

## **BZA Use Variance Application**

**Property Location: 5058 Central Ave SE, Washington, DC 20019 (Square 5286, Lot 0837)**

### **Statement of Existing and Intended Use**

The property identified as Square 5286, Lot 0837 in R-2 was issued a building permit for a two-unit flat and renovated as such in 2017. It has been used as a two-unit flat since then, albeit without a certificate of occupancy

The intended use of the property is as a two-unit flat with a certificate of occupancy.

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### BURDEN OF PROOF STATEMENT

#### Background

This property, located at 5058 Central Avenue SE, Washington, DC 20002 (the Property), identified as Square 5286, Lot 0837 in the R-2 zone, was purchased as a single-family home in 2016. The new owner, Ms. Hartley as trustee of The 5058 Central Ave Trust, dated May 15, 2023, acquired this property in February 2016 with the intention of creating climate resilient, energy efficient, affordable rental housing for residents of Washington, DC. As the owner was not versed in DC zoning regulations, she relied on the advice and guidance of industry professionals. The owner worked with architectural firm, Ohi Engineering, to develop the design drawings and obtain a permit, and general contractor, Paul Wharton Construction Services, to renovate the home, converting the basement to a separately metered (gas and electric) one-bedroom apartment. Inspections were completed by a certified third-party inspector, Clarence Mobley Associates. Drawings (Exhibit X) were submitted to the Department of Buildings (formerly the Department of Consumer and Regulatory Affairs) and a permit for a two-unit flat (Exhibit X) was approved on April 26, 2017.

Renovations were completed in August 2017, and Mr. Wharton, the general contractor instructed Mr. Mobley, the third-party inspector, to obtain a Certificate of Occupancy (Exhibit X). Later, the owner was informed that a Certificate of Occupancy (C of O) was not required in that zone. The owner proceeded to obtain a business license and rent both units.

It has since come to the owner's attention that incorrect business license was obtained. In her efforts to secure the correct business license, she once again tried to obtain a C of O and was denied. After several conversations with the Department of Buildings, Office of Zoning, the owner was informed that she should not have been granted a permit for a two-unit flat as those are not permitted as a matter of right in R-2. She was instructed to seek a variance with the Board of Zoning Adjustment to get a C of O.

#### Description of the Relief Sought

Per 302.9 Applications for certificates of occupancy authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date the orders were promulgated; provided, that all applications for certificates of occupancy shall be accompanied by information sufficiently complete to permit processing without substantial change or deviation.

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### **Exceptional Situation.**

This application seeks relief based on an exceptional situation that would pose an undue hardship upon the owner if not approved. The owner purchased the property as a rental in February 2016 and received a building permit for a two unit flat in April 2017. The owner spent a significant sum of money, approximately \$200,000 renovating the property and converting the basement to a one-bedroom apartment based on having received a permit for a two-unit flat. She relied on the professional expertise of an architect, general contractor, DC zoning office, and a certified inspector, all of whom led her to believe she was following regulations. It is only now, seven (7) years later, that the owner learned this was not the case. Because flats are not permitted as a matter of right in R-2, the owner is now unable to obtain a certificate of occupancy and she and the tenants living on the property are in a tenuous situation.

This renovation has not been in detriment to the public good, but denial of relief would pose an undue hardship on the owner. Without the rental income from both units

Relief can be granted without detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

I purchased the subject property in 2016 with the intent of offering affordable and energy efficient rental housing. A building permit was approved for a two-unit flat in 2017, and an extensive renovation of the building was completed that same year.

Based on professional consultations with the architect and general contractor and based on subsequent permitting from the Office of Zoning, the owner proceeded with converting the property to a two-unit flat by renovating the basement as a separately metered one-bedroom apartment.

With this application, I am seeking a use variance that will allow me to obtain a certificate of occupancy so that I may continue to use the property as a two-unit flat without displacing my tenant of seven years.

which sections of the code apply.

From there, you will need to explain how your project meets the special exception or variance criteria. These requirements are found at Subtitle X § 901.2 (Special Exceptions) and

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Subtitle X § 1002.1 (Variances). "An applicant for a use 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 exceptional and undue hardship upon the owner of the property."

