

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

Application of Community Three Grimke, LLC  
ANC 1B

**STATEMENT OF THE APPLICANT**

This is the application of Community Three Grimke, LLC (“**Applicant**”) for variance and special exception relief to permit the renovation and construction of an addition to an existing building to create a mixed-use project.<sup>1</sup> The property that is the subject of this application is located at 1925 Vermont Avenue NW (Square 361, Lot 827) (“**Property**”). The Property is located in the RF-1 Zone District, but the Applicant has filed a Zoning Map amendment application to rezone the Property to the ARTS-2 Zone District. That application, Zoning Commission Case No. 18-01, has been set down for a public hearing that will occur on June 7, 2018. Accordingly, this application and the proposed project are evaluated under the standards of the ARTS-2 zone.

**I. NATURE OF RELIEF SOUGHT**

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) approve the following relief from the Zoning Regulations:

1. Variance from the minimum alley width requirement for parking access in Subtitle C § 711.3(b) (11-C DCMR § 711.3(b)).
2. Variance from the drive aisle width requirement in Subtitle C § 712.5 (11-C DCMR § 712.5).

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<sup>1</sup> The District of Columbia is currently the owner of the Property, but the District awarded the Applicant the right to redevelop the Property after a competitive disposition process. The Applicant will take title to the Property on or about June 2019.

3. Special exception from the rear yard requirement in Subtitle K § 805.1 (11-K DCMR § 805.1).

## **II. JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the relief requested pursuant to Subtitle K § 813.1, Subtitle X §§ 900.2 and 1000.1, and Subtitle Y § 100.3 of the Zoning Regulations.

## **III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA**

The Property is located in the Shaw/Cardozo neighborhood of Ward 1 and contains approximately 37,926 square feet of land area. The Property is generally bounded by residential properties and a 15-foot wide public alley on the north, residential properties the south, a 30-foot wide public alley (known as 9½ Street) to the east, a 9.33-foot wide public alley to the southeast, and Vermont Avenue to the west.

The Property is improved with the former Grimke School and rear addition formerly used as a gymnasium. In total, the existing building contains approximately 69,000 square feet of gross floor area. The former Grimke School structure recently contained offices for the Fire Emergency Medical Services Department, and the former gymnasium currently contains the African-American Civil War Museum (“AACWM”). The Property currently contains 16 usable, but not entirely conforming, on-site surface parking spaces, and the existing building (to the rear of the former gymnasium) has a nonconforming rear yard of one (1) foot. The former Grimke School structure, constructed circa 1887 and 1937, is a contributing building in the Greater U Street Historic District.

The surrounding area is a mix of residential and commercial uses. Properties to the south and east are developed with row dwellings, flats, and small apartment buildings.

Properties to the north and northeast, which are zoned ARTS-2, are developed with moderate density commercial buildings. Across Vermont Avenue to the west are a small park (the African American Civil War Memorial); an entrance to the U Street/African-American Civil War Memorial/Cardozo Metrorail station; row dwellings, flats, and small apartment buildings; and a four-story commercial building.

## V. PROJECT DESCRIPTION

The Applicant intends to construct a mixed-use project that will include office, cultural, museum, and multifamily residential uses (the “**Project**”), as shown on the attached architectural plans and drawings (“**Plans**”). The Project was granted HPRB concept approval on March 1, 2018 and will be constructed in two phases.<sup>2</sup> In the first phase, the former Grimke School structure will be preserved, renovated, and converted to include approximately 30,000 net square feet of general office space, approximately 11,000 net square feet for a new home for the AACWM, and approximately 4,000 net square feet of space for cultural uses. The first phase also includes a small addition to the former Grimke School in its courtyard. In the second phase, the former gymnasium (where the AACWM is currently located) will be renovated and expanded horizontally (to the north and south) and vertically with an additional floor. The additional fourth floor will be set back from the rear (east) wall below by approximately nine (9) feet and from the north and south walls below by approximately eight (8) and 20 feet, respectively. This four-story (approximately 43.75 feet tall) rear structure will contain approximately 37,167 square feet of residential floor area (approximately 40 residential units).

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<sup>2</sup> HPA No. 18-203.

