

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

**Hampton East Owner LLC
4750 and 4730 Benning Road, SE
Portion of Lots 1 and 2 in Square 5344**

Preliminary Statement in Support of Compliance with Burden of Proof

I. Overview and Nature of Relief Sought

On behalf of Hampton East Owner LLC (the “Applicant”), this statement is submitted in support of an application for (i) a **special exception** pursuant to Subtitle U § 421 and Subtitle X § 901.2 to permit the construction of a new residential development in the RA-1 zone; and (ii) an **area variance** pursuant to Subtitle X § 1000.1 from the lot frontage requirement of Subtitle C § 303.4, which requires a minimum street frontage of 30 feet for new lots to be used and occupied by an apartment house.

As explained herein, the subject property consists of a portion of Lots 1 and 2 in Square 5344 (the “Property”). Lots 1 and 2, which are owned by the Applicant, are presently improved with multifamily buildings. The Property will be subdivided into three lots, thus creating a new, third lot to construct a new residential development on the Property.

Pursuant to Subtitle Y § 300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 30 days prior to the public hearing on 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 relief. The following is a preliminary statement demonstrating how the application meets the burden of proof.

II. Jurisdiction of the Board

The Board has jurisdiction to grant the requested special exception relief pursuant to Subtitle X § 901.2 and the requested variance relief pursuant to Subtitle X § 1000.1 of the Zoning Regulations.

III. Background

A. Description of the Property and Neighborhood Context

Located in the Marshall Heights neighborhood in Southeast Washington, DC, the Property consists of a portion of Lots 1 and 2 in Square 5344 and is currently improved with a surface parking area that serves residents and visitors of the existing multifamily buildings located on Lot 1 (4750 Benning Road, SE) and Lot 2 (4730 Benning Road, SE). An aerial photograph showing the outer lot line boundaries of Lots 1 and 2 in Square 5344 (outlined in red), along with yellow lines indicating the approximate boundaries of the Property, is provided below:



Square 5344 is bounded by H.D. Woodson High School to the north, F Street, SE to the south, Benning Road, SE to the west, and St. Louis Street, SE to the east. The character of the surrounding area is primarily residential, with a mix of low- and mid-rise apartment buildings, single-family homes, and community-serving uses such as schools and places of worship. The neighborhood benefits from convenient public transportation, with several WMATA bus routes serving Benning Road, SE near the Property, and the Benning Road Metrorail Station (Blue and Silver Lines) located approximately 0.6 miles away, providing access to the broader Metro system.

B. Zoning

As shown on the portion of the Zoning Map submitted herewith, the Property is located in the Residential Apartment (RA)-1 zone. The RA zones are residential zones designed to provide for residential areas suitable for multiple dwelling unit development and supporting uses (11-F DCMR § 101.1). Among other purposes, the RA zones are intended to permit flexibility by allowing all types of residential development, promote stable residential areas while accommodating a variety of urban residential neighborhoods, ***and encourage compatibility between the location of new buildings or construction and the existing neighborhood***, as set forth in 11-F DCMR § 101.2. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached houses, row houses, and low-rise apartment buildings (11-F DCMR § 101.4).

The development standards applicable to the RA-1 zone include a maximum floor area ratio (FAR) of 1.08 for developments with Inclusionary Zoning; a maximum building height of 40 feet and three stories; a minimum rear yard depth of 20 feet; minimum side yards with a width equal to three inches per foot of building height, but not less than 8 feet; a maximum lot occupancy of 40 percent for all other structures; and a minimum Green Area Ratio (GAR) of 0.4. *See* 11-F DCMR § 200 *et seq.*

With respect to parking, a residential apartment (residential, multiple dwelling unit use category) requires one parking space for every three dwelling units in excess of four units. The same use category requires one short-term bicycle space for each 20 dwelling units and one long-term bicycle space for every three dwelling units. *See* 11-C DCMR §§ 701.5 and 802.1.

C. Proposed Residential Development

As shown on the architectural plans submitted herewith, the Applicant proposes to construct a new apartment house consisting of 28 units (the “Project”). The building will contain approximately 26,670 square feet of gross floor area and will be constructed to a height just under 23 feet. The Project will include a mix of two-, three-, and four-bedroom units. The Project will provide the required Inclusionary Zoning units. Some of the units on the first and second levels will include balcony space, and some of the units in the penthouse will include outdoor deck space. The Project will include sustainability features such as a green roof and solar panels. The Project will also include a long-term bicycle parking storage room that can accommodate up to 11 bicycle parking spaces, exceeding the minimum required by the Zoning Regulations. Moreover, the Project is designed to be compatible with the other multifamily buildings immediately surrounding the Property.

