

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

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STATEMENT OF REASONS IN SUPPORT OF AN APPLICATION FOR AREA VARIANCES FROM THE
REQUIREMENTS OF SECTIONS 2001.3 (NONCONFORMING STRUCTURE), SECTION 930.1 (BUILDING
HEIGHT), 931.2 (FLOOR AREA RATIO), 932.1 (LOT OCCUPANCY), AND
933.2 (REAR YARD SETBACK) OF THE ZONING REGULATIONS
TO ALLOW THE CONSTRUCTION OF AN ADDITION TO AN EXISTING BUILDING AT
1045 WISCONSIN AVENUE, N.W. (SQUARE 1189, LOT 830)(THE "PROPERTY")

This Statement of Reasons is submitted on behalf of the applicant, Verizon Washington DC, Inc. ("Verizon") and Eastbanc, Inc. ("Eastbanc")(collectively, the "Applicant"). Verizon is the owner of the Property. Eastbanc, as contract purchaser with Verizon, proposes to construct an addition to the existing building located on the Property.

THE PROPERTY & SURROUNDING NEIGHBORHOOD

Property Description and Current Use. The Property is located on the northeast corner of the intersection of Wisconsin Avenue and Waters Alley N.W. (a named public alley approximately 15' in width), immediately south of the C&O Canal. The Property is improved with a two-story building (the "Building") that was constructed in 1954 as a switch for Bell Atlantic-Washington D.C., Inc. (now Verizon) and a surface parking lot consisting of approximately 10,000 square feet of land adjacent to Wisconsin Avenue. The Property contains 28,522 square feet of land area and is located within the W-1 Zone District.

The existing Building contains approximately 34,222 square feet of gross floor area (1.19 FAR), all of which is used as an active telephone and data switch. The building is therefore nonconforming as to maximum non-residential FAR. The Building currently occupies 60.1% of its lot, and is oriented away from the street, with a large surface parking lot between the building line and the street. The vehicular entrance to the Property is off of Waters Alley and slopes

down to the surface of the parking lot, which is below the adjacent grade of Wisconsin Avenue. The Building is constructed right to the eastern boundary line, which is shared with Lots 35 and 36 in the same square, resulting in a “zero lot line” condition; the Property is thus nonconforming with respect to the applicable rear yard requirements. The Property is located in the Old Georgetown Historic District.

The Surrounding Neighborhood. The square in which the Property is located is bounded by the C&O Canal on the north, 31st Street to the east, South Street to the south, and Wisconsin Avenue to the west, and is bisected by Waters Alley N.W. Grace Episcopal Church, an individually-designated historic landmark, is directly south of the Property across Waters Alley. The remainder of the square is predominantly residential in character and developed with two-story row dwellings, however, a five story office building is located immediately adjacent to the Property on Lots 35 and 36 to the east (at 1050 31st Street). Across South Street is the Ritz-Carlton Hotel and Residences, a multi-story hotel and residential complex. The Property is located just two blocks north of the Potomac River.

Zoning. The Property is classified within the W-1 (Waterfront) Zone District. The W Districts are applied to waterfront areas that “are also (1) geographically, historically, or locationally unique; (2) adjacent to well-established residential areas...or (3) where the public health, safety, general welfare, and amenity would be promoted and protected by the encouragement of mixed uses.” 11 DCMR § 900.1. The purpose of the Waterfront Zones is to “encourage a diversity of compatible land uses at various densities, including combinations of residential, offices, retail, recreational, arts and cultural, and other miscellaneous uses.” 11 DCMR § 900.4. The W-1 zone is specifically designed to provide a variety of housing, service, employment, and recreational opportunities in one location. 11 DCMR § 900.5.

Matter-of-right uses in the W-1 Zone District include moderate-density residential and commercial mixed uses (maximum building height is 45 feet). 11 DCMR §§ 900.3, 901.1. Maximum floor area ratio is 2.5, of which no more than 1.0 may be devoted to non-residential uses. 11 DCMR § 931.2.

PROPOSED USE OF THE PROPERTY

Verizon and Eastbanc wish to construct an addition to the existing Building to create a mixed-use development (the “Proposed Development”) consisting of up to nine (9) new residential units, the existing Verizon telephone and data exchange (the “Switch”), and ground-floor retail space, along with structured above-grade and underground parking serving all uses. The Proposed Development will fill in the existing surface parking lot with a building oriented to the street.

