

**APPLICATION TO THE BOARD OF ZONING ADJUSTMENT OF THE  
DISTRICT OF COLUMBIA**

RECEIVED  
D.C. OFFICE OF ZONING  
2006 DEC 18 PM 3:24

**300-320 RIGGS ROAD, NE**

**by**

**DAKOTA SQUARE, LLC**

**DECEMBER 18, 2006**

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 17600

EXHIBIT NO. 5

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17600  
EXHIBIT NO. 5

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

Application of Dakota Square, LLC

BZA Application No. \_\_\_\_\_  
ANC 4B

**STATEMENT OF THE APPLICANT**

This is an application of Dakota Square, LLC (“**Applicant**”) for a variance from the residential loading berth size requirement of §2201.1 of the District of Columbia Zoning Regulations. The Applicant is currently redeveloping the property located at 300-320 Riggs Road, NE (Lot 52 in Square 3748) (the “**Property**”), as shown on Exhibit C, for residential and commercial use.

The Applicant proposes to construct a four-story residential and commercial structure on the Property that will contain street level retail and ample parking. The new building will not conform to the residential loading berth size requirement of 11 DCMR §2201.1. The building will conform to the District of Columbia Zoning Regulations in all other ways.

**I. NATURE OF RELIEF SOUGHT**

The Property is located in the C-2-A Zone District (see pertinent portion of the Zoning Map attached as Exhibit C)<sup>1</sup> which permits commercial and residential uses as a matter-of-right.

The Applicant requests that the Board of Zoning Adjustment (the “**BZA**” or the “**Board**”) approve a variance pursuant to §3103.2 from the residential loading berth size

---

<sup>1</sup> Although the Zoning Map indicates that the Property is located in the C-3-A Zone District, it is actually in the C-2-A Zone District, pursuant to Zoning Commission Order Nos. 762 and 774.

requirement of §2201.1 of the Zoning Regulations. Under §2201.1, the minimum loading berth that must be provided in a project with 50 or more dwelling units is 55 feet. The Applicant requests relief to construct a loading berth that is 30 feet for the residential units in the Project. The necessary zoning relief has been self-certified as shown on the attached Exhibit A. The Applicants' satisfaction of the standards for granting area variance relief is discussed in detail in Section IV of this statement.

The portion of the Property that will be primarily affected by the variance application is the interior courtyard and loading area of the development on the Property near the intersection of Riggs Road and 3<sup>rd</sup> Street, NE.

## **II. JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the variance relief requested pursuant to §3103.2 of the Zoning Regulations.

## **III. BACKGROUND**

### **Description of the Property and Surrounding Area**

The Property is located in the Fort Totten neighborhood of the District of Columbia on the west side of Riggs Road, NE, between 3<sup>rd</sup> Street and Chillum Place, NE (See Exhibit C). It is currently improved with three one-story structures that have a variety of retail and service uses. One of the buildings is comprised of a row of stores that resembles a suburban strip mall. The other two buildings are stand-alone commercial establishments – a bank and a check cashing operation. The remainder of the Property is a patchwork of parking lots and vehicular access ways between the existing buildings.

The surrounding neighborhood generally is characterized by a variety of uses, including various commercial properties of small scale and residential uses including duplexes and multi-family housing. To the north, the Property is abutted by residential duplexes; to the west, the Property is abutted by residences, multi-story housing and low scale commercial uses; to the south, the Property is abutted by commercial uses similar to those currently on the Property and industrial uses abutting the train tracks; to the east, the Property is abutted by an open triangle of property owned by the District of Columbia and, further to the east, by multi-story residential housing and more low-scale commercial buildings. These parcels immediately to the east of the Property are being redeveloped by affiliates of the Applicant in a coordinated development that will assist in revitalizing this neighborhood. Dakota Points, LLC, is the owner and developer of 5545-5549 South Dakota Avenue and 5553-5575 South Dakota Avenue, NE and South Dakota Holdings, LLC is negotiating the purchase of the triangle of land to the southeast of the Property owned by the District.

The Property is walking-distance to the Fort Totten Metrorail station. The Property is designated as Moderate Density Commercial on the Generalized Land Use Map of the Comprehensive Plan<sup>2</sup>. The areas surrounding the Property include Moderate Density Commercial (to the east), Low Density Residential (to the north and west), and Production and Technical Employment (to the south).

