

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant's Statement of Montello 1723 LLC**

**1723 Montello Ave, NE; Square 4052, Lot 180.**

**I. INTRODUCTION.**

**A. Overview.**

This Statement is submitted on behalf of Montello 1723 LLC (the “Applicant”), owner of the property located at 1723 Montello Ave, NE (Square 4052, Lot 180) (the “Subject Property”). The Subject Property is currently improved with a one-story building (the “Building”) most recently used for commercial purposes. The Applicant is proposing to renovate the existing Building, construct a two-story addition (plus penthouse) on top of the existing Building footprint (the “Addition”), for a total of three (3) stories. The Applicant proposes to convert the Building to seven (7) residential units (the “Project”), one (1) of which will be set-aside as an Inclusionary Zoning (“IZ”) unit. As the existing Building occupies 100% of the Subject Property, the Applicant must request special exception relief from the parking, lot occupancy, and rear yard requirements of the MU-4 Zone. It must also request variance relief from C § 202 in order to extend the existing non-conforming structure, as described in more detail below.

**B. Summary of Requested Relief.**

*1. Special Exception- Parking Requirements (C § 703.2).*

According to the parking schedule in C § 701.5, a multi-unit residential building is required to provide one (1) parking space for every three (3) units over four (4) units. The Project will have seven (7) residential units, requiring one (1) parking space. Due to the fact that the existing and proposed Building footprint occupies 100% of the lot, the Applicant is unable to provide parking on the Subject Property. Accordingly, the Applicant is requesting special

exception relief pursuant to C § 703.2 which permits exemptions from the minimum parking requirements of C § 701.5.

2. Special Exception- Rear Yard and Lot Occupancy (G §§ 1200-1201).

The Applicant is proposing to construct a two-story Addition (plus penthouse) on top of the existing Building footprint. As the existing Building occupies 100% of the lot, the Applicant must request special exception relief from the fifteen-foot (15 ft.) rear yard requirement of G § 405.2 and the seventy-five percent (75%) (with IZ) lot occupancy limitation of G § 404.1 in order to construct the Addition. Subtitle G § 409 states that “exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle G, Chapter 12.”

3. Variance Relief -Extension/Expansion of a Nonconforming Structure (C § 202.2).

The Addition also requires relief from the prohibition against expanding or extending a nonconforming structure of C § 202.2, as it extends two existing non-conforming aspects of the structure (lot occupancy and rear yard). Unlike the lower R and RF Zones, Subtitle G (MU Zones) does not have a provision allowing for special exception relief from Subtitle C § 202.2.

**II. BACKGROUND.**

**A. Description of the Subject Property and Proposed Project.**

The Subject Property is located in the MU-4 Zone. It is a small corner lot measuring only 1,278 square feet. The Subject Property is currently improved with a one-story Building most recently used as a laundromat. The Applicant is proposing to construct a two-story addition and a penthouse on top of the existing Building footprint. As part of the Project, the Applicant will convert the Building into seven (7) residential units. The Applicant is proposing a mix of one-

and two-bedroom units, with two (2) residential units per floor and one (1) residential unit in the penthouse. The Applicant is opting-in to the Inclusionary Zoning Development program and will therefore be providing one (1) IZ unit.

**B. Surrounding Area.**

To the north of the Subject Property is a deli with residential units on the upper floor. To the east of the Subject Property is a newly constructed four-story multi-unit residential building. To the west and south of the Subject Property are Montello Avenue and Simms Place, respectively. The Subject Property is located near Gallaudet University and within one mile (1 mi.) of Union Market.

**III. THE APPLICATION SATISFIES THE GENERAL AND SPECIFIC SPECIAL EXCEPTION REQUIREMENTS.**

**A. Overview.**

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, 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; subject also, in this case, to the specific requirements for relief under Subtitle C § 703.2 and G §§ 1200 and 1201.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

**B. General Special Exception Requirements of Subtitle X § 901.2.**

The granting of a special exception in this case “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 ...” (11 DCMR Subtitle X § 901.2).

1. *In Harmony with the General Purpose and Intent of the Zoning Regulations.*

The Project is in harmony with the general purpose and intent of the Zoning Regulations, as it proposes an adaptive reuse of a previously neglected commercial property and the provision of seven (7) quality new residential units, one (1) of which will be set-aside as an IZ unit. The Zoning Regulations specifically permit special exception relief from the lot occupancy and rear yard requirements of the MU-4 Zone. The neighboring properties include a mix commercial and of low to moderate density residential uses, and the Project will complement the surrounding character. The location near West Virginia Avenue will encourage walking and patronization of local business by foot rather than by automobile. The convenient public transportation options, described below, will give residents alternatives to car ownership and mitigate any potential parking impacts.

