

May 23, 2018



Meridith H. Moldenhauer
Alyssa L. Bigley

Direct Phone 202-747-0767
Direct Fax 202-683-9389
abigley@cozen.com
mmoldenhauer@cozen.com

VIA IZIS

Frederick Hill, Chairperson
Board of Zoning Adjustment
441 4th Street NW Suite 210S
Washington, DC 20001

**Re: BZA Application for 4526 13th Street NW
Square 2817, Lot 0036 – Application for Variance Relief**

Dear Chairperson Hill and Members of the Board:

Please accept for filing the enclosed application of Columbia Heights Partners LLC (the “Applicant”). The Applicant requests an area variance pursuant to 11 DCMR § X-1000.1 from Subtitle E § 201.4 for apartment building use in the RF-1 Zone.

The application package includes the following materials:

1. BZA Form 120, Application for Variance/Special Exception
2. BZA Form 126, Fee Calculator
3. BZA Form 135, Self-Certification
4. Agent Authorization Letter
5. Certificate of Proficiency
6. Plat showing the existing structure on the Property
7. Zoning Map
8. Photographs of the Property
9. Baist Atlas Map
10. Statement of Existing and Intended Use
11. Statement of the Applicant
12. Architectural Plans
13. Summary of Witness Testimony
14. Statement of Community Outreach
15. List of names and mailing addresses of owners of all property within 200 feet of the boundaries of the Property; and
16. Certificate of Service upon the Office of Planning and the affected Advisory Neighborhood Commission.

We believe that the application is complete and acceptable for filing, and request that the Board scheduled a public hearing for the application as soon as possible. If you have any questions please do not hesitate to contact me on behalf of the Applicant.

Thank you for your attention to this application.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', written over a thin horizontal line.

Meridith H. Moldenhauer
Alyssa L. Bigley

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

**APPLICATION OF
COLUMBIA HEIGHTS PARTNERS LLC**

**4526 13TH STREET NW
ANC 4C**

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Columbia Heights Partners LLC (the “Applicant”), owner of the property located at 4526 13th Street NW, Square 2817, Lot 0036, (the “Property”) in support of their application for variance relief pursuant to 11 DCMR § X-1000.1 and Subtitle E § 201.4. The requested relief is necessary to continue use of the Property as a purpose-built apartment house with 17 units (the “Project”) in the RF-1 Zone. No changes to the footprint or massing are proposed.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance relief requested herein pursuant to Subtitle X § 1000.1 of the Zoning Regulations.

III. BACKGROUND

A. The Property and the Surrounding Neighborhood

The Property, comprised of Lot 0036 on Square 2817, is improved with a detached purpose-built apartment house constructed in 1919. A copy of the zoning map is attached at **Exhibit A**, a copy of the Baist map is attached at **Exhibit B**, and an excerpt from the HistoryQuest Map is attached at **Exhibit C**. The Property has a land area of 7,452.5 square feet and is located in the Petworth neighborhood. The lot is bounded by Buchanan Street NW to the north, a 15-foot public alley to the west, and 13th Street NW to the east. An unimproved narrow lot separates the Property from the nearest structure to the south.

Square 2817 is bounded by Buchanan Street NE to the north, Arkansas Avenue NW to the west, Allison Street NW to the south, and 13th Street NW to the east. An alley network divides the square and 10 alley lots are located at the center of the square. The surrounding area is residential and mixed-use in nature and comprised primarily of single-family homes, flats, and apartment buildings. In addition, the PDR-1 Zone is located to the west, and the MU-3 Zone to the southwest of the Square. Finally, the Dorothy Height Elementary School and Upshur Recreation Center are approximately 1 block south on 13th Street NW.

The Property is well-serviced by mass transit options and is characterized by “Excellent Transit” on walkscore.com. The Metrorail Green and Yellow Lines at the Georgia Avenue/Petworth stop is approximately 0.7 miles from the Property. Metrobus lines 52, 59, 52, 70, S1, 79, 62, 63, S9, and S4 are all within 0.3 miles (about 4 blocks or less) from the Property. Walkscore.com indicates that the area is a “Walker’s Paradise” because most errands can be accomplished on foot. Finally, there are four Capital Bikeshare stations within 0.5 miles of the Property.

