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BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Statement of Nike, Inc.
ANC 2E05

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BZA Application No.
Hearing Date:

STATEMENT OF THE APPLICANT

This is the statement of Nike, Inc. ("**Applicant**") for special exception relief for an existing building at 3040 M Street, NW (Square 1198, Lot 74) ("**Property**"). The Property is located in the C-2-A Zone District in the Georgetown Historic District. The Property has frontage on the south side of M Street and the west side of Thomas Jefferson Street. The Property was formerly used as a car sales warehouse, a Barnes and Noble and is currently used as a Nike retail store. The Applicant seeks special exception approval for roof structures. The building currently has non-compliant roof structures, which Nike is proposing to make more conforming. Nevertheless, the existing and proposed roof structures still require relief from the Zoning Regulations.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve special exception relief pursuant to Section 3104.1 of Title 11 of the District of Columbia Municipal Regulations from the roof structure requirements of Sections 777, 411.3, and 411.5.

II. JURISDICTION OF THE BOARD

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

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18565
EXHIBIT NO. 4

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III. STATEMENT OF EXISTING AND PROPOSED USE

The Property is a contributing building in the Georgetown Historic District. In recent history its prominent location in the vibrant M Street shopping district has made it favorable for use as a retail center. It was the site of a Barnes and Noble for several years and it is currently the home of Nike.

Nike has long had stores located in the suburbs of DC but never had a presence in the city itself. Nike recently opened its first store in the District on the Property. It modified the building to suit its retail needs, which included modifications to the roof structures. When Nike took possession of the building, there were seven roof structures (four rooftop units ("RTU"), one mechanical room, one elevator penthouse and one stair bulkhead) as well as a series of ductwork spanning the entirety of the roof, the majority of which constituted a "structure" in and of itself under the definitions of the Zoning Regulations. Nike promptly introduced a more efficient HVAC system, requiring a replacement of the RTUs and the ductwork on the roof. Nike reduced the number of RTUs from 4 to 3 and lowered the height and mass of both the RTUs and the ductwork. In sum, Nike took steps to make non-conforming roof structures more conforming. Nevertheless, the resulting roof structures did not comply with the letter of the Zoning Regulations; namely that there are multiple roof structures and they are of varying height. This was noted during an inspection for Nike's certificate of occupancy. Nike is currently operating under a temporary certificate of occupancy, a copy of which is attached as Exhibit D.¹

Upon learning this, Nike immediately took steps to rectify the situation, including meeting with the Commission of Fine Arts and the Zoning Administrator. After meeting with the Commission of Fine Arts to discuss the roof structures, Nike was directed to make additional

¹ Nike will extend the existing temporary certificate of occupancy pending the conclusion of the BZA case.

changes to the existing structures. In response to these suggestions, Nike is proposing to further reduce the height of the ductwork along Thomas Jefferson Street and to set it back from the perimeter of the roof. Nike seeks approval for the existing roof structures as modified per the comments received from the Commission of Fine Arts. A proposed roof plan is attached as Exhibit A.²

IV. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the southwest corner of M Street, NW and Thomas Jefferson Street, NW in Georgetown. As shown in the attached photographs, the Property is located along a string of retail shops on the south side of M Street. The Property is surrounded largely by office, hotel and retail uses. It is removed from the residential uses in Georgetown.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER SECTION 3104.1 OF THE ZONING REGULATIONS

The Applicant is seeking special exception relief pursuant to Sections 3104.1 and 411.11 from the requirements of Sections 777 (411.3 and 411.5), that there be a single roof structure and that the roof structure be of uniform height. The Applicant's building has multiple roof structures which vary in height. In order to obtain the requested relief, the special exception must 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. 11 DCMR Section 3104.1.

² The roof structures depicted on the attached roof plan are existing structures. The structures on the eastern side of the building, within the dotted box, are the structures to be further modified per comments from the Commission of Fine Arts.

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

The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR Section 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted; and must be designed to encourage the stability of districts and land values. Id. at Section 101.2. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether a special exception should be granted.

In this case, the Applicant seeks relief pursuant to Section 411.11, from Sections 77 (411.3, and 411.5). Section 411.3 requires that all penthouses and mechanical equipment be placed in a single enclosure. Section 411.5 requires penthouses to consist of a uniform height. Section 411.11 of the Zoning Regulations provides, however, that “[w]here 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 Section 3104, the location, design, number, and all other aspects of such structure, even if such structures do not meet the normal setback requirements...; 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.” 11 DCMR Section 411.11.

The Applicant is proposing a roof plan with three existing roof structures: an existing elevator penthouse, an existing stair bulkhead, and an existing mechanical room. These roof

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structures are grandfathered as existing roof structures. Nike, however, replaced four of the existing RTUs and ductwork, also considered roof structures, with fewer and smaller RTUs and ductwork. Nike is going to make further changes to the ductwork along Thomas Jefferson Street to minimize its appearance, as depicted in the attached plans. Nevertheless, the existing and proposed modifications require zoning relief as they do not comply with the Zoning Regulations. Nike has modified an existing non-compliant condition and improved the condition by bringing it closer in conformity with the Zoning Regulations. The number of roof structures has been reduced and perhaps, more importantly, Nike will reduce the overall size of the RTUs and related ductwork so that they are generally not visible from either Thomas Jefferson Street or M Street. The visual impact of the non-conformity will be minimized, if not eliminated altogether.

B. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

The proposed roof plan will have a smaller presence on the rooftop than its predecessors, thus, neighboring property owners will benefit from the proposed change in the roof plan. Given the reduced mass and height of the roof structures, the requested relief will not adversely affect the use of neighboring property.

VII. EXHIBITS

1. EXHIBIT A Architectural Plans including Surveyor's Plat of Property and Photographs of Property
2. EXHIBIT B Application Form, Self-Certification and Agent Authorization
3. EXHIBIT C Property Owner List
4. EXHIBIT D Temporary Certificate of Occupancy

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VIII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested special exception and variance relief in this case.

Respectfully submitted,


Christine Roddy

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Certificate of Service

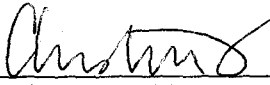
I hereby certify that I sent a copy of the foregoing document to the following addresses on March 20, 2013 by first class mail and hand delivery:

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