

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

Application for 627-631 H Street, N.W.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by MR Gallery Square LLC, the owner of the property located at 627-631 H Street, N.W., Square 453, Lot 59 (the "Site"), in support of its application pursuant to 11 DCMR §§ 3103.2 and 3104.1 for (1) an area variance from the parking requirements of § 2101, (2) an area variance from the loading requirements of § 2201, (3) an area variance from the court requirements of § 776, (4) a special exception from the roof structure requirements of §§ 770.6 and 411, and (5) a special exception from the rear yard requirements of § 774, to allow the construction of a new hotel with cellar and ground floor retail in the DD/C-3-C District at the Site.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than fourteen days prior to the public hearing for the present application. In this statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested variance and special exception relief. Following herein, as required by the Board's application process, is a preliminary statement indicating how the Applicant meets the burden of proof.

I. Background

The Site consists of Lot 59 in Square 453. Square 453 is bounded by I Street to the north, 7th Street to the west, H Street to the south, and 6th Street to the east, all located in the northwest quadrant of the District of Columbia. The Site is an interior lot with frontage on H Street and a 30-foot public alley at the rear. To the east and west of the Site is private property (Lots 54 and 58, respectively), with each lot improved with a mixed use building rising to a height of approximately 40 feet.

The Site is zoned DD/C-3-C and is located in the Chinatown Subarea and Housing Priority Area B in the Comprehensive Plan (*see* 11 DCMR § 1706.8(b)). The C-3-C zoning permits a hotel as a matter-of-right, with a maximum height of 90 feet and a maximum floor area ratio ("FAR") of 6.5. Based on the Site's location within the Downtown Development Overlay District, the Site may be developed with a building having a maximum height of 110 feet, based on its frontage on H Street, N.W., and a maximum density of 10 FAR. Section 1706.5 requires that a minimum of 3.5 FAR be devoted to residential uses, which will be satisfied for this project off-site through combined lot development. Section 1705.3 requires that a minimum of 0.5 FAR be devoted to retail, service, arts, and arts-related uses listed in §§ 1710 and 1711, which will be satisfied by devoting a minimum of 0.5 FAR to retail uses on the Site.

The Applicant proposes to develop the Site with a new 11-story hotel with two below-grade levels. The proposed building has a height of 110 feet and contains approximately 68,772 square feet of total gross floor area, comprised of 245 guest rooms on floors 2-11. The ground floor will contain 4,600 square feet devoted to retail use, and 1,495 square feet devoted to the hotel lobby. The first cellar level will include new retail uses, and the second cellar level will include "back-of-house" hotel uses, including administrative offices, mechanical utility rooms, locker rooms for hotel employees, and a laundry room. The Site is across the street from the Gallery Place Chinatown Metro Station and will continue the ongoing growth of the Chinatown area.

II. Burden of Proof - Variances

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan. As described below, the Applicant can meet its burden of proof for the area variances requested.

(A) Exceptional Condition or Situation

The Applicant will demonstrate that the Site is exceptionally small, consisting of only 8,039 square feet of land area, and exceptionally narrow, having only 60.5 feet of frontage along H Street for its almost 133 feet of depth. The Site is an interior lot bounded on two sides by lot lines (east and west facades) and on one side by a 30-foot public alley (south façade). The existing 40-foot building to the west encroaches onto the Site approximately 1 foot, 7 inches, making the practical width of the Site even narrower, at 57 feet, 11 inches. These site characteristics place substantial restrictions on potential parking and loading configurations, as well as on the depth available for courts.

(B) Resulting Practical Difficulty

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant.

1. Parking

Section 2101.1 of the Zoning Regulations requires that the proposed development provide one parking space for each four hotel rooms, plus one parking space for each additional 750 square feet of retail space in excess of 3,000 square feet. In this case, the Applicant is required to provide 61 parking spaces for the hotel use, plus three parking spaces for the retail uses, for a total of 64 spaces.

