

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

Application of H Street DC LLC

471 – 473 H Street NW (Sq. 0517, Lots 833, 834 and 835)

STATEMENT OF THE APPLICANT IN SUPPORT OF THE APPLICATION

H Street DC LLC (hereinafter referred to as the “Applicant”) is the applicant and owner of the property located at 471 – 473 H Street NW (Sq. 0517, Lots 834 and 835). The owner of the property located at Lot 833 in Square 517 has authorized the Applicant to file this Application incorporating Lot 833 into the Application. Together, lots 833, 834 and 835 are herein collectively referred to as the “Property.” The Applicant proposes to convert the two existing historic rowhouse buildings on the Property from office use back to their original residential use and to construct an 11-story residential apartment building in the rear of the Property (hereinafter referred to as the “Project”). The Project will include a total of 48 new affordable residential units. To facilitate the Project, the Applicant now seeks an area variance to allow relief from the minimum required rear yard pursuant to 11 DCMR Subtitle I, Section 205.5 and a special exception to allow relief from the minimum penthouse setbacks pursuant to 11 DCMR Subtitle C, Section 1506.

I. BACKGROUND

a. Current Zoning and Improvements on the Property

The Property is assigned to the D-4-R zoning district, located within the Downtown Historic District, and subject to review by the Commission of Fine Arts. The Property is currently improved with two three-story historic buildings currently used as offices and is subject to an easement managed by the Capital Historic Trust (CHT). The Property has access in the rear to a 20-foot wide public alley known as a “Hook and Ladder Alley.”

b. Overview of the Project

The Applicant proposes to convert the existing historic buildings on the Property back to residential use by elimination of a recent, non-contributing rear addition and commensurate reduction of the footprint of 471 H Street along with construction of an 11-story residential building and mechanical penthouse at the rear of the Property. The project will include a total of 48 new residential units, which are all to be rented as affordable units. This project has been approved by the CHT and already received conceptual approval from both the Historic Preservation Review Board (“HPRB”) and the Commission of Fine Arts (“CFA”).

II. NATURE OF RELIEF REQUESTED

To facilitate the project, and given site constraints due to the existing dimensions of the Property and footprint of the existing historic structures, the Applicant now seeks an area variance to allow relief from the minimum required rear yard pursuant to 11 DCMR Subtitle I, Section 205.5 and a special exception to allow relief from the minimum penthouse setbacks pursuant to 11 DCMR Subtitle C, Section 1506.

A. Area Variance for Rear Yard Relief

The Applicant seeks an area variance from the Board to allow a rear yard of 10 feet from the centerline of the alley, rather than the required 23 feet. Given the historic footprint of the existing buildings and comments made by the Commission of Fine Arts (CFA), this rear yard relief is necessary in order to construct an economically viable building on the rear portion of the Property. The Board may grant special exception relief from the rear yard requirements in the D-4-R zone pursuant to 11 DCMR Subtitle I, Section 205.5, pursuant to Subtitle X and subject to certain conditions including the condition in Section 205.5(a) that no window to a residence use shall be located within forty feet of another facing building. Here, the proposed project is unable

to meet this special exception condition due to the proximity of the large apartment building directly across the alley from the rear of the Property. As such, an area variance is requested pursuant to Subtitle X, Section 1001.3(a).

a. Variance Relief Standards Pursuant to Subtitle X, Chapter 10

Pursuant to Subtitle X, Section 1000.1 the Board has the authority to grant a variance as follows:

With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), “[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.”

