

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Prehearing Statement of WC PROPERTIES LLC**  
**62-64 Forrester Street, SW (Square 6239, Lots 60 and 59).**

**I. INTRODUCTION.**

This Statement is submitted on behalf of WC PROPERTIES LLC (the “**Applicant**”), owner of the property located at 62-64 Forrester Street, SW (Square 6239, Lots 60 and 59) (the collectively referred to as the “**Property**” or “**Subject Property**”). The Subject Property is currently unimproved. The Property is subject to a DHCD Covenant requiring that the Property be improved with a multi-family residential building with at least 50% of the units being set aside for affordable housing (see Covenant included with this submission).

Accordingly, the Applicant is proposing to combine the lots into one single lot and construct a new, **11-unit**,<sup>1</sup> multi-family apartment building (the “**Building**”). The Subject Property is located in the R-2 Zone in which residential use is limited to detached and semi-detached single-family homes. Accordingly, the Applicant is seeking relief from the use provisions of U-201 in order to construct the new apartment building in the R-2 zone. As described more fully below, the unique circumstances (including the unimproved lot status, existing topography, covenant, and surrounding area) and subsequent hardship of developing the Property or properties as a matter-of-right justify the granting of a use variance.

In addition to the variance, the Applicant seeks relief from the screening requirements of C-714.1 pursuant to C-714.3, as the topographic conditions on the site will not allow for both screening, retaining walls, and vehicle parking. All other development standards for the zone are met.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the special exception relief requested pursuant to X-901, X-1002, and C-714.3.

**III. BACKGROUND.**

**A. Description of the Subject Property and Surrounding Area**

---

<sup>1</sup> Corrected from the previous statement which noted 12 units.

The Subject Property is made up of two lots, 62 Forrester and 64 Forrester. The Applicant is planning to combine these lots into one single record lot having 7,444 square feet of land area and 73 feet and 2 inches of lot width—meeting the minimum requirement for a new lot for an apartment building in this zone. Abutting the Property to the north is Forrester Street, SW. Abutting the Property to the south is an alley which will be used to access parking. Abutting the Property to the west is an apartment building. Abutting the Property to the east is an apartment building.

The area is characterized by a mix of commercial and residential uses. As demonstrated on the Map of the Surrounding Properties, this area is predominately made up of apartment buildings. As demonstrated by the photographs, this block is primarily made up of pairs of semi-detached multi-family buildings which appear from the street to be one large apartment building. All appear to be older purpose-built apartment buildings. The proposed project, as more thoroughly described below, will fit in with the general bulk and massing of the apartment buildings on this block and directly across the street.

**B. Proposed Project.**

The Applicant is proposing a new, 11-unit multi-family building on a newly combined lot. The proposal will include one IZ Unit (60% MFI or less) and 5 affordable units (120% MFI or less). But for the proposed use, the Applicant is proposing a building envelope entirely permitted within the by-right development standards of the R-2 Zone. The proposal also includes 7 parking spaces accessed via a public alley to the south. The proposal has been designed to fit in with the character of the neighborhood.

**IV. USE VARIANCE.**

The Applicant is requesting use variance relief from the Use Permissions of U § 201 in order to construct a new multi-family building in the R-2 Zone. The Board is authorized to grant use variance relief where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape, or topography or other extraordinary or exceptional situation or conditions;
- (2) The owner would encounter an undue hardship if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Board of Zoning Adjustment*, 628 A.2d 1023, 1035 (D.C. 1995); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle. These purposes infuse meaning into the phrase “exceptional and undue hardship.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

It is well established that because of the nature of variances and their effects on the zone plan, the stricter “undue hardship” standard applies to requests for use variances while the “practical difficulty” standard applies to requests for area variances. *Palmer v Board of Zoning Adjustment* 287 A.2d 535 (D.C. 1972). For the Board to grant use variance relief, “it must be shown that the regulations ‘preclude the use of the property in question for any purpose for which it is reasonably adapted, *i.e.*, can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?’” *Palmer v. BZA*, at 542, citing 2 A. Rathkopf, *The Law of Zoning and Planning*, Note 21, at 45-5 (3d ed. 1962).

