

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

Application of the American Association of Medical Colleges  
BZA Application No.:

Hearing Date:  
ANC: 2C

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STATEMENT OF THE APPLICANT

I.

Nature of Relief Sought

This is an application by the American Association of Medical Colleges (“**Applicant**”)<sup>1</sup> for relief from the strict requirements of the Zoning Regulations to permit the construction of an office and retail building on the property located at Square 451, Lots 2, 3, 4, 31, 801, 806, 807, 810, 811 820, 821, 824, 825, 826, and 830 (the “**Property**”), also known as 611-627 K Street, NW, and 616-640 New York Avenue, NW. The application requests (i) special exception relief pursuant to 11 DCMR § 3104.1 from 11 DCMR §§ 771.1 and 411.11 relating to penthouse setback requirements, and from 11 DCMR § 2108.1 relating to the minimum number of parking spaces required, and (ii) variance relief pursuant to 11 DCMR § 3103.2 from 11 DCMR §1701.7 relating to required setbacks for buildings fronting on Mount Vernon Square.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 DCMR §§ 3104.1 and 3103.2.

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<sup>1</sup> The Applicant is the contract purchaser of the Property.

III.

Description of Environs

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A. Description of the Property

The Property is triangle-shaped and has frontage on New York Avenue, NW, and K Street, NW. Its western edge abuts a small pocket park owned by the Federal government. Its eastern boundary is a ten (10) foot wide public alley. The total area of the Property is approximately 30,238 square feet. The Property is depicted on the plat attached as Tab 2 to the application packet.

The Property is currently improved with a number of two to three story buildings, most of which will be demolished to make way for the headquarters building. The Property is not in a historic district and does not contain any individually landmark buildings. However, a landmark application was filed for several of the buildings on the Property in 2005 by the District of Columbia Preservation League (“**DCPL**”). This application was withdrawn by DCPL after a private preservation agreement was reached with the then-owners of portions of the Property (“**Preservation Agreement**”). Such agreement requires the retention and restoration of four (4) existing buildings on the Property.

B. Description of the Surrounding Area

The area surrounding the Property can be described as a former heavy commercial area that has largely fallen into disrepair and disuse. The Property is situated at the western point of the Mount Vernon Triangle neighborhood, immediately east of the former City Museum building and southeast of the D.C. Convention Center. It is located at the point where Massachusetts Avenue and New York Avenue, NW converge. The Applicant intends to take advantage of the Property’s strategic and high-profile location and transform the Property’s blighted condition into a high-quality architectural statement well-suited for such a prominent parcel.

Immediately to the south of the Property, across K Street, NW, is the current National Public Radio headquarters building. To the east of the Property on Square 451 lies a row of two story commercial buildings fronting on 6<sup>th</sup> Street, NW. To the north of the Property across New York Avenue, NW, several three and four story commercial buildings front on New York Avenue, NW.

The Property is located in the Central Employment Area ("CEA"), as defined by the Comprehensive Plan, 10 DCMR § 199. The CEA is the core area of the District of Columbia, where the greatest concentration of employment in the city and region is encouraged. Plans are in development for the construction of significant projects on each of the squares surrounding the Property. The area surrounding the Property will soon support a dense concentration of residential, commercial, and retail uses befitting of the urban core in which it is situated.

C. Existing Zoning

The Property is located in the Downtown Development District ("DD")/Mount Vernon Triangle ("MVT") Overlay/C-2-C Zone District, as depicted on the portion of the Zoning Map attached as Tab 3 to the application packet. The C-2-C Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside the central core but includes office employment centers. The C-2-C zone is located in, or near, the CEA, and provides for higher density residential and mixed uses. Office, hotel, most retail, service, and residential uses are permitted as a matter-of-right in the C-2-C Zone District.

Since the Property is located in the DD/MVT Overlay/C-2-C Zone District, a maximum floor area ratio ("FAR") of 8.0 is permitted, however, a minimum of 4.5 FAR of residential use is required. This required residential use may be accounted for off-site in a Combined Lot

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Development (“CLD”). The maximum permitted FAR in the DD/MVT/C-2-C Zone District may be increased to 8.5 when preferred retail uses are provided on site or Transferable Development Rights (“TDRs”) are utilized. The FAR can also be increased above 8.5 pursuant to the CLD program.

