

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564  
Holland & Knight LLP | www.hklaw.com

Mary Carolyn Brown  
(202) 862-5990  
carolyn.brown@hklaw.com

October 22, 2013

VIA HAND DELIVERY

Board of Zoning Adjustment  
for the District of Columbia  
441 4<sup>th</sup> Street, N.W., 2<sup>nd</sup> Floor  
Washington, D.C. 20001

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Re: BZA Application No. 18648  
1430 Rhode Island Ave., N.W. (Square 211, Lot 858)

Dear Members of the Board:

On behalf of LHO Washington Hotel Four LLC, we are submitting herewith an original and ten copies of the Applicant's Pre-Hearing Statement in support of the above-referenced application. We look forward to the Board's hearing on this matter on November 5, 2013.

Respectfully Submitted,



Mary Carolyn Brown

Enclosures

cc: Advisory Neighborhood Commission 2F (w/encl. by mail)  
Steven Mordfin, Office of Planning (w/encl. by hand delivery)

BOARD OF ZONING ADJUSTMENT  
District of Columbia  
CASE NO. 18648  
EXHIBIT NO. 26

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. 18648  
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**BEFORE THE BOARD  
OF ZONING ADJUSTMENT  
FOR THE DISTRICT OF COLUMBIA**

**APPLICATION OF  
LHO WASHINGTON FOUR, LLC  
1430 RHODE ISLAND AVE., N.W.**

**BZA APPLICATION NO. 18648  
HEARING DATE: NOV. 5, 2013  
ANC 2F03**

**STATEMENT OF THE APPLICANT**

**I.  
NATURE OF RELIEF SOUGHT**

LHO Washington Hotel Four LLC (the "Applicant") submits this statement in support of its application to the Board of Zoning Adjustment ("BZA" or "the Board") for a variance pursuant to 11 DCMR §§ 3103.2 from the provisions of 11 DCMR § 350.4(e) prohibiting the expansion of gross floor area or the increase in function or meeting space within a hotel existing on or before May 16, 1980, in the R-5-E District at premises 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858).

The relief requested will permit the construction of a small addition to The Helix Hotel, consistent with BZA Case No. 17672, in which the Board approved an area variance from 11 DCMR § 350.4(e) in 2008 for the same addition requested by the Applicant herein. Since the Board's decision, the Applicant took no action to construct the proposed addition, and the Board's Order expired on June 9, 2010. Thus, the Applicant is returning to the Board to obtain the same variance that was granted in 2008. The proposed addition to the existing hotel is appropriate for the site, fully compatible with the surrounding area, and will not substantially impair the intent, purpose, and integrity of the Zone Plan.

## **II.**

### **JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment ("BZA" or "Board") has jurisdiction to grant the variance requested herein pursuant to 11 DCMR § 3103.2.

## **III.**

### **BACKGROUND**

#### **A. Description of the Site**

The subject property is located at 1430 Rhode Island Avenue, N.W., at Lot 858 in Square 211 ("Site"). Square 211 is bounded by Rhode Island Ave., N.W., to the north, 15<sup>th</sup> Street, N.W., to the west, N Street to the south, and 14<sup>th</sup> Street, N.W. to the east. The Site is presently improved with the Helix Hotel, and contains approximately 18,191 square feet of land.

The Helix Hotel is a high-rise building with approximately 109,146 square feet of gross floor area and 179 guest rooms. The first floor of the building contains typical hotel functions, including a reception area, hotel offices, a restaurant, a fitness room, public restrooms, and three meeting rooms. The hotel fronts on Rhode Island Avenue and abuts a public alley to the rear. The Site is zoned R-5-E and is located within the 14th Street Historic District.

