



August 29, 2018

Meridith H. Moldenhauer

Direct Phone 202-747-0767

Direct Fax 202-683-9389

mmoldenhauer@cozen.com

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

**Re: Columbia Heights Partners LLC (BZA Case No. 19811)
Applicant's Prehearing Statement**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant Columbia Heights Partners LLC, please find enclosed the Prehearing Statement for the above-referenced case. The application is scheduled to be heard before the Board of Zoning Adjustment on September 19, 2018.

The Applicant is scheduled to present the case to the full ANC 4C at their duly-noticed public meeting on September 12, 2018. Please note that due to timing, the Applicant anticipates requesting a late filing in order to update the Board with the ANC resolution prior to the hearing.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

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BY: MERIDITH H. MOLDENHAUER

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

**APPLICATION OF
COLUMBIA HEIGHTS PARTNERS LLC**

**4526 13TH STREET NW
ANC 4C**

PREHEARING STATEMENT OF THE APPLICANT

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Columbia Heights Partners LLC (the “Applicant”), owner of the property located at 4526 13th Street NW, Square 2817, Lot 0036, (the “Property”) in support of their application for variance relief pursuant to 11 DCMR § X-1000.1 and Subtitle E § 201.4. The requested relief is necessary to continue use of the Property as a purpose-built apartment house with 17 affordable units (the “Existing Building”) in the RF-1 Zone. The Applicant requests relief to add one dwelling unit to the building, but no changes to the footprint or massing are proposed. For the reasons set forth in the initial application, and as supplemented here and at the public hearing, the Applicant has satisfied the burden for variance relief.

II. HISTORY OF THE USE

The Property is improved with a purpose-built apartment house dating from 1919. The Zoning Regulations define “Apartment House” as “any building or part of a building in which there are three (3) or more apartments, providing accommodation on a monthly or longer basis.” Subtitle B § 100.2. When the Applicant acquired the Property in 2016 there were 17 residential units on the rent roll, including one unit in the cellar, but only 16 units identified on the Certificate of Occupancy. *See* Certificate of Occupancy at BZA Exhibit #3D. All units are prioritized for existing and new low-income tenants and are priced at or below 30% Annual Median Income (“AMI”) through the Housing Choice Vouchers (“HCV”) program.

Given the Applicant is a recent owner of the Property and inherited the existing condition, the Applicant has no personal knowledge or history of the 17th unit. Furthermore, the Property has changed hands 14 times since constructed in 1919.¹

Based on these facts, since the filing of the application the Applicant has searched the permitting department in hopes of revealing more information on how the extra unit was created. Additional information from the Department of Housing and Community Development (“DHCD”) has been obtained showing that as early as 2008, a 17th unit (“Unit #A”) was listed on the rent rolls at the Property. *See* DHCD Certificate of Notice at **Exhibit A**. Unfortunately, no permits or addition plans are available. All that is clear is that Unit #A was first listed with DHCD in 2008, and has been inspected by that agency for over 10 years.

The Applicant requests the cited relief to bring this existing condition into compliance so that the 17th affordable housing unit may continue to be offered to low-income tenants, as it has for at least the past decade.

III. APPLICANT MEETS BURDEN FOR VARIANCE RELIEF

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

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. The Property is characterized by an exceptional situation and condition arising from a confluence of five factors: (1) the Property is the largest lot on the Square; (2) the Property is a corner lot; (3) the structure is raised up on a berm

¹ Office of Tax & Revenue - Recorder of Deeds public records

that allows for the 7-foot floor-to-ceiling clearance in the cellar; (4) there is a significant amount of public space on both the east and north sides of the Property that limits the amount of square footage that counts toward the lot area; and (5) the only lot directly adjacent to the Property is unimproved.

