



April 5, 2018

Meridith Moldenhauer

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**Re: BZA Case No. 19737 – Fulcrum Properties Group LLC (Lot 817, Square 1043)
Applicant's Prehearing Statement**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant Fulcrum Properties Group LLC, please find enclosed the Prehearing Statement for the above-referenced case. Further, we respectfully request that the Board waive the time requirements of Subtitle Y § 300.15 for a one day delay for this filing. The application is scheduled to be heard before the Board of Zoning Adjustment on April 25, 2018.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

BY: Meridith H. Moldenhauer

LEGAL\35002139\1

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2018, a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Crystal Myers
1100 4th Street SW, Suite E650
Washington, DC 20024
crystal.myers@dc.gov

District Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Anna.chamberlin@dc.gov

Advisory Neighborhood Commission 6B
c/o Daniel Ridge, Chairperson
6B09@anc.dc.gov

Advisory Neighborhood Commission 6B06
c/o Nick Burger, SMD Commissioner
6B06@anc.dc.gov



Meridith H. Moldenhauer

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

**APPLICATION OF
FULCRUM PROPERTIES GROUP LLC**

**BZA CASE NO. 19737
500 13TH STREET SE**

APPLICANT’S PREHEARING STATEMENT

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

This Prehearing Statement is submitted on behalf of Fulcrum Properties Group LLC (the “Applicant”), the contract purchaser of the property located at 500 13th Street SE (the “Property”) in support of this application for variance relief, pursuant to 11 DCMR Subtitle X § 1000.1 and Subtitle U § 301.1, to establish an office use in an existing two-story building in the RF-1 zone. For the reasons set forth in the initial application (BZA Ex. 9), and as supplemented here and at the public hearing, the Applicant has satisfied the burden for variance relief.

II. THE CONFLUENCE OF THE PROPERTY’S UNIQUE CONDITIONS CONSTITUTES AN UNDUE HARDSHIP

As part of the initial application, the Applicant outlined four unique conditions affecting the Property, including: (1) a corner lot location with high commercial visibility; (2) the commercial history of the Property; (3) the mixed-use nature of the Square; and (4) the small size of the lot. The confluence of these four factors has resulted in the Property being on and off the market for many years. The Property’s exceptional and unique conditions create undue hardship for the Applicant to comply with the zoning requirements.

In particular, the commercial history and design of the two-story building with basement (the “Building”) presents several challenges to residential or other matter-of-right uses. As noted in the initial statement, the Building was originally constructed for the use of “stores.”¹ The

¹ Historic Building Permit Records database, Building Permit #4108 (1924). See Exhibit A.

Building features classic corner store architectural characteristics including commercial curtain bay windows and a corner-facing door. These design elements present undue hardship for the Applicant to provide residential units given the challenging layout and greatly diminish the useable interior space. The result is a floorplan with numerous odd and inefficient spaces. While show windows are positive in marketing and showcasing food items, they are extremely challenging for residential use. Furthermore, the limited first floor layout creates a hardship without the use of the second floor.

In evaluating other viable matter-of-right uses, we note that the Building cannot be used as a corner store. The Property is located approximately 350 ft. from another corner store along Pennsylvania Avenue SE, and Subtitle U § 254.5(b) requires that corner stores in the RF maintain a minimum distance of 500 feet from one another. Furthermore, the Property directly opposite 13th Street SE at 1247 E Street SE obtained zoning approval in 2014 and seeks to extend Order 18701 for a second two-year time period due to challenges occupying the space, demonstrating that a third corner store use in the immediate area would not be practical.

The Applicant cannot be expected to provide a residential unit on the second floor only, while the ground floor remains vacant and idle indefinitely, as has been the case. Such an outcome is at odds with longstanding Court of Appeals decisions, including *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972), which held that the purpose of the variance procedure is to “prevent usable land from remaining idle.” Additionally, a use variance should be granted “where a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.” *See id.* at 542. Here, the Applicant seeks a use variance to prevent usable floor space in the Building from remaining idle, and there is no other reasonable use for the entire Building.