The Switch, which is active and integral to the telephone and data network serving the city, must remain on the premises. This reduces both the footprint and the amount of gross floor area available to redevelop the property in a manner consistent with the purposes of the W-1 Zone District and the recommendations of the Comprehensive Plan. Together with the unique topography of the site and other development constraints as described herein, the requirement to keep the Switch in place creates significant practical difficulties in developing the Property in conformance with the strict requirements of the Zoning Regulations. Thus, the Applicant hereby requests area variance relief from the regulations governing expansion of existing nonconforming structures devoted to a conforming use, maximum permitted building height, floor area ratio, percentage of lot occupancy, and rear yard setback, and submits that, for the following reasons, it satisfies the requirements for such variance relief.

VARIANCE CRITERIA

The Board is empowered to grant an area variance where the Applicant has demonstrated that the following three criteria have been met:

- (1) The property in question is unique because of its size, shape, or other extraordinary or exceptional situation or condition relating to the property, or a confluence of factors affecting the property;
- (2) The owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and
- (3) The variance, if granted, would not cause substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zoning plan.

Gilmartin v. District of Columbia Board of Zoning Adjustment, 579 A.2d 1164, 1168 (D.C. 1990).

Uniqueness. The practical difficulties in complying with the Zoning Regulations arise from a confluence of factors uniquely affecting this Property, including:

- (1) Existing non-conforming status of the structure, which must remain on the site;
- (2) Uneven topography of the Property and its adjacency to the C&O Canal, which combined require that the Switch and parking for all uses must be counted as gross floor area, although neither is visible from the street or effectively above-grade;
- (3) The need to accommodate on-site parking for oversized vehicles associated with Verizon's operations; and
- (4) The location of the existing Switch, which must remain in operation during and after any redevelopment of the Property.

Existing Nonconformities

Since the Building is already nonconforming with respect to non-residential FAR, any increase in non-residential uses increases the nonconformity of the structure and requires a variance from 11 DCMR § 2001.3 and the maximum permitted FAR under 11 DCMR § 931.

The existing Switch was constructed in a zero lot line condition, immediately adjacent to the five-story office building located at 1050 31st Street N.W., with which the Property shares a boundary. Neither of these buildings conforms to the required rear yard setback in the W-1 Zone District. Although the Applicant seeks to redevelop the Property, the Switch must remain in its current configuration in order to continue to operate the city's telephone and data network; moving the hardware associated with the Switch to conform to the rear yard requirement is infeasible.

Topography and Exposure Along Canal

There are a number of different issues related to topography and grade that contribute to the uniqueness of this site. The Property is rectangular in shape and extremely deep; its depth is nearly equal to the length of an entire city block. The entirety of this depth is located above and adjacent to the C&O Canal. Although the Property abuts Wisconsin Avenue to the west, there is no direct access to the Property or the existing Switch from Wisconsin Avenue due to the unique topography. The main access to the Property is currently from Waters Alley N.W. at an elevation approximately 11 feet above the adjacent surface parking lot in the front yard of the Property. The entrance to the Switch is also at least 11 feet below the adjacent street grade, and immediately adjacent to the C&O Canal, which elevation is several feet lower than the surface parking lot and existing entrance to the Building. In other words, the sidewalk along Wisconsin Avenue adjacent to the Property is at least 11 feet and as much as 14 feet above the parking lot on the Property.

Although a significant portion of the lowest levels of the Building are below the adjacent Wisconsin Avenue grade, these lower levels are exposed on the exterior along the C&O Canal, creating a basement, which is chargeable as FAR. Additionally, while the Property itself slopes

down from the highest point, at Waters Alley, to the Canal Wall, the adjacent grade along Wisconsin Avenue is sloping up from the intersection of Waters Alley to meet the bridge crossing the C&O Canal. This leaves a significant portion of the lowest levels of the building underground, without daylighting, and thus unsuitable for residential development or other permitted uses in the W-1 Zone District.

Requirement to Keep Switch in Place and to Provide Parking

The Switch will remain in place, as it is infeasible to move or replace the functioning utility space without prohibitive costs and interruption to telephone and data services within the Georgetown area. In order to continue operation of the Switch once the surface parking area is filled in, Verizon must be able to park its vehicles and equipment currently stored in the surface parking lot within the Proposed Development, further reducing the available gross floor area that may be devoted to the uses permitted in the W-1 Zone.

This confluence of factors constitute unique or extraordinary conditions inherent in the Property, meeting the first prong of the three-part test required for area variances. *Gilmartin, supra*, at 1167.

