

TAB 6

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

Application of
Rooney Properties, LLC

BZA Application No:
ANC: 4C

STATEMENT OF THE APPLICANT

I.

Nature of Application

This is an application by Rooney Properties, LLC (“**Applicant**”) for relief from the strict requirements of the Zoning Regulations to permit the construction of a residential and retail building on the property located at Square 3030, Lot 0805 (the “**Property**”), also known as 3701 New Hampshire Avenue, NW.¹ The application requests variance relief pursuant to 11 DCMR § 3103.2 from 11 DCMR §2101.1 relating to parking requirements, and from 11 DCMR §772.1 relating to lot occupancy requirements. The project will conform to the Zoning Regulations in all other ways.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

¹ The Property sometimes is described as having an address of 3709 New Hampshire Avenue as well. Additionally, Applicant will be subdividing the lot with a specific address of 3701 New Hampshire Avenue.

III.

Information Regarding the Property and Project

A. Description of the Project

The project will create a sixty-five foot, five story residential and retail building (“**Project**”). The Project will have an FAR of 4.8 and consist of approximately 22,840 square feet in total.

The building will include approximately 18,276 gross floor area of residential space as well as approximately 4,564 gross floor area of ground floor retail. The second through fifth floors, as well as the penthouse, will contain one- and two-bedroom residential units.² This will furnish twenty-one (21) residential units, including a minimum of 1,480 square feet of affordable housing. The retail area on the ground floor will have two entrances off of Rock Creek Church Road as well as an entrance off of Georgia Avenue. Page 9 of Tab 7 shows the plans of this retail floor. The residential entrance is on the rear portion of the building on the first floor off of Georgia Avenue, which leads to the residences on the upper floors. Residential amenities such as a mailroom and trash and recycling area will be located in this rear entry/exit portion, with other residential amenities located in a below grade basement.

B. Description of the Property

The Property is located in the Petworth area of the City, on the south side of New Hampshire Avenue where it intersects with Georgia Avenue and Rock Creek Church Road. The Property occupies the western triangular point of Square 3030 that is formed by the convergence of New Hampshire Avenue and Rock Creek Church Road, as depicted on Tab 3 to this package.

² The Applicant is aware that Case No. 14-13 is still pending before the Zoning Commission. In the event the roof structure amendments to the Zoning Regulations are not adopted prior to the submission of building permit plans, the Applicant will revise its roof plan to make it fully compliant with the Zoning Regulations.

It measures approximately 4,772 square feet in land area. The Property is current improved with an underutilized two-story building (“**Building**”).

The Property is not located in a historic district nor is the Building currently designated as a historic landmark listed in the D.C. Inventory of Historic Places or the National Registry of Historic Places.

The Property is located in the Georgia Avenue Neighborhood Commercial Overlay District (“**GA**”)/C-3-A Zone, which permits multi-family residential uses as a matter-of-right. The maximum height is seventy (70) feet³ and the maximum FAR in the GA/C-3-A Zone District is 4.8 for residential uses. The maximum lot occupancy for commercial uses in the GA/C-3-A Zone District is 100% while the maximum lot occupancy for residential uses is 80%.

C. Description of the Surrounding Area

The Property is surrounded by both residential and commercial uses. To the east of the Property there is a small food mart, which is adjacent to many row homes. To the north of the Property, across New Hampshire Avenue, is the Georgia Avenue – Petworth Metro Station. To the west of the Property across Georgia Avenue are mixed-use buildings. To the south of the Property are row houses and a few smaller commercial buildings.

The land to the northwest, west, and southwest are also zoned GA/C-3-A. The properties to the east, northeast, and southeast are zoned R-4. The land to the far west beyond the GA is also zoned R-4.

The 2006 Comprehensive Plan Generalized Land Use Map places the Property, as well as the area immediately to the west, northwest, and southwest in the Medium-Density Residential

³ This maximum height is based on the sixty-five (65) foot height limit permitted in the C-3-A Zone increased by the five (5) foot increase under the GA’s fourteen (14) foot ground floor ceiling height requirement.

and Moderate-Density Commercial categories. The surrounding areas outside of this strip along Georgia Avenue are in the Moderate-Density Residential category.

IV.

Description of Relief Requested

A. Relief Requested – Variance from the Parking Requirement

Pursuant to 11 DCMR §2101.1, a retail use in the C-3-A Zone District must provide one (1) parking space for every additional 300 square feet in excess of 3,000 square feet. For an apartment house in the C-3-A Zone District, the owner must provide one (1) parking space for each two (2) dwelling units. Therefore, in the C-3-A Zone District, the Project would be required to provide thirteen (13) total parking spaces – two for the retail use and eleven for the residential use. However, due to the unique size and shape of the building lot, the Project will not provide any parking. Accordingly, the Applicant requests a variance from § 2101.1 to permit the Project without providing any parking.

B. Relief Requested – Variance from the Lot Occupancy Requirement

Pursuant to 11 DCMR §772.1, a building in the C-3-A Zone District devoted to residential use should not exceed 80% lot occupancy with the flexibility afforded by 11 DCMR §2604.2 for Inclusionary Zoning. However, due to the size and shape of the building lot, the Project will exceed such 80% threshold. While the ground floor will be in compliance with the Zoning Regulations as it is operated for retail use, and thus has no lot occupancy maximum, the residential floors will have a lot occupancy of 96%. Accordingly, the Applicant requests a variance from § 772.1 to permit the construction of a structure that exceeds 80% lot occupancy.

V.

Satisfaction of Standards for Relief

In order to obtain area variance relief an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) 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).

A. The Property is affected by Exceptional Conditions

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 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.