Indeed, the Board has long-recognized this Court of Appeals precedent in many case decisions. In BZA Case No. 18275, the Board approved an applicant's proposed request to establish a coffee shop within an existing residentially-zoned building on a similar corner lot location. In that case, the Board specifically noted that the existing layout made the building unique, which lead to undue hardship. *See* Order in BZA Case No. 18275, pg. 5. The Board found that the applicant faced undue hardship because "the lack of privacy from the [existing] show windows and the exposure of the first floor entrance" make the first floor "undesirable" for a matter-of-right residential use. *See* Order in BZA Case No. 18275, pg. 5. Likewise, in BZA Case No. 19262, approved in 2016, the Board granted a use variance to allow a massage establishment in a 365-square-foot windowless unit of an existing apartment house. The Board specifically noted that the peculiar layout of the unit meant that it "cannot be put to any conforming use with a fair and reasonable return to the owner." *See* Order in BZA Case No. 19262. Similar to these use variance cases, the Property's show windows and floor layout mean that the Applicant will face undue hardship if the Zoning Regulations are strictly applied.

The requested use variance for the first and second floors directly address the inefficiencies of the floor plan, small size of the lot, and goal of revitalizing the entire Building. The adaptive reuse of the entire Building is necessary for a reasonable work flow, meeting room, and office arrangement.

While the design of the Building is ill-suited to residential use, it lends itself to adaptation to office use relatively easily. The Building, including the second floor, is located next to an auto body repair shop and other PDR-1 uses, thereby further reducing the compatibility for residential use on the Property. The layout and windows create an undue hardship for residential use but are suited for offices, desk, and meeting rooms. Therefore, the most reasonable use of the Building is for office use, and there are no other compatible uses that utilize the entirety of the Building.

III. THE OFFICE USE WILL CAUSE NO DETRIMENT TO THE PUBLIC GOOD

The operation of an office use will not disrupt the RF-1 zone given the current mixed-use character of the block. As noted in the initial statement, the Property is located in a mixed-use Square, which includes RF-1, PDR-1 and MU-4-zoned properties. The proposed use would create a buffer and low-impact transition to the more-intensive PDR uses such as an auto body repair shop and garbage truck parking lot, among others. The use of the Building as an office complements the mixed-use context and is appropriate for this unique location.

Office use will feature weekend hours to serve clients in the neighborhood who are not available during the workweek. Therefore, unlike other office uses which remain closed and dark during the weekend, the proposed office use will serve as a good neighbor during the weekend, thereby providing “eyes on the street” and promoting non-impactful pedestrian activity in the area. Moreover, the use of all floors as an office will cause no impacts on the surrounding neighbors. The open layout of the second floor will remain in place for easy conversion to a residential use by future owners.

IV. THE OFFICE USE IS HARMONIOUS WITH THE STATED PURPOSES AND OBJECTIVES OF THE RF ZONE PLAN

Establishing an office use in a chronically-vacant and commercially-designed building will satisfy a number of the stated purposes and objectives of the RF zone plan, including Subtitle E § 100.3(b), which “allow[s] for limited compatible non-residential uses.” The office use is compatible with the Capitol Hill neighborhood, which itself is generally characterized by a mix of neighborhood-serving uses. Also, no expansion to the building is proposed, and so therefore the importance of Capitol Hill’s historic character is recognized and reinforced as described in Subtitle E § 100(a). Further, the use would contribute to the walkability of the neighborhood, also stated in Subtitle E § 100(a), because most of the employees walk or bike to

work. Similarly, the majority of all expected visitors are expected to walk or use public transportation to the Property, as has been the Applicant's experience at its current Capitol Hill location.

V. COMMUNITY OUTREACH

The Applicant presented to the ANC 6B Planning and Zoning Committee on April 3, 2018. At that meeting, the Committee voted to support the application and the relief requested. The Applicant will be presenting to the full ANC 6B on April 10, 2018. As of the time of the filing of the pre-hearing statement, 53 letters in support had been submitted by nearby residents and businessowners, and no letter in opposition had been submitted.

VI. APPLICANT'S EXPERT WITNESS

Stephen Varga, Planning Services Director at Cozen O'Connor will testify as an expert in land use and planning. Please find his resume and land use and planning report attached at **Exhibit B** and **Exhibit C**, respectively.