D. Proposed Subdivision and Applicable Requirements

The Applicant proposes to subdivide the Property to create three new record lots, in order to comply with the requirement that all new primary buildings in the R, RF, and RA zones must be erected on separate lots of record, as set forth in Subtitle C § 302.2. The resulting configuration will not affect the zoning compliance of Lots 1 and 2 or create any new nonconformities for the existing buildings.

However, the resulting configuration for the Property will only be able to achieve five feet of street frontage on St. Louis Street, SE, whereas Subtitle C § 303.4 provides that “[e]ach new lot being created to be used and occupied by an apartment house ***shall have a street frontage measured along the street line a distance of not less than thirty feet (30 ft.)***.” (Emphasis added.) Therefore, as detailed in Section V below, the Applicant is requesting variance relief from this lot frontage requirement to allow the proposed Project.

IV. Special Exception Relief

As discussed in this Section IV, the Applicant is requesting special exception relief pursuant to Subtitle U § 421 and Subtitle X § 901.2 to permit a new residential development in the RA-1 zone.

A. Burden of Proof

Pursuant to D.C. Code § 6-641.07(g)(2) and Subtitle X § 901.2, the Board is authorized to grant a special exception if it finds that the requested relief is in harmony with the general purpose and intent of the Zoning Regulations and Map, and will not tend to adversely affect the use of

neighboring property, subject to any specific conditions set forth in the regulations. The stated purposes of the Zoning Regulations are set forth in D.C. 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.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the application satisfies the specific requirements for the relief requested. 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. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. D.C. 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.*

B. Justification

Pursuant to Subtitle U § 421, in any of the RA-1 zones, all new residential developments, except those comprising all one-family detached and semi-detached dwellings, must be reviewed by the Board of Zoning Adjustment as special exceptions pursuant to Subtitle X, Chapter 9, in accordance with the standards and requirements in that section. The Applicant provides comments below on the specific requirements related to the subject application and offers justifications in support of the general special exception criteria set forth in Subtitle X § 901.2.

- ***Subtitle U § 421.2.*** *The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendations 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*
 - *(b) Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.*

Based on the number of units and the proposed bedroom mix, a significant portion of the Project is intended to accommodate family-sized households. Accordingly, it is appropriate to assess existing and planned area schools and other public services to understand the potential impacts of the proposed residential development. The application will be referred to relevant District agencies, as needed, to ensure that existing and planned schools, surrounding infrastructure, and public services can support the expected population. School-aged children residing in the Project are currently assigned to the DCPS boundaries for Nalle Elementary School, Kelly Miller Middle School, and H.D. Woodson High School. According to the DC Public Education Master Facilities Plan of 2023, Nalle, Kelly Miller, and H.D. Woodson have estimated SY27-28 utilization rates of 58%, 35%, and 74%, respectively.¹ Thus, the schools should be able to accommodate these residents in that respect.

- ***Subtitle U § 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.*

The Applicant looks forward to working with the Office of Planning to ensure that the Project's design and site plan appropriately fit within the context of the surrounding neighborhood and align with applicable planning goals.

- ***Subtitle U § 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.*

As shown on the plans submitted herewith, the Applicant has provided all plans and information required by this provision.

The Project also satisfies the general special exception criteria set forth in Subtitle X § 901.2, which require the Board to find that the requested special exception is in harmony with the purpose and intent of the Zoning Regulations and that the proposal will not tend to adversely affect neighboring properties. The Project is consistent with the purposes of the Residential Apartment zones, and specifically the RA-1 zone, which is intended to provide areas predominantly developed with low- to moderate-density development, including low-rise apartment buildings. The Project has been carefully designed to integrate with the surrounding multifamily buildings, maintaining the established residential character of the area in both scale and use, and represents a moderate height and density within the limits permitted under the RA-1 zone. Additionally, the surrounding services and infrastructure, including schools, transportation options, and public facilities, are capable of accommodating the new residents anticipated at this location. Furthermore, development of the new residential building will not result in adverse impacts on parking availability for current residents of the existing multifamily buildings, as sufficient parking remains to serve those uses. Overall, the Project will contribute to the stability

¹ Available at: <https://dme.dc.gov/mfp2023>.

and residential character of the neighborhood without introducing any substantial negative impacts.

