

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by KJ Florida Avenue Property, LLC the owner of property located at 1711 Florida Avenue, N.W., Square 2562, Lot 95 (the "Site"), in support of its application pursuant to 11 DCMR §§ 3103.2 and 3104.1 for: (1) an area variance from the loading requirements of section 2201.1; (2) a special exception from the height requirements of section 1402.1; and (3) a special exception from the roof structure requirements of sections 411 and 770.6. The relief is necessary to allow the construction of a new six-story multiple-unit residential building in the RC/C-2-B District at the Site.

Pursuant to section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that 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 relief.

I. Background

The Site is located on the northeast corner of Champlain Street, N.W., and Florida Avenue, N.W., and is currently improved with multi-level parking garage. The existing building on the Site is proposed to be razed in connection with this application to allow for redevelopment of the Site. The Site is zoned C-2-B and is located in the Reed Cooke Overlay District.

Square 2562 is bounded by Champlain Street to the west, Kalorama Road to the north, Ontario Road to the east, and Florida Avenue to the south, all in Northwest Washington. The square is split-zoned: the south portion, which includes the Site, the Marie H. Reed Community Learning Center, a Potomac Electric Power Company building, and a secure storage facility, is

zoned RC/C-2-B; the north portion of the Square, which includes residential co-op buildings on Champlain Street and attached row-dwellings on Ontario Street, is zoned R-5-B. As indicated on the building plat included with the application, the Site is bounded on the south by Florida Avenue, N.W., on the west by Champlain Street, N.W., and on the north and east by private property. The Site includes 25,920 square feet of land area.

As shown on the architectural plans and elevations, the Applicant will be constructing a new six-story multiple-unit residential building with one level of below-grade parking. The building will include approximately 130-145 residential units and will have a maximum building height of 65 feet. The project include a minimum of 48 off-street parking spaces located in the below-grade garage accessed from Florida Avenue on the east side of the building. The proposed residential use for the Site is consistent with the Site's zoning designation and with other uses in the surrounding neighborhood.

II. The Applicant Meets the Burden of Proof for the Requested Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (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 Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia*

Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987). As discussed below, the Applicant meets all three prongs of the area variance test.

A. The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990). In this case, the conditions of the Site, its corner location, and its irregular shape and size, combine to create an exceptional situation and condition. As shown on the materials included with the application, the Site has no alley access and is bounded by private property to the north and east, which impact access to and development of the Site. The Site is surrounded to the south by Florida Avenue, which is a 2-way street running southwest to northeast, and to the west by Champlain Street, which is one-way near the site, running south, except for a small portion of the street just north of Florida Avenue which is two-way to allow access into the current building's parking garage entrance. Both streets are heavily trafficked by all modes of transportation traveling to and within the neighborhood.

In addition, and as shown on the building plat included with the application, the Site has 149.38 feet of frontage on Champlain Street and 180.08 feet of frontage on Florida Avenue. However, the Site is not perfectly geometrical, with its south lot line on Florida Avenue extending from multiple angles. With 25,920 square feet of land area, the Site is significantly larger than most of the surrounding lots in the area that are improved with residential buildings. The Site's grade slopes down significantly from north to south, further impacting development, and, significantly constraining the ability to locate loading facilities on the west side of the Site from Champlain Street.

B. Strict Application Would Result in a Practical Difficulty to the Owner

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. Section 2201.1 of the Zoning Regulations requires that an apartment house with more than 50 units include the following loading facilities: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. In this case, the Applicant proposes to provide one loading berth at 30 feet deep.

Given the Site's size, topography change, and location abutting private property on two sides, the Site is not equipped to provide front-in front-out loading facilities for a 55-foot truck, with all the necessary clearances for maneuverability. Providing these facilities would result in a significant portion of the ground floor being devoted to maneuvering space for trucks, and would adversely affect the location of the courtyard and configuration and location of residential units, making development practically difficult. Furthermore, the only practical way to provide vehicular access onto the Site is from Florida Avenue, which does not provide sufficient space or turning movement for 55-foot trucks.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. The redevelopment of the Site with a new residential structure will significantly contribute to the vibrancy of the neighborhood while supporting the city's housing goals for this area.

The proposed loading facilities are sufficient to serve the needs of the prospective residents of the Site. The proposed loading facilities will adequately accommodate smaller-sized moving trucks that are anticipated to serve residential units for this building. The Applicant will

be able to manage and schedule use of the loading berth, providing an organized process for move-ins and move-outs.

