

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

1000 South Capitol Street, SE (Square 697 Lot 46)

This statement is submitted by Lerner South Capitol Street Joint Venture LLC (the “Applicant”), the owner of the property located at 1000 South Capitol Street, SE (Square 697 Lot 46) (the “Subject Property”), in support of an application for a special exception pursuant to 11 DCMR §§3104.1 and 411.11 from the roof structure setback requirement of Section 770.6(b), and single enclosure requirement of Section 411.3; and, pursuant to 11 DCMR §3103.2, for variances from (i) the side yard requirements of Section 775.5, and (ii) the loading requirements of Section 2201.1, to allow development of the Subject Property with a multi-family apartment building in the DD/C-3-C District.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the District of Columbia Board of Zoning Adjustment (the “Board”) no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background: Subject Property, Surrounding Context, and Zoning

Square 697 is located in the southeast quadrant of the District of Columbia and is bounded by K Street to the north, L Street to the south, Half Street to the east, and South Capitol Street to the west (the “Square”). The Square is bifurcated by a north-south alley running between K and L Streets. The alley is made up of both public alley and easements, with the southern portion of the alley connecting to L Street being a 20-foot perpetual easement located on adjacent Lot 45. The

northern portion of the alley that connects to K Street is a public alley, and is currently 15 feet wide. As part of a separate alley closing proceeding, the Applicant will widen this portion of the alley to 20 feet by means of a 5-foot perpetual easement that would exist on the Subject Property. The portion of the public alley to be closed is located in the center of the Square and consists of approximately 808 square feet.

The Subject Property is zoned C-3-C and is also located within the Capitol South receiving zone as defined in Section 1709.18 of the Downtown Development (DD) Overlay District. It encompasses the entire portion of the Square located west of the alley, consisting of approximately 33,523 square feet (including the 808 square feet of alley area to be closed), and has frontage along South Capitol Street (235 feet), L Street (123 feet), and K Street (168 feet). The east side of the Subject Property abuts the existing alley and the aforementioned 20-foot easement that exists on the adjacent property.

The neighborhood surrounding the Subject Property can be characterized as being primarily high-density, mixed-use comprised of commercial, residential, and retail and service uses interspersed with some industrial uses. The area is undergoing a major revitalization due in large part to the construction of the Ballpark, and the redevelopment of the former Southeast Federal Center which is now known as The Yards. The area surrounding the Subject Property is primarily zoned C-3-C and CR, with the areas located south of M Street, SE also subject to the provisions of the Capitol Gateway (CG) Overlay District. Along the west side of South Capitol Street there are areas zoned C-2-C, R-5-A, and R-4.

II. Proposed Development

The Applicant proposes to develop the Subject Property with an apartment house containing approximately 300 - 360 dwelling units. Under the current C-3-C zoning, the Subject Property is permitted a maximum building height of 90 feet, and maximum floor-area-ratio (FAR) of 6.5. However, as stated above the Subject Property is also located within the Capitol South receiving zone of the DD Overlay District; and therefore, pursuant to Section 1709.21 may achieve a maximum height of 130 feet and 10.0 FAR through the acquisition of transferrable development rights (TDR), which the Applicant has obtained. As such, the proposed apartment house will have a maximum height of 130 feet, as measured from the elevation at the midpoint of the building front along L Street, and an FAR of 9.55. The proposed building will have a lot occupancy of 90%, below the 100% permitted, and a zoning compliant rear yard of 40 feet, measured pursuant to Section 774.11 from the centerline of K Street. Finally, the building will contain a large open court that faces east towards the alley. The court will have a width of approximately 91 feet, well in excess of the approximately 40 feet required by the Zoning Regulations.

