

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

**APPLICATION OF
47TH AVENUE LLC
4700-4704 WISCONSIN AVE., N.W.**

**BZA APPLICATION NO. 18839
HEARING DATE: OCT. 28, 2014
ANC 3E03**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

47th Avenue LLC (the "Applicant"), through undersigned counsel, submits this statement in support of its application to the Board of Zoning Adjustment for a variance pursuant to 11 DCMR § 3103.2 from the off-street parking space requirements of section 2101.1. The Applicant hereby amends its application to also seek a variance from the size of parking space requirements of section 2115. The relief requested will allow the construction of a new four-story apartment house with 16 residential units in the C-2-A District at 4700-4704 Wisconsin Avenue, N.W. (Square 1733, Lots 800, 833, and 834) (the "Site").

As originally submitted, the proposed new building provided 16 residential units with retail uses at the street level and basement/cellar area. These uses generated a requirement for 19 parking spaces and the Applicant sought relief to provide just three spaces at the rear of the property. The Applicant has revised its proposal to now include the required eight parking spaces for the 16 residential units in the basement/cellar area of the building. Four of those spaces will be compact in size, and will be not be in a group of five spaces. The elimination of retail uses in the below grade space reduced the retail parking requirement to two spaces and the

Applicant seeks a variance from this requirement. The proposed development is appropriate for the Site and fully compatible with the surrounding area.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance requested herein pursuant to D.C. Code § 6-641.07(g) and 11 DCMR § 3103.

III. BACKGROUND

A. Description of the Site

The Site is located on the northwest corner of the intersection of Wisconsin Avenue, N.W. and Chesapeake Street, N.W., and is currently improved with three low-rise commercial buildings that the Applicant intends to raze in connection with this application. The corner building is occupied by Steak & Egg Restaurant, a local institution in the Tenleytown neighborhood. The Steak & Egg building features an outdoor seating area along Wisconsin Avenue, a small lawn that wraps the corner, and an extensive curb cut along Chesapeake Street. Steak & Egg will return to the Site upon completion of the project.

Square 1733 is located in the northwest quadrant of the District and is bounded by Wisconsin Avenue to the northeast, Chesapeake Street to the south, and 42nd Street to the west. The entirety of Square 1733 is zoned C-2-A and is generally improved with low-rise commercial buildings along Wisconsin Avenue and associated parking lots at the rear of the commercial buildings along 42nd Street. A four-story building operating the Central Pension Fund is located to the west of the Site at the northeast corner of Chesapeake and 42nd Streets and is the only other building with frontage on the north side of Chesapeake Street between Wisconsin Avenue and 42nd Street.

As shown on the portion of the Zoning Map attached as Exhibit A, the Site is zoned C-2-A and has approximately 5,143.8 square feet of land area. The Site is bounded by Wisconsin Avenue to the west, Chesapeake Street to the south, and private property to the north. The rear of the Site abuts private property, as well, which is used as an access alley approximately eight feet in width. Half of the private alley (four feet) is located on the Site.

B. Description of Surrounding Area

The Site is located in the heart of the Tenleytown neighborhood of the District, a vibrant, mixed-used area with an eclectic mix of restaurants and retail establishments, residential dwellings, and office buildings. The majority of the commercial uses in Tenleytown are located along Wisconsin Avenue, with a mix of small shops and larger commercial establishments. Detached single-family dwellings and row dwellings predominate the areas to the east and west of Wisconsin Avenue, with several apartment houses located in close proximity to the Site. The primary crossroads in Tenleytown are Wisconsin Avenue and Albemarle Street where the main entrance to the Tenleytown Metrorail station is located. This intersection is a short walk from the Site and features office, retail, and service uses.

Tenleytown is well served by multiple public transportation amenities. The Site is located 0.3 miles from the Tenleytown Metrorail station, which services the Red Line. The Site is also well-served by Metrobus, with ten bus lines located within 0.2 miles of the Site (31, 32, 36, 37, 96, H2, H4, M4, N2, and X3), four of which have bus stops at the corner of Wisconsin Avenue and Chesapeake Street. Five permanent car share spaces are located within 0.4 miles of the Site, serviced by Zipcar and Hertz on Demand, and Car2Go. The Site is well connected to bicycle lanes and routes that connect the Site to locations throughout the District, and bike sharing is available from nearby Capital Bikeshare docks. The Site is located in a highly

walkable and desirable neighborhood, with community retail and service establishments, grocery stores, restaurants, parks, and schools within walking distance. Based on these attributes, the Site has been deemed “very walkable” with “excellent transit.” See www.walkscore.com.