Thirty percent (30%) of the residential floor area (approximately 12 units) will be for affordable units – three times the Inclusionary Zoning requirement. Half of the affordable units will be reserved for households earning up to 50% MFI, and half will be reserved for households earning up to 80% MFI.

Other than the relief requested herein, the Project will conform to the development standards of the ARTS-2 zone. In total, the Project will contain approximately 102,000 square feet of gross floor area, which equates to a total FAR of approximately 2.75 (0.98 for residential use and 1.77 for non-residential use). With the additions, the total gross floor area on the Property will increase by approximately 48% beyond the existing condition. The maximum height of the Project will be approximately 52.5 feet, measured to the top of the Grimke School structure (a height which is existing and will remain unchanged). The overall lot occupancy of the Project will be conforming at approximately 73%.

Because of the additions to the rear structure, some rear yard relief is requested. The required rear yard in the ARTS-2 zone is 15 feet. The additions to the rear structure will maintain the one-foot nonconforming rear yard for its entire width, and for the first 25 feet of the Project's height, the rear yard depth will be conforming at 16 feet.<sup>3</sup> However, between 25 and 33 feet of the Project's height, the rear yard will be nonconforming at one (1) foot.<sup>4</sup> Above 33 feet of the Project's height (i.e., the 4<sup>th</sup> floor addition to the rear structure), the rear yard depth will be slightly nonconforming at 10 feet since the 4<sup>th</sup> floor will be set back 10 feet from the rear

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<sup>3</sup> Pursuant to Subtitle K § 805.3(a)(1), the rear yard may be measured to the centerline of the alley for the building's first 25 feet of height.

<sup>4</sup> Above 25 feet of building height, the rear yard must be measured to the rear property line. Subtitle K § 805.3(a)(2).

property line. Thus, relief from the rear yard requirement is requested only for the upper 18.75 feet of the rear of the Project.

The Project will provide a total of 21 conforming parking spaces, even though only 16 conforming spaces are required.<sup>5</sup> Six (6) of the parking spaces will be located within the residential structure at the northeast corner of the Property. The remaining 15 parking spaces will be surface spaces located to the south and east of the Grimke School structure. The 10 spaces along the east side of the Grimke School structure will be conforming (in terms of width and length) perpendicular spaces directly accessed from the adjacent 9.33-foot wide public alley. The five (5) conforming (in terms of width and length) spaces along the south side of the Grimke School structure will be accessed via a curb cut on Vermont Avenue and a 17-foot wide drive aisle to the south of the spaces.

## **VII. THE APPLICATION SATISFIES THE CRITERIA FOR AREA VARIANCES**

Pursuant to Subtitle C § 711.3(b), surface parking spaces accessed from a public alley must be from a public alley that is at least 10 feet wide. In this case, the 10 surface parking spaces on the east side of the Grimke School structure will be accessed from the adjacent public alley that is only 9.33 feet wide. Thus, nominal variance relief for 0.67 foot of alley width is required for the adjacent public alley.

In addition, pursuant to Subtitle C § 712.5, both a one-way drive aisle for perpendicular parking spaces and a two-way drive aisle for parallel parking spaces must be at least 20 feet

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<sup>5</sup> The existing building was constructed prior to the zoning requirement for on-site parking spaces. However, in accordance with a determination from the Zoning Administrator, 16 on-site spaces must be provided since the existing site contains 16 usable parking spaces. Pursuant to Subtitle C § 704.2, no additional parking is required since the Project does not increase the existing gross floor area by more than 50%.

wide. In this case, the five (5) parking spaces along the south side of the Grimke School building will be both parallel and perpendicular, so the required drive aisle width is 20 feet. The provided drive aisle width will be 17 feet, so minor variance relief for three (3) feet of drive aisle width is required.

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose, or integrity of the zone plan. *See, e.g., Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, this application meets the three-part test for the requested variances.

**A. The Property is Affected by an Exceptional Situation or Condition**

The D.C. Court of Appeals held in *Clerics of St. Viator v. District of Columbia Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from only the physical aspects of the land. *See Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). Further, the Court has long held that an exceptional condition may result from a confluence of factors that, taken together, make the property unique. *Gilmartin*, 579 A.2d at 1167.