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

Strict application of the Zoning Regulations pertaining to minimum lot area would result in a practical difficulty to the Applicant. The Applicant seeks zoning relief to bring an existing condition into compliance and allow one affordable residential unit to be added to the 16-unit apartment building. The 17th unit, Unit #A, is located in the cellar. Uniquely, it is habitable space that would otherwise not be put to productive use. The remainder of the cellar area houses the Existing Building's utilities, mechanical equipment, and supplies related to building maintenance.

The structure is a purpose-built apartment house. When it was constructed nearly one hundred years ago, the issues now facing the District in terms of housing stock and efficiencies in smart development were not present. As such, the building was constructed with a 7-foot tall cellar space that is easily accessible from both Buchanan and 13th Streets, particularly due to the topography of the lot and the building restriction lines setting the structure back from the Streets. *See* Subdivision Plat at **Exhibit B**. This leaves a significant amount of adjacent public space that would otherwise count toward the lot area of the Property and would significantly reduce the degree of requested relief.

Further, the habitable space in the cellar complies with all other areas of the Zoning Regulations. Consequently, if the relief is not granted, the Applicant would be required to remove

an affordable, 30% AMI unit from the market that has been available to District residents for 10 years, thereby reducing the District's affordable housing stock.

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

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief for minimum lot area. First, the Applicant does not propose to expand the footprint of the Existing Building, so there will be no visual impact to the surrounding properties. Second, the Applicant does not intend to make changes to the façade of the building or the view from the street. The Property will continue to appear as it has for at least the past 10 years since Unit #A was added to the rent rolls. Third, no tenants will be displaced, as no construction is proposed or necessary. Fourth, granting the requested zoning relief will not precipitate a change of use on the Property, and the residential nature of the block will remain undisturbed. Further, the continued residential use of the Property will “reinforce the importance of neighborhood character . . . preservation of housing stock . . . and the overall housing mix and health of the city.” Subtitle E § 100.3(a).

The request will satisfy several Comprehensive Plan recommendations as well. Generally speaking, the Comprehensive Plan's Framework and Land Use elements discourage vacancy. Here, the Applicant seeks a variance to prevent usable floor space in the Existing Building from remaining idle, and there is no other reasonable use for the fully finished dwelling unit. The provision of additional housing is consistent with a number of policies from the Framework Element, Land Use Element and Housing Element. These recommendations speak to increasing the housing supply and managing the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale.

The Existing Building also complies with stated goals in the Rock Creek East Area Element of the Comprehensive plan, which encourages “providing a variety of housing choices for residents,²” as well as preserving the affordability of some of the area’s rental housing through “rehabilitation and renovation.³”

In summary, the requested relief will permit the Applicant to continue to provide a total of 17 affordable housing units that currently exist to the Petworth community while simultaneously protecting its residential character and causing no outward changes or disruption. The Project advances numerous Comprehensive Plan recommendations, and the variance relief requested will not be a detriment to the public good, nor impair the intent and purpose of the zone plan. Accordingly, the Applicant meets the requirements for variance relief, and the request should be granted.

IV. STATEMENT OF COMMUNITY OUTREACH

The Applicant has conducted community outreach since filing the initial application. The Applicant coordinated with Single Member District Commissioner 4C03, Ulysses E. Campbell, throughout the process. The Applicant is scheduled to present the request to the full ANC at their duly-noticed public meeting on September 12, 2018.

V. TESTIMONY & EXPERT WITNESSES

Testimony will be presented on behalf of the Applicant by Nick Finland of MED Developers. Stephen Varga, Director of Planning Services at Cozen O’Connor will present expert witness testimony regarding the Existing Building’s consistency with District land use regulations and planning goals. Mr. Varga’s Land Use & Planning report and resume are included at **Exhibit C**.

² Planning and Development Priorities 2207(b), pg. 22-9; Policy RCE-1.1.6: Development of New Housing, pg. 22-14

³ Planning and Development Priorities 2207(b), pg. 22-9; Policy RCE-1.1.5: Housing Renovation, pg. 22-14

VI. 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 to continue use of the Property as a purpose-built apartment house with one additional unit. Accordingly, the Applicant respectfully requests that the Board approve the application on September 19, 2018.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Meridith H. Moldenhauer', is written over a horizontal line.

