

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

**APPLICATION OF
311 K STREET LLC**

**317 K STREET, N.W.
LOTS 20, 21, 804, 805, 824,
825 AND 829 IN SQUARE
526**

STATEMENT OF THE APPLICANT

I. NATURE OF THE RELIEF SOUGHT

This Statement in Support of an Application for Variance is brought by 311 K Street LLC, (“Applicant”), the contract purchaser and authorized agent for the property owner, Welch Family LP in support of variance relief from the parking requirements (§ 2101.1) and rear yard (§ 774.1) of the Zoning Regulations, pursuant to 11 DCMR § 3103.1, for the property known as 317 K Street, N.W. (Lots 20, 21, 804, 805, 824, 825 and 829 in Square 526)(the “Property”) to allow the construction of an approximately 200-room hotel and approximately 30 residential units.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (“BZA” or “Board”) has jurisdiction to grant the variance relief requested pursuant to 11 DCMR § 3103.2 of the Zoning Regulations.

III. BACKGROUND

The Property consists of approximately 10,767 square feet of land area and is located in Northwest Washington, D.C. at the intersection of 4th and K Streets, N.W. *See* Baist Atlas attached hereto as **Tab A**. The Property is classified within the DD/C-2-C Zone District and located in Housing Priority Area A. *See* Zoning Map attached hereto as **Tab B**.

The Property is currently improved with three, one- to three-story commercial buildings constructed in the early twentieth century, which are currently in commercial use. The Property is not in a historic district.

Directly across 4th Street from the Property is a high-rise residential apartment building. Across K Street are surface parking lots. The Property is approximately one block from the I-395 underpass and is located on the eastern boundary of the Mount Vernon Triangle.

The Property is well serviced by a number of public transportation facilities and services including Metro, Metrobus routes, Capital Bikeshare, and Zipcars. The Property is located approximately 1/3 of a mile from three Metrorail Lines (Yellow/Green at Mt. Vernon Square/Convention Center, and Gallery Place/Chinatown on Metrorail's Red Line are equidistant from the Property). Moreover, Metrobus routes X2, D4, P6, 80, 70, X2, and the Circulator all stop within two tenths of a mile (.2 miles) from the Property. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 5th and L Street NW (1 block away, 17 docks), 5th & Massachusetts Ave N.W. (2 blocks away, 18 docks), and at 3rd & H Streets, N.W. (1 block away, 14 docks). Walkscore.com labels the property as "Walker's Paradise" with a WalkScore of 94/100, a "Rider's Paradise" with a TransitScore of 100/100, and "very bikeable."

IV. THE PROPOSED DEVELOPMENT

The Applicant proposes to construct a 14-story, mixed-use building containing hotel and apartment uses (the "Project"). As shown on the architectural plans included at **Tab C**, the hotel use will occupy floors 1-11 of the building and contain approximately 200 rooms and approximately 2,040 gross square feet of hotel public space/bar. The proposed apartment house will occupy floors 12-14 and contain approximately 30 units. As permitted in the DD/C-2-C Zone District, the proposed building will be constructed to 130 feet in height and 10.5 FAR. The proposed project will provide an open court located at the rear of the Property. Two levels of underground parking containing 42 spaces are proposed as part of the Project, with access from the existing curb cut on K Street. Loading and trash will be accessed off of 4th Street from another, existing curb cut.

V. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required from the requirements regarding parking (§2101.1) and rear yard (§774.1). 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 Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained in the Prehearing Statement and at the public hearing, all three prongs of the area variance test are met in this Application.

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

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 applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294

(D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The subject Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property is irregularly shaped; (2) the Property does not have alley access; (3) the Property has an exceptionally large, public space, “Parking” area along K Street N.W.; (4) the Property’s small size and corner location present unique access constraints; and (5) the Property is located in an area with a high water table, restricting that ability to construct more than two levels of underground parking.

1. Irregularly Shaped Property

The Property is an assemblage of seven (7) lots. Four (4) of those lots, Lots 21, 20, 824 and 825, jut out 20 feet beyond the rear lot lines of the rest of the Property (the “Dogleg Lots”). As a result, the Property forms a wide L shape that presents design and efficiency challenges.

2. Small Property Size and Corner Location

As previously noted, the Property is a corner lot front along K and 4th Streets NW, and has a land area of only approximately 10,767 square feet, which is small considering the intended mix of uses and inability to assemble more land due to the other developments planned on the square and proximity to the highway.

3. No alley from 4th Street, despite existing curb cut

As shown in the Property photos included at **Tab D**, the Property has a large curb cut along 4th Street that is blocked by a gate and does not lead to an alley or provide rear access to the Property. For the proposed uses, the lack of rear, alley access presents unique circulation constraints because it requires that the Project provide two, disconnected access points, with the proposed automobile access from K Street and loading and trash access from 4th Street. If the Property had rear alley access from 4th Street, then those two access points could have been consolidated, and there would be no need for two, separate access points and the associated square footages devoted to them.

4. Significant public space setback along K Street

The significant, “parking” setback from K Street contributes to the Property’s exceptional situation because it pushes the façade of the Project to at least 50 feet from K Street. This condition is not present in most commercial locations in the City and requires that the bulk of the Project be located near rear of the lot, while preserving the boulevard viewshed down this section of K Street.

5. High water table

The Property has a high water table that restricts excavation to two levels of below grade parking. A Subsurface Exploration and Geotechnical Engineering Analysis (the “Geotech Report”) prepared for the Property documents that groundwater was found at a depth of 20 feet. This Geotech Report also notes that the site “is likely subject to shallower perched water conditions where water becomes trapped ... [and] serves as conduits for lateral groundwater flows.” Accordingly, the high water table is an exceptional condition on the Property that limits the depth of below-grade excavation.

