

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

**APPLICATION OF LERNER SOUTH CAPITOL STREET JOINT VENTURE LLC
1000 SOUTH CAPITOL STREET, SE
BZA APPLICATION NO. 19113
HEARING DATE: NOVEMBER 24, 2015
ANC 6D**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

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.

The proposed development is appropriate for the Subject Property, fully compatible with the surrounding area, and not inconsistent with either the Comprehensive Plan or the Zoning Regulations.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103 and 3104 of the District of Columbia Municipal Regulations ("Zoning Regulations").

III.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

<u>Exhibit A:</u>	Map of Subject Property and surrounding zoning
<u>Exhibit B:</u>	Updated architectural plans and elevations
<u>Exhibit C:</u>	Portion of Comprehensive Plan Future Land Use Map
<u>Exhibit D:</u>	NCPC South Capitol Street Task Force Publication, March 2005
<u>Exhibit E:</u>	Adjacent property truck access diagrams
<u>Exhibit F:</u>	Loading memorandum prepared for DDOT
<u>Exhibit G:</u>	Outlines of testimony
<u>Exhibit H:</u>	Resumes of expert witnesses

IV.
BACKGROUND

A. Description of the Subject Property

The Subject Property is located in the southeast quadrant of the District of Columbia within Square 697, which 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 encompasses the portion of the Square located west of the alley, has an irregular shape, and consists of approximately 33,523 square feet of land area, including the 808 square feet of alley area to be closed. It has approximately 235 feet of frontage along South Capitol Street, which is 130 feet wide, approximately 123 feet of frontage along L Street, which is 90 feet wide, and approximately 168 feet of frontage along K Street, which is 80 feet wide. The Subject Property is currently vacant and used as a surface parking lot for portions of the year.

B. Description of Surrounding Area

The area surrounding the Subject Property can be characterized as a high-density, mixed-use neighborhood comprised of commercial, residential, and retail and service uses interspersed with some industrial uses. The area has been undergoing a major transformation for several years with numerous large-scale residential, office, and hotel projects completed or underway mostly to the north, south, and east due in large part to the construction of the Nationals Park, and the redevelopment of the former Southeast Federal Center, now known as The Yards.

The Subject Property is located in a very walkable, bike-friendly, and transit-rich neighborhood that has several attractions and neighborhood amenities in close proximity; including the aforementioned Nationals Park, Yards Park, Canal Park, the Anacostia Riverwalk, Barracks Row, and Capitol Hill. There are several neighborhood serving amenities nearby including grocery stores, a pharmacy, several restaurants, and a dry cleaner, to name but a few. Other attractions planned for the near future include the new DC United soccer stadium at Buzzard Point and a movie theater complex at The Yards.

With regard to access, the Subject Property is in close proximity to major arterial roads such as South Capitol Street and M Street which provide convenient access to regional highways

and interstates. In addition, the Subject Property is well-served by multiple modes of public transportation. In fact, according to the Walk Score website, the Subject Property has a “Very Walkable” Walk Score of 79, where most errands can be accomplished on foot; a Transit Score of 81, which equates to “Excellent Transit” that is convenient for most trips; and a Bike Score of 92, which rates as a “Biker’s Paradise” with excellent bike lanes. The Navy Yard – Ballpark Metrorail Station is located only 0.2 miles to the southeast of the Subject Property. The Subject Property is also accessible by several Metrobus routes, as well as the DC Circulator’s Union Station-Navy Yard Metro route which has a stop located just east of the Subject Property at First and K Streets. Finally, the Subject Property can be easily accessed by bicycle, including Capital Bikeshare which has two stations in close proximity, with several signed bike routes within one block of the site.

C. Existing Zoning and Comprehensive Plan Land Use Designation

As shown in Exhibit A, the Subject Property is zoned C-3-C and is also located within the Capitol South receiving zone as defined in Section 1709.18. 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.

While under the base C-3-C zoning a building height of 90 feet is permitted, the Subject Property can achieve a maximum height of 130 feet pursuant to Sections 1701.7 and 1709.21 of the Zoning Regulations. With regard to density, pursuant to Sections 1706.5(a) and 1706.7(a)(1), the Subject Property is permitted a maximum floor-area-ratio (FAR) of 10.0. Finally, the site can be developed to a maximum lot occupancy of 100%.

Regarding parking and loading, pursuant to Chapters 21 of the Zoning Regulations the Applicant is required to provide one parking space for every four dwelling units. In addition,

pursuant to D.C. Code §50-1641.05, the Applicant is required to provide bicycle parking at a rate of one space for every three dwelling units. As reflected in the plans attached hereto as Exhibit B, while the amount of vehicle and bicycle parking proposed by the Applicant may vary, the amount ultimately provided will either meet or exceed the minimum required by the Zoning Regulations.

