

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Statement of RP MRP 900 G LLC
ANC 2C03

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of RP MRP 900 G LLC ("**Applicant**") for special exception and variance relief to construct a new office building, with ground floor retail, located at 624 9th Street, NW (Square 376, Lot 68) ("**Property**"). The Property is located in the C-4 Zone District of the Downtown Development Overlay ("**DD**"). The Applicant recently secured variance and special exception approval from the Board of Zoning Adjustment ("**BZA**") for the renovation of the existing building at this site, which included a nonconforming courtyard, nonconforming penthouses, and nonconforming loading and parking in connection with BZA Case No. 18200. During that case, the Applicant developed the design of the addition being proposed at that time after numerous discussions with the neighboring property owners. In fact, the courtyard design and elements of the penthouse design were specifically requested by the neighboring property owners, despite the fact that they required additional relief.

The Applicant is no longer renovating the existing building because it has since determined that renovating the existing building will be nearly as costly as constructing a new building; yet a new building will yield significantly more efficient floor plans. Accordingly, the Applicant has decided to raze the existing building and construct a new office building with ground floor retail in order to achieve the Trophy office space it desires. Nevertheless, many elements of the new building's design will remain the same in light of the Applicant's negotiations with the neighboring property owners. As such, the new proposal will continue to require variance relief from the courtyard requirements and special exception relief from the

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EXHIBIT NO. 3

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penthouse requirements, per the designs the Applicant developed in coordination with its neighbors. In addition, the Applicant seeks variance relief from the loading requirements, as discussed in further detail below.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve special exception relief pursuant to Section 3104.1 of Title 11 of the District of Columbia Municipal Regulations from the roof structure requirements of Sections 777, 400.7, and 411.5. The Applicant also requires variance relief pursuant to Section 3103.1 from the loading requirements for an office building under Sections 2201.1 and 2203.2. Finally, it seeks variance relief from Section 776.1 for a nonconforming open court in a commercial building.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.1 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.1 and 3104.1).

III. BACKGROUND AND PROJECT DESCRIPTION

The Applicant in this case is RP MRP 900 G LLC, the owner of the Property. The Applicant is an affiliate of MRP Realty, a strategic real estate development and investment firm with projects throughout the District. RP MRP 900 G LLC purchased the Property in March 2010 with the intention of renovating it and bringing it more in line with current standards for office space. It proposed a new core and "skin" for the building as well as a modest addition along the western side of the structure. The building could not accommodate conforming parking or loading so the Applicant proposed a mechanical parking system as well as a loading space to serve the building's needs.

The original building was constructed to accommodate a YWCA, complete with an indoor pool and athletic courts. The needs of the gym dictated the floor plans for the building which made it exceedingly difficult to convert to functional office space that could be marketed successfully. In order to achieve a Trophy office building with attractive and competitive features, the Applicant has decided to raze the existing building and construct a new building. The proposed building, however, faces some of the same challenges as the existing building including the narrowness of the lot and its context amid multiple neighbors, some of which are residential users.

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The proposed new building will be nine stories tall and will be dedicated entirely to office use, with the exception of the ground floor, which will be dedicated to the building lobby and retail space, in compliance with the requirements of the DD Overlay. The gross floor area of the building will be approximately 108,000 square feet: the office component will consist of approximately 101,500 square feet and the retail space will consist of at least 6,500 square feet. Three levels of below grade parking will be provided with at least 55 parking spaces. The parking will be accessed from the public alley to the south of the building as well as the loading. The loading area will include one thirty foot berth, a platform and a service and delivery space. Because of the narrowness of the lot, in combination with the retail requirements of the DD Overlay, the Applicant does not have the space to provide an additional loading berth, as required under the Zoning Regulations. The compact area also makes it difficult to provide a loading platform that is contiguous with the loading berth; rather, the platform is located adjacent to the berth to the east. The platform is contiguous with the service and delivery space.