The Property has a land area of 201,274 square feet and is located in the C-2-A Zone District. The Property is located in a cluster of parcels of C-2-A to the north of the intersection

---

<sup>2</sup> The Property remains designated Moderate Density Commercial on the proposed Generalized Land Use Map that accompanies the draft Comprehensive Plan that is currently before the D.C. City Council.

of Riggs Road, South Dakota Avenue, and 3<sup>rd</sup> Street, NE. To the east of the cluster of C-2-A and to the north of the Property, R-2 is the primary Zone District. Properties to the west and south of the Property are zoned CR. Well to the south of the Property across the intersection, the land is zoned Fort Totten Overlay (“FT”)/C-3-A.

The maximum height for a building in the C-2-A Zone District is 50 feet and the maximum lot occupancy for a residential structure is 60%. The maximum floor area ratio (“FAR”) in the C-2-A Zone District is 2.5 FAR, of which 1.5 FAR may be nonresidential FAR. Accordingly, the Applicant would be permitted to construct, as a matter-of-right a 50 foot building of 503,185 square feet, including 301,911 square feet of nonresidential use.

### **History of the Property**

The existing buildings on the Property were constructed in the 1980’s and comprise a single-story strip mall with outbuildings. The Property has a large parking lot on it that surrounds the commercial structures. The buildings on the Property have an FAR of 0.23, or 46,293 square feet of gross floor area, and a height of 21 feet. The existing buildings provide limited retail and services for the surrounding community, but the Property is inefficiently utilized.

### **Description of the Proposed Development**

The Applicant proposes to demolish the existing buildings on the Property and develop a four-story mixed-use building containing approximately 420 residential units and approximately 85,000 square feet of commercial space (the “**Project**”) as shown on Exhibit B. The proposed building will be approximately 50 feet in height under the Zoning Regulations. The proposed

building will have an FAR of 2.5 (comprised of 1.9 FAR of residential space and 0.6 FAR of commercial space). Therefore, the proposed building would be at or under the 50 foot maximum height and the maximum FAR allowed in the C-2-A Zone District. The proposed Project would have 550 parking spaces, although only 484 would be required under the Zoning Regulations.

No side yard is required at the Property and none is provided. If a side yard is provided in the C-2-A Zone District, it must be at least two (2) inches per foot of height of the building and no less than six (6) feet.

The Project would be comprised of one building that would encircle the perimeter of the square. A large closed courtyard would be created in the interior of the building for parking and a portion of the proposed grocery store (as shown on Exhibit B). The Project would include a retail space on the first level and portions of the second level of the building fronting on Riggs Road, NE. The northern portion of the building would be a grocery store if such a tenant can be arranged for the space. The Applicant aims to create an active streetscape on Riggs Road, NE. Residential space would comprise the remainder of the building over the retail space and the entirety of the building fronting on 3<sup>rd</sup> Street, NE.

The entrances for vehicles will use the same curb cuts as are currently on the Property. Traffic will enter the site from 3<sup>rd</sup> Street and Riggs Road, NE and park in the courtyard and garage parking.

The Project is comprised of two phases. The retail and portions of the residential space will be built out in the first phase. The second phase will include an expansion of the residential space and the augmentation of the parking deck.

Loading for the retail and residential space for the first phase will be at the south end of the Property to utilize the site layout, topography, and existing curb cuts. The Applicant will provide a 30 foot loading berth and 20 foot delivery space for the residential portion along with two (2) 30 foot loading berths and one (1) 20 foot delivery space for the (non-grocery) retail portion. Loading for the grocery space would be to the north end of the Property, on Chillum Place, NE. The Applicant will provide one (1) 55 foot loading berth, (1) 30 foot loading space, and one (1) 20 foot delivery space for the grocery space. In the second phase of the Project, the 55 foot residential loading berth would be moved to the northern edge of the Property on Chillum Street, NE, once that portion of the structure is constructed.

The Project is intended to compliment and enhance the appearance and character of the neighborhood – which is comprised of an eclectic mix of uses and designs, much of it modern. The Project will replace an entire square of non-descript and inefficient commercial buildings with one cohesive design. Although the immediate neighborhood is too eclectic to have a definitive style, the Project’s highly-articulated façade and detailed design would energize the neighborhood and signal a new energy at the Property. By focusing on the design and replacing a largely under-utilized parking lot, the Project will replace the sense of disinvestment that the Property currently creates. The Project will be a key investment at a prominent corner location which would stimulate and compliment other investment in the neighborhood. The proposed Project capitalizes on the existence of the nearby Fort Totten Metro station and the proposed Clark and Cafritz projects.

