

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

Application of SIM Development, LLC

APPLICANT'S PRE-HEARING STATEMENT

June 29 2017

This Hearing Statement ("Statement") outlines the existing and proposed use of the property of application and the manner in which the application ("Application") complies with the specific tests and burden of proof for the variance sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR Subtitle X Chapter 10 § 1000.1, more specifically § 1001.2 for area variance to allow the increase in the aggregate number of existing dwelling units from nine (9) to twenty-five (25) through an addition of two additional floors plus a habitable penthouse to an existing, but vacant mixed-use retail/residential building not meeting the additional number of parking spaces required prescribed and set forth under Subtitle C, Chapter 7, § 701.5 for property located in the MU-4 zone district.

Applicant also includes relief from the provision of Subtitle C, Chapter 2, § 202.2 (a) and (b) to allow an enlargement or addition to an existing nonconforming structure for reasons of overabundance of caution.

The existing structure is classified nonconforming with respect to percentage of lot occupancy because the existing two-story building, a portion of which has

historically been used and occupied for residential purposes, currently occupies approximately ninety-one percent (91%) of the lot area of the subject property.

SUMMARY OF APPLICATION

The applicant seeks the above area variance pursuant to 11 DCMR Subtitle X Chapter 10 § 1000.1 as set forth under Subtitle C, Chapters 7, § 701.5 and 2, § 202.2 (a) and (b) to allow the enlargement of or addition to an existing nonconforming structure not meeting the minimum number of additional parking spaces required and which may be deemed to increase or extend a nonconforming aspect of structure, notwithstanding that the proposed third and fourth floor additions will occupy approximately sixty-three percent (63%) at the horizontal plane of those floors, less than the seventy-five percent permitted an Inclusionary Zoning (IZ) development as set forth under Subtitle G, Chapter 4, Table § 404.1

The subject property is approximately eight thousand seven hundred and eighty four square feet (8,784 ft²) in lot area and as aforementioned the existing two-story structure located on subject property occupies approximately ninety-one percent (91%) of the lot; therefore an existing nonconforming structure with respect to percentage of lot occupancy because of partial use of structure for residential purposes.

The applicant proposes to construct an addition of third and fourth floors, including penthouse habitable space as limited by the provision set forth under Subtitle C, Chapter 15, §1503.1 (c), to accommodate additional residential density. The building will reinstate its historical mixed-use retail service establishment and residential rental apartments.

The residential dwelling units will occupy a part of the existing cellar, and first floor, but the entirety of the second through the fourth floors. The remaining floor area in the cellar and the ground floor will be occupied for purposes of a retail/service establishment by tenant(s) yet unknown.

The proposed project complies with all other applicable provision of the Zoning Regulations, including maximum allowed floor area ration (FAR), height, Green Area Ratio (GAR) and will comply with the set aside requirements of the Inclusionary Zoning (IZ) provisions, as applicable.

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested special exception and area variance under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (2) (2001), as further set forth in 11 DCMR, Subtitle X, Chapters 9 and 10, §§ 900.2 and 1000.1 respectively.

PROPERTY LOCATION AND PROJECT DESCRIPTION

The property is located in the Anacostia neighborhood in the Southeast quadrant at 1916 15th Street SE. The subject property, a corner lot by virtue of location at the intersection of Good Hope Road and 15th Street SE, is currently improved with a two-story building which has historically been occupied as a mixed-use retail establishment and residential use but has been vacant and unoccupied for several years.

The subject property is legally described as being located within Square 5766, lot 0845

The applicant seeks to construct the described addition to make adaptive use of an existing building which is and has been otherwise vacant for several years.

The completed project will retain existing commercial gross floor area of approximately five thousand, four hundred and eight-four square feet (5,484 ft²), while all of the proposed addition of approximately eleven thousand, one hundred and thirty-two (11,132 ft²) of allowable base building floor area ratio (FAR), excluding penthouse habitable space, will be devoted to residential dwelling units or an apartment house by definition.

The project proposes twenty-five (25) dwelling units, twenty-four (24) of which are three bedroom units, while one (1) is a two (2) bedroom unit with a den. The applicant contends that the size of the dwelling units are dictated by market forces of the immediate neighborhood and will in the course of the final submission and hearing provide the Board with evidence to the effect.

Further, the project proposes penthouse habitable space of approximately two thousand, eight hundred and forty square feet (2,840 ft²) therefore FAR of 0.32, less than the maximum 0.4 (3,514 ft²) set forth under Subtitle C, Chapter 15, §1503.1 (c).