In addition, the standard for granting an area variance pursuant to Section 1002.1(a) follows:

- (a) An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.**

According to the D.C. Court of Appeals, “[t]o support a variance it is fundamental ‘that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant’s property and not to the general conditions in the neighborhood.’” *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (1990) (citing *Palmer v. Bd. of Zoning Adjustment*, 287

A.2d 535, 539 (D.C. 1972)). In applying this test, however, there “is no requirement that the uniqueness ‘inheres in the land at issue’” *Id.* (citations omitted). Furthermore, the requirements “do not preclude the approval of a variance where the uniqueness arises from a confluence of factors.” *Id.*; see BZA Order 19309 (citing *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land and finding uniqueness based on confluence of restrictive covenants, position of adjacent building and common ownership of contiguous properties); *Downtown Cluster of Congregations v. District of Columbia Bd. of Zoning Adjustment*, 675 A.2d 484, 491 (D.C. 1996) (affirming a Board of Zoning Adjustment decision based on a confluence of small footprint of building, limited vertical access, and proximity to public transportation created uniqueness).

b. Extraordinary or Exceptional Situation or Condition of the Property

In this case, a “confluence of factors,” leads to an extraordinary or exceptional situation or condition on the Property. These factors include the historic nature of the Property and the building footprints thereon. The existing historic buildings occupy most of the existing area of the three parcels that make up the Property. Per guidance from the Historic Preservation Office and Historic Preservation Review Board, the Applicant cannot build on top of the existing historic buildings or remove any portion of the existing historic buildings except for the rear addition of the building on 471 H Street NW. As such, the historic buildings will be converted to residential use and they will be integrated into the new proposed 11-story tower to be built at the rear of the site.

The existing parcels are extremely narrow (combined lot width of approximately 42 feet) with limited depth (100 feet). The majority of parcels in Square 517 and surrounding squares are significantly larger. Further, other properties on Square 517 are improved with large apartment

buildings of similar height to the proposed building in this Application. Because of CFA comments on the character and location of the new tower, the density and height envisioned in the D-4-R zone can only be achieved on the Property with the requested rear yard relief. Applying the required rear yard setback would move the proposed rear wall of the new building back 13 feet, and require a redesign of the life-safety elements to accommodate required travel distances and separation of stairs. This would thereby eliminate at least 18 units out of the total of 48, and the project would not be viable from a constructability or financial standpoint.

c. Peculiar and Exceptional Practical Difficulties

In reviewing whether an Applicant has demonstrated a practical difficulty, the Applicant must demonstrate that “compliance with the area restriction would be unnecessarily burdensome” and that the practical difficulty is “unique to the particular property.” *Gilmartin*, 579 A.2d at 1170 (citations omitted). As part of its assessment of the practical difficulty test, the Board may consider the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976). The confluence of factors discussed above creates peculiar and exceptional difficulties for the Applicant because without the relief requested, it would be unable to construct a viable project on the Property. This, again, is due to the historic nature of the structures on the Property combined with the unique narrowness and lack of depth of these parcels in the D-4-R zone.

d. No Substantial Detriment to the Public Good or Substantial Impairment of the Intent, Purpose, and Integrity of the Zone Plan

The requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The purpose of the D-4-R zone is to promote the development of high-density residential and mixed-use neighborhoods. *See* 11 DCMR Subtitle I, Section 530.1.

Given the historic footprint of the Property, the only opportunity to develop a high-density residential project in line with the purpose of the D-4-R zone is to obtain relief from the rear yard requirements.

The requested relief is not expected to affect adversely the use of neighboring properties. Multiple other buildings on this same block (including the neighboring properties at 475 and 477 H Street NW as well as Lots 875 and 876) have no rear yard setback from this alley. The majority of parcels on Square 517 are improved with large apartment buildings of similar height to the building proposed herein. Further, even with the reduced rear yard, the proposed building will provide a loading dock that will be accessed from the rear alley. No parking spaces are required for a residential project in the D-4-R zone. It should also be noted that the Board has recently approved several other requests for rear yard relief in the vicinity of the Property for similar reasons related to historic structures and challenges related to lot width and depth. (*See* BZA Case Nos. 20974 and 20763).

