

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by West End Residential Properties, LLC, on behalf of the District of Columbia (collectively, the "Applicant"). The District owns the parcel located at 2225 M Street, NW, more particularly described as Lot 822 in Square 50 (the "Property"). The Applicant seeks variances from Sections 633, 638.1, 2101, and 2201 of the Zoning Regulations and special exception approval from Sections 411.5 and 630.4 of the Zoning Regulations in order to support the redevelopment of the Property with a mixed-use project that consists of a new fire station, a squash court or commercial space, and an apartment house.

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 additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Property

The Property is located at the northwest corner of the intersection of 23rd and M Streets, NW, in the West End neighborhood. It consists of approximately 16,260 square feet and is improved with the fire station for Engine Company #1. The proposed development of the Property is the subject of a land disposition agreement ("LDA") entered into between EastBanc and the District, which obligates the developer to construct a new fire station and affordable units on the Property subject to certain conditions.

The Property is zoned CR (Mixed Use Commercial Residential). The CR District is intended to encourage a diversity of compatible land uses that may include a mixture of

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18456
EXHIBIT NO. 4

#11359222_v4

Board of Zoning Adjustment
District of Columbia
CASE NO.18456
EXHIBIT NO.4

RECEIVED
D.C. OFFICE OF ZONING
2017 AUG -1 PM 1:15

residential, office, retail, recreational, light industrial and other miscellaneous uses. 11 DCMR § 500.1.

The Property is designated Mixed-Use High Density Residential/Medium Density Commercial on the District of Columbia Comprehensive Plan Future Land Use map. Mixed use categories are areas where the mixing of two or more land uses is encouraged. This designation is generally applied to established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses. 10 DCMR § 225.18. Residential uses are permitted in all of the commercial zones, however, many mixed-use areas may have commercial zoning. 10 DCMR § 225.12. The High Density Residential designation is used to define neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. The corresponding zone districts are generally R-5-D and R-5-E, although other zones may apply. 10 DCMR § 225.6. The Medium Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas, but generally do not exceed eight stories in height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A and C-3-B, although other districts may apply. 10 DCMR § 225.10.

The Property is included in a Neighborhood Conservation Area on the Generalized Policy Map. Neighborhood Conservation Areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will

consist primarily of scattered site infill housing, public facilities and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. 10 DCMR § 223.4. The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map. 10 DCMR § 223.5.

II. Description of Proposal and Zoning Relief

The Applicant proposes to redevelop the Property with a mixed-use project that consists of a new station for Engine Company #1 (the "Fire Station"), an apartment house, and a squash club (the "Project"). The Fire Station will have a floor area of approximately 14,886 square feet and occupy the majority of the ground level and a portion of the second level of the building. The apartment house will consist of approximately 51,821 square feet and contain approximately 61 dwelling units. Of those units, no fewer than 52 will be for households with incomes not exceeding 80 percent of the area median income. The main lobby for the residences will be on 23rd Street, near the north end of the Property; the residential amenities (fitness room and lockers, management and leasing offices) will be on the second level of the building; and the dwelling units will be on levels 4 through 9. The squash club will have a total floor area of approximately 20,597 square feet. It will occupy the third level and a portion of the 4th level of the building. The squash club will be accessed from a lobby on 23rd Street near the southwest

RECEIVED
D.C. OFFICE OF ZONING
2012 AUG -1 PM 1:15

corner of the Property. The Project will have a maximum building height of 100 feet and an FAR of approximately 5.47.

As an alternative to the foregoing, the Applicant proposes to provide commercial space in lieu of the squash club (the "Commercial Alternative"). In that case, the commercial space will consist of approximately 26,560 square feet and occupy the third and third-mezzanine levels of the building. There will be a total of 65 residential units (no fewer than 52 of which will be affordable) on levels 4 through 9 of the building; and the FAR will be 5.77. The floor plans for the Commercial Alternative are shown on **Sheets 18 and 20** of the enclosed plans.

The variances and special exception approvals described below must be granted by the Board to facilitate the proposed redevelopment of the Property.

A. Public Space at Ground Level

The Applicant seeks a variance from Section 633 of the Zoning Regulations, which requires an open area equivalent to 10% of the total lot area to be located immediately adjacent to the main entrance to the principal building or structure on the lot and which serves as a transitional space between the street or pedestrian right-of-way and the building or structure.