**A. The Subject Property is Unique Because it is Affected by an Exceptional Situation or Condition.**

**1. Confluence of Factors:**

The Subject Property is uniquely affected by several exceptional conditions, including its topography, retaining wall requirements, zoning history, and the DHCD covenant restrictions. These factors combine to make the property uniquely challenging for any zoning-compliant development. As recognized in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990), an exceptional condition can arise from a confluence of factors affecting a single property. Here, the combination of topographical challenges, retaining wall requirements, covenant restrictions, and zoning history creates a unique set of conditions that justify relief.

**2. Unique Topography and Retaining Wall Issues:**

The Property features a steep grade requiring the construction of a retaining wall to support any future development. The existing retaining wall, which spans 80 feet in length and reaches up

to 10 feet in height, is failing in several locations, is not up to code, and must be completely replaced to meet current code standards. Contractors have confirmed that the current wall is not on a footer, lacks proper drainage, rebar, or tie-backs, and cannot support any new structure on the site. Replacing the wall will require specialized engineering and compliance with modern safety standards, significantly increasing the construction cost by an estimated \$194,000. Furthermore, due to the severe topography and proximity to neighboring properties, a retaining wall is necessary for any future development, whether for single-family dwellings (SFDs) or a multi-family building. DOB is pushing the Applicant to address the failing wall and has issued fines. The Applicant is desperate to fix the wall, but designing and engineering the wall depends on knowing what type of structure will be built on the site, creating a compounding challenge.

### **3. DHCD Covenant Restrictions:**

The Property is also subject to restrictive covenants imposed by the District of Columbia's Department of Housing and Community Development (DHCD), limiting the Applicant to two potential uses:

- An apartment building with at least 50% of units set at 120% MFI rates; or
- Two single-family dwellings, one of which must be rented at 120% MFI for 40 years.

These restrictions, combined with the topography, make the property unique compared to other sites. The covenant requirements further exacerbate the financial and design challenges, as discussed in the undue hardship section below. While these restrictions are unique and do present challenges developing the site compared to a non-restricted site, the Applicant is dedicated to providing affordable housing in a meaningful way on this site, with housing that will actually help the community and be affordable for the community in which it is located. The single-family alternatives as described below would need to be priced too high to make this project work given the market in this area. This is why the DHCD covenant is clear that the use should be for an apartment building first, and DHCD supports this variance. As noted in *McDonald v. DC Board of Zoning Adjustment*, "When an applicant seeks a variance to meet a public need or serve the public interest, **the Board of Zoning Adjustment may consider the applicant's particular**

**proposed use and its needs as an exceptional condition**, because public need is an important factor in granting or denying a variance.” *McDonald*, 291 A.3d 1109 (DC Ct. App 2023).

#### **4. Zoning History:**

The Subject Property was downzoned in 2008 from R-5-A (now RA-1) to R-2, which limits it to single-family dwellings by right. However, the Future Land Use (FLU) Map identifies this area as “moderate density,” which is more consistent with RA-1 zoning. This inconsistency between the current zoning and the FLU Map adds another layer of uniqueness, as the zoning does not reflect the historical development patterns of the block, which includes multi-family apartment buildings.

#### **B. Strict Application of the Zoning Regulations Would Result in an Undue Hardship to the Owner.**

An owner is presented with an undue hardship when their “property cannot be put to any zoning-compliant use for which it can be reasonably adapted.” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). In a recent case, the D.C. Court of Appeals upheld this Board’s approval of a use variance and noted that economic harm to an owner in converting a portion of their property into a zoning-compliant use, coupled with significant limitations on the utility of a building, constituted undue hardship necessary to satisfy the second prong of the use variance test. *The Oakland Condo v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748 (D.C. 2011).

As discussed above, the only options are an apartment building, or two single-family dwellings, one at 120% MFI. As discussed more fully below, the two, single-family development is not a viable option given the above-referenced confluence of factors as well as market conditions.

#### **1. Construction Costs vs. Market Viability**

As noted above, the property requires significant investment in site preparation, including demolishing and replacing the failing 80-foot retaining wall at a cost of approximately \$200,000. This is a mandatory replacement, not an optional improvement. This expense alone represents a significant financial burden that would need to be recouped through the sale or rental of the homes. The average sales price for a three-bedroom home in the 20032 ZIP code is approximately

\$375,000—although there are properties in the neighborhood listed in the low \$400s. Developing two single-family homes, even with the ability to sell at the high end of the market rate, would result in limited profitability after factoring in development costs, including the retaining wall, grading, and construction.

