

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

Application of
MDP 526 8th Street LLC

BZA Application No:
ANC 6B04

STATEMENT OF THE APPLICANT

This application is made by MDP 526 8th Street LLC (the “**Applicant**”) to the Board of Zoning Adjustment (“**Board**”) for special exception and variance relief from the strict requirements of the Zoning Regulations to redevelop an existing surface parking lot with a three-story commercial building (the “**Project**”) at 526–528 8th Street SE (Square 926, Lots 809 and 810) (the “**Property**”). The application requests special exception relief pursuant to Subtitle C § 703.2 of the Zoning Regulations in order to provide two (2) parking spaces where four (4) are required, and variance relief from the requirement under Subtitle C § 901.1 of the Zoning Regulations in order to provide no loading berth where one (1) loading berth is required. The Project will conform to the Zoning Regulations in all other respects.

I. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X §§ 901.1 and 1000.1 of the Zoning Regulations.

II. DESCRIPTION OF THE PROPERTY, SURROUNDING AREA, AND PROJECT

The Property is located in the Capitol Hill neighborhood, on the east side of Barracks Row. The Property is located in Square 926, which is bounded by 8th Street SE to the west, E Street SE to the north, 9th Street SE to the east, and G Street SE to the south. The Property is zoned MU-25 and is currently improved with a surface parking lot. This block of 8th Street SE consists primarily of two- and three-story commercial buildings occupied by retail and office uses. The Property is located a block and a half, or approximately 0.2 miles, south of the Eastern Market Metrorail

Station, and is also served by the 90 and 92 Metrobus routes, as well as the Congress Heights-Union Station and Eastern Market-L’Enfant Plaza D.C. Circulator routes.

The Applicant proposes to replace the existing surface parking lot on the Property with a new three-story commercial building with approximately 9,245 square feet of gross floor area. The Project has been designed to be compatible with the Capitol Hill Historic District. To such end, it includes a brick façade of two stories at the street lot line with a partial third story set well back from such façade¹. The building will incorporate projecting bays along the first floor streetscape to accentuate one of the defining characteristics of the Historic District and Barracks Row itself. The Project will provide two (2) parking spaces at the rear of the proposed building and will utilize an adjacent commercial loading zone along 8th Street SE in lieu of providing loading on-site. Importantly, the Project will close a curb cut along 8th Street, allowing the historic brick sidewalk along such frontage to be connected while finally filling in a gap in the fabric of the streetscape.

The Project received a unanimous vote in support of concept approval for the Project – as HPA #18-433 – from the Historic Preservation Review Board (“**HPRB**”) on June 28, 2018. During such process, the Project received the support of Advisory Neighborhood Commission (“**ANC**”) 6B. The outreach to the ANC will continue in the coming months.

III. THE APPLICATION SATISFIES THE CRITERIA FOR THE REQUESTED RELIEF

The Applicant requests special exception relief pursuant to Subtitle C § 703.2 of the Zoning Regulations in order to permit the Project to provide two (2) vehicular parking spaces where four (4) are required. The Applicant also requests variance relief from the requirement under Subtitle C § 901.1 to provide one (1) loading berth for the Project and instead proposes no loading

¹ The proposed building will have a height of approximately 39 feet. Note that, because the third level is below the maximum permitted height of 50 feet and contains occupiable space, this level constitutes a story, not a penthouse, and thus is not subject to penthouse setback requirements.

berth on the Property, with loading operations to be conducted on the commercial loading zone adjacent to the Property. As discussed in detail below, the application satisfies the respective standards for the relief requested.

A. Special Exception Under Subtitle C § 703.2 for Minimum Parking Requirements.

Under Subtitle X § 901.2, in order to obtain special exception relief, an applicant must show that the requested relief will be in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not adversely affect neighboring properties. Additionally, for special exception relief from the parking requirements pursuant to Subtitle C § 703.2, an applicant must demonstrate compliance with certain conditions for relief. The application meets both the general standards for special exception relief and the specific conditions of Subtitle C § 703.2.