In this case, the amount of public space at the ground level of the building to be provided is 1,323 square feet (8% of the total lot area) where 1,624 square feet is required, as shown on **Sheet 29** of the enclosed plans. Theoretically, the public space could be increased by extending it north along 23rd Street and/or east along M Street. However, practically, neither option can be achieved because of the site constraints. The majority of the Property's frontage along M Street must remain clear for access to the Fire Station apparatus bays, which extend to the property line. The ramp to the parking garage is situated at the northwest section of the Property along 23rd Street, and is just wide enough (20 feet) to safely accommodate two-way vehicular traffic. Similarly, due to the program requirements of the Fire Station and the need to provide entrances

RECEIVED
D.C. OFFICE OF ZONING
2012 AUG -1 PM 1:15

for all three uses proposed for the site, there is no possibility of carving additional space out of the interior of the building at the ground floor.

B. Open Court

The Applicant seeks a variance from Section 638.1 of the Zoning Regulations, which states that where an open court is provided for a residential building (except a hotel) in the CR District it shall have a width of three inches per foot of height of court, but not less than ten feet.

In this case, the open court that runs along the north side of the Property has a width of 8'-0" where 13'-9" is required, as depicted on **Sheet 35** of the enclosed plans. (See "Court 4".) The proposed open court is not required because the building can be constructed to the property line under the CR District standards. However, the affordable dwelling units along the north side of the apartment house are designed with windows on the north face of the building. Pulling the building back from the north property line and creating the open court along that side of the building allows additional light and air into these units. Eliminating the open court would have the double negative impact of (1) depriving the units on the north side of the building of additional light and (2) air and blocking the windows on the existing building immediately north of the Property.

C. Parking

The Applicant seeks a variance from Section 2102 of the Zoning Regulations in order to permit 24 parking spaces where up to 55 spaces may be required for the Project. The Applicant has not yet decided if the squash court proposed for the Project will have bleachers. If it does, 55 parking spaces are required for the Project; if not, only 38 are required. In the case of the Commercial Alternative, a variance must be granted to permit 24 parking spaces where 43 are required. For the various uses contemplated for the Property, the parking requirements are as follows: Fire Station -- 8 spaces, Apartment House -- 20 spaces, Squash Court (without

bleachers) -- 10 spaces, Bleachers -- 17 spaces, and Commercial Space -- 13 spaces. 11 DCMR § 2101.

The building is designed with one level of underground parking with 24 parking spaces. In order for the building to comply with the parking standards, a second level of underground parking is needed, adding \$1.7 million to the construction cost. The additional costs associated with the construction and maintenance of parking garages are typically passed onto residents and, therefore, a second level of underground parking would adversely impact the affordability of the dwelling units. Moreover, the additional cost is unreasonable given that the Property is within walking distance of both the Dupont Circle and the Foggy Bottom Metrorail Stations and is well served by several Metrobus and Circulator lines. Also, according to a recent survey by Symmetra Design, there are six public parking garages within a few blocks of the Property, two of which allow overnight parking. Symmetra Design also confirmed that on-street parking is available in the neighborhood during the afternoon and evening hours.

D. Loading

The Applicant seeks a variance from Section 2201 of the Zoning Regulations. Under this section, the building is required to have a 55-foot loading berth, a 200-square foot loading platform, and a 20-foot delivery space for the apartment house. No loading is required for the Fire Station or the squash club. With the Commercial Alternative, the building is required to have a 30-foot loading berth, 100-square foot loading platform, and 20-foot delivery space in addition to the loading facilities required for the apartment house.

Under either development scheme, the Applicant is proposing to have only one 30-foot loading berth, one 100-square foot loading platform, and one 20-foot delivery space, as shown on **Sheets 33 and 34** of the enclosed plans. The loading area is located in the only section of the site accessible by the public alley system. Due to the required configuration and footprint of the

RECEIVED
D.C. OFFICE OF ZONING
12 AUG - 1 PM 3:15 PM

Fire Station, the Property is not large enough to accommodate a 55-foot loading berth, nor can it accommodate the second set of loading facilities required for the Commercial Alternative.

E. Roof Structures

The Applicant seeks special exception approval from Section 411.5 of the Zoning Regulations, which requires that all enclosing walls for roof structures be of equal height, and from Section 630.4 of the Zoning Regulations, which requires rooftop enclosures to be set back from all exterior walls a distance at least equal to their height above the roof upon which it is located.

The roof plans and diagrams for the building are shown on **Sheets 22 through 28** of the enclosed plans. The enclosure for the mechanical penthouse is 18'-6" in height and the screen wall for the condensing units is 9'-1" in height. Therefore, the enclosures do not comply with Section 411.5. Also, the mechanical penthouse does not meet the required 1:1 setback on the east and north sides of the building.

The variation in height of the enclosures for the roof structures reduces the massing of the roof structure to the greatest extent possible. If the enclosures were 18'-6" in height for all of the roof structures, setback relief would be needed for all sides of the building instead of just the east and north sides. On the east side, the mechanical penthouse is set back only 8'-1" from the building wall but 38'-4" from the east property line. On the north side, the mechanical penthouse is set back only 14' from the building wall but 22' from the property line. Therefore, the reduced setbacks do not adversely affect the existing buildings immediately to the north or east of the Property. Finally, neither the east nor north building façades face 23rd or M Street, so the reduced roof structure setbacks do not affect the public realm.

