

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

**APPLICATION OF
1031 4TH STREET LLC
1031 4TH STREET, N.W.**

**BZA APPLICATION NO. 18749
HEARING DATE: MAY 13, 2014
ANC 6E07**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted by 1031 4th Street, LLC (the "Applicant"), the owner of property located at 1031 4th Street, N.W., Square 526, Lots 815, 816, 836, 837, 838, 808, 809, 810, and 811 (the "Site"), in support of its application pursuant to 11 DCMR § 3103.2 and § 3104.1, for (1) an area variance from the side yard width requirements of section 775.5; (2) an area variance from the rear yard depth requirements of section 774.1; (3) an area variance from the parking requirements of section 2101.1; (4) an area variance from the loading requirements of section 2201.1; and (5) a special exception from the roof structure requirements under sections 411 and 770.6; to allow the construction of a new mixed use building with ground floor retail and nine stories of residential apartments in the DD/C-2-C District at the Site.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

- Exhibit A: Portion of the Baist and Sanborn Atlas plats showing the Site.
- Exhibit B: Portion of the Zoning Map showing the Site.
- Exhibit C: Architectural Plans and Elevations.
- Exhibit D: Outline of Testimony of Earle C. Horton III, 1031 4th Street, LLC.
- Exhibit E: Outline of Testimony and Resume of John Maisto, BKV Group.
- Exhibit F: Outline of Testimony and Resume of Steven E. Sher, Holland & Knight, LLP.
- Exhibit G: Outline of Testimony and Resume of Erwin Andres, Gorove/Slade Associates, Inc.
- Exhibit H: Mount Vernon Triangle Community Improvement District Letter of Support.
- Exhibit I: ANC 6E Letter of Support.
- Exhibit J: Parking and Loading Technical Memo Prepared by Gorove/Slade.

IV.
BACKGROUND

A. Description of the Site

The Site is located at 1031 4th Street, N.W., more specifically described as Lots 815, 816, 836, 837, 838, 808, 809, 810, and 811 in Square 526. Square 526 is located in the northwest quadrant of the city and is bounded by 4th Street to the west, K Street to the south, and I-395 to the north and east (see plats attached hereto as Exhibit A). The Site has frontage on 4th Street, N.W. to the west, with private property surrounding the Site to the north, east, and south. The Site includes approximately 12,379 square feet of land area. Lots 815 and 816 are currently vacant dirt lots with no improvements; Lots 836, 837, and 838 are improved with vacant row

structures, which will be demolished; and Lots 808, 809, 810, and 811 are paved with asphalt and were most recently used as a parking lot.

The Site is zoned C-2-C and is located within the Downtown Development ("DD") overlay zone and within Housing Priority Area A. The C-2-C zoning permits an apartment house as a matter-of-right, with a maximum height of 90 feet and 6.0 FAR, of which a maximum of 2.0 FAR may be devoted to non-residential uses. (11 DCMR §§ 770.1 and 771.2). Based on the Site's location within the DD overlay zone, the Site may be developed with an apartment house having a maximum height of 100 feet, based on its frontage on 4th Street, N.W., and with no maximum FAR. (11 DCMR §§ 1701.7 and 1706.7(b)).

B. Description of the Surrounding Area

The Site is located in the Mount Vernon Triangle neighborhood, which is easily walkable and accessible at the east end of Downtown, and within walking distance of the Washington Convention Center, Chinatown, the Verizon Center, and many other notable areas within downtown Washington, D.C. The Site is well-served by public transportation, with ample access to the Mt. Vernon Square/7th Street/Convention Center Metrorail Station and the Gallery Place/Chinatown Metrorail Station, multiple Metrobus lines, car share facilities, and Capital Bikeshare stations. As will be further referenced herein, the Site has a Walkscore of 95 out of 100 (*see www.walkscore.com*). The Mount Vernon Triangle neighborhood is growing rapidly and is becoming home to a diverse set of residents, high-quality retail establishments, and office space.

