

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

Application of 2222 Q Street Owner, LLC
ANC 2D02

STATEMENT OF THE APPLICANT

This is the application of 2222 Q Street Owner, LLC (“**Applicant**”) for use variance relief to allow the renovation of the existing 20-unit multifamily residential building (“**Building**”) and conversion of cellar space in the Building to provide four (4) additional residential units (the “**Project**”) at the property located at 2222 Q Street NW (Square 2510, Lot 38) (“**Property**”) in the R-3 Zone District.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) approve a use variance from the R Zone use requirements (Subtitle U §§ 201.1 and 202.1) and the restriction on expansion of a nonconforming use (Subtitle C § 204.1).

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X § 1000.1 and Subtitle Y § 100.3 of the Zoning Regulations (Title 11 DCMR).

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the Dupont Circle / Sheridan Circle neighborhood in the Northwest quadrant of the District in Ward 2. The Property is an irregularly shaped lot containing approximately 6,636 square feet of land area according to District tax records. As shown on Exhibit A, the Property is located in the R-3 Zone District.

The Property is located mid-block on the south side of Q Street NW, abutting a public alley to the east and south of the Property. Square 2510 is bounded by Q Street NW to the north, Florida Avenue NW to the east, and 23rd Street NW to the southwest. Sheridan Circle is located one block

north of the Property, and the Rock Creek and Potomac Parkway runs immediately west of the Square.

The Property is located within the Sheridan-Kalorama Historic District, and the Building is considered a contributing structure in the Historic District. The Property is also subject to review by the U.S. Commission of Fine Arts (“CFA”) under the Shipstead-Luce Act due to its proximity to the Rock Creek and Potomac Parkway.

The surrounding area is characterized by property zoned R-3 encompassing Square 2510 and areas generally north and west of the Square, with properties further north and west also zoned R-1B; property located east of the Square, beginning at 22nd Street NW and Florida Avenue NW, zoned various RA and MU Zone designations.

The immediate area surrounding the Property consists primarily of a mix of chanceries and other foreign government-owned buildings located along and around Massachusetts Avenue NW, various private club and museum uses, a few single family row homes, and large multifamily buildings, as well as retail, service, and eating and drinking uses focused along P Street NW, southeast of the Property. The Church of the Pilgrims is located immediately east of the Property in Square 2510, and the few properties immediately to the west and east of the Property are large single-family row homes. The north side of the Square is predominated by properties owned by various foreign states, including the governments of Romania, Ireland, Greece, the Bahamas, Sudan, Togo, Turkey, and Luxembourg. Further east across 22nd Street NW is the State House Apartments, a large multifamily apartment building, and southeast along P Street NW are several other multifamily buildings and hotels.

IV. DESCRIPTION OF THE BUILDING AND PROJECT

The Property is currently improved with the Building, a five-story multifamily residential building that was constructed in 1922, according to District historic records, and therefore predates

adoption of the 1958 Zoning Regulations and is considered a legally nonconforming apartment house. As noted above, the Building is considered a contributing structure in the Sheridan-Kalorama Historic District, having been designed by Beaux-Arts architect B. Stanley Simmons, who also designed prominent buildings around the city such as the nearby Fairfax Hotel at 2100 Massachusetts Avenue, NW (now operated as the Inspir Embassy Row senior living community), the National Metropolitan Bank Building at 655 15th Street NW adjacent to the White House, The Wyoming apartments at 2022 Columbia Road NW, and the Barr Building on Farragut Square at 910 17th Street NW, among numerous other buildings across the District.

While retaining its stately presence on Q Street, the Building in its current state is in severe disrepair with decades of deferred maintenance and requires extensive work to be brought up to modern building standards and current life/safety requirements. Therefore, as shown in the architectural plans attached as Exhibit B (“**Plans**”), the Applicant proposes to renovate the Building and undertake the necessary comprehensive repairs, restoration, and system upgrades to steward the Building into its next chapter. As part of the Project, the Applicant proposes to build out unfinished cellar space that is currently used for storage and convert the space to create four (4) new residential units. The additional units will consist of three (3) two-bedroom units and one (1) three-bedroom unit. In addition, the Applicant proposes to voluntarily dedicate one of the units in the Building as an affordable housing unit under the Inclusionary Zoning (“**IZ**”) program.

Creation of the proposed four (4) new cellar units and the resulting additional revenue stream is critical to the Applicant’s ability to undertake the extensive repairs and restoration the Applicant must implement throughout the Building, which includes: significant upgrades to electrical and plumbing systems; removal of the existing outdated gas burning furnace and an above-ground storage tank; removal of hazardous lead-based paint and asbestos in the Building;

modernization of the dated elevator system; preservation and enhancement of the Building exterior, including replacing vinyl windows with wood windows and cleaning and repairing the historic limestone facade; replacement of the Building's roof; installation of energy-efficient appliances and systems throughout the Building; incorporation of trash and recycling systems that the Building currently lacks; and other wide-ranging improvements to fully revitalize the Building to be safe, Code-compliant, and energy efficient. While the Building currently suffers in a dilapidated state, after completion of the Project, the Building will be fully up to modern living and development standards so that the structure and residential use can continue to thrive and contribute to the vibrancy of the surrounding diverse neighborhood and community.