However, the DHCD covenant means that only one can be market rate and requires one of the single-family homes to be rented at an affordable rate for 40 years, capped at 120% of the Median Family Income (MFI). Even though the IZ rental price for a single-family 3BR home is capped at about \$4,200 per month, the average rental price for a three-bedroom home in 20032 is around \$3,000-\$3,500/month,<sup>2</sup> meaning the IZ cap far exceeds local market rates. Accordingly, the cost to develop a single-family home on this property, with additional site preparation costs, would far outweigh the rental revenue over the covenant's 40-year period.

The average cost to construct a single-family home in D.C., excluding additional site costs for the retaining walls, is approximately \$190-\$290 for a 'cost conscious' home and \$291-330 for a mid-range home.<sup>3</sup> At about 1,800 square feet for each 3BR home, the average cost for developing each home would be estimated between \$360,000-594,000, depending on the quality of the house—an average of about \$470,000. If you exclude the retaining wall, this aligns generally with the pro forma for this particular site, included with this submission which shows the development cost for each home being around \$460,000. Adding the \$200,000 cost for the retaining wall, the cost of each house increases to \$560,000 (cost of retaining wall split between the two. Accordingly, the total development cost for the two single-family homes on this site is estimated at \$1,200,000. This estimate using estimates for DC development aligns perfectly with the actual pro forma for this site particular site.

This option contemplates of the houses would have to be rented for 40 years at a 120% MFI rate through DHCD's program according to the covenant. There is of course one market-rate home in this scenario which could potentially sell for \$350,000-\$430,000, aligning with the local market average in this area.<sup>4</sup> This is still lower than the cost to develop even without including the

---

<sup>2</sup> Based on the two available rental properties in the neighborhood according to [Zillow.com](https://www.zillow.com)

<sup>3</sup> <https://www.homebuilderdigest.com/cost-guides/how-much-does-it-cost-to-build-a-house-in-washington-d-c/>

<sup>4</sup> <https://www.redfin.com/zipcode/20032/filter/min-beds=3,max-beds=3,viewport=38.83063:38.82439:-77.00174:-77.01451>

cost for the retaining wall, resulting in a loss. And then the covenant-restricted home would at a maximum generate income of approximately \$42,000/year (at \$3,500/month).<sup>5</sup> The capped rent significantly limits the owner's ability to recover the upfront investment in a manner that would allow for financing. Since construction costs outweigh revenue potential, lenders are unlikely to issue a loan, rendering the single-family option unfeasible.

Given the development costs, capped rents, and low resale potential, the project would sustain a loss. Lenders are unlikely to provide financing for a project that is projected to incur significant losses, especially when one of the homes is subject to a 40-year rent cap. The financial risk is exacerbated by the additional \$200,000 required for retaining wall replacement and site preparation. Without the ability to demonstrate a viable return on investment, the Applicant cannot secure funding for this scenario, resulting in an undeveloped lot with a failing retaining wall that cannot be fixed until the final project has been determined. But of course, the Applicant cannot do any project as it cannot obtain financing for the single-family project. As discussed below, the proposed Apartment is a viable economic option compared to the single-family and resolves the issues in the way DHCD intended this property to be used when it applied the covenant—as well as fits with the underlying FLU Map Designation.

## **2. Economic and Practical Feasibility: Multi-Family Apartment Development**

First, the apartment is a more cost-effective use of the property. Developing an 11-unit apartment building allows for economies of scale, spreading the \$200,000 cost for the retaining wall across multiple units rather than two single-family homes. The per-unit cost of site preparation becomes significantly lower in the multi-family scenario, making the project financially viable. Further, while there would be greater costs to develop an apartment (more than two homes) in terms of additional sq. ft. and materials (additional bedrooms, closets, etc.), the utility cost are actually significantly cheaper. The utilities listed in the pro forma for the two townhomes are nearly double those of the 11-unit apartment building due to several key factors. Each townhome requires a separate DC Water connection, costing \$27,000 per unit for a 1.5" Domestic & Fire Water Line and 4" Sewer, totaling \$54,000 for both. In contrast, the apartment building only requires \$30,000 for a 2" Domestic & Fire Water Line and a 6" Sewer & Stormwater system. Additionally, Pepco

