

January 27, 2015

Lloyd Jordan, Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re: *Request for Variance and Special Exception Relief for 646-654 H Street, N.E.*

Dear Mr. Jordan and Members of the Board:

Rock Creek-650 H LLC (the "Applicant") submits this supplemental application, pursuant to 11 DCMR Section 3104.1 and 3103.2 of the Zoning Regulations for variance and special exception relief for 646-654 H Street, N.E. (the "Property").

The enclosed materials include the following:

1. Supplemental Statement in Support of the Application;
3. Surveyor's Plat showing subject property and existing conditions (Exhibit A);
4. Zoning Map showing the Property outlined in red (Exhibit B);
5. Architectural Plans for Proposed Project (Exhibit C);
6. Transportation Report prepared by Gorove Slade (Exhibit D).

Thank you in advance for your consideration of this request.

Sincerely,


Cynthia A. Giordano

Lloyd Jordan, Chairperson
January 27, 2015
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Attachments
CAG/jmd

cc: Joel Lawson
Jon Lastuvka

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

Application of

Rock Creek-650 H LLC

SUPPLEMENTAL STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

Rock Creek-650 H LLC (the “Applicant”) submits this supplemental application, pursuant to 11 DCMR § 3103.2, for a variances from the parking requirements of section 2101.1, the parking space size requirements of 2115.2 and the loading requirements of section 2201.1, and pursuant to 11 DCMR §§ 3104.1 and 1325.1 for a special exception to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot that has 6,000 square feet or more of land area, in the C-2-B District and the H Street Northeast Neighborhood Commercial Overlay District (“H Street Overlay District” or “HS District”) for a new mixed-use (residential/retail) project (the “Project”) at premises address of 646-654 H Street, N.E. (Square 858, Lots 1, 2, 800, 801, and 802) (the “Property” or “Site”).

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the requested special exception and variance relief pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations.

III. EXHIBITS IN SUPPORT OF THE APPLICATION

This application includes the following additional materials:

Exhibit A: Surveyor’s Plat showing the Property and proposed improvements and Survey Plat showing existing site conditions

Exhibit B: Zoning Map showing the Property outlined in red

Exhibit C: Project Plans showing proposed improvements on the Property

Exhibit D: Transportation Report prepared by Gorove Slade

IV. BACKGROUND OF THE CASE

A. Property, Site and Vicinity Characteristics and Zoning

1. The Property

The Property which is the subject of this application is located at 646-654 H Street, N.E. at the northwest corner of the intersection of H and 7th Streets N.E. (Square 858, Lots 1, 2, 800, 801 and 802). As shown on the attached surveyors plat issued by the District of Columbia Office of the Surveyor, it is roughly square in shape with approximately 85 feet of frontage along H Street, N.E., 82 feet of frontage on 7th Street, N.E. and a lot area of approximately 6,970 square feet (Exhibit A). The Property is zoned C-2-B as well as HS-H, the H Street Northeast Neighborhood Commercial Overlay (see attached Zoning Map, Exhibit B). It is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 6C and across 7th Street from ANC 6A. The Property is currently improved with five, low rise commercial buildings that are devoted to retail uses.

2. Square 858 and Vicinity

Square 858 is located in the rapidly evolving H Street corridor. The square is bounded by H Street, N.E. to the south, 1 Street N.E., to the north, 6th Street N.E. to the west and 7th Street N.E. to the east. A narrow, 8 foot east-west public alley abuts the Property to the north. The immediate neighborhood is developed with a variety of residential and commercial uses. Immediately to the west of the Property is a two-story commercial building which houses a sushi restaurant. Further west is the site of a recently approved, mixed-use PUD project (Z.C. 12-18; The Apollo) which will include a Whole Foods grocery store as well as other retail uses, approximately 432 housing units and a large underground parking garage containing approximately 442 parking spaces. That PUD project will have a maximum height of 90 feet.

To the north of the PUD site is a two-story brick building owned by the District and operated as a community residential facility. To the east of that building, along 7th Street are residential row dwellings. To the northwest are also residential row dwellings which front on 6th Street and I Street. These are in the R-4 district. Across H Street are commercial properties in the HS-H/C-2-C District.

The Property and the area is well served by public transportation. The Property is located 0.7 miles from the No-Ma Metrorail station and 0.8 miles from the Union Station Metrorail station. The new streetcars are expected to begin operations along H Street soon.