Aside from the use variance requested by this Application, the Project will fully comply with applicable requirements of the Zoning Regulations for the R-3 Zone, and no additional zoning relief is necessary to enable the Building's preservation and revitalization.

V. THE APPLICATION SATISFIES THE CRITERIA FOR A USE VARIANCE

While the existing multifamily use of the Building with 20 units is considered a legally nonconforming use as it predates adoption of the Zoning Regulations in 1958, a use variance is required in order to create the proposed four (4) new units in the cellar level, which will increase the overall number of units and thus is considered an increase in the intensity of the use under Subtitle C § 204.1.

The burden of proof for a use variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in an undue hardship to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose, or integrity of the zone plan. *See e.g.*

Monaco v. District of Columbia Bd. of Zoning Adjustment, 407 A.2d 1091, 1096 (D.C. 1979). As set forth below, this Application meets the three-part test for the requested variance from the use requirements in the R-3 zone (Subtitle U §§ 201.1 and 202.1) and the prohibition on increasing the intensity of a nonconforming use (Subtitle C § 204.1).

A. The Property is Affected by an Exceptional Situation or Condition.

The D.C. Court of Appeals held in *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 293-94 (D.C. 1974), that the exceptional situation or condition standard goes to the “property”, not just the “land”; and that “property generally includes the permanent structures existing on the land.” Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See Monaco*, 407 A.2d at 1097. Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a “confluence of factors.” *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). One of the factors the Board may consider in evaluating whether a property is unique is the property’s past zoning history. *Monaco*, 407 A.2d at 1097–98.

Here, several factors converge to create an exceptional condition affecting the Property. First, the Building is the only R-zoned large multifamily building in the area (within the Square and in several surrounding Squares) and was constructed prior to adoption of the 1958 Zoning Regulations at a time when apartment houses were permitted in this area. While there are other multifamily buildings located nearby, those sites have all retained a zoning designation (either RA or MU) that permits multifamily residential use as a matter of right. By contrast, the Property is unique in being improved with an established multifamily use that, since initial construction, has

been remapped so as to render such existing use nonconforming and thereby subjected to the strict limitations applicable to nonconforming uses under the Zoning Regulations.

Second, the Building is over a century old and is in a significant state of disrepair. The repairs, restoration, and overall renovations that are needed to bring the Building up to modern standards — including Code compliance and energy efficiency — are exhaustive, as outlined in detail above and depicted on Pages 4 and 5 of the Plans (Exhibit B). Not only are substantial aesthetic restorations (such as cleaning and repairing the historic limestone façade) and new interior finishes (such as energy efficient appliances) all necessary for the Project. The Applicant must also complete extensive building-wide upgrades to electrical, plumbing, and elevator systems, in addition to replacing the Building's roof and implementing waterproofing. Moreover, hazardous elements, including lead-based paint and asbestos and an above-ground storage tank, as well as an outdated gas burning furnace, must all be removed from the Building to provide safe and modern living conditions. In short, completing the necessary work to restore the Building so that it can offer modern and safe residences and can thrive into the next century of its useful life will be an enormous undertaking that will require both dedicated effort and, notably, a significant economic investment on the Applicant's part to realize this vision.

The last factor contributing to the Property's uniqueness is the Building's status as a historic resource, being a contributing structure in the Sheridan-Kalorama Historic District, as well as being subject to CFA review under the Shipstead-Luce Act. While the above-referenced repair and renovation work would be substantial for any building, the Property's historic status adds an additional layer of complication — and expense — that is required for the Applicant to ensure the Project meets historic preservation standards. For example, the Applicant must install energy efficient wood or aluminum windows as replacements to match the existing wood window

configuration, rather than less expensive vinyl windows, as well as historically appropriate brickmould around all replacement windows. In addition, the Applicant must conduct masonry repointing and restoration throughout the Building's historic facades to repair existing deteriorating conditions.

All of the above-discussed factors combine in this case to create an unusual and exceptional condition affecting the Property.

B. Strict Application of the Zoning Regulations Would Result in Undue Hardship to the Applicant.

To satisfy the second element for a use variance, the Applicant must demonstrate “undue hardship.” The D.C. Court of Appeals has established that the applicant must demonstrate that “reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). The Court of Appeals has held that the “applicant must prove that ‘the property cannot be put to any conforming use with a fair and reasonable return arising out of the ownership thereof.’” *Downtown Cluster of Congregations v. District of Columbia Bd. of Zoning Adjustment*, 675 A.2d 484, 492 (D.C. 1996) (quoting *Palmer*, 287 A.2d at 542). Further, it is appropriate for the BZA to focus its analysis of the undue hardship on a portion of a property, not necessarily the entire property. *See Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 756 (D.C. 2011). Importantly, it is also proper for the Board to consider economic impacts to an applicant in assessing whether the undue hardship prong has been met. *See id.* (quoting *Gilmartin*, 579 A.2d at 1170 for the proposition that “the BZA may consider economic use of property . . . as a factor in deciding the question of what constitutes an unnecessary burden” (quotations omitted)).