Further, the maximum permitted building height in the DD/MVT/C-2-C Zone District is based on the Act to Regulate the Height of Buildings in the District of Columbia (“Height Act”). Under § 1701.7, the maximum allowable building height on the Property is 130 feet, subject to a 1:1 setback from Mount Vernon Square for the portion of the building above 110 feet in height.

The Property also has several design requirements due to its location in the MVT Overlay, including the inclusion of display windows and entrances for 50% or more of the streetwall surface area and providing floor-to-ceiling heights of 14 feet for portions of a project’s ground floor. A building in the MVT Overlay with K Street frontage also must devote at least 50% of the gross floor area of the ground floor to the specific uses listed in §§ 1732.2 and 1732.4.1 of the Zoning Regulations.

A rear yard of at least 15 feet is required for all uses. The C-2-C Zone District requires parking in varying amounts, depending upon the precise use mix for the building. The parking requirement for office use is one (1) parking space for every 1,800 square feet of gross floor area in excess of 2,000 square feet. The parking requirement for retail use is one (1) parking space for every 750 square feet of gross floor area in excess of 3,000 square feet. The C-2-C Zone District requires loading in varying amounts, depending upon the precise use mix for the building. For an office building with more than 200,000 square feet of gross floor area, the loading requirement is three (3) loading berths at 30 feet deep, three (3) loading platforms at 100 square feet, and one (1) delivery space at 20 feet deep. For 5,000 to 20,000 square feet of retail

use, the requirement is (1) loading berth at 30 feet deep and one (1) loading platform at 100 square feet.

IV.  
Description of the Project

The project will create a 130 foot office and retail building that will be the headquarters for the Association of American Medical Colleges (“**Project**”). The Project will have a FAS of 9.6 through the purchase of Combined Lot Development Rights (“**CLDs**”).

The building will include a maximum of 289,000 square feet of gross floor area including a minimum of 13,750 square feet of ground floor retail. Three (3) levels of below grade parking are also proposed.

As a result of the Preservation Agreement, portion of four (4) existing buildings will be retained and incorporated into the design of the Project. In order to create an efficient building footprint, those retained structures, which are currently scattered across the Property, will be relocated and consolidated to the southeast corner of the Property, as shown on Page 4 of Tab 7. Tab 8 and Page 4 of Tab 7 also show pictures of such historic structures. The upper floor levels of the proposed new construction will be carved away behind the existing structures, giving them three-dimensional integrity, while creating a deferential and complimentary backdrop.

The primary office lobby will be located at the northeast corner of the Property along New York Avenue. The project will have two (2) retail areas on the ground floor. The primary retail area will occupy the western “wedge” of the Property immediately adjacent to the Federal reservation. The secondary retail area will be located on K Street in the southeast portion of the Property. Such retail is in accordance with the MVT Overlay and other planning documents relating to the Mount Vernon area. All building core and backhouse service functions will be removed from the sides of the building to maximize the enlivening of the streetscape of the

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Project. All parking and loading activities will take place from the existing public alley in Square 451.

V.

Relief Requested – Special Exception from the Parking Requirements

Pursuant to 11 DCMR § 2101.1, the parking requirement for office use in the C-2-C Zone is one (1) parking space for each 1,800 gross square feet of office gross floor area for all space in excess of 2,000 square feet, and the parking requirement for retail use is one (1) parking space for each 750 square feet of retail gross floor area in excess of 3,000 square feet.

The Project will require 152 parking spaces for the approximately 275,250 square feet of office use and fourteen (14) parking spaces for the approximately 13,750 retail use, for a total of 166 required parking spaces. The Project will provide approximately 160 parking spaces. Thus, a special exception is required under § 2108.1 to reduce the parking by six (6) parking spaces. The parking requirement may be reduced by up to 25% under the special exception procedure<sup>2</sup>.

VI.

Relief Requested – Special Exception from the Roof Structure Setback Requirements

Pursuant to 11 DCMR §§ 770.6(b) and 771.1 (which references 11 DCMR §411), a roof structure is required to be set back from the exterior walls of a building by a distance equal to its height. However, the Project proposes a roof structure that does not setback from the exterior walls for such required distance for a small area of such roof structure, as shown on page 11 of Tab 7. Thus, a special exception is required under § 411.11 from § 770.6(b). The height

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<sup>2</sup> 11 DCMR 2108.2.

of the proposed roof structure is eighteen (18) feet six (6) inch, as permitted as a matter of right under the Zoning Regulations.