B. The Project

The Property is improved with a purpose-built apartment house dating from 1919. The Zoning Regulations define “Apartment House” as “any building or part of a building in which there are three (3) or more apartments, providing accommodation on a monthly or longer basis.” Subtitle B § 100.2. When the Applicant acquired the Property, there were 17 residential units on the rent roll, including one unit in the cellar, but only 16 units identified on the Certificate of Occupancy.¹ See Certificate of Occupancy at **Exhibit D**. The Applicant requests the relief herein to bring this existing condition into compliance and to continue use of the 17 residential units that

¹ All units are prioritized for existing and new low-income tenants. Housing Choice Vouchers (“HCV”) are accepted. All units are priced at or below the HCV Program rates for the neighborhood.

are rented to low-income tenants through the acceptance of Housing Choice Vouchers (“HCV”).² See plans at **Exhibit C**.

The requested relief would not trigger a requirement to provide off-street parking on the Property. The Property does not currently provide off-street parking.³ Seventeen total units would not change the total number of required parking spaces for the Property ($17 - 4 = 13 / 3 = 4.3$, or 4 total spaces). In addition, Subtitle C § 704.1 provides an exemption from the minimum parking requirements when an addition to an existing building does not exceed “25% or more beyond the gross floor area on the effective date of this title” (September 2016). The proposed continued use of the unit in the cellar would not contribute to the gross floor area. The large cellar area is currently 7 feet in height and used for laundry, storage, and utility space. As indicated in previous decisions by the Zoning Administrator, structure space with a headroom of 6’-6” or greater already counts toward a building’s gross floor area. Consequently, the incorporation of residential units into existing habitable space with a headroom of 6’-6” would not constitute an expansion of the structure’s gross floor area. See Zoning Determination Letter at **Exhibit E**. Therefore, the 17th unit does not add to the gross floor area of the Property, nor does it trigger the requirement to provide additional off-street parking on the Property.

Although the Property is located in the RF-1 Zone, the current use as an apartment house is considered a conforming use because the Property was constructed specifically for that use before 1958, and that use is continued to the present.⁴ Accordingly, the proposed use of 17 residential units on the Property does not require relief from the Zoning Regulations for expansion

² The Property has 16 above-grade units and one unit in the cellar. As of the filing of this application, the cellar unit is occupied, and one above-grade unit is unoccupied.

³ However, due to the historic use of the Property as an apartment house, the Property would be considered to have 4 parking space credits ($16 \text{ units} - 4 = 12 / 3 = 4 \text{ spaces}$).

⁴ In BZA Case 19414, the Office of Planning’s report (found at BZA Ex. No. 49) concluded they had “consulted with both the Zoning Administrator and Office of the Attorney General and all agree that the existing pre-1958 apartment building is not considered in the zoning regulations as a nonconforming use.”

of a nonconforming use. Instead, the Applicant's use of the existing building with 17 residential units is permitted in the zone, subject to the condition of Subtitle E § 201.4, which states:

An apartment house in an RF-1, RF-2, or RF-3 zone, *whether existing before May 12, 1958*, or converted pursuant to the 1958 Regulations, or pursuant to Subtitle U §§ 301.2 or 320.2, may not be renovated or expanded so as to increase the number of dwelling units unless there are nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new. (Emphasis added).

The Property has 7,452.5 square feet of land area, and thus only 8 residential units would be permitted as a matter of right under E § 201.4. Therefore, the Applicant seeks area variance relief from the requirement to provide 900 square feet of lot area per residential unit to continue using 17 total units. The Applicant meets the standard for an area variance as outlined below.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Area variance relief is required for the minimum lot area pursuant to Subtitle E § 201.4. Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § X-1000.1, the Board is authorized to grant an area variance where it finds that:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties 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. 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)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). 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. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting, “area 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 BURDEN 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 arising from a confluence of five factors: (1) the Property is the largest lot on the Square; (2) the Property is a corner lot; (3) the structure is raised up on a berm that allows for the 7-foot floor-to-ceiling clearance in the cellar; (4) there is a significant amount of public space on both the east and north sides of the Property that limits the amount of square footage that counts toward the lot area; and (5) the only lot directly adjacent to the Property is unimproved.

The Property is the largest lot on the Square and is a corner lot. *See Exhibit A*. The remainder of the Square is improved primarily with row dwellings on small, narrow lots.

The structure is uniquely raised up on a berm, which is significantly higher than the topographic character of the remainder of the square. *See Property Photos at Exhibit G*.

