

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

Application for 1031 4th Street, N.W.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 1031 4th Street, LLC, 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 sections 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 width 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.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief. Following herein, as required by the Board's application process, is a preliminary statement indicating how the Applicant meets the burden of proof.

I. Background

The Site is located in Square 526, Lots 815, 816, 836, 837, 838, 808, 809, 810, and 811 and is currently being subdivided to create a single record lot. Square 526 is bounded by 4th Street to the west, K Street to the south, and I-395 to the north and east, all in the northwest

quadrant of the city. As indicated on the building plat included with this application, 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 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 existing 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, and with no maximum FAR. (11 DCMR §§ 1701.7 and 1706.7(b)).

As shown on the architectural plans and elevations (the "Plans") included with the application, the Applicant proposes the construction of a new apartment building on the Site, having a height of 100 feet from the point of measurement and containing approximately 98,646 square feet of gross floor area (7.97 FAR). The ground floor will contain approximately 6,052 square feet of retail space, and floors 2-10 will contain approximately 88,065 square feet of residential and residential amenity uses. The project will provide 25 parking spaces in a below-grade parking garage, as well as rooftop amenity spaces. The Site is in close proximity to the Mt. Vernon Square/7th Street/Convention Center Metrorail Station and will continue the ongoing growth of 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 areas within downtown Washington, D.C.

II. The Applicant Meets the Burden of Proof for the Requested Area Variances

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, the Applicant meets all three prongs of the area variance test.

A. The Property is Unusual because of its Size, Shape, or Topography and is Affected by an Exceptional Condition:

The phrase "exceptional situation or condition" in the above-quoted variance test 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 three existing

townhouses that must be demolished, and vacant land on the remaining lots. 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 land in the immediate vicinity. In addition, there is a D.C. Water easement that abuts the Site's north property line and includes space for a 42-inch sewer and a 36-inch water main. Finally, a Pepco transformer pad is located on the northwest corner of the Site, which must be open to the sky and easily accessible from the street. The existence of the transformer pad essentially prevents any new development on the northernmost 12 feet of the Site. The transformer pad is in this location due to the proximity of other Pepco facilities.

B. Strict Application Would Result in a Practical Difficulty to the Owner:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant.

(a) Side Yard Requirements

Section 775.5 of the Zoning Regulations provides 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.)." According to these regulations, 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 greatly reduce the number of residential units and square footage of residential lobby and retail space available for development, making development practically difficult. Providing a compliant side yard would have the effect of reducing the size 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).

In addition, the Zoning Regulations do not require the provision of side yards in multiple dwellings. See 11 DCMR 775.5. 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 on public space, must be open to the sky, and must be located at the northern-most portion of the Site closest to access from 4th Street due to the location of other nearby Pepco facilities. 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 not to provide a rear yard at the grade level. Although floors 2-10 will be setback 15 feet from the rear lot line, the ground floor is proposed to be built up to the rear property line, thus requiring 100 percent relief from the Zoning Regulations.

Providing a rear yard would result in a practical difficulty to the Applicant because the ground floor is necessary to provide structural columns to support 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 valuable parking spaces, increasing necessary parking relief, and making development practically difficult. Furthermore, since there is no alley or other access to the rear, and the adjoining property 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 up to 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 in the Zoning Regulations would create a practical difficulty to the Applicant. In order to access a second parking level for additional spaces, parking spaces on the first garage level would need to be eliminated to provide a ramp to access a theoretical second garage level. The consequence would result in fewer parking spaces on each level, and the construction of an inefficient and costly garage to achieve the required number of parking spaces and levels. 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 for 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 retail. The Applicant proposes to provide no loading facilities on the Site, and instead proposes to provide a 35-foot loading zone in front of the Site on L 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 and unique configuration, the Site is not equipped to provide front-in front-out loading facilities for a 55-foot truck. Providing these facilities would result in a significant portion of the ground floor being devoted to maneuvering space for trucks, making development practically difficult. DDOT therefore recommended providing all loading from the front door, which will be adequate given the size of the residential units and the proposed retail space.

C. No Substantial Detriment to the Public Good nor Substantial Impairment to the Intent, Purpose, and Integrity of the Zone Plan:

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan.

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 theoretical 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. 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 2-10 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 its retail patrons. Although the Applicant proposes to provide nine fewer parking spaces than what is required under the Zoning Regulations, 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. The Site is located approximately a half-mile from the Mount Vernon/7th Street/Convention Center Metrorail Station, which services the Green and Yellow lines and is in close proximity to multiple Metrobus lines, three Capital Bikeshare stations, and various car-share facilities. The Site is located in a mixed-use, walkable neighborhood with a walkscore of 95 and a transit score of 99. See www.walkscore.com. Moreover, the public good will be served by a high-quality infill development project in the Mount Vernon Triangle, which the city is trying to revitalize and reintegrate through public and private investment.

Finally, the proposed 35-foot 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 residential units of this size. The Applicant will be able to manage and schedule use of the loading zone, providing an organized process for move-in and move-outs. Similarly, given that there are only 6,052 square feet devoted to retail use on the Site, any future retail tenant will not be large enough to require major loading operations on a regular basis. Given the size of the retail space and the type of retail operation that is anticipated to fill the space, it is likely that the ground floor retail use will not generate more than one or two deliveries per day on a regular basis. Therefore, the on-street loading zone proposed for the Site will be adequate to accommodate the needs of the development and relief can be granted without substantial detriment to the public or to the Zone Plan.

III. The Applicant Meets The Burden Of Proof For The Requested 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." *Gladden v. District of Columbia Board of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995) (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, the Board may grant special exception relief from strict application of the Regulations "where 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.

The Applicant proposes to include a roof deck with spaces 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 level to provide a fully-accessible roof deck. 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. 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. 11 DCMR § 411. Instead, the separate enclosures will help minimize the appearance

of the roof structures and protect the visual quality from the street. The surrounding walls will be of quality material to integrate them into the overall design of the building.

STATEMENT OF EXISTING AND INTENDED USE

The Site is currently improved with six vacant lots and three lots with existing row structures that are proposed to be demolished. The application proposes to subdivide and combine the existing lots on the Site and construct a ten-story residential building with ground floor retail and one level of below grade parking.