Practical Difficulty. The aforementioned confluence of factors creates serious practical difficulties in complying strictly with several of the applicable requirements of the W-1 Zone District as follows:

Expansion of Existing Nonconforming Structures Devoted to Conforming Uses

Although the Zoning Regulations provide a modicum of flexibility to expand existing nonconforming structures that are devoted to conforming uses, expansion is only permitted when the proposed structure will comply with lot occupancy requirements, and the addition or enlargement will not increase or extend any existing nonconforming aspect of the structure. 11

DCMR § 2001.3. Because the Building does not conform to either the rear yard setback or the maximum permitted non-residential FAR, any expansion of the building requires a variance under § 2001.3. Although the Building is currently only 27 feet tall (as measured from the adjacent surface parking lot, approximately 17 feet above Wisconsin Avenue), there is limited area in which to build the remaining residential FAR on the Property, because the Switch cannot be expanded upwards or constructed over. Strict conformance with the maximum permitted non-residential FAR requirement would mean then that no change can be made to the existing Building. This is an extraordinary practical difficulty in attempting to modernize the structure and maximize the Building's interaction with the street.

Rear Yard Setback

The Property is already nonconforming with respect to rear yard setback. The W-1 Zone District requires a rear yard equal to three inches per foot of vertical height of the adjacent building measured at the rear of the structure, but no less than twelve feet. 11 DCMR § 933.2. The Proposed Development cannot reasonably comply with the rear yard setback requirement because the Building is already in place in a zero lot-line condition. The Building was constructed along the rear lot line; the Switch must remain operational and cannot be relocated, the Proposed Development cannot reasonably comply with the rear yard setback.

Lot Occupancy

The Proposed Development seeks to connect the Property to the Georgetown Streetscape. As shown on the Site Context Sheet, p. 3 of Plans & Drawings, the neighborhood is characterized by two- to three-story buildings oriented to the street. The existing Building, however, is removed from the Street by 97 feet, and occupies approximately 60% of the Property. The W-1 Zone permits up to 80% lot occupancy, but because the existing Switch must

remain, there is no way to develop a building that utilizes the remaining allowable residential FAR, meets the street, and provides the parking needed for the proposed mixture of uses on the Property within the remaining 40% of the lot and the maximum permitted height in the W-1 Zone District. The Proposed Development will occupy approximately 93.7% of the Property, a deviation of approximately 17% from the maximum permitted lot coverage in the Zone.

Floor Area Ratio

As mentioned above, the Building currently occupies approximately 60% of the Property, on two floors, but rises just over one story (17') above the grade of Wisconsin Avenue. Half of the existing floor area is located on the lower level, which is actually below the adjacent finished grade on three sides of the site. Both stories of the existing Building are thus chargeable to floor area ratio because of the proportion of exterior wall above the adjacent C&O Canal.

Floor area ratio is calculated by dividing the gross floor area of the structure by the land area. Gross floor area is "the sum of the gross horizontal areas of the several floors of all buildings on a lot, measured from the exterior faces of exterior walls and from the center line of party walls separating two buildings." 11 DCMR § 199.1. In the case of a building that has a difference in grade, resulting in floors that are by definition part basement (which is included in the calculation of gross floor area) and part cellar (which is not), the gross floor area is measured by taking the total perimeter of the floor in question, calculating the percentage of that perimeter area that is more than four feet above the adjacent finished grade, and multiplying that percentage by the floor area in question to determine the gross floor area of that floor. In the instant case, although the lowest level of the Proposed Development is completely below grade on three sides, due to the low adjacent finished grade along the C&O Canal Wall and the exceptional depth of the lot, 77% of the lower level (G1 Floor), most of which is devoted to

parking and Switch uses, is chargeable to gross floor area. Relief is required from the overall FAR requirements in the W-1 Zone, as the entire development will result in an FAR of 2.77, a 10% increase over the maximum permitted.

Given the existing nonconformity as to non-residential FAR, the addition of any non-residential space above grade, such as ground-floor retail, violates the maximum permitted floor area devoted to non-residential uses pursuant to 11 DCMR § 931.2. While other properties in the area are somewhat similarly affected by the manner in which FAR must be calculated where there is a significant change in grade from the street level to the canal level, due to the amount of floor space required for the Switch, and the parking facilities that must be provided within the Proposed Development to serve Verizon vehicles and the new uses, this method of calculation uniquely burdens the Property.

For example, but for the exposed north wall of the Building along the C&O Canal, only one story of the Switch would be chargeable as FAR. If the Property were not located on the canal, more than 54,000 square feet (1.9 FAR) of new residential uses, and up to 11,400 square feet (.4 FAR) of non-residential uses could be added to the Property without violating 11 DCMR § 931.2. Instead, all 34,222 square feet of existing floor area devoted to the Switch are chargeable to FAR, rendering the Building nonconforming at 1.2 FAR (all non-residential). Moreover, the new parking proposed, which is for all intents and purposes below-grade, is chargeable to gross floor area and counted in the calculation of FAR. Exclusive of parking, the Proposed Development includes a total of 5,783 square feet (approximately .2 FAR) of new non-residential uses. Because a significant portion of parking uses included on the G-1 level and all of the parking on the 1st Floor level of the Proposed Development (approximately .3 FAR) must

be charged to gross floor area, however, the resulting non-residential FAR is 1.67, a 39% increase over the existing condition and 67% greater than the maximum permitted in the Zone.

