

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

Application of The American Enterprise Institute
ANC 2B07

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the application of The American Enterprise Institute ("**Applicant**"), the co-
purchaser of the property located at 1785 Massachusetts Avenue, NW (Square 157, Lot 112)
("**Property**").¹ The Applicant proposes to renovate the existing historic landmark located at the
intersection of 18th and P Streets and Massachusetts Avenue and to construct a modest addition
at the rear of the Property. The addition and renovations will require relief from the floor area
ratio, height, office use, and roof structure requirements. The Property is located in the SP-2
Zone District of the Dupont Circle Overlay. Attached as Exhibit A is an excerpt of the Zoning
Map and a plat showing the location and configuration of the Property and attached as Exhibit B
is a Surveyor's Plat of the Property.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**")
approve a request for special exception relief pursuant to Section 3104.1 of Title 11 of the
District of Columbia Municipal Regulations from the roof structure requirements of Sections
537.1 and 411.2, 411.5 and from the office use provisions of Section 508.1. The Applicant also
requires variance relief pursuant to Section 3103.1 from the floor area ratio requirements for
office buildings under Section 531.1 and the height requirements under Section 530.1.

II. JURISDICTION OF THE BOARD

¹ The property is owned by the National Trust for Historic Preservation, which has signed
the application forms and submitted an independent agent authorization letter.

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The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.1 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.1 and 3104.1).

III. APPLICANT

The Applicant in this case is The American Enterprise Institute (“AEI”). AEI is a private, nonpartisan, not-for-profit institution dedicated to research and education on issues of government, politics, economics and social welfare. Founded in 1938, AEI is home to some of America's most accomplished public policy experts. AEI's purpose is to serve leaders and the public through research and education on the most important issues of the day. AEI research is conducted through seven primary research divisions: Economics, Foreign and Defense Policy, Politics and Public Opinion, Education, Health, Energy and the Environment and Society and Culture. It also works through several specialized outlets, such as the National Research Initiative (which sponsors research by university-based scholars), the AEI Press, and the Enterprise Blog.

Approximately 185 people work at AEI's headquarters in Washington, D.C., which is currently located at 1150 17th Street, NW. AEI is the contract purchaser of the former National Trust for Historic Preservation building located at 1785 Massachusetts Avenue. Upon closing on the Property, AEI will commence work on the proposed project. Once the work is completed, it will relocate its headquarters to the Property.

IV. DESCRIPTION OF THE PROPERTIES AND SURROUNDING AREA

The Property is located along 18th Street between Massachusetts Avenue and P Street, NW. It is a corner lot with frontage on the three streets noted above and is approximately 13,032

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square feet in size. The Property is located near both Dupont Circle and the Dupont Circle Metrorail Station. The neighboring properties along Massachusetts Avenue are largely institutional buildings as well as high-rise residential buildings while the neighboring properties along P Street are largely high-rise residential buildings.

The Property is improved with a five story office building. The building was initially constructed in 1915 by Stanley McCormick as one of the City's first luxury apartment buildings. Andrew Mellon is one of the most famous tenants to have lived in the building. He occupied one of the six units while he served as Secretary of the Treasury during the 1920s. His former apartment is now protected with an interior landmark designation, one of the few interior landmarks in the District. The building was converted to office use in 1941 and has been occupied by such users as the American Council on Education, The Brookings Institution and is now occupied by the National Trust for Historic Preservation, which has been located at the Property since 1976. AEI is under contract to purchase the Property but is proposing renovations and a modest addition in order to modify the building to meet its needs.

