

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

Statement of Penn Avenue Partnership, LLC
ANC 6B09

BZA Application No.
Hearing Date:

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STATEMENT OF THE APPLICANT

This is the statement of Penn Avenue Partnership LLC ("**Applicant**") for special exception and variance relief to construct a new residential building at 1550 Pennsylvania Avenue, SE (Square 1077, Lot 130) ("**Property**"). The Property is located in the C-2-A Zone District and in Ward 6. The Property is irregularly shaped and has frontage along Pennsylvania Avenue, SE, Kentucky Avenue, SE and Barney Circle. The grade of the Property drops off north to south and west to east. The west end of the Property is approximately six feet higher than the east end of the Property. The Applicant is proposing to redevelop the Property with approximately 80-84 residential units. The lot configuration presents challenges in satisfying the zoning requirements for parking and loading. Thus, the Applicant is seeking variance relief from the loading and parking space requirements. In addition, the Applicant is seeking special exception relief from the roof structure requirements of the Zoning Regulations, in order to allow differing heights for the portions of the roof structure that are above the elevator override and for the remainder of the roof structure.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve special exception relief pursuant to Section 3104.1 of Title 11 of the District of Columbia Municipal Regulations from the roof structure requirements of Section 777 (411.5). The Applicant also requires variance relief pursuant to Section 3103.2 from the loading and

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EXHIBIT NO. 4

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parking space requirements for a residential building under Sections 2201 (2201.1) and 2101 (2101.1., 2115.2 and 2115.4).

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2 and 3104.1).

III. STATEMENT OF EXISTING AND PROPOSED USE

A used car dealership is currently operating on the Property. As shown in the plans included in Exhibit A, the Applicant is proposing to redevelop the site with a five story residential building with approximately 80-84 residential units. The design of the building effectively utilizes the change in grade of the Property as well as the irregularly shaped lot to create an attractive residential structure that will serve as a distinctive architectural marker at this key intersection.

IV. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The irregularly shaped Property is bound by Pennsylvania Avenue, SE, Kentucky Avenue, SE and Barney Circle. A 10 foot wide alley borders the Property to the north. The Property is the last property before Pennsylvania Avenue enters Barney Circle and crosses over the Anacostia River on the John Phillip Sousa Bridge, or conversely, the first property that one passes along Pennsylvania Avenue after crossing the bridge, as one heads towards the Capitol Hill neighborhood and Downtown. The Property is located approximately two blocks from the Potomac Avenue Metro Station. Three story rowhouses are found adjacent to the property on Pennsylvania Avenue and 2½ story rowhouses are found along Kentucky Avenue, SE across the alley from the Property.

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

The Applicant is seeking special exception relief pursuant to Sections 3104.1 and 411.11 from the requirements of Section 777 (411.5) that the roof structure be of uniform height. The Applicant is providing one roof structure which varies in height. In order to obtain the requested relief, the special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and must not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. 11 DCMR Section 3104.1.

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

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

In this case, the Applicant seeks relief pursuant to Section 411.11, from Section 777 (411.5). Section 411.5 requires penthouses to consist of a uniform height. Section 411.11 of the Zoning Regulations provides, however, that “[w]here impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable,

the Board of Zoning Adjustment shall be empowered to approve, as a special exception under Section 3104, the location, design, number, and all other aspects of such structure, even if such structures do not meet the normal setback requirements...; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR Section 411.11.

As shown in the plans included in Exhibit A, the Applicant is proposing to provide a mechanical penthouse for the elevator overrun that is 18 feet, six inches in height. This height is also applied to other portions of the roof structure in order to provide space for taller mechanical equipment (freeing roof space below for vegetated green roofs and common roof decks). The remainder of the roof structure, at the northwest and southeast ends, is only 13 feet tall. In both cases, the step-down relates to context. On the northwest and southeast ends of the building, the roof structure steps down in the direction of the lower-scaled rowhouses across the alley and across Kentucky Avenue. The step-down sculpts the massing of the roof structure and reduces its visual impact. Though the Zoning Regulations require a penthouse to be of uniform height, the Applicant believes the intent of the Zoning Regulations, which is to reduce impacts of development on neighboring property, is better achieved by providing varying heights for the rooftop structure.

