

May 23, 2018

**Via Hand Delivery and IZIS**

Frederick L. Hill, Chairperson  
District of Columbia Board of Zoning Adjustment  
441 4th Street, NW, Suite 200S  
Washington, DC 20001

Re: BZA Case No. 19772 – Application of 1729 T Street TF LLC to the District of Columbia Board of Zoning Adjustment for 1729 T Street, SW (Square 151, Lot 0015) (the “**Property**”) – Applicant’s Pre-Hearing Statement

Dear Chairperson Hill and Members of the Board:

On April 22, 2018, 1729 T Street TF, LLC (the “**Applicant**”) submitted an application for variance relief pursuant to Subtitle X, Section 1002.1 from the closed court, floor area ratio (“**FAR**”), and lot occupancy requirements of the RA-2 zone as set forth in, respectively, Subtitle F, Sections 202.1, 302.1, and 304.1, to allow the construction of a five-unit multifamily residential building, containing two 3-bedroom units, one 2-bedroom unit, and two studio units (the “**Project**”). The Project is located midblock on T Street, NW between 17<sup>th</sup> Street, NW and 18<sup>th</sup> Street, NW and is located within the Strivers’ Section Historic District.

The Applicant hereby submits this pre-hearing statement (i) to update the Board on the status of the Applicant’s outreach to neighboring property owners and the broader community; and (ii) to provide additional clarification on the manner in which the unique circumstances affecting the property create practical difficulties in complying with the FAR and lot occupancy requirements of the Zoning Regulations; and (iii) to file materials related to the Applicant’s presentation at the public hearing. Additional drawings, including color renderings of the Project, are attached as Exhibit A. For completeness, a restatement of the court relief is also included here.

**I. Community Outreach**

The Applicant is pleased to point out to the Board that it has received the unanimous support from Advisory Neighborhood Commission (“**ANC**”) 2B for this application. *See* Exhibit 33 in the record for BZA Case No. 19772. The ANC noted its appreciation of the Project’s design, green roof, and sensitivity to context. The ANC also noted that the Project includes multiple family-sized units, which are in short supply within the boundaries of the ANC. (The Project’s two largest units contain three separately demised bedrooms, all of which contain windows but one of which does not comply with the emergency egress requirements to be considered a separate “bedroom” for certain purposes and is therefore sometimes referred to as a den though they will be marketed as three-bedroom units.)

The Applicant also notes that it has had multiple productive discussions with the immediate abutters on either side of the Property. Much of the content of these discussions has involved addressing the neighbors' concerns regarding construction-period mitigation. The Applicant understands that the neighbors are not opposed to the application for zoning relief and are generally supportive of the overall design of the Project, including the proposed materiality. Attached as Exhibit B is a letter from one set of immediate neighbors. The Applicant is not certain whether the other immediate neighbors will file a letter with the Board prior to the public hearing.

## **II. The Property Is Affected by Exceptional Conditions that Create a Practical Difficulty in Complying with the Court, FAR and Lot Occupancy Requirements**

The Applicant provides this supplemental information and analysis regarding the Project's satisfaction of the variance standard. Inadequate access to light because of nonconforming conditions on the adjacent properties is the driving factor of this relief request. In summary:

- The Property is surrounded by existing buildings that are non-conforming with respect to lot occupancy, rear yard and FAR and that are each supported by an existing party wall that encroaches into the Property on both sides by approximately six (6) inches;
- The Property is a narrow and small lot that abuts a lot that is twice its size;
- The abutting buildings impair the Property's access to light at the rear façade, which is one of only two possible facades given the size and nature of the Property,
- If the adjacent existing buildings conformed to the zoning requirements the light impairment would not exist, but those existing buildings and existing party walls are unlikely to be removed or reoriented given their contributing status in the historic district;
- Because of the impaired access to light and air created by the adjacent non-conforming and contributing buildings, the Project includes a light well (i.e., a closed court that does not satisfy the minimum area and width requirements for a court) and adds a partial fourth story (above the existing building) to provide units with reasonable amounts of daylight;
- The creation of the light well, which is located and sized based on the location and size of the neighboring building's existing non-conforming light well, and the addition of the fourth floor to reach additional daylight, each create interior inefficiencies;
- The presence of the Property in a historic district effectively eliminates the ability to use the entire top floor in order to preserve the historic cornice line, also creating inefficiencies;
- The loss of interior efficiency and the encroachment of the party walls necessitates minor additional FAR and lot occupancy; and
- The Project resulting from these items of relief is compatible in form and density with the surrounding buildings (many of which are non-conforming) and consistent with the Comprehensive Plan's objectives of providing additional family-sized housing.

