

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

Application of SIM Development, LLC **BZA No. 19572**

**APPLICANT'S HEARING STATEMENT**

**November 2017**

This Hearing Statement (“Statement”) outlines the existing and proposed use of the property of application 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 Subtitle X Chapter 10 § 1000.1, more specifically § 1001.2 for area variance to allow the increase in the aggregate number of existing dwelling units from nine (9) to twenty-five (25) through an addition of two additional floors plus a habitable penthouse to an existing nonconforming structure as more specifically set forth under Subtitle C, Chapter 2, § 202.2 (a) and (b).

Applicant also seeks special exception pursuant to 11 DCMR Subtitle X, Chapter 9, § 901.2 and Subtitle C, Chapter 7, §703.2, not meeting the additional number of parking spaces required as prescribed and set forth under Subtitle C, Chapter 7, § 701.5 for property located in the MU-4 zone district.

The existing structure is classified nonconforming with respect to percentage of lot occupancy because the existing two-story building, a portion of which has

historically been used and occupied for residential purposes, currently occupies approximately ninety-one percent (91%) of the lot area of the subject property.

## **SUMMARY OF APPLICATION**

The applicant seeks the above area variance pursuant to 11 DCMR Subtitle X Chapter 10 § 1000.1 as set forth under Subtitle C, Chapters 2, § 202.2 (a) and (b) to allow an enlargement or addition to an existing nonconforming structure which may be deemed to increase or extend a nonconforming aspect of structure, notwithstanding that the proposed third and fourth floor addition will occupy approximately sixty-three percent (63%) at the horizontal plane at which those floors are proposed, less than the seventy-five percent permitted an Inclusionary Zoning (IZ) development as set forth under Subtitle G, Chapter 4, Table § 404.1

The subject property is approximately eight thousand seven hundred and eighty four square feet (8,784 ft<sup>2</sup>) in lot area and as aforementioned the existing two-story structure located on subject property occupies approximately ninety-one percent (91%) of the lot; therefore an existing nonconforming structure with respect to percentage of lot occupancy because of partial use of structure for residential purposes.

The applicant proposes to construct an addition of third and fourth floors, including penthouse habitable space as limited by the provision set forth under Subtitle C, Chapter 15, §1503.1 (c), to accommodate additional residential density. The building will reinstate its historical mixed-use retail service establishment and residential rental apartments.

The residential dwelling units will occupy a part of the existing cellar, and first floor, but the entirety of the second through the fourth floors. The remaining floor area in the cellar

and the ground floors will be occupied for purposes of a retail/service establishment by tenant(s) yet to be determined.

The applicant seeks relief from providing the three (3) required parking spaces on site because the existing building or improvement on subject property occupies approximately ninety-one percent (91%) of the lot and is so located as to leave no room to permit location of any parking on site. The applicant notes that condition predates the May 12, 1958 adoption of the 1958 Zoning Regulations. Hence parking on site is only feasible if the existing building is partially demolished at prohibitive costs to and hardship upon the owner.

The proposed project complies with all other applicable provision of the Zoning Regulations, including maximum allowed floor area ration (FAR), height, Green Area Ratio (GAR) and will comply with the set aside requirements of the Inclusionary Zoning (IZ) provisions, as applicable.

## **JURISDICTION OF THE BOARD**

The application is properly before the BZA. The Board is authorized to grant the requested special exception and area variance under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (2) (2001), as further set forth in 11 DCMR, Subtitle X, Chapters 9 and 10, §§ 900.2 and 1000.1 respectively.

## **PROPERTY LOCATION AND PROJECT DESCRIPTION**

The property is located in the Anacostia neighborhood in the Southeast quadrant at 1916 15<sup>th</sup> Street SE. The subject property, a corner lot by virtue of location at the intersection of Good Hope Road and 15<sup>th</sup> Street SE, is currently improved with a two-story building which has historically been occupied as a mixed-use retail establishment and residential use but has been vacant and unoccupied for several years.

The subject property is legally described as being located within Square 5766, lot 0845

The applicant seeks to construct the described addition to make adaptive use of an existing building which is and has been otherwise vacant for several years.

The completed project will retain existing commercial gross floor area of approximately five thousand, four hundred and eight-four square feet (5,484 ft<sup>2</sup>), while all of the proposed addition of approximately eleven thousand, one hundred and thirty-two (11,132 ft<sup>2</sup>) of allowable base building floor area ratio (FAR), excluding penthouse habitable space, will be devoted to residential dwelling units or an apartment house by definition.

The project proposes twenty-five (25) dwelling units, twenty-four (24) of which are three bedroom units, while one (1) is a two (2) bedroom unit with a den. The applicant contends that the size of the dwelling units is dictated by market forces of the immediate neighborhood and will in the course of the final submission and hearing provide the Board with evidence to the effect to the extent pertinent.