C. Description of Proposed Development

As shown on the Architectural Plans and Elevations attached hereto as Exhibit C, the Applicant proposes to construct a new apartment house on the Site, with a maximum height of 100 feet and approximately 98,595 square feet of gross floor area (7.96 FAR). The ground floor

will contain approximately 10,530 square feet of retail space and the residential lobby, and floors two through ten will contain approximately 88,065 square feet of residential and residential amenity uses, consisting of approximately 124 units. The project will provide 25 vehicle parking spaces in a below-grade parking garage, with 23 of the spaces devoted to residential use and two of the spaces devoted to retail use. The Applicant will provide a minimum of 41 secure bicycle parking spaces in the below-grade garage and will work with DDOT to provide short-term bicycle parking in the public space in front of the building along 4th Street. The proposed use of the Site is consistent with the DD/C-2-C zoning designation and with other uses within the area.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the side yard width requirements (§ 775.5); the rear yard depth requirements (§ 774.1); the parking requirements (§ 2101.1); and the loading requirements (§ 2201.1). 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" 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 affected by several exceptional conditions. The Site has a unique L-shape configuration primarily consisting of vacant land. The Site is located mid-block on 4th Street, N.W., and is bounded by private property on three sides to the north, east, and south. The Site has no alley access or frontage on any street other than 4th Street to the west, and is largely surrounded by vacant lots. In addition, a D.C. Water easement abuts the Site's north property line and includes space for a 42-inch sewer and a 36-inch water main. These existing sewer and water lines are located in the old L Street right-of-way and were built in the 1890s. This fragile infrastructure creates a unique condition, since the Applicant is wary of undertaking construction too close to the Site's northern property line which abuts the easements. In addition, a Pepco transformer pad is located on the northwest corner of the Site and must remain accessible to a vertical height of 45 feet and must be easily accessible from 4th Street. The existence of the transformer pad essentially prevents any development on the northernmost 12 feet of the Site. The transformer pad is in this location so that it can be easily accessible from 4th Street.

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

(a) Side Yard Requirements

The strict application of the side yard requirements will result in a practical difficulty to the Applicant. Section 775.5 of the Zoning Regulations states that "if a side yard is provided, it

shall be at least two inches (2 in.) wide for each foot of height of building, but not less than six feet (6 ft.)." From the foregoing, it is evident that there is no requirement to provide any side yard. If a side yard is provided on the Site, it must be at least 16 feet, 8 inches wide, based on the building's height of 100 feet. In this case, however, the Applicant proposes to provide a 12-foot wide side yard at the north of the Site.

Providing a 16 foot, 8 inch-wide side yard is impractical given the Site's unique shape and size. If the Applicant provided the required side yard width at the north of the building, the space where the parking ramp is currently located would be significantly reduced, thus pushing the ramp farther into the center of the building and eliminating valuable space for vehicle parking. Doing so would also severely compromise the layout of the building's interior and would greatly reduce the number of residential units and the square footage of the residential lobby and retail space available, making development practically difficult. Moreover, providing a compliant side yard would have the effect of reducing the size and/or number of residential units, which directly compromises the policies and objectives of the DD overlay to "[e]ncourage construction of new housing to accomplish the balanced mixture of uses essential to a 'living downtown,'" and "[c]reate the greatest concentration of housing in the Mount Vernon Square area." 11 DCMR § 1706.1(a)-(b). It is noteworthy that the Site is located within Housing Priority Area A.

The Zoning Regulations do not require side yards for multiple dwelling buildings. See 11 DCMR 775.5. However, if the Applicant did not provide any side yard, the building would lose significant light and air, as well as an entire bank of units, since the middle units on the building's northern edge would not have any windows. Furthermore, the primary reason that the Applicant is providing the side yard is to accommodate the Pepco transformer pad, which is not

permitted to be located in public space, must have a vertical clearance of 45 feet, and must be located at the northern-most portion of the Site with direct access to 4th Street. Although the transformer pad could theoretically be located underground, it would still need a 45-foot vertical clearance above it. As a result, providing no side yard is not an option on the Site, but providing a fully compliant side yard is practically difficult.