As articulated more formally below, the requested relief satisfies the requirements for a variance under the Zoning Regulations. The Board may grant an area variance if it finds that "(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan." See *Dupont Circle Citizens Ass'n. v. District of Columbia Bd. of Zoning Adjustment*, No. 16-AA-932 at 5 (D.C. Apr. 12, 2018) ("**Dupont**").

## 1. The Property Is Affected by Exceptional Conditions

As set forth in the Applicant's initial filing in this case, the Property is subject to a number of conditions that together make the Property unique. The D.C. Court of Appeals has recently reaffirmed that "[t]he extraordinary or exceptional conditions affecting a property can arise from a confluence of factors." *Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082–83 (D.C. 2016) (internal citations omitted). The exceptional conditions requirement may be satisfied by, without limitation, features of the lot such as narrow width, characteristics of the land, and conditions inherent in structures built upon the land. *See Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (internal citations omitted). The Property has conditions that, taken together, cause it to be unique.

The conditions that affect the Property that together make it exceptional are (i) its narrowness and small size, (ii) the non-conforming lot occupancy of the immediately adjacent buildings and the encroachment of an existing party wall onto the Property that the Project will not utilize, (iii) the presence of an existing nonconforming light well serving one of the immediately adjacent buildings, and (iv) the Property's location in a historic district immediately adjacent to two contributing structures.<sup>1</sup> Together these four sets of conditions result in an overall exceptional condition affecting the Property in satisfaction of the first prong of the variance test.

In particular, these conditions combine to prevent an adequate amount of light from reaching the interior of the units in the Project. All three requested items of relief are intended to remedy the difficulties created by inadequate access to light. Shadow studies depicting impacts of the adjacent buildings on the Project's access to light are included in the plans. *See Exhibit A* at 9-10. These shadow studies show that but for the adjacent buildings' non-conforming characteristics (i.e., if the mass of the adjacent buildings was conforming), a matter-of-right proposal on the Property would have adequate access to light along the rear façade at least some of the time. The rear façade's northern orientation is a confounding factor, but the presence of the adjacent non-conforming structures significantly obstructs light penetration even during the summer. The shadow studies underrepresent both the negative effects of the adjacent buildings as well as the positive effects of the light well and the fourth story, insofar as shadow studies are only a proxy measure of ambient light reaching the interior of the units. The proposed configuration has more windows (because of the light well) than a matter of right layout, and the additional windows allow more light throughout the interior. *See Exhibit A* at 5-6. In addition, the proposed fourth story is almost entirely unobstructed, creating bedrooms with good lighting conditions in two of the Project's five units. *See Exhibit A* at 9. The Project's light well and fourth story are necessary to

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<sup>1</sup> The Applicant notes that in *Dupont*, the Court of Appeals took the view that the property that was the subject of that proceeding was not sufficiently unique merely because it was a historically contributing building within a historic district containing many other contributing buildings. The instant case is not at all like *Dupont*. In *Dupont* the subject property was itself a historically contributing structure. Here, the subject property does not contain a contributing structure; rather, the two immediately adjacent properties contain contributing structures, and together those two contributing buildings create conditions that serve to limit the development potential of the Property. As noted by the court in *Ait-Ghezala*, structures may be part of the conditions that make a property unique. Because the two adjacent buildings and their non-conforming characteristics are effectively permanent given the status of each as a contributing building, those two buildings inhere to the Property. Moreover, the contributing status of the two adjacent buildings is simply one of the confluence of factors affecting the Property and not the only item that makes the Property exceptional.

provide adequate light and require the requested variances to overcome the practical difficulties created by the existing unique conditions.

2. Strict Application of the Zoning Regulations Results in a Practical Difficulty as a Result of the Exceptional Conditions Affecting the Property

Together the four above-listed sets of exceptional conditions result in a practical difficulty in complying with the court, FAR, and lot occupancy requirements of the Zoning Regulations.

Closed Court: The Applicant requests a variance from the minimum width and area requirements for a closed court. These areas of relief are necessitated by the practical difficulty in complying with the minimum width and area requirements for closed courts given the size of the Property and the need to allow additional light into the Project.

