

MEMORANDUM

TO: Joel Lawson, Office of Planning

FROM: Jeff Utz
David Lewis

DATE: July 7, 2016

SUBJECT: Zoning Commission Case No. 15-32 – Application of 1126 9th St NW LLC (the “Applicant”) – Memo Regarding Parking and M Street Height Flexibility

This memorandum responds to the request for additional information set forth in the Office of Planning’s Memorandum to the Zoning Commission, dated June 27, 2016 (“**OP Report**”). Among other items, the OP Report requested further justification relating to the flexibility requested from (i) the height limitation along M Street in the Downtown Development (“**DD**”) Overlay pursuant to Section 1706.15 of the Zoning Regulations, and (ii) the parking requirement pursuant to Section 2101.1 of the Zoning Regulations.

We note that this memo does not discuss the requested flexibility from the roof structure setback requirements of Section 411.18 or the closed court requirements of Section 776.4, since discussions of both elements were included in the Applicant’s April 12, 2016 pre-hearing filing in response to the Zoning Commission’s request at setdown. However, many of the reasons for the need for flexibility relief and the satisfaction of the standards noted in this memo are similar to some of those described in the April 12th filing.

A. DD Overlay M Street Height Relief

The Applicant’s project (the “**Project**”) includes a design along M Street, NW that requires flexibility relief from Section 1706.15 of the Zoning Regulations which limits a building’s maximum height to 60 feet within 40 feet of M Street, NW at the Property. The Project satisfies the standards for variance relief with respect to its proposed height along M Street, NW as described below.

The Project is designed to have a baseline height of 54 feet, 2 inches for the component of the Project along the M Street frontage. However, two “rooftop” loft elements (the “**Lofts**”) along that frontage will reach a maximum height of 61 feet, 4 inches, exceeding the maximum height by 1 foot, 4 inches. As a result, the Applicant seeks flexibility from Section 1706.15 to allow the Lofts as proposed.

In order to meet the standard for area variance relief: (a) the property must be affected by an exceptional or extraordinary situation or condition, (b) the strict application of the Zoning Regulations must result in a practical difficulty, and (c) the granting of the variance must not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). The Project satisfies each of these three conditions for the requested height relief.

a. The Property is affected by an exceptional or extraordinary situation or condition

The presence of exceptional or extraordinary situations or conditions may arise from a confluence of factors that tend to affect the property only (rather than the neighborhood generally), although the factors need not be unreservedly unique to the subject property. Conditions affecting the Property are exceptional and satisfy this standard, as described below.

As a threshold matter, the Property has an irregular “T”-shape, is narrow in width, and is relatively small. It is also bounded on three sides by existing buildings, each of which are built to the lot line, and two of which are contributing to the Shaw Historic District. These elements create a unique configuration whereby the ability to create a unified, cohesive design between the M Street and 9th Street frontages is significantly challenged.

Further, since the Property is within a Historic District, the Project has obtained concept design approval from the Historic Preservation Review Board (“**HPRB**”). In addition, the Property contains a contributing historic structure that will be retained and integrated into the Project. The HPRB approval of the design of the Project includes, among other things, the two Lofts at the proposed height and configuration sought herein as integral architectural elements of the Project. These elements contribute to the modulated sculptural quality that was a key design theme during the historic preservation review.

These several factors are not general conditions of the neighborhood, but present a confluence of factors that are unique to the Property, all of which constrain the ability to present a unified design over the Project’s two components – the M Street and 9th Street elements. The Property therefore satisfies the exceptional or extraordinary condition prong of the variance test.

b. The strict application of the Zoning Regulations would result in a practical difficulty

The strict application of Section 1706.15’s building height limitation would create unnecessary burdens on the Project. If the height limit of Section 1706.15 were strictly imposed, the Lofts would not be usable and would not comply with the design objectives approved by the HPRB.

Reducing the height of the Lofts by 1 foot, 4 inches to comply with strict requirements of Section 1706.15 would render the Lofts uninhabitable because their ceiling heights would be too low (at 7 feet clear). Reducing the heights of all floors below the sixth floor to allow for the building to decrease 1 foot, 4 inches overall would also have an adverse effect on the Project. The second through fifth floors are already designed to present a modest profile along M Street. The first floor is designed to provide a 13 foot clearance to allow for flexibility for the

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commercial users at such level. This 13 foot clearance has the effect of pushing the rest of this building component up.