The Property is affected by an exceptional condition because of the confluence of four characteristics: the presence of a contributing building in a historic district, the unusual shape of the Property, the location of the building on the site, and size and location of the existing adjacent public alley. These characteristics combine to create a unique condition that distinguishes the Property from any other in the District of Columbia.

First, the Property has a very irregular shape. As shown on the plans, the multiple angles and corners created by the many lot lines creates a highly unusual lot shape that not common to any other property and is not conducive to a regularly-shaped building and sufficient parking area.

Second, the Grimke School structure is a contributing building in the Greater U Street Historic District. Pursuant to Historic Landmark and Historic District Protection Act of 1978, as amended, the Grimke School building cannot be demolished without approval from the Mayor. Accordingly, the Applicant is effectively prevented from removing or demolishing portions of the Grimke School structure, and the Grimke School structure must be retained.

Third, the siting of the existing building – both the Grimke School structure and the gymnasium addition that will be retained – on the Property creates an unusual condition. The location of the building on the Property leaves little open space large enough to accommodate parking spaces that satisfy the minimum size and access requirements even though the District has been using many of the open areas for nonconforming parking for decades. In particular, the side yard on the south varies from approximately 37.0 feet to 29.5 feet wide, the open court on the east side of the Grimke School structure varies from approximately 21.0 feet to 23.7 feet wide (adjacent to the public alley), and the open court on the north side of the Grimke School structure is approximately 16 feet wide.

Finally, the public alley adjacent to the Property along the Property's east side near the Grimke School structure is only 9.33 feet wide. That is an existing condition in public space that the Applicant cannot change, but it is one of the few access points for providing parking on the Property.

**B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty to the Applicant**

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established that the applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance" and "the severity of the variance(s) requested." *Id.*

As described above, the Project will retain the existing improvements on the Property – both the former Grimke School structure and the rear gymnasium. The Grimke School must be retained by its historic status.<sup>6</sup> Therefore, because of the siting of the existing improvements on the Property, only the open areas on the Property are available for parking since constructing under the existing improvements would risk the historic integrity of the Grimke School and would be prohibitively expensive. The Project will provide 21 parking spaces, and 16 of those

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<sup>6</sup> An applicant is not required to remove an existing non-contributing structure in order to create a conforming condition. The presence of the former gymnasium addition that will be retained is part of the existing condition that contributes to the Property's uniqueness that results in a practical difficulty.

are required for zoning purposes; however, all are required for the anticipated demand from the uses in the Project. With the redevelopment of the Property for the Project, the Zoning Regulations require that all on-site parking spaces conform. While the open areas to the south and east of the Grimke School structure as well as the open area to the north of the gymnasium addition currently accommodate parking that has been used by the District for decades, the existing parking is nonconforming as to both the size of the parking spaces and drive aisle widths. Thus, for the Project, those areas must be reconfigured to conform to the parking space size and drive aisle width requirements in the Zoning Regulations. Without using these open areas for parking, the Applicant would be unable to provide the parking that is required both by the Zoning Regulations and by market demand. The inability to provide the required parking would result in a practical difficulty for the Applicant because it would necessitate further relief from the required number of spaces and result in an inability to serve the demand from the Project's patrons and residents.

The area to the north of the gymnasium will receive an addition as part of the Project, and it will include six (6) conforming parking spaces. Also, the open court to the north of the Grimke School structure is too narrow to accommodate parking spaces with any access, plus there is no curb cut to access that area. These factors result in parking spaces needing to be provided elsewhere on the Property. Because of the siting of the existing building on the Property, the only open areas with access from a public street or alley large enough to accommodate conforming parking spaces (in terms of length and width) with sufficiently wide access are to the south and east of the Grimke School structure.

To the south of the Grimke School structure, the Project will provide five (5) parking spaces accessed from a drive aisle. The drive aisle will run parallel to the south property line and

from Vermont Avenue to the public alley to the east. Because of the narrow and variable width of this area and the location of the Grimke School structure, the drive aisle cannot be the required 20-foot width while providing conforming sized parking spaces. Accordingly, the provided drive aisle can only be 17 feet wide to serve the conforming spaces. If a conforming drive aisle width were provided, then the conforming parking spaces could not. Without an ability to provide required parking, the Applicant would face a practical difficulty because it would require additional relief from the number of spaces, and the Applicant would not be able to satisfy market demand.