V. Variance Relief

As discussed in this Section V, the Applicant is requesting variance relief from the lot frontage requirement set forth in Subtitle C § 303.4, which provides that each new lot created to be used and occupied by an apartment house must have a street frontage measured along the street line of no less than thirty feet (30 ft.).

A. Burden of Proof

Under D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant a variance from “the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02” when the following conditions are met:

1. the property is affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation;
2. the owner would encounter peculiar and exceptional practical difficulties or 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. D.C. Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. D.C. Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also *Capitol Hill Restoration Society, Inc. v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The Zoning Regulations distinguish between area variances and use variances. In this case, the Applicant’s request is properly evaluated as an area variance because it seeks relief from an area requirement applicable to the zone district in which the Property is located (11-X DCMR § 1001.2). The subdivision provisions, including the lot frontage requirements set forth in Subtitle C § 303, “are intended to ensure that the dimensions and shapes of lots created ***are consistent with the purpose of a zone.***” See Subtitle C § 300.2 (emphasis added). Thus, the lot frontage requirements directly affect how properties may be configured and subdivided in the RA-1 zone, making the requested relief properly analyzed as an area variance.

Thus, the Applicant 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 Subtitle C § 303.4 would result in peculiar and exceptional practical difficulties. As discussed below, and as will be further explained at the public hearing, the subject application meets the three-prong variance test.

B. Justification

i. Extraordinary or Exceptional Condition or Situation

The Property is unique due to a confluence of factors that create an exceptional situation. See *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). Moreover, the exceptional situation pertains not only to the land itself but also to the existing improvements that surround and affect the Property. This is consistent with the principle, long recognized in BZA jurisprudence, that an exceptional situation or condition can relate to the property as a whole, not merely the land. See *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974) (“It makes no practical difference whether the inability to use property in accordance with zoning regulations stems from topographical conditions of the land itself or from the existence of a structure on the land.”).

The Property is singularly affected by exceptional and unique conditions arising from its physical configuration, surrounding uses, and zoning requirements. These conditions are not self-imposed but result from the Property’s longstanding development pattern and the surrounding built environment. Specifically, the Property comprises a portion of Lots 1 and 2 in Square 5344, which has an irregular, interlocking configuration that confines the Property to an interior location within the square. Although both Lots 1 and 2 front St. Louis Street, SE, their combined frontage, as currently configured, spans the entire length of St. Louis Street, SE up to its intersection with F Street, SE (approximately 275 linear feet). In addition, Lot 2 extends along the full length of the abutting portion of F Street, SE, running east to west between Benning Road, SE and St. Louis Street, SE. As a result, the Property is effectively trapped between Lots 1 and 2 and lacks independent street frontage. A subdivision plat illustrating this configuration is attached hereto as **Exhibit A**.

In addition to the current subdivision of Lots 1 and 2 in Square 5344 and the Property’s position deep within the square, the surrounding built environment further limits the Applicant’s ability to obtain street frontage as required by the Zoning Regulations. To the north, the Property is bounded by the site of H.D. Woodson High School. To the west, the Property abuts residential buildings on separately owned lots. To the south, the Property is constrained by a multifamily building (on Lot 2) that spans the entire length of what would otherwise be available frontage along Benning Road, SE or F Street, SE. As a result, the Property cannot obtain frontage from the north, the west, or the south. The Property can feasibly obtain frontage only from St. Louis Street, SE—and only following a subdivision that reconfigures the existing record Lots 1 and 2 in a manner that accommodates improved access and lot layout.