Perhaps most important, the Project’s residential units will be priced to be “workforce housing.” The price points for the residential units are intended to be set at a level that can be affordable to those District residents priced out of Northwest or the Downtown areas of the

District. This middle segment of the District's population is under-served by housing in the District. The nearby Metro station gives the workforce great access to the Downtown core. In addition, affiliates of the Applicant will also provide substantial affordable housing on the site adjacent to the Property if that property is successfully acquired from the District of Columbia.

### **Area of Necessary Relief**

The Applicant is requesting a variance from the residential loading berth size requirements of 11 DCMR §2201.1. The Project plan as attached hereto as Exhibit B, requiring this variance, is the result of the Applicant's attempt to maximize the efficient use of an oddly configured lot, with existing curb cuts, on a sloping topography. The Applicant has experimented with several different designs for the loading in order to develop a loading scheme that maximizes the efficiencies of the required loading, maximizes the amount of loading provided, arranges the loading in the positions most "user-friendly" to the space being served by the loading, and minimizes vehicular and pedestrian conflicts. In addition, the Applicant is trying to utilize the existing curb cuts for the Property (and remove the northern curb cut on Riggs Road, NE).

The residential loading berth variance would allow for the Applicant to include more efficient parking closer to the retail uses on the project and allow for the best design of the building given the Property's constraints.

This variance relief will not affect the surrounding community. The proposed arrangement of the loading facilities brings all non-grocery loading vehicles onto the Property and into an interior loading area that allows such vehicles to execute all necessary movements on



the Property. Therefore, there will be minimal impact on adjacent District residents or on District traffic.

In addition, as stated above, the Project will offer a great deal of other loading facilities on the Property. Further, the loading berth for the residential units will only be temporarily non-compliant with the Zoning Regulations. The later phase of the Project, which will build out the upper floors of the residential units in the Project, will include a 55 foot residential loading berth for those units on the northern portion of the Property.

#### **IV. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCE RELIEF UNDER § 3103.2 OF THE ZONING REGULATIONS**

An applicant requesting an area variance must prove that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets this test for the requested variance from the residential loading berth requirements under 11 DCMR §2201.1.

##### **A. The Property is Affected by an Exceptional Situation or Condition**

The BZA may “weigh more fully the equities in an individual case.” *National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a “confluence of factors.” *Gilmartin*, 579 A.2d at

116. For example, in *French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), the Court of Appeals upheld the granting of a variance from 11 DCMR § 217.1 based on the Board's findings that several circumstances existed which, when considered together, made the property unique. In *French*, the circumstances cited by the Board were the site's "irregular shape, steeply sloping grade, the large size and physical configuration of the existing building, and its previous history of chancery use." *Id.*

Furthermore, it is not necessary that the Property be unreservedly unique. Rather, an applicant must prove that the property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. In *Gilmartin*, the Court of Appeals rejected the idea that a property was not unique because the asserted exceptional condition was common to other types of properties in other zoning districts. *Gilmartin*, 579 A.2d. at 1167. The Court explained:

the rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulation themselves from the Zoning Commission. If such problems were addressed through individual variances, the effect would be a *de facto* amendment of the zoning regulations by the BZA because requests by other owners similarly situated would have to be granted.... [...] The test follows from its rationale. To support a variance it is fundamental that the difficulties or hardships [be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood.

*Id.* at 1169 (internal quotations and citations omitted; alterations in original).

Here, the Property is affected by several factors that create an exceptional condition. As noted above, a primary factor that creates an exceptional condition on the Property is the

existence of significantly sloping topography. The slope of the Property makes it very difficult to negotiate a 55 foot tractor trailer that would use a 55 foot loading berth from either 3<sup>rd</sup> Street or Riggs Road, NE. A residential loading berth of 30 feet is significantly easier to furnish on the grade of the Property instead of a 55 foot loading berth.

In addition, the Property is unique because of the odd configuration of the lot. Since it is the entirety of Square 3748 – which is created by the convergence of several streets of differing directions – the Property is an oddly-shaped parcel that is configured as a rounded wedge. Any structure that uses the Property efficiently must conform to its strange shape. Such a configuration creates difficult traffic, parking and loading considerations on the Property since the site is not angular and must accommodate such awkward shape. Further, traffic and loading must deal with traffic flow from many different misaligned directions from 3<sup>rd</sup> Street, Riggs Road, and Chillum Place, NE.

