

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

**APPLICATION OF  
1612 SEVENTH STREET NW LP**

**1612–1616 7TH STREET, NW  
ANC 6E**

**STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 1612 Seventh Street NW LP (the “Applicant”), the owner of the property located at 1612–1616 7th Street NW, (Square 420, Lot 38) (the “Property”) in support of its application for variance relief pursuant to 11 DCMR § 3103.2, from the requirements regarding lot occupancy (§ 772.1) and rear yard (§ 774.1), and a special exception pursuant to §§ 3104.1 and 2120.6 for parking requirements (§ 2101.1), to allow the rehabilitation of and addition to a contributing structure in the Shaw Historic District to provide a mixed-use building with retail on the first two floors and 8 residential units (the “Project”).

**II. JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance and special exception relief requested herein pursuant to §§ 3103.4 and 3104.1, respectively, of the Zoning Regulations.

**III. BACKGROUND**

**A. The Property**

The Property has approximately 5,719 square feet of land area. Square 420 is bounded by 7th Street NW to the east, Q Street NW to the south, 6th Street NW to the west, and Rhode Island Avenue NW to the north. *See* Baist Map at **Tab A**. The Property is located within the Shaw Historic District and the existing buildings on the Property are considered contributing buildings.

The Property is an interior lot comprising three addresses at 1612–1616 7th Street. It is presently improved with three adjoining buildings used for offices. *See* Certificate of Occupancy at **Tab B**. The existing structures have approximately 10,654 square feet of floor area across two stories and a cellar. The Applicant has worked with staff at the District’s Historic Preservation Office (“HPO”) to determine the degree of preservation necessary, concluding that 6,360 square feet of the existing structures are considered historic. This portion of the structure, including the façade, will be retained pursuant to discussions with HPO staff. The remainder of the structure, which is non-historic, will be demolished as a result of the Project.

**B. The Surrounding Area**

Square 420 is zoned C-2-A and is located in the Shaw Historic District. *See* Zoning Map at **Tab C**. The Property is directly across the street from Asbury Dwellings, a large, four-story affordable senior housing community located in the historic Shaw Junior High School Building. On the west side of Square 420, backing up to the Property, are residential rowhouses. Aside from Asbury Dwellings, the 1600 block of 7th Street is a commercial strip primarily devoted to retail uses. Approximately two doors north of the Property is a 7-Eleven convenience store sitting along the corner of a busy corridor of Rhode Island Avenue, one of the city’s major arterials.

**C. Traffic Conditions and Mass Transit**

The Property is well serviced by a number of public transportation facilities and services including Metrorail, Metrobus, Capital Bikeshare, and Zipcar. The Property is approximately 0.2 miles from the Shaw-Howard Metro Station and 0.4 miles from the Mt. Vernon Square/7th Street Convention Center Metro Station, both of which have access to the Green and Yellow lines. Additionally, Metrobus routes along Rhode Island Avenue (G8), Florida Avenue (90, 92, 93, 96, X3), 7th Street NW (70, 79), and P Street NW (G2) all serve the Property. Also within close

proximity are a number of bikesharing and carsharing programs. There is a Capital Bikeshare station at the corner of 7th Street NW and R Street NW, and two Zipcar vehicles approximately one block away. On walkscore.com, the Property received a walk score of 93 out of 100, deemed a “walker’s paradise,” and received a bike score of 95, a “biker’s paradise.”

#### **D. The Project**

The Applicant proposes to convert the existing office buildings at the Property into a mixed-use building with residential and retail space. As shown on the architectural plans, *see **Tab D***, the Project will renovate the existing buildings, while retaining the historic structures, and will add a new story and a penthouse. Per comments received from HPO staff, the Applicant will preserve and enhance 6,360 square feet of the existing structures, the portion that is considered historic, which includes the façade and the original retail bay walls. Further, the third story will be set back 22 feet, four inches from the façade, also in response to feedback from HPO. The proposed penthouse will meet applicable setback requirements. The Applicant has also limited the density of the Project by foregoing the bonus density that would be available under Inclusionary Zoning.

