

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Parasol Tree Holdings, LLC
409 East Capitol Street, SE (Square 0817, Lot 0812).

I. INTRODUCTION.

This Statement is submitted on behalf of Parasol Tree Holdings, LLC (the “**Applicant**”), owner of the property located at 409 East Capitol Street, SE, (Square 0817, Lot 0812) (the “**Property**”). The Property is improved with a two-story building with a commercial first-floor and a residential second floor (the “**Building**”). The first floor of the Building has historically been used for commercial purposes. Based on the Certificates of Occupancy included with this Application, the space has been occupied for at least seventy-five (75) years by various commercial uses, including the current use as office space for Sanabria & Co., an interior design firm (“**Sanabria**”).

During the previous owner's tenure, the commercial space was changed from a dry-cleaning drop-off facility to its current office use by Sanabria. However, the previous owner failed to update the permission approval for the premises. When the Applicant began investigating this proposed project, he was first informed that the office use of the premises was not in compliance with the Zoning Regulations, and that variance relief would be needed to bring the current office use into compliance. Through this BZA application, the Applicant seeks to rectify the previous unauthorized change in use and bring the Property into compliance.

To that end, the Applicant is requesting use variance relief pursuant to Subtitle U § 301 to allow the conversion from one nonconforming use (dry cleaner) to another (office). Under the 1958 Zoning Regulations, such a change was permitted via special exception (11 DCMR §2003). However, the 2016 Zoning Regulations rewrite eliminated the “neighborhood facility” language in that special exception, effectively eliminating any chance that the special exception would ever again be requested.¹

¹ Section 2003.5 of the 1958 Regulations provided this condition: “*In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.*” The current language of C-204.9 (b) is: “*In the R, RF, or RA zones, the proposed use shall be either a single dwelling unit, flat, or a multiple dwelling unit development; except on an alley lot, the proposed use may only be a single dwelling unit;*” So, the only way one can get special exception

The Applicant is also proposing to construct a rear third-story addition to the Building (“the **Addition**”). The proposed Addition will increase the lot occupancy to 70%, exceeding the maximum permitted lot occupancy of 60% in the RF-1 zone, requiring special exception relief from E-210.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the variance relief requested pursuant to Subtitle X § 1000.1 from the use requirements of Subtitle U § 301 and the special exception relief requested pursuant to E § 5201.

III. BACKGROUND.

A. Description of the Property and Proposed Use.

The Property is located in the RF-1/CAP Zone and is located in the Capitol Hill Historic District. It is an interior lot, measuring 1,800 square feet in land area. The Applicant is proposing to continue using the Building as an office for interior design – Sanabria & Co. The office will operate during normal business hours (M-F, 9AM-5PM).

The Applicant is proposing to construct a rear and vertical addition to the Building, which includes adding a second residential unit. The project will introduce a third story and extend the building toward the rear of the lot, increasing the building’s height from approximately 22 feet 1¼ inches to 29 feet 6 inches, which remains well below the 40-foot height limit permitted in the RF-3 zone. The Addition will increase the lot occupancy to 70%. The design of the Addition has been carefully developed to respect the character and scale of the Capitol Hill Historic District. The third story is stepped back from the front façade, and the massing of the Addition has been designed

approval for a change from one nonconforming use to another, is to be changing to a residential use, which just never happens. We are not aware of any cases of a change from one N/C use to another (either before or after 2016) being anything *but* a “neighborhood facility.” It is unclear why this language was removed and if it was intended to have the result of making the new Section C-204.9 meaningless and requiring use variance relief for any change from one nonconforming use to another. This change has created additional expense and uncertainty for District businesses and property owners, and if eliminating the special exception altogether was not the intended result (and clearly it is not, since C-204.9 exists), it seems that the Regulations should be revised accordingly.

to fit in with the surrounding buildings. The Addition will provide additional habitable space while preserving the Property's existing mixed-use character.

B. Surrounding Area.

The Property is surrounded by a mix of uses and properties. Abutting the Property to the north is East Capitol Street. Abutting the Property to the south at 8 4th Street, SE is a single-family row dwelling. Abutting the Property to the west at 407 East Capitol Street, SE is a two-family rental. Abutting the Property to the east is 411 East Capitol Street, SE, which has a C of O for art gallery use and residential use.