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

Due to the siting of the building on the Property and the location and treatment of the proposed penthouse structure, the proposed roof structure of varying height diminishes the impact on the amount of light and air provided to neighboring properties compared to a matter-of-right roof structure which is 18 feet, six inches tall.

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**VI. THE APPLICATION MEETS THE REQUIREMENTS FOR
VARIANCE RELIEF**

The Applicant is seeking relief from the requirement to provide one 55-foot loading berth (the project will include the required 100 square foot loading platform, a 30 foot loading berth, and a 20 foot service and delivery space). The Applicant is seeking relief from the requirement to provide 42 parking spaces (the project will include 31 parking spaces) on the Property and the Applicant is also requesting relief to provide compact parking spaces in a garage with less than 25 parking spaces and to provide compact parking spaces in groups of less than five contiguous spaces.

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the application satisfies the three-part test for area variance relief.

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

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather,

applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

Here, the Property is unique because it is an irregularly shaped lot. With respect to the areas of relief sought, the impact of the irregular shape is compounded by the sloping topography, and the location of the street and alley frontages. These factors create challenges in designing an efficient site plan for the building and the below-grade parking level. In addition, the Property is served by a rather narrow 10 foot alley, which limits the size of vehicles that can effectively and conveniently access the loading facilities provided in this project.

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

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj.,

606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171.

Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant meets this standard.

Loading

As noted above, the Property is served by a rather narrow 10 foot wide alley. The Applicant is seeking relief from the requirement to provide a 55 foot long loading berth. The design of this project is consistent with the Department of Transportation’s policy of having all vehicles (passenger cars and delivery trucks) access the Property from an alley rather than curb cuts on Pennsylvania Avenue or Kentucky Avenue. Any large delivery trucks that need a 55 foot loading berth would face a series of very difficult and awkward turning movements in order to access the Property from the 10 foot alley. For these reasons, the Applicant is faced with a practical difficulty in satisfying the requirement to provide a 55 foot loading berth on the Property.

Parking

The project will include one level of below-grade parking which will create 23 zoning compliant spaces, and will also provide eight spaces in the rear of the building adjacent to the alley at-grade. The alley spaces are efficient, but the garage suffers from site-related factors. The driveway ramp, for example, comes off the alley as required by DDOT policy. However, since the alley is at the higher end of the site, the driveway ramp must be longer than if the entrance were elsewhere on the site. The dimensions of the lot are somewhat small relative to

the required widths and lengths of ramps, aisles and parking spaces. The provision of compact spaces in the parking garage provides some alleviation from these factors, but the site dimensions combined with the irregular shape of the lot create a very inefficient below-grade parking garage. This inefficiency, combined with the difficulties of creating an underground space which necessarily extends under much of the yard between the western wing of the project and the alley, makes provision of parking difficult. Such underground construction, with vertical sheeting and shoring along the alley and extensive waterproofing, is common for larger buildings but disproportionately difficult in a medium sized building such as this project.

In order to satisfy the Zoning Regulations' requirement to provide 42 parking spaces for this project, it will be necessary to add a second level of below-grade parking. In addition to the construction challenges posed by a second level below grade, the necessary ramps would further reduce the efficiency of the first level. Providing a second level of parking is also extremely expensive and ultimately puts the financial viability of this project in jeopardy. Thus, the Applicant is faced with a practical difficulty in providing 42 parking spaces on the Property and in providing compact parking spaces in groups of at least five contiguous spaces.

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

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan.

Loading

Given the proposed residential unit sizes, it is unlikely that residents of this project will be utilizing trucks that require a 55 foot loading berth. The Applicant believes that the 30 foot loading berth and the 20 foot delivery space will be able to satisfy the vast majority of the

VIII. CONCLUSION

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

Respectfully submitted,

Paul A. T. S.

Paul A. Tummonds

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