The Project will have 10,221 square feet of retail space on the cellar and first two floors, as well as 8 residential units spread across the second and third floors and penthouse. The two rear units on the third floor will be two-level duplexes, each with internal stairs leading up to additional space on the penthouse level.

Aside from the relief requested, the Project complies with the Zoning Regulations. The proposed height for the Project is 37 feet, 2 inches, well within the 50 feet permitted in the C-2-A District. The proposed penthouse is 11 feet in height, within the 12 feet permitted under § 770.6, and the penthouse complies with the 1:1 setback required by § 411.18. There are no minimum

court or side yard requirements because no court or side yard will be provided. The C-2-A District permits a maximum floor-to-area ratio (“FAR”) of 2.5. 11 DCMR § 771.2. The Project has an FAR of 2.47.<sup>1</sup> Lastly, although loading facilities would otherwise be required for the Project, none are required in this case because the existing buildings are contributing structures in the Shaw Historic District. *Id.* § 2200.5.

#### **IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW**

Variance relief is required for the requirements regarding lot occupancy (§ 772.1) and rear yard (§ 774.1). Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance 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 condition;
- (2) The owner will encounter practical difficulties if the Zoning Regulations are strictly applied; and
- (3) The variance will not cause substantial detriment to the public good or 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 Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)).

Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v.*

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<sup>1</sup> The penthouse, which has a gross floor area of 1,426 square feet, does not count towards total FAR calculations because it equals less than 0.4 FAR. *See* 11 DCMR § 411.13(c).

*District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540–41 (D.C. 1972) (“[A]rea variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

**V. APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF**

**A. The Property Is Affected by an Exceptional Situation or Condition**

The phrase “exceptional situation or condition” 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. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. The Property is characterized by an exceptional situation and condition as a result of (1) the Property’s existing nonconformities and (2) the historic character of the existing structures.

*1. Existing Nonconformities*

The Property is currently nonconforming with respect to rear yard and parking requirements. The Property is required to have a rear yard of at least 15 feet, but the two northernmost structures on the Property extend all the way to the rear lot line, providing no rear yard. Additionally, the Property is currently nonconforming with respect to parking. The current office use is required to provide 14 spaces,<sup>2</sup> whereas the Property currently provides only two parking spaces.

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<sup>2</sup> The parking requirement for an office use in the C-2-A District is one space for every 600 square feet above 2,000 square feet. 11 DCMR § 2101.1. The calculation is: (10,654 sq. ft. – 2,000 sq. ft.) ÷ 600 ≈ 14 (after rounding down).

2. *Historic Character of the Existing Structures and Location along a Commercial Strip*

The existing buildings on the Property are contributing structures in the Shaw Historic District. In response to comments from HPO staff, the Applicant will be preserving 6,360 square feet of the existing structures' gross floor area, including the façade and original retail bays, and the proposed additional stories will be set back 22 feet, four inches from the façade. The historic façade and bays are designed for retail uses, and the Property is situated along a commercial strip of 7th Street NW. Approximately two doors north of the Property is a 7-Eleven store that sits along a busy corridor of Rhode Island Avenue.

**B. Strict Application of Zoning Regulations Would Result in Practical Difficulty**

Strict application of the Zoning Regulations with respect to lot occupancy (§ 772.1) and rear yard (§ 774.1) would result in a practical difficulty to the Applicant.

1. *Lot Occupancy (§ 772.1)*

While there is no lot occupancy restriction for retail uses in the C-2-A District, a residential use may not exceed 60% lot occupancy. 11 DCMR § 772.1. The second and third floors of the Project, which both include residential units, will have a lot occupancy of 89% and 64%, respectively, thus requiring relief.

The Property's historic nature and location along a commercial strip of 7th Street NW make compliance with lot occupancy requirements practically difficult in this case. Both of these characteristics make it highly preferable to provide retail on the ground floor. The historic façade and bays are designed for that use, and a retail use is in keeping with the other uses on this side 7th Street. If residential units were not included on the second and third floor, there would be no lot occupancy limit. However, additional retail on the upper floors is less desirable and would

result in a higher deviation from parking requirements, with an additional space required for every additional 300 square feet of retail; comparatively, a residential use would only require an additional space for every two residential units. 11 DCMR § 2101.1. In other words, replacing the residential units with more retail space would simply substitute one area of relief with another. Likewise, reconfiguring the Project to provide residential units on the first floor with retail only on the upper floors would be unworkable because the original historic retail bays do not work for residential units and, further, ground-floor retail is strongly preferred.

