

**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: JULY 8, 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 rear yard depth requirements of section 774.1; (2) an area variance from the parking requirements of section 2101.1; (3) an area variance from the compact parking space requirements of section 2115; (4) an area variance from the loading requirements of section 2201.1; (5) an area variance from the lot occupancy requirements of section 772.1; and (6) 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.

The relief is requested as an alternative to the relief initially requested from the Board, and provides an alteration in the following areas: i) lot occupancy variance in lieu of the pervious side yard variance, ii) additional relief for parking in the number of parking spaces for which relief is requested (variance of 15 spaces instead of 10), and iii) relief from the compact parking space requirements in order to provide the proposed 22 parking spaces.

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

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| <u>Exhibit A:</u> | Portion of the Baist and Sanborn Atlas plats showing the Site. |
| <u>Exhibit B:</u> | Portion of the Zoning Map showing the Site. |
| <u>Exhibit C:</u> | Architectural Plans and Elevations. |
| <u>Exhibit D:</u> | Theoretical Building Diagrams Addressing the Lot Occupancy Request. |
| <u>Exhibit E:</u> | Outlines of Testimonies of Witnesses. |
| <u>Exhibit F:</u> | Resumes of Expert Witnesses. |
| <u>Exhibit G:</u> | ANC 6E Letter of Support for Original Application. |
| <u>Exhibit H:</u> | 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 lots with no improvements; Lots 836, 837, and 838 are improved with vacant 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.

As indicated on the Zoning Map, attached hereto as Exhibit B, the Site is zoned C-2-C, is located within the Downtown Development ("DD") overlay zone, and is 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 a maximum density of 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). However, 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)). The Site must provide on-site or account for off-site in a combined lot development no less than 4.5 FAR of residential use (11 DCMR § 1706.4). The maximum permitted non-residential FAR is 3.5.

B. Description of the Revised Areas of Relief Requested

Pursuant to 11 DCMR § 3113.8, the Applicant filed its prehearing statement and related materials with the Board on April 29, 2014. However, as a result of further discussions with the Office of Planning, the District Department of Transportation ("DDOT"), and PEPCO, on May 12, 2014, the Applicant submitted a request for postponement of the hearing, which was originally scheduled for May 13, 2014. Since then, the Applicant has modified the plans to eliminate the previously proposed 12-foot wide side yard at the north of the Site by extending the building to its northern property line. The Applicant added 8,518 square feet of gross floor area to the building, and nine additional residential units. Thus, the Applicant's requested relief changed in the following ways:

1. The Applicant, with this plan, is no longer seeking relief from the side yard width

requirements, since the revised building design does not provide any side yard;

2. The Applicant is now seeking relief from the lot occupancy requirements, since the building will have a lot occupancy of 86 percent where a maximum of 80 percent is permitted. It is noteworthy in this regard that the Zoning Administrator may grant two percent relief pursuant to Section 2522.1(a), which would permit 82 percent lot occupancy, which further reduces the overall request for relief from that perspective to four percent. The previously requested side yard relief was a reduction from 16.67 feet to 12 feet, or 28 percent requested variance relief.
3. The Applicant is seeking a slightly greater variance from the parking space requirements than was originally requested. In the original application and in the prehearing submission, the Applicant proposed to provide 25 vehicle parking spaces when 35 were required. In the present application, the Applicant proposes to provide 22 parking spaces, but due to the increase in the building's gross floor area and number of residential units, the Applicant is now required to provide 37 parking spaces, thus increasing the amount of necessary parking relief to 15 spaces; and
4. The Applicant is seeking a variance from section 2115 of the Zoning Regulations, which permits parking garages containing 25 or more required parking spaces to designate up to 40 percent of the parking spaces for compact cars (11 DCMR § 2115.2), and requires compact parking spaces to be placed in groups of at least five contiguous spaces (11 DCMR § 2115.4). In this case, relief is necessary because the Applicant is only providing 22 total parking spaces, which does not meet the threshold of 25 spaces to allow for the provision of compact spaces, and because the proposed compact spaces are not located in groups of at least five contiguous spaces.

Attached hereto as Exhibit C are revised architectural plans and elevations (the "Revised Plans") that reflect the modified project design.

C. 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, as well as 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), which classifies this site as a "walker's paradise." The Mount Vernon Triangle neighborhood is growing rapidly and is becoming home to a diverse set of residents, numerous and diverse retail establishments, and office space.