Of note, while not required under the Subject Property's current DD/C-3-C zoning designation, the Applicant is proposing to provide a 15-foot building setback along South Capitol Street, for the entire length of the building, and provide an additional 1:1 setback above 110 feet. Currently, these are requirements that only apply to properties located in the CG Overly District, which exists to the south, and which the Subject Property is not a part of. However, the Subject Property will be subject to these requirements under the proposed provisions of Zoning Commission Case No. 08-06A (Z.C. 08-06A), Zoning Regulation Review (ZRR). Therefore, given the uncertainty for when ZRR will take effect, and the Applicant's desire for the proposed building

to contribute to the urban design and streetscape objectives the District seeks to achieve along South Capitol Street through ZRR, the Applicant has voluntarily incorporated these additional setbacks into the project.

Access to parking and loading will be provided on the east side of the building along the public alley. With regard to parking, the minimum requirement for an apartment house in the C-3-C District is one space for each four dwelling units. This equates to a minimum parking requirement of 75 - 91 spaces for the proposed building depending on the number of dwelling units provided. The Applicant is currently proposing up to 225 spaces. While the parking plan is still under development and is subject to change, the number of parking spaces provided will not fall below the minimum that is required by the Zoning Regulations. With regard to loading, pursuant to Section 2201.1, the Applicant is required to provide a 55-foot loading berth and a 20-foot service delivery space. As proposed, the Applicant is providing the required 20-foot service delivery space, and as discussed below, is requesting a variance to provide a 30-foot loading berth in-lieu of the required 55-foot berth.

III. The Applicant Meets The Burden of Proof For Special Exception Relief

Pursuant to Sections 3104.1 and 411.11, the Applicant is requesting a special exception to allow roof structures that do not meet the requirement that all penthouses and mechanical equipment be placed in a single enclosure (§411.3), and are not setback from all exterior walls a distance equal to their height above the roof upon which they are located (§770.5(b)).

The Applicant's proposed roof plan includes two roof structures located on the north and south ends of the proposed building. The northern roof structure contains mechanical equipment, an elevator core, and egress stair. The southern roof structure contains mechanical equipment and

only an egress stair. Both roof structures have a measured height of 18'-6" above the roof level, and have been located such that they are properly setback 18'-6" from the exterior walls facing South Capitol Street, L Street, and K Street. The northern roof structure is also properly setback from the eastern exterior wall along the public alley. However, due to the U-shape of the building, the narrowness of the three building wings, and the additional setbacks provided along South Capitol Street, both roof structures do not meet the required setback along the north and south walls of the open court on the back side of the building.

Section 411.11 of the Zoning Regulations empowers the Board of Zoning Adjustment to grant a special exception from the location, design, number, and other aspects of roof structures regulated under §§ 411.3 through 411.6, if the Applicant can demonstrate that full compliance would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable provided the intent and purpose of the Zoning Regulations are not materially impaired, and the light and air of adjacent buildings are not adversely affected.

Full compliance with the setback requirements would be impracticable as it would create non-compliant setbacks along exterior walls that face public streets. Shifting the roof structures to the north and south to meet the setback requirement along the courtyard walls would result in the roof structures being located directly at the edge of the roof along L and K Streets. Furthermore, reconfiguring the roof structures to meet the setbacks along K and L Streets and the courtyard walls would require the roof structure footprints to extend further east and west, resulting in non-compliant setbacks along South Capitol Street.

Compliance with the requirement that all roof structures be placed in a single enclosure would also be impracticable as it would unnecessarily add to the overall mass and perceived height of the building's mechanical penthouse, and increase the extent of non-compliant setbacks along the courtyard wall facing the alley. It would also require replacing the proposed roof terrace amenity with unnecessary empty screen walls or enclosed mechanical penthouse that would reduce the amount of light and air into the courtyard amenity space proposed on east side of the building, and have an adverse effect on natural light and views from the neighboring building.

IV. The Applicant Meets The Burden of Proof for the Requested Area Variance

The Applicant is requesting area variances from the requirements of Section 775.5 (side yard) and Section 2201.1 (loading). As described above, the Applicant is proposing to construct an apartment house on the Subject Property with approximately 300 - 360 dwelling units. Pursuant to Section 775.5, there is no requirement to provide a side yard for the proposed project, however, if a side yard is provided its width must be equal to at least two inches for each foot of building height, but not less than six feet. Based on the proposed building height of 130 feet, the minimum side yard requirement for along South Capitol Street is 21.6 feet. The Applicant is providing a side yard that is 15 feet wide.