1. The Use and Structure Is Particularly Well Served by Mass Transit, Shared Vehicle, or Bicycle Facilities. (C § 703.2(b))

Although the Project is required under Subtitle C § 701.5 to provide four (4) parking spaces (1.33 spaces per 1,000 square feet in excess of 3,000 square feet, assuming an approximately 9,245 square foot retail, service, or eating/drinking establishment use²), given how exceedingly well the Property is served by alternative modes of transportation, the two (2) proposed parking spaces will be sufficient to meet the needs of the Project program. The Property is only 0.2 miles walking distance from the Eastern Market Metro entrance, with access to the Blue, Orange, and Silver Metro lines. The Property is also immediately served by the 90 and 92 Metrobus routes, as well as the Congress Heights-Union Station and Eastern Market-L'Enfant Plaza D.C. Circulator routes.

² Such assumption would generate the highest parking requirement for the potential uses to occupy the Project. Office use, which is also possible for some of the Project, has a lower parking requirement of 0.5 spaces per 1,000 square feet in excess of 3,000 square feet.

In addition, Metrobus stops along Pennsylvania Avenue SE (one and a half blocks north) provide access to the 30S, 30N, 32, 34, and 36 buses, and stops along I Street SE (one and a half blocks south) provide access to the V1 and V4 routes.

The Property has easy access to Capital Bikeshare, with an 18-dock station located adjacent to the Eastern Market Metro station, in addition to the full gamut of rideshare, carshare, and dockless bicycle and electric scooter rental services available within the City. Further, the Applicant will provide a robust Transportation Demand Management (“**TDM**”) Plan as part of its forthcoming traffic report.

Given how well the Project is served by public transit and other transportation options, a reduction in parking is merited.

2. *Land Use or Transportation Characteristics of the Neighborhood Minimize the Need for Required Parking Spaces. (C § 703.2(c))*

For similar reasons as discussed above, the characteristics of the neighborhood surrounding the Property render the total four (4) required parking spaces unnecessary in this case. As outlined above, the Property is only 0.2 miles walking distance from Metro and is served by a full menu of Metrobus, D.C. Circulator, and bicycle options.

The Property is so well served by mass transit and the land use patterns surrounding the Property are so conducive to providing goods and services to the surrounding community that the Property has a Walk Score of 96. Such score equates to a “Walker’s Paradise” and indicates that daily errands do not require a car. The Property also has a high Bike Score (also of 96).

Moreover, the Property occupies a key position in the 8th Street corridor that connects the Barracks Row, Eastern Market, and H Street NE areas. The 8th Street corridor includes some of the only commercially-zoned nodes in the Capitol Hill neighborhood outside of Pennsylvania Avenue SE. Further, the Property’s MU-25 zoning is intended to, among other things, concentrate

non-residential uses in commercial zone districts in certain areas of Capitol Hill and to provide for infill construction that is compatible with the Capitol Hill Historic District. 11 DCMR G § 700.4. This site is specially primed for infill construction to serve the surrounding area such that access for cars is not essential or even necessary (for both customers and employees of commercial establishments). The proposed redevelopment of the Property from the existing surface parking lot to a commercial project in line and to scale with the surrounding commercial node will fill in a “missing tooth” in this block of 8th Street SE and achieve the optimal use for a well-situated site, in a more appropriate manner than providing four (4) parking spaces would.

3. *The Requested Reduction Is Consistent with the Number of Spaces the Applicant Can Provide Onsite. (C § 703.3)*

The Applicant requests relief to provide two (2) spaces where four (4) are required. As shown on the Page A01 of the architectural plans attached as Exhibit G, the configuration of the Property and public alley directly to the east (rear) of the Property is such that only two (2) regulation parking spaces can be accommodated on site. If the Project were to provide the additional two (2) parking spaces required, such spaces would absorb at least approximately 324 square feet of land area, draining at least an equivalent amount of gross floor area from the Project and increasing construction costs to cantilever over such spaces (or eliminating such second story and above space altogether). The buildable portion of the Property is only approximately 87.2 feet deep, meaning that an additional parking space provided anywhere else along the rear would reduce the depth of the building to approximately 69.2 feet deep. Such depth would significantly reduce the viability of a retail use at this site, particularly on the site’s first floor.