III. **Burden of Proof for Area Variances**

RECEIVED
D.C. OFFICE OF ZONING
2012 AUG -1 PM 1:15

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 or exceptional and undue hardship;
- (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 in the prehearing statement at the public hearing, all three prongs of the area variance test are met in this Application.

A. **The Property 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 unique and exceptional situation stems from the fact that the redevelopment of the site was negotiated between the District and the developer, and the specific uses for the Property are set forth in the LDA between the parties. Under the LDA, the

developer is obligated to construct the Fire Station and the affordable units on the Property. Additionally, the Fire Station was proffered as a public benefit for the West End neighborhood in connection with the planned unit development ("PUD") approved by the Zoning Commission pursuant to the Z.C. Order No. 11-25. Under the Order, the Fire Station must be constructed prior to the issuance of a certificate of occupancy for the residential portion of the approved PUD.

As a result of the foregoing, the site planning for the redevelopment of the Property is dictated first and foremost by the programming and operational needs of the Fire Station. All of the other required elements of the development - the apartment house, loading area, garage access, and lobby areas must be designed around the footprint of the Fire Station, which significantly limits the layout of the site and building design. In short, the function of the building causes the need for the variances.

B. Strict Application Would Result in an Exceptional and Undue Hardship to the Property Owner

The owner of the Property would encounter practical difficulties in redeveloping the Property with both the Fire Station and the affordable housing, as set forth in the LDA, if the Zoning Regulations were strictly applied to this case for the reasons set forth below:

- The design cannot achieve 10 percent of the public space at the ground and at the same time meet the programming and operational needs of the Fire Station and accommodate other basic elements of the development.
- The open court along the north side of the Property is not required. However, if the building was constructed to the property line and the court was removed, there would be no windows on the north building facade. The affordable dwelling units on that side of the building would have less light and air and, as a result, they would be far less marketable than other units in the building.
- In order to comply with the parking requirements, the building would need an additional level of underground parking. This would add \$1.7 million to the construction cost and result in on-going maintenance costs for the parking garage. These costs would be passed onto residents and affect the affordability of the

apartment house. The additional cost would be an undue hardship given the Property's proximity to the Dupont Circle and Foggy Bottom Metrorail Stations, several bus lines, and public parking garages. On-street parking is also available in the neighborhood.

- Neither a 55-foot loading berth for the apartment house nor a second loading area for the Commercial Alternative can be accommodated on the Property without reducing the footprint of the Fire Station. The current station design meets the programming and operational needs for DC FEMS.

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, if the Board grants the requested area variances. In fact, the proposed development promotes the intent, purpose and integrity of the zone plan and the public good. First, the Property is in the CR District, a mixed-use commercial district intended to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial and other miscellaneous uses. D.C. ZONING REGULATIONS § 500.1. The proposed development is a mixed-use project containing civic, recreational or commercial, and residential uses. Second, the proposed development is consistent with the Property's designation on the Future Land use Map, which is Mixed-Use High Density Residential / Medium Density Commercial, and it is compatible with the surrounding mix of uses in the immediate neighborhood. Third, the proposed development will result in the redevelopment of an underutilized site with a mixed-use project that includes two important public benefits -- a new fire station and no fewer than 52 new affordable dwelling units.

IV. Standard for Approving Special Exception Relief

The Board is authorized to grant special exceptions where, in its judgment, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance

with the Zoning Regulations and Zoning Maps. 11 DCMR § 3104.1. Section 411.11 of the Zoning Regulations states that 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 shall be empowered to approve, as a special exception, the location, design, number and all other applicable aspects of the roof structures provided that the intent and purpose of the Zoning Regulations shall not be materially impaired by the structure, and the light and air of adjacent building shall not be affected adversely. The special exception approvals sought under this application meet the foregoing standards for the following reasons:

- The variation in the height of the rooftop enclosures reduces the massing of the roof structures.
- The reduced roof structure setbacks on the east and north sides of the building do not impact the public realm because they do not face 23rd or M Streets.
- The apartment house is much narrower than the base of the building. Therefore, while the roof structure is set back only 8'-1" from the east wall of the building, it is set back 38'-4" from the east property line. Similarly, while the roof structure is set back only 14' from the north wall of the building, it is set back 22' from the north property line. Therefore, the reduced set backs will not adversely affect the existing buildings immediately east and north of the Property.

RECEIVED
D.C. OFFICE OF ZONING
2012 AUG -1 PM 1:16