The existing building was constructed in 1965 for multi-family use and was converted to hotel use in the late 1970s. The building is T-shaped, occupying the entire lot in the rear, then extending toward the front of the property with significant setbacks on either side. The center of the building directly abuts its front property line on Rhode Island Avenue, with deep side courts measuring 25 feet in width and 93 feet, 2 inches in length. The rear yard has an irregular configuration, with three separate sides abutting the public alley. The open court on the east side of the building is partially landscaped and includes some mechanical equipment. The building occupies approximately 60 percent of its lot and has a floor area ratio ("FAR") of 6.0. To the

front of the building is a circular driveway with a covered area for pick-up and drop-off. There are three existing parking spaces in front of the building that the hotel uses for service, deliveries, and valet parking operation. A below-grade garage, accessed from the public alley at the rear of the building, provides parking spaces for 33 vehicles.

**B. Description of the Surrounding Area**

The Site is located on the south side of Rhode Island Avenue, N.W., between 14<sup>th</sup> Street and 15<sup>th</sup> Street, with close proximity to Logan Circle. This portion of Rhode Island Avenue is characterized by a mix of high-rise apartment houses, hotels, modern condominium buildings, and historic row houses. The area around Logan Circle and the 14<sup>th</sup> Street corridor is being redeveloped with a wide variety of high-density commercial, residential, and mixed use buildings.

The Site is easily accessible by public transportation. It is located 0.7 miles from the Dupont Circle and the Farragut North Metrorail Stations, both of which serve the Red Line, and 0.8 miles from the Mt. Vernon Square/7<sup>th</sup> Street-Convention Center Metrorail Station, which serves the Green and Yellow Lines. The Site is also located along numerous Metrobus lines, including the G2, 52, 53, 54, and DC 98 lines, and is within two blocks of three Capital Bikeshare stations.

**C. Zoning**

The Site is located in the R-5-E District, which allows hotels existing as of May 16, 1980, as a matter of right. 11 DCMR § 350.4. The R-5-E District allows a maximum height of 90 feet, a maximum FAR of 6.0, and a maximum lot occupancy of 75 percent. *See* 11 DCMR §§ 400.1, 402.4, 403.2. The Site is also located within the Greater 14<sup>th</sup> Street Historic District, which includes the Logan Circle neighborhood. Like many other buildings in the area, the Helix Hotel

was originally built as a twentieth century apartment house but was later converted to hotel use. The building is a non-contributing property in the historic district.

The existing building on the Site was constructed in 1965 and is currently nonconforming only to the extent that it was converted to a hotel use prior to the change in the Zoning Regulations governing such uses in a residential district. Because the proposed addition does not render the building non-conforming with respect to lot occupancy, and does not extend or expand any non-conformities, the building may be expanded or enlarged without additional variances. 11 DCMR § 2001.3. However, a variance from 11 DCMR § 350.4(e) is necessary because the proposed addition will add both to the gross floor area of the building and the floor area within the hotel dedicated to function or exhibit space. Although the proposed addition is *de minimis*, a variance from the restrictions in section 350.4(e) for hotels in the R-5-E District is required.

#### **D. Project Description**

The Applicant proposes to construct a one-story addition to the existing hotel to create a single, flexible meeting room with approximately 1,789 square feet of space. The addition will be located where the northeast court currently exists. It will extend the existing northeast exterior wall out to the eastern property line and will align with the center portion of the building facing Rhode Island Avenue. The addition will add approximately 2,172 square feet of gross floor area to the existing building. The property's lot occupancy will increase from approximately 60 percent to 72.2 percent, and the density will increase from 6.0 FAR to 6.11 FAR.

Approximately 1550 square feet of gross floor area presently used as a passenger drop-off area will be converted to interior space comprised of new lobby seating and pre-function space for the proposed meeting room. The existing smaller meeting rooms at the rear of the

building will be reconfigured to accommodate restrooms and slightly expanded kitchen space currently undersized for the restaurant.

The addition as proposed is slightly different from the addition that the BZA approved in 2008 (see Exhibit B). The 2008 approved addition included maintaining the existing drive loop curving beneath the building. The proposed addition is slightly larger, however, recognizing the current design guidelines set for DC Public Space, the addition was configured to infill the existing drive aisle space currently used for guest drop off, thus maintaining the line of the current façade and setbacks on the street. The current proposal is intended to keep the building footprint, including the addition, all within the property boundary, excluding a pedestrian canopy along the façade.

