs Connecticut Avenue NW, with its mix of office buildings, shops, and restaurants.

D. Traffic Conditions and Mass Transit

The Property is well serviced by a number of public transportation facilities and services including Metrorail, Metrobus, Capital Bikeshare, and Zipcar. The Property is 0.3 miles from the Dupont Circle Metro Station and 0.4 miles from the Farragut North Metro Station, both providing access to the Red Line. The Property is also 0.5 miles from the Farragut West Metro Station, with access to the Blue, Orange, and Silver Lines. Additionally, Metrobus routes along Connecticut Avenue NW (42, 43, L2, N2, N4, N6), M Street NW (305, 325, 335, 345), and 16th Street NW (S1, S2, S4, S9) all serve the Property. Also within close proximity are a number of bikesharing and carsharing programs. There are two Capital Bikeshare stations approximately 500 ft. away,

one at the corner of 17th Street and Rhode Island Avenue NW and another at the corner of 17th Street and Massachusetts Avenue NW. Further, there are Zipcar vehicles at three different locations within a two block radius. On walkscore.com, the Property receives a walk score of 99 out of 100, deemed a “walker’s paradise,” and receives a bike score of 91, a “biker’s paradise.”

E. The Project

As shown on the plans included at **Tab C**, the Applicant proposes a subdivision to combine Lots 829 and 830 to create a single record lot, and to renovate the interior of the Structures to create one building. This will require removing much of the interior wall area that currently separates the two buildings and consolidating the existing interior dual stairway cores into one stairway core in the east of the consolidated building (the “Consolidated Structure”). The result will be an open office layout that will allow the free flow of employees and ideas throughout the Consolidated Structure. The vast majority of the proposed changes to the Structures will not impact the exterior of the Property. However, the Applicant proposes to consolidate the existing two outdated fire escapes in the rear into one, rear exit staircase that satisfies the building code requirements, and to add a penthouse on the rear of the roof.¹ The Consolidated Structure will be used as Barbaricum’s offices.

Aside from the relief requested, the Project complies with the Zoning Regulations. The proposed height for the Project is 45 ft., well within the 65 ft. permitted in the SP-1 District under § 530.1. There is no lot occupancy limit for office buildings in the SP-1 District, and there is no side yard requirement. A rear yard of 12 ft. is required under § 534.2, and the Project will provide

¹ The Applicant also proposes to consolidate the Property’s existing front exterior staircase that is located in public space. Accordingly, review and approval of that proposal will be conducted by the Historic Preservation Review Board and DDOT’s public space division, as necessary.

a rear yard of 13.5 ft.² No parking is required for the Project because the Property is a historic resource and does not meet the minimum threshold to trigger parking requirements under § 2120.3.

The proposed penthouse will meet the front setback required by § 411.18(a), and will be 12 ft. in height, as permitted by § 530.5. The penthouse location has been moved towards the rear in anticipation of comments from Historic Preservation Office (“HPO”) Staff requesting more than the required 1:1 front façade setback in order to limit views of the penthouse from N Street. Accordingly, the Applicant also seeks a special exception to provide a substandard rear, roof setback.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required for the requirements regarding FAR (§ 531.1) and additions to nonconforming structures (§ 2001.3). 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 will encounter practical difficulties if the Zoning Regulations are strictly applied; and
- (3) The variance will not cause substantial detriment to the public good or 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 Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)).

² In the SP District, if the property abuts an alley, rear yard is measured from the centerline of the alley to the rear wall of the building. 11 DCMR § 534.3(a).

Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. See *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540–41 (D.C. 1972) (“[A]rea variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

V. APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property 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. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. The Property is characterized by an exceptional situation and condition as a result of its historic status, its existing nonconformity, and the fact that both lots have been owned by the same company and have been operated as consolidated offices, with the buildings separated by a fire door.

First, as stated above, the Property is located in the Dupont Circle Historic District and the Structures are considered to be contributing. Accordingly, the Applicant is retaining the exterior of the Structures mostly *as is* with the proposed exterior alterations limited to the addition of a new rear exit staircase and penthouse that will be located on the rear of the roof to address HPO’s anticipated request for reduced line of sight from N Street.

Second, the 1714 Structure is currently nonconforming as to allowable office FAR. Specifically, that structure has an existing FAR of 2.71, while the maximum permitted for non-residential uses is 2.5. When combined, the Structures as is, even without the new exit staircase would have a total FAR of 2.59 as shown on the Existing Ground Level Floor plan included at page 10 of **Tab C**.

Third, both lots 829 and 830 are owned by the American Foreign Service Protective Association and both buildings have been operated as offices for that association. Furthermore, the 1714 and 1716 Structures are currently connected by a fire door that allows the association's employees to access both Structures. The current layout, which allows access to both Structures, but has duplicated interior staircase space is awkward and would not allow the open layout that is the industry standard for technology companies, such as Barbaricum.

B. Strict Application of Zoning Regulations Would Result in Practical Difficulty

Strict application of the Zoning Regulations with respect to FAR and additions to nonconforming structures would result in a practical difficulty to the Applicant.

1. FAR (§ 531.1)

The SP-1 District permits a maximum FAR of 2.5 for non-residential uses. As stated above, the 1714 Structure currently has a nonconforming FAR of 2.71, and the Structures combined have an FAR of 2.59 based on the existing condition, thereby increasing the existing nonconformity by extending it to both lots. Moreover, in order to satisfy the building code requirements, the Applicant will consolidate the existing fire escapes into a new rear exit stairway to provide a second means of egress for the Combined Structure. The gross floor area associated

with this staircase is in addition to the Structures' existing non-conformities, resulting in a total proposed FAR of 2.79.³ Accordingly, relief is required.

