

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

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PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Be the Change, on behalf of the District of Columbia, the owner of property located at 1005 North Capitol Street, N.E.¹, Square 674, Lot 439 (the "Site"), in support of its application pursuant to 11 DCMR Section 3103.2 and Section 3104.1 for an area variance from the court width and area requirements of Section 776, an area variance from the off-street parking requirements of Section 2101.1, area variances from the loading berth depth and service/delivery space requirements of Section 2201.1, a special exception from the rear yard requirements pursuant to Section 774.2; and a special exception from the roof structure setback requirements pursuant to Sections 411.11 and 770.6 to allow the construction of a new building with residential, retail, and office uses in the C-3-C District at the Site

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site and Application

The Site is located on the east side of North Capitol Street, N.E. and is currently unimproved. Square 674 is located in the northeast quadrant of the District and is bounded by L Street on the north, 1st Street on the east, K Street on the south, and North Capitol Street on the

¹ Square 674, Lot 439 currently does not have an official address designated by the District. However, based upon the existing addresses in the square, the Applicant anticipates that the District will assign the Site an address of 1005 North Capitol Street, N.E.

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west The Site includes 8,925 square feet of land area. The Site is located within the C-3-C District and the North Capitol Street TDR receiving zone.

As shown on the plans included with the application, the project will include the construction of a new building including residential, retail, and office uses. The building will include a total of approximately 83,730 square feet of gross floor area, which will be comprised of 122 residential units, 3,062 square feet of retail use, and 5,113 square feet of office use. The office spaces will be used by staff who operate the building and provide support services to the tenants. The proposed uses for the Site are consistent with the Site's C-3-C zoning designation. However, due to a number of site and design constraints, and the Site's proximity to St. Phillips Baptist Church, which is a historic landmark, the Applicant is seeking area variances from the court width, off-street parking, and the loading berth depth and service/delivery space requirements, and is also seeking special exception relief from the rear yard and roof structure setback requirements.

II. Burden of Proof for Area Variances

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

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition,
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d

405, 408 (D C 1980)); see also, *Capitol Hill Restoration Society, Inc v District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D C. 1987) As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

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

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See Clerics of St. Viator, Inc v. D C Board of Zoning Adjustment, 320 A 2nd 291, 294 (D C. 1974) Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. Gilmartin v D C Board of Zoning Adjustment, 579 A 2nd 1164, 1168 (D.C 1990).

In this case, the Site is uniquely affected by the combination of the Site's size and shape, the fact that it is adjacent to St Phillips Baptist Church, which is a historic landmark, and the fact that the Site is bounded by private property to the north, east, and south which limits accessibility to the Site The combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the Site For example, the shape of the Site, in particular, its relative small dimensions of 105 feet by 85 feet, severely limits the depth of any below-grade excavation for the development, and limits the practical ability to provide zoning-compliant parking spaces, loading facilities, ramps, and other features necessary to construct a new building In addition, because of these site constraints, a number of the uses typically located in basements in other projects, such as water service and fire pump storage space, electrical equipment room, and other similar uses have been included on the ground floor of the proposed building Moreover, the number of curb cuts for the Site will likely

be limited by the District's Department of Transportation, which given the Site's shape and dimensions, further complicates development of the Site. Finally, the presence of the St. Phillips Baptist Church, which is a historic landmark located to the south of the Site also restricts the type of shoring and underpinning techniques that can be employed on the Site while the development is being constructed.

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

(a) Court Width And Area Requirements

The strict application of the court width and area requirements in this case would result in a practical difficulty. Although not required for zoning purposes, the project includes 3 open courts: one along the northern property line, one along the southern property line, and one at the southwest corner of the building that begins on the fifth floor of the building. Pursuant to Section 776 3 of the Zoning Regulations, open courts in the C-3-C District are required to have a minimum width of 4 inches per foot of height of court, but not less than 15 feet. In addition, closed courts are required to have a minimum area equal to at least twice the square of the width of the court based upon the court height, but not less than 350 square feet. Relief is required in this case since

- the court located along the northern property line has a width of 3 feet and an area of 38.6 square feet, but is required to have a minimum width of 15 feet and a minimum area of 350 square feet,
- the court located along the southern property line has a width of 6'-8" but is required to have a minimum width of 15, and

- the court located at the southwest corner of the building that begins on the fifth floor of the building has a width of 18'-10" feet but is required to have a width of 30"-6" based upon the height of the court.

The proposed court along the southern property line provides required light and air to those units. In addition, the court located at the southwestern edge of the building provides a visual buffer from the existing church to the south of the Site. The Applicant cannot increase the width or area of the courts to meet the requirements because doing so would result in a significant number of design changes to the interior configuration of the building, including, for example, a significant impact on the locations of the internal stair towers, the location of the elevator core, and the size and layout of a number of units. Thus, it would be practically difficult for the Applicant to comply with the open court width requirements in this case.