V. PROJECT DESCRIPTION

AEI is proposing a series of changes to the interior of the existing building and a modest addition at the rear of the Property. The current floor plan dissects each floor into a series of offices in order to maximize the amount of individual office space. AEI would like to simplify the floor plan and consolidate many of the offices spaces to create larger office spaces. The first floor is currently dedicated solely to offices; with the renovations, AEI would convert the space to an auditorium, conference space, dining area, and a reception space. The remaining floors would be used for office space but unlike the existing floor plan, the renovated building would

reduce the total number of offices in order to provide more generous working spaces. AEI is also proposing to expand the penthouse and use a small portion of it as event space for AEI functions. AEI plans to extend the grand staircase at the center of the building to the roof to create an elegant and dramatic reception area. AEI will also construct a rooftop terrace and create a new plane of activity on the building that can be enjoyed during its events. Finally, AEI is proposing a one-story addition that will provide an interior service corridor along the eastern property line to connect the “back of house” space with the private alley that will be used as an informal loading area. It is also filling in an existing courtyard with a new egress stair and a service elevator to provide access from the penthouse and each floor to the private alley in the rear of the building, per Building Code requirements.

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

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The Applicant is seeking special exception relief pursuant to Sections 3104.1 and 537.1 from the setback and uniform height requirements of Sections 411.2 and 411.5, as well as from Section 508.1 to allow an expansion of office use in the SP Zone District. 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 537.1 from Sections 411.2 and 411.5. Section 411.2 requires all roof structures to be set back a distance from exterior walls equal to its height and Section 411.5 requires a penthouse to be of 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... 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.

Here, the Applicant is proposing a penthouse that is not set back from the eastern exterior wall, which abuts a private alley. The enclosure is 18 feet, 6 inches tall and would otherwise be required to be set back a minimum of 18 feet, 6 inches from the exterior wall of the building; however, the penthouse is flush with the exterior wall of the building. The portion of the penthouse located along the eastern exterior wall of the building houses mechanical equipment, an egress stair, elevator control room, electrical equipment as well as three elevator overruns, including one for the service elevator. The floor plan is dictated by the shape of the building, the

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desire to create generous working spaces, and a historic covenant recorded against the interior of the building, designating Andrew Mellon's former apartment a historic landmark and the historic stair located at the center of the building. In addition, the new service elevator is located outside the original, historic footprint of the building in the former light court on the perimeter of the building. These factors relegate the core to the perimeter of the building so as to minimize its effect on the floor plan. Providing the core at the edge of the building, while efficient, creates a nonconforming penthouse. In this instance, the balancing of historic considerations favors pushing the core to the perimeter of the building despite the effect on the resulting penthouse at back.

AEI also seeks special exception relief from Section 508.1 of the Zoning Regulations, which does not allow for an addition to an office building without special exception relief. Relief is appropriate so long as the use, height, bulk and design of the building is in harmony with existing uses and structures on neighboring properties, the use shall not create dangerous or objectionable traffic conditions and the Board may require special treatments, as necessary.

AEI is proposing a modest one story addition along the eastern property line to allow enclosed access between the private alley and the interior service space. The Applicant is also infilling an existing court in order to provide additional egress features such as a stair, service elevator and a reconfigured core, as required by the D.C. Building Code. Finally, the Applicant is utilizing a portion of the penthouse space as amenity space for the office building. As noted in the variance discussion below, the proposal is consistent with the intent of the Zoning Regulations with respect to height, bulk and design. The addition was designed in a manner to respect the historic nature of the building but to also complement, facilitate and make the existing office space more efficient. The total addition consists of approximately 4,147 square

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feet, which is roughly 6.9% of the overall density of the building; accordingly, the increase in bulk is minimal. Moreover, it is located so as to have minimal impact on neighboring properties – the additional density is primarily located in an interior courtyard along a private alley. The additional height is also consistent with the intent of the Zoning Regulations as the increased height is consistent with the Height Act and is fully designed so as to blend in with surrounding buildings and respect its historic context. In fact, the proposal is simultaneously undergoing review with the Historic Preservation Review Board, which will undoubtedly ensure that the design, including the height and bulk, does not compromise the historic integrity of the building and the greater Dupont Circle Historic District.

