GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17443 of Allstate Hotel Partnership, pursuant to 11 DCMR 3104.1, for a special exception from section 512 of the Zoning Regulations to permit a hotel in the SP-2 zone and a special exception under Section 411 for roof structures in order to construct a hotel at premises 515 20th Street, NW (Square 122, Lot 25)

HEARING DATES: March 14, 2006 and April 11, 2006
DECISION DATE: May 2, 2006

DECISION AND ORDER

On October 3, 2005, Allstate Hotel Partnership (the owner or the applicant), filed an application with the Board of Zoning Adjustment (Board) pursuant to 11 DCMR § 3104.1, for special exception relief for a hotel with roof structures. Following a public hearing, the Board voted to approve the application at a decision meeting held on May 2, 2006.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 6). The original application also requested variance relief under § 530 to permit a rooftop pool enclosure above the permitted height in the SP zone (Exhibits 1 and 6). However, the variance request was withdrawn before the public hearing.

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all entities owning property with 200 feet of the applicant's site, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC) 2A, and the Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 22).

ANC 2A The subject site is located within the area served by the Foggy Bottom and West End Advisory Neighborhood Commission 2A (the ANC), which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on February 15, 2005, with a quorum present, the ANC voted to oppose the application (Exhibit 25). The ANC also opposed the revised application and submitted an additional

statement in opposition on April 4, 2006 (Exhibit 32). The ANC was represented by ANC Commissioner Dorothy Miller, Robert Dreher, Esq., and Andrea Ferster, Esq. (Exhibit 31)

Requests for Party Status There were no requests for party status.

Other Persons/Entities in Opposition/Support Elizabeth Elliot, a board member of the Foggy Bottom Association, also appeared in opposition to the application. The Association submitted a letter in opposition following the hearing (Exhibit 37).

Office of Planning (OP) Report OP filed a report indicating that it recommended approval of the special exceptions (Exhibit 25). Travis Parker, OP's representative, testified at the public hearing in support of the application.

Motion to Continue The applicant requested that the hearing be continued from March 14, 2006 so that the ANC could review the revised building plans (Exhibit 24). The ANC joined in this request and the hearing was re-set for April 11, 2006.

The Applicant's Case Steven Gewirtz, managing partner of Allstate Hotel Limited Partnership, testified for the applicant. The applicant also offered testimony from the following expert witnesses: Architect George Dove, Traffic Consultant Marty Wells, and the applicant's zoning and land planning expert, Steven Sher. The applicant was represented by the law firm of Holland and Knight.

Closing of the Record Except for a written statement from the Foggy Bottom Association (Exhibit 37), the record was closed after the public hearing in accordance with § 3121.5 of the Regulations. However, the Board waived this rule and accepted post-hearing filings from the applicant and the ANC (See, Exhibits 35 and 36).

FINDINGS OF FACT

The Property

1. The property is located at 515 20th Street, NW in the Foggy Bottom neighborhood, Lot 25, in Square 122. It is a mid-block lot located on the east side of 20th Street, measuring 85 feet in width and approximately 13,267 square feet in area.

2. The lot has no alley access, and is currently improved with a six-story parking garage containing 420 parking spaces. The parking garage will be demolished.

3. The property is located in the Special Purpose District (SP-2 zone), *see*, 11 DCMR § 500. The SP zone is designed to stabilize those areas adjacent to C-3-C and C-4 zones and other appropriate areas that contain existing apartments, offices, institutions, and mixed use buildings (§ 500.1). The SP District is divided into the SP-1 and SP-2 zones. The SP-2 zone is designed to support medium-high density development (§ 500.4).

The Surrounding Area

4. The area surrounding the property contains a variety of land uses, including university, residential, and office uses. There are no hotels in close proximity to the subject site (Exhibit 23).

5. All properties within Square 122, with the exception of the subject property, are properties of George Washington University. The University buildings have a mixture of materials, character and design (Exhibit 23, 25).

6. The property is bounded on the south and east by George Washington University buildings and the George Washington University campus boundary. Across 20th Street to the west are the American Red Cross local headquarters and two mid-rise apartment buildings. The majority of the George Washington campus lies to the northwest of the site, zoned R-5-D and R-5-E. A block to the south and east is the "Northwest Rectangle", an area of large federal government buildings (Exhibit 25).

