

BOARD OF ADJUSTMENT FOR ZONING APPEALS

CITY AND COUNTY OF DENVER, STATE OF COLORADO

Case No. 32-20

---

Landowner: Robert E. and Eddie H Woolfolk (“**Applicant**”)  
Re: Appeal of Informal Denial and Request for Variance (the “**Appeal**”)  
Property: 3020, 3022 and 3026 Welton Street (the “**Property**”)

---

**HEARING BRIEF OF APPLICANT**

By and through its undersigned counsel, the Applicant submits this Hearing Brief in support of the above-referenced Appeal.

**INTRODUCTION AND PROJECT BACKGROUND**

This Appeal concerns an Informal Denial of the Applicant’s site development application (#2018PM0000705) pertaining to the proposed development (the “**Project**”) of the Property. The Project contemplates the development of an apartment building containing 36 individual units available to residents at or below 30 percent Area Median Income (AMI), which constitutes a Multi-Unit Dwelling use (the “**Use**”), as defined in the Denver Zoning Code (the “**DZC**”). The required number of parking spaces for the Use in the C-MX-5 zone district is 0.75 spaces per Unit, for a total of 27 vehicle parking spaces for the Project. DZC § 7.4.4. The Project qualifies for a 20% parking reduction by providing housing that can only be rented or purchased by households of a certain area median income level, per DZC § 10.4.5.3.B, for a reduced requirement of 22 vehicle parking spaces. In order to develop the Project and provide any vehicle parking spaces at all, the Applicant requests a variance from (1) the foregoing parking requirement to reduce the vehicle parking requirement for the Project to five parking spaces (with the one loading stall) and (2) the

requirement for a five-foot wide planting strip required between surface parking lots and abutting residential uses per DZC § 10.5.4.4.C.

Following the initial hearing regarding the Appeal on May 19, 2020, the Applicant endeavored to procure additional, off-site parking on other properties in the surrounding area, including engaging in discussions with representatives of the following properties:

|                                      |  |
|--------------------------------------|--|
| Denver Language School               | 2949 California St.                            |
| Masjid Al Shuhada Islamic Center     | 2952 N. Downing St.                            |
| Gilliam Youth Services Center        | 2844 N. Downing St.                            |
| Gipson Eastside Family Health Clinic | 501 28th Street, lots at 28th and 29th Streets |

Unfortunately, each of these properties is already either (a) non-conforming, meaning that it would not be eligible to enter into a shared parking arrangement with the Project per the DZC, or (b) unwilling to grant any parking spaces for the use of the Project, due to the property's own need—real or perceived—to preserve those spaces for its invitees, even in exchange for the payment of rent. Many of the properties noted above fell into both categories.

The Applicant and its design team also held a community meeting on July 7, 2020, via Google Meets, in order to discuss the Project in greater detail with the surrounding property owners. The Applicant sent 19 personalized invitations to the meeting (via email), and also posted the meeting information on Facebook. 16 individuals attended the meeting. Following that meeting, the Applicant has continued to engage with and respond to questions from the community. The Applicant also received letters of support for the Appeal from both Councilwoman Candi CdeBaca and Britta Fisher, the Chief Housing Officer and Executive Director of the Department of Housing Stability (HOST), which have been submitted with the

other materials for this Appeal. The Applicant had previously submitted a letter of support from the owner of the property directly to the north of the Project.

### ANALYSIS

Pursuant to DZC § 12.4.7, the Board may authorize variances from the terms of the DZC when “literal enforcement of the provisions of [the DZC] will result in unnecessary hardship,” and such variances meet approval criteria as set forth in DZC § 12.4.7.6. As described below, the Project satisfies the variance requirements set forth in the DZC, and therefore the Board should grant the requested variances.

#### **(a) Unnecessary Hardship—Unusual Condition**

There are unusual physical circumstances impacting the Property. DZC § 12.4.7.5.B. Due to the overall layout of the Property, **it is not feasible to construct more than seven parking spaces and one loading space within the Property.** Such unusual physical circumstances include the following:

- RTD Light Rail. The Property’s main frontage is on Welton Street, which does not permit curb cuts or vehicle access due to the RTD light rail. As such, the only vehicular access to the Project must come from Downing Street via the vacated alley, as noted below.
- Active Street Frontages. The Property’s frontage on both Welton Street and Downing Street, both of which are considered Primary Streets, must consist of “active uses,” which do not include any parking spaces or storage uses, to a depth of 15 feet for the entirety of the portion of the frontage within the build-to requirement (70%). DZC § 7.3.3.3.D. Such “active use” requirement results in approximately 1,270 square feet of the Property that is not available for parking (or storage or other “back-of-house”) uses.
- Fire Access. The fire department has required a minimum of three feet of access on each internal lot line of the Property. This access requirement results in an additional 700 square

feet of the Property that is not available for development of any kind. The fire department will not permit trees or other landscaping required per DZC § 10.5.4.4.C. As such, the effective unusable area of the three-foot fire department access and the five-foot planting strip would be a minimum of eight feet in width along the entire length of the garage portion of the southwest perimeter of the Project, for a total of 1,025 square feet.