VII.

Relief Requested – Variance from the Height Setback Requirement

Pursuant to 11 DCMR § 1701.7, a building fronting on Mount Vernon Square must be designed so that no part of the building projects above a plane at a forty-five (45) degree angle from a line that is 110 feet above the property line abutting Mount Vernon Square. However, the Project requires the construction of the building into such required setback area. Accordingly, the Applicant requests a variance from § 1701.7 to permit the construction of portions of the Project that will exceed the 45 degree setback.

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VI.

Satisfaction of Standards for Special Exception Relief

In order to obtain special exception relief, the proposed special exceptions 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 Zoning Maps.” 11 DCMR § 3104.1. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether the individual special exceptions requested herein should be granted.

A. The Requested Special Exception 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. Id. §

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 of land values. Id. § 101.2.

Permitting the parking special exception is in alignment with the general purpose and intent of the Zoning Regulations and the Zoning Map. The reduction in the amount of parking required by six (6) spaces does nothing to compromise the public health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia. Further, such reduction is a sensible planning element for the Project considering its location. The Property is located in a high density commercial area and is well-served by mass transit, including two (2) Metrorail stops (including three (3) Metrorail lines) and multiple bus stops. Further, recent discussions within the District of Columbia planning community and the Zoning Commission indicate that parking maximums soon will be instituted, particularly for properties such as the Property. Thus, the reduction of the required parking at the Project is “in harmony with the “intent and purpose” of the parking regulations as applied to commercial buildings in the DD/C-2-C Zone District – that is, to ensure sufficient parking for employees and visitors to the Building.

Permitting the roof structure setback special exception is “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps,” since there will be no perceptible loss of the amenities (light, air, privacy, and off-street service functions) as a result of such special exception – given that the roof structure at that location would face K Street NW. The Property is located in a high-density commercial Zone District, in the CEA, and no residential area is adversely affected by such request. In fact, as described below, the building

efficiency and historically-deferential design allowed by the roof structure special exception actually achieves planning elements of the District of Columbia.

Further, the Applicant's and DCPL's desire to set the upper level facades back from the four (4) moved "historic" buildings to effectuate a design which is in harmony with these older structures requires such accommodation. Such removal of the "exterior wall" towards the core creates a situation of non-compliance. The Applicant is actually maximizing the preservation on the site and the concomitant complementary design – a key aspect of the Comprehensive Plan – at the expense of a small technical relief request. Essentially, the Applicant is asking the Board of Zoning Adjustment to exchange the setback requirement for the roof structure for more preservation than would be required by the District's historic preservation laws.

The penthouse will be set back more than the required 18.5 foot distance from the walls on all other sides of the Building. Therefore, the only portion of the penthouse creating the adverse condition will face the southeast, towards K Street and the high density commercial development planned for the square south of the site. As a result, the roof structure will not overshadow nor negatively impact a residential building or any pedestrians on any surrounding street, nor affect any other property's light and air. Thus, the "intent and purpose" of the chapter as applied to commercial buildings in the C-2-C Zone District—to prevent unsightly penthouses from increasing the apparent height of the building—will be fulfilled.

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

The somewhat reduced number of parking spaces will not adversely affect neighboring properties. Once again, the Building is within easy walking distance of several Metrorail lines and numerous Metrobus routes, meaning that many employees and visitors will not only come by car. Those that do will find ample parking in the building itself and, in the event that the

Building's own garage is full, the various commercial lots located throughout the immediate vicinity. In addition, the parking relief request of six (6) parking spaces out of 166 required spaces is a de minimis request.