3. Subject Property and Area Zoning

As indicated above, the Property is located in the C-2-B zone and the HS H Street Northeast Overlay zone. More specifically, the Property is located in the Housing Sub-District of the HS Overlay zone.

The C-2-B zone is a mixed use residential/commercial zone typically mapped along arterial streets, in uptown centers, and rapid transit stops. It permits a maximum height of 65 feet and a maximum FAR of 3.5 with nonresidential uses limited to 1.5 FAR.

The HS Overlay zone was established by the Zoning Commission and mapped over lots fronting on H Street, N.E., between 2nd and 15th Streets, N.E., to encourage and foster the revitalization of the H Street corridor. The overlay seeks to protect the historic scale and character of the area within it, to encourage the reuse of existing buildings as well as the development of new residential and commercial uses. Along with the text amendments used to implement the overlay, map amendments were adopted upzoning from C-2-A to C-2-B several lots fronting the north and south side of H Street. The stated purpose of the Housing Sub-District is to encourage housing (Section 1321.1.) New construction in the Sub-District that preserves an

existing façade constructed before 1958 is permitted to use an additional 1.0 FAR for a maximum nonresidential density of 1.5 FAR for nonresidential uses (Section 1321.3.)

Matter-of-right development permitted with HS-H/C-2-B zoning includes residential and commercial uses to a maximum height of 75 feet and a maximum FAR of 4.7 with nonresidential FAR limited to 1.5. Parking is required at a ratio of 1 space per 3 units for residential development and 1 space per 750 square feet of gross floor area for commercial development in excess of 3,000 square feet. A special exception is required in the HS District to construct a new building or enlarge the gross floor area of an existing building by 50% or more on a property with a land area of 6,000 square feet or more (1320.4(f).)

B. The Proposed Project

The Applicant proposes to construct a new 75 foot high apartment building with 26 units and ground floor retail uses (“Project”). (See Exhibit C, Project Plans.) Affordable units will be provided as required by the inclusionary zoning (“IZ”) requirements. The Project will total approximately 32,646 square feet of gross floor area on the 6,970 square foot lot, resulting in a building density of approximately 4.7 FAR which is the maximum permitted FAR (with the 20% IZ bonus) in the HS-H/C-2-B District. The Project meets all of the Overlay design requirements as well as the HS-H/C-2-B height and density standards. However, due to the small size of the lot, parking and loading relief is needed to develop the Project. In addition, a special exception is required because the Project is enlarging the gross floor area of the existing buildings on the 6,970 square foot Property by more than 50%.

V. HS DESIGN REQUIREMENTS

Pursuant to § 1324.1, all construction in the HS Overlay must be consistent with the design requirements enunciated in § 1324. As detailed below, the Project meets all of the applicable design requirements:

1. More than 75% of the Project's streetwall up to a height of 25 feet will be constructed out to the property line abutting H Street. The side walls of the Project are also built out to the property line abutting 7th Street. (§ 1324.2).
2. Not less than fifty percent (50%) of the surface area of the Project streetwalls at the ground-level frontage on H Street will be devoted to commercial or other building entrances and to clear or low-emissivity glass display windows. (§ 1324.8).
3. No security grilles provided will have less than 70% transparency. (§ 1324.9).
4. The proposed development's retail establishments, as well as the residential component of the Project, will have a separate public entrances from the sidewalk on H Street. (§ 1324.10).
5. The Project will include placement of an entrance every 40 feet on average for the linear building frontage on H Street. (§ 1324.11).
6. The ground floor of the Project will have a clear floor-to-ceiling height of at least 14 feet.(§ 1324.12).
7. Any projection signs on the Project will have a minimum clearance of eight feet above the sidewalk. Such signs will project no more than three feet, six inches from the face of the building and will end a minimum of one foot behind the curb line(§ 1324.14). Facade panel signs will not be placed so as to interrupt windows or doors and will project no more than 12 inches from the face of the building. (§ 1324.15). There will be no roof signs on the building. (§ 1324.16).

VI. ZONING RELIEF REQUESTED

A. HS-H Special Exception

Pursuant to §§ 1325, all special exceptions to the Overlay must also meet the criteria of set forth in § 1325 as well as the design guidelines of the *H Street, N.E. Strategic Development Plan* ("Plan").