Clearly, it is not optional for the Applicant to maintain a curb cut and parking from 8th Street, so the provision of parking from the front of the Property should not be considered. In

fact, as the result of the removal of the Property's curb cut along 8th Street, at least one and possibly more public street parking spaces will be added to 8th Street.

Given the configuration, location, surrounding context, and proposed use of the site, the proposed two (2) parking spaces are the maximum the Applicant is able to provide.

4. *The Requested Relief Will Include a Transportation Demand Management Plan Approved by the District Department of Transportation, the Implementation of Which Shall Be a Condition to the Board's Approval.*

The Applicant has retained the services of Wells + Associates as its traffic and transportation consultant. The team has met with DDOT and prepared a scoping form for the Project. The team is preparing a transportation study for the Project and the Property and will submit such document into the case record upon completion and well prior to the hearing.

The Applicant will continue to work with DDOT to prepare a TDM Plan for the Project and will submit such plan into the record as part of the transportation study.

5. *The Relief Requested Is in Harmony with the Intent and Purpose of the Zoning Regulations and Zoning Maps and Will Not Adversely Affect Neighboring Properties.*

The Project affords the opportunity to redevelop a highly transit-accessible site currently occupied by a surface parking lot with a commercial development, as specifically intended by the Property's MU-25 zoning. Although two (2) fewer parking spaces will be provided than are required as a matter of right, the Property is exceptionally well served by public transit and the two (2) proposed parking spaces will meet the needs of the proposed development.

The reduction in parking for the Project will also not have an adverse impact on surrounding areas given how well this site is served by mass transit and other transportation options. Therefore, the parking provided is adequate for the Project and the reduction will not adversely impact the area or neighboring properties. Further, such reduction in parking will be in

accordance with the parking provided – or not provided – on neighboring properties and throughout the area. To such end, the Applicant has been in communication with the surrounding property owners to discuss the proposal and has received support and positive responses throughout such contacts. The Applicant will continue such outreach.

As noted above, the reduction of the amount of parking provided on site from four (4) parking spaces to two (2) allows a more efficient and desirable commercial structure to be constructed on site. The resulting structure will include more robust offerings that will positively contribute to this unique Barracks Row corridor, on a site that has long been a fallow, gated parking lot.

B. Variance from Minimum Loading Requirements Under Subtitle C § 901.1.

The Applicant requests a variance from the requirement under Subtitle C § 901.1 to provide one (1) loading berth. In order to obtain area variance relief, an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) 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. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Here, the application satisfies all three standards for the variance relief requested.

1. The Property Is Affected by an Exceptional Situation or Condition.

The Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” *Id.*

Here, the ability to provide the required loading berth is exceptionally constrained by the configuration of the Property in relation to the alley and the alley system itself. The alley is a narrow fifteen (15) feet wide at the east/west components that connect to 8th and 9th Streets which prohibits certain trucks from physically being able to make the necessary turns into the alley system. Further, the narrowness of the east/west alley would prevent a truck from entering the alley system from 8th Street when another vehicle is exiting the alley. Finally, field observations and anecdotal information from the adjacent property owners (with garages abutting the alley) indicate that trucks frequently stop in the alley and block traffic from entering or exiting for long periods of time, thus further constraining the ability to conduct loading for the Property off of the alley.

Further, the Property has a small size and narrow and irregular shape. These features complicate the ability to provide both loading and (even partial) parking facilities. The provision of two (2) parking spaces at the rear of the lot, on the portion of the lot that extends approximately 21.83 feet farther into the alley than the rest of the site means that a standard 30-foot loading berth could only be provided on the opposite (southern) foreshortened half of the Property.