MERIDITH H. MOLDENHAUER

CERTIFICATE OF SERVICE

I certify that on August 29, 2018, a copy of this Prehearing Statement was served via email on the Office of Planning and Advisory Neighborhood Commission 4C, as follows:

District of Columbia Office of Planning
c/o Maxine Brown-Roberts
1100 4th Street SW, Suite E650
Washington, DC 20024
maxine.brownroberts@dc.gov

Advisory Neighborhood Commission 4C
Bennett Hilley, Chairperson
5e06@anc.dc.gov
Ulysses Campbell, Single Member District Commissioner 4C03
5e09@anc.dc.gov



Meridith H. Moldenhauer

EXHIBIT A

Department of Consumer & Regulatory Affairs
Housing Regulation Administration
Rental Accommodations and Conversion Division
 941 North Capitol Street, N.E., Suite 7100
 Washington, DC 20002
 (202) 442-4477

DEPARTMENT OF HOUSING
 CONSUMER AFFAIRS

HOUSING

RACD Date Stamp

'08 JUN -9 12:29

Certificate of Notice of Increase in Rent Charged

Housing Accommodation: 4526 -13th Street, NW, Washington, DC 20011
 Owner (name & address): Three Sisters, LLC
C/O Celia Dunayer & Co., LLC 5600 Conn. Ave., NW, #200 Wash Washington DC 20015
 Registration No. & Date: 115292 (3-20-06)
 Date of Certificate: 06-18-07

The undersigned certifies that Notices of Increase in Rent Charged, all with the same effective date of 7/1/2008, a sample of which is attached, were served on the tenants of the housing accommodation as follows:

Unit	Tenant Name(s)	Previous Rent	New Rent	Section of Act
#1	Virginia McLauren	\$545	\$545	208(h)(2)
#2	Jahmarreh Smoot	\$615	\$625	208(h)(2)
#3	Francine P. Wright	\$615	\$625	208(h)(2)
#5	Tashia Wright	\$615	\$625	208(h)(2)
#6	Paul E. Kyrsiak	\$665	\$675	208(h)(2)
#8	Ozelle Colbert	\$515	\$525	208(h)(2)
#201	Ida Santana	\$695	\$710	208(h)(2)

[check if additional pages are attached]

Sections of Act: 208(h)(2) = CPI-based; 210 = capital improvement; 211 = services & facilities; 212 = hardship; 214 = substantial rehabilitation; 215 = voluntary agreement.

Date of service of notice: 6/4/2008. Service completed by depositing with U.S. Postal Service with proper address and postage.

The housing provider certified to the tenant that the rental unit and the common elements of the housing accommodation are in substantial compliance with the Housing Regulations, Title 14, District of Columbia Municipal Regulations, or that any noncompliance is the result of tenant neglect or misconduct.

Date: 6/4/2008 Signature: Celia Dunayer
 Address: 5600 Conn. Ave., NW, #200 Wash DC Name Printed: Celia Dunayer
Washington DC 20015 Title: Property Manager

Owner:

Three Sisters, LLC
C/O Celia Dunayer & Company, LLC
5600 Connecticut Avenue, NW, #200
Washington, DC 20015

DEPARTMENT OF DISABILITY
Department of Consumer & Regulatory Affairs
COMMUNITY HOUSING
Housing Regulation Administration
Rental Accommodations and Conversion Division

'08 JUN -9 12:29
Housing Accommodation:

4526 - 13th Street, NW

Washington, DC 20011

J Smoot

4526 - 13th Street NW, # 2

Registration No. & Date 115292 3/20/06

Washington, DC 20011

Date of Notice: May 29, 2008

Notice of Increase Base in Rent Charged

In accordance with the provisions of the Rental Housing Act of 1985 as amended (the "Act"), the rent charged for your rental unit will be increased as set forth below.

