

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

**APPLICATION OF
TM JACOB, LLC
2018**

**Z.C. CASE NO. 18-13
HEARING DATE: NOVEMBER 15,**

SUPPLEMENTAL STATEMENT OF THE APPLICANT

I. EXECUTIVE SUMMARY AND RELIEF SOUGHT

This supplemental statement is submitted on behalf of TM Jacob, LLC (the “Applicant”), the owner of the property located at 1530 First Street SW, (Square 0656; Lot 53) (the “Property”) to provide additional information regarding the pending application No. 18-13 (the “Application” or the “Project”). In addition to information provided in the updated plans attached at **Exhibit “A”**, due to a recently adopted zoning text amendment (08-06P), the Applicant now requests variance relief from the plaza requirement of Subtitle K § 504.13. But for this minor change, no other relief or aspects of the Project are being amended through this Supplemental Statement. Accordingly, this Supplemental updates the Applicant’s “Statement in Support” filed at ZC Exhibit No. 2 (the “Initial Statement”) and “Prehearing Statement” filed at ZC Exhibit No. 21.

II. PLAZA REQUIREMENT-APPLICANT MEETS BURDEN FOR VARIANCE RELIEF

The Applicant filed the initial application on August 10, 2018 seeking design review, area variance from the loading requirements and special exception relief from the court and lot occupancy requirements, See ZC Ex. No. 2. As discussed in the Applicant’s Pre-Hearing Statement, with the proposed adjustments to the loading area to provide a 20’-service space and a platform, loading variance relief is still required from the 30’-loading berth requirement.

Since then, the Applicant has communicated with Office of Planning, and now understands that a variance from the plaza requirement of Subtitle K § 504.13 is now required because the Property area exceeds 10,000 s.f. The Applicant notes that at the time the Application was filed, the language of the Zoning Regulations exempted First Street SW for a project, like the Application, that intended to provide preferred uses as designated in Subtitle K § 509.2. However, since that time, the Zoning Commission has adopted Z.C. 08-06P, which includes technical correction to Subtitle K § 509.1(c) to refer to First Street SE, instead of First Street SW, as a “designated street.” Z.C. 08-06P became effective on October 26, 2018. Accordingly, for the reasons below, the Applicant now seeks relief from this plaza requirement.

A. Impact of the Plaza requirement on the Project

If required, the Subtitle K § 504.13 plaza requirement would mandate that 8% of the Property’s total lot area along the First Street frontage would be devoted to plaza area pursuant to Subtitle C § 1700. This would result in the Applicant needing to provide approximately 1,057 s.f. of “plaza” open space abutting the existing public space along First Street. Due to the Property’s narrow, 75’-foot frontage, to accommodate the required 1,057 s.f. of plaza space, the ground floor (at the very least) would need to be pulled in an additional 14’ from the property line. As the public space/side walk area along First Street is already expansive – approximately 28’ from the curb to Property line – to satisfy the plaza requirement, the Project’s first floor would need to be pulled in another 14’, thereby creating an excessive 42’-wide ground floor open area. In light of the unique zoning history discussed below, this 42’-open area would only be located in front of the Property; it would not be provided on either property to the south (the first phase of this development approved in Z.C. 17-13) or the north (which is zoned RF-1). Further, this plaza requirement would reduce the Project’s retail square footage by approximately 15%, and create a

retail space that would may be difficult to market or lease due to its likely dark, cavernous, and awkward shape. Such design would be contrary to the goals of the Comprehensive Plan including supporting Economic Development and enhancing Urban Design (which aims to improve the vitality, appearance and security of streets and public spaces), as well as aspects of the Buzzard Point Vision Framework + Design Review Guide (the “Buzzard Point SAP”) and the Buzzard Point Streetscape Guidelines (the “Streetscape Guidelines”). Those plans encourage creating neighborhoods that feature architecture and open space that “fulfill[s] goals for neighborhood delight, equitable access, livability, safety, and social interactions.” Incorporating the required plaza into the Project would likely result in a streetscape that is less inviting, which would be contrary to these plan goals.