(b) Rear Yard Requirements

Section 774.1 of the Zoning Regulations requires that a rear yard with a minimum depth of 15 feet must be provided in the C-2-C District. In this case, the Applicant proposes to not provide any rear yard at the grade level. Although floors two through ten will be set back 15 feet from the rear property line, the ground floor is proposed to be built up to the rear property line, thus requiring 100 percent relief from section 774.1.

Providing a rear yard would result in a practical difficulty to the Applicant because the ground floor provides necessary structural support for the parking garage below. Without the ground floor extending all the way to the rear lot line, the below-grade parking level would be truncated, thus eliminating at least four parking spaces, increasing the necessary parking relief, changing the column grid spacing, and making development practically difficult. As shown on the parking level plan of the Architectural Plans and Elevations, attached hereto as Exhibit C, if foundation wall lined up with the 15-foot set back of the building's upper floors, this wall would be in the middle of two parking spaces, and would eliminate them. The Applicant could potentially provide access to the two eastern-most parking spaces; however, the required structural beam would likely be too deep to provide a legal passageway for access. Furthermore, since there is no alley or other access to the rear of the Site, and since the adjoining property to the east is also zoned DD/C-2-C, a dead space could be created in this area which is not reasonably usable and could be unsafe.

(c) Parking Requirements

The Zoning Regulations require that the proposed development provide 35 parking spaces: 31 for the residential uses and four for the retail uses. *See* 11 DCMR § 2101.1. Because the Site has only 12,379 square feet of land area and is L shaped, the below-grade parking garage can only accommodate a maximum of 25 vehicle parking spaces on a single level.

Excavation of more than one garage level in order to fully comply with the number of parking spaces required by the Zoning Regulations would create a practical difficulty to the Applicant. In order to access a second garage level, parking spaces on the first garage level would need to be eliminated to provide a ramp with adequate turning movement to access a theoretical second garage level. Given the Site's unique L-shape, its narrow east-west dimension of approximately 66 feet, and the L-leg's north-south dimension of approximately 58 feet, the parking ramp and drive aisle has to be located in the middle of the Site, as proposed, in order to provide 19-foot parking spaces on both sides of a 20-foot drive aisle.

If the Applicant extended the ramp and drive aisle to a second garage level, a maximum of 15 parking spaces (ten standard spaces and five compact spaces) could fit on the first garage level, instead of 25 spaces as proposed, and a maximum of 19 parking spaces (12 standard and seven compact) could fit on a second level. This configuration would result in 34 parking spaces, which would still not meet the required 35 spaces. Constructing a garage in this manner demonstrates the inefficiency in constructing two levels of parking, especially since the ramp to get down to the lower level would not work if U-turns were required to access the lowest level quickly.

Additionally, a ramp cannot be positioned in the following other locations: 1) underneath the existing entrance ramp because of interference with the Pepco vault, 2) along the L Street basement wall because of the required turning radii, which are too tight, or 3) along the

opposite side of the L Street basement wall because it would create landlocked areas that are not able to be used for parking. Thus, due to the size and shape of the Site, maximizing parking to a by-right condition would result in much deeper foundations and gross inefficiencies in the parking layout. Moreover, the additional excavation, sheeting/shoring, underpinning, and construction required to create additional garage levels would add a significant expenditure to the construction costs, which would have a direct impact on the sale/rental price of the residential units and retail space. Finally, given the Site's close proximity to multiple alternative transportation options, including the Metrorail, Metrobus, bicycle lanes, and bike and car share facilities, there is simply no need to provide the required number of parking spaces as specified in section 2101.1 of the Zoning Regulations.

(d) Loading Requirements

Section 2201.1 of the Zoning Regulations requires that an apartment house with more than 50 units include the following loading facilities: one berth at 55 feet, one platform at 200 square feet, and one service/delivery space at 20 feet. Pursuant to Section 2201.2, no additional loading is required for the proposed retail. The Applicant proposes to not provide any loading facilities on the Site, and instead proposes to provide a 30' x 8' loading zone in front of the Site on 4th Street.