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The proposed addition will not create objectionable traffic conditions as only a very modest amount (the rooftop area) will be occupiable; the remaining area will be dedicated to the building core. The occupiable space will only be used during special events, it is not meant to be used on a daily basis; accordingly, it will not affect the traffic generated by the tenant. Finally, the Applicant does not believe that additional screening is necessary given the attention that has been given to the detail of its design, but will defer to the Board of Zoning Adjustment to make that determination. The Applicant notes, again, that the HPRB is simultaneously reviewing this request and will also weigh in on these issues.

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

The penthouse will be located along the eastern side of the building, immediately adjacent to a private alley on the Property. The private alley is 10 feet wide, thus providing a sufficient set back from the neighboring property. Further, as depicted in the plans, the roof structure is fully designed and does not appear as a typical penthouse but rather as an additional

story. There was a significant amount of thought put into the aesthetic component of the addition, which further minimizes its effect on neighboring properties. Finally, the adjacent property was constructed to the property line and as such, any windows they may provide are not protected under the Building Code.

The increase in office use will not adversely affect the use of neighboring property. As noted above, the addition is a modest 4,147 square feet. The rooftop space will typically be utilized during special events and not on a daily basis and the other additions will be dedicated to the building core, thus there will be no effective change in the operations of the building due to the proposed additions.

VII. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The Applicant is seeking relief from the height and FAR requirements. AEI is proposing to use a portion of the penthouse as occupiable space, thus extending the height of a small portion of the building from 85.3 feet to 98.3 feet. In addition, the SP-2 Zone District allows a maximum FAR of 6.0 but limits commercial uses to 3.5. The Applicant is proposing a maximum commercial FAR of 4.77, 1.27 FAR in excess of the cap and .31 FAR in excess of the current office building on the Property.

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.

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D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the Applicant shall demonstrate that the Property meets 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 in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness, as well as its location in relation to the Capitol. Specifically, the Court held “[t]he site’s proximity to the Capitol made it uniquely valuable to the Republican National Committee, a public service organization. The previously constructed buildings and the contiguous subject site can be considered together in applying the test especially because the past acts of the zoning authorities led interveners to rely in good faith on their eventual consent to the final stage of the building. This case, like DeAzcarate, illustrates that extraordinary circumstances can encompass the past zoning history, as well as the physical features, of the property.” Id. at 1099-1100. Furthermore, 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

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Here, the Property is unique primarily because it is improved with an existing building that was constructed as a luxury apartment building in the early 1900s. One floor of the interior of the building is landmarked and is one of only a handful of properties in the District to have such a designation. This designation in turn dictates the size and configuration of the proposed penthouse. AEI must expand the existing penthouse in order to accommodate the additional mechanical equipment serving the building. The expansion, however, must comport with the existing column grid because the penthouse walls must align with the structural columns. As such, the penthouse assumes the size and configuration depicted in the plans, despite the fact that it exceeds the space needed to accommodate AEI's mechanical needs. Whereas columns can typically be reinforced to suit an owner's purposes and minimize the size and location of the roof structure, the historic nature of this building and the restrictions against altering the interior of the building, precludes AEI from modifying the column grid. As such, the resulting penthouse exceeds AEI's mechanical needs and will result in empty space at the rooftop level unless converted to other uses. Accordingly, AEI is proposing to use that portion of the penthouse for entertaining space. The area will exist on the roof regardless of whether it will be used as event space or penthouse space. If used as event space, however, it will be contributing to the overall character and functionality of the building. If the conversion is not permitted, the entirety of the space will be dedicated to mechanical equipment, however, a significant portion of the penthouse will remain vacant. The penthouse will not exceed the .37 FAR limitation imposed by the Zoning Regulations.

Similarly, the grand staircase, which is the focal point of the entryway, is a significant historic attribute of the building, which the Historic Preservation Office would like to see preserved. As such, AEI is limited in places where it can include the new proposed core. The

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core must be centrally located so as to effectively serve the building but AEI does not want to disrupt the historic fabric that comprises the landmarked interior of the building. Accordingly, it is providing the additional access features along the perimeter of the building, which increases the FAR of the building.

