

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

Application of Weaver Prospect, LLC
ANC 2E

BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of Weaver Prospect, LLC and WT Weaver & Sons Incorporated, the owners of the Property, and McCaffery Interests, Inc., the developer of the project, (collectively, "**Applicant**") for variance relief from the loading requirements to facilitate the construction of a new retail center at 3220 Prospect Street, NW. The property is approximately 20,640 square feet in size and is more specifically described as the property located in Square 1207, Lots 104, 838, 839, 840, 841, 843, and 906) (the "**Property**"). The Property is located in the C-2-A Zone District of the Georgetown Historic District. The design of the project has been reviewed and approved by the Old Georgetown Board and Commission of Fine Arts, a copy of OGB's and CFA's letters of approval are attached as Exhibit G.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve an area variance pursuant to Section 3103.2 of the District of Columbia Municipal Regulations ("DCMR") from the off-street loading requirements in Section 2201.1 of the Zoning Regulations (11 DCMR § 2201.1).

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.1 of the Zoning Regulations (11 DCMR § 3103.1).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the commercial corridor of the Georgetown Historic District. It is located on the south side of Prospect Street on what is currently used as a surface parking lot. It sits amidst a series of retail and service uses such as Restoration Hardware, Café Milano, Zara, and Peacock Café. The Property is rectangular in shape and is situated mid-block; it has approximately 200 linear feet of frontage on Prospect Street and a maximum depth of approximately 120 feet. It is, however, landlocked and has no access to the ten foot wide public alley that otherwise provides access to the Square.

The Property is bounded by Prospect Street to the north, commercial retail to the east and south, and commercial uses in converted residential buildings to the west. It is unimproved and currently used as a surface parking lot that serves public users with approximately 86 valet parking spaces (with only approximately 40 of the spaces being striped). It is served by two curb cuts along Prospect Street that effectively consume approximately 49.5 feet of the pedestrian walkway along Prospect Street. Despite its rectangular shape, the Property is limited functionally by its narrowness, the fact that it does not have alley access, and the slab of bedrock located beneath the Property.

IV. THE PROPOSED PROJECT

The proposed new building will be a two-story commercial retail center consisting of approximately 30,000 square feet of retail uses and 96 structured parking spaces. While the Applicant has not made any commitments regarding the specific retail users, it does not anticipate locating a restaurant in this space but rather a clothing retailer, or something similar. Plans for the proposed new building are included in Exhibit A.

The proposed building will conform to the Zoning Regulations in almost all respects. The building will rise to a height of 34 feet, will have a lot occupancy of 85%, a rear yard setback of 15

feet, a green area ratio of .3, and a floor area ratio of 1.5. The project will include two levels of below grade parking, for a total of 96 parking spaces.

The proposed project, however, does not fully comply with the loading requirements. The Zoning Regulations require two loading berths at 30 feet deep, two loading platforms at 100 square feet and a service and delivery space at 20 feet deep; however, the project does not provide any of the required loading facilities. Rather, the project will coordinate with the District Department of Transportation to provide street-side loading. Because the loading berth, platform and service and delivery space will not be provided on the Property, the Applicant seeks relief from Section 2201.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) 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. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As discussed below, the Applicant demonstrates that the Property meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. The Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is

not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

There are several unique characteristics about this Property. The primary point of uniqueness is that it does not have access to a public alley. The Property is landlocked; accordingly, in order to provide loading on-site, it would have to be accessed directly from Prospect Street, which creates challenges. Prospect Street is only 59 feet wide and it accommodates two-way traffic with street parking on the south side of the street and informal loading areas on the north side of the street. This makes it extremely challenging for a 30-foot truck to maneuver the turn into an on-site loading area from Prospect Street, as described below.

The dimensions of the Property itself also make it unique. The Property has a maximum depth of 120 feet and a linear frontage along Prospect Street of 200 feet. In this circumstance, the dimensions of the lot are a unique feature that exacerbates the inability to provide loading on-site, as noted below in the discussion regarding the practical difficulty in complying with the Zoning Regulations.

Finally, the Property is located atop a slab of bedrock, which creates challenges in excavating the site for additional below-grade parking in order to accommodate the loading within the garage.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] 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.” In area variances, applicants must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . . . Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

In this case, the proposed project meets the practical difficulty standard. As noted above, the Property does not have alley access; accordingly, all loading activities must take place from Prospect Street. While 59 feet wide, Prospect Street is functionally much narrower since it has parking on the south side and informal loading activities routinely take place on the north side of the

street. This makes it extremely difficult for trucks to maneuver turns onto the site, all while allowing traffic to continue to flow unimpeded on Prospect Street.

