

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

**Application of Bridges 2 Psychological Services & Consultation, LLC  
639 Atlantic Street SE BZA No. 20121**

**APPLICANT’S HEARING STATEMENT**

This Hearing Statement (“Statement”) outlines the existing and proposed use of the property 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 for use variance from the provisions of Subtitle U, Chapter 2, §201.1 to permit the establishment of a medical office at the subject premises.

As set forth under Subtitle X, Chapter 10, §1001.4 (a), applicant requests use variance relief in order to permit use not otherwise permitted as a matter of right or by special exception in the underlying zone district within which subject property is located.

A medical office use is not permitted either as a matter of right or by special exception in the R-2 zone district within which subject property is located

## **SUMMARY OF APPLICATION**

The applicant seeks use variance relief from the Use Provisions pursuant to 11 DCMR Subtitle X, Chapter 10 §201.1 to establish a medical office use at subject premises.

Applicant contemplates adaptive use of the premises which has historically been used as a Community-Based Residence Facility (CBRF) as that term was defined in the 1958 Zoning Regulations with limited additional interior alterations to comply with related construction codes requirements affecting the proposed change of use.

## **JURISDICTION OF THE BOARD**

The application is properly before the BZA. The Board is authorized to grant the requested special exception and 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, Chapter 10, § 1000.1.

As set forth under § 1000.1, the Board is authorized to grant variances 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 exist 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 undue hardship 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.

In accordance with the provision set forth under Subtitle X, Chapter 10, §1002.1 (b), “an applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of the Zoning Regulations would result in exceptional and undue hardship upon the owner of the property”

### **PROPERTY LOCATION AND DESCRIPTION**

The property is located in the Southeast quadrant at 639 Atlantic Street in the Congress Heights neighborhood.

The subject property is located in Square 6162, Lot 0127, according to the records of the DC Surveyor.

The subject property is improved with a detached building which was constructed in the early 90s for the purpose of a CRF housing six residents, plus two staff and comprises approximately eight thousand, two hundred and fifty square feet (8,250 ft<sup>2</sup>)

The applicant proposes to make adaptive use of the existing building for the purpose of a medical office, use not permitted as a matter of right in the R-2 zone district within which the subject property is located.

### **BACKGROUND**

The subject property was originally zoned R-5-A (RA-1 under ZR16) but was downzoned to its current R-2 zone district in a wholesale Ward 8 rezoning exercise in 2008 (ZC-08-12).

Whereas that rezoning or map amendment was to reconcile the prevailing zoning of the neighborhoods with its inconsistency with the Comprehensive Plan, the subject property remains an anomaly given the fact of its location amongst predominantly single-family semi-detached buildings and multiple dwelling buildings or apartment houses. The subject property is the only detached structure situated on lot area more than twice its size for its type of structure in both the original R-5-A and current R-2 zone districts. The subject property meets and exceeds the minimum lot area for the most restrictive Residence Zone District, the R-1-A zone district and has never been used and occupied for purposes of a one-family dwelling.

The subject property was constructed anew in the early 1990s for the express purpose of occupancy as a Community residence Facility for the handicapped, as such was not intended for the purpose of a typical residential facility or a private residence.

The subject property has never been occupied for purposes of a private residence.

The property was listed for lease for a period of eight months (April – December 2018) without fielding any interest for any use permitted in the R-2 zone district, including as a one-family dwelling.

The owner of the property entered into a lease agreement with a potential tenant in early 2019 to occupy the premises for purposes of a medical office, and approached the Department of Consumer and Regulatory Affairs to obtain a Certificate of Occupancy (CO).

The owner will testify that she was misinformed that the use was permissible and made to expend a significant amount in upgrades ostensibly to comply with construction codes requirements to enable the issuance of a CO. In remedy, DCRA issued a Conditional CO (CO 1901025) to expire December 31<sup>st</sup>, 2019.

The owner has since lost that tenant without one day of occupancy or payment of rent, so technically, the property remains unoccupied for well over a year. The owner now intends to occupy the building for the purpose of her own business.

Dr. Angelina Dickerson, Psy.D. is a Licensed Clinical Psychologist and the Clinical Director of Bridges 2 Psychological Services & Consultation, LLC (“B2PSC, LLC”).

B@PSC, LLC offers a suite of mental health services to include individual and family therapy for children, adolescents and adults; group therapy; psychological evaluations; educational, cognitive, and social emotional; parent advocacy; organizational consultation; employment assistance/placement; and housing advocacy to address homelessness

#### **STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

Applicant seeks use variance relief to establish a medical office use in the existing structure which has been historically used as a CBRF for the physically and mentally challenged, or the handicapped as that term is defined.

As more specifically outlined below in this Hearing Statement and as will be further attested in the course of the hearing, the applicant contends that the application complies with the three provisions for the grant of the requested relief as follows

#### **EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY/UNIQUE PHYSICAL CHARACTERISTIC OF SHAPE OR SIZE**

Applicant contends that the subject property demonstrates both an extraordinary or exceptional situation or condition of property and unique physical characteristic of shape or size for its zone district of location.

As aforementioned, the subject property is located with the R-2 zone district and is flanked in proximity by the RA-1 zone district, which permits multiple dwellings or apartment houses.

The subject property comprises lot area of 8,250 ft<sup>2</sup>, lot size uncommon in its zone district of location, which surpasses the minimum lot dimensions prescribed in the most restrictive residence zone district, the R-1-A zone district.

The subject property is not only the largest lot in its Square of location, it is also uniquely the only detached structure in its street of location. All other properties are improved with single-family semi-detached dwellings situate on smaller lots on average twenty-five feet wide. The width of the subject property is 75 feet.