Four short-term retail parking garages are also located in the area between the Tenleytown Metrorail Station and the Site. They are associated with Best Buy and other retail businesses at Cityline (150 spaces); Whole Foods Market (380 spaces); CVS Pharmacy (30 spaces); and 4001 Brandywine Street, N.W. (36 spaces).

C. Project Description

As shown on the architectural plans and elevations, attached as Exhibit B (the "Plans"), the Applicant proposes to construct a new four-story mixed-use residential building with approximately 15,379.6 square feet of gross floor area. The street level of the project will be comprised of approximately 3,724 square feet devoted to retail uses; floors two through four will contain approximately 10,214.8 square feet of gross floor area devoted to 16 residential units; and the ground floor will include approximately 753.4 square feet of gross floor area devoted to residential amenity uses. The cellar/basement level will contain eight residential parking spaces, a bicycle room, trash room, and storage facilities. The residential units will be a mix of studios and one-bedrooms, with an average unit size of 536 square feet. The building will have a maximum height of 50 feet to the top of the main parapet and will include a green roof as a component of its compliance with the Green Area Ratio requirement. The western portion of the fourth floor will have a roof deck for building residents, accessed from the elevator and main hallway.

The eight off-street parking spaces in the basement/cellar level will satisfy the residential parking requirement of one space for every two units. 11 DCMR § 2101.2. However, four of the

spaces will be compact in size (8 feet' by 16 feet) where full-size spaces (9 feet by 19 feet) are required. 11 DCMR § 2115.1. Additionally, the compact spaces will not be in a group of five spaces, as required under section 2115.4. Two parking spaces are required for the retail use but the Applicant proposes not to provide any retail parking spaces. As a result of the proposed development, however, as many as three new on-street parking spaces will be created when the extensive curb cut and driveway along Chesapeake Street are eliminated. The proposed on-site parking will be accessed from the privately-owned alley at the rear of the Site. As described more fully below, the proposed mixed-use development is consistent with the Site's zoning designation and with other uses in the surrounding neighborhood.

IV.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the parking requirements under sections 2101.1 and 2115.1 of the Zoning Regulations. 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 unusual because of its 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 Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. 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 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" in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Site is affected by several exceptional conditions due to its unique shape, corner location, steep topography change, and the existence of an easement at its rear.

The Site is a small, irregular-shaped corner lot, surrounded on two sides by private property and with no public alley access. The Site has 72.85 linear feet of frontage on Wisconsin Avenue to the east and 99.36 linear feet of frontage along Chesapeake Street to the south. The only existing curb cut to the Site is on Chesapeake Street, which the Applicant will eliminate during the redevelopment process. To the rear of the Site is an eight-foot public access easement, which encroaches four feet onto the western-most portion of the Site and is used by adjacent property owners for alley purposes. The rear of the Site abuts the easement for a length of 37.89 feet. The Site is also burdened by steep topography that slopes almost ten feet down from the front of the Site along Wisconsin Avenue toward the rear of the Site at the easement.

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

1. Number of Required Parking Spaces

Strict application of the off-street parking space requirements would result in a practical difficulty. Section 2101.1 of the Zoning Regulations requires that apartment houses in C-2-A Districts provide one parking space for every two dwelling unit. The 16 residential units generate a requirement for eight spaces, which the Applicant will provide. Section 2101.1 also

requires that retail and service establishments in C-2-A Districts provide one parking space for each 300 square feet of gross and cellar floor area in excess of 3,000 square feet. The proposed retail uses comprise approximately 3,724 square feet of gross floor area, generating a requirement for two parking spaces. The Applicant is seeking a variance to provide four non-standard size spaces for the residential requirement in groups of less than five spaces, and provide no off-street parking spaces for the retail use.

Due to the Site's small size and irregular shape, the easement at the Site's rear, and the steep topography change, the maximum number of parking spaces that can fit on the Site is eight. The Applicant has carefully located the eight parking spaces to maximize layout and efficiency, which necessitates four of the spaces to be compact in size. As shown on Sheets 04 and 15 of the Plans, the Applicant proposes to provide two front-in parking spaces accessed directly from the alley easement, three front-in spaces along the north wall of the ground (cellar) level, and three front-in spaces in the center of the garage facing east and located between the trash room to the north and the building wall to the south. The parking spaces are located in these locations due to section 2117.5 of the Zoning Regulations, which requires drive aisles to have a clear width of not less than 20 feet for 90 degree angle parking. Given that the Site's rear lot line is less than 38 feet wide, and a that minimum of 16 linear feet will be occupied by the two surface parking spaces, there is less than 22 feet remaining for the drive aisle. In addition, the three parking spaces facing east cannot be pushed toward the front of the Site because the space between the parking spaces and the building wall is necessary for storage. Even if these spaces could be pushed forward, the Applicant could not provide another row of parking spaces behind them, since stacked parking is inconsistent with section 2117.4 of the Zoning Regulations, and would not satisfy the parking requirement.

