

**Kenneth Jackson <kenneth419@gmail.com> BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

2805 Jasper Street, SE (Square 5722, Lot 74)

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by KAJ VENTURES LLC (the “Applicant”) in support of an application pursuant to Subtitle X § 901.2 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”) for special exception relief pursuant to (i) 11-U DCMR § 421.1 to permit a new multi-family residential development in the RA-1 zone at premises 2805 Jasper Street, SE (Square 5722, Lot 74) (the “Property”); (ii) 11-C DCMR §§ 802.1 and 807.2 to not provide the three long-term bicycle parking spaces required for the proposed residential development; and (iii) 11-C DCMR § 605.1 for a partial reduction in the GAR requirements.

Attached hereto is a letter from the Applicant authorizing the filing and processing of this application. Also included is a filing fee in the amount of \$7,440 for the special exception relief requested, pursuant to 11-Y DCMR § 1600.1(b)(19) and (b)(24).

Pursuant to 11-Y DCMR § 300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 21 days prior to the public hearing for the application. In this statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board’s approval of the requested special exception relief. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

I. BACKGROUND

A. Description of the Property and Surrounding Area

The Property consists of Lot 74 in Square 5722 and has a total land area of approximately 5,346 square feet. The Property is bounded by Jasper Street, SE to the north, private property to the east and west, and a 16-foot wide public alley to the south. As shown on the Zoning Map attached hereto, the Property is zoned RA-1.

The Property is improved with an existing three-story building that is presently vacant but which was most recently operated as a rooming house with 13 rooms (the “Existing Building”). A copy of the Existing Building’s most recent Certificate of Occupancy (“COO”), issued January 5, 2009, shows the rooming house use with 13 rooms. A prior COO issued on December 18, 2001, was for a rooming house with 14 rooms. COOs issued on March 6, 2000, and February 5, 1999, were for an apartment with four units. The COOs referenced above are attached to this application. The Existing Building has a height of 38 feet and a density of 1.35 floor area ratio (“FAR”). The Existing Building has three surface parking spaces at the rear of the Property, accessed from the public alley.

The Property is located in the Buena Vista neighborhood of southeast Washington, DC, which supports a mix of uses including residential, commercial, educational, religious, and public facilities, among others. The immediately surrounding properties are also improved with three-story multi-unit buildings and detached single-family homes.

B. Description of Proposed Use

As shown on the architectural drawings attached hereto, the Applicant proposes to undertake interior renovations to the Existing Building and convert it to an eight-unit apartment house. The building would contain two units in the cellar and two units on each of floors 1-3. Each unit would have three bedrooms, two bathrooms, and an open living space and kitchen. Parking for three vehicles would be provided, accessed from the rear alley.

The Existing Building will not be expanded as part of the renovations in terms of height, density, massing, lot occupancy, etc. However, the Applicant will upgrade the Existing Building's windows and exterior finishes. The interior will be fully sprinklered for fire protection and will include new flooring, kitchens, bathrooms, efficient water heaters, HVAC systems, permeable paving, and lighting. The building will also be powered by efficient green solar technology.

As detailed below, the Applicant seeks special exception relief pursuant to 11-U DCMR § 421.1, which requires that new residential developments in the RA-1 zone (other than those comprised of one-family detached and semi-detached dwellings) are reviewed by the BZA as special exceptions. The Applicant also seeks a special exception pursuant to 11-C DCMR § 807.2 to not provide the three long-term bicycle parking spaces that are required by 11-C DCMR § 802.1 for the eight residential units. Finally, the Applicant seeks special exception relief pursuant to 11-C DCMR § 605.1 for a partial reduction in the GAR required for the Property.