D. Description of Proposed Development

As shown on the Revised Plans, 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 107,113 square feet of gross floor area (8.65 FAR). The ground floor will contain approximately 5,890 square feet of retail space and approximately 5,418 square feet encompassing the residential lobby and amenity spaces, residential support spaces, and circulation. Floors two through ten will contain approximately 95,805 square feet of gross floor area comprised of approximately 133 units. The project will provide 22 vehicle parking spaces in a below-grade parking garage and a minimum of 44 secure bicycle parking spaces distributed at the garage and ground floor levels. The Applicant 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.

In the previous plan, the Applicant proposed to locate an above-grade transformer north of the building in the previously-approved side yard. This location was questioned by OP and the adjoining property owner, and as a result, the Applicant is currently reworking the location of the transformer pad with Pepco to locate the facility underground in public space. This configuration results in larger and more costly facilities that require solid tops and either ventilation or air conditioning.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the rear yard depth requirements (§ 774.1); the parking requirements (§ 2101.1); the loading requirements (§ 2201.1); and the lot occupancy requirements (§ 772.1). 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, with dimensions barely wide enough to accommodate a double-loaded corridor. The Site is located mid-block on 4th Street, N.W., and is bounded by private property to the north, east, and south, with no alley access or frontage on any street other than 4th Street. Unlike most regularly-shaped interior lots, the Site's irregular shape creates five separate facades that abut private property, therefore creating five separate landlocked elevations that need to be designed around in order to accommodate the project. 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.

In the Applicant's previous submissions, the Applicant proposed to locate a Pepco transformer pad on the northwest corner of the Site. This configuration resulted in the Applicant's proposal to provide a side yard at the north of the building at a width of 12 feet. However, as a result of further dialogue with Pepco, OP, and the adjoining property owner, the Applicant relocated the transformer to be located underneath the sidewalk on 4th Street, within public space. As a result of the relocated transformer pad, the D.C. Water easement to the north, and further work with Pepco and the adjoining property owner, the Applicant can now build to

the northern property line thereby removing the impediment of one of the landlocked elevations.

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

(a) 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 as well, 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 included in the Revised Plans, if the 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 two eastern-most parking spaces would also be adversely affected, as 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 the area behind the building, which would be bad urban planning, not reasonable usable, and could be unsafe.

(b) Parking Requirements

The Zoning Regulations require that the proposed development provide 37 parking

spaces: 33 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 22 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 approximately 15 parking spaces (ten standard spaces and five compact spaces) could fit on the first garage level, instead of 22 spaces as proposed, and a maximum of approximately 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 37 spaces, and a partial third level with the attendant ramps would be necessary. Constructing a garage in this manner demonstrates the inefficiency in constructing two-plus 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 along the L Street basement wall because of the required turning radii, which are too tight or 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 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. This fact is substantiated by the Parking and Loading Technical Memo, prepared by Gorove/Slade and attached hereto as Exhibit H.

(c) Compact Parking Space Requirements

Section 2115.2 of the Zoning Regulations permits parking garages containing 25 or more required parking spaces to designate up to 40 percent of the parking spaces for compact cars. Section 2115.4 requires compact parking spaces to be placed in groups of at least five contiguous spaces. In this case, the Applicant is providing four compact parking spaces in a garage that only provides 22 total parking spaces. Therefore, the 25-parking space threshold established by section 2115.2 is not met, and the five contiguous compact space requirement is not met.

Compliance with section 2115.2 would result in a practical difficulty because the Applicant is already providing the maximum number of parking spaces possible in a single garage level. Twenty-five parking spaces cannot physically fit on one level of parking due to the irregular shape of the lot, and providing a second garage level to increase the total number of parking spaces results in a practical difficulty to the Applicant, as described in Section (b), above.

Furthermore, it is practically difficult for the Applicant to increase the size of the proposed compact parking spaces to make them standard-sized spaces at 9 feet x 19 feet. The two compact parking spaces located along the south wall of the building are sandwiched between a row of columns and five standard-sized parking spaces to the east and an egress stair to the west. The columns cannot be pushed farther east because the five standard spaces would be compromised. The compact spaces cannot increase in size to the west because it would reduce the necessary egress width and the exit stairs would become less than code-compliant. Similarly, the compact spaces located along the west wall of the building cannot move south because of the spatial requirements of the building's electrical and emergency equipment, as well as that equipment's connections to the adjacent Pepco facilities and vaults. The columns to the south are currently in line with the separation of the retail spaces above, and shifting them would result in a less efficient and less desirable retail space. Finally, the compact spaces cannot increase in size to the north because doing so would shift the four standard spaces north as well, which would not leave adequate space to enter the storage room and water room. Based on the foregoing, it is practically difficult for the Applicant to provide 25 parking spaces on the Site and to transform the four proposed compact parking spaces into standard-sized spaces.

