

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

Application of Team Washington, Inc. d/b/a Domino's Pizza
2330 Wisconsin Avenue NW

SUPPLEMENTAL STATEMENT OF JUSTIFICATION FOR VARIANCE REQUEST

I. Introduction

In this Application, Team Washington, Inc. d/b/a Domino's Pizza (the "Applicant") requests approval of a special exception and related variance to establish a new Domino's Pizza restaurant in an existing building located at 2330 Wisconsin Avenue NW (Sq. 1300, Lot 0815) (the "Property"). At the public hearing of the Board of Zoning Adjustment ("BZA") on December 20, 2017, the BZA requested that the Applicant submit this supplemental memorandum further justifying its request for the variance. The Applicant now provides the following additional information to supplement the Application and further justify the variance request.

II. The Variance Requested

The Property, which is split zoned MU-27 and R-13, is part of the 1950's-era "The Calvert Center" building and it includes an accessory 29-space parking lot shared by The Calvert Center's existing commercial tenants. Pursuant to the use permissions for mixed use zones in Chapter 5 of Subtitle U of the D.C. Zoning Regulations, the MU-27 zone is classified as MU-Use Group E. Pursuant to Section 513.1(c) of Chapter 5, a fast food establishment and/or food delivery service may be approved through a special exception in the MU-27 zone, subject to certain conditions. Given that the Property is split-zoned MU-27 and R-13, it is unable to meet one of those conditions, which states: "No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a

R, RF, or RA zone, unless separated therefrom by a street or alley.” The Board of Zoning Adjustment may grant relief from this condition pursuant to Section 1200.3 of Subtitle G of the zoning regulations applicable to mixed use zones. This form of relief shall be processed as a variance pursuant to Section 1200.3 of Subtitle G and Chapter 10 of Subtitle X.

III. Previous Justification for the Variance Requested

In previous filings in the BZA record in this case, the Applicant has supported its request for the variance in a number of ways. For example, the Applicant has stated that the commercial building on the Property is located within the MU-27 zone and the R-13 portion of the Property is improved with a commercial parking lot for use by the commercial tenants on the Property. The BZA has continuously approved special exceptions to allow the commercial use of this parking lot, with the most recent approval occurring in 2014. Furthermore, the R-3 zoned parcels to the north and south of the Property are contiguous only with the R-13 zoned portion of the Property. Neither of the R-3 zoned parcels are located within 25 feet of the MU-27 zoned portion of the Property. Moreover, the nearest residence on the adjacent R-3 zoned property is approximately 140 feet from the rear entrance to the space that the new Domino’s restaurant would occupy. A condominium building is located on the parcel adjacent to the Property to the south, which is also zoned MU-27.

The Applicant has also provided evidence that similarly-situated applicants in the near vicinity of the Property have obtained similar variances related to special exception requests for fast food establishments. Examples include Chipotle on this same Property (Application No. 18137), Paisano’s at 1815 Wisconsin Avenue NW (Application No.

19158), and Noodles & Company, also at 1815 Wisconsin Avenue NW (Application No. 18328). Finally, the Applicant has submitted a letter in the record that describes the significant difficulties that the owner has had in finding a new tenant for this Property.

IV. Supplemental Justification for the Variance Requested

In addition to the evidence and support currently in the BZA record, the Applicant now offers the following supplemental support for the variance requested in this Application. In particular, there are a number of additional unique characteristics of the Property that create an exceptional situation resulting in exceptional practical difficulty for the owner.

According to the D.C. Court of Appeals, “[t]o 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.’” *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (1990). In applying this test, however, there “is no requirement that the uniqueness ‘inheres in the land at issue. . . .’” *Id.* (citations omitted). Furthermore, the requirements “do not preclude the approval of a variance where the uniqueness arises from a confluence of factors.” *Id.*

The Property in this Application is unique in that it is considerably larger than other properties in the vicinity and it has frontage on two roads: Wisconsin Avenue and 37th Street NW. The Property is one of only two parcels in this square that is both split-zoned and has frontage on both Wisconsin Avenue and 37th Street NW. The other split-zoned property is zoned R-3/MU-27 and is significantly smaller than the Property in this application. Given the frontage on two streets, the Property has ingress/egress from both the front and rear of the Property. Moreover, the adjacent buildings surrounding the

Property block direct access between the front and rear of the Property. Therefore, it is very time consuming to walk or drive from the front of the Property to the rear or vice versa. The only way to access the rear of the Property from the front is to walk or drive up north on Wisconsin Avenue to its intersection with Calvert Street, and then walk or drive back south down 37th Street, a distance of almost 1,500 feet—more than a quarter mile. This is a factor unique to this Property and not shared by any other Property nearby.