Here, the Applicant is faced with an undue hardship due to the significant repairs, restoration, and renovation work that must be undertaken to bring the Building up to modern standards and the corresponding substantial financial investment necessary to execute this extensive scope of work. The serious state of disrepair of the century-old Building compels these wide-ranging improvements to the structure's interior and exterior, as well as critical building systems that are severely outdated. However, the Building is uniquely beset by the strict limitations of the R-3 zoning that was applied to the Property after the Building was constructed and rendered the established multifamily use nonconforming. Other historic multifamily buildings in this part of the District continue to be mapped within RA and MU zone designations that permit multifamily residential use and, as a result, those other buildings retain the ability under zoning to add new units or reconfigure existing space to increase the number of units, which enables existing and new owners to create a "value-add" in the form of a new revenue source to justify and support the renovations, maintenance and systems upgrades that historic buildings rely on to remain well-preserved and thriving into the future. Here, the Applicant is forced to compete with those other buildings given their close proximity but without the same opportunity to "value-add."

By contrast, the Building's relegation to the heavily restricted status of a nonconforming use due to being rezoned R-3 means that, absent variance relief, prospective new stewards of the Property, such as the Applicant, are denied the supplemental revenue stream generated by additional units that would enable preservation and revitalization of the Building. Accordingly, while many nearby historic apartment buildings continue to thrive and attract investment from one market cycle to the next, the Building today suffers from disrepair, obsolete building systems, and outdated finishes that prevent the Building from providing the highest-quality housing and further limit its ability to compete in the market.

Importantly, as relates to the undue hardship facing the Applicant as a result of the issues discussed above, there is no other use besides additional residential units to which the unfinished below-grade space at issue could be devoted that would create a comparable reasonable return, as contemplated by the Court of Appeals in the *Downtown Cluster of Congregations* case, 675 A.d2d at 492, to support the comprehensive revitalization of the Building the Applicant now seeks to achieve. Notably, while the Applicant studied the possibility of converting the cellar space instead to building amenity space, the space is not suitable to serve as amenity space due to the clear ceiling height of the space, which is limited to 7.5 feet, as shown in the building section at Page 14 of the Plans (Exhibit B). The minimum clear height requirement under Code is 7.5 feet, but additional space is necessary for any amenity space to accommodate the existing beam location and mechanical/plumbing duct work, as well as larger plenum space for additional mechanical, electrical, and lighting facilities that is needed for workable larger amenity space. In addition, while the Project, as designed, includes new trash and recycling facilities and new bicycle parking in the cellar level, this still leaves significant underutilized space that can and should be put to more productive use. Further, other potential functions for the space, such as maintaining it as storage, would not provide a meaningful return on investment as does creating new units.

Accordingly, there is no other reasonable, conforming use to which the cellar space can be devoted, resulting in an economic hardship to the Applicant in this particular case because of the Building's unique status as a historic nonconforming multifamily use in this area of the city and the structure's current severe state of disrepair. For all these reasons, the Application meets the undue hardship requirement of the variance test.

C. Relief can be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

Finally, the Applicant must demonstrate that granting the variance will do no harm to the public good or to the zone plan. *Monaco*, 407 A.2d at 1096. Here, the requested variance can be granted without causing any adverse impact on the neighboring properties or to the Zone Plan.

The requested relief will allow the creation of four (4) new units of housing, including three (3) two-bedroom units and one (1) three-bedroom units, in an area of the city where the demand for new housing is especially high and where few larger family-sized apartments are available. In addition, the Applicant proposes to voluntarily dedicate one of the units as an IZ unit, and therefore the Project will support the District’s objectives to preserve the existing housing stock and create new and affordable, family-size housing. In addition — and importantly — granting the requested relief to allow the additional units will support the extensive restoration and upgrades to the Building that will make the structure more environmentally friendly and ensure that it contributes to the overall character and vibrancy of this centrally-located neighborhood. In all these ways, the Project furthers the stated goals of the R zones to “[r]ecognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability . . . preservation of housing stock, [and] improvements to the overall environment. . . .” 11-D DCMR § 101.2(b). Indeed, by supporting the revitalization of this century-old Building to carry it into its next chapter, granting the requested relief will directly serve the public good. Accordingly, the third prong of the variance test is met.

Also, granting the relief to allow the addition of these four units will not otherwise substantially impact the public good. The additional four units will not change the size, massing, or appearance of the Building, so it will not result in any adverse impact to light, air, or privacy to neighboring properties. Further, the Property is located in a central retail-, service- and transit-

rich location less than ½ mile from the Dupont Circle Metrorail station. For this reason, despite the Property not offering any parking, there is almost no demand for parking from residents, and it is expected that the same will continue with the additional four units. Thus, there will be little to no impact on parking availability in the neighborhood.

For all of the reasons discussed above, the Application meets the standards for a use variance.

VI. CONCLUSION

For all of the above reasons, the Applicant respectfully requests the Board's approval of the requested variance relief in this case.

Respectfully submitted,

_____/s/
Cary Kadlecek

_____/s/
Lawrence Ferris