In addition, compliance with section 2115.4's requirement to provide compact parking spaces in groups of at least five is not possible, since the Applicant is only providing four compact spaces in total. Requiring the Applicant to provide a fifth compact parking space would negate the Zoning Regulations' purpose of requiring 25 standard-sized parking spaces before permitting any compact spaces to be constructed. Therefore, providing five compact spaces also results in a practical difficulty to the Applicant.

(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 impacted. The residential lobby and retail space would be significantly reduced, and life-safety egress corridors would be obstructed. Given that there is access only from 4th Street and that the parking garage ramp is located on the northernmost 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.

(e) Lot Occupancy Requirements

Section 772.1 of the Zoning Regulations requires buildings located in the C-2-C District to have a maximum lot occupancy of 80 percent. As described above, the Applicant has now designed the building to be set on its northern property line, which results in an overall lot occupancy of 86 percent. As previously stated, this is a minor variance request of six percent

and is requested in lieu of the side yard variance, which was the original request for relief for 28 percent for reducing the side yard from 16.67 feet wide to 12 feet wide.

The Applicant requests relief from the lot occupancy requirements in order to create an efficient and effective building layout. The proposed building has a lot occupancy of 100 percent for the retail space on the ground floor, which is permitted under the Zoning Regulations. However, the building has a lot occupancy of 86 percent for the residential uses on floors 2-10, which is not permitted by section 772.1. Providing a compliant residential lot occupancy would result in a practical difficulty to the Applicant for the following reasons:

To begin, if the Site was a regularly-shaped rectangle, the Applicant would be able to provide the same number of residential units at the same FAR and height as currently proposed, but would be able to do so within the 80 percent lot occupancy requirements. Therefore, the irregular shape of the Site creates a practical difficulty for the Applicant in complying with the lot occupancy requirements.

Next, as shown on the Theoretical Building Diagrams, attached hereto as Exhibit D, the Applicant prepared and evaluated several alternative building designs that would satisfy the 80 percent lot occupancy requirement. However, each of these designs resulted in an inefficient building layout, irregularly shaped units, and the elimination of either two units per floor (18 total units eliminated), or one unit per floor (nine total units eliminated) plus the necessary reconfiguration of all two-bedroom units into one-bedroom units. For example, if the Applicant increased the width of the existing open court to bring the lot occupancy down to 80% (as shown on page 2 of Exhibit D) or increase the rear yard setback to bring the lot occupancy down to 80% (as shown on page 3 of Exhibit D), either change would result in the elimination of approximately two units per floor (18 total units eliminated) and would create irregularly-shaped

units. Similarly, if the Applicant sets the building back from the northern property line in to bring the lot occupancy down to 80% (as shown on page 4 of Exhibit D), it would eliminate one unit per floor (nine total units eliminated) and would also turn all of the building's two-bedroom units into one-bedroom units. This major reduction in residential units of approximately 14% and change of unit types is disproportionate to the six percent decrease in lot occupancy that would result.

Also, due to the unique shape of the lot and its five interior faces, the building has a core factor that is higher than would be the case for a rectangular lot. The core factor in the lot occupancy complying scenarios is greater than 15% while the core factor for the rectangular shaped lot is about 10%.

Moreover, as previously stated, the Site is located in Housing Priority Area A of the Downtown Development District, the policies and objectives of which are to "create the greatest concentration of housing in the Mount Vernon Square area" (see 11 DCMR 1706.1(b)). That is precisely what the Applicant is doing in this case. Strict compliance with the lot occupancy requirements would directly contradict the District's policy of maximizing residential density and residential unit size at the Site and in the surrounding neighborhood.

In addition, the Board has previously found that complying with the lot occupancy requirements can result in a practical difficulty, even for development proposed on a vacant lot (see BZA Order No. 18375, Finding of Fact No. 24 "[i]f the Applicant were required to meet the 80% lot occupancy requirement, it would result in inefficient layouts and a reduced unit count. In order to maintain a continuous building wall along the street frontages ... the only place to accommodate open areas on the lot is at the rear of the building. However, by narrowing the 8th Street bar portion of the building... the overall number of units would need to be reduced... [and

t]he ability to house families, as well as individuals, would be dramatically reduced").