VII. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings as well as the reasons discussed at the Board's hearing, the Applicant submits that the application meets the requirements for variance relief in order to establish an office use in the RF-1 zone. Accordingly, the Applicant respectfully requests that the Board approve the application on April 25, 2018.

Respectfully submitted,
COZEN O'CONNOR



Meridith H. Moldenhauer
1200 19th Street, NW
Washington, DC 20036
(202) 912-4800

EXHIBIT A

Not started ✓

NEW BUILDINGS

Permit 4108 Date 10/24/21

Owner S. L. Del Vecchio

Address _____

Builder _____

Address _____

Premises 817 Lot 500-13 ^{7E D. 21} Square 1043

No. of buildings 1 No. of stories 2

Material Brick

Material of roof slag Access to _____

Main buildings Width 19 Depth 6 1/2

Subsidiary buildings Width _____ Depth _____

Height _____ Av. Height 29'

Purpose of building Stores

Nature of soil _____ Foundation conc.

Material of foundation _____ Thickness _____

Footings _____

Walls, Ex. 2 1/2 1 2 3 4 5 6 7 8

Walls, party _____ Cellar _____

Proj., main steps _____

Proj., area steps _____

Proj., B. W. 3 S. W. 3' Vault _____

Proj., oriels _____ Tower _____

Height of 1st floor above grade _____

Height of terrace above grade (curb) _____

Next _____

10-23-21
not started

Assistant Inspector of Buildings.

Miller (OVER)

EXHIBIT B

STEPHEN VARGA, AICP, LEED GREEN ASSOCIATE

Mr. Varga has experience in zoning and land use, sustainability best practice, comprehensive planning, as well as geographic information systems. He is currently Planning Services Director in Cozen O'Connor's Washington, DC office. In this role, he evaluates development proposals for zoning conformance and entitlement potential, drafts and submits text and map amendments as part of the District's 'Open Call' Comprehensive Plan update, and monitors and researches local government land use policies.

Prior to joining Cozen O'Connor, he served as director of planning services at Griffin, Murphy, Moldenhauer and Wiggins LLP after serving for nearly 10 years as an urban planner within the District of Columbia government.

From 2008-2010, he worked at the District of Columbia Office of Planning, an agency which guides development in the District while implementing preservation, revitalization, and strategic goals. As a development review specialist, he was responsible for reviewing zoning applications and presented agency recommendations at public meetings. Additionally, he served as core team member of Zoning Regulations Review project, a multi-year effort to comprehensively revise and modernize the zoning regulations of the District. He produced zoning recommendation reports and zoning regulation text, particularly for mixed use, transit-oriented development, and sustainability subject areas. This work would eventually become adopted as "ZR16," the new zoning regulations of the District, in effect since September 6, 2016.

From 2011-2016, he served at the District of Columbia Office of Zoning (DCOZ), an agency which provides administrative, professional, and technical assistance to the Zoning Commission and the Board of Zoning Adjustment (BZA) in support of their oversight and adjudication of zoning matters in the District of Columbia. Upon joining DCOZ, he worked as a zoning specialist, and eventually senior zoning specialist, where he was responsible for communicating complex technical and regulatory information to a wide range of stakeholders, including applicants, BZA, Advisory Neighborhood Commissions, and the public. In addition to carrying out his explanatory duties, he analyzed and managed hundreds of zoning applications per year, ensuring each complied with applicable procedures and requirements. He also improved the BZA application processes for applicants, and clarified rights and responsibilities for stakeholders, resulting in more-timely and efficient hearings. Additionally, he adapted BZA zoning processes in the Interactive Zoning Information System to conform with ZR16.

Mr. Varga holds a Master's Degree in City & Regional Planning from the Ohio State University. He graduated with a Bachelor of Arts Degree from the Ohio State University.

He has been a member of the American Planning Association since 2003. He earned his American Institute of Certified Planners ("AICP") designation in 2007, and his LEED Green Associate designation in 2010.

EXHIBIT C

**FULCRUM PROPERTIES GROUP LLC
BZA CASE #19737**

LAND USE & PLANNING REPORT

PROPERTY INFORMATION

- Address: 500 13th Street SE
- Square/Lot: Sq. 1043, Lot 817
- Existing: Two-story building
- Proposed: Office
- Neighborhood: Capitol Hill
- Historic District: Capitol Hill
- Lot size: 1,425 sq ft.