Your current rent charged is: \$ 6.15 The increase in your rent charged is: \$ 10

Your new rent charged is: \$ 6.25 The effective date is: 7/1/08

The basis of the increase in rent charged is as follows [check one]

Under section 2.08(h)(2) of the Act (annual CPI-based increase) the increase in rent charged is based on the increase in the Consumer Price Index (CPI). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the CPI percentage, but not more than 5.0%. For other tenants, the maximum percentage increase in rent charged is the CPI percentage plus 2.0%, but not more than 10.0%. The CPI percentage published by the Rental Housing Commission for the rent-control year May, 2008 through April 30, 2009 is 5.4%.

Alternatively, a housing provider may seek an allowable increase under other provisions of the Act, including petitions based on capital improvements, changes in services and facilities, hardship, substantial rehabilitation or agreement with seventy percent of the tenants. If any such authorized increase is partially implemented now, the balance may be implemented later. The increase in rent charged is based on the following provision of the Act:

208 (h)(2)
[Section of Act]

Annual CPI-Based Increase
[Type of increase]

\$ 33.83
[Increase authorized]

[Effective date of authorization]

[Case number, if applicable]

[Date of decision, if applicable]

The housing provider certifies that (1) -the rent increase is in compliance with the Act; (2) at least one year has passed since the last rent increase; and (3) the rental unit and the common elements of the housing accommodation are in substantial compliance with the District of Columbia Municipal Housing Regulations (Title 14) or that any noncompliance is the result of tenant neglect or misconduct.

You have the right to request that the Rental Accommodations and Conversion Division (RACD) review this notice if you believe it is improper. You may contact RACD on 202-442-4477. RACD is located in Suite 7100 at 941 North Capitol Street, N.E., Washington, DC 20002. A more detailed summary of tenant rights and sources of technical assistance are available in the RACD pamphlet available from the Housing Provider, in the RACD office and on line at www.dhra.dc.gov.