At the request of the residents of the Mather building, the building will be set back from the western property line approximately four feet in order to provide light and air to the

residential units in the Mather Building, the majority of which is also set back from the property line four feet. The four foot setback will lead to a large courtyard at the rear of the building, which will provide views in addition to light and air to the tenants of both the Mather and Gallup buildings. The four foot strip along the western edge of the building, however, creates a non-conforming court for which the Applicant requires relief. The courtyard in the southwest corner of the building has also does not comply with the width requirements for an open court.

Finally, the Applicant requires relief for not setting its penthouse back from the southern lot line and for providing a penthouse with varying heights. The penthouse is pushed to the southern lot line, due to the narrow width of the lot. The varying heights are being provided in order to minimize the impact of the penthouse.

IV. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the southwest corner of 9th and G Streets in the Downtown neighborhood. It is immediately adjacent to the Mather Building to the west and the Gallup Building to the south. The National Portrait Gallery is located one block to the east of the Property and the Martin Luther King, Jr. Library is located on the block north of the Property, directly across the street from the building. With the exception of these institutional uses, the neighborhood is primarily comprised of office buildings with ground floor retail.

The existing office building was constructed in 1980 for use as a Young Women's Christian Association ("YWCA") offering a pool and gymnasium with auxiliary office use. The building was originally constructed with a floor area ratio ("FAR") of 6.98, a height of 106.5 feet, and a rear yard of 23 feet. It did not include any parking or loading facilities; none were required in the C-4 Zone District at the time of construction. It was subsequently converted

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entirely to office use. The property was renovated in 1990 by infilling slabs resulting in an additional 9,000 square feet of gross floor area. Despite the renovations, the building never became the Class A office space that a building at its location should be.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER SECTION 3104.1 OF THE ZONING REGULATIONS

The Applicant is seeking special exception relief pursuant to Sections 3104.1 and 411.11 from the setback requirements of Section 400.7 for the one penthouse provided on the rooftop level of the building. It also seeks special exception relief pursuant to Sections 3104.1 and 411.11 from the even height requirements of Section 411.5. In order to obtain the requested relief, the special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and must not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. 11 DCMR Section 3104.1.

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A. The Requested Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR Section 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted; and must be designed to encourage the stability of districts and land values. Id. at Section 101.2. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether a special exception should be granted.

In this case, the Applicant seeks relief pursuant to Section 411.11 from Sections 400.7 and 411.5. Section 400.7 requires all mechanical equipment and stairway or elevator penthouses to be set back from all exterior walls a distance at least equal to its height above the roof. Section 411.5 requires penthouses to consist of a uniform height. Section 411.11 of the Zoning Regulations provides, however, that “[w]here impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under Section 3104, the ... location... of such structure, even if such structures do not meet the normal setback requirements...; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR Section 411.11.

Here, the Applicant is proposing a penthouse that is not set back from the southern property line, which abuts a twenty-foot wide alley, and it is proposing a penthouse that has varying heights. The enclosure is 18 feet, 6 inches tall at its greatest height and twelve feet tall at its shortest. It would otherwise be required to set back a minimum of one foot for every foot of height from the exterior wall of the building. The proposed penthouse, however, is flush with the exterior wall of the building.

The lot is long and narrow: it is approximately 70 feet wide and over 184 feet in length. The main lobby of the building is entered from 9th Street, which requires the elevators to be located at that end of the building. Given the narrowness of the building, it is not feasible to set the elevators, and the resulting penthouses, away from the southern lot line. This would leave very narrow spaces on either side of the elevator lobby, which would not be able to

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accommodate office space or sufficient corridor space, or viable retail space at the ground floor level. See Sheet 37 of Exhibit A. It would result in an inefficient floorplan that would be extremely difficult to market to a tenant. Pushing the elevator lobby to the southern end of the lot, however, provides a functional depth for office and corridor space and a much preferred floorplate for marketing to potential tenants. This layout, however, results in a penthouse that will not be set back from the exterior wall of the building at least one foot for every foot of height.

