

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

**Application for 518 9th Street, NE and 816 E Street, NE
(Square 914, Lots 54 and 55)**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 5533-518 9TH STREET NW WASHINGTON LLC (the “Applicant”) in support of its application pursuant to 11-C DCMR §§ 302.2(a) and 305 and 11-X DCMR § 901.2, for special exception relief to allow two existing primary buildings on a single record lot pursuant to the theoretical lot subdivision regulations on property located in the RF-1 Zone District at 518 9th Street, NE and 816 E Street, NE (Square 914, Lots 54 and 55) (the “Site”).

Pursuant to 11-Y § 300.15 of the Zoning Regulations, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or the “Board”) no fewer than 21 days prior to the public hearing for 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 special exception relief. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

I. Background

A. The Site and Existing Buildings

The Site consists of Lots 54 and 55 in Square 914. Both lots are generally square in shape, with Lot 54 having approximately 14,243 square feet of land area and Lot 55 having approximately 13,897 square feet of land area, for a total land area of 28,140 square feet for the Site. Lot 55 is located in the southeast corner of Square 914, with E Street, NE to the south and 9th Street, NE to the east. Lot 54 is located directly to the north of Lot 55 in Square 914 with frontage on 9th Street. The Site is otherwise bounded by private property to the north and private property and a portion of a public alley to the west. The Site is zoned RF-1 and is located within the Capitol Hill Historic District (the “Historic District”).

Lots 54 and 55 are each developed with an existing four-story apartment house with 64 units each. Both buildings were built in 1926 and are nonconforming structures as to height and number of stories, and are nonconforming as to their apartment house use. The buildings were designed by Washington architect Frank Russell White and feature matching brick facades; six-over-six double-hung windows; stone strong courses; and profiled metal cornices with deep soffits. The Applicant entity owns both of the existing buildings, and each building is located on its own record lot. The buildings are contributing resources to the Historic District.

B. Proposed Renovations

The Applicant proposes to undertake matter-of-right renovations to the buildings and grounds, both inside and out, including new site work and construction of new matter-of-right penthouses. Upon doing so, the Applicant will be required to meet the existing Department of Energy and the Environment (“DOEE”) stormwater management requirements for each lot. However, due to the existing configuration of the buildings and the existing lot sizes, the Applicant is unable to meet the current DOEE requirements for each lot separately. Lot 54 cannot satisfy the stormwater management requirements on its own due to an insufficient amount of land area. If Lots 54 and 55 are combined into a single record lot, the green roof and bioretention facilities that can be accommodated on Lot 55 would benefit both lots, such that the new record lot would be able to satisfy the DOEE stormwater management requirements.

C. Subdivision to Create Single Record Lot

Pursuant to 11-C DCMR § 302.2, each new primary building must be erected on a separate record lot. The two buildings on the Site are presently located on separate record lots. There are two means by which the Site could be subdivided into a single record lot, and thus be able to meet the current DOEE stormwater management requirements:

1. Connect the two buildings above-grade in compliance with 11-B DCMR § 309, to create a single building for zoning purposes, and then obtain a matter-of-right single record lot; or
2. Obtain approval from this Board for a theoretical lot subdivision under 11-C DCMR § 305.1.¹

The first option is not practical because the two historic buildings and their open spaces are not configured in a way that an above-grade connection could readily or practically be achieved in compliance with 11-B DCMR § 309.1. Even if an above-grade connection could readily and practically be achieved between the buildings, relief from this Board would still be required to create the connection as an addition to the two existing nonconforming structures. The Zoning Administrator has determined that the second option—the theoretical lot subdivision—is the only other option available to achieve a single lot for both buildings.

Thus, in order to facilitate compliance with the DOEE stormwater management requirements with maximum flexibility, the Applicant proposes to subdivide the Site into a single record lot and then create two theoretical lots along the existing record lot lines. To do so, the Applicant herein requests a theoretical lot subdivision pursuant to 11-C DCMR § 305, as an exception to 11-C DCMR § 302.2. The Zoning Administrator has determined that because the number of units in the two buildings is not being increased, and because the buildings’ envelopes (excluding the matter-of-right penthouse modifications) are not being increased, the subdivision does not require any other zoning relief from the BZA. *See* Zoning Administrator Determination Letter, dated February 5, 2018, attached hereto. Also attached is a draft copy of the subdivision plat showing the existing and proposed lot lines, which the Applicant will file if the Board approves

¹ 11-C DCMR § 302.2 includes several other exceptions, for campus plans, medical campus plans, private school plans, and Planned Unit Developments, which are not applicable to this situation.

this zoning application. The proposed theoretical lot lines will be in the exact same location as the existing record lot lines shown on the existing conditions plan shown on page 1 of the subdivision plat. Thus, the BZA application requests relief simply to insert a “theoretical” lot line on the future single record lot in order to allow the two existing buildings to exist on a single record lot.