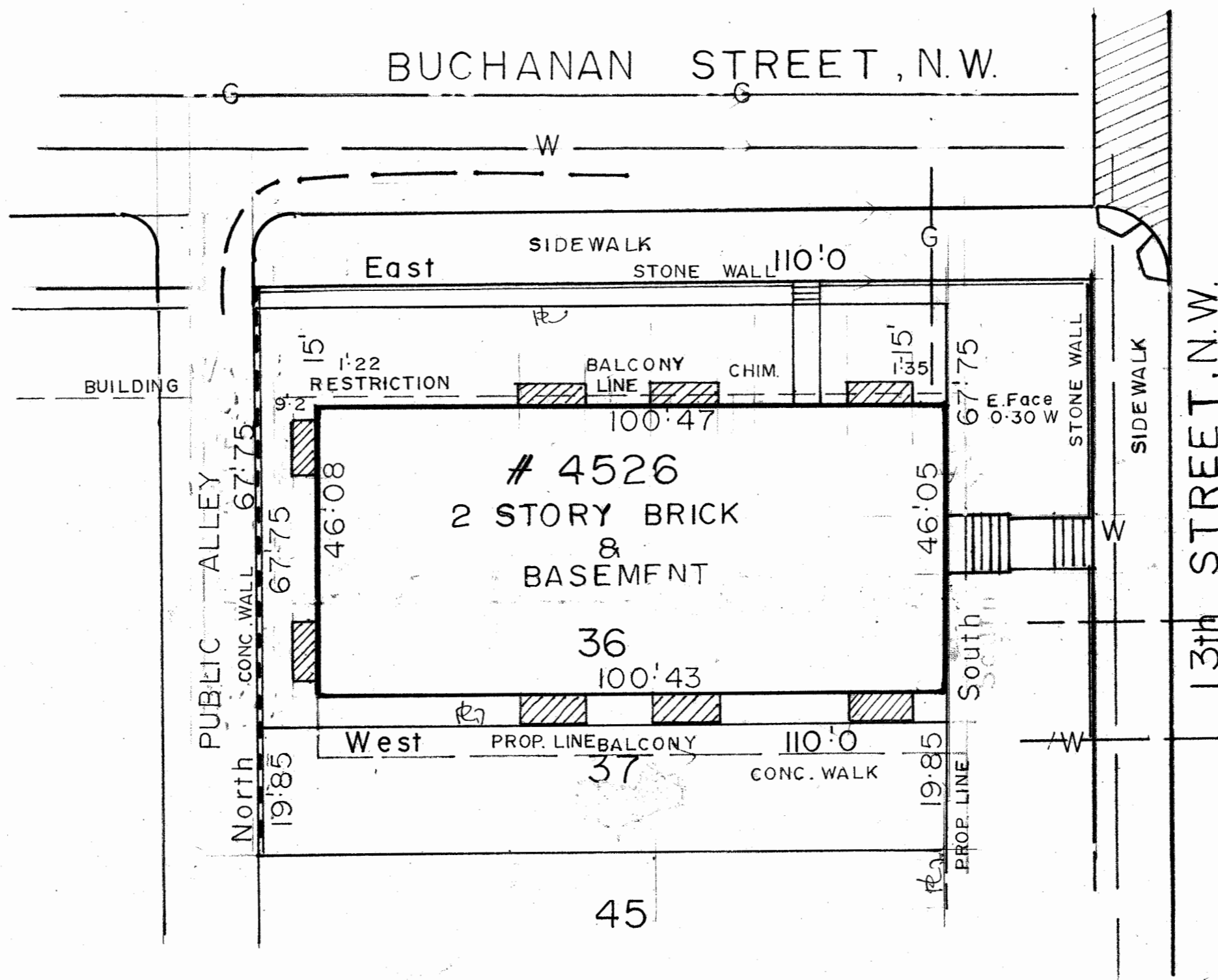
Celia Dunayer

Signature of [circle one] owner/agent

Celia Dunayer

Name of [circle one] owner/agent [print or type]

EXHIBIT B



- LEGEND**
- 2 STORY BALCONIES (4' x 10')
 - GAS MAINS
 - WATER MAINS
 - SEWER MAINS
 - CONCRETE RETAINING WALLS
 - STONE WALLS
 - PROPERTY LINE

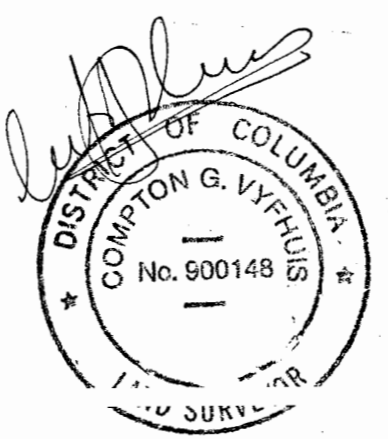
PROJECT NAME
 4526 13th STREET N.W.
 SURVEYOR'S CERTIFICATE

- 1 Local Initiatives Support Corporation
- 2 Chicago Title Insurance Company-
- 3 Premium Title & Escrow LLC

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6b, 7a, 7b1, 7c, 8, 9, 11a, 13, 16, 17, 18 of Table A thereof. The field work was completed on (July 8, 2011).

COMPTON G. VYFHUIS
 Name of Surveyor

Land Surveyor Number 900148
 In state of DISTRICT OF COLUMBIA
 Date of Plat or Map: Feb 20, 2016
 Date of last revision
 Date of this Printing Feb 23, 2016



SURVEY PREPARED BY:
 VYFHUIS & ASSOCIATES
 6518 BLAIR ROAD N.W.
 WASHINGTON D.C. 20012

ALTA/ACSM LAND TITLE SURVEY
 4526 13th STREET N.W.
 SQUARE 5426 LOT 25
 WASHINGTON
 DISTRICT OF COLUMBIA
 DATE: FEBRUARY 20, 2016 SCALE 1" = 20'

