

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

Application of Renaissance Centro Third Street, LLC
ANC 6C

BZA Application No.
Hearing Date:

APPLICANT'S STATEMENT

This is the application of Renaissance Centro Third Street, LLC (the "**Applicant**") for variance relief to allow the construction of an addition to an existing historic building. The property that is the subject of this application is 704 3rd Street, NW (Square 529, Lots 802, 803, 845, & 847) (the "**Property**"). A Surveyor's plat is included in Exhibit C. The Property is included in the DD/C-2-C Zone District. An excerpt of the Zoning Map is included in Exhibit D.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve variances from the following three sections of the Zoning Regulations:

1. Section 774.1 (minimum rear yard): The required rear yard is 15 feet, and the proposed rear yard ranges from 0 to 5 feet.
2. Section 772.1 (lot occupancy): The maximum permitted lot occupancy for residential use is 80%. The proposed residential lot occupancy ranges from 68% to 100%. In the event that the Applicant decides on a residential use for the proposed project, the Applicant requests this relief.
3. Section 2101.1 (off-street parking): The parking requirement for the proposed project is 58 spaces, and the proposed project currently provides 60 spaces. However, the Applicant requests conditional

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18325
EXHIBIT NO. 5

relief – in the event that the Applicant finds it unnecessary – to eliminate one level of parking and to provide 39 spaces.

The Applicant also requests that the Board approve a special exception, pursuant to Section 411.11, for a roof structure that is not composed of walls of equal height, as required by Section 411.5.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2, 3104.1).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in downtown Washington and in Ward 6. It is mostly rectangular in shape and contains approximately 13,356 square feet of land area. The Property is located on the west side of the 700 block of 3rd Street NW between G & H Streets. It is bounded by a public alley to the north, G Street to the south, 3rd Street to the east, and office and residential buildings to the west.

The Property is improved with a long-since vacant five-story former apartment building (the “Harrison”). The Harrison is an individually-listed historic landmark.

The Property’s surrounding neighborhood is characterized by a mix of commercial and residential uses. The Property occupies a portion of the District that is dominated primarily by numerous large buildings. A large 11-story residential apartment tower, known as The Ashton, is to the north directly across the alley, and a large 12-story residential complex, known as Mass Court, is located at the northwest portion of the same square across the alley and to the north and west of The Ashton. The seven-story headquarters of the Government Accountability Office is to the west across 4th Street, an eight-story office building is to the south across G Street (FBI Washington

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Field Office), and the large National Building Museum is to the southwest across the intersection of 4th and G Streets. Further, the recently approved Center Leg Freeway mixed-use project across 3rd Street will include at least three high density buildings with heights comparable to the proposed project; it will include significant commercial, retail, and residential uses.¹ Finally, to the immediate west are moderate density residential and commercial buildings.

IV. EXISTING ZONING

The Property is located in the Downtown Development Overlay (“DD”)/C-2-C Zone District, a high-density zone that allows office, retail, housing, and mixed-use development. The DD/C-2-C Zone District allows any building height permitted by the Act to Regulate the Height of Buildings in the District of Columbia of 1910, which means a building on the Property may attain a height of 130 feet.² The DD/C-2-C Zone District has a mandatory residential requirement of a minimum of 4.5 floor area ratio (“FAR”), and permits matter-of-right buildings with a total commercial FAR of no greater than 8.0 (or 8.5 with the purchase of transferable development rights).³ However, through the combined lot development (“CLD”) process, an individual commercial building may exceed the FAR limit, should sufficient residential development be included in the combined lot.⁴

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V. THE PROPOSED PROJECT

The proposed project will be a residential/hotel complex consisting of the existing, vacant Harrison (converted to apartments/hotel rooms) as well as the addition of a new 12-story, 130-foot-

¹ ZC Case No. 08-34 was approved in proposed action on April 11, 2011, but it has not yet been approved in final action.

² The Property fronts on a 110-foot right-of-way: 3rd Street, N.W. See 11 DCMR §1701.7.

³ 11 DCMR§1706.4(a).