---

<sup>5</sup> A generous figure given the average rental price is lower.

costs are higher for the townhomes, as each requires separate conduit installations at \$3,000 per unit, totaling \$6,000, compared to just \$3,000 for the apartment building. The increased costs stem from the need for individual utility connections for each townhome, including separate water lines, sewer systems, and electrical infrastructure, whereas the apartment benefits from a single shared system servicing all 11 units. This structural difference results in significantly higher upfront utility costs for the townhomes, making their pro forma utility expenses almost double that of the apartment building.

Additionally, five market-rate units (1BR or 2BR) would generate rental income closer to the neighborhood average of \$1,560/month for 1BR units and \$2,200/month for 2BR units. Assuming conservative pricing at \$1,800/month per market-rate unit,<sup>6</sup> this segment alone could generate \$9,000/month or \$108,000/year in revenue. Five units set at 120% MFI and one at 60% MFI would provide additional revenue while meeting DHCD's affordability goals. IZ rental caps for 1BR and 2BR units at 120% MFI are approximately \$2,500-\$3,500/month. However, these would likely go for under that, at market rate pricing, since the affordable rate is higher than market rate.<sup>7</sup> Assuming conservative pricing at \$1,800/month per market-rate unit, this segment alone could generate \$10,800/month or \$129,600/year in revenue. The total rental revenue for the 11-unit apartment building is estimated at \$19,800/month or \$237,000/year, providing a sustainable revenue stream that supports financing and ongoing operations that could sustainably pay off any loans on the project.

The projected revenue from the multi-family scenario makes the project viable to lenders compared to the single-family scenario. With a consistent mix of market-rate and affordable units, the Applicant can demonstrate a reasonable return on investment, securing the financing needed to move forward, especially given the high cost of the retaining wall.

Developing two single-family homes under the current zoning and covenant restrictions is economically and practically infeasible due to prohibitively high construction costs, limited market viability, and financing challenges. Conversely, constructing an 11-unit apartment building offers a financially viable solution that aligns with neighborhood character and DHCD's goals, while

---

<sup>6</sup> <https://www.zillow.com/rental-manager/market-trends/20032/>

<sup>7</sup> The Applicant could fill these units with anyone at 120% MFI or BELOW that threshold, which is a larger pool of candidates and so given how the DHCD lottery works, would likely have a mix of rental incomes, up to that 120%.



providing much-needed affordable housing. Granting the requested use variance ensures the property is developed in a manner that is both appropriate and beneficial to the community as described more fully below.

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

The request is to provide affordable units in a configuration consistent with the other buildings on the block—apartment homes. The proposal itself conforms to all zoning development standards of the R-2 Zone. It contains 6 affordable units, consistent with the covenant placed on the Property by DHCD. While each case is judged on its own merits, the Board approved a similar case in 2019 where the adherence to DHCD's program was considered as part of the variance argument and supported by both OP.<sup>8</sup> This situation appears to be exceedingly rare, as no other similar case has been brought in front of this Board until now, 6 years later.

While this may be zoned R-2, the surrounding uses are apartment buildings, and the proposal will be consistent with the pattern on the block. It should further emphasize that the Future Land Use (FLU) Map still designates the area as "moderate density", making R-2 inconsistent with city planning goals. But as noted above, the alternative solution, a map amendment, would take over a year and cost nearly three times more than a BZA variance, delaying much-needed affordable housing. And then also require a special exception.

The proposal will provide more than enough parking—including bike parking—and result in much-needed infill housing and an overall improved property relative to the existing vacant lot. The proposed multi-family building aligns with the existing development pattern of the block, which includes apartment buildings. This ensures that the project integrates seamlessly into the neighborhood while maximizing the property's potential. By providing five affordable units at 120% MFI (or below) and one at 60% MFI (or below), the project fulfills DHCD's covenant requirements while addressing the broader public need for affordable housing. This aligns with the District's housing priorities and provides a clear public benefit. Accordingly, relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan.