The “stepping down” of the penthouse toward the southern property line resulted from the Applicant’s conversations with the owner of the Gallup Building during Case No. 18209 (the Gallup Building is located across the alley from the Property). The penthouse steps from 18 feet 6 inches to approximately 15 feet and 12 feet. The area of the penthouse is compact in order to minimize its effect and the varied heights of the penthouse further helps to minimize its impact on adjacent property owners, which is consistent with the intent of the Zoning Regulations.

B. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

The penthouse will be located along the south side of the building, which fronts on a public alley. Its location minimizes its impact and it will not be visible from the sidewalks along 9th or G Streets. Further, the penthouse will not impair the light or air of adjacent properties including, perhaps most importantly, the residential property to the west. It should also be noted that the Applicant had been in discussions with the owners of the Gallup Building during the first BZA case to ensure that the penthouse design will not detrimentally affect the building and the Applicant will continue its dialogue with the Gallup Building throughout the development of this project. The conversations with Gallup led to the proposal of stepping up the height of the

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penthouse as it steps back from the exterior wall of the building in order to minimize the potential impact of the penthouse.

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VI. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The Applicant is seeking relief from the requirement to provide one 30-foot loading berth and from providing one 100-square foot loading platform contiguous to the loading berth. It also seeks variance relief for two courtyards along the western side of the building. The burden of proof for an area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the Applicant shall demonstrate that the Property meets the three-part test for area variance relief.

A. The Property is affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness, as well as its location in relation to the Capitol. Specifically, the Court held “[t]he site’s proximity to the Capitol made it uniquely valuable to the Republican National Committee, a public service organization. The previously constructed buildings and the contiguous subject site can be

considered together in applying the test especially because the past acts of the zoning authorities led interveners to rely in good faith on their eventual consent to the final stage of the building. This case, like DeAzcarate, illustrates that extraordinary circumstances can encompass the past zoning history, as well as the physical features, of the property.” Id. at 1099-1100. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood

Here, the Property is unique because it is a long, narrow lot located in the SHOP subdistrict of the DD Overlay. As such, the Applicant must provide the entirety of the leasable space to retail use at the ground floor level, which must be no less than a .5 FAR. In order to maximize the amount of retail space on the ground floor, the Applicant is providing the bulk of it along the G Street façade. It is providing a narrow lobby off of 9th Street and is focusing all of its service corridors along the alley in the rear of the Property. Despite having streamlined all of the non-retail uses, the Applicant is capturing 6,500 square feet of retail space, which is a .51 FAR. Losing any additional space, albeit only for a single loading berth, would reduce the available retail space below the .5 FAR requirement, which would require BZA relief. Given that the loading operations of an office building at this site have been minimal in the past, the Applicant thinks it was more appropriate to seek loading relief rather than relief from the retail requirements. Further, providing a loading platform that is contiguous with the berth would project the loading space further toward G Street, which would create an awkward and

inefficient retail floor plan. Thus, the Applicant is providing the platform to the east of the berth, which helps maintain a compact loading area and preserves an open retail floor plan.

The location of the building also adds to its uniqueness. The building is located in the Downtown neighborhood of the District and is surrounded by commercial and institutional uses. It also is adjacent to a building that was originally constructed for commercial use but later converted to residential use. The varying uses of the neighboring buildings create different considerations for the Applicant in developing the design of its own building. For instance, it wants to be sure to respect the residential building and be sure to provide enough light and air for the units – thus, it is providing a setback from the side lot line where one is not required, despite the fact that it creates a nonconformity.

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

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, 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 applicant for a variance are among the

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factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)), see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). 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.” Gilmartin, 579 A.2d at 1171.

Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant meets this standard. As explained above, being required to provide the required loading would be done at the expense of providing ground floor retail. The ground floor is extremely tight and there are many competing use requirements. The Applicant has minimized its service area to the extent possible in order to maximize the available retail space; nevertheless, there simply is not room on such a narrow floor plate to provide all necessary and required uses. An additional loading space would either cut closer to G Street, reducing available retail space and minimizing the depth of a portion of the retail space along G Street to a depth that was no longer functional or it would widen the loading area toward 9th Street, which would conflict with a structural beam, as well as reduce available retail space below what is required. Given how tight the ground floor is, it is not practicable to dedicate any additional space to loading operations.