II. SPECIAL EXCEPTION RELIEF

A. Relief Requested

As stated above, the Applicant seeks special exception relief pursuant to 11-U DCMR § 421.1, which requires that new residential developments in the RA-1 zone (other than those comprised of one-family detached and semi-detached dwellings) are reviewed by the BZA. The Board may grant the relief requested pursuant to the general special exception standard of review set forth in 11-X DCMR § 901.2, and the specific requirements set forth 11-U DCMR §§ 421.2 through 421.4.

In addition, the Applicant seeks special exception relief pursuant to 11-C DCMR § 807.2, to not provide the three long-term bicycle parking spaces that are required by 11-C DCMR § 802.1 for the eight residential units.

Finally, the Applicant seeks special exception relief pursuant to 11-C DCMR § 605.1 for a partial reduction in the GAR required for the Property. While 0.4 GAR is required in the RA-1 zone, the Applicant can only reach approximately 0.2 GAR due to the existing site configuration and improvements.

B. Burden of Proof

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds 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, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

The standards set forth in 11-U DCMR §§ 421.2 through 421.4 must be met in order for the Board to grant special exception relief for a new residential development in the RA-1 zone. At least one of the standards set forth in 11-C DCMR § 807.2 must be met in order for the Board to grant special exception relief from the minimum long-term bicycle parking requirements set forth in 11-C DCMR § 802.1. Finally, pursuant to 11-C DCMR § 605.1, relief from the minimum GAR requirements may be provided so long as the Applicant demonstrates that providing the GAR is impractical as a result of equivalent sustainability measures.

As demonstrated below, this application meets the burden of proof to meet the general special exception standard of review and the specific standards of 11-U DCMR § 421, 11-C DCMR § 807.2, and 11-C DCMR § 605.1.

1. The Applicant Meets the General Test for Special Exception Relief Under 11-X DCMR § 901.2

The proposed project meets the general special exception standard of review set forth in 11-X DCMR § 901.2.

Before granting an application for a special exception, the Board must determine that 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 in accordance with the Zoning Regulations and Zoning Maps. 11-X DCMR § 901.2(a)-(c). The stated purposes of the Zoning Regulations are set forth in DC Code § 6-641.02:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and

cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

In this case, the proposed eight unit multi-family residential use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Apartment house use is permitted use in the RA-1 zone, and there is history of apartment house use at the Property. *See* Certificates of Occupancy from 1999 and 2000. The Existing Building was most recently used as a 13-room rooming house, which would have supported approximately the same number of individuals as an eight unit residential apartment building. The Applicant does not propose to make any changes to the exterior envelope of the Existing Building in terms of height, density, lot occupancy, setbacks, etc., and therefore the Existing Building will continue to be consistent with the existing scale and architecture of the surrounding buildings on the block.

Moreover, the Property is located within a mixed-use neighborhood that supports residential, commercial, educational, religious, and public service uses, among others. The Applicant will provide the required number of on-site vehicle parking spaces, which will be accessed from the adjacent public alley and screened appropriately, such that no negative traffic or parking impacts will be created. Moreover, providing long-term residential use is consistent with the Mayor's Housing Initiative to construct 36,000 new housing units by 2025.

The lack of a long-term bicycle parking room within the building also meets the general special exception standard of review. Due to the size, footprint, and configuration of the Existing Building, as well as the existence of load-bearing walls that cannot be relocated, there is no room within the Existing Building – even once renovated – to locate a long-term bicycle parking room. The Applicant could theoretically reduce the size of one of the residential units in order to provide the required bike room, but doing so would result in the unit becoming a 2-bedroom unit instead of a 3-bedroom unit, which is inconsistent with the District's housing goals. Moreover, the proposed units are large enough for each resident to store a bicycle(s) within the unit itself. Exterior bicycle parking will also be provided.