The Proposed Project

Hotel

7. The applicant proposes to build a nine floor Courtyard Marriott Hotel that is 90 feet tall. The hotel will have approximately 147 rooms, with a gross floor area of approximately 79,872 square feet and an FAR of 6.0. The hotel's height will be consistent with the height of most of the buildings in the area, but the hotel will be one of the smaller buildings on the block (Exhibit 23).

8. The hotel will use the same design elements as nearby university buildings and the American Red Cross building. The lighting and signage will be inconspicuous, consisting of recessed down lights concealed in a canopy, four bollard lights separating the parking area from the pedestrian area, and symbols for "Courtyard" and "Marriott".

9. The hotel is designed for short-term business travelers and will have a small dining room serving up to 55 guests, two small meeting rooms (the largest having a seating capacity for 49 persons), a small pool and spa, a workout room, and a business office.

10. Delivery of food products will occur between 8:00 am and 3:00 pm, with the exception of baked goods, which will arrive at 6:00 am daily. Because most laundry will

be on-site, there will be one delivery every other week of laundry supplies. Trash pick-up will occur two to three times per week, between 8:00 am and 2:00 pm.

11. The proposal includes an underground parking garage of three levels containing 48 self-park spaces and 60 spaces accessible only to valet service. The proposal exceeds the minimum parking requirements in the Zoning Regulations, *see* § 2101.1.[1]

12. The proposal also includes one thirty-foot loading berth and one two hundred square foot loading platform, in compliance with § 2201.1 of the Zoning Regulations.

Roof Structures

13. The hotel roof structures will house mechanical equipment and an elevator penthouse. Except for the portion facing 20th Street (which has been lowered to approximately 12 feet in order to minimize its visibility from the street), the roof structures will be built to a maximum height of 15 feet 6 inches.

14. A roof structure in the SP zone must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. *See*, § 530.4(b) of the Zoning Regulations. Therefore, the roof structure requires a setback of the same distance from the exterior walls of the building. The proposed hotel has exterior walls at the east and west elevation, and around the perimeter of the interior closed court which "opens" onto the north property line. Although the penthouse will be set back 15 feet 6 inches from the exterior walls to the east and the west, it will not meet the minimum setbacks from all exterior walls. (Exhibit 23, p. 11). The drawings at Sheet A.005, (Tab D appended to Exhibit 23) indicate that four sections of the penthouse have setbacks less than the minimum requirement, ranging from zero feet to over eleven feet. Because the penthouse will not have the required "one to one" setback along all exterior walls, special exception relief is necessary.

15. Roof structures in the SP zone must also meet the requirements under § 411, including the requirement under § 411.5 that the entire roof structure have a uniform height (*See*, 530.4(a), which incorporates the requirements of § 411). Therefore, special exception relief is also necessary because the roof structure lacks a uniform height.

The Application

[1] This section states that hotels in an SP zone are required to provide one parking space for every four sleeping rooms and one parking space for every 300 square feet of floor area in either the largest function room (549.26 square feet) or the largest exhibit space, whichever is greater.

16. The application was filed on October 3, 2006 with, among other things, a building plat (Exhibit 3), photographs of the area (Exhibit 8), a property map (Exhibit 9), and architectural plans and elevations for a ten-story hotel (Exhibit 10).

17. The applicant filed a Pre-Hearing Statement on February 28, 2006, in which he withdrew his request for variance relief to permit a roof top swimming pool, and filed revised plans to eliminate the roof top pool and reduce the number of floors to nine (Tab D appended to Exhibit 23). The final revised plans were filed on March 31, 2006 (Exhibit 30).

The Impact of the Proposed Development

18. The Board credits the testimony and report presented by OP. In particular, the Board adopts its findings that:

(a) The project will maintain the existing scale and design of the buildings in the neighborhood. Because the hotel will be limited to nine stories, it will be in scale to the buildings across the street, and lower than the building immediately to the south.