Based upon the above, the reason for this application is to convert the current record lots to theoretical lots, to allow the Applicant to comply with DOEE stormwater requirements. All of the other proposed renovations and modernizations to the Site are permitted as a matter-of-right. As shown in the architectural drawings attached hereto, the Applicant proposes to maintain the existing structures in their current form. No changes are proposed to the buildings’ height, density, lot occupancy, setbacks, or number of residential units.

II. Special Exception Relief

Pursuant to 11-C DCMR § 302.2, and as described above, each new primary building must be erected on a separate record lot, except as provided for in the theoretical lot subdivision regulations of 11-C DCMR § 305.1. Accordingly, pursuant to 11-C DCMR § 305.1, the Board may grant, through special exception, a waiver to allow multiple primary buildings on a single record lot provided that the application meets the requirements of 11-C DCMR § 305 and the general special exception criteria of 11-X DCMR, Chapter 9. The number of buildings permitted under the theoretical lot subdivision regulations is not limited, provided that satisfactory evidence is submitted that all the requirements of 11-C DCMR § 305 are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations. As set forth herein, the application complies with all requirements of 11-C DCMR § 305 and 11-X DCMR, Chapter 9.

A. Standard of Review

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant special exceptions where it finds the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and will meet such special conditions as may be specified in 11-Z DCMR, Chapter 9. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested 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 Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (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.*

B. Special Exception Standards for Multiple Primary Buildings on a Single Record Lot

Pursuant to 11-C DCMR § 305.3, the following development standards shall apply to theoretical lots:

- a. *Side and rear yards of a theoretical lot shall be consistent with the requirements of the zone;*

Pursuant to 11-E DCMR § 306.1, a minimum rear yard of 20 feet is required in the RF-1 zone. Pursuant to 11-E DCMR § 307.3, no side yard is required for a principal building in the RF-1 District, but if one is provided, it shall be at least five feet wide. As shown on the surveyor's plat attached hereto, the rear yards on the theoretical lots (the current record lots) are 11.06 feet (Lot 54) and 20.78 feet (Lot 55) and the side yards are 11.47 feet and 12.20 feet (Lot 54) and 10.98 feet and 0.05 feet (Lot 55). The two buildings are validly existing non-conforming structures on the two current record lots and the rear and side lot measurements will not change when they are converted to theoretical lots.

- b. *Each means of vehicular ingress and egress to any principal building shall be at least twenty-four feet (24 ft.) in width, exclusive of driveways;*

The two buildings were built in 1926 when there was no on-site parking requirement. The building on Lot 54 has frontage on the east along 9th Street, NE, which is 90 feet wide, and on the west along a 15-foot wide alley. The building on Lot 55 has frontage on both 9th and E Streets, NE, both of which are 90 feet wide. There is no on-site parking and therefore no means of vehicular ingress or egress.

- c. *The height of a building governed by the provisions of this section shall be measured from the finished grade at the middle of the building façade facing the nearest street lot line; and*

As shown on the architectural drawings attached hereto, the existing non-conforming buildings have a maximum height of 55 feet (excluding penthouses), as measured from the finished grade at the middle of the front of the building façades facing 9th Street, which is the nearest street lot line.

- d. *The rule of height measurement in Subtitle C § 305.3(c) shall supersede any other rules of height measurement that apply to a zone, but shall not be followed if it conflicts with the Height Act.*

The heights of the existing buildings do not conflict with the Height Act.

Pursuant to 11-C DCMR § 305.4, for a theoretical subdivision application, the information listed in 11-C DCMR § 305.4 is required to be submitted to the Board of Zoning Adjustment, in

addition to other filing requirements pursuant to Subtitle Y § 300. Attached hereto are the plats, plans, and zoning information required to be submitted by 11-C DCMR § 305.4.