- (i) Lot Width: The narrowness of the Property—just 20 feet in width—renders the Property virtually unable to provide a closed court of conforming width, which must be at a minimum 15 feet wide. A conforming court would leave just 5 feet, barely wide enough only for a corridor and for no other internal use. Complying with the minimum area requirements for a closed court is similarly difficult given the conditions applicable to the Property. In the RA-2 zone, a closed court must have a minimum area of 350 square feet. Such an area is equal to 17.5 percent of the total area of the Property. Any conforming closed court would create an unbuildable donut hole in the middle of the Property and result in interior inefficiencies that constitute a practical difficulty. *See Exhibit A* at 8. When the zoning-compliant court is overlaid on the maximum lot occupancy 60 percent, the resulting floor plate is separated into two halves, with a “neck” that can be no more than only approximately 3.33 feet wide because the Property itself is only 20 feet wide. If the Project were to utilize this typical floor configuration, it would result in an excessive amount of internal circulation and an inefficient unit configuration. In addition, the amount of exterior envelope would increase significantly beyond that of a typical infill building.
- (ii) Existing Non-Conforming Light Well (Closed Court) on Adjacent Building: The adjacent building to the east includes a non-conforming court which faces the Property and which creates a unique condition for both properties. The most space-efficient and cost-effective matter-of-right design solution for the Property is to build up to the property line at the adjacent building’s non-conforming closed court. *See Exhibit A* at 6-7. However, this approach would have a detrimental impact on the light and air of the adjacent property, which uses the “light well” created by the existing non-conforming court to mitigate its excessive depth. To optimize light penetration and the value of the existing light well for both the adjacent building and the subject Property and to minimize interior inefficiencies created by a light well within the Project, the Project’s light well should be located to complement the existing one. The Project proposes such an optimized scenario, which prevents it from conforming to the closed court dimensional requirements. Accordingly, the Project meets the standard for a variance from the closed court minimum width and area requirements.

FAR: The Applicant requests a variance for 0.5 of additional FAR. This additional FAR is necessitated by the practical difficulty in complying with the 1.8 FAR limit of the zoning regulations on account of four components of the above-listed exceptional conditions:

- (i) Light well: As noted above, the Project includes a light well to allow light into the building on account of the cave-like condition created by the presence of the existing adjacent non-conforming structures. The size and location of the light well is dictated by the presence of an analogous light well within the building adjacent to the east. *See Exhibit A* at 5. By matching the size and location of the existing light well, the Applicant optimizes light penetration both for the Project as well as for its neighbors. The light well occupies approximately 90 square feet on each of the top three stories. Although the volume occupied by the light well itself does not count toward FAR, the light well creates interior inefficiencies to an extent roughly equivalent to the area of the light well itself. That is, the light well creates interior conditions and geometries that require additional floor area to offset the irregular floor plan resulting from the inclusion of a light well. For instance, given the location of the light well, a conforming floor plate would not have enough space on the north side of the light well to have useable bedrooms when factoring in the requirements for internal stairs and structural support. The total impact of these interior layout inefficiencies resulting from the light well is approximately 270 square feet, or an FAR equivalent of 0.135.
- (ii) Access to Light: The Project extends approximately two and a half additional feet to the north relative to what would be allowed by right in order to move the rear façade slightly closer to aligning with that of the existing adjacent buildings. Although this does not entirely eliminate shadow impacts from those adjacent buildings, it does allow additional ambient light into the rear bedrooms. In addition, this minor extension gives the rear bedrooms approximately two additional linear feet (i.e., from 9.5 feet to 11.5 feet), which makes them much more habitable. Over the first three stories, this additional northward projection of two feet results in approximately 140 square feet, or an FAR equivalent of approximately 0.07.
- (iii) Stairs to 4<sup>th</sup> Story: As a second method of providing light and air to the Project and to mitigate the non-conforming condition of the adjacent properties, the Project extends slightly higher than those adjacent properties (yet still within the height limit allowed under the Zoning Regulations). To reach this upper story the Project includes internal stairs that are effectively lost living space. *Exhibit A* at 5. The top story, and the stairs necessary to reach them, result solely on account of the need to reach additional light and air on account of the adjacent non-conforming structures. The total impact of these interior circulation inefficiencies resulting from the fourth story is approximately 115 square feet, or an FAR equivalent of 0.058.
- (iv) Additional Space on 4<sup>th</sup> Story: Because of the cornice line on the front of the building, which is dictated by the existing cornice line of the neighboring historically contributing buildings, the Project's fourth story is set back from the front of the building in accordance with review and approval by HPRB. In order to provide functional bedroom and bath sizes on this fourth floor, this floor is expanded by approximately 190 square feet more than would be allowed as a matter-of-right, or an FAR equivalent of 0.095.