The base building density of proposed addition of eleven thousand, one hundred and thirty two square feet (11,132 ft²) and the existing density of fifteen thousand, one hundred and ninety-seven square feet (15,197 ft²) combined, results in a total of twenty six thousand, three hundred and twenty-nine square feet (11132 + 15,197 = 26,339 ft²) (26,329 ft²); therefore resulting in FAR of 2.99, less than the maximum 3.0 allowed and set forth under Subtitle G, Chapter 4 Table §402.1.

As aforementioned, the percentage of lot occupancy measured at the horizontal plane or level at which the addition is proposed will comply at approximately sixty three percent (63%) with the maximum seventy percent allowed an IZ development as set forth under Subtitle G. Chapter 4, Table G § 404.1

In light of the foregoing, the applicant contends that the project is constrained by pre-existing conditions outside of the control of the owner which necessitates the requested relief outlined in this Statement of Burden of Proof.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted twenty-one days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of the area variance sought, as outlined below.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

The improvement located on Subject Property was constructed and has been in existence prior to May 12, 1958 in its current building footprint condition, which occupies ninety-one percent of the lot area.

The subject property abuts 15th Street SE to its south and Good Hope Road to its west. A public alley abuts the subject property on its eastern lot line, while the adjacent property to the north improved by a building that has been in existence prior to May 12, 1958.

Applicant contends based on the foregoing that the opportunity to expand lot area that effectively brings the existing structure on subject property into conformity with the prescribed percentage of lot occupancy for the underlying MU-4 has been foreclosed prior to may 12, 1958 and continues to be foreclosed now.

The applicant contends that the foregoing situation, that is, the condition of the structure or improvement located on subject property constitutes the extraordinary or exceptional situation or condition of property for purposes of compliance with the first of the three burden of proof test for the granting of an area variance.

PECULIAR AND PRACTICAL DIFFCULTIES TO OWNER OF PROPERTY

The extraordinary or exceptional situation or condition of property described above results in and imposes peculiar and practical difficulties upon the owner because the applicant is consigned to seeking the reliefs sought in the instant application.

As aforementioned, although the proposed addition will comply with prescribed maximum FAR and not expand upon the existing nonconformity of percentage of lot occupancy, the fact of the history of residential use within one of the two existing floors

of the building which has from the construction of the building occupied ninety-one percent of the lot compels the relief sought before the Board in the instant application. The proposed new residential floors will in fact occupy approximately sixty-three percent (63%), twelve percent (12%) less than the seventy-five percent allowed an IZ development

Likewise the relief from providing the additional parking spaces required for the aggregate increase in number of residential dwelling units is compelled by the fact of the size of the existing structure on the subject property.

Hence the only option available to the owner of the property is to partially demolish the existing structure to the extent that will bring the subject property to conformity with the prescribed percentage of lot occupancy for its underlying MU-4 zone district and also enough to provide the additional five (5) parking spaces required for the aggregate increase in number of dwelling units.

The applicant contends that the foregoing option imposes upon the owner peculiar and practical difficulties and will in the course of the hearing provide additional information evidencing the prohibitive cost associated with this option and its impracticality.

SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE PLAN

The applicant seeks to make adaptive use of an existing mixed-use structure which has been vacant for several years, by constructing an addition of two floors and a habitable penthouse for the purpose of increasing the aggregate number of residential dwelling units. The proposed project also seeks to retain pre-existing commercial density to serve a suitable neighborhood facility or establishment.

The proposed project is wholly consistent with the General Provisions set forth under Subtitle G, Chapter 1, §§ 100.1, 100.2, 100.3 (a) through (g) and 100.4 for the underlying MU-4 zone district with which the subject property is location

The project only seeks the reliefs it is compelled and consigned to by the extraordinary or exceptional situation or condition of property, and will otherwise comply with all other applicable provisions of the Zoning Regulations.

Notwithstanding that the subject property qualifies for a fifty percent (50%) reduction in required parking spaces as set forth under the Exemption provisions of Subtitle C, Chapter 7, § 702.1 (c) (6) because of location within prescribed distance of a specified Priority Corridor Network Metrobus Route, the applicant intends to work with the Department of Transportation (DDOT) to provide a Transportation Action Plan (TAP) to mitigate the potential adverse impact of ostensibly not providing a de minimis three (3) parking spaces on or off-site

The applicant based on all the foregoing contends that the Board may grant the relief sought without substantial detriment to public good and substantial impairment of the intent, purpose and integrity of the zone plan

WITNESS

1. Yosief Maharai
2. Neil P. Cruikshank

CONCLUSION

The Applicant submits that the instant application complies with all conditions for the granting of the requested area variance as outlined above and as shall be further documented, and respectfully requests that the relief be granted.