2. *Will not tend to Affect Adversely the Use of Neighboring Property.*

To the north of the Subject Property is a deli with residential units on the upper floor. To the east of the Subject Property is a newly constructed four-story multi-residential building. To the west and south of the Subject Property are Montello Avenue and Simms Place, respectively. The proposed residential units shall not adversely affect the adjacent property owners' ability to use their properties for residential purposes. The Project will likely enhance the neighborhood by replacing a laundromat with quality residential units, including one (1) IZ unit.

**C. Parking Relief: Requirements of Subtitle C § 703.2.**

The Proposal in this Application satisfies the requirements of Subtitle C § 703.2 as follows:

**Section 703.2 “The Board of Zoning Adjustment may grant a full or partial reduction in number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant’s demonstration of at least one (1) of the following:**

As provided below, the Applicant can satisfy several of the considerations, even though only one (1) is required to grant the requested approval. The information below includes only the sections that safely apply to this Subject Property and Application.

**(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;**

Due to the fact that the existing and proposed Building occupies 100% of the Subject Property, the required parking space cannot be provided on the Subject Property. From the Applicant’s investigation, the only parking lots within six hundred feet (600 ft.) of the Subject Property are in use as part of commercial properties. Included with this Application is a map showing all properties within six hundred feet (600 ft.) from the Subject Property (see pg. 1 of “Proximity to Mass Transit” included with this Application).

**(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;**

The Subject Property is particularly well served by mass transit, shared vehicle, and bike facilities. According to WalkScore.com, the Subject Property has a WalkScore of 83 out of 100 and has been designated “Very Walkable, as “most errands can be accomplished by foot.” The Subject Property is only sixteen feet (16 ft.) from the Montello Avenue and Simms Place bus stop, five-tenths of a mile (0.5 mi.) from the nearest Capital BikeShare station, eight-tenths of a mile (0.8 mi.) from the H Street Streetcar, and nine-tenths of a mile (0.9 mi.) from the nearest

ZipCar location on Bladensburg Road and 14th Street, NE (see "Proximity to Mass Transit" included with this Application).

**(c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;**

As described in detail above, the land use and transportation characteristics of the neighborhood minimize the need for required spaces.

**(d) Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood;**

The additional units are unlikely to create additional traffic congestion in the neighborhood. The convenient public transportation options, described above, will give residents alternatives to car ownership and mitigate any potential parking impacts.

**Section 703.3 "Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide and shall be proportionate to the reduction in parking demand demonstrated by the applicant."**

As the existing and proposed Building occupies 100% of the Subject Property, the reduction in the number of parking spaces is only for the amount that the Applicant is unable to provide.

**Section 703.4 "Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval."**

The Applicant will provide a transportation demand management plan.

**D. Lot Occupancy Relief: Requirements of G § 1200.**

Subtitle G § 409 states that the Board of Zoning Adjustment may grant special exception relief to the development standards of Subtitle G subject to any applicable conditions of Subtitle

G, Chapter 12 and the General Special Exception requirements of Subtitle Y, Chapter 9. As discussed above, the Application meets the general special exception requirements. The Application also meets the specific requirements of G § 1200.4 as follows:

Relief may be granted as a special exception by the Board of Zoning Adjustment to the development standards and regulations of Subtitle G where, in the judgment of the Board, the special exception:

**(a) Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;**

According to Subtitle G § 400.3, the purpose and intent of the MU-4 Zone is to “Permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.”

The Application is in harmony with the general purpose and intent of the MU-4 Zone, as it proposes an adaptive reuse of a commercial property and the provision of seven (7) quality new residential units, one (1) of which will be set-aside as an IZ unit. The Subject Property also has access to main roadways and rapid transit stops as described in detail in Section III-C of this statement.

**(b) Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps; and**

To the north of the Subject Property is a deli with residential units on the upper floor. To the east of the Subject Property is a newly constructed four-story multi-residential building. To

the west and south of the Subject Property are Montello Avenue and Simms Place, respectively. The proposed residential units shall not adversely affect the adjacent property owners' ability to use their properties for residential purposes. The neighboring properties include a mix commercial and of low to moderate density residential uses, and the Project will complement the surrounding character by providing new quality apartment units.

**(c) Is subject in each case to any applicable conditions specified in this chapter.**

Regarding lot occupancy, there are no other applicable conditions specified in this chapter. The specific rear yard requirements are described below.

**E. Rear Yard Relief: Requirements of G § 1201.**

Subtitle G § 1201.1 sets forth additional conditions for relief from the rear yard requirements of G § 405.2. The Board of Zoning Adjustment may grant relief for the rear yard requirements of Subtitle G as a special exception pursuant to Subtitle X, provided:

**(a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;**

The Applicant is proposing windows on the west-side of the Building, facing Montello Avenue, NE, and on the south-side of the Building, facing Simms Place, NE. As demonstrated by the document entitled "Window Distances" provided with this Application, the closest buildings to the west and the south are well over forty feet (40 ft.) from the subject Building. Accordingly, no apartment window shall be located within forty feet (40 ft.) directly in front of another building.

