

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

Application of Fort Totten South LLC
ANC 4B

STATEMENT OF THE APPLICANT

This is the application of Fort Totten South LLC (the “**Applicant**”)¹, for special exception relief to permit the construction of a mixed-use project containing residential and retail use at 5543-5575 South Dakota Avenue, NE (Square 5760, Lot 22, a portion of Parcel 125/30, and a portion of the closed South Dakota Avenue NE ramp) (collectively, the “**Property**”). The Property is included primarily in the MU-4 Zone District, with a small portion in the R-2 Zone District.

I.

Requested Relief

The Applicant requests the following relief from District of Columbia Municipal Regulations (“**Zoning Regulations**”):

1. A special exception pursuant to Subtitle A § 207.2 to extend the use, height, and bulk regulations of the MU-4 zone to a portion of the Property zoned R-2; and
2. A special exception pursuant to Subtitle G § 409.1 for relief from the side yard requirement in Subtitle G § 406.1.

¹ We note that the District of Columbia is also an owner of a portion of the Property and therefore, technically a co-applicant, but Fort Totten South is acting as the primary applicant for purposes of this BZA proceeding and most Project entitlements.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X § 901.1 and Subtitle Y § 100.3 of the Zoning Regulations.

III.

Information Regarding the Property and the Project

A. Description of the Property and the Surrounding Area

The Property in the Fort Totten neighborhood of the northeast quadrant of the District. It is also located within Ward 4. The Property is unimproved, triangular-shaped, and comprised of approximately 172,230 square feet of land area. It is situated at the intersection of Riggs Road and South Dakota Avenue. The Property is bounded by Riggs Road to the west, South Dakota Avenue to the south, and residences that front on 4th Street to the east and north. Single family and multi-unit residences are located to the east, with retail establishments, such as Walmart, located immediately across Riggs Road to the northwest. A gas station and 7-11 are located to the south of the Property.

The Property is split-zoned, as shown on sheet 1 of the architectural plans and drawings attached hereto (the “**Plans**”). A majority of the Property is located in the MU-4 zone, and a small southeast portion of the Property – approximately 6,300 square feet or 3.6% – is located in the R-2 zone. Other properties to the northeast are also included in the R-2 zone. The property across Riggs Road to the northwest is zoned MU-4, other properties further to the west are zoned PDR-1, and the property to the south across South Dakota Avenue is zoned MU-28.

B. Description of the Project

The Applicant proposes to construct a mixed-use residential and retail development, as shown on the Plans. The proposed project will include 160 to 185 townhouses and/or condominiums, 200-292 parking spaces, and 20,000-30,000 square feet of ground floor retail (the “**Project**”). On the west side of the Property, the Project will contain a podium building with street-level retail that will line Riggs Road, multifamily residential units located directly above the retail, and below-grade parking for the retail and residences. For the remainder of the Property, the Project will be comprised of at-grade townhouses (with parking) in 10 rows with various configurations and orientations. This eastern portion of the Project also will provide internal vehicular and pedestrian circulation routes. Many of the at-grade townhouses will be oriented to the street along South Dakota Avenue for a strong streetscape presence, and other rows of townhouses will be internal to the Property. Vehicular access to the podium building will be via a curb cut at the northwest corner of the Property from Riggs Road, and vehicular access to the at-grade townhouses will be via a curb cut on the south side of the Property on South Dakota Avenue.

The Project will fuse the private property owned by the Applicant and the public property owned by the District of Columbia, made available by the reconfiguration of the South Dakota Avenue, Riggs Road and 3rd Street intersection reconfiguration. The Project will allow for the Fort Totten neighborhood to grow in a manner that is appropriate for the enhanced focus on this important intersection and complements the investments made at the Fort Totten Square project immediately to the north of Riggs Road.

Other than the relief requested herein, the Project will conform to the Zoning Regulations. The Project will have an overall Floor Area Ratio (“**FAR**”) of approximately 1.82, with a residential FAR of 1.61 and a retail FAR of 0.21, which are both well within the maximum 3.0

(1.5 non-residential) FAR permitted in the MU-4 zone. The maximum height of the Project will be 50 feet, which is the maximum permitted in the MU-4 zone. The Project will provide affordable housing commensurate with the inclusionary zoning requirements in Subtitle C, Chapter 10.

IV.

Description of Relief Requested

The Applicant is seeking special exception approval to extend the use, height, and bulk regulations permitted by the MU-4 zone into the portion of the Property zoned RA-2. Subtitle A § 207.2 sets forth specific conditions for this special exception, which are discussed in more detail below. The Applicant is also seeking a special exception for relief from the side yard requirement in Subtitle G § 406.1 to allow two side yard of five (5) feet and three (3) feet, rather than the required side yard of approximately eight (8) feet. Special exception relief from a required side yard granted pursuant to Subtitle G § 409.1 must comply with any applicable provisions set forth in Subtitle G, Chapter 12. Subtitle G, Chapter 12 does not include any specific standards that must be satisfied for special exception relief from the side yard requirement.

Both the relief to extend the MU-4 zone and the relief from the side yard requirement must comply with the general standards for special exception relief set forth in Subtitle X § 901.2. This section requires that an applicant demonstrate that requested special exception relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties. As discussed below, this application satisfies both the specific standards for the relief to extend the use, bulk and height permitted by the MU-4 zone and the general standards for special exception relief for both extending the MU-4 zone and from the side yard requirement.

A. Zone Boundary Extension Relief

This application satisfies the specific conditions in Subtitle A § 207.2, as described below.