B. Nature of Variance Relief and Standard of Review

Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § X-1000.1, the Board is authorized to grant an area variance where it finds that:

- (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 must 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, “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).¹

C. The Property 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*, 579 A.2d at 1168.

In addition to the exceptional conditions discussed in the Applicant’s Initial Statement at Z.C. Ex. No. 2, the Property is characterized by an exceptional situation and condition arising from a confluence of factors: (1) the Property has a narrow, 75’ frontage; (3) the Property is located on

¹ Further, it is well established that the reviewing authority (either the Zoning Commission or the Board of Zoning Adjustment) can be “ ‘more flexible’ in applying the three-part test for a variance when the applicant is a non-profit organization (rather than a for-profit entity), especially where the organization is seeking the zoning relief in order to meet a public need or serve the public interest”. *See Neighbors for Responsive Gov’t, LLC v. D.C. Bd. Of Zoning Adjustment*, 2018 D.C. LEXIS 441, 40 (D.C. 2018); *citing to Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979), 407 A.2d at 1098; *see also St. Mary’s Episcopal Church v. District of Columbia Zoning Comm’n*, 174 A.3d 260, 269-70 (D.C. 2017); *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949, 956 (D.C. 1990); *Nat. Black Child Dev. Inst., Inc. (“NBCDI”) v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). Such flexibility would apply to the Application because the Applicant is in a Joint Venture with the United Planning Organization Community Development Corporation, which is a 501(c)(3) non-profit organization, and the Project serves the public need by providing an all-affordable project with units to be rented at between 30% and 50% Area Median Income. We note that in *St. Mary’s Episcopal Church* case, the Court remanded the decision back to the BZA and expressly directed it to evaluate the application using the more “flexible”- non-profit standard because that was a project where the developer joint-ventured with a non-profit organization. *See St. Mary’s Episcopal Church*, 174 A.3d at 269-70. The same premise would apply here.

the zone boundary line with the RF-1 zone; and (3) unique development/zoning history as the second phase of the sister-project already approved at 1550 First Street, providing a plaza would be incongruent with the approved building line/public space area.

D. Strict Application of the Zoning Regulations Would Result in Practical Difficulty

Based on the exceptional conditions discussed above, strict application of the Zoning Regulations with respect to the Plaza Requirement would result in a practical difficulty to the Applicant. Indeed, the narrow frontage of the lot would require a plaza to be set back approximately 14 feet into the ground floor. Such a setback on the ground floor level would cause myriad practical difficulties to the residential lobby area, the retail space and the streetscape.

First, as to the impact on the residential lobby, as a general matter, the entire lobby area cannot be pushed back 14' toward the rear of the site without severely impacting the vehicular garage access, which is already at a 16% grade. Such a relocation of the lobby towards the rear would effectively shorten the vehicular access run, likely making that access steeper and potentially reducing its functionality and/or compliance with building and/or DDOT requirements. As such, this means that the creation of the plaza would result in a 14'-reduction in the size of the lobby, rather than its relocation. Such reduction cannot be accommodated in the residential elevator/ stair core, which is designed and located to satisfy building and fire safety code requirements. Accordingly, any reduction in the lobby size would have to be taken from the general lobby area (resident mailboxes/ entrance) or the leasing bays. The design standards require the general lobby uses must have street frontage, and would likely not be able to be reduced in size. As such, the provision of the required plaza would likely result in the removal of one of the two, proposed leasing bays. In this case, providing two leasing bays (or at the very least space for two desks within a leasing bay) supports the Project's programing and mission because of the

added administration required in providing the lowest income affordable housing. As discussed in the pre-hearing statement, the lowest income tenants who satisfy the 30% AMI requirements will be referred to the Project through the District's Coordinated Entry System, rather than lease units through a more traditional leasing program. If one of the leasing bays is removed to accommodate the plaza, the provision of this affordable housing will become much less efficient because the District's Coordinated Entry System staff would not be able to use a dedicated space to process those tenants.