As a functional matter, the loading docks would need to be located at either end of the site along Prospect Street; they can't be located in the middle of the site because it would create extremely inefficient retail spaces and would essentially bifurcate the Property into two separate lots. In addition, DDOT would not support an additional curb cut accessing the Property.

The Property's proximity to Wisconsin Avenue dictates that the loading facilities would be located on the western end of the site so as to avoid any conflicts with vehicular traffic on Wisconsin. This is also where access to the parking garage is located. Because the Property only has a maximum depth of 120 feet, there would not be enough room to provide the requisite loading berths, both loading platforms and 20 foot service and delivery space without encroaching into the entrance to the parking garage. If the Applicant were to provide the required loading berths and spaces inside the garage, not only would this create potential conflicts with other vehicular traffic, the Applicant would lose 46 parking spaces in the garage, reducing the parking count to 50 spaces, which is below the required 93 parking spaces. See the loading and parking analysis attached as Exhibit C. In order to provide loading within the garage, the slope of the garage ramp needs to be reduced to a 12% slope rather than the proposed 15% slope. This in turn means that the ramp must be elongated and will take up more space in the garage, eliminating parking spaces on the first level. Additional spaces will also be lost to accommodate the truck maneuvers within the garage. In addition to modifying the slope of the ramp, additional clearance must be provided to accommodate the height of the delivery trucks, requiring the Applicant to excavate deeper for the first garage level. This in turn pushes the second level of the garage even deeper, creating a conflict with the bedrock underneath the Property. Because the second level of the garage would be lower and

conflict with the bedrock, several parking spaces on the second level would have to be eliminated. Further excavation beyond the two levels would be cost prohibitive due to the bedrock. Elongating the garage ramp and increasing ceiling height not only affects the garage but would also result in a loss of over 3,000 square feet of retail space, which has financial impacts on the project given its modest size.

C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

Granting the requested relief will not harm the public good, and it will not impair the intent, purpose, and integrity of the Zone Plan. The Applicant is coordinating with the community in requesting that the District Department of Transportation provide a second curbside loading berth. There is an existing curbside loading space closer to the intersection with Wisconsin Avenue; however, the Applicant would like to provide a second space in front of its building to serve its retailers, as well as the restaurant and retail users on the north side of Prospect Street. A second loading space would allow delivery trucks to park parallel to the Property without impeding the flow of traffic along Prospect Street. While the provision of this space will remove approximately 2-3 parallel parking spaces, there is still a net gain of street parking since the Applicant is reducing the number of existing curbcuts serving the site. Further, the Property is maximizing the amount of parking available on site, addressing the need for parking on its site as well as helping to address the need for parking in the area. Nevertheless, the Applicant has retained a transportation specialist to study the site and its loading needs to confirm that providing curb-side loading will provide the least impact on the community. In coordination with DDOT, the Applicant will also develop a Loading Management Plan to mitigate any impacts loading may have on the adjacent community.

VI. COMMUNITY OUTREACH

This project has been reviewed and approved by the Old Georgetown Board and the Commission of Fine Arts, which have jurisdiction to review the design of the building. The Applicant is working with both the ANC and the Citizens Association of Georgetown in connection with the instant request for relief.

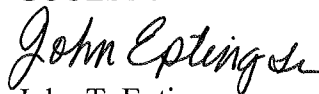
VII. EXHIBITS

EXHIBIT A	Architectural Plans
EXHIBIT B	Self Certification, Application, and Agent Authorization Letters
EXHIBIT C	Loading and Parking Analysis
EXHIBIT D	Excerpt of Zoning Map
EXHIBIT E	Surveyor's Plat
EXHIBIT F	List of Property Owners within 200 Feet of Property
EXHIBIT G	OGB and CFA Letters of Approval
EXHIBIT H	Photographs of Property

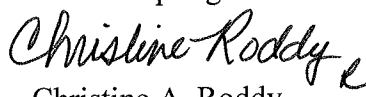
VIII. CONCLUSION

Based on the foregoing analysis and conclusions, the Applicant respectfully requests that the Board grant the variance relief requested.

Respectfully submitted,
GOULSTON & STORRS, P.C.



John T. Epting



Christine A. Roddy

Certificate of Service

I certify that a copy of the foregoing document was served by first class mail, electronic mail or hand delivery to the following addresses on February 10, 2015:

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