Further, the project proposes penthouse habitable space of approximately two thousand, eight hundred and forty square feet (2,840 ft<sup>2</sup>) therefore FAR of 0.32, less than the maximum 0.4 (3,514 ft<sup>2</sup>) permitted and set forth under Subtitle C, Chapter 15, §1503.1 (c).

The base building density of proposed addition of eleven thousand, one hundred and thirty two square feet (11,132 ft<sup>2</sup>) and the existing density of fifteen thousand, one hundred and ninety-seven square feet (15,197 ft<sup>2</sup>) combined, results in a total of twenty six thousand, three hundred and twenty-nine square feet (11132 + 15,197 = 26,339 ft<sup>2</sup>) (26,329 ft<sup>2</sup>); therefore resulting in FAR of 2.99, less than the maximum 3.0 allowed and set forth under Subtitle G, Chapter 4 Table §402.1.

As aforementioned, the percentage of lot occupancy measured at the horizontal plane or level at which the addition is proposed will comply at approximately sixty three percent

(63%) with the maximum seventy percent allowed an IZ development as set forth under Subtitle G. Chapter 4, Table G § 404.1

In light of the foregoing, the applicant contends that the project is constrained by pre-existing conditions outside of the control of the owner which necessitate the requested relief outlined in this Statement of Burden of Proof or Hearing Statement

### **STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

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 twenty-one days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of the area variance sought, 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**

The improvement located on Subject Property was constructed and has been in existence prior to May 12, 1958 in its current building footprint condition, which occupies ninety-one percent of the lot area.

The subject property abuts 15<sup>th</sup> Street SE to its south and Good Hope Road to its west. A public alley abuts the subject property on its eastern lot line, while the adjacent property to the north is improved by a building that has been in existence prior to May 12, 1958.

Applicant contends based on the foregoing that the opportunity to expand lot area that effectively brings the existing structure on subject property into conformity with the prescribed percentage of lot occupancy for the underlying MU-4 has been foreclosed prior to May 12, 1958 and continues to be foreclosed now.

As aforementioned, bringing the existing structure into compliance with respect to percentage of lot occupancy such that the proposed addition is permissible without the need for the relief sought will impose upon the owner the burden of partial demolition of the existing structure at prohibitive hardship upon the owner

The applicant contends that the foregoing situation, that is, the condition of the structure or improvement located on subject property constitutes the extraordinary or exceptional situation or condition of property for purposes of compliance with the first of the three burden of proof test for the granting of an area variance.

## **PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY**

The extraordinary or exceptional situation or condition of property described above results in and imposes peculiar and practical difficulties upon the owner because the applicant is consigned to seeking the reliefs sought in the instant application.

As aforementioned, although the proposed addition will comply with prescribed maximum FAR and not expand upon the existing nonconformity of percentage of lot occupancy, the fact of the history of residential use within one of the two existing floors of the building which has from the construction of the building occupied ninety-one percent of the lot compels the relief sought before the Board in the instant application. The proposed new residential floors will in fact occupy approximately sixty-three percent (63%) of the lot at the horizontal plans at which it is proposed, a substantial twelve percent (12%) less than the seventy-five percent (75%) allowed an IZ development

Likewise the relief from providing the additional parking spaces required for the aggregate increase in number of residential dwelling units is compelled by the fact of the size of the existing structure on the subject property.

Hence the only option available to the owner of the property is to partially demolish the existing structure to the extent that will bring the subject property to conformity with the prescribed percentage of lot occupancy for its underlying MU-4 zone district and also enough to provide the additional three (3) parking spaces required for the aggregate increase in number of dwelling units.

The applicant contends that the foregoing option imposes upon the owner peculiar and practical difficulties and will in the course of the hearing provide additional information evidencing the prohibitive cost associated with this option and its impracticality.

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

The applicant seeks to make adaptive use of an existing mixed-use structure which has been vacant for several years, by constructing an addition of two floors and a habitable penthouse for the purpose of increasing the aggregate number of residential dwelling units. The proposed project also seeks to retain pre-existing commercial density to serve a suitable neighborhood facility or establishment.

The proposed project is wholly consistent with the General Provisions set forth under Subtitle G, Chapter 1, §§ 100.1, 100.2, 100.3 (a) through (g) and 100.4 for the underlying MU-4 zone district within which the subject property is located

The project seeks only the reliefs it is compelled and consigned to by the extraordinary or exceptional situation or condition of property, and will otherwise comply with all other applicable provisions of the Zoning Regulations.