Building Height

Finally, the Applicant seeks a variance from the maximum permitted height within the Zone District. As shown on the West Elevation drawing (Page 13 of Plans & Drawings), the road bed of Wisconsin Avenue and the adjacent slope seven feet (7') from the highest point at the northwest corner of the lot down to the southwest corner of the lot. The measuring point of the Proposed Development is, pursuant to 11 DCMR § 199.1, "the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet." The curb opposite the middle of the front of the building is approximately 1.5 feet lower than the level of the first floor of the building, resulting in a building height of 46.5', while the maximum permitted height in the W-1 Zone is 45'. In order to maintain sufficient ceiling height on the First floor (Wisconsin Avenue Level) and G1 Level (Canal Level) for retail uses, maintain vehicular access from Waters Alley and sufficient height to accommodate Verizon's oversized vehicles, and comply with the maximum building height of 45', the Proposed Development would need to eliminate a portion of the second floor to accommodate the required clear 1st Floor ceiling height. The Applicant thus seeks a variance of 1.5 feet (3.33%), which is *de minimis*.

No Adverse Impact. The requested relief can be granted without harming the public good or impairing the intent, purpose, and integrity of the Zone Plan. The Proposed Development provides adequate outdoor spaces in the form of terraces and rooftop recreational space and is designed with varying façade depths to provide sufficient light and air to the building and its residents as well as to the users of adjacent property. The addition will not

impact the existing office building to the east, which shares a property boundary and is built against the rear wall of the existing Building, because it will be oriented to the Wisconsin Avenue portion of the Property. In fact, the addition above the existing height of the Switch will be 183' west of that office building. The Proposed Development is separated from other properties within the adjacent neighborhood by Waters Alley, by the C&O Canal, and by the Grace Church courtyard, so that the increase in lot occupancy will have no measurable impact on the adjacent structures or the character of the neighborhood as a whole.

The additional floor area devoted to non-residential uses will likewise have no measureable impact on the adjacent neighborhood. The additional retail uses are consistent with the amount of non-residential floor area permitted within the Zone; the additional non-residential uses devoted to parking for the existing Switch and new residential and retail uses will not be visible from the street or have an impact on the character of the structure or on the zone plan. Providing continuous street level retail along this section of Wisconsin Avenue in place of a surface parking lot will be more consistent with the existing retail uses and character of the street. *See Site Context Photos, p. 3 of Plans & Drawings.*

The proposed addition to the Building is consistent with the character of the neighborhood and with the industrial design of buildings along the C&O Canal. The connection of the structure to the Wisconsin Avenue site and the addition of visible commercial and residential uses, as opposed to the Switch, which is not only set back from the street but is also behind solid walls, is consistent with the purposes of the W-1 Zone “to encourage a diversity of compatible land uses at various densities, including combinations of residential, offices, retail, recreational, arts and cultural, and other miscellaneous uses.” 11 DCMR § 900.4.

The Proposed Development has been reviewed by and received the conceptual approval of the Old Georgetown Board and the U.S. Commission of Fine Arts, which is charged with review of all new development within the Old Georgetown Historic District in accordance with the Old Georgetown Act (Public Law 81-808, September 22, 1950). *See Exhibit E.*

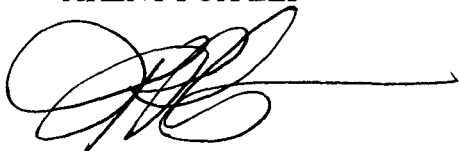
The Property has since its construction been underutilized and out of character with the historic, mixed-use nature of the Georgetown community and the Waterfront Zones. The Proposed Development will bring a mixture of uses and activate the street, connecting the Wisconsin Avenue corridor above and below the Canal and masking what is currently an unattractive and utilitarian public utility building. The requested relief is minor in nature, will result in a use significantly more compatible with the Property's zone classification, and will have no adverse impact on the public good or the zone plan.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that, upon receipt of all of the Applicant's proof and all other support of record for the variances requested, such relief be granted.

Respectfully submitted,

ARENT FOX LLP



Kinley R. Bray

EXHIBIT LIST

- A. Application Form & Authorization Letter
- B. Self-certification Form (Form 135)
- C. Plat
- D. Names of Property Owners within 200'
- E. Commission of Fine Arts Approval Letter

SUBMITTED AS SEPARATE VOLUME: Plans & Drawings

- Site Context Photographs
- Site Plan
- Plans
- Elevations
- Sections