Further, the Property has existing curb cuts that are being utilized for the Project. Such curb cuts limit the options for installing loading accommodations. The two curb cuts that will be utilized for the main loading for the residential and (non-grocery) retail space in the first phase of the Project are already in existence. These curb cuts place trucks delivering the residential and (non-grocery) retail portions of the Project near the intersection of South Dakota Avenue, Riggs Road, and 3<sup>rd</sup> Street, NE. As a result, if a 55 foot loading berth was required where the 30 foot residential loading berth is proposed, any 55 foot tractor trailer that would try to utilize the space would have to maneuver: (1) in the street to enter the Property, or (2) on the Property (and thereby eliminate a great deal of parking, as noted below). As a side note, one of the Property's curb cuts on Riggs Road, NE is being removed in order to contribute to the vibrant streetscape.

Similar to the property in the *French* case, the Property has an “irregular shape”, “sloping grade”, “large size”, and is fettered by the previous uses of the land (in the Property’s case, the existing curb cuts). As a result, the Property is unique in its exceptional condition. Therefore, the Applicant satisfies the first prong of the area variance test and has an exception condition.

**B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty to the Applicants**

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof of the practical difficulty element of the area variance test. The applicant must demonstrate that “compliance with the area restriction would be unnecessarily burdensome” and that the practical difficulty is “unique to the particular property.” *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d at 1170 (D.C. 1990). The Court of Appeals has held that 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.” *Id.* at 1171. The Court of Appeals provided “a wide range of factors” that the BZA may consider in determining whether the practical difficulty standard has been satisfied. *Id.* 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). The Court noted the following factors: “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.” *Id.* In addition to the factors listed above, the Court in *Gilmartin* stated that “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.” *Id.* Thus, to demonstrate practical difficulty, the Applicant must show that strict

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

It would be unduly burdensome for the Applicant to comply with the Zoning Regulations regarding the residential loading berth requirement on the Property for several reasons.

Constructing a building with a 55 foot residential loading berth would require the Applicant to make changes to the internal courtyard that would reduce a large number of parking spaces. As shown on Exhibit B, the turns required for a 55 foot truck on the site would render a great deal of parking spaces unusable. Such an unappealing parking configuration would be difficult to market to retailers and residents and would be unlikely to be desirable or practicable. The result would be an awkward configuration of the “loading area” for the residential and (non-grocery) retail areas and an under-utilization of space. The retail component is critical to the success of the Project, and efficient parking is a crucial requirement for retail tenants.

The only other alternative to losing a significant amount of parking for the 55 foot trailer’s maneuvering room inside the building courtyard is for such trailers to perform similar awkward loading maneuvers in the streets. This would create an undue burden on the operation and residents of the Project and on the traffic around the Property.

Although the Applicant might be able to achieve a 55 foot residential loading berth if a different curb cut was created and the site was reconfigured, this would cause great burden to the Applicant and negatively affect the users of the surrounding streets. To begin with, the process of installing another curb cut to access the Property would cause a great degree of expenditures and efforts from the District and the Applicant. Further, the creation of a new curb cut would create new holes in the Applicant’s design – which is intended to deliver a cohesive and active

streetscape. The Applicant is trying to minimize (and even decrease) the numbers of curb cuts at the Project.

Also, it should be noted that the variance request is a very minor request for relief. Following the logic of the *Gilmartin* case, one slight variation in the zoning requirements should be accommodated to allow for the construction of a viable mixed use building that has been extensively planned and is intended to maximize the efficiency of the Property. Further, the relief requested is only for a deviation on one of many loading berths that the Applicant proposes to make smaller, not eliminate. The Applicant will still provide one (1) 30 foot loading berth and one (1) 20 foot delivery space for the residential portion along with two (2) 30 foot loading berths and one (1) 20 foot delivery space for the (non-grocery) retail portion and one (1) 55 foot loading berth, (1) 30 foot loading space, and one (1) 20 foot delivery space for the grocery space. Further, the non-conforming condition of the residential loading berth will only be a temporary condition at the Property. The second phase of the Project will create a 55 foot residential loading berth that conforms to the zoning regulations. Therefore, the size of the requested relief is small both in the amount of relief requested and the amount of time such relief would be required.