The design of the addition's façade is made primarily of brushed stainless composite metal panels with vertically butt-glazed windows and brushed stainless metal. The addition's design and materials are in harmony with the stainless steel meshed drapery and stainless metal shingles that adorn the façade of the existing building. Detailed renderings are included in Sheet 1 of the architectural plans and are submitted as Exhibit D. The proposed addition will be constructed with a green roof.

#### **IV.**

#### **THE APPLICANT MEETS THE STANDARDS FOR AREA VARIANCES UNDER THE ZONING REGULATIONS**

##### **A. Nature of Relief Sought**

The Applicant requests a variance from section 350.4(e) of the Zoning Regulations. The proposed addition will increase the Site's FAR from 6.0, the maximum permitted in the R-5-E District, to 6.11, or a 1.8 percent increase. This increase falls within the two percent flexibility granted to the Zoning Administrator, pursuant to section 2522.1(a) of the Zoning Regulations.

However, section 350.4(e) does not permit any addition of gross floor area to a hotel within the R-5-E District, or an increase in the amount of area devoted to function rooms to a hotel established prior to May 16, 1980. Therefore, a variance is required from section 350.4(e).

**B. Standard of Review for Variance Relief**

Under D.C. Code § 6-641.07(g)(3) (2001 ed.)<sup>1</sup> and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) the property is unique because, *inter alia*, of its size, shape or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

*French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. See *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship,

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<sup>1</sup> Section 6-641 07 of the D.C. Code provides, *inter alia*, that:

[w]here by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this subchapter and subchapter V of this chapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, ... [the Board is authorized to grant], upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

D.C. Code § 6-641.07(g)(3) (2001 ed).

a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." *See Gilmartin v. D.C. Bd of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, the proposed project meets all three prongs of the variance test.

### **C. The Site's Extraordinary or Exceptional Conditions**

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Here, the existence of the hotel on the Site creates multiple exceptional conditions, which were identified in 2007 when the Board reviewed and approved the same request for a variance from section 350.4. *See* BZA Order No. 17672. In that case, the Board concluded that the Site confronted multiple exceptional conditions:

"[t]he subject property faces an exceptional condition or situation due to a confluence of factors. The building on the subject property was constructed and used as an apartment house prior to its conversion to hotel use, and thus lacks certain features typically found in hotels, such as large common areas. The conversion to hotel use was undertaken as a matter of right, but subsequent amendments to the Zoning Regulations restricted the Applicant's ability to enlarge the hotel building or alter the hotel operation by creating additional meeting space within the building. Structural features of the building, especially the limited space between columns and the relatively low ceilings, the irregularly shaped lot, the siting of the building on the lot, and the large side yards also constrain the Applicant's ability to create a larger meeting space, consistent with the industry standard high ceiling and unobstructed sight lines, within the existing building."

BZA Application No. 17672.

The conditions of the Site and building are the same today. The Site is generally rectangular in shape, but has an irregular rear yard configuration, with three separate sides abutting the public alley. This angled area at the building's rear is the entrance to the below-

grade parking garage. The existing building is also uniquely configured. While no side yard is required in the R-5-E District, the building is T-shaped with large side yards. This configuration, combined with the building's existing structural system, limits the ability to combine spaces to accommodate large groups. The building's only existing meeting space is comprised of three separate rooms on the first floor, which together consist of approximately 2,000 square feet of floor area. Because this meeting space was created in the conversion from apartment to hotel use, it is extremely limited in size and configuration, and the column layout restricts the ability to expand this space without also expanding the envelope of the building.

On June 9, 2008, the BZA voted 4-0-1 to grant the variance requested; however, the Applicant took no action to construct the proposed addition. Thus, the exceptional conditions that were inherent in the Site and the existing building in 2007 remain relevant today. The Applicant now seeks to obtain the same variance approval from this Board.