---

<sup>8</sup> BZA Case 19908, OP Report: <https://app.dcoz.dc.gov/CaseReport/ViewExhibit.aspx?exhibitId=167988>

**V. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE X-901.2 AND C § 714.3.**

**A. Special Exception Criteria**

*i. General Special Exception Standards*

Pursuant to Subtitle X-901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception 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.

*ii. Standard for Review*

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). In this case, the Applicant is seeking relief from C-714.3 and asserts it meets the prerequisites for approval as it satisfies the relevant respective zoning requirements.

**B. The Application satisfies the General Special Exception Criteria of Subtitle X-901.2.**

The granting of the special exception will be in harmony with the general purpose and intent of the zoning regulations. The screening requirements are to ensure safety around vehicular egress from public ways and to ensure proper maintenance of larger parking areas and minimize conflicts with pedestrians. While this is not a particularly large parking area and the alley is not frequently traversed by pedestrians, it is still subject to these screening requirements. The Property abuts a shared public alley which other nearby apartment buildings also utilize for parking. None of the other properties have screening. The Applicant is providing strategically located retaining walls which do provide some break in the parking area—although the gaps are still larger than 20 feet—meeting the intent of this regulation. Accordingly, the granting of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties.

**C. The Application satisfies the Specific SE Requirements of C § 714.3.**

Subtitle C § 714.1 governs the screening requirements for surface parking areas. It states that “screening shall be required for any external surface parking spaces except: (a) On a property located in a PDR zone that does not abut property that is not within a PDR zone; or (b) On a property devoted to residential uses with a maximum of three (3) dwelling units.” Subtitle C § 714.2 provides that “screening of external surface parking shall be provided in accordance with the following provisions: (a) Screening shall be provided around the entire perimeter of the surface parking area; (b) Gaps in the screening are allowed only to provide driveways and pedestrian exits or entrances that open directly onto a street, sidewalk or alley. No individual gap may exceed twenty feet (20 ft.) in width; and (c) The screening shall be either: (1) A wall or solid fence at least forty-two (42) inches high; or (2) Evergreen hedges or evergreen growing trees that are thickly planted and maintained, and that are at least forty-two (42) inches in height when planted and maintained in perpetuity.”

Subtitle C § 714.3 provides that, “The Board of Zoning Adjustment may grant, as a special exception, a modification or waiver of these screening requirements. In addition to the general requirements of Subtitle X, the Board of Zoning Adjustment may consider:

**Section 714.3(a): Impacts on the pedestrian environment within adjacent streets, sidewalks, and other public areas;**

The parking area is located at the rear of the Property and does not intersect with any pedestrian environments, as it is adjacent to the public alleys. Accordingly, removing the screening will not impact the pedestrian environment within adjacent streets, sidewalks, and other public areas.

**Section 714.3(b): Existing vegetation, buildings or protective screening walls located on adjacent property;**

The proposed parking will not have an impact on existing vegetation, buildings, or protective screening walls located on adjacent properties.

**Section 714.3(c): Existing topographic conditions;**

As described above, the topographic conditions necessitate retaining walls in specific locations at the rear. Further, the alley to the rear has a slope. Because of the spacing of the retaining walls and the slope of the alley, the maximum 20-foot gaps cannot be provided. The

retaining walls do provide some break, but the gaps are more than 20 feet. And a fence or roll up door cannot be provided due to the slope of the alley behind.

**Section 714.3(d): Traffic conditions; and**

The parking area is located at the rear of the Property along the public alley. The requested relief would not have any impact on traffic conditions in the alley and may improve the future residents' ability to park their cars more efficiently.

**Section 714.3(e): In granting a modification or waiver, the Board of Zoning Adjustment may require any special treatment of the premises that it deems necessary to prevent adverse impacts on neighboring properties or the general public.**

The Applicant will comply with special treatment if the Board deems it necessary.

**VI. CONCLUSION.**

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the variance relief and special exception relief as detailed above.

Respectfully Submitted,

*Alexandra Wilson*

---

Alexandra Wilson  
Sullivan & Barros, LLP  
Date: January 30, 2025