ZONING

The Project conforms to the RF-1 (Residential Flat) zone plan because it satisfies the purpose, general provisions, and objectives of the zone:

- Recognize and reinforce the importance of neighborhood character¹
- Support walkable neighborhoods¹
- Allow for limited compatible non-residential uses²



¹ Subtitle E § 100.3(a)

² Subtitle E § 100.3(b)

RELEVANT ELEMENTS FROM THE COMPREHENSIVE PLAN

The requested zoning relief is not inconsistent with several planning objectives detailed in the Comprehensive Plan as follows:

Framework Element

- Providing services that support families' needs (Managing Growth and Change: Guiding Principles 217, #2, pg. 2-23)
- Promoting redevelopment near transit stations (Managing Growth and Change: Guiding Principles 217, #6, pg. 2-23); see proximity map, below
- Including commercial uses that contribute to neighborhood character (Managing Growth and Change: Guiding Principles 217, #9, pg. 2-23)



Land Use Element

- Promoting infill development of an often-vacant structure that is compatible with its surroundings (LU-1.4, pgs. 3-22, 23)
- Supporting easy access to services which meet the needs of District residents (What Makes a Great Neighborhood? 309.6, pg. 3-24)

Capitol Hill Area Element

- Preserving small businesses that serve the community's needs (Planning and Development Priorities 1507(f), pg. 15-10)
- Promoting reinvestment in existing structures while protecting the historic fabric (Planning and Development Priorities 1507(h), pg. 15-11)

RELEVANT ELEMENTS FROM SMALL AREA PLANS

Pennsylvania Avenue SE Corridor Small Area Plan (Potomac Avenue Sub-Area)

- Promote the retention of neighborhood-serving uses (Future Vision, pg. 48)
- Preserve architectural fabric and character of the neighborhood (Building Design, pg. 48)
- Encourage active ground floor retail with upper-story small offices (Site Planning, pg. 48)

- Require that infill development respect all relevant design guidelines (Site Planning, pg. 48)

SUMMARY

The Capitol Hill Area Element Overview states:

In many respects, Capitol Hill is a “city within the city.” The community has well defined physical boundaries that enhance its sense of identity. Its neighborhoods are united by history, architectural tradition and relatively consistent urban form, including a system of grid and diagonal streets that has remained faithful to the 1791 L’Enfant Plan for Washington. Much of the community has the feel of a small historic town, with block upon block of attractive late 19th century and early 20th century row houses, well-maintained public spaces, historic schoolhouses and corner stores, rear yard alleys, and traditional neighborhood shopping districts. The community’s attractive housing stock, living history, low scale, and proximity to the U.S. Capitol make “the Hill” one of the District’s most celebrated and attractive Communities.”³

The requested use variance celebrates and builds upon this nuanced, small-grain mixed-use character of the Capitol Hill neighborhood. More specifically, the Pennsylvania Avenue SE Corridor Small Area Plan states that “[the Potomac Avenue Sub-Area] will retain and expand its neighborhood-serving retail base. Existing architectural fabric and character will be preserved.” Further, it states under “Other Land Uses” that “Active ground floor retail is encouraged, with **upper-story small offices**...”⁴ The requested use variance is in character with these recommendations, and complements the mixed-use nature of this block.

In drawing this conclusion, the neighborhood context is important. The Property is within close proximity to two Metro Stations and serves to encourage pedestrian activity along the street as a neighborhood-serving use. Further, the Project satisfies the purpose, general provisions, and objectives of the zone by rehabilitating an existing building without compromising the integrity of the neighborhood and respecting the broader community context.

The relief allows for the office use of a chronically-vacant building originally designed for “stores.” The relief will permit a long-standing small business to remain in the Capitol Hill community. Moreover, the Project will not negatively impact the public good as it fulfills planning objectives and is harmonious with this small RF-1-zoned section of the block, sandwiched amongst MU and PDR zoned-properties. Therefore, the requested zoning relief has no detriment to the zone plan or public good and should be granted.

³ Comprehensive Plan, Capitol Hill Area Element, pg. 15-1

⁴ Pennsylvania Avenue SE Corridor Small Area Plan, pg. 48.