⁴ 11 DCMR§1706.4(b).

tall residential/hotel building (the “**Project**”).⁵ The Project will contain approximately 124,156 square feet of gross floor area (“**GFA**”) enabled by a combined lot development agreement. Approximately 33,018 square feet of GFA will be provided in the renovated Harrison structure, and approximately 91,138 square feet of GFA will be provided in the addition. Consideration has been given to the entire façade of the Harrison, and the addition’s design preserves most of the Harrison’s exterior. The project’s design will compliment, rather than mimic, the design of the Harrison. The addition will be set back from the main structure of the Harrison, and the south façade of the new addition will have the appearance of an independent building adjacent to the south façade of the Harrison. A new main entryway will be added at the base of the addition along G Street to complement the existing Harrison entryways fronting on 3rd Street.

The addition of a new residential/hotel structure tucked behind and preserving the historic Harrison would be entirely consistent with the nature and scale of the Project’s surroundings. The addition will create an exciting contrast to the Harrison, which will favorably accentuate the architecture of each, providing a varied and interesting appearance to the observer. The setback of the addition behind the smaller Harrison will create an interesting urban composition of building elements with differing heights, complementing the existing condition on the west side of the same square, along the 4th Street frontage – where the existing buildings range from two to 13 stories. The east and west facades of the addition will be designed consistent with the fact that they will be viewed from distances of up to several blocks in both directions. The architectural design of the addition will be primarily of brick masonry with smaller windows relating to the windows of the existing building, as well as larger glass bay windows. The Historic Preservation Review Board

⁵ The Applicant has not yet decided if the Project will include a hotel, a residential apartment house, or a mixture of both. The Applicant has requested conditional relief to account for the possible different uses. Market conditions will dictate which use(s) the Applicant selects.

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approved the design at their September 22, 2011 meeting (HPO staff report is attached as Exhibit E).

The Project will have one parking and loading entrance off of the alley to the north of the Property, which will provide access to an underground garage with approximately 60 parking spaces. The Project's loading facilities will be accessed from the same entrance off of the alley. This single parking/loading entrance will minimize traffic disruption in the alley and will maximize overall design efficiency.

In order to accomplish the desired redevelopment, which is detailed in the plans included in this filing (the "**Plans**", attached hereto as Exhibit F), the Applicant requires variance relief from the rear yard, lot occupancy, and, (conditionally) off-street parking requirements, as well as special exception relief from the roof structure uniformity requirements. The Board previously granted very similar relief for a very similar project on the Property in Case No. 17651 (the Order is attached as Exhibit G).

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In the DD/C-2-C Zone, pursuant to 11 DCMR §774.1, a rear yard of fifteen (15) feet is required. The building front is on G Street, N.W. The rear yard may be measured from the rear wall to the center line of the 20 foot wide alley below 20 feet of building height, but must be measured from the rear lot line to the rear wall of the building for that portion of the building over 20 feet high, pursuant to 11 DCMR §774.7. Since the Harrison already abuts the northern lot line, the proposed addition will also abut the northern lot line in order to maintain alignment between the existing and new structures. Thus, the Project cannot meet the rear yard requirement: the rear yard will measure 10 feet below 20 feet in height and 0 feet above 20 feet in height. Further, since the Addition needs to align with the rear of the existing building, the rear yard noncompliance is

increased slightly by the addition. Accordingly, the Applicant requests a variance from the fifteen (15) foot rear yard requirement.

Pursuant to 11 DCMR §772.1, the maximum lot occupancy for residential use is 80%. The Project will have a lot occupancy of that ranges from 68% to 100%. In order to retain as much of the Harrison as possible, the Project's design has incorporated a somewhat larger footprint. While the proposed lot occupancy is conforming for the possible hotel use, it is not conforming for the proposed residential use. Therefore, the Applicant requests relief from the lot occupancy requirement in the event that the Applicant chooses to incorporate residential use into the Project.

Pursuant to 11 DCMR §2101.1, the required amount of off-street parking for the Project is 58 spaces, and the current design includes 60 spaces. The third level of below grade parking significantly increases the cost of the Project and may not be necessary if the market conditions do not demand it. Should market conditions allow at the time of construction, the Applicant requests relief from the off-street parking requirement to eliminate one level of parking and provide 39 parking spaces.