#### **D. Resulting Practical Difficulty**

As a direct result of the unique conditions of the Site, the Applicant has encountered practical difficulties in meeting the strict application of section 350.4(e). The Zoning Regulations prohibit the expansion of gross floor area or the increase in function or meeting space within a hotel existing on or before May 16, 1980. Because the existing building was originally constructed as an apartment house in 1965, it lacks appropriate meeting space that is a typical feature of most modern hotels. As a result, the Applicant proposes to construct a flexible meeting space in a single room with unobstructed floor space. Without the proposed addition, the Applicant cannot host large groups for formal meetings or functions. Providing a larger, open space is integral to the successful operation of the hotel and is key in maintaining the hotel's competitive advantage in relation to its direct hotel competitors.

The structural layout of the building and its unusual T-shape prevent both the expansion of the existing meeting rooms or their relocation into a single space in another portion of the building. Although the combined floor area of existing meeting rooms is approximately 2,000 square feet, this square footage exists in fragmented spaces located in the rear of the first floor of the building. This space cannot be combined or reconfigured in any logical way to allow for continuous or larger meeting spaces because of the building's existing structural layout. The building's structural members and bearing walls will not allow full passage between these rooms. This inflexibility creates a significant practical difficulty because there is no place within the existing structure to accommodate any medium-sized function or gathering space, which is integral to the hotel's operations. The proposed addition will be flexible in design and will be able to accommodate a variety of meetings, functions, and events, which the hotel is currently unable to host. As a result of these unique conditions, strict compliance with section 350.4(e) would result in a practical difficulty to the Applicant, thus requiring the requested variance.

### **3. No Harm to Public Good or Zone Plan**

The requested variance will not result in any substantial detriment to the public good, nor will it impair the purpose, intent, or integrity of the Zone Plan. Section 350.4 does not freeze all pre-1980 hotels in residential areas as they were, and it does not entirely prohibit changes or reallocations to their space; rather, section 350.4 seeks to protect existing residential neighborhoods by excluding the conversion of residential buildings to hotel uses and by preventing the construction of major conference centers as part of hotel developments. The Helix Hotel existed as a hotel before the restriction in section 350.4 was enacted. Further, the hotel does not seek to become a major conference center or change its existing character or use. The proposed addition is *de minimis*, and will simply allow a permitted use in the R-5-E District to continue. The addition is compatible with the requirements of the Greater 14<sup>th</sup> Street Historic

District, and has received conceptual approval from the District of Columbia Historic Preservation Review Board through delegated action to the staff. The Applicant does not anticipate any significant increase in traffic to the Site as a result of the proposed addition, and the addition will not result in a major change in hotel operations. Thus, relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zone Plan.

**V.**  
**COMMUNITY SUPPORT**

The Applicant presented the project to the Advisory Neighborhood Commission 2F ("ANC 2F") Community Development Committee on June 26, 2013. At its regularly-scheduled public meeting on July 10, 2013, at which a quorum was present, ANC 2F voted 7-0-1 to support the application. The ANC letter of support is attached as Exhibit E.

**VI.**  
**EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION**

- |                   |                                                    |
|-------------------|----------------------------------------------------|
| <u>Exhibit A:</u> | A portion of the Zoning Map showing the Site;      |
| <u>Exhibit B:</u> | Expansion Comparison, 2008 and 2013                |
| <u>Exhibit C:</u> | Portions of Sanborn/tax maps illustrating the Site |
| <u>Exhibit D:</u> | Architectural Plans and Drawings for the project;  |
| <u>Exhibit E:</u> | ANC 2F Letter of Support;                          |
| <u>Exhibit F:</u> | Outline of Testimony of Applicant's witnesses      |

**VII.**  
**WITNESSES**

The Applicant may call the following witnesses to testify in support of the application:

- A. Joanna Zook, LHO Washington Four, LLC
- B. Gene Weissman, Architecture Inc., architect for the project

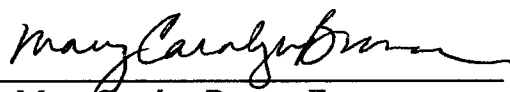
- C. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight  
LLP

**VII.**  
**CONCLUSION**

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:   
Mary Carolyn Brown, Esq.

800 17<sup>th</sup> Street, N.W.  
Suite 1100  
Washington, D.C. 20006  
(202) 955-3000

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