Under Subtitle C § 302.2, any new primary building in the R, RF, and RA zones must be constructed on a separate lot of record. To facilitate new residential development, it is therefore necessary to subdivide the Property, along with Lots 1 and 2, to create new record lots. The Applicant is not pursuing a theoretical lot subdivision, and the Project does not involve a campus plan or a Planned Unit Development (PUD), which are among the few exceptions to the separate lot-of-record requirement under Subtitle C § 302.2. As a result, the Property’s unique configuration, including its location deep within the square, lack of adjacency to any street

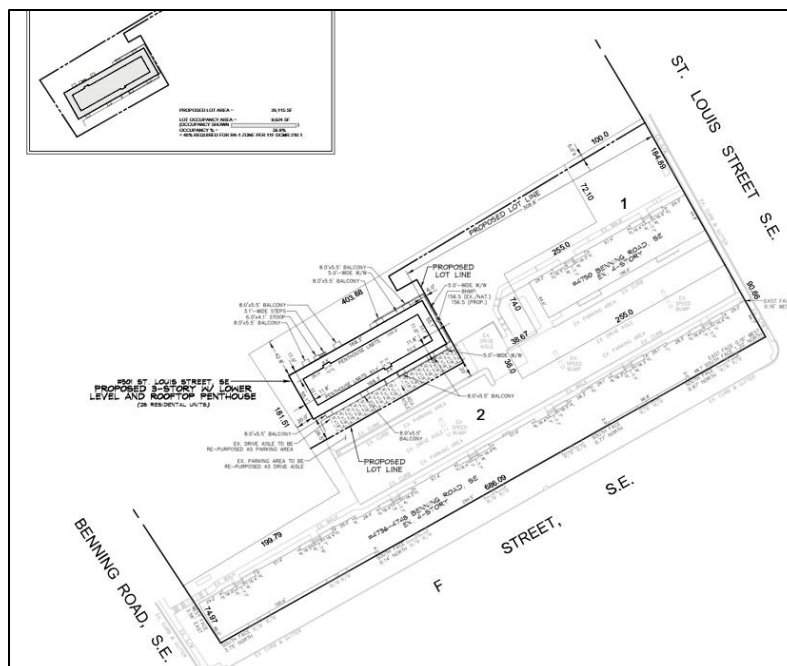
Hampton East Owner LLC | Portion of Lots 1 and 2 in Square 5344
Preliminary Statement of Compliance

frontage, and adjacency to the high school site, along with the mandatory subdivision requirement, creates an exceptional condition that gives rise to the practical difficulty described below.

ii. Peculiar and Exceptional Practical Difficulty

There is a clear nexus between the Property's unique conditions and the practical difficulties that would result from strict application of the zoning regulations, specifically the lot frontage requirement under Subtitle C § 303.4. Under Subtitle C § 303.1, all new record lots must have at least one lot line abutting a public street or a public access easement approved by DDOT. For this reason, the Applicant is proposing a subdivision that secures street frontage from St. Louis Street, SE, which, for the reasons explained above, is the only available street frontage for the Property. **However, due to the presence of the existing multifamily building on Lot 1 in Square 5344, the Property can secure only five feet of frontage along St. Louis Street, SE.** Strict application of the required 30 feet of frontage under Subtitle C § 303.4 is therefore not merely impractical but physically impossible in this context. This unique physical constraint leaves no reasonable alternative means to comply with the frontage requirement without demolition of existing improvements, acquisition of adjoining property not owned by the Applicant, or other measures that are infeasible due to practical, financial, or planning considerations.

As a result, the Property cannot be subdivided into a conforming record lot, which in turn prohibits the construction of a new primary residential building. This inability to subdivide the Property prevents the Applicant from making reasonable and productive use of its land consistent with the RA zoning district, thereby creating a practical difficulty unique to this site. A variance from the strict application of the 30-foot frontage requirement is therefore necessary to allow the Property to be used for its intended residential purpose and to achieve the policy goals underlying the Zoning Regulations. An excerpt from the surveyor's plat submitted herewith, showing how the proposed Project would be constructed on the Property in light of the foregoing limitations and proposed lot configuration, is shown below:



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

Granting the requested variance would allow the proposed Project and lot configuration (shown above) without resulting in substantial detriment to the public good or substantial impairment to the intent, purpose, or integrity of the Zoning Regulations or Zoning Map. The Project will deliver 28 new residential units—including a mix of two-, three-, and four-bedroom units suitable for families—in a transit-accessible location. It will also provide four Inclusionary Zoning (IZ) units, contributing to affordable housing opportunities in the neighborhood. Importantly, the Project will not displace any existing residents or negatively affect vehicular access or parking for surrounding properties. Accordingly, the requested relief aligns with the District’s goals of expanding housing supply, increasing housing diversity, and improving accessibility for residents of all income levels.