Given the Site's small size and narrow width, it is practically difficult to achieve the required number of parking spaces for the Site. First, the turning radius and grade required to provide a ramp leading to a below-grade parking garage would require a ramp to be located in

the northeast corner of the Site. Given that the majority of the Site's rear width is allocated to the required loading facilities (27 feet) and rear exit corridor (5 feet), a ramp would occupy the remaining width of the Site. It is practically difficult to construct a ramp in this location because it would eliminate approximately 1,200 square feet of the ground floor of the building devoted to retail uses, and it would eliminate Stair B and Elevator 4. (See First Floor Plan of the architectural plans and elevations.) The location of Stair B is dictated by the Building Code requirements that (i) two stairways must be located at a minimum distance of one-third the diagonal dimension of the building (in this case, 46 feet), and (ii) a dead-end corridor must not be located more than 50 feet past a stairway. If Stair B is pushed toward the front of the building to provide room for a parking ramp, Stair B would be less than 46 feet away from Stair A, and the dead end corridor would be located more than 50 feet from a stairway. Thus, Stair B cannot be moved or eliminated to make space for a parking garage entrance ramp on the ground floor without resulting in a practical difficulty. Relocating the stair would adversely impact the layout of the hotel rooms above, which is already constrained given the narrowness of the Site.

Furthermore, due to the Site's small size, narrow width, and the location of the proposed building's columns and core elements, the Applicant could fit very few parking spaces on each excavated parking level, due to required drive isle widths and ramping. Thus, a large number of below-grade levels would be necessary to achieve the required 64 parking spaces, and such construction and excavation would be at a significant cost. While the Applicant is providing two cellar levels for retail and back-of-house hotel uses, these types of uses would still need to be accommodated even if parking was provided, which would further exasperate the practical difficulty of providing the required number of parking spaces. Based on the constraints of the Site and these practical difficulties, the Applicant requests a variance from the parking space requirements of Section 2101.

2. Loading

Section 2201.1 of the Zoning Regulations requires that a hotel with more than 200 rooms include the following loading facilities: one berth at 30 feet deep and one berth at 55 feet deep, one platform at 100 square feet and one platform at 200 square feet, and one service/delivery space at 20 feet deep. The Applicant proposes to provide one berth at 30 feet deep, one platform at 100 square feet, and one service/delivery space at a minimum of 20 feet deep. Therefore, the Applicant requests relief from providing one 55-foot loading berth and one 200 square foot loading platform.

Given the Site's small size and narrow width, providing a 55-foot loading berth and related platform is practically difficult. If provided, the two loading berths would have to be either (a) lined up along the rear property line, taking up almost the entire width of the Site and interfering with the location of the exit corridor, Stair B, and Elevator 4, which, as described above, cannot be relocated, or else (b) stacked one in front of the other, taking up almost half of the length of the Site on the first level and interfering with the layout of the restaurant and the configuration and location of the building's structural columns. (See First Floor Plan of the architectural plans and elevations included with the application). For these reasons, the Applicant requests a variance from the loading requirements of Section 2201.1.

3. Courts

Section 776.1 of the Zoning Regulations provides that "where a court is provided for a building or portion of a building devoted to nonresidential uses... the width of court shall be a minimum of three inches per foot (3 in./ft.) of height... provided that in no case shall the width of court be less than twelve feet (12 ft.)." In addition, Section 776.2 provides that "[i]n the case of a closed court for a building or portion of a building devoted to nonresidential uses, the minimum area shall be at least twice the square of the width of court based upon the height of court, but not less than 250 square feet. In this case, the Applicant proposes to provide the following non-compliant courts: (1) at the west side of the Site, a closed court at the second level of the building, with a width of 10 feet, 4 inches, where a minimum width of 12 feet is required; (2) at the west side of the Site, an open court at the third floor of the building with a width of 10 feet, 4 inches, where a minimum width of 20 feet, 10 inches is required, based on a court height of 83 feet, 4 inches feet; and (3) at the east side of the Site, an open court at the second floor of the building with a width of 8 feet, 2 inches, where a minimum width of 23 feet, 4 inches, is required, based on a court height of 93 feet, 4 inches. The closed court on the second level on the west side of the Site requires a minimum area of 250 square feet and the proposed court complies with this requirement by providing an area greater than 250 square feet.