Pursuant to 11 DCMR §411.5, a rooftop structure's enclosing walls "shall be of equal height." The Building's new penthouse will have walls of varying heights, even though its overall height will not exceed 18 feet, 6 inches. The penthouse will be comprised of three sections. The central, tallest, and westernmost portion of the penthouse will contain the elevator overrun, a cooling tower, and other mechanical equipment. The smaller southeast corner of the penthouse will have a height of 12 feet and will contain a lobby for the elevators and stairway providing access to the roof deck. The northwest corner of the penthouse will have a height of 12 feet and will contain an additional egress stairway. The Applicant lowered the height of these two portions of the roof

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structure by 5.5 feet to mitigate the visual effects of the roof structure's height on the western exterior wall. The roof structure is depicted on pages 13 – 17 of Exhibit F.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) 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. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, this application demonstrates that the Property meets the three-part test for area variance relief. As previously stated, it is also important to note that the Board once-before approved variance and special exception relief for a very similar project on the Property. In BZA Case No. 17651, the Board granted variance relief from the rear yard requirement and granted special exception relief for a roof structure with unequal wall heights and not set back sufficiently from exterior walls for an 11-story office building with nearly identical height and massing.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, 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. Finally, it is not

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necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

The Property meets the “exceptional conditions” element of the variance test. The presence of the Harrison - an historic landmark that cannot be demolished or substantially altered - prevents the Applicant from maximizing the development potential of the Property while still providing a rear yard and a conforming lot occupancy in a conventional layout. Indeed, the District of Columbia Court of Appeals has ruled that the existence of a landmark building on a property *always* renders that property “unique” for the purposes of the variance test - holding in United Unions v. District of Columbia Bd. of Zoning Adjustment, 554 A.2d 313, 317 (D.C. 1989), that “the landmark status of a single building is legally predicated on the unique attributes of that building,” and therefore that “designation as an historic landmark reflects characteristics of exceptional design requiring special treatment in the planning of continuous structures and additions.”⁶

The landmark status of the Harrison and the incentives for increases in height and density in the DD District, combine to comprise an exceptional condition. In order to utilize the incentives to increase development in the DD District, the site must be put to use in a way that obviates the typical width and space associated with new hotel and residential buildings. Furthermore, the layout of the Harrison, by extending from northern lot line to southern lot line, contributes the exception condition affecting the Property. Thus, the historic landmark designation, the zoning characteristics, and the layout of the Property all create an exceptional condition for the Property, as the Board found in Case No. 17651.

⁶ This holding has been followed in several significant cases decided by the Board, including BZA Case No. 16702 (2001).

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B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] 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.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . . . Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

The Applicant meets this standard for a practical difficulty. In summary, the practical difficulty inherent in providing a conforming rear yard and lot occupancy, and in providing the required amount of off-street parking results from the unique and exceptional circumstances related to the existing historic Harrison.

The width of the developable portion of the Property is severely constrained by the presence of the historic Harrison and the inability to demolish or make substantial alterations to it. Adaptive redevelopment of the Property requires working within the parameters of the Harrison's preservation. Therefore, the constraints imposed by the Harrison, in narrowing the space for the addition, create the practical difficulties necessary to justify the variance. However, failing to develop the addition will result in a waste of large buildable area, will contribute nothing to the economic development or tax revenue of the District of Columbia, and will not achieve the goal of development in the East End of Downtown promulgated by the creation of the DD District. Further, specifically regarding the rear yard and lot occupancy relief, the Applicant has been required to reserve the air space over the landmark; as a result, the Applicant had to shift the mass to the north and west and to increase the size of the Project's footprint. The resulting "filling in" of a portion of the rear yard both allows the Project to efficiently allocate square footage - and thus be viable - and create a uniform and aligned building facade facing the alley and 3rd Street.

Because of the narrowness of the developable land on the Property, the addition will be built to the lot lines on all sides. Due to the narrowness of the land for the addition (itself resulting from the need to preserve the historic Harrison), a rear yard and lot occupancy that comply with the Zoning Regulations cannot be provided while simultaneously allowing proper room for loading facilities, the parking/loading entrance, and the ground-floor interior functions. Further, in order to preserve and respect the landmark, the Applicant was required to reserve the air space over the landmark and therefore needed to utilize other portions of the Property - such as the rear yard - and to increase the footprint of the Project in order to make the Project financially feasible. Such shifting of space from over the landmark to the rear yard and increasing the Project's footprint allow the Building to maintain an efficient use of the site and protect the historic landmark.