- (v) Party wall encroachment: The existing historically contributing buildings on either side of the Property are structurally supported by a party wall that encroaches into the Property by approximately six (6) inches along each property line. *See Exhibit A* at 4-5. The Project will not benefit from the party wall and will instead utilize an independent structural system to protect the adjacent construction. But for the existing party wall, the Project would have an additional six inches of gross floor area on every floor for each of the two sides of the building for the entire approximately seventy (70) foot depth of the Project. The total impact of the party wall encroachment (accounting for a shallower floor plate on the fourth story) is approximately 281 square feet, or an FAR equivalent of 0.14.

Taken together, the four components of the exceptional conditions create practical difficulties in complying with the FAR requirements to a combined extent of approximately 0.5.

Lot Occupancy: The Applicant requests a lot occupancy variance of ten percent (10%; i.e., from the allowed 60 percent to the proposed 70 percent), which is equivalent to 200 square feet of lot area. Three exceptional conditions of the Property, when taken together, create a practical difficulty in complying with the lot occupancy requirements of the RA-2 zone:

- (i) Light well: As noted above, the Project includes a light well to allow light into the building on account of the cave-like condition created by the presence of the existing adjacent non-conforming structures. The size of the light well is dictated by the presence of an analogous light well within the building adjacent to the east. The light well occupies approximately 90 square feet of the lot area, or 4.5 percent of the 10 percent variance.
- (ii) Setback on 4th Story: Because of the cornice line on the front of the building, which is dictated by the existing cornice line of the neighboring historically contributing buildings, the Project's fourth story is set back from the front of the building to a depth of 16.8 feet. *See Exhibit A* at 5. Because the top story cannot be occupied to the same extent as the lower stories a portion of that floor is inefficiently used for lot occupancy purposes. The setback area is approximately 326 square feet and is the equivalent of 84 square feet of lot occupancy. To be conservative, this setback area does not translate on a one-for-one basis to a need for additional lot occupancy. Instead this 326-square foot area is equivalent to the occupancy of an additional 84 square feet of lot area spread over four stories (i.e., if the Project occupies an 84 square feet of the lot, it gains 326 square feet of occupiable space, which in the most conservative reading is equivalent to what is "lost" by setting the building back at the top floor). Accordingly, the 4<sup>th</sup> story setback accounts for approximately 84 square feet of the lot area or 4.2 percent of the 10 percent variance.
- (iii) Party wall encroachment: As noted above, the existing historically contributing buildings on either side of the Property are structurally supported by a party wall that encroaches into the Property by approximately six (6) inches along each property line, and the Project will not benefit from the party wall. The party wall occupies 77 square feet of the lot area or 3.8 percent of the 10 percent variance.

Taken together, the three components of the exceptional conditions create practical difficulties in complying with the lot occupancy requirement to a combined extent of

approximately 12.5 percent of the area of the Property, which is greater than the lot occupancy relief requested. In addition to the above-described interior-related items driving the lot occupancy request, the Applicant also notes that the exterior balconies on the rear of the Project occupy approximately 80 square feet of the 200 square feet of additional lot occupancy relief requested. Pragmatically, a significant driver of the lot occupancy request is a desire to provide the Project's residents with outdoor space, which again mitigates the loss of light and air as a result of the exceptional conditions created by the adjacent non-conforming structures. The Project's provision of outdoor space was an important consideration raised by the ANC.

3. The Requested Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan

The Board can grant the relief requested in the instant application without any detriment to the public good and without impairing the intent, purpose, or integrity of the Zone Plan. The Zone Plan is embodied in the Zoning Regulations and Zoning Map. *See* 11-X DCMR § 1000.1. The Project provides the kind of infill, multifamily residential development with family-sized units that the Zone Plan encourages. The Project revitalizes a currently underutilized site with a building that is contextually appropriate from the perspective of design, massing, and use. For ease of reference, the analysis provided by the Applicant in its initial filing is reproduced here.