2. *Strict Application of the Zoning Regulations Would Result in a Practical Difficulty.*

To satisfy the second element for an area variance standard, the Applicant must demonstrate “practical difficulty.” The D.C. Court of Appeals has held that 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*, 579 A.2d at 1170. 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.

Due to the unique conditions described above, the Property would be subject to a practical difficulty if required to provide the required loading. The introduction of a loading vehicle at the rear of the site would complicate the operation of the alley and likely result in tedious and protracted — and potentially dangerous — turning, maneuvering, and operating conditions. The Applicant will submit turning diagrams demonstrating the difficulties associated with loading operations in the alley.

Further, as mentioned above, the small and unique size and shape of the lot would make it unnecessarily difficult to furnish loading on the Property. A compliant loading berth would be 30 feet deep, twelve (12) feet wide, and fourteen (14) feet clear. Further yet, such berth would be required to have a 100-square-foot loading platform adjacent to it. Such loading area would absorb a minimum of 460 square feet of the Property's land area, which would unduly and constrain the ability to provide a viable commercial use along this key corridor in the Capitol Hill neighborhood. The resulting layout of the ground floor floorplate with loading, even after providing only two (2) parking spaces, would be rendered significantly less usable by, and desirable to, tenants, in addition to being more costly to construct.

The required fourteen (14) foot clearance of a loading berth would be highly deleterious to the proposal as well. As planned, the Project includes twelve (12) foot clearances on the ground floor. Such ground floors have been designed to be in character with the surrounding Historic District and foster a continuity along 8th Street. Further, they allow the total building height to be curtailed, again resulting in a more compatible structure for this location. If a loading berth were required to be located on the site, it would require either raising the ground floor clearance by at least two (2) feet (along with an equivalent

increase in building height) or foregoing construction over such loading area, greatly exacerbating the reduction in gross floor area at the site.

Alternatively, requiring loading to enter the site directly from 8th Street at the front of the Property would present even greater practical difficulties as it would significantly undermine the viability and attractiveness of the ground floor space. Perhaps more importantly, obtaining historic or public space approvals for such a design configuration would not be possible.

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

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

As stated above, there is a commercial loading zone located along 8th Street immediately adjacent to the Property. The Applicant proposes to utilize such commercial loading zone for all of its operations, and if approved by DDOT and the public space permitting process, potentially extend such loading zone further to the south. Such street loading zone is utilized by commercial uses adjacent to the Property and is a common characteristic of the surrounding Barracks Row commercial corridor.

The removal of the loading facilities at the Property has been supported by neighbors during the Applicant’s initial outreach regarding the required zoning relief. In fact, neighbors on the east side of the alley requested that the loading facilities be kept out of the alley due to its current configuration and operational deficiencies. The Applicant will continue its outreach with the community and meet with the ANC at upcoming public meeting dates.

The small sizes of the commercial uses within the Project will not create significant loading activity. In fact, even the most loading-intensive user of the Property is likely to receive only a small number of deliveries per day. Such minimal loading activity would not justify the provision of loading facilities on the Property, particularly when considering the adverse effect on the Project's first floor space if such facilities were to be provided.

We note that, since the Project is new construction within a historic district, it is not able to apply for special exception relief under Subtitle C § 909.2(b). Such special exception is available for an addition to a historic resource such as those lining Barracks Row adjacent to the Property. However, the architectural and structural difficulties that would exist for the Project if it were to provide compliant loading facilities (as noted above) would satisfy the special exception standards under Subtitle C § 909.2(b).

The removal of the loading facilities at the Property allows this small, narrow lot to furnish a more efficient and desirable commercial offering along the unique Barracks Row corridor. Further, granting the requested relief will allow for the use and structure on the Project to be in accordance with numerous other commercial buildings flanking both sides of 8th Street in this area.

IV. CONCLUSION

For all of the above reasons, the Applicant has satisfied the standards for the requested special exception and variance relief in this case and requests approval for such relief.

Respectfully submitted,



Jeff C. Utz



Lawrence Ferris