III. The Applicant Meets the Burden of Proof for the Requested Special Exception Relief

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 regulations." *Gladden v. District of Columbia Board of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995) (quoting *Stewart v. District of Columbia Board 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.*

A. Height Requirements (§ 1402.1)

Pursuant to section 1402.1 of the Zoning Regulations, the maximum building height permitted in the RC/C-2-B District shall not exceed 40 feet, or 50 feet with the bonus density provided by the Inclusionary Zoning regulations of Chapter 26. In this case, the Applicant proposes to construct the proposed building to a maximum height of 65 feet to the top of the parapet. Pursuant to section 1402.1, the Board may grant relief from the requirements of the Reed Cook Overlay as special exceptions, provided that certain criteria are met, as set forth below:

1. *Section 1403.1(a): The use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the RC Overlay District;*

The proposed building will advance the RC Overlay District's purposes of providing for the development of new housing and protecting adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts. 11 DCMR § 1400.2(a). The proposed building will add approximately 130-145 new residential units to the Adam's Morgan neighborhood without negatively affecting traffic or parking in the area. Elimination of the existing parking garage will significantly reduce daily vehicular trips to the Site and the immediate vicinity. The building will be designed with quality materials that will improve the aesthetic of the surrounding neighborhood and the street walls along Champlain Street and Florida Avenue.

2. *Section 1403.1(b): Vehicular access and egress shall be designed and located so as to minimize conflict with pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic condition;*

The proposed building will have vehicular access and egress from Florida Avenue. This location was selected because access from Champlain Street would negatively affect vehicular traffic and pedestrian/bicycle safety along the smaller, one-way, and highly-utilized street. Access from Florida Avenue will minimize conflict between all transportation modes, will function efficiently for drivers, and will not create any dangerous or objectionable traffic conditions.

3. *Section 1403.1(c): Adequate off-street parking shall be provided for employees and for trucks and other service vehicles;*

The proposed development will provide a minimum of 48 vehicle parking spaces in a below-grade garage, which is adequate for the few employees that may be hired for the residential building and for service vehicles.

4. *Section 1403.1(d): If located within a C-2-B District, the use shall not be within twenty-five feet (25 ft.) of a Residence District, unless separated there from by a street or alley;*

The Site is separated from all residential districts by a street or alley.

5. *Section 1403.1(e): Noise associated with the operation of a proposed use will not adversely affect adjacent or nearby residences;*

The Site is not located immediately adjacent to other residential buildings and the potential minimal noise generated by a multi-family building will not adversely affect the nearby residences across Florida Avenue. The Site is surrounded on two sides by high-traffic streets and on the other two sides by private property. The private property to the north is a Pepco facility and the private property to the east is a commercial storage facility. Thus, any noise associated with the new residential building will not adversely affect adjacent or nearby residences.

6. *Section 1403.1(f): No outdoor storage of materials, nor outdoor processing, fabricating, or repair shall be permitted;*

The proposed residential building will not permit the outdoor storage of materials or any outdoor processing, fabricating, or repair activities.

7. *Section 1403.1(g): The use, building, or feature at the size, intensity, and location proposed will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.*

The residential use for the proposed building will not adversely affect adjacent and nearby property and will not be detrimental to the health, safety, and convenience or general welfare of persons living, working, or visiting the area. Adam's Morgan is a highly mixed-use

area, and the corner of Champlain Street and Florida Avenue is particularly active with a mix of residential, commercial, and recreational uses and activities. The new residential building will improve the existing neighborhood fabric, will help to support local businesses, and will add new vibrancy, excitement, and high-quality architecture to the Adam's Morgan community for residents and visitors to enjoy.

B. Roof Structure Requirements (§§ 411.1 and 770.6)

Pursuant to section 411.11 of the Zoning Regulations, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR § 411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.* In this case, special exception approval is required because, as shown on the Roof Plan sheet included in the plans: (a) there will be multiple roof structures, (b) the southern roof structure will have walls of unequal heights, and (c) the southern roof structure will not meet the setback requirements from the southern court wall.

The Applicant proposes to provide two roof structures. The northern roof structure will contain a stair tower, and will rise to maximum heights of 12 feet above the main roof deck. The southern roof structure will contain a second stair tower, amenity space, and mechanical equipment. The height of the southern penthouse will be unequal at 12 feet, and 18 feet, 16 inches. It will not be setback from the southern court wall at a distance at least equal to its height above the main roof.

Each roof structure is a necessary feature to provide mechanical equipment and vertical transportation, and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The location and number of the roof structures is driven by the layout and design of the residential units and core functions within the building. The Applicant is providing the greatest setbacks possible given the size and dimensions of the roof and the internal configuration of the proposed building. The roof structures meet the setback requirements from the south and west building facades, which are the two facades that have street frontage, and will not adversely affect the neighbors across Florida Avenue. The only non-conforming setback is from a court wall, which is internal to the proposed building. Thus, the requested roof structure location and design will not adversely affect the light and air of adjacent buildings and will not be visible from the surrounding streets, since each element has been located and designed to minimize visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.