Notwithstanding that the subject property qualifies for a fifty percent (50%) reduction in required parking spaces as set forth under the Exemption provisions of Subtitle C, Chapter 7, § 702.1 (c) (6) because of location within prescribed distance of a specified **Priority Corridor Network Metrobus Route**, the applicant is not averse to and incorporates by reference all the conditions set forth in DDOT's recommendation as a part of an approved Transportation Demand Management plan to mitigate the potential adverse impact of not providing a de minimis three (3) parking spaces on or off-site



## **SPECIAL EXCEPTION FOR FULL REDUCTION IN NUMBER OF REQUIRED PARKING**

As set forth under Subtitle C Chapter 7, § 703.2, the Board of Zoning Adjustment (BZA) may grant a full or partial reduction in number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant's demonstration of at least one (1) of the following:

*(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;*

The subject property is physically constrained by the existing structure from providing the required parking on site and there is no commercial parking lot within six hundred feet (600 ft.) of the lot. In fact, the applicant approached the John H. Ketcham Public School, neighboring property separated by 15<sup>th</sup> Street about parking on its premise after hours but the request was declined

*(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;*

The subject property is located in a Priority Corridor Network Metrobus Route, specifically the Anacostia/Congress Heights Route as set forth in Subtitle C, Chapter 7, § 702.1 (c) (6). The applicant refers the Board to the parking study (Exhibit 39) which concludes that ample on-street parking (432 spaces) are available around the project site, fifty percent (50%) of which are unoccupied and are available at any time during a typical weekday or weekend day. The project will provide the required number of bicycle parking spaces on site and additionally in public space as recommended by DDOT. The subject property is within one mile of the Anacostia Metro Station; hence well served by mass transit

*(c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;*

The applicant incorporates the Office of Planning's (OP) (Exhibit # 35) information on the Walk, Transit and Bike scores for the subject property

*(d) Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood;*

DDOT concludes in its report that the project will result in minor impact or increase in vehicular, transit, pedestrian and bicycle trips. Including minor impacts to on-street parking conditions. The relief is from providing three (3) required parking spaces

*(e) The nature of the use or structure or the number of residents, employees, guests, customers, or clients who would reasonably be expected to use the proposed building or structure at one time would generate demand for less parking than the minimum parking standards;*

Not applicable

*(f) All or a significant proportion of dwelling units are dedicated as affordable housing units;*

At least three dwelling units are required to be IZ dwelling units.

*(g) Quantity of existing public, commercial, or private parking, other than on-street parking, on the property or in the neighborhood, that can reasonably be expected to be available when the building or structure is in use;*

The applicant is unaware of the quantity of existing public, commercial or private parking available in the neighborhood.

*(h) The property does not have access to an open public alley, resulting in the only means by which a motor vehicle could access the lot is from an improved public street and either:*

The subject property does have access to an improved public alley

*(1) A curb cut permit for the property has been denied by the District Department of Transportation; or*

*(2)*

Not applicable

*(3) Any driveway that could access an improved public street from the property would violate any regulation of this chapter, of the parking provisions of any other subtitle in the Zoning Regulations, or of Chapters 6 or 11 of Title 24 DCMR;*

Not applicable.

*(i) The presence of healthy and mature canopy trees on or directly adjacent to the property; or*

Not applicable

*(j) The nature or location of a historic resource precludes the provision of parking spaces; or providing the required parking would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the historic resource.*

Not applicable

*703.3 Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide, and shall be proportionate to the reduction in parking demand demonstrated by the applicant.*

The applicant physically unable to provide parking on site because the existing improvement does not permit space for any parking

*703.4 Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval.*

The applicant consents to all conditions DDOT itemize for an approved Transportation Demand Management (TDM) plan

## **WITNESS**

1. Erwin Andres
2. Neil P. Cruikshank

## **CONCLUSION**

The Applicant submits that the instant application complies with all conditions for the granting of the requested area variance and special exception as outlined above and as shall be further attested in testimony at the hearing, and respectfully requests that the relief be granted.

The applicant seeks only the relief imposed upon it by the existing condition of property outside his control.

As aforementioned, the proposed additional floors conform with the percentage of lot occupancy limitation allowed an IZ development at the horizontal plane at which they are proposed.

The fact of the existing nonconformity of structure, condition which predates the adoption of the 1958 Zoning Regulations precipitates the necessity for the area variance relief sought from the provisions set forth under Subtitle C Chapter 2, § 202.2 (a) (b)

Likewise, the relief from the required parking is condition imposed upon the owner by pre-existing condition not in the control of the applicant or owner

By a vote of 4 to 2 the affected Advisory Neighborhood Commission (ANC 8A) approved the project in their properly noticed meeting on November 7, 2017

Both the Office of Planning and DDOT recommend approval of the relief sought with conditions that the applicant is not averse to and accepts

The applicant based on all the foregoing further contends that the Board may grant the relief sought without substantial detriment to public good and substantial impairment of the intent, purpose and integrity of the zone plan