COMMITMENT NO. _____ EFFECTIVE DATE OF COMMITMENT _____

VYFHUIS & ASSOCIATES
LAND SURVEYORS - ENGINEERS - PLANERS
 3112 RHODE ISLAND AVENUE, N.E. 6518 BLAIR ROAD, N.W.
 WASHINGTON, D.C. 20018 WASHINGTON, D.C. 20012
 PHONE: (202) 526-7702 FAX: (202) 526-7746
 E-MAIL: vyfhuisassociates@yahoo.com

EXHIBIT C

**COLUMBIA HEIGHTS PARTNERS LLC
BZA CASE #19811**

LAND USE & PLANNING REPORT

PROPERTY INFORMATION

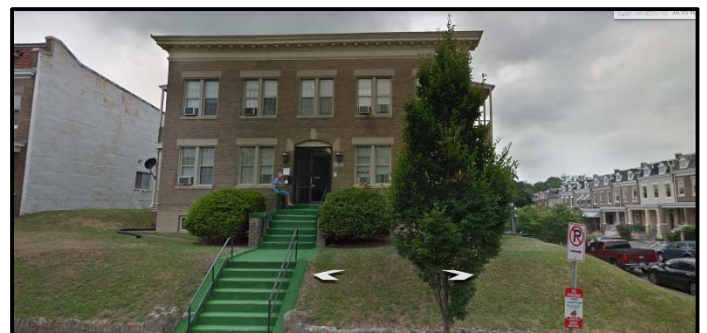
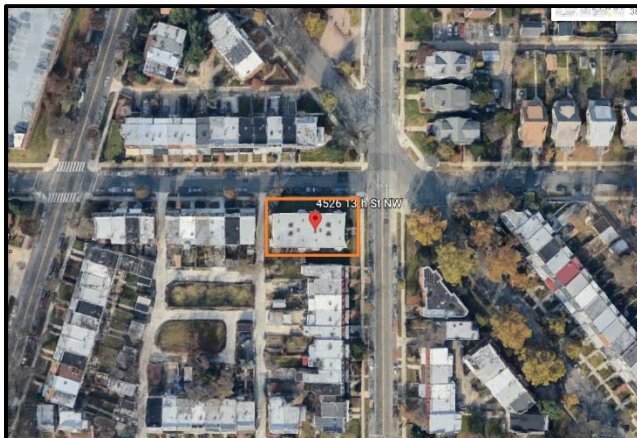
- Address: 4526 13th St. NW
- Square/Lot: Sq. 2817, Lot 36
- Existing: Legally non-conforming, purpose-built 16-unit apartment house
- Proposed: Bring one unit into conformance (17 units total)
- Neighborhood: Petworth
- Historic District: N/A
- Lot size: 7,452 sq ft.



ZONING

The Existing Building 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
- Providing an additional unit to the overall housing mix¹

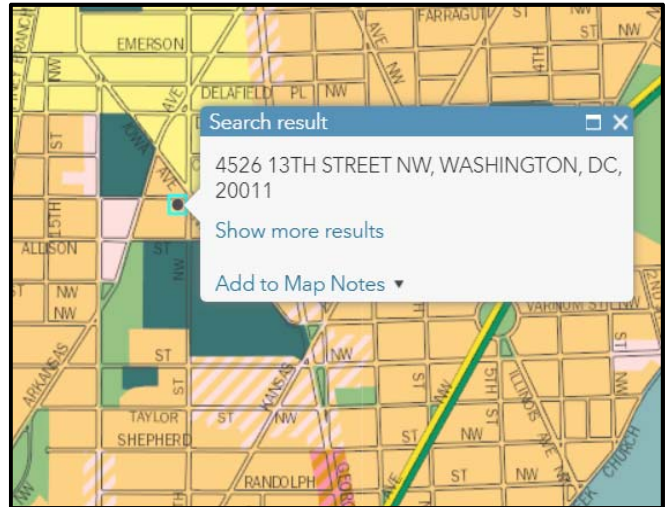


¹ Subtitle E § 100.3(a)