Second, requiring the plaza creates a practical difficulty for the Applicant to provide a successful retail space. Generally, a plaza would reduce the overall retail space by 15%, bringing that space to just under 6,000 s.f. Such a size could make the area difficult to lease, because it could be too large for one retailer and potentially too small and awkwardly arranged to be bifurcated into two separate retail spaces. This potentially difficult leasing issue would be compounded by the fact that if the plaza is provided, it would essentially be an open space over which the upper stories of the Project would be cantilevered. This design has the likelihood of limiting direct light into the retail space, which is less attractive for successful retail leasing, especially neighborhood-serving uses such a restaurant. In addition, due to the northern lot line condition, the proposed "at risk" ground-floor windows" could be covered by a future development, further reducing the amount of light into the retail space. In sum, requiring the plaza could create a dark, cavernous retail space condition that could be detrimental to the overall goals of the Project as well as the District's plans and goals that support economic development and enhancement of the Buzzard Point area.

Third, in light of the RF-1 zoned property to the north and the approved 1550 First Street project to the south (neither of which require, or are providing, a plaza), the requirement for a plaza

on the Project will cause a practical difficulty by creating a jagged, awkward streetscape. Specifically, both 1550 First Street and any development to the north could be built to the property line, while the 75'-frontage of the Project would be pulled in by 14', likely bounded on both sides by a blank wall. Such condition would be odd at best, and certainly uninviting to pedestrians, who would likely be confused by the creation of a potentially tunnel-like entrance into Property. In sum, the resulting jagged streetscape caused by a required plaza would create a practical difficulty on the Applicant.

E. No Substantial Detriment to the Public Good or Impairment of the Zone Plan

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief for the Plaza Requirement. The relief requested does not impair the Zone Plan because it permits the Applicant to construct a thoughtfully designed project that is congruous with its neighboring properties and allows a cohesive public space design in furtherance of the goals for the neighborhood and surrounding area. As designed, the Project already provides 28 feet of public space along First Street SW that together with the public space proposed in front of 1550 First Street creates a corridor of welcoming and usable public space. The current design (without the plaza) creates a walkable and pedestrian friendly streetscape and furthers the goals set forth in the Comprehensive Plan for the Buzzard Point area.

Finally, the public good will not be detrimentally impacted because providing a consistent building façade with 1550 First Street will facilitate use of the proposed public space. It will also will help to enhance the security and liveliness of the streets and the public space as well as advance successful ground floor retail through the creation of an attractive facade that seamlessly ties into

1550 First Street. Requirement for a 14'-deep plaza along the Project's frontage would neither advance public policy goals nor benefit the public good.

III. NO ADDITIONAL RELIEF NEEDED FOR PARKING OR PENTHOUSE SETBACK

A. Project is eligible for the Transit Proximity Parking Reduction

The Project proposes a total of 23 parking spaces in satisfaction of the Zoning Requirements because the Project is located within 0.5 miles from the Waterfront Metro station. *See* Subtitle C § 702.1(a). This distance is illustrated on the information provided from Walkscore.com and the District's zoning map, as shown in Exhibit "B".

Specifically, the Walkscore information identifies the Waterfront Metro station as located 0.5 miles from the Property. Further, the zoning map shows the Property is 2,471 feet from the Waterfront Metro station, or .47 miles. No additional relief is required for the parking spaces.

B. Penthouse railing is setback 1:1 from front roof wall

As shown on Sheets A-37 and A-38, the proposed 3'-6" railing along the front of the penthouse will be set back 4'-8" from the front building wall of the roof on which it is located. Accordingly, the penthouse railing setback, which exceeds 1:1, complies with the front setback requirement of Subtitle C § 1502.1(a). No additional relief is required.

IV. UPDATED PLANS

A. Information about satisfying IZ in the future

The Project will be 100% affordable and funded in whole or in part by the Federal or District Government and administered and/or monitored by the Department of Housing and Community Development, etc. Accordingly, the Project would not be subject to Inclusionary Zoning ("IZ") pursuant to Subtitle C § 1001.6.

However, even though the Project is not subject to IZ, as was required in Z.C. 17-13, the Applicant is providing an illustrative IZ analysis at sheet A-52 of the Revised Plans at **Exhibit “A”**. This sheets demonstrates how the Project could conform with the current IZ set-aside and unit mix requirements upon expiration of the 40-year public funding stream.

