

January 16, 2015

ELECTRONIC SUBMISSION

Lloyd Jordan, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, NW, Suite 200 South
Washington, DC 20001

Re: Case No. 18866: Supplemental Information Regarding Parking Variance and
Proposed Roof Plan

Dear Chairperson Jordan:

Pursuant to the Board's request at the public hearing on December 2, included herein is supplemental information regarding satisfaction of the variance standard for parking relief and additional information regarding the roof structures.

Parking Variance

After hearing the Board's comments on December 2, the Applicant reviewed its proposal to determine if it could further minimize its request for relief. The Board may recall that the Applicant initially proposed 20 residential units and subsequently reduced the number to 17 units. It has since revised its floor plans to further reduce the number of units by 2, for a total number of 15 residential units. While this does not change the parking requirement for the Property, it will help minimize impacts from the project. The Applicant also reviewed its surface parking area and made modifications so that it can accommodate an additional standard parking space, increasing the number of parking spaces provided on-site to four, which is the number of parking spaces the 15 residential units require under the Zoning Regulations. As such, the Applicant will reserve the four on-site spaces for the residential units. It will make arrangements to park the office-users with nine spaces off-site, as discussed below. See updated parking plan attached as Exhibit A.

As a building with fabric contributing to the Sixteenth Street Historic District, the Applicant initially sought special exception relief from the parking requirements.¹ The Board

¹ The Applicant has posted the Property with notice that it is seeking a variance from the parking requirements.

noted that given the limited extent of the historic fabric being preserved, it would be more appropriate to move forward with parking relief under the variance standard. Accordingly, the Applicant hereby amends its application to seek variance relief pursuant to Section 3103.2 from the parking requirements of Section 2101.1. The Applicant's satisfaction of the variance standard is set forth below.

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

Exceptional Condition

In *Fleischman v. D.C. Bd. of Zoning Adjustment*, 09-AA-1514 (D.C. 2011), the Court further specified that uniqueness does not mean that a property must be unreservedly unique but only that its unique features do not affect a substantial portion of a neighborhood. The Court of Appeals held in *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (D.C. 1972) that "the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions of the neighborhood." In the instant case, there are features to the Applicant's property that are unique to its context.

The Property is one of 11 lots in its square. The width of the lot is 50 feet, yet the average width of the lots in this Square is 129 feet. In fact, only two other lots in the Square have a width of 50 feet or less: lot 91, which is 28 feet wide and lot 106, which is also 50 feet wide. Both of those lots, however, have additional frontage along either an alley or another street. Lot 91 has 95 feet of frontage along an alley to its north in addition to its frontage on 16th Street. Similarly, Lot 106 has 114 feet of frontage along L Street in addition to its frontage on 16th Street. (See plat attached as Exhibit B). This additional frontage is significant because not only does it provide flexibility in how to access on-site parking, it provides greater flexibility in using vault space to accommodate additional parking, making a below-grade garage more economically viable. The width of the other lots in the Square range from 63 feet to 296 feet and are better equipped for handling below-grade parking. Consistent with *Palmer*, the narrowness of the Property does not reflect the general conditions of other lots in the Square, but rather is a characteristic of only of a small percentage of properties in the Square.

The Board has been faced with the issue of balancing whether the narrowness of a lot truly makes it unique within its greater context. In Case No. 17936, the Board granted a 49 space variance to New York University ("NYU"), located just three blocks west of the Property (1307-1311 L Street, NW). In that case, NYU proposed a nine-story building with an additional four levels below grade. The building would be used as a dormitory and academic center to support students from the University during their semester in Washington. The use generated a parking

requirement of 51 spaces, yet the University only provided two surface spaces. The Board supported the variance relief, finding that the property was unique due to its small size (6,960 square feet) and narrow width (58 feet). Specifically, the Office of Planning noted that the narrow lot width was insufficient to accommodate a double-sided, below-grade parking structure. After accounting for the required aisle widths and the minimum parking space depth, only parallel spaces could be accommodated. Like the Applicant, the NYU property was not the narrowest property in the Square. It was one of 15 lots in the Square, yet three other lots had widths more narrow: one was 55 feet wide, one was 40 feet wide and one lot was 20 feet wide. Yet, the Board found that it was not a prevailing feature of the Square and was, thus, qualified as unique.

The size of the Property also factors into the fact this will be the only building with residential units in the Square. The Square is split-zoned: those properties along 16th Street are located in the SP-2 Zone District, while the properties further west are located in the C-4 Zone District. No other property in the Square provides residential uses, despite the fact that it is a preferred use. In fact, the SP-2 Zone District favors residential use – the permitted floor area ratio in SP-2 is 7.2; yet, commercial uses are capped at 3.5 FAR. This is significant because it is difficult to reconcile the permitted residential density with the parking requirement on a property this small. Despite the fact that the SP-2 Zone encourages residential density at this location, it is challenging, if not impossible, to utilize the available residential density while providing the requisite parking for the site. This discrepancy is being addressed in the Zoning Regulations Review, where the Office of Planning is proposing to eliminate a parking requirement for this site altogether. Nevertheless, in the meantime, larger sites do not face this challenge as they are better suited for accommodating parking in a below-grade garage. As demonstrated below, the narrowness of the Property creates a practical difficulty in constructing an efficient below-grade garage.

Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

Attached as Exhibit C are sketches that detail the practical difficulty in accommodating on-site parking. The Applicant is currently maximizing the amount of surface parking it can provide on the Property, thus, the only possible alternative would be to provide a below-grade

garage. Attached are two sketches, one that depicts a garage with perpendicular spaces and another with parallel spaces. As the attached sketches show, a garage with perpendicular spaces actually reduces the amount of on-site parking. The garage entry would eliminate two surface spaces and the garage itself would only accommodate one parking space. The reason for this is because the property is not wide enough to accommodate the garage ramp, drive aisle and parking space depth. The garage ramp and the drive aisle must each be 20 feet in width, which consumes 40 feet of the 50 foot-wide lot. The remaining ten feet is not wide enough to provide parking spaces, which must have a depth of at least 19 feet; thus only one additional space can be provided at the bottom of the ramp.

Alternatively, the garage can accommodate two zoning compliant parallel spaces and two spaces can be provided at the rear of the building (two surface spaces must still be sacrificed in order to accommodate the garage entry). In such a scheme, the total number of spaces that could be provided on-site with a garage is 4 – the same number of spaces as what is currently being provided.

Providing the four spaces on the surface at the rear of the building is much more cost efficient than constructing the garage. The expense associated in constructing a garage with only two spaces would be astronomical. Attached as Exhibit D, are details from Ellis Denning regarding the costs associated with constructing such a garage. For instance, parking spaces typically cost \$40,000-60,000 per space when a part of a larger garage. Here, because only two spaces would absorb the entire cost of the garage, their estimated cost of construction would be \$685,000 (per space). Again, this is a significant hardship for no net gain in on-site parking.

Impacts from Reduced Parking

Unlike many other projects requesting parking relief, this project is located in the Downtown core. It is not located in a traditional residential neighborhood and it will be the first and only building with residential units in this Square. In fact, the surrounding streets don't even allow for resident parking; the five blocks surrounding the Property are not eligible for the Residential Parking Permit program. All street parking is metered parking; accordingly, tenants of the building will not displace residential parking but will have to pay for metered spaces if they do not park in a garage.

Because the Applicant will provide the requisite amount of parking for the residential component of the project, it will only have to park the office users off-site. There are currently over 35 garages nearby that have capacity to accommodate the nine additional parking spaces the project must provide. Importantly, each of these garages is closer than the closest RPP zone, making the garage a more convenient option than street parking. The Applicant reached out to several parking providers to determine their current capacity: LAZ Parking operates 6 garages in the immediate vicinity and currently has capacity to accept an additional 50 monthly parkers, Monument Parking has two garages in the immediate vicinity and has current capacity to accept 45 monthly parkers. See a supplemental report prepared by Gorove Slade, attached as Exhibit E.

In an effort to ensure that its request for a nine-space variance does not have adverse impacts on the community, the Applicant will offer all residential purchasers annual memberships to a bike share and car share program for a period of five years. The Applicant will also require the building owner to secure at least nine parking spaces in a garage within three blocks of the Property. Evidence of such a lease must be produced prior to issuance of a certificate of occupancy for the building.

The Applicant proposes the following conditions in any approval of its application:

- 1) The Applicant must abide by the Transportation Management Plan outlined in Exhibit E.
- 2) The Applicant must secure a lease for nine parking spaces in a private garage located within at least three blocks of the property. Evidence of such lease must be produced prior to issuance of a certificate of occupancy for the building.

Rooftop Structures

The Board asked the Applicant to provide additional information on its rooftop structures, specifically whether the trellises qualified as structures and had to comply with the requirements of Section 411. The Applicant has revised its roof plan to remove the trellises. See Exhibit A. The roof structures depicted in the attached roof plan comply with the setback, height and number requirements of the Zoning Regulations (note that penthouses do not need to be set back from an interior court).

Conclusion

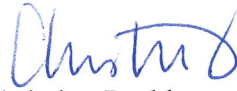
The Applicant appreciates the Board's thoughtful consideration of these important issues as the Applicant does not want to impose a burden on an existing community with its request for a parking variance. It believes that between its transportation management plan, its commitment to provide spaces in a nearby parking garage and the fact that there is no RPP in the vicinity of the project, it will be able to accommodate the parking needs of its tenants without displacing any existing parking. We look forward to answering any questions the Board may have at the continuation of the public hearing on January 27, 2015.

Lloyd Jordan
January 16, 2015
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Sincerely,



Allison Prince



Christine Roddy

Encl.

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Certificate of Service

The undersigned certifies that it sent a copy of the foregoing letter and attached documents to the following addresses by hand delivery or first class mail on January 16, 2015:

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