Section 1325 sets forth the following criteria for special exception relief in the HS

Overlay:

- (a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;

- (b) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board;
- (c) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;
- (d) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;
- (e) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and
- (f) The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent with the design guidelines of the H Street N.E. Strategic Development Plan.

Section 1325.3 also provides that the Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the H Street Overlay District.

The Project Meets the Special Exception Criteria

The requested special exception meets all of the aforementioned special exception criteria as follows:

(1) Sections 1325.1(b) and (f) requires that the architectural design of the project and any signs used be compatible with, and enhance, the local urban design character. The project has been attractively designed to comport with the local urban design character. Signs to be used on the project will also be compatible with the character of the H Street corridor and with the requirements of the *H Street, N.E. Strategic Development Plan*.

(2) Sections 1325.1(c) and (d) require that parking and traffic associated with the project not cause adverse, dangerous or objectionable conditions in the neighborhood. The Project's transportation consultant has studied the Project transportation impacts and has concluded that the Project parking and loading arrangements will be adequate and that safe and effective non-auto transportation facilities are available as well. The Project is well served by public transportation options and it will provide adequate parking onsite for 5 cars as well as additional

off-site parking options. The Applicant is also committed to a number of Transportation Demand Management (“TDM”) measures including provision of a TDM coordinator, transportations incentives, bicycle amenities and ride-matching/ridesharing programs. (See Exhibit D, Gorove Slade Parking and Loading Statement). The Project also includes an innovative bike storage system that will be provided on each residential floor for the storage of up to 9 bikes per floor. (See Project Plans, Sheet A4.3 and A4.4).

(3) Section 1325(e) also mandates that the project not cause objectionable conditions due to noise. There is no reason that the Project should cause any objectionable conditions due to noise associated with any of the uses within the Project. The proposed residential and retail uses are compatible with adjacent and nearby uses.

(4) As indicated above, Project signage will be exclusively located on upper facades, awnings, and/or transom windows, constructed of durable materials, and sensitively designed; and will not affect more than twenty percent (20%) of display windows, consist of backlit box signs or neon product advertisements, or block visibility into a store, or be overly obtrusive.

B. Parking Variances

Pursuant to section 2101.1 of the Zoning Regulations, a total of seventeen (17) off-street parking spaces are required to be provided in the Project.¹ The Project will provide 5 surface, compact size spaces at the rear of the Project to be accessed off of 7th Street via the adjacent public alley. A variance from section 2101.1 to reduce the parking requirement accordingly is requested. Further, Section 2115.2 provides that an accessory parking area containing twenty-five (25) or more required spaces may provide up to 40% compact spaces. Since the Project is providing only six spaces and all of them are compact size, a variance from the 25-space threshold requirement and the 40% limit of Section 2115.2 is also requested.

C. Loading Variance

A variance from the loading requirements of the C-2-B zone is also needed to develop the Property. One 30-foot deep berth is required but the Property is too small to provide it. Given the small amount of retail and residential space in the Project and the adjacent alley located to the rear of the site which may be used for loading and unloading, no adverse impact is

¹ Section 2101.1 provides the following parking requirements (1) for apartment houses in C-2-B zones: one space for every 2dwelling units; and (2) for retail 1 space for each 750 square feet in excess of 3,000 square feet.

anticipated. The Applicant will also be widening this alley by two feet to bring it up to a standard 10 foot alley width. Further, utilization of the alley in this manner is not expected to create any significant conflicts with other property owners in the square. The alley is a dead end alley which only serves the Property, the adjacent, small restaurant to the west of the Property, and the Apollo PUD property. However, the Apollo PUD project is using the larger alley system in the square for their loading and delivery traffic. Further, DDOT has required that PUD to include a loading lane at the 7th St and H St corner adjacent to the Property.

The Application Meets the Requirements For Variance Relief From the Zoning Regulations

The burden of proof for variance relief is well established. The Applicant must demonstrate that its property is affected by an exceptional or extraordinary situation or condition that will cause the strict application of the Zoning Regulations to result in a practical difficulty to applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose, or integrity of the Zone Plan. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972). The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation 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.) As set forth below, the Application meets this three-part test for area variance relief as established in Section 3103.2.