Similarly, the reduced roof structure setback from the edge of the building will not adversely affect neighboring properties. The penthouse will be no taller than 18.5 feet, which is permitted by the Zoning Regulations and will only encroach on the required roof structure setback in the southeast portion of the building. That portion of the Property faces K Street, NW, and the commercial development on Square 484W to the south of the Property. Thus, it will not impact any residential property. Granting this special exception will not adversely affect light and air or other conditions for adjacent structures, and thus will create no adverse effect on the "use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." The mechanical penthouse will conform to the 1:1 setback requirement on all sides of the Building other than the southeast portion of the building. Therefore, the non-compliant feature of the roof structure will not be visible from the large majority of the surrounding neighborhood or the surrounding streets. It is also important that the portion of the roof structure that is subject of this special exception request is de minimis.

The negative impact of the special exception is negligible, particularly in light of such an effort to augment the positive impact of other characteristics required by the Zoning Regulations. It is important to note that the Project actually advances the intent and goals of the Zone Plan for this area as defined in the Comprehensive Plan. The Project is in compliance with the intended development along the New York Avenue corridor and K Street NW corridors (within the Mount Vernon Triangle neighborhood), both under the Zone Plan and the Comprehensive Plan. The Project will not change the overall permitted density on the Property or the total size of

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development. The only effect will be that the Property will be developed with a roof structure with a slightly less than required setback.

C. The Applicant Meets the Requirements for Special Exception Relief under § 2108.3 of the Zoning Regulations

In the case of a parking special exception, the BZA will also consider the:

1. Nature and location of the structure;
2. Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
3. Amount of traffic congestion existing or that the building or structure can reasonably be expected to create in the neighborhood;
4. Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the building or structure is in use; and
5. Proximity to public transportation, particularly Metrorail stations....

Id. § 2108.3.

The Project will bring a productive use to a currently vacant and underutilized parcel in the Downtown core. Such use would typically require 166 parking spaces under the Zoning Regulations, but the Project provides 160 parking spaces in three (3) below-grade parking decks.

The Property is located in the CEA – the main business district of the City, where a greater amount of density is encouraged. Also importantly, the Property is well-served by public transportation. The Mount Vernon Square/Convention Center Metrorail Station is two blocks to the north of the Property while the Gallery Place Metrorail Station is two and a half blocks to the south of the Property. In addition, the site is very well served by several bus lines including the D.C. Circulator, which along with the 70, 71, and D4 makes a stop immediately adjacent to the Property. The Applicant will meet with DDOT and will work closely with DDOT as part of the

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Project to ensure sufficient parking and traffic considerations are taken into account. Furthermore, as mentioned, neighboring buildings have abundant commercial parking facilities accessible to those visitors unable to park in the Project's own parking garage.

Specifically regarding the amount of parking provided, the Project includes an appropriate amount of parking spaces on the Property for residents and visitors/guests. The use of the building will be as a typical office use – for the headquarters of the Association of American Medical Colleges. Such use will not generate an atypical number of vehicle trips at the Property. As a result, there will not be any adverse impact on the availability of parking spaces in the adjacent neighborhood. As a site in the employment center of the City and that is generously serviced by mass transit, the Property is a prime candidate for a parking reduction. Since it is so well served by mass transit, the Project is unlikely to create additional traffic congestion in the area.

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D. The Application Meets the Requirements for Special Exception Relief under §§ 3104.1 and 411.11 of the Zoning Regulations

Pursuant to 11 DCMR § 770.6(b), mechanical equipment, stairway, and elevator penthouses must be set back from all exterior walls a distance at least equal to its height above the roof. Under § 411.11 of the Zoning Regulations, the Property Board of Zoning Adjustment is authorized to grant a Property relief from strict compliance with the Zoning Regulations requiring certain design characteristics for roof structures such as § 770.6(b). § 411.11 of the Zoning Regulations states:

Where 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 § 3104, the location, design, number, and all other

aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; 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.

As will be discussed below, the Applicant meets the standards set forth in § 411.11 of the Zoning Regulations.

1. Strict compliance with the uniform height of roof structure requirements would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

The Property is affected by several factors that make the full compliance with the roof structure requirements impracticable.

The Project's location and layout, as well as the need to retain and incorporate the existing four (4) buildings on the Property under the Preservation Agreement, make it impossible to set the penthouse back from the rooftop edges by the required amount on the exterior wall at the southeast of the Property. Further, DCPL has approved the design set forth by the Project since the portion of the façade that relates to the historic buildings sets backs significantly, in deference to such buildings, and therefore creates the need for the instant relief. The inclusion of the historic buildings constrains development on the Property in a manner that would not typically be required for projects of this nature.