Financially Viable (hardship)

### Description of the Property

Lot Numbered Forty One (41) and the East 3 feet front on Central Avenue by full depth thereof of Lot Numbered Forty-two (42) in Square Numbered Fifty Two Hundred Eighty Six (5286) in the Capital View Realty Company's subdivision as part of a tract of land called "Conclusion", as per plat recorded in the Office of the Surveyor on the District of Columbia in Liber 78 at Folio 5, subject to the building restriction line as shown on said plat, said property being now known for the purpose of assessment and taxation as Lot 837 in Square 5286.

### VARIANCE

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.)), "

1. where, 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

I purchased said property in February 2016 with the in

2. to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;

complying with the zoning requirement would create undue hardship as it would require me to either move into the house and displace the existing tenants who have lived in the house

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for 7 years, raised two girls in the house, and is a leader in the community; or sell the house, effectively displacing the tenant; or convert the basement back to its original configuration, which would be cost prohibitive and disruptive to the tenants.

3. 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.

A use **variance** is a request to permit:

1. A use that is not permitted matter of right or special exception in the zone district where the property is located;
2. A use that is expressly prohibited in the zone district where the property is located; or
3. An expansion of a nonconforming use prohibited by Subtitle C § 204.

According to the DC Office of Zoning Handbook, the purposes of the R-2 zone are to:

- Provide for areas with semi-detached dwellings; and
- Protect these areas from invasion by denser types of residential development.

The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached dwellings.

Architect applied for and was granted a permit for a two-unit flat.

301.6 For the purposes of Subtitle A § 301.5, the term “building permit” refers to the following types of permits:

1. (a) A permit for new construction, including constructing, adding to or moving a building or structure;
2. (b) A permit to erect or replace an awning, canopy, tent, or other membrane structure, or similar structures as a principal structure;
3. (c) A permit to erect a radio, television, or other telecommunications tower as a principle structure; or
4. (d) A permit for a change of use or occupancy, increase in load or modification of floor layout of the building or structure.

302.4 If a building permit application for the erection or alteration of a structure is

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submitted, a certificate of occupancy for that structure shall not be issued until the erection or alteration is completed to the point of availability of occupancy for use, except as provided in Subtitle A § 302.5.

302.11 This subsection shall govern the issuance of a certificate of occupancy for the use of a structure, or part thereof, if the establishment of the use is dependent upon the erection, construction, conversion, or alteration of the structure, or part thereof; provided:

1. (a) The use authorized shall be designated as a proposed use at the time of application for the building permit on which the use depends;
2. (b) A building permit shall be issued in compliance with Subtitle A § 301;
3. (c) At the time of issuance of the building permit that is required by this subsection, the proposed use shall be designated in a provisional certificate of occupancy; and
4. (d) The use designated in the provisional certificate of occupancy shall comply with all provisions of this title in effect on the date on which the building permit required by this subsection is issued.

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### Statement of Public Outreach

The owner and long-standing residents of 5058 Central Ave SE are committed to working with the surrounding community, ANC 7C, its neighbors, and other District agencies regarding the project (the “Project”) and the required BZA relief.

During the renovation process, I reached out to the neighbors on either side of the house – 5056 Central Ave SE and 5062 Central Ave SE – to introduce myself, exchange contact information, and invite them to contact me should the need arise. I have communicated with Kimberly Martin, the Single Member District representative for 7C08, in which the property is located, and Antawon Holmes, the Chair of ANC 7C. In addition, I have met with members of the ANC and the Deanwood Citizens Association.

Finally, I worked with the Office of Tax and Revenue and

Owner has also corresponded with the Office of Planning regarding development at the Property. The Owner will continue to work to communicate with neighbors and keep area residents informed about the Project. The Owner is committed to continuing the above described outreach in advance of the Board’s public hearing and throughout the Project’s design and construction.

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### **Process for Applying for a BZA**

- Secure a memo from Office of Zoning. This can take 4-6 weeks. Alternatively, you can have a lawyer or architect sign form 135.
- Begin developing your application based on the requirements of the BZA application requirements.
- Go to the Office of Tax and Revenue to request a list of homeowners within a 200 ft radius map. Visit the Real Property GIS and Mapping Services to find this information. Prepare address labels for all homeowners on the list.
- Speak with all the neighbors within the 200 ft radius. Obtain letters of support and address areas of concern.
- Contact your local neighborhood community association to present your case and get their support.
- Submit an application on BZA IZIS portal.
- Once you have the support of the neighborhood community association and the application has been submitted on the BZA IZIS portal, request to get on the schedule of the ANC for the property in question.