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

Due to the Property’s exceptional conditions discussed above, the strict application of the minimum parking and rear yard requirements of Sections 2101.1 and 774.1 would result in practical difficulties for the Applicant.

1. Parking (§ 2101.1)

Based on the proposed building program, the Applicant is required to provide a total of 122 parking spaces pursuant to § 2101.1 (Hotel parking requirement based on 200 rooms and 2,040 public space/bar: 1 space per 2 rooms, plus 1 space for each 150 SF of floor area for largest function room = 114; + Residential requirement based on 30 units: 1 for each 4 dwelling space = 8 spaces).

However, as a result of the small size of the Subject Property and the high water table that limits excavation to approximately 20 feet, the Applicant can only provide two levels of below grade parking with area for 42 parking spaces.

At approximately 10,767 square feet, the Subject Property is small for a mixed-use hotel/residential project of this type. Further, due to the Property's irregular shape and the provision of a conforming court area to the rear, the proposed floorplates only range from 8,480 to 8,828 s.f.; a small area in which to efficiently accommodate necessary space for the hotel and residential uses; including, lobbies; unit floor plans; elevator cores; fire control and other required mechanical and operational spaces; loading; as well as access to, and provision of, below grade parking.

Further, due to the small lot size and high water table that limits the depth of possible excavation to approximately 20 feet (allowing for two levels of underground parking), the maximum number of parking spaces that can be provided is 42 due to the space that must be allocated to each parking space and parking garage circulation area.

Requiring more than 42 spaces would be unnecessarily burdensome because of the extreme challenge of additional parking below grade due to the high water table discussed above. Accordingly, any additional parking spaces would need to be located above-ground – either in surface parking lots or above-grade structured parking. Requiring surface lots would substantially shrink the building's footprint and the various floorplates. Above-grade structured parking would result in reducing the amount of gross square footage that could be devoted to hotel and residential uses, because multiple stories of the proposed building would have to be devoted to above-grade parking structure. Such would be a practical difficulty, severely limiting the ability to redevelop this Property as a higher-density mixed-use development, as is permitted by matter of right.

Also, the exceptional nature of having two curb cuts, one off of K Street, and the other off of 4th Street, and no rear alley creates a practical difficulty that results from having to design a Project with two, separate, disconnected access points. This causes a duplication of below-grade space that must be devoted to access, directly reducing the area for parking. As stated above, the Project is limited to two-levels of below-grade parking due to the high water table. Accordingly, the unique nature of the Property requiring the construction of two, separate and unconnected access points results in even further limiting the already substandard amount of below-grade area that could be used for parking.

2. Rear Yard (§ 774.1)

Pursuant to 11 DCMR § 774.1, development on this Property requires a 15-foot rear yard. As designed, the Project provides no rear yard setback, but it does provide a substantially-size, conforming rear court in the north-east quadrant of the Project. The existence of the unique features of the Property referenced above, in particular, its irregular shape and small size, as well as the significant public space setback from K Street combine to result in a practical difficulty for the Applicant if the zoning relief is not provided.

First, the Property is shaped irregularly, as the Dogleg Lots jut out 20 feet beyond the rear lot lines of the rest of the Property creating in an elongated “L” shape of the rear lot line. The fact that the property lines do not form a neat square shape, as more commonly seen, makes it almost impossible to create a conforming rear yard without seeking additional zoning relief. This is because if the Applicant were required to provide a rear yard, the rear of the Dogleg Lots would continue to jut out beyond the rear of the other lots, resulting in a non-conforming court. It is unnecessarily burdensome to require compliance with certain zoning regulations only to create non-compliance with other regulations, necessitating additional zoning relief.

Next, the Property’s small size and the existence of the substantial public space, parking area along K Street result in practical difficulties. As discussed above, with the small property size and the design needed to accommodate the Dogleg Lots, the proposed floor plates range in size from 8,480 to 8,828 s.f., which is a small floor plate that only allows for approximately 20 hotel rooms and 10 residential units per floor. This floor plate would need to be even further narrowed if a 15-foot rear yard requirement was mandated, resulting in an approximately 64.7-foot wide building. Such a narrow building would have a patently inefficient floor plan that potentially would not be acceptable to a major hotel chain.

C. Neither 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. As noted above, the Property is well-served by surrounding transit network, and the requested variance from the minimum parking requirement will not have a substantial impact on the public good. In regards to the hotel use, it is anticipated that most hotel guests will be arriving from out of town and will not have cars. Further, given the modest size of the hotel’s function space, it is

unlikely that events will generate a large volume of vehicular traffic. Rather, it is more likely that visitors will arrive by public transportation or other alternative ride services such as taxi or Uber, especially in light of the Property's close proximity to Union Station. As to the residential uses, it is expected that most residents will choose to live in this location for its access to public transit and surrounding public amenities and nightlife, and, therefore, will not own cars. Those residents that do own or desire a parking space will be able to utilize one of the 42 spaces provided. As referenced above, many car and bike sharing spaces are located nearby, providing future residents with ample commuting options other than car ownership. Therefore, the requested parking variance relief will have no detrimental impact.

With respect to the requested rear yard relief, the Project proposes a conforming rear court that will ensure access to light and air along the rear lot line. Also, the Property is adjacent to public open space along K Street and to the east abutting Interstate 395, so the Project is surrounded by open area, and the lack of rear yard will have no impact.

VII. CONCLUSION

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

Respectfully submitted,

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