(b) The makeup of the area is currently skewed toward office and academic uses. Hotel and residential uses are underrepresented on this square and neighboring squares. The hotel will improve the balance of uses in the area.

(c) As proposed, the area of the hotel devoted to function rooms and exhibit space will be approximately 1% of the hotel's gross floor area.

(d) The subject property is located within 300 feet of the Central Employment Area (see also, Exhibit 23, p. 8, Tab E) and is seven blocks from the Foggy Bottom Metrorail station.[2]

(e) The project meets the requirements under the Zoning Regulations for loading berths, and includes more parking spaces than is required under the Regulations. There is no need to impose greater requirements to avoid dangerous or other objectionable traffic conditions.

(f) Neither of the roof structure special exceptions will have any effects on the light and air of neighboring properties or affect the character or view from public ways.

19. The Board credits the testimony and report presented by the applicant's traffic expert, Marty Wells in concluding that the hotel will have no adverse or objectionable transportation impacts (see, Tab F appended to Exhibit 23). In particular, the Board adopts the findings that

[2] This distance was calculated by measuring from the main lobby of the proposed hotel to the closest edge of the Central Employment Area, at the centerline of 19th Street (Exhibit 23, p. 8-9).

(a) The proposed hotel will generate about 49 am peak hour trips and 65 pm peak hour trips, fewer than the trips currently generated by the public parking garage;

(b) The planned parking spaces will adequately accommodate projected parking demands without spilling over into the adjacent neighborhood;

(c) The location and design of the traffic circulation elements avoid dangerous or objectionable traffic conditions. For instance, the portico share will have the capacity for two cars or taxis on the site (not on the street), so it will not impede northbound traffic on 20th Street; and, the proposed truck dock will adequately serve the modest service and delivery needs of the hotel.

20. The Board credits the testimony presented by the applicant's architect, George Dove. In particular, the Board adopts the findings that:

(a) Due to the narrowness of the site (85 feet width), it is not feasible to build mechanical units on the roof in a size enclosure that would setback from all walls, equal to the penthouse height;

(b) The portion of the penthouse fronting 20th Street was lowered, in response to discussion with the community, to align with the smaller, lower portion of the adjacent building next door.

CONCLUSIONS OF LAW

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR § 3104.1 for special exceptions pursuant to 11 DCMR §§ 512 and 411.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are met. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. Neither the proposed hotel in the SP zone nor the roof structures will be contrary to the purpose or intent of the Zoning Regulations. Nor does the Board find that the proposed hotel with roof structures will adversely affect the surrounding neighborhood.

A hotel use is permitted by special exception in the SP zone, provided certain specified conditions are met. Under section 512.1 of the Zoning Regulations, the Board may permit a hotel in the SP district, subject to the following provisions:

512.3 The height, bulk, and design of the hotel or inn shall be in harmony with existing uses and structures on neighboring property.

The Board concludes that the hotel will be compatible with existing uses and structures (See, Findings of Fact 18 (a) and (b)).

512.5 The approval of the hotel or inn shall result in a balance of residential, office, and, hotel or inn uses in the SP District in the vicinity of the hotel or inn.

As stated above, there are no other hotels in close proximity to the site. Therefore, the construction of a hotel will actually improve the balance of residential, office and hotel uses in the area (Findings of Fact 4, 5, and 6).

512.6 The gross floor area devoted to function rooms and exhibit space shall not exceed fifteen percent (15%) of the gross floor area of the hotel.

The gross floor area devoted to function rooms and exhibit space will be only 1% of the hotel's gross floor area (Finding of Fact 18(c)) This condition is met.

512.7 The hotel or inn shall be located within thirteen hundred feet (1,300 ft.) of the Central Employment Area or a Metrorail station.

The hotel will be 300 feet from a metrorail station (Finding of Fact 18(d)). This condition is met.

512.8 The location and design of driveways, access roads, and other circulation elements of the hotel or inn shall be to avoid dangerous or other objectionable traffic conditions.

The hotel will not result in adverse or objectionable transportation impacts (Finding of Fact 19(c)).