The Applicant also requires relief for the courts along the western property line. It is providing two courts: one court that runs north-south at the western edge of the building and another court that is being provided in lieu of a rear yard in the southwest corner of the building. With respect to the former court, providing a court with the required width of 27.5 feet along the western edge of the building would significantly diminish the floorplate of the building. A

conforming court would occupy nearly 15 percent of the G Street frontage. This is a significant amount of space to leave undeveloped in the C-4 Zone District and would preclude the Applicant from satisfying the retail requirements of the SHOP subdistrict. The Applicant, however, has worked hard to accommodate the requests of the Mather Building residents who would like to maximize the amount of light and air available to the residential units. Accordingly, the Applicant is proposing a four foot setback along the western lot line that will provide an eight foot buffer (when combined with the Mather Building's setback) between the two buildings to accommodate the residences.

The Applicant is providing an additional court at the rear of the Property, again, at the request of the Mather Building, which will extend an additional 16 feet from the western property line. The latter court is being provided in lieu of a rear yard pursuant to Section 774.9(c); however, the Applicant also seeks relief for the width of that court pursuant to Section 776.1. The Mather residents specifically requested a setback along the entire width of the building rather than providing a deeper courtyard in the rear of the building. In light of the requests from the neighboring property owner, the Applicant is proposing the court scheme attached as Exhibit A. Accordingly, instead of a court that is 22.5 feet wide at the rear of the building, the Applicant is providing a court that is 16 feet wide.

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

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. The proposed building exceeds the 100,000 square foot threshold for

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the loading requirement by only 8,000 square feet.¹ Under the Zoning Regulations, the provision of the 8,000 square feet requires an additional loading berth, even though it is unlikely that 8,000 square feet would justify an additional berth. The existing building, at approximately 100,000 square feet of gross floor area does not provide any loading. It performs all loading operations from the alley. Accordingly, the Applicant is confident that providing one berth will be able to serve the building's loading needs and that loading operations of the new building will have less of an impact than the existing building, despite the increase in gross floor area. Because this is an office building, the loading demand will not be burdensome. The few deliveries that the building does receive can be accommodated through this loading space. The Applicant also believes that there will be no impact from providing the loading platform adjacent to the berth rather than contiguous to the berth. The functionality of the platform will remain the same.

Finally, with respect to the court relief, the proposed setback along the western property line is being provided at the request of neighboring property owners. In fact, the nonconformity is being created as a result of an effort to mitigate building impacts. The depth of the second court is dictated by the creation of the former court. Whereas, a compliant court could be provided, the Mather Building prefers the provision of the four foot setback for the entire width of the building with a non-compliant courtyard in the southwest corner of the building. The nonconformity of both courts in and of themselves will not create a detrimental impact on neighboring owners; they are in fact provided to diminish the impacts of the building on the neighboring residential building.

¹ In fact, if the retail and office loading requirements were calculated separately, the building would only exceed the threshold for an additional berth for office use by approximately 1,500 s.f.

VII. COMMUNITY OUTREACH

The Applicant has secured the support of the owners of the Mather Building's Condominium Association. It will present this application to the ANC at its monthly public meeting and it will continue its dialogue with the Gallup Building and discuss the minor changes that have been made to the penthouse plan.

IX. EXHIBITS

1. EXHIBIT A Architectural Plans including Surveyor's Plat of Property and Photographs of Property
2. EXHIBIT B Application Form, Self-Certification and Agent Authorization
3. EXHIBIT C BZA Order No. 18200
4. EXHIBIT D Excerpt of Zoning Map
5. EXHIBIT E Property Owner List

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X. CONCLUSION

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

Respectfully submitted,



Allison C. Prince



Christine A. Roddy

Certificate of Service

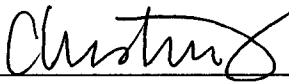
I hereby certify that I sent a copy of the foregoing document to the following addresses on August 1, 2011 by first class mail:

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