Similarly, to the east of the Grimke School structure, the Project will provide 10 conforming parking spaces that will be accessed directly from the existing adjacent 9.33-foot wide public alley. Because of the 23.7-foot to 21.0-foot width of this area, it is not possible to include conforming parking spaces and a conforming drive aisle, so direct access from the adjacent alley is necessary. However, the alley width is less than the requirement of 10 feet for accessing parking spaces from an alley, and the Applicant cannot change that, which results in a practical difficulty. In this case, the conforming parking spaces will be located at least 5.7 feet from the property line abutting the public alley, thereby ensuring that an approximately 15-foot wide area is provided (combined on- and off-site) behind the parking spaces. Without the ability to provide direct access to the parking spaces from this public alley, the Applicant would be burdened with an inability to provide required parking spaces from an existing public alley.

**C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan**

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variances

can be granted without causing any adverse impact on the neighboring properties or to the Zone Plan.

Approving the proposed 17-foot wide drive aisle width and parking access from a 9.33-foot wide alley will not have adverse impacts with respect to parking conditions in the neighborhood. In fact, the proposed configuration was the recommendation and result of discussions with the adjacent property owners aimed at providing improved access to the rear yards of the adjacent properties. The neighbors preferred this this configuration so that they can have access to their rear yards. Currently, the nonconforming parking is adjacent to their property line, which restricts access to their yards. However, by relocating parking spaces to next to the Grimke School, these neighbors will have access to their rear yards. In addition, approving the requested variances will allow the Project to provide more conforming parking spaces than if the relief were not granted and will likely improve parking conditions in the neighborhood. More on-site parking spaces means that fewer patrons or residents of the Project will be inclined to park on neighborhood streets.

Also, granting the requested variances will not adversely impact traffic conditions in the neighborhood. The 17-foot wide drive aisle will allow sufficient maneuvering in and out of the five (5) parking spaces it serves. Also, since the number of spaces that the drive aisle will serve is small, it is unlikely to cause congestion that would back onto public streets or alleys. Similarly, access to parking spaces from the 9.33-foot wide alley will allow sufficient maneuvering. There will be an additional 5.7 feet of space between the end of the parking spaces and the property line, which means that there will be approximately 15 feet of adequate maneuvering space for these parking spaces. Accordingly, this will not cause congestion in the alley or adverse impacts on other properties adjacent to the alley.

Further, granting the variances will not have an adverse impact on the Zone Plan. The relief will allow the Project to provide additional parking, which is consistent with the Zone Plan's policy, as embodied in the Zoning Regulations, to provide sufficient off-street parking to avoid negatively impacting adjacent property, urban design, or public spaces.<sup>7</sup> Further, the amount of variance relief is minimal. The drive aisle will be only three (3) feet narrower than required, and the alley is only eight (8) inches narrower than required. Thus, the variances allow for the drive aisle and alley width to be consistent with the intent in the Zoning Regulations. Accordingly, granting the variances will not adversely affect the Zone Plan or the Zoning Regulations.

### **VIII. THE APPLICATION SATISFIES THE CRITERIA FOR SPECIAL EXCEPTION RELIEF FROM THE REAR YARD REQUIREMENT**

Relief from the rear yard requirement in Subtitle K § 805.1 is permitted as a special exception, subject to the specific requirements in Subtitle K § 813.1 and the general provisions of Subtitle X § 901.2. For the reasons set forth below, the application satisfies these requirements.

- A. *The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS zones and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area (K § 813.1(a)).*

The Project will result in a new mixed-use building on a site that is currently underutilized. The Project will include arts and cultural uses (the AACWM), which are one of the main policy objectives of the ARTS zones. Residential use is another stated purpose of the ARTS zones, and the rear yard relief, in particular, will allow for the construction of approximately 40 new mixed-income residential units in the Project. Therefore, the Project,

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<sup>7</sup> See Subtitle C § 700.1.

through the rear yard relief in particular, will enhance the neighborhood with a renovated and enhanced building and will provide residential use in a location that is appropriate for such use.