The Property Is Affected By an Exceptional or Extraordinary Situation or Condition

The Property has several unusual conditions which give rise to an exceptional situation. First and foremost, the site is exceptionally small for a mixed-use development. Further, the Property is subject to a very extensive, overlapping set of use and design objectives and standards pursuant to the H Street Overlay District (Section 1320), the H Street Overlay Housing Sub-District (Section 1321), the H Street Strategic Development Plan, and the H Street Overlay special exception requirements (Section 1325). For example and more specifically, the HS Overlay zone objectives of preserving existing structures and providing active retail uses as well as new residential uses and affordable units on the small Property create an exceptional situation with respect to the redevelopment of the Property. These objectives simply cannot be met in on the subject small Site if the onsite parking and loading requirements have to be met. The small size of the lot does not permit a below grade floor plan which can accommodate the required parking and loading along with the required aisles, ramping for lower level parking trash facilities, utilities, and columns which also have to be located on this level. In summary, the small size of the lot, the applicable extensive zoning and planning objectives and standards including the retention of the existing structures into the Project, provide new housing and affordable housing as well as ground floor retail uses, and not create new curb cuts or vehicular access from H Street, together constitute exceptional circumstances with respect to the redevelopment of the Property.

The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

In order to qualify for an area variance, a property owner must demonstrate peculiar and exceptional practical difficulties which would result from strict compliance with the applicable

regulation. Furthermore, these difficulties must be related to a property's exceptional circumstances.

In this case, the small size of the site coupled with the HS zone objectives to preserve existing structures and facilitate both ground floor retail and new residential uses creates a practical difficulty should strict adherence to the parking and loading standards be required. The parking study included in the Project Plans (Exhibit C) illustrates the difficulty of providing underground parking on the Site. The challenge with parking this site lies in the fact that in order to comply with the code required clearances in the garage, the length of the ramp would have to exceed the maximum dimension of the Property. This would necessitate providing at least one bend in the ramp, which would reduce its efficiency and result in a smaller area left for parking. The subsequent shape and dimensions of the lower level would prevent utilizing a double-loaded drive aisle, and would result in a highly inefficient, and unergonomic layout with only 5 parking spaces. Additionally, the area taken up by the ramp on the ground level poses problems, as it would violate the HS design standards by placing the ramp along a substantial portion of the H Street commercial façade.

Variance Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

The variances can be approved by the Board with no substantial detriment to the public good and with no impairment to the intent, purpose and integrity of the Zone Plan, as set forth below.

1. Public Good

The grant of variance relief to allow the development of the Project with less on-site parking and compact size spaces will not create any detriment to the public good. In urban areas,

many residents opt for compact cars for ease of parking on city streets and maneuvering in and out of city traffic and market trends indicate that parking demand in close-in, revitalizing areas of the City is moderating. Further, the Property is located within walking distance to two Metrorail stations as well as Metrobus and will also be well served by the new streetcar. Finally, the adjacent Apollo PUD project potentially offers an opportunity for additional off-street parking, if needed for the Project. According to the record of that PUD case, parking is being provided in excess of the zoning requirements. The retail requirement for the PUD project is 125 spaces and 209 spaces will be provided and the residential requirement is 144 spaces while 216 will be provided. The PUD developer has indicated that any excess spaces may be made available to the Project if all needed approvals can be secured. Further, the owner of 360 H Street, N.E. has agreed to lease up to 30 parking spaces in that building for use by residents or tenants of the Project. Additional, nearby off-site parking facilities are also being pursued by the Applicant.

Regarding loading as indicated above, the small alley to the rear of the Property can be used for the limited loading requirements of the Project. The Applicant will improve the alley by widening by two additional feet and it will be available given that it only serves the Property and the small restaurant located next door to the Project site. Further, as indicated above, DDOT required that that PUD provide a loading zone along 7th St and H St corner adjacent to the Property.

2. Zone Plan

The grant of variance relief in the present case will likewise not impair the District's zone plan. As discussed above, the Project is consistent with the HS overlay objectives and standards. Further, we note that current public policy with regard to parking in the District of Columbia is to encourage smaller, more fuel-efficient cars and to discourage automobile traffic.

For all of these reasons, the Applicant satisfies the requirements of Sections 3104.1 and 3103.2 of the Zoning Regulations for requested special exception and variance relief.

VII. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose, and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant this application.

Respectfully submitted,

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