IV. USE VARIANCE.

The Applicant is requesting use variance relief from the Use Permissions of U § 301 in order to convert the existing dry cleaner use to office use. 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 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 Property is affected by a unique and exceptional situation due to its long history of commercial use and an unauthorized change in use that occurred under prior ownership. For decades, the first floor of the Property was legally used as a dry cleaner drop-off, which was an established legally nonconforming use supported by Certificates of Occupancy dating back to the 1950s. During the previous owner's tenure, however, the commercial space was leased to an interior design firm without obtaining the required zoning relief to authorize the change from one nonconforming use to another. The current owner only recently discovered this oversight while exploring the possibility of expanding the building. As a result, the Property is now burdened with a non-compliant use that the current owner is attempting to correct. As discussed below, these exceptional conditions create an undue hardship if the zoning regulations are strictly enforced.

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 size and existing use of the Property creates an exceptional situation where the Applicant will suffer an undue hardship if the use variance is not granted. The Building consists of one residential dwelling unit on the second floor, in addition to the commercial space on the first floor. As described above, the first floor of the Building is configured for commercial use. To convert it to residential use would require a reconstruction and reconfiguration. Also, because the historically contributing building was originally constructed for commercial use on the first floor, it includes a large, bay, shop window, which likely cannot be materially altered, per HPRB. Additionally, in contrast to the residential uses to the east of the Building, with raised first levels, and similar to the commercial uses to the west of the Building, without raised first levels, the Building's entrance is at street-level, which is less conducive to residential use.

C. No Substantial Detriment to Public Good and No Harm to the Zone Plan.

Granting the relief will not result in a substantial detriment to the public good, nor will it harm the zone plan. The first floor of the Building has been used for commercial purposes since at least 1950, and the Applicant is proposing a less-intense commercial use than was previously approved.

Continuing to use the space as a professional office fits with the character of the East Capitol Street corridor, which already includes a mix of residential and small-scale commercial uses. The building's current setup, with a commercial use on the ground floor and a residential unit above, reflects a long-standing pattern in the Capitol Hill Historic District and doesn't conflict with the overall residential goals of the RF-3 zone. In fact, four of the six properties immediately west of the Property also have legally nonconforming commercial uses on their first levels, including the adjacent property at 411 East Capitol St. Granting the requested relief will also allow the Applicant to bring the property into compliance through the proper zoning process and maintain the tenancy of a small local business. This helps promote stability and responsible use of the property, without opening the door to more intense or inappropriate commercial activity.²

² It is important to note that the Applicant wishes only to have this approved for Office Use, to keep the Application as simple as possible for the long-term expectations of the surrounding

V. SIMILAR BZA APPROVALS

A. Case No. 20146

In BZA Case No. 20146, the Board approved a use variance for a change from hair salon use to a list of several possible uses, including office and service uses, at 1510 31st Street, NW. The Office of Planning supported the use variance for factors present in this Application, including the long history of commercial use and the undue hardship of reconfiguring and reconstructing that space into a permitted residential use.

B. Case No. 19737.

In BZA Case No. 19737 the Board approved a use variance for office use on the first and second floors of an existing two-story building at 500 13th Street, SE. In the present case, the Applicant is only requesting relief for one story. Similar to the situation in 19737, the history of commercial use on the first floor coupled with its size creates a situation where the Applicant would face an undue hardship if it had to convert the building to residential use.

C. Case No. 19578.

In BZA Case No. 19578, the Board approved a use variance for a hair salon on the first and second floors of an existing two-story building at 944 Florida Avenue, NW. The applicant argued that the history of commercial uses, the cost of converting commercial space into residential space, and the cost of updating the existing residential space created an exceptional situation where the applicant would face an undue hardship if it had to use either floor of the building for residential purposes. In its deliberation, the Board granted the relief, determining that the history of uses coupled with the cost of updating the existing residential space and converting the non-residential space created an exceptional situation which would lead to an undue hardship if relief were not granted.

As noted above, the Applicant in the present case is only requesting relief to maintain the status quo and is not asking to expand the existing, previously-approved premises.

community. This is in contrast to certain recent cases where, for flexibility, a larger list of uses have been requested and approved.

D. Case No. 18701.

In BZA Case No. 18701, the BZA approved a use variance request very similar to this one, approving a restaurant at 1247 E Street, SE, based on the undue hardship inherent in converting an originally-built commercial first floor space from commercial to residential use. The Office of Planning supported the use variance, noting that the existing configuration of the commercial space created an exceptional situation. The space was originally constructed as a grocery store, had always been used for various commercial purposes, and was never outfitted or adapted for residential use.

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,

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