Roof Structures

Roof structures in the SP zone are governed by standards contained in §§ 530.4 and 537. In addition, § 537.1 incorporates the standards contained in § 411 of the Zoning Regulations. Among other things, these standards regulate the location and height of roof structures. Under §§ 3104.1 and 411, the Board may approve a special exception for the "location, design . . . and *all other regulated aspects*" of a roof structure in any zone district (emphasis supplied) (*See*, Table for special exception uses following § 3104.1). As explained in the Findings of Fact, the roof structures for the proposed hotel do not meet the "one to one setback" requirements or the uniformity requirements in the Regulations (Findings of Fact 13, 14, and 15). For this reason, the applicant seeks special

exception relief under § 411 to allow roof structures that do not meet the setback or uniformity requirements.

Pursuant to § 411.11, the Board may grant special exception relief from the strict requirements for a roof structure. The provision states in full:

> Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

The Board is persuaded that full compliance with the roof structures requirements would be unduly restrictive, prohibitively costly, and unreasonable. The architect testified that the roof structures will house mechanical equipment and an elevator penthouse, both of which are essential to the operating needs of the hotel. He explained further that the applicant was constrained by the narrowness of the site, a factor also highlighted by OP.

The Board is also persuaded that the intent or purpose of the Regulations will not be materially impaired, and that the light and air of adjacent buildings will not be affected adversely by the roof structures (Finding of Fact 18(f)). As set forth previously, setbacks in the SP zone will be met to the east and the west. While the roof structure heights will not be uniform throughout, they will be less than the maximum permitted height in of 18 feet 6 inches. *See*, § 530.4 (c).

The ANC Issues and Concerns

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10), to give "great weight" to the issues and concerns raised in the affected ANC's written recommendations. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive

advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

The chief concerns raised by the ANC are: (a) the size and bulk of the proposed hotel will create an intense canyon-like effect that will reduce light and cause a "further strain" on the residential community on the block; (b) the proposed hotel design, including the height and massing of the roof structure, is not in harmony with neighboring structures; (c) the proposed hotel will increase the traffic impact on the street, as the design offers limited options for taxi and bus service; and (d) the conversion to hotel use will result in an excess of hotel uses in the vicinity of the proposed new hotel and "within the boundaries of [the] ANC" (Exhibit 25).

The Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. As set forth above the Board found the testimony of OP persuasive that the building will be compatible with other nearby structures and will not diminish available light on the block. (Findings of Fact 18(a) and (f)). As to the traffic impact, the Board is persuaded by the applicant's traffic expert and report that the location and design of the traffic circulation elements will provide ample space for taxis or other cars and will not impede traffic on the street. (Finding of Fact 19). Finally, with respect to the ANC's assertion that conversion of the property to hotel use will result in "excess" hotel uses, the Board finds to the contrary. The area surrounding the site of the proposed hotel includes university, residential and office use. The proposed hotel will be the only hotel in the vicinity (Finding of Fact 4). While the ANC may prefer a residential project at the site, the choice to develop a hotel does not violate § 512.5. As stated by the OP representative, this section of the Regulations was designed to foster a "mix" of residential, office and hotel uses, not to favor one use over another.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under §§512 and 411 to allow the proposed hotel with roof structures. The Board further concludes that the special exceptions can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the granting of the requested relief will not tend to adversely affect the use of neighboring property in accordance with the regulations and map. It is therefore **ORDERED** that the application is **GRANTED.**

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is **GRANTED.**

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann II to grant; Curtis L. Etherly, Jr. and John G. Parsons to grant by absentee ballot)

Vote taken on May 2, 2006

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

Final Date of Order: AUG 03 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR,

RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17443

As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 3, 2006**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Whayne S. Quin, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Allstate Hotel Partnership
1666 K Street, N.W., Suite 430
Washington, D.C. 20006

Chairperson
Advisory Neighborhood Commission 2A
725 24th Street, N.W.
Washington, D.C. 20037

Single Member District Commissioner 2A05
Advisory Neighborhood Commission 2A
725 24th Street, N.W.
Washington, D.C. 20037

Bill Crews
Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Councilmember Jack Evans
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

Ellen McCarthy, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Jill Stern
General Counsel
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR