

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application of AE Tower LLC and RE Opal LLC
2140 Wisconsin Avenue, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF
AND STATEMENT OF EXISTING AND INTENDED USE

I. Background

The Property is located at 2140 Wisconsin Avenue, NW (Square 1300, Lot 320). The Property is unimproved and has been vacant for several years. The Property has a land area of 2,413 square feet; with a lot width of 20.5 feet for most of the length of the lot, then tapering to a minimum width of 17.37 feet at the rear property line. The Property is about 120 feet in length.

The Property abuts an existing condominium consisting of two office buildings (collectively, the "Office Building") to the north, and the parking lot for the Office Building (the "Parking Lot") to the west. The Office Building is on the corner of Wisconsin and W Place, NW. To the south are several mixed-use buildings of varying heights. Across Wisconsin Avenue to the east is a building which serves as an Embassy for the Republic of China.

There is no alley or street access to the rear of the Property. The Parking Lot is on the same lot as the Office Buildings and is owned by those unit owners. The Parking Lot is located in the R-3 zone district and operates for the benefit of the Office Buildings pursuant to BZA Order No. 13934 (1983). That Order provides a permanent condition that the Parking Lot shall be available for residential parking during the hours the office facility is not in operation. According to signage on the Parking Lot, the Parking Lot is restricted to the exclusive use of the Office Buildings from 7 a.m. until 6 p.m., Monday through Friday. To its knowledge at this time, the Applicant does not have legal access across the Parking Lot to the rear of the Property. Also, to the Applicant's knowledge, no spaces in the Parking Lot are available for specific use by the Property.

The Subject Property is zoned NO/C-2-A. The maximum allowable floor area ratio ("FAR") is 2.5 for residential uses, and the maximum permitted height – under the Naval Observatory (NO) Overlay is forty (40) feet. The maximum permitted lot occupancy for a residential building is sixty percent (60%). The Applicant is proposing to construct a four-story 8-unit residential condominium building with sixty percent (60%) lot occupancy, 2.5 FAR, forty (40) feet in height, and no legal parking spaces. An 8-unit apartment house in the C-2-A zone requires four (4) parking spaces. The Applicant's proposal will leave room for two legal parking spaces at the rear of the Property, but as noted above, the Applicant does not believe that it has

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legal, recorded access to these two spaces. As of today, the Applicant is attempting to contact the manager of the Office Buildings and Parking Lot to determine the Applicant's right to access the rear of the Property.

For these reasons, the Applicant is requesting area variance relief from the parking requirements of 11 DCMR § 2101.1.

Pursuant to § 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for this Application. In that Statement, and at the public hearing, the Applicant will provide detailed testimony to meet its burden of proof to obtain the Board's approval of the requested variance relief. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

II. Burden of Proof

In order to receive variance relief, the applicant must satisfy a three-part test which requires: (1) a demonstration that the property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

A. Property Is Affected by An Exceptional Situation or Condition

The Subject Property is a long, narrow lot, which has been vacant for several years. The vacant lot is surrounded primarily by commercial and diplomatic uses, and by the commercial Parking Lot owned by the Office Buildings' unit owners. There is no alley or street access to the rear of the Property. While the proposal will include space for two parking spaces at the rear of the Property, the Applicant does not believe that there is legal, recorded, access across the Parking Lot to those spaces (although it is hopeful that it will gain such access, formally or otherwise).

The Applicant believes that a curb cut in this location of Wisconsin Avenue, to access the front of the Property, would be highly disfavored by DDOT and by the community. The property two doors to the south has such a curb cut and parking pad in front of its building. The Property is much too narrow to allow the construction, or the operation, of an underground parking garage, accessed either from the rear or the front of the Property. Even if a curb cut were permitted here, because of the narrow lot, it could only provide access to one or two parking spaces, from which a car would have to back out onto Wisconsin Avenue to exit.

In addition, the Property slopes in grade from front to back, making an underground garage even more difficult, and the Property narrows in the rear, which makes setting the building back - while still providing potential parking spaces in the rear - impossible.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty upon the Property Owner

Due to the exceptional conditions discussed above, the strict application of the Zoning Regulations would result in practical difficulty to the Applicant. The lack of alley access to the rear of the Property, the unlikelihood of getting a curb cut approved on Wisconsin Avenue, and the extreme difficulty with using such a curb cut for required parking or for an underground parking garage, essentially makes it impossible to provide any legal parking on the Property.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan

The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The proposed project would convert a long-vacant “eyesore” property to a vibrant residential use. The design will greatly improve the appearance and character of this block. The Property is on Wisconsin Avenue, and its residents will have the value of the Metro bus lines in this location. Also, the Parking Lot provides parking in the evenings and on weekends for residential use. The Applicant believes that the sum of the extraordinary conditions surrounding this Property make for a very unique situation; and since parking variance relief has been granted in the past for similar unique situations, there will not be a substantial detriment to the Zone Plan.

STATEMENT OF EXISTING AND INTENDED USE.

The Property is currently unimproved and has been vacant land for several years.

The Applicant intends to construct a new 8-unit apartment house.