Further, due to the triangular nature of the proposed building, the building's core is required to be shifted towards the southeast of the Property, where the building has its most

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substantial, but still narrow, width. The New York Avenue and K Street, NW, street frontages pinch the building such that there is no other location for the roof structure to be located.

2. Strict compliance with the uniform height of roof structure requirements would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable

There is no practical way to push the elevator roof structure further into the middle of the building without drastically altering the efficiency of the floor plates and significantly shifting the service core. Since the building will be triangular, the development is already significantly limited in its ability to deliver efficient floor plates. The Applicant requires as much contiguous office space as possible. To strictly adhere to the rooftop setback requirements would force the core and service functions further into such space and unnecessarily detract from the Project.

The strict compliance with the 1:1 setback of the roof structure would also have negative consequences on the aesthetics of the Project. The roof structure is intended to follow the curved shaping of the building at its southeast corner. If the roof structure is required to be disassociated from such curvature the rhythm and experience of the entire southern façade of the Project will be adversely affected.

3. 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.

The requested relief would have no negative impact on the intent and purpose of Zoning Regulations or the light and air of adjacent buildings, as described above.

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VII.

Satisfaction of the Standards for Variance Relief

The Applicant is seeking variance relief from 11 DCMR § 1701.7 since the Project does not satisfy the 45 degree setback at 110 feet of elevation from Mount Vernon Square. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- i. the property must be subject to an extraordinary or exceptional situation or condition;
- ii. a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and
- iii. no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

The Applicant meets the test as follows:

- A. An extraordinary or exceptional situation or condition is inherent to the Property

The Court of Appeals held in Clerics of Saint Viator v. District of Columbia Board of Zoning Adjustment, 320 A.2d. 291 (D.C. 1974), that the exceptional situation or condition standard goes to the property, not just the land; and that "... property generally includes the permanent structures existing on the land." Id. at 293–94 (citation omitted).

Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a "confluence of factors." Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990). For example, in French v. Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995), the Court of Appeals upheld the granting of a variance from 11 DCMR § 217.1 based on the Board's findings that several circumstances existed which, when considered together, made the property unique. In French, the

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circumstances cited by the Board were the site's "irregular shape, steeply sloping grade, the large size and physical configuration of the existing building, and its previous history of chancery use." Id. The Board determined "it is not reasonable to consider the building for single-family purposes due to its size, configuration, and history, and that the variance will ensure the preservation of and continued use of the existing structure." Id.

In Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment, 534 A.2d 939 (D.C. 1987), the Court also held that in order to demonstrate such an exceptional situation or condition, "the property owner must present proof that 'the circumstances which create the hardship *uniquely* affect the *petitioner's property*....'" Id. at 941-42 (quoting Taylor v. D.C. Bd. of Zoning Adj., 308 A.2d 230, 234 (D.C. 1973)) (emphasis in original). However, 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. In Gilmartin, the Court of Appeals rejected the idea that a property was not unique because the asserted exceptional condition was common to other types of properties in other zoning districts. Gilmartin, 579 A.2d. at 1167. The Court explained:

the rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulation themselves from the Zoning Commission. If such problems were addressed through individual variances, the effect would be a *de facto* amendment of the zoning regulations by the BZA because requests by other owners similarly situated would have to be granted.... [...] The test follows from its rationale. To support a variance it is fundamental that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood.

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Id. at 1169 (internal quotations and citations omitted; alterations in original).

The Property meets the "exceptional conditions" element of the variance test. The unique exceptional condition at the Property arises from a confluence of factors rather than a single situation or condition. In addition, the exceptional conditions at the Property are not related to general conditions in the neighborhood.

In order to retain portions of the existing "historic" buildings, the Applicant (and DCPL) wishes to incorporate such buildings into the Project design. Retention of those "historic" buildings, which is desirable from a design, sustainability, and cultural point of view, creates an exceptional condition on the site. In order to utilize the existing buildings, the Applicant must work with the constraints created by those structures. Such existing structures have an effect on the ability to include a compliant setback from Mount Vernon Square. The setback from the historic structures requires that the upper floors are pushed back away from the southeast corner of the Property. Therefore, the necessary space for this setback pushes the Project's footprint to the west lot line of the Property and into the Mount Vernon Square setback.

