



Cary Kadlecek
ckadlecek@goulstonstorrs.com
(202) 721 1113

Derick Wallace
dwallace@goulstonstorrs.com
(202) 721 1120

Lee S. Templin
ltemplin@goulstonstorrs.com
(202) 721-1153

July 2, 2024

VIA IZIS

Mr. Anthony J. Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Z.C. Case No. 23-29: Application of Martin’s View LLC (“Applicant”) for a Consolidated PUD & Map Amendment from RA-1 to RA-2 at 4337-4347 and 4353-4363 Martin Luther King Jr. Avenue SW, 201-211 and 200-210 Elmira St. SW (Parcels 252/0082, 252/0083, 252/0092, and 252/0086) (“Property”) – Pre-Hearing Submission

Dear Chairperson Hood and Members of the Commission:

On December 22, 2023, the Applicant filed the above-referenced application for a consolidated PUD and map amendment from the RA-1 to RA-2 Zone for the Property (“**Application**”). The Application was set down on March 28, 2024 and is scheduled for a public hearing on July 22, 2024. Pursuant to Subtitle Z § 401.5, the Applicant hereby submits the following supplemental information. Attached as Exhibit A is an executive summary describing the Application. Attached as Exhibit B are updated plans (“**Updated Plans**”).

I. Additional Benefits and Amenities Proffer

The Applicant proposes a new public benefit proffer to install a mid-block crossing on Elmira Street, as shown on Page L03 of the Updated Plans. This mid-block crossing will provide safe pedestrian access for Building 1 residents to the central courtyard amenity space and daycare located north of Elmira Street, in between Buildings 2 and 3. The mid-block crossing will be further coordinated with the District Department of Transportation (“**DDOT**”) during the public space permitting process.

II. Heritage Trees

Two heritage trees are located at the north end of the Property where future “Building 4” will be located. The Applicant previously proffered relocation of these two heritage trees to Fort Greble Park. However, the Urban Forestry Division (“UFD”) has since visited the Property and diagnosed these two heritage trees with decay, hollows, and hazardous conditions, and it recommended that the trees be removed rather than relocated. Accordingly, the Applicant will remove the trees per UFD’s recommendation. See page L02 of the Updated Plans for further details.

III. Community Engagement Update

The Applicant has engaged extensively with the community and Advisory Neighborhood Commission (“ANC”) 8D regarding the Project since Fall 2023, as described at Exhibit 2 (pages 20-22) and Exhibit 12B of the record. Since the pre-hearing submission filed on April 17, 2024, the following additional community engagement has occurred:

- April 22, 2024 – Project Update for Martin’s View Residents (Virtual)
- May 2, 2024 – Martin’s View Seniors Brainstorm Meeting (Living Word Church)
- May 11, 2024 – Martin’s View Meet & Greet (Virtual)
- May 21, 2024 – Phone Calls to Neighbors
- May 23, 2024 – ANC 8D Community Meeting (Community of Hope)
- May 25, 2024 – Community Office Hours (Virtual)
- May 30, 2024 – Community Office Hours (Virtual)
- May 30-31, 2024 – Phone Calls to all Martin’s View residents with known phone number
- June 5, 2024 – Community Meeting (Bellevue/William O. Lockridge Neighborhood Library)
- June 10, 2024 – Martin’s View Community Open House (Virtual)
- July 10, 2024 – Martin’s View Resident Update (Virtual)

The Applicant is pleased to have the support of ANC 8D, as shown in their letter of support, found at Exhibit 20 of the record. The Applicant will continue to engage the ANC and community as the Project progresses.

IV. Mechanical Penthouse Height Flexibility and Variance Relief

The Applicant has requested flexibility to permit a mechanical penthouse height of 18.5 feet, solely to accommodate the Project’s elevator overruns. Subtitle X § 303.18 limits the mechanical penthouse height for a PUD in the RA-2 Zone to the height that is allowed as a matter of right; that is, a height of 15 feet as set forth in Subtitle F § 205.1. Accordingly, the Applicant requests a variance from Subtitle X § 303.18 to allow mechanical penthouses for only the elevator overruns that are 18.5 feet tall.