B. Clarification of North Elevation At First Floor

The Project proposes windows along the north property line intended to allow some natural light to enter the retail space on the first floor level. *See* North Rendered Elevation at sheet A-28 in **Exhibit “A”**. The Applicant is aware that these proposed windows are “at-risk” because the window openings are located along the side lot line.

C. Provision of Zoning Information Sheet

The Applicant has provided a zoning information sheet that tabulates the zoning information illustrated in the Revised Plans. *See* sheet A-50 of **Exhibit “A”**.

D. Building Signage Details

The Applicant has provided building signage details that illustrate the proposed design and dimensions of the Project’s residential and retail entrances on the first floor. *See* signage details 5 and 6 on sheet A-31 of **Exhibit “A”**.

E. Revisions and Clarifications to First Street SW Streetscape Improvements

The Applicant has updated and expanded the First Street SW streetscape plan to demonstrate conformance with the Buzzard Point Streetscape Design Guidelines. Sheet A-42 provides a plan view of the proposed streetscape, identifying the location and dimensions of the retail and residential entryways, as well as the proposed seating area, brick planters, tree boxes and short-term bicycle storage facilities. Further, sheet A-42 illustrates the colors and materials for the

brick pavers within the public space along First Street proposed for both the Project and 1550 First Street, demonstrating the cohesive nature of the proposed public space improvements.

Also, Sheet A-43 shows a cross-section of the streetscape area and provides dimensions and materials of proposed public space improvements, including low impact development stormwater management facilities. In addition, sheet A-42 lists the specifications for “All Other Streets” in the Buzzard Point area which include:

- Brick sidewalks, granite curbs, and traditional Washington Globe streetlights
- Permeable brick pavers between the tree boxes to increase stormwater management efforts
- Streetscape responds to the ground floor use of the building, with 10’-wide sidewalks adjacent to retail uses and 8’-wide sidewalks with landscaping adjacent to residential uses or along blank walls

See sheets A-42 and A-43 of **Exhibit “A”**. The Applicant will continue to refine the public space improvements through the Public Space Committee process and will coordinate public space improvements associated with the Application with those required for 1550 First Street to create a consistent public space area along First Street.

F. Green Building Features

As proposed, the Project seeks LEED Silver certification, as shown on the LEED Scorecard tabulation on sheet A-51 at **Exhibit “A”**.

The Applicant continues to explore available opportunities to enhance the green elements of the Project design, including potentially working through the District to locate solar panels on the roof. The Applicant will continue these efforts. However, based on the current evaluations and meetings with District staff it appears that the costs associated with the enhancements, would likely be prohibitively expensive, given the 100% affordable nature of the Project.

V. COMMENT ON NOVEMBER 1, 2018 “UPDATED” PARTY STATUS REQUEST

The Applicant is in receipt of an “Updated” Party Status request served on November 1, 2018 on behalf of Hosea McLain, Gazmyn McClain, Sylvia Carroll and Geraldine McClain (the “Opposition”) (the “Updated Request”). The Updated Request makes no substantive changes to the original request filed on September 6, 2018. Rather the Updated Request includes minor changes, such as the removal of a reference to a PUD, and advises the Commission that the Opposition will not provide their own expert witnesses, but will “rather cross examine the expert witnesses of Applicant.”

The Applicant continues to oppose the Party Status request for the same reasons set forth in its September 7, 2018 Opposition, filed in the record at ZC Exhibit No. 11. The Opposition’s claims are general in nature and in no way explain how the Opposition would be “more significantly, distinctly, or uniquely affected” than the general public. For these reasons, the Applicant continues to respectfully ask the Commission to deny the Updated Request for Party Status as a preliminary matter before the November 15, 2018 hearing on the Application.

VI. CONCLUSION

For the reasons stated above, the Project meets the applicable standards for design review and area variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Zoning Commission grant the relief requested for the reasons stated herein, as well as those set out in the Initial Statement, the Pre-Hearing statement and the testimony provided at the hearing.

Respectfully Submitted,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to be 'MMD', written over a horizontal line.

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