The proposed loading configuration was recommended by DDOT after discussions with the Applicant. DDOT's Design and Engineering Manual requires front-in front-out loading, and discourages back-in only loading maneuvers. Given the Site's size, unique configuration, and lack of access from three out of four sides, the Site is not equipped to provide front-in front-out loading or the 55-foot loading berth required by the Zoning Regulations. If the Applicant provided the required loading facilities plus an area devoted to maneuvering space for trucks, the building's ground floor would be significantly restrained and the residential lobby and/or

significant retail space would be eliminated. Given that there is access only from 4th Street and that the parking garage ramp is located on the northern-most portion of the Site, loading access would have to replace the residential entrance or one of the retail entrances, resulting in an inefficient and inconvenient building layout and making development unduly burdensome for the Applicant. Based on these practical difficulties, DDOT recommended providing all loading from the front door, which will be adequate given the size of the residential units, the proposed retail space, and the limited traffic on 4th Street, N.W.

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.

First, with respect to the side yard width requirements, the proposed 12-foot side yard is sufficiently wide to provide ample light and air to residents of the proposed building on the Site and to any residents of a future building on the adjacent property to the north of the Site. Moreover, the existence of the D.C. water easement located in the former L Street right of way will most likely impact development potential on the site to the north. Thus, the existence of a 12 foot wide side yard, instead of a 16 foot, 8 inch wide side yard, will not have an adverse impact on the public good or on the integrity of the zone plan.

Second, the absence of a rear yard on the ground floor will have no perceptible impact on the public good or on the zone plan. The single ground floor story will not block light and air from any future development on the adjacent property to the east or otherwise negatively affect any neighboring lots. Floors two through ten of the building will be pushed back a distance of 15 feet from the rear property line, thus providing the required rear yard setback for the majority

of the building. Therefore, the building's proposed single story that does not comply with the rear yard requirements will have a nominal effect.

Third, the proposed number of parking spaces is sufficient to serve the building's residents and retail patrons. Although the Applicant proposes to provide nine fewer parking spaces than the Zoning Regulations require, many building residents, visitors, and retail customers and employees will not access the Site via a private vehicle, given the Site's easy accessibility to multiple alternative transportation options. As described in the Parking and Loading Technical Memorandum prepared by Gorove/Slade, attached hereto as Exhibit J, the Site is located less than half a mile from the Mt. Vernon Square/7th Street/Convention Center Metrorail Station, which services the Yellow and Green Metrorail lines, and a half mile from the Gallery Place/Chinatown Metrorail Station, which services the Red Metrorail line. The Site is located within 0.2 miles of the D4, P6, 96, and 950 Metrobus lines, and within 0.5 miles of seven Capital Bikeshare stations. The Site is also within 0.5 miles of nine permanent car share parking spaces (serviced by Zipcar and Hertz On Demand) and has ample access to Car2Go vehicles. Furthermore, the Site has a walkscore of 95 (see www.walkscore.com), with close proximity to local parks, schools, grocery stores, restaurants, and retail opportunities. There are also plans for the D.C. Streetcar line to pass within feet of the project, along K Street, N.W. Thus, the Site's excellent location and available alternative options for commuting will provide a variety of transportation modes for building residents, thus reducing the potential impact of vehicle traffic in the surrounding neighborhood.

In addition, there are at least six large off-street parking facilities within close proximity to the Site that provide approximately 800 parking spaces to the public and can be used by residents and visitors of the proposed building. The Applicant also proposes to implement an

extensive transportation demand management ("TDM") plan, which will include 1) a transportation management coordinator, 2) on-site services, such as a transit screen in the lobby, 3) a marketing program that provides detailed transportation information to residents and promotes walking, cycling, and transit use, 4) transportation incentives, such as car and bike share memberships and/or a SmartTrip card, 5) secure on-site bicycle amenities, 6) ride-matching and ride-sharing programs, and 7) a dedicated car sharing or electric vehicle charging parking space.