Furthermore, the Applicant cannot excavate below the basement/cellar to provide another level of parking, ramps for two-way circulation, and sufficient drive aisle widths. If the Applicant did so, the aisle and ramp width requirements of sections 2117.5 and 2117.8 would occupy the majority of the below-grade space, since only two parking spaces would be required to be located on the theoretical second parking level. The additional excavation, sheeting and shoring, underpinning, and construction required to construct a below-grade parking level with only two parking spaces would add significant expenditure to construction costs and would have a direct impact on the sale/rental price of the residential units and retail space above.

2. Size of Required Parking Space; Grouping of Compact Spaces

Strict application of the compact parking space size and grouping requirements would result in a practical difficulty to the Applicant and a reduced number of parking spaces that could meet the residential requirement. Section 2115.4 requires compact parking spaces to be placed in groups of at least five contiguous spaces. In this case, there are only eight total parking spaces, four of which will be compact in size. The two front-in compact parking spaces accessed from the alley easement cannot be widened or else they would encroach into the drive aisle, which must have a minimum width of 20 feet and is currently less than 22 feet wide. These spaces also cannot be lengthened because they would either encroach onto the public easement or else push uses within the building to the east, which would significantly interfere with the location of the building's structural columns, elevators, stairwells, and other core functions. The compact spaces located along the north wall also cannot be enlarged given their location on either side of the building columns and the need to provide a handicap accessible space closest to the elevator core. Increasing their size would also impede vehicle maneuverability .

In addition, compliance with the requirement of section 2115.4 to provide compact parking spaces in groupings of at least five is not possible, since the Applicant is only providing four compact spaces in total and, as described above, none of the compact spaces can be converted to a standard size.

3. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

Relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zone Plan, as embodied in the Zoning Regulations and Map. Redevelopment of the Site with a new mixed-use building will significantly contribute to the vibrancy of the Tenleytown neighborhood while supporting the city's housing goals for this area.

The proposed number of parking spaces is sufficient to serve the building's needs. The Applicant will provide all of the required parking spaces for the residential use. Although the Applicant will not provide the two required retail parking spaces, the proposed retail use of the Site is intended to be neighborhood-serving with most patrons arriving at the Site by foot, bicycle, or public transportation. The Steak & Egg Restaurant, which will return to the Site, presently does not provide parking and the lack of parking has not generated any complaints from or negative impacts on the neighborhood. Most of its customers do not arrive by automobile and those late-night customers that do drive can be easily accommodated by the parking spaces on Wisconsin Avenue and the south side of Chesapeake Street. There are four short-term parking garages between the Site and the Tenleytown Metrorail Station, which have approximately 596 spaces. Additionally, up to three on-street spaces will be created on the north side of Chesapeake Street, N.W., upon completion of the project.

As described in the Parking Memorandum, prepared by Gorove/Slade and attached as Exhibit C, given the Site's close proximity to Metrorail, Metrobus, carshare spaces, and Capital Bikeshare docks, as well as its location in a walkable, mixed-use neighborhood, the Site is not anticipated to generate significant retail parking demand and the proposed design of the Site will adequately serve the vehicular needs of the development. Moreover, there is ample on-street parking in the neighborhood and the Applicant will be adding to this inventory of on-street parking spaces due to the closure of the curb on Chesapeake Street.

With respect to the required parking space size and grouping requirement, providing four compact spaces out of eight will not result in any harm to the public good or zone plan. The compact spaces are located in appropriate locations so as to maximize the efficiency and use of the Site and ensure that vehicles accessing the parking spaces have sufficient maneuverability for both ingress and egress. 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 on-site.

VI. **COMMUNITY SUPPORT**

The Applicant has worked with the community and has obtained support for the project. On October 9, 2014, at a regularly scheduled, duly noticed public meeting at which a quorum was present, ANC 3E voted 4-0-1 to approve the project, with conditions. The Applicant has entered into an agreement with the ANC and requests, pursuant to that agreement, that its terms be incorporated into any BZA order granting the application, as follows:

1. Restricted Uses: The following uses, even though permitted within the C-2-A District as a matter of right or with special exception approval by the BZA, will not be permitted in the Project: the sale of any pornographic material; a check-cashing establishment; a pawnbroker; an establishment requiring a night club license from the Alcohol Beverage Regulation Administration; a drycleaners; a mattress store; a convenience store such as 7-Eleven; or a drug store such as CVS. Notwithstanding the foregoing,

the Parties agree that the ANC may approve a prospective tenant otherwise prohibited in this paragraph (“Otherwise Prohibited”) that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.