As the Commission is aware, for many years the Zoning Regulations allowed a mechanical penthouse height of up to 18'-6" in most zones. When the Commission overhauled the penthouse regulations to allow for habitable penthouses, the Commission established a lesser mechanical penthouse height of 15 feet in certain zones where building heights are limited to 50 feet or less, in order to encourage the use of hydraulic system elevators that do not require a larger penthouse to accommodate an overhead pulley system. For building heights exceeding 50 feet, hydraulic systems cannot accommodate the travel distance of the elevators and so an overhead pulley system enclosed in a taller penthouse is necessary. Subtitle X § 303.18 appears to acknowledge this for other zones that are constrained to a by-right height of 50 feet and allow greater height for a PUD, but the RA-2 Zone—which allows 50 feet of height by right and 60 feet of height with a PUD—is not included. Accordingly, the variance relief is necessary to allow the Project to achieve the heights that are otherwise allowed for a RA-2 PUD. Here, as shown on page A22.1 of the Updated Plans, an elevator shaft with a minimum vertical dimension of 18'-6" above the roof level is necessary to provide elevator access to the penthouse level. As described below, the requested mechanical penthouse height flexibility meets the area variance standards.

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

The D.C. Court of Appeals has held that an exceptional situation or condition need not arise from a single situation or condition on the property, but rather it may arise from a “confluence of factors.” *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1217 (D.C. 2016) (citing *Metropole Condo. Ass’n V. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-83 (D.C. 2016)). In addition, the exceptional situation or condition relates not just to the “land,” but to the “property.” *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 293 (D.C. 1974). The Court has also held that the unique circumstances should adhere specifically to the property in question “and not to the general conditions in the neighborhood.” *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 540 (D.C. 2011).

The Property is exceptionally large at approximately 4.9 acres or 213,748 square feet. It is currently improved with small, aging apartment buildings that are obsolete and in need of repairs and upgrades. The Property’s location is unusual in that it is a residential property – indicated for Moderate Density Residential use on the Future Land Use Map (“**FLUM**”) – but surrounded by large non-residential uses: Leckie Elementary School directly to the north, BridgePoint Hospital National Harbor directly to the south, and Fort Greble Park directly to the west. It is rare that a residential property is surrounded by three essential community amenities such as a school, park, and hospital. In addition, the Property’s FLUM designation, as stated in the Framework element, explicitly indicates RA-2 as an appropriate zone. The Property is designated as a Neighborhood Conservation Area on the Generalized Policy Map (“**GPM**”), which is intended to conserve and enhance established neighborhoods, but not preclude development, particularly in addressing housing needs. In addition, in areas with access to opportunities, services, and amenities, such as the Property, the Framework Element indicates that more levels of housing affordability should be accommodated. Thus, the Property is

uniquely positioned to further the policies of the FLUM and GPM by providing additional housing to the area.

A PUD in the RA-2 Zone is unique in that additional height is not permitted for a mechanical penthouse, unlike PUDs in numerous other zones. Subtitle X § 303.7 permits additional building height up to 60 feet for a PUD in the RA-2 Zone; however, Subtitle X § 303.18 does not permit additional penthouse height for a PUD, unlike in other zones.

These several factors contribute to an exceptional and extraordinary condition in that the Property is prime for redevelopment given its size, the age and deterioration of existing structures, and the essential community facilities nearby. In addition, the Property's FLUM and GPM designations position the Property uniquely to provide a large amount of new residential units. These categories along with the maximum permitted PUD height of 60 feet encourages the site to be redeveloped from the existing 156 residential units to the proposed 821 units.

B. The Strict Application of the Zoning Regulations will Result in a Practical Difficulty to the Applicant

The Court of Appeals has held that to demonstrate the “practical difficulty” standard, an applicant must show that “compliance with the area restriction would be unnecessarily burdensome.” *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). The Court has further held that the Board may consider a “wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty,’” including “the weight of the burden of strict compliance.” *Gilmartin*, 578 A.2d at 1171.

Here, there are practical difficulties in complying with the mechanical penthouse requirement because a building height of 60 feet—which is consistent with the goals of the Zoning Regulations and the Comprehensive Plan—cannot accommodate an elevator system that fits within a 15-foot mechanical penthouse height. There are two types of elevators: hydraulic and cable. Hydraulic elevators do not provide the necessary travel distance from the below-grade parking garage to the penthouse and therefore are impractical. Only cable elevators are feasible for the Project as proposed. The travel distance from the below-grade parking garage to the penthouse is approximately 85 feet. Attached as Exhibit C is manufacturer materials for hydraulic elevators. These materials demonstrate the limitations of hydraulic elevators for the Project. All three types of hydraulic elevators - the Schindler, TK, and Otis - do not allow for the necessary 85 feet of travel distance required for the Project.¹ Therefore, the Project requires an elevator with overhead pulleys, the only viable option for the necessary travel distance.