The dual frontage on Wisconsin Avenue and 37th Street NW and the difficulty in accessing the front of the property from the rear causes a unique difficulty for prospective tenants given that two completely separate customer entrances are required—one along Wisconsin Avenue and the other along 37th Street NW. The necessity to maintain two separate entrances leads to operational difficulties and problems with layout as customers need to be able to access the store from both the front and rear of the building. The need for two entrances also causes financial difficulties for prospective tenants such as financial institutions, medical practices, or other retailers given the security measures that are required for each entrance in this area of Glover Park along Wisconsin Avenue. Combined with these factors, the mid-block location of the Property further reduces the appeal for prospective tenants looking for space at a more desirable signalized intersection.

The current 1950's-era building on the Property is also problematic given that it is 100' deep by 100' wide. In addition to the operational requirements discussed above, the D.C. Fire Code requires separate entrances to each tenant space given that the depth of the space exceeds 75 feet. Furthermore, many of the tenant spaces are either too wide or not wide enough vis-à-vis the considerable depth of the building. The owner has

attempted to solve this problem by re-working the dimensions of some of the tenant spaces, including the former El Salvador Consulate space in which the proposed Domino's would be located. Nonetheless, many tenants have rejected the space given the unique dimensions coupled with the need to maintain a front and rear customer entrance to the space.

Another unique factor to consider is that the Property is located in the MU-27 zone, which incorporates the requirements of the former Naval Observatory Overlay District. This zone limits heights of buildings to 40 feet with a maximum FAR of 2.5 for residential uses and 1.5 for non-residential uses. The MU-27 zone also includes additional special exception criteria given the vicinity of the properties in this zone to the Naval Observatory. These MU-27 requirements restrict the owner's ability to redevelop the Property and to locate tenants that may otherwise be objectionable to the Naval Observatory officials. It should be noted that in this case, the National Capital Planning Commission submitted a memorandum to the BZA in which it stated that the proposed Domino's is consistent with the Federal Elements of the Comprehensive Plan for the National Capital and the Naval Support Facility Naval Observatory Master Plan. Thus, Domino's is an appropriate establishment for this site, but many other types of by-right tenants on this Property may not be acceptable to Naval Observatory officials.

In cases such as these, the D.C. Court of Appeals has stated that it has "eliminated any doubt that 'economic use of property' may properly be 'considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in [area] variance cases" *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (1992). As such, the unique difficulties with the Property described

above have proven to be especially challenging for the owner given the difficult retail market in the Glover Park area at this time. According to recent available data, the Glover Park area currently has 17% vacancy for retail spaces. This has increased from about 5% vacancy in 2013. As discussed at the public hearing, the owner of the Property has spent close to two years marketing this space formerly occupied by the El Salvador Consulate, which formally left the space a year ago. Moreover, the Brueggers store adjacent to this space just closed unexpectedly in December 2017. Many potential by-right tenants have rejected the available tenant space based on the issues with the Property discussed above. The 1950's-era building design and dimensions, front and rear customer access points, frontage on both Wisconsin Avenue and 37th Street, and limitations of the Naval Observatory overlay greatly restrict the pool of suitable tenants for this site.

Given these factors, the unique characteristics of the Property create an exceptional situation resulting in practical difficulty for the owner. Thus, the Applicant respectfully requests that the BZA grant the variance requested.

V. Conclusion

For all of the above reasons, together with all evidence and documents in the record and the testimony at the public hearing, the Applicant respectfully requests that the BZA approve this Application.