Although the Property is the largest on the square, it would be even bigger if the public space adjacent to it were incorporated in the lot area. If all the public space was included in the lot area, the lot would total approximately 11,800 square feet in area. See Zoning Map Area Estimate at **Exhibit F**. A lot of this size would allow 13 units as a matter of right ($11,800 / 900 = 13.11$) and would require a smaller degree of relief. As depicted on the Zone Map at **Exhibit A**, the relatively large area of public space surrounding this corner lot to the north and east is a unique condition that creates the appearance of a much larger lot than the actual dimensions.

Finally, the Property is separated from nearby structures on all sides. The north and east lot lines abut Buchanan and 13th Streets NW. To the west, the rear of the Property abuts a 15-foot wide alley distancing the Property from the row of homes along Buchanan Street. And finally, a 25-foot wide unimproved lot separates the Property from the nearest structure to the south, on Lot 0037. Lot 0037 is owned by a different entity, and the Property cannot be expanded to include it.

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

Strict application of the Zoning Regulations pertaining to minimum lot area would result in a practical difficulty to the Applicant. The Applicant seeks zoning relief to bring an existing condition into compliance and use a total of 17 affordable residential units on the Property. The cellar is habitable space that would otherwise not be put to productive use.

The structure is a purpose-built apartment house. When it was constructed nearly one hundred years ago, the issues now facing the District in terms of housing stock and efficiencies in smart development were not present. As such, the building was constructed with a 7-foot tall cellar space that is easily accessible from both Buchanan and 13th Streets, particularly due to the topography of the lot and the building restriction lines setting the structure back from the Streets. See Surveyor's Plat at **Exhibit H**. This leaves a significant amount of adjacent public space that

would otherwise count toward the lot area of the Property and would significantly reduce the degree of requested relief.

Further, the habitable space in the cellar complies with all other areas of the Zoning Regulations. Consequently, if the Applicant were not permitted to put this space to use, it would be a wasteful limitation on otherwise habitable area that could efficiently add to the District's affordable housing stock.

In addition, Lot 0037 abutting the Property to the south is 2,184 square feet in total land area. See Office of Tax and Revenue Report at **Exhibit I**. Even if the Applicant were able to acquire this lot, thus increasing the total lot area to 9,636.5 square feet, the resulting assembled square footage would still not meet the requirements for 900 square feet of lot area per unit, even for the existing 16 residential units in the apartment house. The additional lot area that the adjacent unimproved lot would hypothetically add would only permit 10 units as a matter of right ($9,636.5/900=10.7$). Therefore, the Applicant faces a practical difficulty in complying with the Zoning Regulations.

C. No Substantial Detriment to the Public Good or Impairment of 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 for minimum lot area. The Applicant does not propose to expand the footprint of the existing structure, so there will be no visual impact to the surrounding properties. Further, the Applicant does not intend to make changes to the façade of the building or the view from the street. The Property will continue to appear as it presently does.

Granting the requested zoning relief will not precipitate a change of use on the Property, and the residential nature of the block will remain undisturbed. As discussed above, the

incorporation of residential units into existing habitable space with a headroom of 6'-6" (here, 7-foot clearance) would not constitute an expansion of the structure's gross floor area. Further, the continued residential use of the Property will "reinforce the importance of neighborhood character . . . preservation of housing stock . . . and the overall housing mix and health of the city." E § 100.3(a). Finally, the requested relief will permit the Applicant to continue to provide a total of 17 affordable housing units to the community. For all these reasons, the Applicant meets the requirements for variance relief in this case.

VI. COMMUNITY OUTREACH

Pursuant to Advisory Neighborhood Commission (ANC) 4C's procedures and guidelines, the Applicant will contact ANC 4C shortly after the application is filed. The Applicant will present to ANC 4C at the next available public meeting.

VI. CONCLUSION

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

Respectfully Submitted,

COZEN O'CONNOR



Meridith H. Moldenhauer
Alyssa L. Bigley

CERTIFICATE OF SERVICE

I certify that on May 23, 2018, a copy of this Application was served via email on the Office of Planning and Advisory Neighborhood Commission 4C, as follows:

District of Columbia Office of Planning
c/o Joel Lawson
1100 4th Street SW, Suite E650
Washington, DC 20024
Joel.lawson@dc.gov
planning@dc.gov

Advisory Neighborhood Commission 4C
Zachary Teutsch, Chairperson
4c06@anc.dc.gov
Ulysses Campbell, Single Member District Commissioner 4C03
4c03@anc.dc.gov



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