As set forth above and in the attached plans, this project faces those same challenges on a site that has one less street frontage to work with.

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, 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.

Second, the proposed number of parking spaces is sufficient to serve the building's residents and retail patrons. Although the Applicant proposes to provide 15 fewer parking spaces than the Zoning Regulations require, many building residents will not own cars, and many 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 H, 22 parking spaces are projected to adequately serve the demands of the Site. Similar residential properties that are located the same distance from a Metro Station and have the same size and mix of residential units have exhibited a need for the same amount of parking as proposed in this application (see Table 4 of the Gorove/Slade Report). In this case, 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. Approximately 230 of these parking spaces are located in the City Vista parking garage, which permits overnight parking, and approximately 570 of the 800 spaces are located in surface parking lots surrounding the Site that do not presently have overnight hours, but could if demand warranted it. In addition, ample on-street parking is available throughout the neighborhood. Therefore, if the demand for parking is higher than anticipated, the demand can be accommodated by on- and off-site parking facilities in close proximity to the Site, thus eliminating any negative impact to the neighborhood.

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 for use by building residents. These TDM measures will adequately mitigate any impact caused by the reduced number of parking spaces provided on the Site.

Based on the Site's proximity to transit, the spectrum of alternative commuting modes available in the neighborhood, the anticipated demand by residents, and the implementation of an aggressive TDM program, there is no anticipated demand for more on-site parking spaces than is proposed and the development will not cause any detrimental impacts to on-street parking conditions. 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.

Third, providing four compact parking spaces in a garage with 22 total parking spaces will not result in any harm to the public good or zone plan. The compact spaces are adequately sized to permit vehicles to park in them, and they help increase the total number of parking spaces that can be provided in the garage.

Fourth, with respect to the loading facilities, the proposed 30' x 8' loading zone on 4th Street in front of the Site is sufficient to serve the needs of the prospective residents 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, 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. Trash will be wheeled out of the building directly onto 4th Street from a service door to the north of the driveway entrance to the parking garage. Moreover, as indicated in Table 5 of the Gorove/Slade report, on-street loading is adequate to serve all of the loading operations for residential developments with more than 133 units. 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.

Fifth and finally, the requested increase in lot occupancy by six percent will not have a negative impact on the public good or on the Zone Plan. There will be adequate light and air on the Site, due to the rear yard that exists from the second floor up, the court, and the existence of the D.C. Water easement directly to the north of the Site. The easement will provide open space, light, and air, and will prevent any future development within approximately 10 feet of the Site's north façade, thus ensuring that the building's north-facing windows are not at risk. Furthermore, providing 80 percent lot occupancy on the Site would create an empty space along the building's street wall that could result in a potentially dangerous open area without adequate visual access. Providing a continuous street wall across the entire Site allows for a more pedestrian-friendly environment and a more cohesive and efficient building design. Finally, although 80 percent lot occupancy is the maximum permitted for the residential portion of the building on floors 2-10,

100 percent lot occupancy is permitted on the ground floor of the building. Based on the foregoing, the proposed building design provides adequate open space on the Site such that increasing lot occupancy by six percent will not create any adverse impacts.

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 initial design. At its regularly scheduled meeting on June 3, 2014, at which a quorum was present, ANC 6E again voted unanimously to support the modified application. Copies of ANC 6D's original letter of support for the application is attached hereto as Exhibit G. As of the time of this filing, ANC 6D had not yet submitted its letter of support evidencing the vote at its June 3, 2014, public meeting.

VIII.
WITNESSES

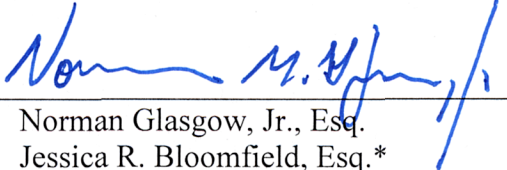
- A. Earle C. Horton III, 1031 4th Street, LLC.
- B. John Maisto, BKV Group.
- C. Erwin Andres, Gorove/Slade Associates, Inc.
- D. Steven E. Sher, Holland & Knight, LLP.

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).
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