Applicant contends that the subject property also demonstrates an extraordinary or exceptional situation or condition of property by virtue of the history of the use of the subject property from inception, for purposes of CBRF or residence facility for the handicapped, use which required unique retrofit of the interior of the building to include wider corridors than required for a private home; commercial grade fire alarm systems; handicapped bathrooms and toilets; commercial sprinkler systems; exit signs, interior and exit doors with self-closing hardware et cetera.

Applicant contends that notwithstanding that the zoning regulations deem this type of residence facility a residential use, the minimum requirements of the life safety codes subject functionality of the occupancy of the building to institutional use standards.

### **UNDUE HARDSHIP UPON THE OWNER OF PROPERTY**

The applicant contends that the peculiar location of the subject property, given its unique physical characteristic amongst apartment houses, and semi-detached single-family dwellings is anomalous.

Applicant further contends that the foregoing and the history of the institutional use of the subject property combine to make the subjected property unsuitable for the purpose of a private home.

The applicant will testify to the fact that the subject property has attracted no interest from potential lease for purposes of a private home and that the only interest is the tenant under lease (replaced by the owner) to occupy the premises for purposes of a medical/counseling office for the providing out-patient services to clients with physical and mental handicap, or clinical mental health counseling services.

Therefore, the undue hardship upon the owner is that the strict application of the zoning regulations would result in the inability of the owner to lease the premises out for the purpose which the market dictates; thereby rendering the premises potentially unoccupied for a protracted period.

The cost to reconfigure the subject premises to conditions conducive to use as a single-family dwelling is prohibitive, as the applicant's expert witness will attest.

The unique characteristics attributable to the subject property – wide accessible corridors; commercial fire alarm and sprinkler systems; accessible bathrooms; self-closing fire doors - militate against the attractiveness of its use and occupancy as a single-family dwelling or a private home.

The applicant further contends that the occupancy of the property for the purpose of private residence will not generate adequate income to service the debt, thereby resulting in a negative cash flow.

Applicant references the submitted prevailing rent profile of comparable properties in the neighborhood ranging from just below \$2,000.00 to the \$3,000.00. as evidence of the foregoing assertion.

Excluding the cost of maintenance and utilities, debt service of the mortgage loan and property taxes is approximately three thousand one hundred dollars (\$3,100.00). The debt service is compounded by the fact that the property is classified as commercial for the purposes of property tax assessment by the Office of Tax and Revenue (OTR) (see Mortgage Statement and OTR records).

The applicant contends that the confluence of factors uniquely affecting the subject property, including its size and type of structure as an oasis, the fact of its construction for the purpose of an institutional use from inception, its taxation as a commercial property and the prohibitive cost in retrofitting for suitability for occupancy as a private residence, conspire to result in the hardship of expectation of a return on investment.

The property is constrained by these factors from making reasonable use of the subject property for use permitted as a matter of right in its underlying R-2 zone district of location, thereby imposing upon the owner exceptional and undue hardship

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

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.

The proposed occupancy of the subject property for purposes of a medical/counseling out-patient services is not inconsistent with the historical use of the premises as an institution.

The applicant contends that the proposed use is less intensive and intrusive than the historical use of the subject premises and is not likely to result in increased adverse impact on neighboring properties.



The proposed office will serve neighborhood clients in close proximity to the subject property, hence will not result in increase in traffic impact or affect street parking. The subject property has capacity for an on-premise parking area which will accommodate four to five automobiles.

The medical office use will operate between the hours of 9:30 AM - 5:30 PM Wednesdays and Fridays, and 1:30 PM – 5:30 PM Thursdays. Mondays and Tuesdays are off-site client counselling visits days. In the three days of office operation, not more than 5 – 7 clients will be present on premises on any given day. The office operation will start off with no staff, but anticipates that one part-time staff may be added in the near future.

Given the foregoing, the intensity of use is equal to or less than permitted an office use under the Home Occupation Provisions, as an accessory use. Hence the use as medical office use is not likely to detract from the predominant residential character of the neighborhood.

Applicant has set forth above how the application meets the three-prong burden of proof for the granting of the requested relief

## **CONCLUSION**

The applicant submits that the confluence of factors enumerated in this Statement which form the basis of the uniqueness of the property and also the exceptional and extraordinary situation or condition of property conspire to impose a hardship upon the owner of property.

The hardship are two-fold; firstly the inability to attract any use permitted as a matter of right, particularly a one-family dwelling use, after over a year of holding out the subject property for lease without restriction, secondly the inability to rent out for said purpose

with an expectation of a reasonable return on investment; in fact the evidence is that it results in negative cash flow.

The matter of a property owner's expectation of a reasonable return on investment as a standard for the granting of a use variance is a settled matter by case law (see BZA Order 17930).

As aforementioned, the owner was issued a Conditional CO because she was led to undertake the substantial expense of the alterations and repair of subject property for purposes of compliance with the Construction Codes which she put good faith reliance on would culminate in the issuance of a CO for the medical use applied for, only to be informed after the fact that establishment of the use was subject to use variance relief before the BZA.

The Board may take into account the good faith detrimental reliance on the foregoing informal assurance in its consideration of the undue hardship standard.

Finally, the objective of the owner is to bring mental health services to an underserved area so designated by the National Health Service Corps (NHSC), as a Health Professional Shortage Area (HPSA).

There is no objection to the application or the establishment of the use from adjoining neighbors as attested by the neighbor support letters

NHSC offers grants and other incentives to mental health services providers to target high need areas, such as this designated neighborhood.

For all the foregoing reasons, the applicant respectfully requests that the requested relief be granted.

**Witnesses**

1. Angelina Dickerson. (Owner/Applicant)
2. William B. Webb (Expert in Construction)