Pursuant to 11-C DCMR § 305.5, before taking final action on a theoretical subdivision application, the Board of Zoning Adjustment shall refer the application to the Office of Planning for coordination, review, and report, including the following:

a. *The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:*

i. *Public safety relating to police and fire concerns including emergency vehicle access;*

This application does not propose any changes to the Site or to the buildings that would affect public safety, police, or fire concerns, including emergency vehicle access.

ii. *The environment relating to water supply, water pollution, soil erosion, and solid waste management;*

The environmental condition of the Site will be improved if this application is granted. The Applicant proposes to subdivide Lots 54 and 55 into a single record lot to facilitate compliance with DOEE stormwater management requirements. Therefore, the proposed theoretical subdivision will enable improved environmental treatment of stormwater on-site. The Applicant does not propose any other changes that would negatively affect water supply, pollution, soil erosion, or solid waste management.

iii. *Public education;*

The Applicant does not propose to increase the number of residential units within the existing buildings. Therefore, the number of school-aged children would not increase as a result of this application; and the theoretical lot subdivision will not have any impact on the public education system.

iv. *Recreation;*

The Applicant does not propose to increase the number of residential units within the existing buildings. Therefore, the number of overall residents would not increase as a result of this application; and the

theoretical lot subdivision will not have any impact on recreation services or facilities.

v. *Parking, loading, and traffic;*

The Applicant does not propose to increase the number of residential units within the existing buildings. Therefore, the number of overall residents will not increase as a result of this application; and the theoretical lot subdivision will not have any impact on the current parking, loading, or traffic conditions. Moreover, since the buildings were constructed prior to the adoption of the parking regulations, no on-site vehicle parking is required.

vi. *Urban design;*

As shown on the plans, the project includes an attractive urban design that is compatible with the surrounding neighborhood. The Applicant proposes matter-of-right renovations to the two historic buildings and the Site, including installing new landscaping on the Site with new permeable green space.

vii. *As appropriate, historic preservation and visual impacts on adjacent parkland;*

The Site is located within the Capitol Hill Historic District and the two existing buildings are contributing elements to the Historic District. The Applicant has been working with the Historic Preservation Review Board staff to insure compatibility of the proposed Site and building improvements with the character of the Historic District.

b. *Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear setbacks; density and open space; and the location, design, and screening of structures;*

None of the elements listed in 11-C DCMR § 305.5(b) will be modified or otherwise affected by the proposed theoretical lot subdivision application.

c. *Considerations of traffic to be generated and parking spaces to be provided, and their impacts;*

As noted above, the Applicant is not proposing to increase the number of residential units in the project. Therefore, traffic and parking conditions will not be impacted by the theoretical lot subdivision.

d. The impact of the proposed development on neighboring properties;

Approval of this theoretical lot subdivision application will have no adverse impact on neighboring properties. The two existing nonconforming buildings will continue to exist in their current configurations. The conversion of the two existing record lots to theoretical lots will be imperceptible to the public.

e. The findings, considerations, and recommendations of other District government agencies.

The Office of Zoning will circulate this application to relevant District agencies.

Pursuant to 11-C DCMR § 305.6, the proposed development shall comply with the substantive intent and purpose of this title and shall not be likely to have an adverse effect on the present character and future development of the neighborhood. As noted above, the application complies with the purpose and intent of the theoretical lot subdivision regulations, and approval of this application will not have an adverse effect on the present character or future development of the neighborhood. Indeed, the project will simply permit the two existing buildings to be located on a single record lot. No changes to building height, density, lot occupancy, setbacks, or any other development standards will be modified as a result of this application.

Pursuant to 11-C DCMR § 305.7, the Board of Zoning Adjustment may impose conditions with respect to the size and location of driveways; floor area ratio; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations. The Applicant does not believe that any additional conditions are warranted for the project, since the buildings on the Site are already existing and grandfathered as validly existing non-conforming structures that contribute to the character of the Historic District.

C. General Special Exception Standards under 11-C DCMR § 901.2

The Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

In this case, the Applicant simply proposes to create two theoretical subdivision lots on a single record lot in the exact same location and dimensions of the two current record lots. The existing buildings' height, density, lot occupancy, setbacks, and other zoning requirements, all of which are grandfathered, will not be modified as part of this application. Therefore, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

III. Affected Advisory Neighborhood Commission

As required under 11-Y § 300.8(l), the Applicant has engaged with Advisory Neighborhood Commission (“ANC”) 6A, the ANC in which the Site is located as follows:

- The Applicant first contacted the ANC in September, 2017, to inform them of the project and discuss the review process.
- In February 2018, the Applicant submitted a copy of its HPRB submission package to the ANC and followed up in March, 2018.
- On March 21, 2018, the ANC cancelled its meeting at which the Applicant was expected to present.
- On March 22, 2018, the HPRB approved the project on its consent calendar.

The Applicant will continue to work with ANC 6A throughout the BZA application process and will update the Board on the ANC’s review prior to the public hearing on this case. The Applicant also received support for its HPRB application from the Capitol Hill Restoration Society, and will continue to work with this and other stakeholders through the BZA process.