In addition, the Applicant's proposal to provide approximately 0.2 GAR instead of the 0.4 GAR required meets the general special exception standard of review. The Property is already improved with an existing building, the envelope of which is not being modified as part of this application. While the Applicant will implement a number of sustainability measures that count towards the specific GAR requirements, including new permeable paving, it is also proposing solar panels on the roof, which limits the ability to provide green roof at the top of the building, which must share the space with the new energy efficient HVAC units. Thus, due to the small size of the Property, the existing building footprint, and the need to provide parking spaces at the rear of the Property, there are limited areas on the lot other than the top of the building on which to provide green elements that satisfy the GAR requirements. Therefore, although the project will not meet the strict 0.4 GAR requirement, it will provide significant new sustainability items within the building and on the Property itself to meet the intent of the GAR regulations and not create any adverse impacts.

Based on the foregoing, the Applicant submits that the proposed eight-unit apartment building 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. The use will fit in with the existing residential character and scale of the surrounding area and will not create any contrasts in use or intensity of the land. The lack of a long-term bicycle storage room will not have any impacts on neighboring property, nor will the 0.2 GAR proposed for the Property. Therefore, the proposed use meets the test for special exception relief under 11-X DCMR § 901.2.

2. The Applicant Meets the Test for Special Exception Relief Under 11-U DCMR § 421.1

Pursuant to 11-U DCMR § 421.1, new residential developments in the RA-1 zone, except those comprising all one-family detached and semi-detached dwellings, shall be reviewed by the Board as a special exception in accordance with the following standards:

11-U DCMR § 421.2 - The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendation as to the adequacy of the following:

- a. *Existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and*

The Property is within the boundaries of the Garfield Elementary School, Johnson Middle School, and Ballou High School, all of which are located a short distance from the Property. This application will be referred to the Deputy Mayor for Education (“DME”) for the purpose of commenting on the adequacy of existing and planned area schools. However, given the limited number of proposed residential units, the existing area schools are expected to be able to accommodate the small number of students that may reside in the project.

- b. *Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.*

Given the modest size of the project, the existing public streets, recreation facilities, and other services will not be adversely impacted. With respect to transportation, the Project complies with all applicable vehicle parking requirements, and is also conveniently located near existing Metrorail and Metrobus routes. The Naylor Road Metrorail station is located approximately 0.6 miles from the Property, and at least 10 different Metrobus lines are located within 0.2 miles of the Property. For residents who choose to own a vehicle, parking will be provided on-site such that on-street parking in the neighborhood will not be affected. Therefore, with the combination of ample public transportation options and on-site parking, the Project will not result in adverse impacts to public streets through traffic, parking, or the overcrowding of public transportation facilities.

In addition, the Property is located within a half mile from the Douglass Pool and Douglass Community Center, the Woodland Terrace Recreation Center, and Fort Circle Park. Thus, ample recreational facilities exist nearby to the Property that will be able to accommodate future residents. Accordingly, the minimal number of residents that will live at the Property will not have adverse effects on existing capacity.

Moreover, the Board will refer the application to the District Department of Transportation (“DDOT”) and the Department of Parks and Recreation (“DPR”) for the purpose of evaluating the Project’s impact on public streets, recreation facilities, and other services.

11-U DCMR § 421.3 - The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects.

As shown on the architectural drawings, the Applicant does not propose any changes to the existing site plan or the arrangement or envelope of the Existing Building. Accordingly, the proposal will not have any impacts on light and air, recreation, landscaping, or grading, as they relate to the surrounding neighborhood. However, the Applicant will upgrade the existing landscaping and will maintain the three existing surface parking spaces as the rear of the Property. Accordingly, the project’s site plan, building location, landscaping, and other on-site facilities relate well to the surrounding neighborhood and will not create adverse impacts with respect to light, air, or parking.

The Board will refer the application to OP to further evaluate the project’s site plan, arrangement of buildings, and the provision of light, air, parking, recreation, and landscaping features as they relate to the surrounding neighborhood and public plans.

11-U DCMR § 421.4 - In addition to other filing requirements, the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plan (existing and final), landscaping plan, and plans for all new rights-of-way and easements.

Architectural drawings showing the proposed project are attached to this application.