Regarding loading, pursuant to Chapters 22 of the Zoning Regulations the Applicant is required to provide a 55-foot loading berth and 20-foot delivery space for the proposed apartment house. As discussed below, the Applicant is requesting a variance from the loading requirement.

The Future Land Use Map of the Comprehensive Plan (January 2013), adopted as part of the District Elements of the Comprehensive Plan for the National Capital (the “Comprehensive Plan”), designates the Subject Property as Mixed-Use (High Density Commercial / High Density Residential), as shown in the attached Exhibit C. According to the Framework Element of the Comprehensive Plan, Mixed-Use areas are those where the mixing of two or more land uses is encouraged. The High Density Commercial land use category defines the central employment district of the city and other major office employment centers on the perimeter of downtown. These areas are characterized by office and mixed office/retail buildings greater than eight stories with lower scale buildings (including historic buildings) interspersed. The High Density Residential land use category defines neighborhoods and corridors where high-rise (8-stories or more) apartment buildings are the predominate use.

Finally, the Subject Property is located within the Near Southeast Policy Focus Area of the Lower Anacostia Waterfront / Near Southwest Area Element of the Comprehensive Plan which includes policies that promote, among other things, the transformation of South Capitol

Street into a great urban boulevard and “walking” street, befitting its role as a gateway to the U.S. Capitol, the creation of additional open space along the South Capitol Street corridor, and increasing housing opportunities. The proposed development is consistent with Comprehensive Plan policies and future land use designation.

D. Project Description

As shown in Exhibit B, the Applicant proposes to develop the Subject Property with an apartment house containing approximately 300 - 360 dwelling units. The proposed building will have a maximum height of 130 feet, as measured from the elevation at the midpoint of the building’s front along L Street, contain approximately 320,000 square feet of gross floor area (gfa), and have an FAR of 9.55. The proposed building will have a lot occupancy of 90%, below the 100% permitted, and a rear yard of 40 feet, which exceeds the 27 foot minimum, as measured from the centerline of K Street pursuant to Section 774.11. 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 43.33 feet required by the Zoning Regulations.

Of note, while not required under the Subject Property’s current C-3-C zoning designation, the Applicant is proposing additional building setbacks along South Capitol Street. As shown in the attached plans, the Applicant is providing a 15-foot setback along South Capitol Street for the entire height, and along the entire frontage of the building. In addition, the Applicant is providing an additional 1:1 setback above 110 feet. The proposed setbacks are consistent with those that are currently required for new developments located within the Capitol Gateway (CG) Overlay District, which exists immediately south of the Subject Property. As currently proposed by the Zoning Commission, the Subject Property will be subject to these

requirements under the provisions of Zoning Commission Case No. 08-06A (Z.C. 08-06A), Zoning Regulation Review (ZRR)(*see* ZRR Subtitle I §§616.7 and 616.7(d)) . 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 the Comprehensive Plan and ZRR, the Applicant has proactively incorporated these additional setbacks into the project.

The ground floor of the proposed building will contain lobby and residential amenity space, parking access and loading facilities, bicycle parking, and other back of house service and utility space. Above the ground floor, the general massing of the building can be described as being "U-shaped" composed of three, rectilinear bars, or wings, forming a large courtyard that opens to the east toward the public alley. The three building wings are each approximately 70 feet in width. This width falls within the typical range used in residential projects as it allows use of industry standard dwelling unit depths and efficient configuration of dwellings along a double-loaded corridor with centrally located circulation (elevator core and egress stair). For the proposed project, the main circulation core and secondary egress stair are located at opposing ends of building where the north and south building wings meet the South Capitol Street portion of the building.

Floors 2 – 13 will contain dwelling units generally configured along a double-loaded corridor that connects the three building wings, elevator core, and egress stairs. This configuration will be utilized throughout most of the building, with the exception of where upper-level setbacks reduce the building width along South Capitol Street such that a double loaded corridor is infeasible. The dwelling units in this portion(s) of the building will be single-loaded along the west side of the circulation corridor.

The roof level of the building will contain an outdoor terrace, including a pool, and two roof structures. The pool deck will remain under four feet above the level of the roof. The main roof structure, located on the northern portion of the roof, will contain the elevator core, egress stair, mechanical equipment, and residential amenity space. The second roof structure, located on the southern portion of the roof, will contain a separate egress stair, mechanical space, residential amenity space. A trellis is proposed for the space between the two roof structures to provide shade to the roof terrace and pool area. The trellis will be approximately 18 feet above the level of the roof, greater than 50% open to the sky and will not have any side walls. It will be setback from the edge of the roof along South Capitol Street a distance greater than its height.