Regarding loading, pursuant to Section 2201.1, apartment houses with 50 or more dwelling units are required to provide a single 55-foot loading berth and one service delivery / loading space that has a depth of 20 feet. The Applicant is proposing to provide a 30-foot loading berth in-lieu of the required 55-foot loading berth. Thus the need for the requested loading variance. The Applicant will provide the required 20-foot loading space.

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 affected by exceptional 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 Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, the Applicant meets the three prongs of the area variance test.

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. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the exceptional conditions affecting the Subject Property derive from the pending status of the District of Columbia's proposed comprehensive update of the Zoning Regulations, ZRR, and the changes that will occur to the zoning of the Subject Property. In addition, the Subject Property has exceptional access constraints caused by the narrow public alley that currently exists in the Square.

First, on February 23, 2015, the Zoning Commission took proposed action to approve Zoning Commission Case No. 08-06A (Z.C. 08-06A), ZRR – Text Amendment, Title 11, Zoning

Regulations. The Notice of Proposed Rulemaking was published in the DC Register on May 29, 2015 for a minimum 119 day public comment period that ends on September 25, 2015. The proposed ZRR includes several changes that will affect what the Applicant is currently entitled to construct under the Subject Property's existing DD/C-3-C zoning. Under the proposed ZRR, including the companion ZRR map amendment proposed in Z.C. Case No. 08-06C, the Subject Property will be zoned D-5, and subject to the specific location-based regulations of the "M and South Capitol Street Sub-Area" (the "Sub-Area") (*see* ZRR Subtitle I § 616). While this will result in several changes to what is currently permitted on the Subject Property, most relevant to this application are the Sub-Area provisions that require a minimum 15-foot setback along the entire South Capitol Street frontage of the Subject Property, and for the full height of the building, and an additional 1:1 setback for any portion of the building exceeding 110-feet in height (*see* ZRR Subtitle I §§ 616.7 and 616.7(d)). As stated previously, both of these requirements are not required under the Subject Property's current zoning. These changes to the Subject Property's zoning allowances, and the uncertainty of when the new zoning regulations will take effect, create the unusual situation where the Applicant can currently construct a building that is inconsistent with the urban design objectives the District of Columbia seeks to achieve along South Capitol Street, an important gateway into the nation's capital, through the proposed ZRR.

Second, the Subject Property has unique access constraints caused by the narrow public alley that exists in the northern portion of the Square, a condition that has existed since the Square was originally subdivided. According to the original subdivision plat recorded on April 13, 1797, the alley system that was initially established consisted of two, 15-foot north-south alleys leading from K and L Streets, to a 30-foot wide east-west alley that terminated in a "hammer-head" configuration. This particular alley configuration was very common at the time the District was

initially being subdivided into squares and lots, however, is not necessarily conducive to current access and circulation requirements for this type of project.

While the alley system of the Square has been modified substantially to accommodate development, including elimination of the southern 15-foot alley connecting to L street and replacing it with a 20-foot perpetual easement on the property to the east, Lot 45, the original 15-foot portion of the alley that connects to K Street remains as originally established. This narrow alley, which does not meet the current 20-foot minimum width requirement as stipulated in the District of Columbia Department of Transportation (DDOT) Design and Engineering Manual, creates exceptional access constraints for the Applicant.

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

1. Side yard (§775.5)

According to Section 775.5, a side yard is not required for the proposed apartment house unless one is provided. As described above, for purposes of zoning the front of the proposed building is located on L Street, thereby making the Subject Property's lot line along K Street a rear lot line, and the lot line along South Capitol Street a side lot line. Therefore, as a result of the proposed 15-foot building setback along South Capitol Street, a non-compliant side yard condition is created. Based on the side yard requirement of Section 775.5, the Applicant is required to provide a side yard with a minimum width of 21.6 feet, approximately seven feet more than what is proposed.