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Finally, the cost for each additional level of underground parking increases exponentially due to the narrow lot and the fact that the parking is being constructed under an existing historic building. While the design incorporates 60 spaces on three underground levels, the additional third level may be unnecessary. Should demand for parking be lower than 60 spaces, the additional cost of the third level would be very costly and extraordinarily burdensome to the Applicant.

C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

A variance from the rear yard, lot occupancy, and off-street parking requirements can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. There will be no adverse impact from these variances. It is unreasonable to conclude that the impacts of a residential use, with respect to lot occupancy, would be greater than if the Project were for hotel use, which would conform to the lot occupancy standard. Despite the addition's increase in density on the site, the Project will not be unduly shadow the neighboring properties and will not negatively affect the adjacent properties with an overly imposing structure. The proposed Project reflects the heights and densities of surrounding buildings, while maintaining the historic landmark. Further, the Project is in a central location and in one of the most transit-rich areas of the city: fewer parking spaces than required will not adversely impact traffic and parking in the neighborhood.

Moreover, the Project advances the goals and policies of the Zoning Regulations related to the DD District, specifically § 1700.3(c), which serves to "protect historic buildings...while permitting sensitive and compatible new development subject to the historic preservation review process." The requested variances allow the Project to advance this purpose of the Zoning Regulations. In particular, the narrow addition minimizes the impact to the historic Harrison while creating an efficient development at the Property. The result is optimal historic renovation and

urban infill on an important location near the Judiciary Square Metrorail station and several bus lines. Therefore, the Project will create positive benefits to the public good.

VII. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF FOR A ROOF STRUCTURE

The Applicant is seeking a special exception under Section 411.11 of the Zoning Regulations to permit a roof structure that does not consist of walls of equal height. In order to obtain the requested special exception relief under this Section, the Applicant must demonstrate that “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] 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...” The requested special exception must also be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and must not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

A. The Requested Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The Applicant lowered the height of the northern and southern stairway enclosures by 5.5 feet to minimize the visual effect of the overall roof structure on the adjacent properties to its west. Since the addition is surrounded by other buildings, the unequal heights of the penthouse walls will not result in the penthouse visibly overshadowing any neighboring structure from the perspective of a person on the street. Furthermore, it should be noted that the relief requested is to minimize the appearance of the penthouse: the Applicant decreased the size of the penthouse where possible to decrease visual impacts and to avoid wasting space on the roof. Without the requested relief, the penthouse would be unnecessarily large when its functions could be accomplished in a smaller

structure, like the one proposed. Thus, the “intent and purpose” of the chapter as applied to buildings in the C-2-C Zone District – that is, to prevent unsightly penthouses from increasing the apparent height of the building – will be fulfilled.

B. The Requested Relief will not Adversely Affect the Use of Neighboring Property

By reducing penthouse wall heights where possible, the Applicant will reduce the possibility of adversely affecting neighboring property more than would one larger structure of uniform wall height. Furthermore, as previously discussed, the Property is surrounded by comparably tall buildings, which will not be impacted by the proposed roof structure. Also, the shorter properties to the west will not have a clear view of the penthouse, and what they can see is smaller than if the walls were of equal height.

VIII. EXHIBITS

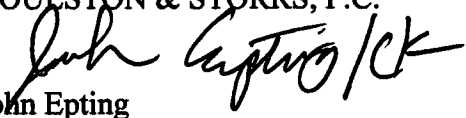
EXHIBIT A	Application Form, Self-Certification Form, and Authorization Letters
EXHIBIT B	Statement in Support
EXHIBIT C	Surveyor's Plat
EXHIBIT D	Excerpt of Zoning Map
EXHIBIT E	HPO Staff Report
EXHIBIT F	Architectural Plans and Drawings, including Photos of Property
EXHIBIT G	BZA Order No. 17651
EXHIBIT H	Names and Addresses of all Property Owners within 200 Feet of the Property

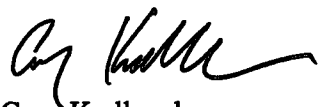
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IX. CONCLUSION

Because of the foregoing reasons, the Applicant satisfies the criteria for area variance relief and respectfully requests that the Board approve this application.

Respectfully submitted,
GOULSTON & STORRS, P.C.


John Epting


Cary Kadlecek

Date: November 1, 2011

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