- (i) *The extension is limited to that portion of the lot in the more restrictive use zone and does not exceed 35 feet.*

As shown on sheet 14 of the Plans, the portion of the Property that is currently zoned R-2 and to which the extension of the MU-4 zone will apply, is less than 35 feet. The extension of the MU-4 zone will extend a maximum of only twenty (20) feet to encompass the small area of the Property currently zoned R-2. In total, only eight (8) townhomes will extend into the R-2 zone.

- (ii) *Any portion of the lot located in the R-2 zone shall be deemed to be limited to a FAR of 0.4 for computational purposes.*

Additionally, as shown on sheets 1-3 of the Plans, there will be only small portions of the proposed buildings located in this extended MU-4 zone area. The FAR of this area will be 1.5, which is below the maximum permitted FAR.

- (iii) *The extension shall have no adverse effect upon the present character and future development of the neighborhood.*

The Applicant is not seeking an extension of the MU-4 zone boundary in order to increase the density of the Project. Instead, the overall density of the Project will be well within the permitted density for the MU-4 zone. The purpose of the relief is to maintain design and massing continuity for all of the Project's buildings. Without the relief, jarring reductions to a portion of the Project's bulk and height would be necessary to accommodate a zone change that affects only a small portion of the Property. Similarly, allowing for the extension of the MU-4 Zone boundary line allows for a more natural configuration of the townhouse and retail community planned for site. The vehicular and pedestrian passageways throughout the project, particularly in the southeast corner of the Property will be ample and efficiently proportioned.

It is also noteworthy that the amount of relief is nominal: only a small portion of the 35 foot extension otherwise permitted is being requested in this case. As shown on sheet 1 in the Plans, the requested relief will affect only nine townhouses and will allow these townhouses to be commensurate with the height and massing of the rest of the townhouses in the Project.

Further, the proposed extension will not have any adverse effect on the present character of the surrounding neighborhood or its future development. The Project's residential character will complement the residential uses currently located to the east of the Property since the retail uses will be located on the west side of the Project away from existing residences. The small portion of the Project in the R-2 zone will include only residential use, and the extension of the MU-4 zone into a small portion of the R-2 zoned Property will not result in inappropriate or disproportionate development since it will be commensurate with the existing residential uses to the east. The Project's townhouses at the southeast portion of the Property will be below the relative heights of the existing houses to the east of the Property, as shown on sheets 8-12 in the Plans. The relief will enable the Applicant to create a cohesive and well-organized residential project that will increase housing stock for families, provide much-needed affordable housing, incorporate significant open space and internal circulation, enliven a long-vacant parcel at a prominent intersection.

- (iv) *The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting or any other requirements it deems necessary to protect adjacent or nearby property.*

As shown on sheet 14 of the Plans, the Project's townhouses will be separated from the existing residences to the east by approximately 35 feet, which will allow for those existing houses to maintain access to ample light and air. In addition, the Project's townhouses will not be any taller than the existing houses to the east, and the townhouses will have an attractive and

compatible design. Therefore, the nearby properties will be protected, and it is unnecessary for the Board to impose any requirements on the Project.

- (v) *The granted special exception will be harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties (general special exception criteria in Subtitle X § 901.2).*

Granting the relief will not allow the Project to increase its bulk or height, and it will not allow for the introduction of an incompatible use. The relief will not infringe on the light, air, and privacy available to neighboring properties, and it will maintain the residential character of the nearby properties. The proposed Project will conform to all of the development standards of the MU-4 zone, except for the requested side yard relief, and the zone extension is required only for a small portion of the site, on which only slight portions of the Project's buildings will be located. It also should be noted that the portion of the Property currently shown as R-2 on the Zoning Map was shown as C-2-A (now MU-4) in the 2003 Zoning Map, so the "appropriate" zone for that portion of the Property may be MU-4 in any event. Therefore, the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect neighboring property. Indeed, rather than adversely affecting the use of neighboring properties, the special exception will enable the development a project that will complement the surrounding properties.

B. Side Yard Relief

The Project has a required side yard of 8 feet, 4 inches, but the Project's proposed side yard in one location is five (5) feet in one location and three (3) feet in another location. As shown on sheet 1 of the Plans, this side yard relief is required only for a small portion of the proposed Project in the southeast corner of the Property and one small portion at the northeast corner of the Property. The nonconforming side yards affect only two townhouses; all other areas of the Project will have

conforming side yards. The requested relief is minor and affects only a small fraction of the Project. The proposed five-foot side yard in the southeast location will maintain the minimum requirement for the MU-4 zone (notwithstanding building height), so it will be consistent the general development standards contemplated for the zone. In the northeast location, the nonconforming three (3)-foot side yard will be for only a small portion of the townhouse's eastern wall due to a jog in the property line, but the majority of the townhouse's eastern side yard will be at least 21 feet wide. Even with the proposed nonconforming side yard, the affected townhouses will be at 24 feet from the nearest buildings on other properties, as shown on sheet 14 in the Plans. Therefore, the requested side yard relief will not adversely affect the light, air, or privacy available to neighboring properties. Accordingly, as required by Subtitle X § 901.2, the requested side yard special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect neighboring property.

V.

Conclusion

For all of the above reasons, the Applicant is entitled to the requested special exception relief in this case.

Respectfully submitted,
GOULSTON & STORRS, PC

_____/s/_____
Jeff C. Utz

_____/s/_____
Cary Kadlecek

March 8, 2018