3. The Applicant Meets the Test for Special Exception Relief Under 11-C DCMR § 807.2

Pursuant to 11-C DCMR § 807.1, flexibility is permitted from the requirements of 11-C DCMR, Chapter 8 when providing the number of bicycle parking spaces required is impractical

or contrary to other District regulations, or when it is unnecessary due to a lack of demand for bicycle parking. Accordingly, pursuant to 11-C DCMR § 807.2, the Board may grant as a special exception a full or partial reduction in the minimum number of long-term or short term bicycle parking spaces required for a use or structure, subject to the general requirements of Subtitle X, the limitations of 11-C DCMR § 807.3, and the applicant's demonstration of compliance with any of the standards set forth in 11-C DCMR § 807.2(a)-(c). In this case, the Applicant submits that the project meets the standards of 11-C DCMR § 807.2(a) as follows:

11-C DCMR § 807.2(a) - Due to the physical constraints of the property, the required bicycle parking spaces cannot be provided on the lot or, in the case of short-term bicycle parking spaces, on abutting public space.

As stated above, the Property is improved with an existing building that the Applicant proposes to renovate in order to provide eight residential units. The Applicant does not propose to make any additions to the building or increase the building's height, FAR, lot occupancy, etc. As shown on the architectural drawings, given the configuration and size of the existing building and the load-bearing demising walls that cannot be removed or relocated, the Applicant is physically unable to provide enough space in the building to locate a bicycle storage room. However, at three bedrooms, the proposed residential units will be large enough to accommodate bicycles within the living spaces themselves. Exterior bicycle parking spaces will also be provided for residents to help mitigate the lack of an interior bicycle storage room.

The proposal is also consistent with the limitations of 11-C DCMR § 807.3, which states that a "reduction in parking granted under Subtitle C § 807.2 shall only be for the amount that the applicant demonstrates cannot be physically provided, and proportionate to the reduction in bicycle parking demand demonstrated by the applicant." In this case, three bicycle parking spaces are required and the Applicant requests relief to not provide all three of the spaces, which, as stated above, cannot be physically provided within the building given the constraints of the existing building.

4. The Applicant Meets the Test for Special Exception Relief Under 11-C DCMR § 605.1

Pursuant to 11-F DCMR § 307.1, properties in the RA-1 zone are required to achieve 0.4 GAR. However, the Applicant proposes approximately 0.2 GAR for the Property. Pursuant to 11-C DCMR § 605.1, the Board may grant, as a special exception, a full or partial reduction in the required GAR if, in addition to meeting the general requirements of Subtitle X, Chapter 9, the applicant demonstrates that providing the GAR is impractical as a result of equivalent sustainability measures already being implemented on the property that achieve the intent of the GAR through methods not available through the GAR requirement.

In this case, although the project will not meet the 0.4 GAR requirement, the Applicant has demonstrated that meeting the full requirement is impractical because it is implementing other sustainability measures that do not satisfy the technical GAR requirements. As stated above, the Property is improved with an existing building, the envelope of which is not changing as part of

this application. The Applicant is proposing to implement a number of sustainability and green measures within the building and on the Property, including permeable paving and significant new solar panels on the building's roof, which limits the ability to also provide green roof at the top of the building. Due to the small size of the Property, the existing improvements, the limited roof area, and the need to provide parking spaces at the rear of the Property, there are limited other areas on the lot other than at the top of the building to provide green elements that satisfy the GAR requirements. Therefore, although the project will not meet the strict 0.4 GAR requirement, it will implement equivalent sustainability measures that achieve the intent of GAR.

III. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of Advisory Neighborhood Commission ("ANC") 8B05. Prior to filing the subject application, the Applicant discussed the project and the special exception relief with the Single Member District representative for ANC 8B05. The Applicant will continue to engage with the SMD representative and the ANC as a whole and request a formal vote on the application prior to the public hearing.