Given the strange configuration of the lot, the sloping topography, and the existing curb cuts, the Applicant could not provide the residential loading berth in the most efficient location without incurring additional expense and unnecessarily detracting from the efficiency of the site – including the ability to place the maximum amount of parking near the retail portions of the Project.

The Property, with the unique characteristics noted above, is not a typical property for the Washington, DC area or the immediate neighborhood, and is therefore uniquely burdened. Based on the factors listed by the Court in *Gilmartin*, the Applicant has satisfied the practical difficulty standard of the area variance test.

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

To satisfy the third element of an area variance, the Applicant must demonstrate that the requested variance relief will not result in substantial detriment to the public good, nor substantially impair the intent or integrity of the Zoning Regulations and Zoning Map. Indeed, the requested relief will have no such result. Instead, granting the requested variance relief advances the intent and goals of the Zone Plan for this area as defined in the District of Columbia Comprehensive Plan. The proposed Project will bring an important investment and a vibrant use to a site that is currently under-utilized. In addition, the Project will allow for a more active streetscape, more desired retail uses, and more residential options to this neighborhood, while strengthening and improving the physical and aesthetic character of the surrounding neighborhood. As a result, the Project will assist in rejuvenating the neighborhood and bring a highly-desired mixed-use, including a high degree of “workforce” residential use to the area. It will also contribute towards achieving the Mayor’s goal to bring 100,000 households to the City, and use “right-sized” development to do so.

The variance will not undermine the Zone Plan since it is the result of a coordinated loading and traffic planning for the Project. In addition, the variance will not change the overall permitted density or height on the Property.

The variance will have no impact on the immediate neighbors or the residents of the Project. The residential loading berth will be on the interior of the Project and therefore the neighbors will never see the condition. Therefore, the effect of any relief from strict application of the Zoning Regulations will not have negative consequences on the neighbors. In fact, the variance will have a positive effect on the residents of the Project since it will allow the Property to be more efficiently used as described throughout this application statement.

The inclusion of a 30 foot loading berth in the place of a 55 foot loading berth for the residential units in the Project does not pose a problem for the functioning of the Project. The Project is amply serviced by eight (8) loading and deliver spaces and berths as noted above.

Further, the Project's units will not require larger loading spaces. The largest units in the building will be two (2) bedroom units which will generally be well-serviced by a 30 foot loading berth.

As stated above, the requested relief will be necessary for the first phase of the Project only. A 55 foot loading berth for the residential space in the Project will be provided in the second phase and will be located on the northern portion of the Property on Chillum Place, NE. The Applicant will be able to arrange such a loading berth since the Project will then have a residential-related structure that can handle a 55 foot loading berth and can take advantage of the topography on Chillum Place, NE, rather than being negatively affected by it.

The variance application will be reviewed by the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 4B,. In addition, the Applicant will meet with Muriel Bowser, the Property's Single Member District ANC Commissioner. To date, the Applicant has met informally with community members and is not aware of any opposition to



this case. The community has been supportive of the Project and related development of nearby parcels.

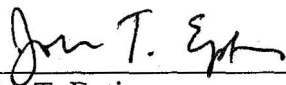
**V. EXHIBITS IN SUPPORT OF APPLICATION**

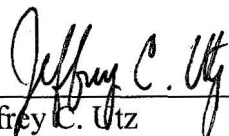
- A. BZA Form 135, Self Certification
- B. Proposed Plans
- C. Zoning Map & Sanborn Atlas Excerpts with Property outlined in red
- D. Building Plat
- E. Authorization Letter from Property Owners
- F. Photographs of the Property
- G. BZA Form 120, Application
- H. List of Owners of Property within 200 feet of the Subject Site
- I. Statement of Existing and Intended Uses

**VI. CONCLUSION**

For all of the above reasons, the Applicants respectfully request approval of the subject application.

Respectfully submitted,

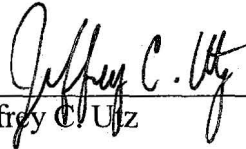
  
\_\_\_\_\_  
John T. Epting *AW*

  
\_\_\_\_\_  
Jeffrey C. Utz

December 18, 2006

### **Certificate of Service**

I certify that on December 18, 2006, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.

  
\_\_\_\_\_  
Jeffrey C. Utz

Office of Planning  
801 N. Capitol Street, NE  
Suite 4000  
Washington, DC 20002

ANC 4B  
6856 Eastern Avenue, NW #314  
Washington, DC 20012