Both roof structures will have a maximum height of 18'-6" above the roof and meet the 1:1 setback requirement from the exterior walls adjoining South Capitol Street, L Street, and K Street, as does the pool and all glass guardrails. However, the roof structures do not meet the setback requirement along the walls of the east-facing court that opens toward the alley; and therefore, the Applicant has requested a special exception pursuant to Section 411.11. In addition, the Applicant is seeking relief from the requirement that all roof structures be located within a single enclosure to allow the roof structure containing the stand alone egress stair to be separate from the main roof structure containing the elevator core.

As noted above, access to parking and loading will be provided on the ground floor, and will be located along the 15-foot wide public alley which will be widened to 20 feet through a 5-foot perpetual easement on the Subject Property. The easement will have a minimum vertical clearance of 15 feet. With regard to parking, based upon an estimated 300 – 360 dwelling units that may be provided in the proposed apartment house, the minimum parking requirement for the project ranges between 75 - 91 spaces. The Applicant is currently proposing

up to 225 spaces primarily located on three levels of below-grade parking. As noted above, the number of parking spaces may vary from what is indicated in Exhibit B, however, the number of parking spaces provided will not fall below the minimum requirement.

With regard to loading, the Applicant is required to provide a 55-foot loading berth and a 20-foot service delivery space. While the Applicant is able to provide the required 20-foot service delivery space, due to multiple exceptional conditions that affect the Subject Property, the Applicant is unable to provide the required 55-foot loading berth. Thus, as discussed below, the Applicant is requesting a variance to provide a 30-foot loading berth in-lieu of the required 55-foot loading berth. Also, a 55-foot loading berth would not be required under ZRR.

V.
THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION RELIEF

Pursuant to Sections 3104.1 and 411.11, the Applicant seeks special exception relief to allow roof structures not meeting the requirement that all penthouses and mechanical equipment be placed in a single enclosure (§411.3), and not setback from all exterior walls a distance equal to their height above the roof upon which they are located (§770.6(b)).

A. Standard for Approving Special Exception Relief

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v.*

District of Columbia Board of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

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.

B. Description of Roof Structure Relief Requested

As described above, the Applicant's proposed roof plan includes two roof structures. Both roof structures have a height of 18'-6" and meet the 1:1 setback requirement from the exterior walls facing South Capitol Street, K Street, and L Street, as required by Section 770.6(b). However, due to the shape and configuration of the building, the narrowness of the three building wings and need to provide efficient building circulation, and the additional setbacks provided along South Capitol Street, and the inability to get setback relief from exterior walls that adjoin a public street due to federal restrictions under the 1910 Height of Buildings Act, the roof structures are not setback from the exterior walls of the open court that opens onto the alley. Furthermore, the two roof structures are completely separated and not contained within a uniform enclosure as required by the Zoning Regulations. Thus, the Applicant has requested a special exception pursuant to Section 411.11 from the roof structure setback and uniform enclosure requirements of Sections 770.6(b) and 411.3, respectively.

1. Roof structure setback (§770.6(b))

Due to the shape and configuration of the building, width of the three building wings, and additional setbacks along South Capitol Street, full compliance with the roof structure setback requirements would be impracticable as it would cause considerable operating difficulties and result in non-compliant setbacks along exterior walls that adjoin public streets, which is not permitted under the federal 1910 Height of Buildings Act. The proposed U-shape of the building, and width of the building wings, which are approximately 70 feet wide, are common practice in residential projects as it allows use of industry standard depths for dwellings. In addition, it allows dwellings to be efficiently configured along a double-loaded corridor with centrally located vertical circulation (i.e. elevators and egress stairs). In addition, the additional setbacks along South Capitol Street further reduce the roof area available to accommodate rooftop program space and meet the 1:1 setback requirements.

For the proposed project, the main roof structure containing the elevator core will be located at the north end of the building adjacent to the ground floor building lobby and where the main building wing along South Capitol Street and the wing along L Street come together. The second roof structure will be located opposite the main roof structure at the south end of the building. The locations of the elevator core and egress stairs provides for an efficient building layout and code compliant egress.

As shown on the attached roof plan, the Applicant has designed the two roof structures such that the residential amenity space is situated toward South Capitol Street, with the mechanical areas located east of the amenity space away from South Capitol Street, and extending east along the north and south walls of the court that faces the alley. The two roof structures have been located on the uppermost roof of the building so as to meet the required 18'-

6” setback requirement from the three adjoining public streets. As a result of providing these required setbacks, the Applicant is unable to provide the required setback along the north and south walls of the east-facing open court on the back side of the building, facing the public alley.