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

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effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d 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. The Applicant must make changes at the rooftop level in order to house the new mechanical equipment that will support the renovations. The existing penthouse must be expanded to accommodate the new equipment; however, given the existing column grid, the expansion will exceed what is necessary to incorporate the new equipment and will result in a larger penthouse space on the roof (albeit still less than the permitted .37 FAR). This condition is brought on by the fact that the existing columns cannot be reinforced due to the historic nature of the building interior. The walls of the penthouse must be aligned with the columns for structural support. The existing column grid dictates the location of the penthouse walls and the resulting floorplate of the penthouse. As a result, the penthouse is larger than need be for storage purposes and AEI proposes to use it for entertainment space. It will not expand the penthouse to exceed those parameters that are typically allotted for rooftop structures. This extension of the penthouse for entertaining space requires a variance from both the FAR and height requirements.

The courtyard infill and one story addition at the rear of the building also requires variance relief from the FAR requirements. The addition in the interior courtyard is being done to bring the building into compliance with the Building Code. The courtyard is the most logical and least intrusive place to provide the building core; it preserves the open floorplate but does not intrude upon the grand staircase showcased at the entrance of the building. The one story service corridor is ideally located along the private alley to connect the back of space area to the alley.

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The variance request for FAR relief also meets the more stringent standard of “undue hardship”, in accordance with *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972), if necessary. Since the Property is a designated historic landmark, the physical configuration of the building presents a set of significant constraints that disallow the re-use of the structure with an expansion or reconfiguration, as proposed. Given the existing non-residential FAR, the addition of any non-residential space above grade, such as the “infill” FAR proposed by this application, violates the maximum permitted floor area devoted to non-residential uses. In fact, the building was marketed for a significant period of time – approximately six (6) years – before a suitable end user could be found. The Applicant is only able to make such suitable use of the Property with the modest FAR increases requested through this variance. This additional floor area allows the structure to be modified in a manner that is now usable for the Applicant. The historic nature of the building and its configuration uniquely burden the Property.

While the inability to put the Property to a more profitable use or loss of economic advantage is not sufficient to warrant a variance, the premises must be able to be put to a conforming use with a fair and reasonable return. *Palmer, supra*, at 542.

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. The Applicant is only adding approximately 4,147 square feet of space. It is staying within the overall density envelope permitted in the SP-2 Zone District, although it exceeds the commercial density for the zone. The additional 4,147 square feet is dedicated in large part to making the building code compliant by providing additional means of egress. Additionally, it is providing amenity space within a subtly designed penthouse structure.

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The additions are designed so as to be consistent with the historic fabric of the building as well as that of the Dupont Circle Historic District. As shown in the photographs attached as Exhibit C, the rooftop is not visible from most vantage points, reducing its aesthetic impact on the adjacent community. The addition will not have an adverse impact on traffic in the area as the additional space is not meant to be used on a daily basis but only during events. Finally, the penthouse will be fully enclosed so any noise generated from events taking place on the roof will be mitigated by virtue of the fact that it will be located indoors.

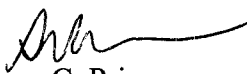
VIII. EXHIBITS

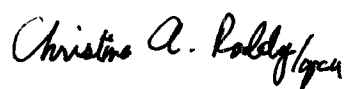
1. EXHIBIT A Zoning Map and Plat
2. EXHIBIT B Surveyor's Plat
3. EXHIBIT C Plans for renovations
4. EXHIBIT D Application and self-certification forms
5. EXHIBIT E List of property owners located within 200 feet
6. EXHIBIT F Photographs of Property
7. EXHIBIT G BZA Fee Calculator

IX. CONCLUSION

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

Respectfully submitted,


Allison C. Prince


Christine A. Roddy

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