In addition, the Lofts represent a continuation of the bay features of the Project's M Street façade, which features the HPRB approved as integral to connecting the design of the Project elements across an awkwardly situated site. Reducing the height of the Lofts would likely eliminate such elements altogether, removing the essential design feature and stranding the project's primary facades from one another.

Therefore, the Project satisfies the "practical difficulty" prong of the variance test.

c. The granting of the relief does not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan

Finally, the granting of the flexibility must not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan for the Zone District in which the Property is located. The additional 1 foot, 4 inch height beyond 60 feet for the Lofts as described above does not cause substantial public detriment and does not substantially impair the intent, purpose or integrity of the Zone Plan.

It is noteworthy that the requested relief is merely for 16 inches of additional height or 2.2 percent of the total building height along this frontage. In addition, only one of the two Lofts is fully within the 40 foot setback from M Street, NW (for a depth of 15 feet, 8 inches). The Loft that is further from M Street encroaches into the 40 foot setback by only 8 inches. The total depth of the encroachment is 16 feet, 4 inches. The flexibility request is truly *de minimis*. The Applicant seeks no more relief from the Section 1706.15 height requirement than is necessary to provide a complementary architectural feature across the building from the Project's M Street frontage to its 9th Street element and an efficient use of the M Street component's uppermost plane.

The Lofts have been designed to minimize impacts on immediate neighbors in the Whitman Condominium building (the "**Whitman**"), many of whom entered letters of support into the record for the Project. Moreover, the Lofts do not limit or prevent light or air from reaching the neighboring buildings, including the Whitman, in a manner materially contrary to the limits imposed by the Zoning Regulations. Indeed, the requested height flexibility is consistent with the similar relief granted by the D.C. Board of Zoning Adjustment ("**BZA**") to the Whitman in BZA Case No. 17167. Under that case, vertical elements on the Whitman within 40 feet of M Street, NW also exceed a maximum height of 60 feet. The Lofts are consonant with such existing neighboring elements and are in fact lower than the eastern façade of the Whitman within the Section 1706.15 height limitation area. Therefore, the height flexibility requested for the Lofts does not adversely affect the urban form adjacent to M Street. In fact, the Lofts allow for complementary masses to step up to the Whitman's mass and height at this location.

From an urban design perspective, the Lofts do not impair the intent, purpose or integrity of the Zone Plan, which is to ensure an approximately uniform maximum height along M Street, NW. The *de minimis* extent of the requested flexibility is consistent with such intent, purpose and integrity. Moreover, the Lofts are consistent with other significant design objectives for the neighborhood, which include ensuring that new construction is distinguished from neighboring

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historic structures while maintaining a contextual vocabulary. The Lofts achieve these objectives by functioning as a design element to both distinguish the new portions of the Project from the surrounding historic buildings while offering an aesthetic connector between the Project's elements. The design of the Lofts is part of an overall design response to comments from HPRB and neighbors.

As primarily design features, the area of the Lofts within the M Street height setback area comprises an area of only approximately 196 square feet. The dimensions of the proposed Lofts are consistent with the bays and other design articulation endemic to the historic Shaw neighborhood.

B. Parking Relief

The OP Report requested additional justification regarding the Project's requested flexibility from the parking requirements of Section 2101.1 of the Zoning Regulations.

The Applicant's Project proposes two non-compliant parking spaces at the rear of the Property (one of these spaces will be utilized by two smaller carshare cars as currently proposed) when 9 parking spaces would otherwise be required under Section 2101.1. The Project satisfies the standards for variance relief with respect to its proposed parking approach. The variance standards for such relief are described in Section A above.

a. The Property is affected by an exceptional or extraordinary situation or condition

As noted above, conditions affecting the Property are exceptional and satisfy this standard because the Property has an irregular "T"-shape, is narrow in width, and is relatively small. It is also bounded on three sides by existing buildings, each of which are built to the lot line, and two of which are contributing to the Shaw Historic District. These factors are not general conditions of the neighborhood, but present a confluence of factors that are unique to the Property. All of these factors constrain the ability to design a viable parking layout at the Property. The Property therefore satisfies the exception or extraordinary condition prong of the variance test.

b. The strict application of the Zoning Regulations would demonstrably result in a practical difficulty

The strict application of the parking requirements of the Zoning Regulations would create practical difficulties for the Project.