Accordingly, the Applicant is faced with a practical difficulty in meeting this requirement.

2. *Rear Yard (§ 774.1)*

The C-2-A District has a minimum rear yard requirement of 15 feet. As stated above, the Property currently provides no rear yard, with the two northernmost structures extending all the way to the rear lot line. The Project will not provide any rear yard.

As with lot occupancy requirements, strict application of the rear yard requirement presents a practical difficulty because of the Property's historic character and the Applicant setting the third floor back over 22 feet from the façade in response to comments from HPO. If the Applicant were permitted to build beyond the envelope to which the third floor is limited by the front setback, it would potentially be feasible to provide the additional 10 feet of rear yard required under § 774.1. However, given the significant limitations to the floor area, carving an additional 10 feet from the rear of the building is unnecessarily burdensome. Further, preserving the original building's walls places limitations on the location of the core, stairs, and elevator. These limitations create a practical difficulty in designing an efficient layout with plausible configurations for the residential units while still providing an over-22-foot setback from the façade.

Given these constraints, complying with the rear yard requirement is practically difficult.

**C. No Substantial Detriment to the Public Good or Impairment the Zone Plan**

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief. The Project will rehabilitate and preserve the historic structures on the Property, including the façade, which will enhance the block and the neighborhood as a whole. Relief for lot occupancy would not be needed but for the Project providing residential units on the upper floors, which is preferable to adding more retail space on these floors. Further, the Property is currently nonconforming with respect to rear yard requirements, and the Project will merely maintain this nonconformity. The Project will harmonize with the surrounding area, providing retail on the first two floors in keeping with the other uses on the west side of this block of 7th Street.

For these reasons, the relief requested will not detriment the public good or zone plan.

**VI. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW**

Special exception relief is required for the parking requirements for historic structures (§ 2120.6). Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it will be in harmony with the general purpose and intent of the zone plan and will not tend to adversely affect the use of neighboring property, subject to the special conditions specified in each case. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. 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 Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia*



*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.*

## **VII. APPLICANT MEETS THE BURDEN OF PROOF FOR A SPECIAL EXCEPTION**

Pursuant to § 2120.3, an addition to a historic resource is exempt from the requirement to provide additional parking as a result of a change of use under § 2100.4 or an increase in intensity of use under § 2100.6, except that parking is required if (a) the gross floor area of the historic resource is being increased by 50% or more, and (b) the parking requirement attributable to that increase is at least four spaces. In this case, the Property meets these two thresholds and thus relief is necessary.

The Property currently has a gross floor area of 10,654 square feet, and the Project will raise this total to 21,359 square feet, an increase of more than 50%. Further, the parking requirement attributable to that increase is more than four spaces. The Project includes 8 residential units and 10,221 square feet of retail space. The residential parking requirement is one space for every two dwelling units, or four spaces. 11 DCMR § 2101.1. The retail requirement is one space for every 300 square feet above 3,000 square feet of gross floor and cellar area. *Id.* Here, the Project will have 10,221 square feet of retail area, requiring 24 spaces. Together, this comes to a total of 28 spaces. As stated above, the Property currently only provides two parking spaces where 14 are required, resulting in a parking credit of 12 spaces.<sup>3</sup> Factoring in this credit, the Project is required to provide 16 parking spaces. As proposed, the Project provides two parking spaces, and the Applicant requests relief for the remaining 14 spaces.<sup>4</sup> Accordingly, the parking

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<sup>3</sup> Parking credits derive from “the long-standing administrative interpretation of §§ 2100.1 and 2100.4,” which “grandfather” properties that predate the 1958 Zoning Regulations and did not meet the parking requirements when those regulations were adopted. *Appeal No. 16839 of ANC 4A* (2002).