The Property is affected by exceptional conditions based on a “confluence of factors.” First, the Property has a very unusual and atypical lot configuration. As stated above, the lot is created by the intersection of Rock Creek Church Road, Georgia Avenue, and New Hampshire Avenue, making the lot the triangular corner of the 3030 square. This confluence of streets causes the Property to narrow quickly and pinches the property to a point at the streets’ intersection. Further, the Property has an atypical extent of street frontage, all within close

proximity to a major intersection. Finally, the Property does not have alley access, requiring all parking to be accessed from one of the Property's two street frontages. Given its high profile location, breaking up the façade of the building to accommodate parking access would undermine the objectives of the GA Overlay.

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

The requested relief is for an area variance, and 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 are not required to show “undue hardship” but 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, the Applicant must show that strict compliance

with the regulations is burdensome, but not necessarily impossible. The Applicant, as demonstrated below, meets this standard.

The odd configuration of the lot and the constraints of the surrounding area create the practical difficulties necessary to justify the variances. The structure of the lot and its size make providing off-street parking impracticable. Providing surface parking would be impractical because, given the lot's small size and irregular shape, to provide surface parking would drastically reduce the size of the Project and reduce its economic viability. The only possible location of surface parking would be in the rear of the Property, which would push the building forward into the narrow part of the lot. Such a movement would remove active street frontage and create challenges for compliance with 11 DCMR 2116.4(b). Further, because so much of the Property is close to intersections, curb cuts for parking would also present a practical difficulty as they would not likely meet DDOT standards. Below-grade parking would be prohibitively expensive and also practically difficult given the Property's shape. Placing parking below-grade would require a very steep ramp to go down into the parking level, which raises practical as well as safety concerns. Further, given the required ramp and twenty (20) foot drive aisle that would need to exist, very little space for actual parking spaces would remain; only a few spaces would be able to exist in below-grade parking. Additionally, the required clearance space for the ramp would mean a reduction in the retail space on the ground floor, thus decreasing the economic viability of the Project and undermining objectives of the GA Overlay. Finally, similar to the concerns related to surface parking, the location of the curb cut accessing the parking would be in close proximity to Georgia Avenue and would not likely meet DDOT's set back requirements.

Similarly, given the shape and small size of the Property, it is also difficult to construct an efficient floor plate and therefore, it is difficult to build to a compliant lot occupancy. Because

the building is mixed-use, only the residential floors are not in compliance with the lot occupancy. Reducing the residential floor plans to be in compliance would result in very narrow residential units, which would vastly reduce the Project's economic feasibility and make inefficient use of the Property space.

Due to the exceptional and extraordinary situations and conditions of the Property, notably the Property's location, shape, and size, the Applicant is faced with a practical difficulty in creating a development that contributes to the vision for the community, is economically and structurally feasible, and satisfies the zoning requirements.

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

A variance from the parking space and lot occupancy requirements can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan. There will be no adverse impact from these variances. The Project will benefit the public by creating a revived use of an underutilized parcel in a prime location near the Georgia Avenue-Petworth Metrorail Station. The Project will provide additional housing and retail in a high-demand area and continue to develop the surrounding area into a vibrant, walkable urban community. It will also create an attractive focal point at a major intersection in the city. Because the Property location is in a walkable community and in close proximity to many avenues of public transportation, both residents in the apartments and visitors to retail will be unlikely to drive or need parking when accessing the Property. Further, the Project will also contain a bike storage room for residents to utilize, encouraging non-automobile methods of transportation. Therefore, there will not be an adverse impact on traffic in the area with the parking relief requested. Further, the relief related to lot occupancy will not adversely impact the area, as the design will be cohesive with the neighborhood, and the frontage on the main

intersection is set back by a District reserve of land at the very tip of Square 3030, as shown in the Zoning Map at Tab 3. Thus, these variances will allow for a more efficient use of the Property for the public.

Additionally, the Project furthers the goals and policies of the Zoning Regulations related to the improved use of space around the Georgia Avenue-Petworth Metrorail Station. Specifically, the GA Overlay's objectives "encourage additional residential uses" and "encourage vertically-mixed uses (ground-floor commercial and residential above) within a quarter mile of the Georgia Avenue-Petworth Metrorail Station." 11 DCMR § 1327.3. Thus, the GA Overlay was created to foster exactly this type of development. That is, the GA Overlay was in part created to stimulate residential development on the Property and its vicinity and create an active and lively urban environment. The variance relief requested will allow the Property to further the goals of the Zone Plan by creating a vertical mixed use development and will benefit the public by providing this vibrant new development to the surrounding community.

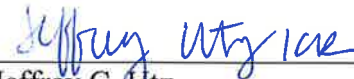
Therefore, for all the reasons stated above, the Project will not impair the intent, purpose and integrity of the Zone Plan, but will actually create positive benefits for the public good. The Applicant will work with Advisory Neighborhood Commission ("ANC") 4C and any potentially-interested community parties to discuss the proposed Project and requested relief.

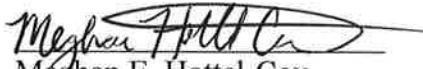
VI.

Conclusion

For all of the above reasons, the Applicant is entitled to the variance relief requested in this case.

Respectfully submitted,


Jeffrey C. Utz


Meghan E. Hottel-Cox

Certificate of Service

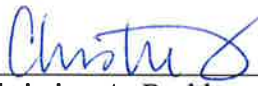
The undersigned hereby certifies that copies of the foregoing document were delivered by first-class mail or hand delivery to the following addresses on July ~~28~~²⁹, 2015.

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