Based on the Site's proximity to transit, the spectrum of alternative commuting modes available in the neighborhood, and the implementation of an aggressive TDM program, the vehicular demand at the Site will be minimal. Any needs for overflow parking can be easily accommodated by on-street parking in the neighborhood, which is moderately utilized, or by any parking within the nearby off-street parking facilities.

Finally, the proposed 30' x 8' loading zone on 4th Street in front of the Site is sufficient to serve the needs of the prospective resident and retail tenants of the project based on the size of the residential units and the square footage of the retail space. Given that the residential units are primarily planned to be one-bedroom, the proposed loading zone will adequately accommodate smaller-sized moving trucks anticipated to serve units of this size. As indicated in the Parking and Loading Technical Memorandum, attached hereto as Exhibit J, only 24 truck deliveries are expected per year for residential move-ins and move-outs (one delivery every 8.5 days), and only three to four van deliveries are expected per week for the small amount of retail use on the Site. If necessary, the Applicant will be able to manage and schedule use of the loading zone. In addition, trash trucks that will pick up trash from the curb in front of the building are generally 30 feet in length and can also be accommodated in the proposed loading zone. Thus, the

proposed curbside loading zone provides sufficient capacity for the building's minimal loading needs, and relief can be granted without substantial detriment to the public or the Zone Plan.

VI.
THE APPLICANT MEETS THE 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.*

Under Section 411.11 of the Zoning Regulations, 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, there will be two roof structures with enclosing walls of unequal heights that do not meet the set back requirements in all locations.

The Applicant proposes to include a roof deck with access for building residents. As shown on the Plans, the two stair towers and the elevator in the building will be extended up to the roof. The north stair tower and the elevator shaft will be located in a single roof structure, with enclosing walls rising to a height of 15 feet over the elevator and 12 feet over the elevator lobby and roof terrace. The south stair tower will be located in a second, separate structure, with enclosing walls rising to a height of 9 feet, 6 inches.

Each roof structure is a necessary feature, and the structures have to be separated due to the Building Code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. Each roof structure is only as tall as it needs to be, and the location and number of roof structures is driven by the layout and design of the residential units within the building, as well as the location of core elements.

A single, 15-foot roof structure could theoretically be built to enclose both stair towers and the elevator shaft in compliance with the requirement for a single roof structure with enclosing walls of a consistent height. However, to require this would be unduly restrictive and unreasonable, given that it would add unnecessary mass to the roof and would undermine the purpose of the Regulations, which is to exercise a degree of architectural control over roof structures. *See* 11 DCMR § 411. Instead, the separate enclosures of unequal heights will help minimize the appearance of the roof structures and will protect the visual quality of the building from the street. The surrounding walls will be of quality material to integrate them into the overall design of the building.

VII. **COMMUNITY SUPPORT**

The Applicant has the support of the community for the requested zoning relief. At its regularly scheduled public meeting on March 4, 2014, at which a quorum was present, Advisory

Neighborhood Commission 6E ("ANC 6E") voted 7-0-0 to support the application. A copy of ANC 6E's letter of support is attached hereto as Exhibit I. The Applicant also received support from the Mount Vernon Triangle Community Improvement District, as indicated in its letter of support, attached hereto as Exhibit H.

VIII.
WITNESSES

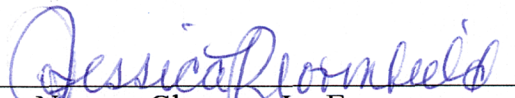
- A. Earle C. Horton III, 1031 4th Street, LLC.
- B. John Maisto, BKV Group.
- C. Steven E. Sher, Holland & Knight, LLP.
- D. Erwin Andres, Gorove/Slade Associates, Inc.

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

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* Admitted to practice in Pennsylvania. Practicing in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8).