- Vacated Alley Access. As noted above, the Property's only legal access is via the vacated alley opposite Welton Street, which provides vehicle access to Downing Street. In connection with the Project, an eight-foot wide access easement over a previously-vacated alley will be required to be granted to adjacent property owners, which grant is consistent with the current use of the vacated alley by other owners, resulting in an additional 423 square feet of Property that may not be developed in any way.
- Non-Standard Shape. The Property's overall shape, which is angled on one side due to its location at the intersection of Welton and Downing Streets where the street grid shifts, exacerbates these issues due to the non-rectilinear geometry.

As generally depicted in the other materials submitted by the applicant, the combination of these factors results in a total of 2,718 square feet of the Property that may not be used for any parking or back-of-house use, which would, on its own, only leave room for approximately seven parking spaces and a drive aisle—but only if no vertical development occurs. In order to leave room for any vertical development, because of the foregoing unusual physical circumstances, the Applicant cannot satisfy the DZC parking requirements by offering more than five parking spaces and one loading space or by providing a separate and distinct planting strip. These physical circumstances are unique to this Property, do not exist throughout the neighborhood, and have not been created

by the Applicant. Further, the unusual physical circumstances impairing off-street parking hamper the reasonable return in use as compared to adjacent conforming properties.

**(b) Approval Criteria (DZC § 12.4.7.6)**

The requested variances satisfy all DZC § 12.4.7.6 variance review criteria. If granted, neither variance would authorize an unpermitted use. DZC § 12.4.7.6.A. The Use is permitted in the C-MX-5 zone district. Similarly, the variances would not change a waiver or condition attached to an approved rezoning of the Property, as no waivers or conditions are attached to the Property. DZC § 12.4.7.6.B. Additionally, the variances do not relate to or increase the number of people who may reside on the Property. DZC § 12.4.7.6.C.

The variances do not substantially impair the intent and purpose of the DZC. DZC § 12.4.7.6.D. The DZC's purpose is "to implement Denver's Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants." DZC § 1.1.1. Its intent is to "balance conservation and development," to "achieve design excellence in the built environment," and to "guide Denver's prosperous and sustainable future." DZC § 1.1.2. These variances, if granted, would allow for the redevelopment of the Property in a manner that is more consistent with the goals and intent of the DZC. Moreover, with respect to the planting strip, Section 10.5.4.4.C of the DZC states that the intent of the planting strip is to "protect ground-level and below-ground-level windows from headlight glare and the direct emission of vehicle exhaust." The Project addresses these concerns by locating its proposed surface parking spaces behind an opaque wall with limited openings in the rear of the Property, which does not abut any windows in adjacent residential dwellings. The openings within this wall are located at a minimum of six feet above the parking surface. Any impacts would be further reduced by the three-foot fire department access, which provides ample buffer for the vacant portions of the adjacent property.

The variances do not substantially impair the intent and purpose of the C-MX-5 district. DZC § 12.4.7.6.E. The general purpose of the Urban Center neighborhood context is to “promote safe, active, and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the public street edges.” DZC § 7.2.2.1.A. Indeed, the purpose of the requested variances is to allow the Project to more clearly define and activate the public street edges through the preservation of the active use requirements within the build-to area. The variance would also be consistent with the purpose statement that intends to “ensure that new development contributes positively to established residential neighborhoods and character” by lowering the overall height of the building to four stories, despite a maximum building height of five stories in the C-MX-5 district, to better align with existing development in the area. DZC § 7.2.2.1.C.

The specific intent of the C-MX-5 district is to apply to “areas or intersections served primarily by collector or arterial streets where a building scale of 1 to 5 stories is desired.” DZC § 7.2.2.2.B. The parking variance does not implicate the purpose or intent of the C-MX-5 district, therefore, it does not substantially impair this consideration.

The variance would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property. DZC § 12.4.7.6.F. The Applicant anticipates that most, if not all, of the residents living in the finished Project would use public transportation and bicycles—indeed residents and staff will be provided with transit passes and the Project will incorporate 37 bicycle parking spaces, which is 18 more than required by DZC § 7.4.4. The few vehicles associated with the Property may be parked on streets surrounding the Property or in the parking spaces located on the Property itself. Adjacent properties will not suffer from an excess of vehicles or overcrowding that would impair the reasonable use and enjoyment of their properties.

Further, as noted above, the location of the vehicle parking spaces in the rear of the Property will not impact adjacent residential dwellings, which are generally located closer to Welton Street.

The variance would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code. DZC § 12.4.7.6.G. As discussed above, the requested variances would allow the Property to be redeveloped in a manner that preserves an active street front and contributes to the surrounding neighborhood, and thus is the minimum change and least modification necessary to afford relief. Further, the Applicant has not been notified of any concerns raised by the Zoning Administrator or other city agencies in their review of the application. DZC § 12.4.7.6.H.

### **CONCLUSION**

The Project meets the requirements for a variance from the DZC's parking standards. Accordingly, the Applicant respectfully requests that the Board grant the requested variance.

SUBMITTED this 9th day of July, 2020.

OTTEN, JOHNSON, ROBINSON, NEFF &  
RAGONETTI, P.C.

By: /s/ Cory M. Rutz

Cory M. Rutz  
950 17<sup>th</sup> Street, Suite 1600  
Denver, Colorado 80202  
303-825-8400

ATTORNEYS FOR APPLICANT  
Robert E. and Eddie H Woolfolk