The additional height for the elevator overruns is necessary to accommodate the elevator mechanical equipment as well as space above the elevator cab to accommodate equipment

¹ The Schindler elevators permit a maximum travel distance of 50 feet (see page 3, 5, 14, 16, 18, Exhibit C); TK Elevators permit a maximum travel distance of 33 feet 6.5 inches for an above-ground jack or 60 feet for a below-ground jack (see pages 26, 42, Exhibit C); and Otis elevators permit a maximum travel distance of 26.5 feet (see page 60, Exhibit C).

maintenance workers. The maximum 15-foot height permitted in the RA-2 Zone does not allow for the necessary space atop the cab of the elevator to perform maintenance work. Without this elevator overrun, the Applicant would have to modify the Project to eliminate the residential units on the penthouse because the elevator could not provide access to those units. A key component of the Project is its substantial affordable housing set-aside of 17% at 60% of the Median Family Income (“MFI”), plus a 10% set-aside for habitable penthouse space at 50% MFI. Elimination of the penthouse units would effectively reduce the amount of space set aside for affordable units.

Accordingly, the Applicant would suffer the practical difficulty of not being able to provide elevator access to residential units in the penthouse, effectively making those units or the two below-grade levels of parking not feasible. Consequently, with fewer units and less habitable penthouse space, the affordable set-aside for 50% MFI units would be impacted, resulting in less residential gross floor area dedicated to affordable units. The proposed elevator overruns that require only 3.5 feet of additional height provide the only feasible option to access two underground levels of parking, six levels in the building, and a habitable penthouse.

C. The Granting of the Variance will not Cause Substantial Detriment to the Public Good nor Substantially Impair the Intent, Purpose, or Integrity of the Zone Plan

Finally, the third prong of the variance test requires the Applicant to demonstrate that “granting the variance will do no harm to the public good or to the zone plan.” *Gilmartin*, 579 A.2d at 1167. The requested variance can be granted without causing any adverse impact on the neighboring properties or to the zone plan.

The elevator shafts are set back from the building roof at least 1:1 on both the courtyard and rear yard sides, as shown on page A22 of the Updated Plans. In addition, the elevator shafts are even further setback at least 2:1 from the building roof edges facing the public streets, private driveways, and public park. Thus, any potential visual impacts of the additional 3.5 feet of elevator overrun is more than adequately mitigated by exceeding the necessary setbacks. The intent of the penthouse setback requirements and height limit is to decrease visibility and reduce visual clutter. The more than adequate setbacks of the mechanical penthouses along with the minor relief requested of only 3.5 feet, is therefore consistent with the intent of the Zoning Regulations.

V. Expert Witnesses

Resumes for the following expert witnesses are attached as Exhibit D. Outlines of witness testimony are at Exhibit 12F of the record.

- JB Lallement, Eric Colbert & Associates, proffered as an expert in architecture;
- Gabriela Canamar, LandDesign, proffered as an expert in landscape architecture;

- Will Zeid, Gorove Slade, proffered as an expert in transportation planning and engineering; and
- Shane Dettman, Goulston & Storrs, proffered as an expert in urban planning.

VI. Conclusion

The Applicant looks forward to presenting the Application to the Zoning Commission at the July 22, 2024 public hearing. We appreciate the Commission's time and consideration of this matter. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Cary Kadlecek
Cary Kadlecek

/s/ Derick Wallace
Derick Wallace

/s/ Lee Templin
Lee Templin

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document and accompanying materials were sent to the following by email on July 2, 2024:

Michael Jurkovic
Office of Planning
michael.jurkovic@dc.gov

Erkin Ozberk
District Department of Transportation
Erkin.ozberk1@dc.gov

Jacqueline Kinlow – ANC SMD 8D01
8D01@anc.dc.gov

Sandra Harrell – ANC SMD 8D03
8D03@anc.dc.gov

Tara Brown – ANC SMD 8D04
8D04@anc.dc.gov

Travon Hawkins – ANC SMD 8D05
8D05@anc.dc.gov

Wendy Hamilton – ANC SMD 8D06
8D06@anc.dc.gov

Natasha Yates – ANC SMD 8D07
8D07@anc.dc.gov

Lakiah Williams – ANC SMD 8D08
8D08@anc.dc.gov

/s/ Lee Templin
Lee Templin