By developing and enlivening an underused site and building with a new and attractive mixed-use project with cultural and mixed-income residential uses, the health, safety, convenience, and general welfare of nearby residents and workers will be enhanced. Also, as described above, the rear yard relief is limited to the two upper stories of the building. In addition, the requested relief is for only five (5) feet of the requirement. Thus, the relief will not have a material impact on neighboring properties since it will not result in an overly bulky or large building. Further, the relief will not allow for additional height, density, or lot occupancy on the Property; in fact, the Project's height, density, and lot occupancy are all below what is permitted as a matter-of-right. Therefore, with the presence of the 30-foot wide alley and the 4<sup>th</sup> floor setback on the Project, the relief will not adversely affect the availability of light or air to neighboring properties.

- B. *The architectural design of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board of Zoning Adjustment shall refer the application to the Historic Preservation Office for review and report (K § 813.1(b)).*

The Project's architectural design will enhance the immediately surrounding area through the renovation of and addition to the existing building. The existing building is run-down due to decades of deferred maintenance and in need of repair and holistic renovation. The Project as designed will significantly raise the profile of this prominent site and historic structure through architectural enhancements. The Project will include new attractive architectural elements that respect the neighborhood and the historic district, and they will enhance the visual appearance of the former Grimke School. In addition, the HPRB reviewed and granted concept approval to

the Project, which further indicates the Project design is aesthetically compatible with the character of the neighborhood and the historic district.

- C. *Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions (K § 813.1(c)).*

Vehicular access and egress will be improved with the Project. As described above, the Project will provide 21 conforming parking spaces with clearly defined access and egress points. The existing conditions on the Property do not include conforming parking conditions, with parking haphazardly occurring on any open surface and no clear access and egress. The six parking spaces within the residential component of the Project will be accessed via the public alley to the northeast of the Property. The 10 parking spaces to the east of the Grimke School structure will be accessed via the alley to the east, and the five (5) parking spaces to the south of the Grimke School structure will be accessed from a drive aisle via the existing curb cut on Vermont Avenue and the alley to the southeast. The parking access and egress for the Project will limit the number of automobile conflicts with pedestrians by concentrating vehicular traffic on the public alleys. In addition, because the parking spaces will be conforming in size, they will create a much safer and efficient traffic condition than currently present.

- D. *The requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property (X § 901.2).*

The requested rear yard relief will be in harmony with the general purpose and intent of the Zoning Regulations and Maps because it will allow a project that enhances a run-down and underused site, maintains ample open space, and protects nearby property by not adversely affecting light or air. Further, because the amount of relief will be nominal and does not allow for additional density, height, or lot occupancy, it will not result in a building that is inconsistent

with the urban fabric surrounding the Project or that overcrowds land. As described above in part VIII(A), the requested rear yard relief will not adversely affect the light, air, or aesthetics to neighboring properties, and it will result in a use more compatible with the purposes of the ARTS-2 zone. The purpose and intent of the Zoning Regulations and Maps are to provide adequate light and air, prevent overcrowding of land, and provide use of land to create favorable conditions for transportation, protection of property, civic activity, recreational/educational/cultural opportunities, and efficient public services.<sup>8</sup> The requested relief satisfies the specific standards for relief in the ARTS zones. It also will allow for adequate light and air; maintain adequate open space; and result in a land use that will enhance transportation improve and protect an existing building, and foster cultural uses. Therefore, granting the relief will be in harmony with the purpose and intent of the Zoning Regulations and Maps and will not tend to adversely affect neighboring property.

## **IX. LIST OF PUBLICLY AVAILABLE DOCUMENTS**

1. Zoning Regulations and Zoning Map of the District of Columbia, available at [dcoz.dc.gov](http://dcoz.dc.gov).
2. Orders of the District of Columbia Zoning Commission and Board of Zoning Adjustment, available at [dcoz.dc.gov](http://dcoz.dc.gov).

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<sup>8</sup> Subtitle A § 101.1.

## **XI. CONCLUSION**

For all of the above reasons, the Applicant is entitled to the requested variance and special exception relief in this case.

Respectfully submitted,  
GOULSTON & STORRS, PC

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Cary Kadlecek