The necessary relief is a direct result of the Structure's historic status and existing nonconformity with respect to FAR. The Applicant is severely limited in its ability to modify the existing envelope, because the Structures are contributing buildings to the Historic District. Accordingly, the current FAR could not be reduced.

Further, the additional FAR relief is directly tied to the need to consolidate the existing exterior fire escapes located in the rear of the 1714 and 1716 Structures. The dual fire escape condition is not efficient or adequate for the Combined Structure, and a new, rear exterior staircase is needed. However, due to the code's size requirements, the new staircase cannot be accomplished without increasing FAR. Because the need for FAR relief is due to the fact that the 1714 Structure is already nonconforming as to FAR and the Structures are contributing to the Historic District, complying with FAR limitations is practically difficult and variance relief is appropriate.

2. Nonconforming Structures (§ 2001.3)

Again, the 1714 Structure is currently nonconforming as to FAR. Thus, the Applicant seeks relief under § 2001.3 to construct an addition to this nonconforming structure. Further, the consolidation of Lots 829 and 830 increases the non-conformity on Lot 830 in such a way that relief from § 2001.3 is required.

In this case, it would be unnecessarily burdensome to deny the requested relief because the way to reduce the nonconforming FAR condition would be to require the Applicant to demolish a portion of either the 1714 or 1716 Structures. Due to the contributing nature of the Structures, such demolition would not be possible unless determined by the Mayor's Agent for Historic

³ The gross square footage of the proposed penthouse does not count towards the Project's overall FAR, pursuant to 11 DCMR § 411.13(b).

Preservation that it is “necessary” for a project of “special merit.” The Applicant would face a practical difficulty if it was required to seek approval for the demolition of portions of either building in order to satisfy the zone’s FAR requirement, when the excess density results directly from the Structure’s non-conforming condition.

C. No Substantial Detriment to the Public Good or Impairment the Zone Plan

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief. Combining the existing lots to unify the Structures has no adverse effect on the surrounding neighborhood and poses no harm to the Zoning Regulations. As stated above, the current association owner has office uses in both Structures, and the buildings are connected by a fire door. Accordingly, the future condition will be very similar to the current situation. Also, the Structures will remain “as is” when viewed from N Street, and the additional gross square footage of the proposed rear stairwell will not alter the building’s appearance from N Street and will not affect adjacent properties. Rather, the Project will renovate the Structures to provide a more functional, open layout, which will enable the building to continue as a positive contribution to the block and the Dupont Circle neighborhood as a whole.

VI. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

Special exception relief is required for the rear setback requirement for penthouses (§ 411.18(b)). 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 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 to the special conditions specified in each case. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided

the specific requirements for the 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 Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (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.*

VII. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION

Pursuant to § 411.18(b), a penthouse must be set back from the rear edge of the roof upon which it is located a distance equal to its height. As shown in the “Proposed Penthouse Plan” at page 18 of **Tab C**, the Applicant proposes to construct a 12-ft. tall, approximately 905-s.f. penthouse for use by Barbaricum’s employees (the “Penthouse”). As explained above, the Penthouse will be sufficiently set back from the front and side roof lines. However, in order to limit the line of sight from N Street, the Penthouse is setback 21’-6”, as far as possible, from the front roof line. This creates a substandard setback condition along the rear roof line, and special exception relief is required.

As explained in detail below, the Applicant meets the requirements for relief from this requirement under § 411.11.

A. Operating Difficulties and Other Conditions Relating to the Building Make Full Compliance Unduly Restrictive and Unreasonable.

In anticipation of requests from the District’s HPO, the Applicant proposes to set the penthouse back 21’-6” — almost a 2:1 setback — from the front roof line in order to limit visibility from the N Street sidewalk. Further, the Penthouse still must be stacked on the top of the central staircase core for access purposes. To provide both the necessary setback and a location with access to the central core while still providing a space that is large enough to be functional, the

Penthouse cannot be set back from the rear roof line. Given the constraints placed on the Project due to the Property's historic status as well as the central core location, it is unduly restrictive and unreasonable to require the Applicant to meet the 1:1 rear setback required under § 411.18(b) by further reducing the Penthouse.

B. The Intent and Purpose of the Zoning Regulations Will Not Be Materially Impaired.

Waiving the rear setback requirement in this case will not have any adverse effect on the intent and purpose of the Zoning Regulations. The setback requirement is intended to prevent penthouses from being visible from the street or sidewalk, but the rear roof line here backs up to a 35'-3" rear yard that goes to the center of a 10-ft. alley. Indeed, the rear roof line will be more than 45 ft. removed from the rear property line of the YMCA building across the alley. That building will be unaffected by the lack of the Penthouse's lack of rear setback. Accordingly, there will be no detriment to the Zoning Regulations.

C. The Light and Air of Adjacent Buildings Will Not Be Affected Adversely.

Granting relief from the setback requirement will also not adversely affect the light and air of adjacent buildings. Again, the rear of the roof backs up to a 35'-3" rear yard that goes to the center of the 10-ft. rear alley, and the rear roof line will be more than 45 ft. away from the property across the alley. Likewise, the other properties adjacent to the Property will not suffer from the lack of a rear roof setback, due to the alley condition to the south, which provides sufficient light and air available along the alley to the rear of the Property. Thus, waiving the penthouse rear setback requirement will not adversely affect the adjacent properties.

VIII. CONCLUSION

For all of the reasons stated above, the Project meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

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