The strict application of the side yard requirement of Section 775.5 would result in a practical difficulty for the Applicant. As described above, the proposed apartment house is "U-shaped," with the dwelling units efficiently arranged along a central double-loaded corridor. To

meet the side yard requirement, the Applicant would need to increase the building setback along South Capitol Street by approximately seven feet by either reducing the width of the north-south wing of the building parallel to South Capitol Street, or reducing the length of the east-west wings along K and L Streets, which under both scenarios would result in a considerable loss of dwelling units. Furthermore, due to the additional upper-level setback provided above 110 feet along South Capitol Street, an increase in the side yard would result in non-compliant roof structure setbacks along South Capitol Street.

2. Loading (§2201.1)

The strict application of the loading requirements of Section 2201.1 also results in a practical difficulty caused by the exceptional access constraints described above. As a result of the additional 15-foot setback along South Capitol Street, the depth of the ground floor is compressed, thereby limiting the amount of space available to provide necessary amenity space, the elevator core and egress stairs, and “back-of-house” functions such as loading, below-grade parking access, and trash facilities. Therefore, requiring the Applicant to provide a 55-foot loading berth would result in further narrowing of the active residential amenity space along South Capitol Street. Furthermore, as discussed below, provision of a 55-foot loading berth is unnecessary given the access constraints created by the narrow alley condition.

The Applicant has limited options for where it can locate the building’s loading facilities. Locating the facilities toward the middle of the Square near the 30-foot portion of the alley creates logistical challenges with regard to truck maneuvering and conflicts with the neighboring building’s loading facilities already located in that area. In addition, placing the loading facilities at the south end of the alley is not feasible as that “alley” is actually a 20-foot easement on the adjacent property. Therefore, the only other option is to locate the loading facilities along the

existing 15-foot portion of the alley, which, as previously stated does not meet current DDOT alley width standards for high density commercial and residential areas. As stated above, the Applicant plans to widen this portion of the alley to 20 feet through establishment of a 5-foot perpetual easement on the Subject Property. However, despite the widening to 20 feet, there would still be insufficient space within the alley for a 55-foot truck to access the building's loading facilities.

C. **No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.**

The requested variances can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the Zone Plan. With regard to the Zone Plan, the intent of the side yard requirement is to protect the public good by providing adequate separation of buildings for purposes of ensuring that properties are provided with adequate light, air, and open space. The requested side yard variance will not substantially impair what the side yard requirement is intended to achieve as there are no abutting properties that would be impacted. Furthermore, the width of South Capitol Street, and the Applicant's proposed 15 foot side yard and larger upper-level setback will ensure that the Subject Property and properties located to the west, will have adequate light and air.

Additionally, while not required under the current Zoning Regulations, the Applicant has designed the building to conform to the new setback requirements that are part of the proposed ZRR. This results in the proposed building being consistent with the uniform street wall that is taking shape to the south within the Capitol Gateway Overlay District, and will be consistent with future projects that are constructed along South Capitol Street after ZRR goes into effect. Thus, in addition to not causing substantial impairment to the current Zone Plan, granting the requested

side yard variance will advance the intent and purposes of the new ZRR setback requirements that will be applicable to the Subject Property.

The requested loading variance can also be granted without causing substantial detriment to the public good or impairment to the Zone Plan. The purpose of the loading requirements is to ensure that each building can provide adequate space onsite for service vehicles (deliveries, trash pick, maintenance, etc.) so as to avoid impacting the surrounding roadway and alley network. The Applicant's loading plan provides the required 20-foot service delivery space and a 30-foot loading berth, in lieu of the required 55-foot loading berth. This is more than adequate to satisfy the loading needs of the proposed residential building considering the number of dwelling units and the lack of ground floor retail.

Finally, granting the requested loading variance is appropriate given the circulation constraints within the existing alley system. Even if the Applicant could provide the required 55-foot loading berth within the already constrained building footprint, there is not enough space to allow a 55-foot vehicle to successfully maneuver within the alley, even after the Applicant establishes the additional 5-foot easement on the Subject Property.