Providing compliant court widths on the east and west sides of the Site is impractical given the Site's exceptionally narrow width. If the Applicant provided compliant courts on both sides of the building, almost 75 percent of the building's width would be eliminated on floors 3-11. If the Applicant provided a single compliant court on one side of the building, there would be no room for a double-loaded corridor in the building, which is necessary for the hotel use on the narrow Site, and one side of the building would have at-risk windows on a party wall. Thus, strict compliance with the court regulations would severely compromise the layout of the building's interior and greatly reduce the number of hotel rooms, making development practically difficult. Furthermore, the Zoning Regulations do not require that the Applicant provide courts at all; however, the Applicant is providing courts to increase the light and air to adjacent buildings and to enhance the building's aesthetic and enjoyment for hotel guests. The Applicant, therefore, requests a variance from the court requirements of Section 776.1 of the Zoning Regulations.

(C) No Harm to Public Good or Zone Plan:

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. Although the Applicant proposes to provide no on-site parking spaces, hotel guests and retail patrons will not need or want a car to access the Site, given the Site's easy accessibility to multiple alternative forms of transportation and its location in a vibrant mixed use neighborhood. The Site is located across the street from the Gallery Place Chinatown Metro Station, which services the Green, Red, and Yellow Metrorail lines. The Site is also in close proximity to multiple Metrobus lines, nine Capital Bikeshare stations within 0.4 miles, 10 car-share facilities within 0.3 miles (ZipCar and Hertz On Demand), and has ample access to Car2Go vehicles. Moreover, the Site has a walkscore of 97 (see, www.walkscore.com), which will enable hotel guests and retail and restaurant patrons to easily access the Site by foot. Finally, based on the Site's location near the Convention Center and the

Verizon Center, and the small average size of hotel guest rooms, it is even more likely that hotel guests will not need or want to use a car to access the Site. Based on the traffic report prepared by Gorove/Slade that will be submitted into the record with the Applicant's prehearing materials, providing no parking on the Site is appropriate for the proposed hotel use at the Site and will have no adverse impact. Moreover, the public good will be served by a high-quality infill development project in the Chinatown area.

The loading facilities are also sufficient to serve the needs of the proposed hotel and restaurant uses. The project provides one berth at 30 feet deep, one platform at 100 square feet, and one service/delivery space at a minimum of 20 feet deep. These loading facilities are more than adequate for the mix of uses proposed for the Site, which can realistically share loading space. As indicated in the traffic report that will be provided by Gorove/Slade with the Applicant's prehearing submission, the proposed loading facilities are appropriate and sufficient for the uses proposed for the Site.

Finally, providing courts that have a narrower width than the minimum width required by the Zoning Regulations will improve the experience of hotel guests and will not negatively affect occupants of the adjacent buildings. The proposed courts provide sufficient space between the proposed building and the adjacent buildings to the east and west, and they fully comply with the Building Code requirement to provide sufficient light and air for building occupants. The courts allow the Applicant to construct a hotel building with windows on all four sides, which will improve the experience for hotel guests without encroaching on their privacy or the privacy of users of the adjacent buildings. Thus, the courts as proposed will not have an adverse impact to the public good or the zone plan.

III. Burden of Proof - Special Exception

A. Roof Structure -- Sections 770.6 and 411

The Applicant seeks special exception approval pursuant to Sections 770.6 and 411 of the Zoning Regulations regarding roof structure setbacks in commercial districts. Section 770.6(b) of the Zoning Regulations requires that every roof structure must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. In this case, the Applicant proposes to provide a single roof structure with enclosing walls rising to a height of 18 feet, 6 inches. This roof structure will contain two stair towers, the elevator override and other mechanical equipment, and an enclosed rooftop storage area. Although the roof structure is set back more than the required 1:1 distance from the north and south elevations, the roof structure is built up to the east court wall, providing no set back at all, and is only set back 5 feet, 11 inches, from the west court wall, where 18 feet, 6 inches is required. Thus, the Applicant requests relief from the set back requirements of the Zoning Regulations.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. Under Section 411.11, the Board may grant special exception relief from the strict requirements for roof structures where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or

unreasonable." 11 DCMR § 411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

The proposed roof structure is a necessary feature of the building, and its location is driven by the building's core functions, the layout and design of the hotel rooms inside the building, and the desire to provide mechanical equipment and a storage facility on the roof. The stair towers and elevator penthouse are required to provide access to the roof, including handicapped access. Given the set backs created by the courts on the east and west sides of the building, the proposed location of the roof structure will not adversely affect the light and air of the adjacent buildings. In addition, the roof structure is set back more than the 1:1 minimum distance on the north and south sides of the building, so that it will not be visible from H Street or from the rear alley. Furthermore, the surrounding walls will be of quality material to integrate the roof structure into the overall design of the building. Accordingly, the proposed roof structure is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.11.

B. Rear Yard -- Section 774

In the C-3-C District, a building must provide a rear yard with a minimum depth of 2.5 inches per foot of vertical height, but not less than 12 feet. 11 DCMR § 774.1. The depth of the rear yard may be measured from the center point of an alley. 11 DCMR § 774.9. Based on the overall proposed building height of 110 feet, the Applicant is required to provide a rear yard of 22 feet deep. Here, the Applicant proposes to provide a rear yard of 15 feet, measured from the center point of the rear alley, or 7 feet less than what is required under the Zoning Regulations. Pursuant to Section 774.2 of the Zoning Regulations, the Board may waive the rear yard requirements pertaining to a C-3-C District provided that the following standards are met:

- *Apartment and office windows shall be separated from other buildings that contain facing windows a distance sufficient to provide light and air and to protect the privacy of building occupants.*

The Site has a 30-foot wide public alley at its rear, which is wide for an alley in the downtown core. Across the alley from the Site are three and four-story mixed-use buildings that have frontage on I Street, N.W. The 30-foot wide alley alone provides more than enough distance to ensure sufficient light and air to the buildings across the alley and to protect the privacy of the buildings' occupants. In addition to the alley, the buildings across the alley have deep rear yards and are thus significantly set back from the public alley right-of-way. Thus, the building's proposed windows will be separated from the existing buildings across the alley at a distance sufficient to provide adequate light, air, and privacy of the building occupants.

- *In determining distances between windows in buildings facing each other, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to the rooms.*

The proposed building has been designed to limit the angle of sight lines and to maximize the distance of penetration of sight lines into habitable rooms. Principal windows that overlook the rear alley are positioned so that privacy is adequately protected. The 7 foot rear yard relief will have little impact on the angle of sight lines due to the wide 30-foot public alley and substantial setbacks that separate the proposed building from the rear windows of the existing buildings to the north.

- *The building plan shall include provision for adequate off-street service functions, including parking and loading areas and access points.*

The proposed building plan provides adequate off-street service functions. Although the building will not provide on-site parking, the Site's central location, high walk score, and close proximity to numerous public transportation facilities eliminates the need to provide on-site parking. The building will provide adequate loading facilities for its proposed uses, which will be accessed from the public alley.

- *Upon receiving an application for an approval under §774.2, the Board shall submit the application to the D.C. Office of Planning for coordination review, report, and impact assessment, along with reviews in writing of all relevant District of Columbia departments and agencies including the Department of Transportation and Housing and Community Development and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.*

The Applicant has met with the Office of Planning and the District Department of Transportation in compliance with section 774.2 of the Zoning Regulations.

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