

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's 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, 12-unit, 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 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.

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

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 for 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, 12-unit multi-family building on a newly combined lot. The proposal will include at least one IZ Unit (60% MFI) and 5 affordable units (120% MFI). 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.

The phrase “other extraordinary or exceptional situation or conditions” 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. D.C. Board of Zoning Adjustment, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. Gilmartin v. D.C. Board of Zoning Adjustment, 579A.2nd 1164, 1168 (D.C. 1990).

The Subject Property is faced with exceptional conditions related to its topography (retaining wall), uses in the surrounding area, and covenant restrictions.

Topography and retaining wall (and unimproved status)

Due to the existing topography and conditions on site- the Applicant must undertake grading and put up a new retaining wall up front, as well as other retaining walls in the rear. The other properties have been long improved with residential apartment buildings, as demonstrated

by the photographs, and none are in a similar position, making the Property unique. This additional work increases construction costs to the tune of \$120,000 according to an initial estimate that has been provided as an Exhibit to this submission.

Covenant Restrictions

The Property is subject to covenant restrictions placed by DHCD as part of the sale which limit the use to either:

- Apartment building where at least 50% of the units are set at an 120% MFI rate; or
- Two single family homes, (one of) which must be leased at a 120% MFI rate for at least 40 years.

These are extremely limited uses. The Applicant is proposing the apartment building; therefore, the only other option, if the apartment is not approved, is two single-family dwellings rented for 40 years at a 120% MFI rate. As discussed more fully below, constructing and renting a single-family home for a 120 MFI rate for 40 years is not feasible and therefore results in a hardship.

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).

The above referenced unique and exceptional conditions of this site create an undue hardship due to: (1) a limited market for a single-family home rental of this type in this area; (2) inability for the affordable rental rate to cover cost of development and construction, especially given the retaining wall; and (3) inability to obtain funding to cover cost of development and construction given these loss that the Applicant will incur from the only matter of right option.

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. In addition to the 120% MFI units, the proposal also includes an IZ unit at 60% MFI. It is consistent with the covenant placed on the Property by DHCD. The proposal will be consistent with the pattern on the block, provide enough parking—including bike parking—and result in an overall improved property relative to the existing vacant lot. Accordingly, relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan.

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: October 23, 2024