Having to shift the proposed roof structures to meet the 1:1 setback requirement along the court would cause significant operating difficulties as it would cut off, or require significant reconfiguration of the circulation corridor on each floor of the building. In addition, shifting the roof structures from their proposed locations would result in substantial disruption to the proposed lobby space, impact the Applicant’s ability to utilize an efficient double-loaded corridor configuration, cause a loss of dwelling units.

2. Roof structure uniform enclosure (§411.3)

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 penthouse. The location of the roof structure containing the standalone egress stair is a function of the stairway below which is dictated by the building code. Having to extend the main roof structure enclosure to include the second proposed roof structure would require construction of unnecessary screen walls or an enclosed corridor that would only increase views of the roof structure from public streets, especially views from the west along South Capitol Street, and have impacts on views, light, and air to the lower courtyard proposed as part of the project, and to the neighboring property to the east.

The requested special exception from the roof structure setback and uniform enclosure requirements can be granted without materially impairing the intent and purpose of the Zoning Regulations, and without adversely affecting the light and air to adjacent buildings. The general intent of the provisions regulating the location, design, number, and other aspects of roof

structures is to establish a reasonable degree of control with regard to ensuring adequate light and air to neighboring properties, establish a level of architectural consistency, and to minimize visual impacts. The requested roof structure setback relief is consistent with this stated intent as it will not adversely affect the light and air to neighboring properties as a result of the required setbacks being provided from all surrounding streets, and the roof structures being separated from the neighboring property to the east by 20 – 33 feet. Finally, having two separate roof structures rather than providing a single uniform enclosure will avoid having unnecessary mass on the rooftop of the building, thereby minimizing views of the roof structures especially from the important South Capitol Street corridor.

VI.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

The Applicant is requesting area variances from the requirements of Section 775 (side yard) and Section 2201.1 (loading). As described above, the Applicant is proposing to construct a multi-family apartment building on the Subject Property with approximately 330 dwelling units.

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 Subject Property is affected by multiple exceptional conditions that make it practically difficult to comply with the Zoning Regulations. Specifically, the exceptional conditions arise from the pending status of the District of Columbia's proposed comprehensive update of the Zoning Regulations, ZRR, and the additional setbacks along South Capitol Street that will apply to the Subject Property. In addition, the Subject Property has exceptional access constraints caused by the narrow public alley that currently exists at the north end of the Square, a condition that has existed since the original subdivision of the Square in the 1790s.

As previously noted, the Subject Property is located in the Lower Anacostia Waterfront / Near Southwest Area Element of the Comprehensive Plan which includes policies that promote the transformation of South Capitol Street into a great urban boulevard and "walking" street, befitting its role as a gateway to the U.S. Capitol, and the creation of additional open space along the South Capitol Street corridor. These Comprehensive Plan policies are an outgrowth of several years of collaboration between the District and federal partners, such as the National Capital Planning Commission (NCPC), to develop a vision to transform South Capitol Street into a grand urban boulevard containing a mix of land uses, commemorative works, and open spaces. As described in the Comprehensive Plan, "such a vision was first laid out in the 1997 [NCPC]

Legacy Plan, and later refined by the 2003 South Capitol Urban Design Study. A Task Force including federal and District representatives was convened in 2004 to develop design options and an open space framework for the corridor.”

The recommendations made by the 2004 Task Force are contained in an NCPC report entitled “South Capitol Street: Grand Urban Boulevard and Waterfront Gateway,” which was issued in March 2005, attached hereto as Exhibit D. As a way to establish the South Capitol Street corridor as a great urban boulevard and maintain an open view of the U.S. Capitol, one of the Task Force recommendations was to maintain the corridor’s existing 130-foot right-of-way, and have new construction along the corridor be set back an additional 15 feet from the property line. The recommendation to establish a 15-foot setback requirement for new buildings was carried forward as part of a text amendment to the CG Overlay that went into effect on February 8, 2007, which also established the additional 1:1 building setback for any portion of a building above 110 feet.

As a way to further advance the vision for South Capitol Street that was jointly established by the District and federal governments, informed current Comprehensive Plan policies, and led to existing CG Overlay requirements, the District of Columbia Office of Planning (DCOP) has proposed to extend the CG Overlay setback requirements described above to additional properties along the South Capitol Street corridor, including the Subject Property, as part of the Zoning Regulation Rewrite (ZRR) effort. 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, which was published in the DC Register for a public comment period that ended on September 25, 2015. As proposed, ZRR includes several changes that will affect how the Applicant can develop the Subject Property.