**(b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;**

The Applicant is not proposing office use.



- (c) In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;**

The Building is parallel to the directly adjacent buildings.

- (d) Provision shall be included for service functions, including parking and loading access and adequate loading areas; and**

The Applicant is requesting relief from the parking requirements, as described above; loading is only required for projects with fifty (50) or more residential units.

- (e) Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office.**

The Applicant acknowledges that the Board shall submit the Application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office.

#### **IV. THE APPLICATION SATISFIES THE STANDARD FOR VARIANCE RELIEF.**

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No.

16-AA-932, 2018 WL 1748313, at \*2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance.

**A. Extraordinary or Exceptional Condition affecting the Property.**

To prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.25 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2<sup>nd</sup> 1164, 1168 (D.C. 1990).

The Applicant is requesting variance relief from the prohibition against extending a non-conforming structure of C § 202. As the existing Building occupies 100% of the lot, it is over the permitted lot occupancy for the MU-4 Zone (60% currently, but 75% for the proposed Building with IZ), and has no rear yard. The Applicant intends to construct a two-story Addition and a penthouse on top of this existing footprint. Accordingly, the Applicant must request variance relief from C § 202.2.

Among the unique conditions for this Property are the existing improvements and the lot size. The existing improvements include a one-story commercial Building which takes up 100% of the lot and has no rear yard. The lot is small and substandard, with only 1,278 square feet of land area. As described below, these unique conditions impact the Applicant's ability to improve the Subject Property and do any addition without variance relief.

**B. Practical Difficulties will occur if the Zoning Regulations are Strictly Enforced.**

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

Due to the Subject Property’s small size and the fact that the existing Building takes up 100% of the lot, a strict application of the Zoning Regulations would result in a practical difficulty for the Applicant. The Applicant is proposing to maintain the existing one-story Building and to do an Addition on top of the existing Building that would match the existing Building footprint. Oddly enough, if the Applicant were to raze the existing Building, it would eliminate its need for variance relief from C § 202.2 altogether as it would no longer be expanding a non-conforming structure. However, razing the Building presents other issues, including additional costs and construction considerations.

Because the existing structure is nonconforming, any addition which extends the existing nonconforming aspects (rear yard and lot occupancy) requires variance relief from C § 202. Essentially the Applicant is now required to make a variance argument for lot occupancy and rear yard relief even though both areas of relief are permitted via special exception in the MU-4 Zone. Due to the small size of the lot and existing improvements, any matter-of-right addition

creates a practical difficulty for the Applicant. The Applicant is proposing to include one (1) IZ unit which would permit a lot occupancy of 75% by right, or a footprint of 958 square feet, resulting in a loss of ~320 square feet (from what is proposed). Even this smaller footprint would still not be permitted as a matter-of-right because the required rear yard would further limit the building footprint to only 892 square feet.

As the Applicant is still entitled to a 3.0 Floor Area Ratio ("FAR") (or 2.5 if it does not do IZ) and needs that additional Gross Floor Area ("GFA") in order to make the project viable, the Applicant would have to shift the GFA upwards via a taller addition. The proposed Building is already thirty-three feet (33 ft.) in height, and the MU-4 Zone has a height limit of fifty feet (50 ft.) As the Project only has an additional seventeen feet (17 ft.) of height available, only one story could be reasonably added. The Project currently includes two units per floor but without the variance relief, it would be limited to only one (1) unit per floor. This is because the common core (stairwell, common hallways etc.) takes up approximately 300 square feet of GFA and only one (1) unit could fit in the remaining ~600 square feet of space. If the Applicant were limited to only one (1) unit per story, the Project would result in a loss of at least one unit and additional GFA. Without this additional unit the Project would no longer be viable because the Applicant would either have to eliminate a market rate unit or eliminate an IZ unit. Eliminating an IZ unit would mean that the Applicant is then limited to a lot occupancy of 60% and a FAR of 2.5. A loss of 0.5 FAR is equivalent to a loss of 639 sq. ft. of GFA. This would also create an even smaller building footprint due to a limited 60% lot occupancy as that is equivalent to a footprint of only 766.8 square feet.

**C. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.**

Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan. The Applicant proposes an adaptive reuse of a previously neglected commercial property and the provision of seven (7) quality new residential units, one (1) of which will be set-aside as an IZ unit. The IZ unit is proposed where none currently exists or may not exist if the lot were to be redeveloped with less than the number of units to accommodate a rear yard. No substantial harm to the Zoning Regulations is anticipated, since additional relief is not required from other bulk requirements, including height and FAR. The variance request is to extend non-conforming lot occupancy and rear yard aspects of the project, even though the Zoning Regulations specifically permit special exception relief from those provisions in the MU-4 Zone and the Application safely meets those provisions.

V. **CONCLUSION.**

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the variance and special exception relief as detailed above.

Respectfully Submitted,

*Martin P Sullivan*

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Martin P. Sullivan

Sullivan & Barros, LLP

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