<sup>4</sup> Note that the two spaces provided will be 8 feet by 16 feet, which is the minimum required for historic resources. 11 DCMR § 2120.5.

requirement attributable to the increase in gross floor area is more than four spaces, and thus relief for parking is necessary.

Pursuant to § 2120.6, the Board may grant a special exception from all or part of the parking requirements of § 2120 if the applicant demonstrates that, as a result of the nature or location of the historic resource, providing the required parking would result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. Additionally, § 2120.6 provides four factors to consider in determining whether to grant the requested relief.

**A. Providing the Required Parking Would Result in Architectural and Structural Difficulties as a Result of the Nature and Location of the Historic Resource**

Providing the required parking would result in an architectural and structural difficulty due to the age and location of the historic buildings on the Property and the size and dimensions of the Property. The Applicant cannot provide parking beneath the historic structures due to the difficulty of underpinning them, excavating below them, permanently supporting them, and constructing parking beneath them. The inability to provide parking beneath the existing buildings drastically reduces the space available for below-grade parking, eliminating 2,120 square feet — or approximately 37% — of the lot's total 5,719 square feet of land area. With limited remaining space available, no level of below grade parking can be provided. Even if below-grade parking were feasible, the narrowness of the lot would result in it being consumed by the double-loaded drive aisle and ramping that would be necessary in order to build more than one level of underground parking, thereby absorbing any practically useable parking area.

In addition, using the ground level for parking would be unworkable. Providing the required 16 parking spaces in this location would mean carving out 2,048 square feet to set aside for parking (based on the eight-by-sixteen-foot dimension required for historic resources under

§ 2120.5). This is obviously impracticable for the Property, which has only 5,719 square feet of land area.

**B. Additional Factors Demonstrate No Adverse Impact on the Use and Enjoyment of Neighboring Properties**

The Property's proximity to public transportation is exceptional. The Property is located in the multimodal Shaw neighborhood. As stated above, the Property is ideal for walkers and is well serviced by a number of public transportation facilities and services including Metrorail, Metrobus, Capital Bikeshare, and Zipcars. The Property is approximately 0.2 miles from the Shaw-Howard Metro Station and 0.4 miles from the Mt. Vernon Square/7th Street Convention Center Metro Station, and is close to nine Metrobus routes, as well as bikesharing and carsharing locations. Furthermore, the Property has a walkscore of 93, deemed a "walker's paradise," and a bikescore of 95, a "biker's paradise."

The availability of a variety of transportation options reduces the incentive to own and store a vehicle on the premises and minimizes spillover parking in the neighborhood. The Property and neighborhood will have sufficient parking when the redevelopment is completed. All residents and patrons of the retail establishments will be well accommodated by the combination of the several bus lines in the vicinity, the close proximity of two Metrorail stations, and the walkability of the neighborhood. The amount of traffic congestion existing and generated by the redevelopment of the historic resource will be limited. A large percentage of trips in this transit-oriented location are made by Metrorail, Metrobus, bicycle, or on foot. Car ownership and traffic congestion is particularly low in this area as a result of the broad array of transportation alternatives for residents, visitors, and customers.

Notably, the Project's parking requirement would be drastically lower under the Zoning Regulations Rewrite ("ZRR"), with only five spaces required and relief thus needed for only three

spaces.<sup>5</sup> While ZRR will not be in effect until this coming September, it does reflect the District's current assessment of the city's parking needs and demonstrates that there will be no adverse impact by granting the requested relief.

For all of these reasons, the Applicant has met the requirements for special exception relief for parking under § 2120.6. Further, the Applicant will provide additional evidence to support its request for the special exception in its Prehearing Statement.

### **VIII. CONCLUSION**

For all of the reasons stated above, the Project meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

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<sup>5</sup> Under ZRR, the Project's base requirement would be nine parking spaces for the retail use (1.33 for every 1,000 sq. ft. above 3,000 sq. ft.) and one space for the residential use (1 for every 3 dwelling units above 4). Subtitle C § 701.5. This total base requirement of ten spaces would be reduced by 50% due to the Property's location within 0.5 miles of a Metrorail station, *id.* § 702.1(a), resulting in an ultimate requirement of five spaces.