Under the proposed ZRR, the Sub-Area provisions for this site 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 (*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 ZRR will take effect, create the unusual situation where the Applicant can currently construct a building that would be consistent with current zoning, but inconsistent with the District's well-established vision and policies for South Capitol Street, and with the proposed ZRR requirements intended to further advance the vision and policies.

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 in 1797. 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 neighboring property, the original 15-foot portion of the alley that connects to K Street remains as originally established. This narrow alley condition, which consequently 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, combined with limitations on where the Applicant can locate the building's loading facilities resulting from the shape and configuration of the building and the location of the neighboring loading facilities, create exceptional conditions that make it practically difficult for the Applicant to provide the required 55-foot loading berth.

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

To meet the standard for practical difficulty, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (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’....” *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

1. Minimum Side Yard (§775)

Pursuant 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 Applicant providing the additional 15-foot building setback along South Capitol Street as a proactive step toward advancing the well-established vision for the corridor, promoting consistency with the streetscape that is evolving to the south, and prospectively complying with new requirements proposed under ZRR, a non-compliant side yard condition is created.

Based on the side yard requirement of Section 775.5 and the building height of 130 feet, the Applicant is required to provide a side yard with a minimum width of approximately 22 feet, seven feet more than what is proposed. The strict application of the side yard requirement 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 building wing along South Capitol Street, or reducing the length of the east-west wings along K and L Streets, which under both scenarios would substantially impact the internal configuration of the building and result in a considerable loss of gross floor area.

Specifically, reducing the width of the South Capitol Street building wing by seven feet, or from 70 feet to 63 feet, would result in a loss of approximately 18,000 square feet of buildable area. In addition, a reduction to 63 feet, a width more akin to what is used for hotels, would compromise the Applicant’s ability to utilize a double loaded corridor to efficiently configure the proposed dwelling units and could limit the types of dwelling units provided. 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. Finally, reducing the length of the building wings along K and L Streets would have similar impacts as just described, amounting to a loss of approximately 13,000 square feet and loss of several dwelling units.

2. Loading (§2201.1)

The strict application of the loading requirements of Section 2201.1 would also result in a practical difficulty caused by the confluence of exceptional access constraints and the additional

15-foot setback provided along South Capitol Street. 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 challenges with regard to truck maneuvering and, as shown in Exhibit E, would conflict with the neighboring building's loading facilities that are 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. In addition, the southern end of the building's ground floor has less depth than the northern end, which increases the impact any size loading berth would have on the design and configuration of the ground floor. Therefore, the only option to locate the loading facilities is 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. While 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, as shown in the truck diagrams included in Exhibit F, there would still be insufficient space within the alley for a 55-foot truck to access the building's loading facilities.

Furthermore, as a result of the additional setback, the depth of the ground floor is compressed, thereby limiting the amount of space available to allocate the necessary lobby and amenity space, elevator core and egress stairs, vehicle and bicycle parking, parking access, loading facilities, and "back-of-house" supporting space. Requiring the Applicant to provide a 55-foot loading berth would require shifting the elevator core toward South Capitol Street resulting in a reduction of lobby space, disruption of building circulation and configuration of dwelling units, and increased visibility of the roof structures from South Capitol Street.

C. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a 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 causing 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, the proposed 15 foot setback, and additional upper-level setback above 110 feet 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 is proactively providing the additional building setbacks along South Capitol Street that are currently only required for properties located along South Capitol Street within the CG Overlay, and are currently proposed to extend to the Subject Property as part of ZRR. This will promote consistency along the streetscape, with the buildings within the CG Overlay and the project recently proposed two blocks north, and 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 a well-established District policy goal, and be consistent with 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.

VII.
WITNESSES

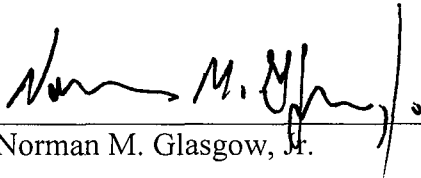
- A. Stuart Miller, Sr. Director | Development, Lerner South Capitol Street Joint Venture LLC
- B. Mark Gilliland, FAIA, Principal, Shalom Baranes Architects
- C. Erwin Andres, Principal, Gorove / Slade
- D. Shane L. Dettman, AICP, Director of Planning Services, Holland & Knight LLP

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: 
Norman M. Glasgow, Jr.

800 17th Street, N.W.
Suite 1100
Washington, DC 20006
(202) 955-3000