The variance is also intended to satisfy Subtitle C § 303.1, which requires new record lots to have at least one street lot line on a public street or approved public access easement. Due to the current lot configuration and the surrounding built environment, the Property cannot obtain frontage from the north, west, or south. However, the requested variance would allow the new record lot to obtain some frontage along St. Louis Street, SE, although less than the required 30 feet, in a manner consistent with the intent of ensuring meaningful public street access. The relief therefore advances the purpose and preserves the integrity of the frontage requirement.

Moreover, the variance supports the purposes of the RA zones, as discussed above and as set forth in Subtitle F § 101.1 *et seq.*, which are intended to promote flexibility by allowing a variety of residential development types and to foster stable, walkable residential neighborhoods. The requested relief would not alter the character of the existing residential community or result in any adverse visual impacts on St. Louis Street, SE or any of the other surrounding streets. This is particularly true given that the Project will be constructed on a portion of the Property located within the interior of the square, with no direct frontage on any public street and minimal visibility from the surrounding rights-of-way. The variance also advances the goals of the RA-1 zone, which is intended for areas developed with low- to moderate-density housing, including low-rise apartment buildings. In light of these zoning objectives, the requested relief is appropriate and would not result in any substantial impairment to the purpose or integrity of the Zoning Plan.

VI. Community Outreach and Engagement

The Property is located within the boundaries of Advisory Neighborhood Commission (ANC) 7E and falls under the jurisdiction of Single-Member District 7E-04. In accordance with Subtitle Y § 300.8(l), the Applicant has apprised the affected ANC of this application. The Applicant received notice that “ANC 7E is on Summer Recess for the months of July and August” and, accordingly, anticipates presenting the application to the ANC in September.

The Applicant intends to work closely with the ANC to address any issues or concerns and will supplement the record regarding outreach efforts at least 21 days before the public hearing.

EXHIBIT A

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We, the undersigned owners, hereby subdivide five tracts of land "Taxed as Parcels 195/36, 195/45, 195/47, 195/49 and 195/51" into two lots and part of a new Square 5344 as shown hereon and request that this subdivision be approved and recorded in the Office of the Surveyor of the District of Columbia

DISTRICT OF COLUMBIA, to wit:

Myron P. Erkiletian and Barry M. Rosenberg, being first duly sworn, depose and say that they are the owners in fee simple of the above mentioned property, that no other person or persons than the undersigned owners has any interest or claim therein, that they are in peaceful occupation thereof; that there are no suits or actions pending affecting the title, and that there is 3 trusts on said property.

Witness our hands and seals this 14 day of November 1963.

WITNESSES: OWNERS: WE ASSENT; TRUSTEES:

Mary Louise Golditch Myron P. Erkiletian Michael J. Green
 Mary Louise Golditch Myron P. Erkiletian Michael J. Green
 Mrs. A. J. Mendelsohn Barry M. Rosenberg Thomas J. Johnson
 Alberta Jones Barry M. Rosenberg Thomas J. Johnson
 Charles M. Schneider, Jr. William S. Harpe

Subscribed and sworn to before me this 14 day of November 1963.

John B. McChing
 Notary Public

My commission expires September 30, 1964.

FINANCE OFFICE, D.C.
 PROPERTY TAX DIVISION

11 / 15, 1963.

Ownership correct according to records of this office 11 / 15 / 63 ALR

General taxes paid to December 31, 1963 ALR

No unpaid arrears 11/15/63 ALR

No unpaid special assessments 11/15/63 ind.

John C. Chasam
 Chief, Property Tax Division

Approved for zoning:
 Zone "R-5-A" (B.Z.A. 7460) J. J. Foley.

Shannon H. Druehl
 Acting Zoning Administrator 11/18-63

Office of the Surveyor of the District of Columbia
 Washington, D.C. November 18th, 1963.
 I certify that the subdivision shown hereon is correct
 and is hereby approved for record in this office.

J. J. Heol
 Surveyor, D.C.



SURVEYOR'S OFFICE, D.C.

Made for: M.B. Associates
 Drawn by: R.H.M. (S.O. 74076)
 Record & computations by:
 Recorded at 11:00 A.M. NOVEMBER 18, 1963
 Recorded in Book 144 page 72
 Scale: 1 inch = 60 feet S.O. 63-162

SUBDIVISION
 SQUARE 5344

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