2. Development Plans: The Subject Property will be developed substantially in accordance with the architectural plans and elevations submitted in BZA Case No. 18839. The Project will provide a green roof as a component of its compliance with the Green Area Ratio requirements of the Zoning Regulations.
3. Public Space Improvements: The Developer shall make all reasonable efforts to secure approval from the D.C. Public Space Committee (“PCS”) to improve the public space area along the street frontage of the building, as shown on the drawings, which will include the following:
 - a. special entrance pavement
 - b. street edging board of mixed ground covers and perennials
 - c. an outdoor patio/seating area along Wisconsin Avenue, N.W., for the adjacent retail/service use space; and
 - d. a new fountain, wall, and planter at the ground level of the building

The Developer will use permeable pavers of its choice in the public space adjacent to the Subject Property, except for the parking and driveway areas. Non-permeable pavers with permeable spaces in between shall be deemed “pervious” for the purposes of the restaurant seating area. The Project shall result in a net increase in the permeable area for the site as a whole (private property and adjacent public space areas) over the present configuration.

4. ANC Support: The ANC shall support the Developer’s request for these public space improvements before PSC. The Developer shall have the flexibility to make adjustments to the plans, in coordination with the ANC, in order to obtain PSC approval. Developer’s failure to obtain PSC approval, provided it has made all reasonable efforts to secure such approval, shall not be deemed a breach of this MOU and the remainder of the Project may be constructed consistent with the order granting the BZA Application.
5. Roof Equipment Noise Reduction: The Developer shall reduce noise from mechanical equipment on the roof through the use of a parapet wall and the installation of equipment with a quieter rating over standard equipment.
6. Transportation Management Coordinator (“TMC”): The Developer shall designate a Transportation Management Coordinator to implement and

manage TDM strategies. The strategies are: (i) the development and distribution of information and promotional brochures to residents, visitors, patrons and employees regarding transit facilities and services, pedestrian and bicycle facilities and linkages, ridesharing (carpool and vanpool) and car sharing; and (ii) ensuring that loading activities are properly coordinated and do not impede the pedestrian, bicycle, or vehicular lanes adjacent to the development. The TMC will generally encourage non-private auto usage and will have related information prominently displayed in the common spaces of the Project.

7. Unlawful Parking/Stopping: Developer will place a provision in the leases for all commercial tenants requiring them actively to discourage visitors to their establishment from unlawfully stopping or parking automobiles in front of the establishment or elsewhere in the neighborhood in connection with visits to the establishment. The provision shall note that should the ANC receive complaints about unlawful stopping or parking in connection with visits to the establishment, it may send a written notification to the establishment concerning same, and the establishment shall ensure that a senior representatives thereof will attend the next ANC meeting to address such complaints.
8. Construction Hours: Developer, its tenants, and contractors will not engage in any construction activities, other than emergency repairs, before 7:00 a.m. and after 8:00 p.m. Monday- Friday, or before 8:00 a.m. and after 8:00 p.m. on Saturday. Developer and its contractors will not engage in any construction work, other than repairs, on Sunday.
9. Trash Removal: Developer, or its tenants, will promptly remove all trash and debris from the public space located between the property line and the adjacent curb.
10. Inclusionary Zoning Units. Pursuant to Chapter 26 of the D.C. Zoning Regulations, in the C-2-A District the Developer is required to provide 10 percent of the residential gross floor area, or 75 percent of the bonus density (whichever is greater), to inclusionary zoning (“IZ”) units. The Developer shall ensure that 50 percent of the IZ units are set aside for households earning no more than 50 percent of the area median income (“AMI”) and the remaining 50 percent of the IZ units set aside for households earning no more than 80 percent of AMI.

VII.

EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A: A portion of the Zoning Map showing the Site

Exhibit B: Updated Architectural Plans and Elevations for the Project

Exhibit C: Parking Memorandum

Exhibit D: Outlines of Testimony and Resumes of Expert Witnesses

VIII.
WITNESSES

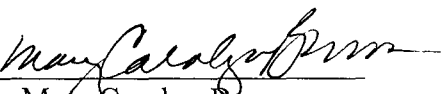
- A. Frank Economides, 47th Avenue LLC
- B. Richard Foster, Richard Foster Architects
- C. Erwin Andres, Gorove/Slade Associates

IX.
CONCLUSION

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

Respectfully submitted,

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