(b) Off-Street Parking Requirements

The strict application of the off-street parking requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 2101.1 of the Zoning Regulations, an apartment house or multiple dwelling in the C-3-C District is required to provide 1 off-street parking space for each 4 dwelling units. The project includes 122 residential units and is thus required to provide a total of 31 off-street parking spaces. The project is not required to provide any retail or office parking spaces due to the square footage of those uses and the Site's land area.

As shown in the plans, the Applicant is seeking a variance to not provide any off-street parking spaces. The Site is bounded by private property to the north, east, and south. The only street frontage is on North Capitol Street. The Applicant proposes providing loading access via a proposed curb cut on North Capitol Street; however, due to the limited amount of street frontage, combined with the need to provide a residential lobby and ground floor retail uses in the

building, this curb cut cannot be widened for use to provide any surface parking spaces. Moreover, the Applicant cannot provide any below-grade parking due to the narrowness of the site, which limits the Applicant's ability to construct below-grade parking. Due to the Site's dimensions, it would be practically difficult for the Applicant to construct any of the required parking spaces below grade and to comply with all of the applicable parking size, turning, and access requirements in Section 2115, 2116, and 2117 of the Zoning Regulations. For example, due to the dimensions of the Site, it is impractical to construct a ramp in the available area which could meet the maximum recommended ramp slope of 12% and the ramp minimum width of 14 feet, and still provide an adequate number of parking spaces per level. In addition, once a vehicle reaches the foot of the ramp, the resulting amount of accessibility and maneuvering space would not meet the requirements of the Zoning Regulations, while still providing enough parking spaces per level. Additionally, below-grade excavation would require additional underpinnings and shoring. The impact of that work could compromise the stability and integrity of the historically significant building to the south of the Site. Thus, due to these practical difficulties, the Applicant is seeking relief from the off-street parking requirements.

(c) Off-Street Loading Requirements

The strict application of the loading requirements in this case would result in a practical difficulty to the Applicant. Pursuant to Section 2201.1 of the Zoning Regulations, an apartment house or multiple dwelling with 50 or more dwelling units is required to provide one loading berth at 55 feet deep, one loading platform measuring 200 square feet and one service/delivery space at 20 feet deep. Due to the size of the proposed retail and office uses, the Zoning Regulations do not impose any loading requirements for those uses in this case.

The project is required to provide 1 loading berth at 55 feet deep, 1 loading platform measuring 200 square feet, and 1 service/delivery space at 20 feet deep. However, as shown on the plans, the project includes 1 loading berth at 30 feet deep and 1 loading platform measuring 200 square feet. Thus, relief is required due to the reduced size of the loading berth, and since the project does not include a service/delivery space.

In order to meet the strict application of the loading requirements, the Applicant would have to increase the depth of the loading berth by an additional 25 feet, eliminate or relocate a number of the building's core features on the ground floor, and increase the width of the proposed curb cut to accommodate a service/delivery space. Increasing the size of these facilities however, will result in a practical difficulty to the Applicant and would have an adverse impact on the layout and configuration of essential building features. In addition, such a reconfiguration would impact the building's structural columns. Moreover, increasing the width of the curb cut to provide the service/delivery spaces would decrease the amount of active residential and retail frontage along North Capitol Street. Finally, given the dimensions of North Capitol Street adjacent to the Site and the existence of a raised median, it would be practically difficult for a 55-foot tractor trailer to access the proposed loading facilities.

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

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan by approving the project as proposed. The construction of a new building with residential, retail, and office uses at the Site will significantly contribute to the vibrancy of the neighborhood while supporting the City's goals for this area. With respect to the court width relief, the courts will not impact the adjacent properties to the north or south of the Site. In addition, the court areas are provided so that a number of

units can have light, air and ventilation, which, given the configuration of the existing building on the Site, could not otherwise be provided

With respect to the requested parking relief, the Site is well-serviced by a number of bus routes along North Capitol Street, and there is a bus shelter in the same block as the Site. Moreover, the Site is within convenient walking distance to the Union Station Metrorail Station. In addition, according to Walkscore.com, which measures the walkability and transit access of properties, the Site is rated as a "Walker's Paradise" and scores 92 points out of a possible 100, and is rated as an "Excellent Transit" location given the Site's location, access to transportation options, access to amenities and other services within close walking distance to the Site. Moreover, a Zipcar car station is conveniently located at the intersection of K Street, N.E. and North Capitol Street. Also, there are a significant number of parking garages in the area, and DDOT has reported that there are an abundance of parking spaces currently existing in the vicinity of the Site. Thus, the Applicant anticipates that the existing transit access to the Site and the Site's convenient urban location will result in significant utilization of transit and pedestrian modes of transportation, resulting in no need for off-street parking spaces.