The Property also has an unusual and atypical lot configuration, since it is comprised of a largely triangular lot meeting a narrow alley. The alignment of the alleys and the angle of Massachusetts Avenue creates a lot shape on which it is difficult to locate a structure in complete compliance with the Zoning Regulations. Such an asymmetrical pattern generally only occurs where diagonal avenues intersect the grid streets of the L'Enfant Plan, as is the case here. The result in this case is that it is difficult to provide a fully-functional building and a compliant rear yard at the Property. Due to the triangular nature of the Property, the building created is oddly-shaped. In order to create functional floor plans, the additional area within the setback area fronting on Mount Vernon Square must be utilized.

- b. A practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations

It is important to note how the DC Court of Appeals has defined “practical difficulty”. In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. D.C. Bd. of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 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 Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990).

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’ .... “. Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). Some other factors that the BZA may consider are “the weight of the burden of strict compliance”, “the severity of the variance(s) requested”, and “the effect the proposed variance(s) would have on the overall zone plan.” *Id.* Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, but not necessarily impossible. The Applicant, as demonstrated below, meets this standard.

Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant, as previously discussed, meets this standard. In summary, the practical difficulty inherent in providing the required rear yard results from the unique and exceptional circumstances related to the Building and the lot configuration.

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As mentioned, due to the configuration of the existing “historic” buildings and the odd lot configuration, the provision of a fully-compliant rear yard would be unduly burdensome. It would not be possible to provide a fully-compliant setback from Mount Vernon Square without significantly altering the floor plans on the 10<sup>th</sup> and 11<sup>th</sup> floors of the Project. Such alteration would make the upper floors an inefficient floor plan and less desirable for the ultimate users of such space.

Further, if the Applicant set back from Mount Vernon Square, the entirety of the 10<sup>th</sup> and 11<sup>th</sup> floors would shift east in a manner that would disallow the setback over the “historic” structures at the southeast of the Property. Such configuration of floors would destroy the sensitive and deferential design of the building at that location and run contrary to the design required by DCPL.

Due to the exceptional and extraordinary situations and conditions of the Property, notably the fact that the Property has is oddly-shaped, and contains existing “historic” structures, the Applicant is faced with a practical difficulty in creating a development that presents itself to the surrounding community as a single integrated and cohesive development yet defers to the “historic” structures and satisfies the zoning requirements.

- c. No harm to the public good or to the zoning plan will occur as a result of the approval of the variance application

Relief can be granted without detriment to the public good. Development on the Property with the Project will create a safer and more vibrant environment for the residents of the Mount Vernon Square neighborhood compared to the vacant, underutilized, and abandoned site that currently exists. The proposed development is consistent in scale and bulk with the zoning and Comprehensive Plan designation for the surrounding buildings and properties.

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Further, the variance related to the lack of a setback from Mount Vernon Square will not harm the public good or Zone Plan. Rather, this variance will allow a more efficient use of the Property. It will also allow for the Project to retain the four (4) existing “historic” buildings and incorporate the design of such structures. Historic preservation, particularly of the fabric on property such as this, is highly encouraged by the Comprehensive Plan.

In fact, the Project furthers the goals and policies of the Zoning Regulations and Comprehensive Plan that focus on design in the DD Overlay. The Project is the type of well-designed office building that was envisioned for the CEA and that the Zoning Regulations are intending to foster. The Project both renovates and incorporates existing “historic” fabric in the DD Overlay and retains an important District employer.

Therefore, for all the reasons stated above, the Project will not impair the intent, purpose and integrity of the Zone Plan, but will actually create positive benefits for the public good. The Applicant will work with Advisory Neighborhood Commission (“ANC”) 2C and any potentially-interested community parties to discuss the proposed Project and requested relief.

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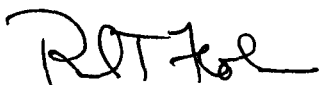
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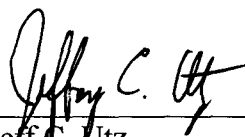
Conclusion

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

Respectfully submitted,

GOULSTON & STORRS, P.C.

By:   
Phil T. Feola

By:   
Jeff C. Utz

Date: August 3, 2011

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