B. Special Exception for Penthouse Setback Relief

Penthouse setback requirements are set forth in 11 DCMR Subtitle C, Section 1504. The Applicant seeks special exception relief from the penthouse setback requirements pursuant to 11 DCMR Subtitle C, Section 1506. Given the limited depth and width of the developable portion of the Property, penthouse setback relief is needed to be able to provide adequate space for the mechanical equipment, elevator overrun, and stairwell to access the roof. A significant portion of the roof will also be covered by a green roof to meet the Green Area Ratio requirements for the project. As shown on the attached plans, the penthouse setback relief requested is only for the rear penthouse setback on a portion of the proposed new building. As noted above with respect to the rear yard setback, because of CFA comments on the character and location of the new tower, the

density and height envisioned in the D-4-R zone can only be achieved on the Property with the requested rear yard relief as well as the penthouse setback relief. Applying the required penthouse setback would move the proposed rear wall of the penthouse back and require a redesign of the life-safety elements to accommodate required travel distances and separation of stairs. This would thereby eliminate at least 18 units out of the total of 48, and the project would not be viable from a constructability or financial standpoint.

The penthouse setback relief sought satisfies the following required special exception conditions in 11 DCMR Subtitle C, Section 1506:

a. Special Exception Relief for Penthouse Setbacks Pursuant to 11 DCMR Subtitle C, Section 1506.

i. Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks.

The Applicant's design team has made every effort to remain in compliance with the required setbacks for elevator, mechanical equipment and stairways. Given the limited depth and width of the Property and the limited development area not covered by the historic buildings, the Applicant is unable to build a viable building without penthouse setback relief.

ii. The applicant's demonstration of at least one (1) of the following:

(a) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes.

Given the footprint and layout of the two existing historic buildings, combined with the limited developable area of the Property, applying the required 1:1 rear penthouse setback would result in a penthouse that would not be able to accommodate the mechanical equipment and stairwell access needed for the building.

(b) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.

As noted above, the existing historic footprint of the buildings on the Property greatly limit the developable area of the site. The proposed building would be significantly constrained without the requested penthouse setback relief.

b. Special Exception Relief for Penthouse Setbacks Pursuant to 11 DCMR Subtitle X, Chapter 9:

The relief sought for the penthouse setbacks also satisfies the following criteria in 11 DCMR Subtitle X, Chapter 9:

(a) The relief sought will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

The relief sought will be in harmony with the general purpose and intent of the D-4-R zoning district. The purpose of the D-4-R zone is to promote the development of high-density residential and mixed-use neighborhoods. *See* 11 DCMR Subtitle I, Section 530.1. The proposed penthouse structure will not impair the intent of the D-4-R zone as it will facilitate the conversion of the historic rowhomes back to residential use and the development of a new residential tower both dedicated to affordable housing. Further, it is not expected that the proposed penthouse will have any impact on the light and air of the surrounding buildings. The proposed penthouse will only be built on a portion of the new building and surrounding development includes apartment buildings that are far larger than that which is proposed as part of this Application.

(b) The relief sought will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

It is not expected that the penthouse setback relief sought herein will have any impacts on the use of neighboring property. As noted above, surrounding properties include large apartment buildings of similar height to that which is proposed in this Application. The penthouse here will only occupy a portion of the new building.

(c) The relief sought will meet such special conditions as may be specified in this title.

As set forth above, the relief sought will meet all special conditions and special exception criteria associated with the D-4-R zone.

III. WITNESSES

The Applicant intends to call the following witnesses at the public hearing in this matter to testify with regard to the Application:

1. Howard Bongam, H Street DC LLC: Mr. Bongam represents the developer and will testify regarding development plans and the proposed new residential buildings.
2. Mark Freeman, Aggregate Architecture: Mr. Freeman is the architect for this project and will discuss the proposed plans filed with this Application.

IV. COMMUNITY OUTREACH

The Applicant has presented this project to ANC 6E on three occasions. ANC 6E voted to support the Application. The Applicant will continue to engage with ANC 6E, neighbors, and the community as this project moves forward.

V. CONCLUSION

For all of the reasons discussed above, the Applicant respectfully requests that the BZA approve this application for special exception and area variance relief.

A handwritten signature in black ink, appearing to read "Zach Williams", is written over a horizontal line.

Zachary G. Williams, Esq.
Venable LLP
Authorized Agent for the Applicant