With respect to the loading, and as the Board has recognized in a number of other cases, due to the anticipated needs of the residential use, combined with the size of the units, it is unlikely that the building will be serviced by 55-foot tractor-trailer trucks, thus there is no need for a 55-foot berth for this project. In addition, service/delivery trucks will be able to use the loading berth when necessary and on-site personnel will be responsible for coordinating loading/deliveries when necessary and can easily schedule such activities so that additional space is not necessary.

III. Burden of Proof For Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, "[t]he Board's discretion .. is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D C 1981) (quoting *Stewart v District of Columbia Board of Zoning Adjustment*, 305 A 2d 516, 518 (D C 1973)) If the applicant meets its burden, the Board must ordinarily grant the application. *Id*

A. Rear Yard Special Exception Pursuant to Section 774.2

Section 774.1 of the Zoning Regulations provides that all structures in the C-3-C District must provide a rear yard measuring 2½ inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. Moreover, pursuant to Section 774.9(b), buildings in the C-3-C District are not required to provide a rear yard for the portion of the building below a horizontal plane 20 feet above the mean finished grade measured at the middle of the rear wall of the building. Therefore, a rear yard measuring 27'-1" is required for the project. The Applicant complies with this requirement on all floors above the 20-foot horizontal plane. However, relief is requested since the rear yard depth is 23'-11" on a portion of the 9th through 11th floors.

Pursuant to Section 774.2 of the Zoning Regulations, the Board may waive the rear yard requirements in accordance with the requirements of Section 3104 for special exception,

provided that the standards in Sections 774.3 through 774.6 are met. As discussed below, the Applicant meets each element of Sections 774.3 through 774.6.

- a) **Section 774.3 – Apartment and office windows shall be separated from other buildings that contain facing windows a distance sufficient to provide light and air and to protect the privacy of building occupants.**

The rear/east elevation of the proposed new construction is a substantial distance from any other buildings that contain facing windows in this direction. The closest buildings directly facing the rear elevation of the proposed new construction are approximately 160 feet and 275 feet away from the proposed new construction. The building 160 feet away from the Site is a one-story commercial building and does not have any windows on its western wall, and the office building is over 275 feet away from the Site so the new building will not impact the light, air, or privacy of that building. Moreover, the requested relief would only bring the building approximately 3'-2" closer to rear lot line than otherwise allowed, and this 3'-2" difference at only three floors of the building would not impact the light, air, or the privacy of building occupants.

- b) **Section 774.4 – In determining distances between windows in buildings facing each other, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to the rooms.**

As discussed above, the rear elevation of the proposed new construction faces due east, and the closest windows directly facing the rear elevation of the proposed new construction are approximately 275 feet away. Moreover, the requested rear yard relief of 3'-2" will have a negligible effect on the angle of sight lines and the distance of penetration of sight lines into habitable rooms, and thus will be sufficient to provide adequate light and privacy to the rooms.

- c) **Section 774.5 – The building plan shall include provisions for adequate off-street service functions, including parking and loading areas and access points.**

The Applicant is seeking relief from the parking and loading requirements. However, as described in more detail above, the requested parking and loading relief will not have any adverse impacts, and the project includes adequate off-street service functions. The rear yard request and the parking and loading relief are unrelated in this case since it is infeasible to locate parking or loading in the rear yard since there is no rear access to the Site in this case.

- d) **Section 774.6 – Upon receiving an application for an approval under Section 774.2, the Board shall submit the application to the D.C. Office of Planning for coordination review, report, and impact assessment, along with reviews in writing of all relevant District of Columbia departments and agencies including the Departments of Transportation and Housing and Community Development and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.**

The Applicant understands that the application will be referred to the required agencies for review and report.

B. Roof Structure Special Exception

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

In this case, special exception approval is required because, as shown on the Roof Plan sheet included in the plans, the proposed roof structure does not meet the setback requirements from the eastern edge of the roof. The roof structure includes an elevator overrun, stair tower, and screen wall enclosing mechanical equipment. The total structure has a height of 12 feet. The roof structure meets the set back requirements from the western roof edge, which fronts on North Capitol Street, but is not required to be set back from the northern or southern edge of the roof since those portions of the building abut lot lines. However, the eastern edge of the roof structure is adjacent to edge of the roof and thus requires set back relief.

The proposed roof structure is a necessary feature and its location is driven by the layout and design of the uses within the building. The Applicant is providing the greatest setbacks possible given the size and dimensions of the roof and the internal configuration of the proposed building. Moreover, the requested roof structure location and design will not adversely impact the light and air of adjacent buildings. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired by granting the requested roof structure relief.