Most importantly, the dimensions and configuration of the Property would not allow for underground (which would be the preferred option for the provision of parking on site) or above-grade structured parking. The size of the lot and its odd configuration would result in a highly inefficient ramping configuration. Further, the driveway and aisles required to traverse the garage and provide for two way traffic would reduce the area of the garage usable for parking even further. Perhaps most importantly, the cost to build such a garage would make the Project financially infeasible while yielding only a small number of parking spaces. Excavating beneath the historic structure, particularly on this small and narrow lot, would be exceedingly expensive and difficult.

Further, the open portion of the lot is too small to accommodate adequate surface parking in light of the historic preservation and design objectives. That is, the existence of the historic resource on the Property would disallow parking being located on the entirety of the ground floor of such structure. In addition, parking at grade along M Street would require relief from Section 2116.12 which requires that no parking spaces are located within a structure at grade within 20 feet of a street frontage. Without such relief, the parking provided at grade would be reduced even more. Further still, the provision of such parking at grade would also be in contravention of planning concepts for this site encouraging active first floors, able to contribute to the Downtown streetscapes.

Based on initial conversations with DDOT, it is also unlikely that the Applicant would be able to obtain curb cuts at the Property along either M or 9th Streets, NW. Instead, access to the parking would only be able to be routed through the rear alley, which would further exacerbate the physical limitations and challenges on the Property. Any ramping from such entrance to a garage would be required to achieve a full vehicular clearance for the entirety of the ramp in a short distance to be able to slide under the historic resource. Any such ramp would need to achieve sufficient clearance for a car (at least 6 feet, 6 inches) within the 45 feet from the alley to the historic structure, which would result in a steep slope of such ramp and eliminate any other use of the rear yard (along with creating potentially dangerous conditions).

Therefore, the Project satisfies the “practical difficulty” prong of the variance test.

- c. *The granting of the relief does not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan*

Finally, the Project’s parking does not cause substantial public detriment to the public good and does not substantially impair the intent, purpose or integrity of the Zone Plan. The Project’s location near a Metrorail station, multiple bus lines and proximity to Downtown significantly mitigate any concerns regarding the requested parking flexibility. The Applicant has proposed a robust Transportation Demand Management Plan (“**TDM Plan**”). The TDM Plan, which the Applicant prepared in coordination with DDOT, sets forth additional transportation mitigation elements that will be incorporated into the Project, including on-site parking for car-sharing options. In short, the Project’s residents will benefit from a number of mobility options that will reduce the need for car ownership and private on-site vehicle parking. Moreover, ANC 2F unanimously approved the Project with the proposed parking relief after closely reviewing the Project’s parking proposal.

Despite the above, the Project provides the maximum amount of on-site parking practical given the exception conditions affecting the Property.

It is also worth noting that under the 2016 Zoning Regulations (to go into effect in September 2016), new construction on the Property would not be required to provide any parking on site. The Applicant recognizes that the instant applicant is proceeding under the Zoning Regulations currently in effect, but uses this point to illustrate that the Zone Plan is consistent with the market reality that such a transit-accessible site requires minimal on-site parking. There will be no adverse effect on the Zone Plan with the proposed parking levels.

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Conclusion

As set forth above, the Applicant believes that flexibility from the M Street height limitation of Section 1706.15 and the parking requirement of Section 2101.1 is justified for the Project. The Project meets the variance tests for both such elements of flexibility as described above.

The Applicant appreciates the opportunity to provide the above additional information and your review of this application.

If you have any questions regarding this application, please feel free to contact Jeff Utz at 202-721-1132 or Dave Lewis at 202-721-1127. Thank you for your attention to this application.