COMPREHENSIVE PLAN - MAPS

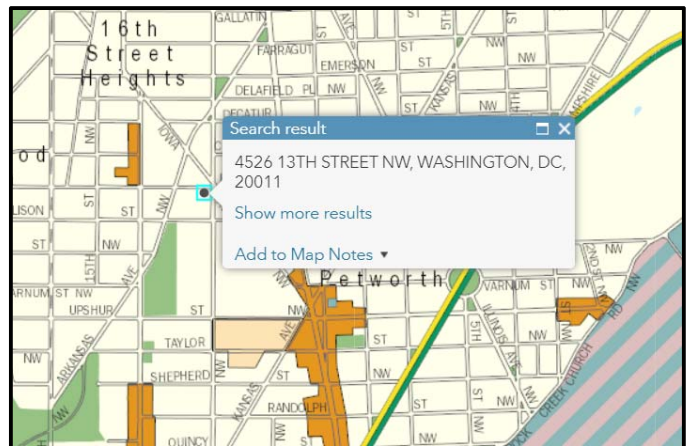
The requested zoning relief and Existing Building is not inconsistent with the Future Land Use Map designation as follows:

Moderate Density Residential: This designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and **low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses** (or were not zoned at all). The R-3, R-4, R-5-A Zone districts are generally consistent with the Moderate Density Residential category; the R-5-B district and other zones may also apply in some locations. 225.4 [emphasis added]



The requested zoning relief and Existing Building is not inconsistent with the Generalized Policy Map designation as follows:

Neighborhood Conservation Areas: Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. 223.4



The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. **The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area.** 223.5 [emphasis added]

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

- Maintaining and enhancing the District’s mix of housing types, specifically for households of different sizes, including growing families as well as singles and couples (Managing Growth and Change: Guiding Principles 217.3, pg. 2-23)

Land Use Element

- Providing housing choices for renters and owners and a range of units that meet the different needs of the community (What Makes a Great Neighborhood?, 309.6, pg. 3-24)
- Balancing goals to **increase the housing supply** with parallel goal to protect neighborhood character (Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods, 309.9, pg. 3-26) [emphasis added]

Housing Element

- Expanding the housing supply is a key part of the District’s vision to create successful neighborhoods (H-1.1 Expanding the Housing Supply, 503, pg. 5-7)

Rock Creek East Area Element

- Provide a variety of housing choices for residents (Planning and Development Priorities 2207(b), pg. 22-9)
- Renovate and rehabilitate existing housing (Planning and Development Priorities 2207(b), pg. 22-9; Policy RCE-1.1.5: Housing Renovation, pg. 22-14)
- Increasing housing choices for residents (Policy RCE-1.1.6: Development of New Housing, pg. 22.14)

SUMMARY

The Existing Building satisfies the applicable zoning standards by:

- Maintaining the existing land use without expansion, thereby conserving and enhancing the moderate-density character of the neighborhood and conforming to the intent of the zone plan²
- Puts otherwise unusable habitable space to good use, increasing the housing supply for District residents
- Preserving the affordability of some of the area’s rental housing through compatible rehabilitation and renovation

The Existing Building provides additional housing stock to District residents thus fulfilling a singularly important planning objective in the Comprehensive Plan. Further, it provides additional housing without increasing the size of the building or displacing current occupants, thereby preserving the existing neighborhood scale and character of the Petworth neighborhood without disruption.

² Subtitle E § 100.2

In short, the Existing Building and the requested zoning relief will not serve as a detriment to the public good as it fulfills the crucial objective of providing additional housing to District residents, and is harmonious with the intent of the RF-1 zone plan as listed above. Therefore, the requested zoning relief should be granted.

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 provides qualified expert witness land use and planning testimony before the Board of Zoning Adjustment and Zoning Commission, 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 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.