- (i) No Substantial Detriment to the Public Good: The requested relief facilitates the Project, which does not detriment the public good. Rather, the Project contributes to the public good by providing four net new housing units on the Property without displacing any existing residents (the existing building on the Property is vacant). In addition, three of the Project's new residential units are "family-sized", two of which contain three bedrooms. These two- and three-bedroom units recognize the public policy objectives of developing larger units to give the District's increasing number of families with children an opportunity to remain in the District. The Project's studio units recognize the demographics of many of the District's new, younger residents and provide a homeownership opportunity for a one- or two-person household at a lower-cost than a larger unit.
- (ii) No Substantial Impairment to the Intent and Purpose of the Zone Plan: The intent and purposes of the Zoning Regulations, which in conjunction with the Zoning Map, embody the Zone Plan, are to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare," 11-A DCMR § 101.1, in consideration of the "character of the respective zones; . . . the suitability of each zone for the uses permitted in each zone . . . ; [the] encouragement of the stability of zones and of land values in those zones; and . . . [the] requirement that zoning shall not be inconsistent with the [Comprehensive Plan]." *Id.* § 101.2.

The Project is located in an area served by transit and accommodating to pedestrians, which promotes public health. The Project adds "eyes to the street" and removes an older, vacant structure, all of which advances public safety. The Project is being undertaken in conjunction with a robust community outreach effort, which advances the public morals of public participation in the land use permitting process. The requested relief facilitates the Project, which promotes the orderly and

prosperous redevelopment of an underutilized lot. The Project replaces a functionally-obsolete single-family dwelling with five units, two of which contain three bedrooms. The Project adds to the property tax base in satisfaction of the general welfare component of the intent and purposes of the Zoning Regulations.

The moderately-dense multifamily residential use proposed for the Project is suited to the character of the RA-2 zone, which is intended for moderate-density residential development. 11-F DCMR § 300.3. The uses intended for the Project are expressly permitted in the RA-2 zone, and the redevelopment of the Property encourages the stability of land values that might drop with the Property remaining vacant or becoming dilapidated through underinvestment.

Specifically, the relief requested does not impair the intent and purpose of the Zone Plan. The Zoning regulations generally encourage appropriately-sized development that prevent light and air encroachments from one property on another. However, where, as here, non-conforming structures create light and air issues, relief from some development standards to provide healthy, light-accessed residential units does not impair the purpose and intent of the Zoning Regulations.

Finally, the Project is not inconsistent with the Comprehensive Plan. The Project is in accordance with the Neighborhood Conservation and Moderate Density Residential designations on the Comprehensive Plan's Generalized Policy and Future Land Use Maps, respectively. The Project advances numerous individual policy objectives of the District Elements and Area Elements of the Comprehensive Plan. *See* Exhibit 13 of the record in this case for a summary of such policy objectives.

- (iii) No Substantial Impairment to the Integrity of the Zone Plan: The Project does not impair the integrity of the Zone Plan. The Zone Plan dictates moderate-density residential uses for the Property, and the Project includes such uses at such densities. The modest relief from the court, FAR, and lot occupancy requirements is designed to be as minimal as possible in light of the objective of establishing a successful project on the Property.

### **III. Expert Resume and Witness Testimony**

On behalf of the Applicant, the following witnesses will be available to testify at the June 13, 2018 public hearing on the Project:

- (i) Travis Fleisher, as representative of the Applicant; and
- (ii) Will Teass, AIA LEED AP or Charles Warren, AIA LEED AP, Teass\Warren Architects. Messrs. Teass and Warren are licensed to practice architecture in the District of Columbia and both have been previously accepted as experts in architecture by the Board.

The attached Exhibit C includes outlines of testimony for the two above-listed witnesses as well as resumes for Messrs. Teass and Warren.

We believe that the application is complete, and we look forward to discussing this matter with the Board at its public hearing. If you have any questions, please do not hesitate to contact the undersigned at (202) 721-1127. Thank you for your attention to this application.

Respectfully Submitted,



Christine A. Roddy



David A. Lewis

**Certificate of Service**

I hereby certify that a copy of the foregoing document was sent to the following by e-mail, first-class mail or by hand delivery by no later than May 24, 2018:

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