

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

Application of Latham Owner SPE, LLC
ANC 2E

BZA Application No. 18845
Hearing: October 28, 2014

STATEMENT OF THE APPLICANT

This is the application of Latham Owner SPE, LLC ("**Applicant**") for variance relief to permit the conversion of and addition to an existing hotel into an apartment and retail building. The property that is the subject of this application is located at 3000 M Street, NW (Square 1197, Lot 70) ("**Property**"). The Property is located in the C-2-A and W-1 Zone Districts.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve the following four areas of relief:

1. Variance from Section 933 (rear yard) to permit a small infill addition;
2. Special exception pursuant to Section 2116.5 to locate 42 required parking spaces¹ within an off-site parking garage;
3. Variance from Section 2101.1 (number of required parking spaces) from the remaining parking requirement of 52 parking spaces; and
4. Variance from Section 2201.1 (number of required loading spaces) to provide no 55-foot deep loading berth.²

¹ The Applicant has increased the number of off-site parking spaces from 20 spaces to 42 spaces.

² The Applicant has removed its request for variance relief from the 20-foot deep service/delivery space.

II. JURISDICTION OF THE BOARD

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

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the northwest quadrant of the District and in Ward 2. The property is roughly rectangular in shape and contains approximately 19,798 square feet of land area. It is a corner lot with frontage on both M Street NW to the north and 30th Street NW to the east. (A small sliver of property extends west to Thomas Jefferson Street, NW. To the south, the Property is bounded by land owned by the National Park Service (“NPS”). The NPS land fronts on the Chesapeake and Ohio Canal (“Canal”), which is a National Historical Park. To the west, the Property is bounded by private properties, which include a two-story retail building at 3030 M Street NW, and a seven-story hotel at 1075 Thomas Jefferson Street NW.

The Property slopes significantly. The Property slopes downward approximately 2 feet from west to east along M Street, then downward 6 additional feet from north to south along 30th Street, and then downward approximately 7 additional feet from east to west along its south side adjacent to the NPS land. The total grade change is approximately 15 feet from the high point of the M Street elevation of 49 feet to the low point of 34 feet abutting the NPS land. As a result the center of the 30th Street frontage is approximately one story below the M Street frontage, and the southern frontage along the NPS property is an additional story below the center of the 30th Street frontage.

The immediate area surrounding the Property consists of a mixture of commercial retail, commercial office, hotel and residential uses. This mix of uses generally extends to the west, south, and east of the property. As a result, there are a host of retail, service, and entertainment

options within a short walk of the Property. Further to the east is the medium- to high-density mixed-use Foggy Bottom/West End neighborhood, which includes two full-service grocery stores. Commercial uses are also located across M Street to the north; beyond these commercial properties is the moderate-density residential East Georgetown neighborhood.

The Property is well served by multiple bus lines, including four WMATA-operated lines and two D.C. Circulator lines. Together, the lines provide nearly continuous transit service 24 hours a day with headways of 10 minutes during the majority of the day and up to 30 minutes during off-peak times, nights, and weekends. The Property is also a two-thirds mile walk from the Foggy Bottom-GWU Metrorail station. A Capital Bikeshare station is located two blocks east of the site at Pennsylvania Avenue and M Streets. Finally, the Property is two blocks away from the start of the cross-town L Street and M Street cycle tracks, and the popular Capital Crescent Trail. The Property is also adjacent to the Rock Creek Park bike trail, which connects to the Mount Vernon bike trail.

The Property is split-zoned in the C-2-A and W-1 Zone Districts. The bulk of the Property (approximately 17,058 s.f.) is located in the C-2-A Zone District. The southernmost portion of the Property (approximately 2,740 s.f.) is located in the W-1 Zone District. Although the Property is located within the Georgetown Historic District, the Hotel is not considered to be a contributing building in the Historic District.

IV. DESCRIPTION OF THE EXISTING IMPROVEMENTS

The Property is improved with the former Latham Hotel (“Hotel”). When viewed from M Street, the Hotel consists of two primary forms:

- a two-story “market shed” building along M Street, which contains ground-floor retail and second-story guestrooms, and

- a multi-story building set back from M Street, which contains the primary hotel lobby, the hotel restaurant, and additional guestrooms.

The two structures are separated by an entrance driveway that opens onto both M Street and 30th Street. Vehicular entrances to the Hotel's parking and loading facilities are located along 30th Street. An outdoor pool deck is located at the rear of the property and is built out over the ramp to the parking level; this parking ramp runs along the entire southern wall of the Hotel. As a result, the back wall of the hotel that abuts and faces the NPS property and the Canal is a solid masonry brick wall.

The Hotel is comprised of a total of ten above- and below-grade stories. As a result, the Property is actually at-grade at three separate floors: the fifth floor (on M Street), the fourth floor (on 30th Street), and the third floor (facing the NPS land to the south). The first and second floors are completely underground, and large portions of the third and fourth floors are below ground as well. As a result, the first through fourth floors were generally constructed to accommodate hotel uses that do not require natural light and can be located underground, such as function rooms, back of house spaces, the restaurant, and parking. (Some guestrooms are also located on the underground levels.) These floors are not daylit and do not have windows, even though the property is at grade at the third and fourth floors.

The Hotel was constructed in the late 1970s. Under the zoning in effect at the time of construction, the Hotel was permitted to achieve a height of 60 feet, and was actually constructed to a height of 56.50 feet, as measured from M Street. Because of the significant change in grade, the Hotel's floor area ratio ("FAR") was calculated using the "grade plane" method; that is, only the gross floor area of floors above the M Street grade plane (that is, the 5th floor and up) were counted against the maximum permitted FAR. For similar reasons, the Hotel has a rear yard of

27 feet, measured starting at the 5th floor elevation. The first four floors generally occupy the entire lot; starting at the fifth floor, the Hotel occupies significantly less of the lot because of the rear yard setback and entrance driveway. The Hotel is improved with 52 parking spaces and a 30-foot deep loading berth.

V. PROJECT DESCRIPTION

The Applicant proposes to adaptively reuse the Property as a furnished all-studios apartment building containing approximately 140 dwelling units and amenity spaces as well as approximately 9,931 square feet of retail space along M Street (“**Project**”). The Applicant’s intended demographic for this Project is single professionals who want to live in a walkable neighborhood close to the central business district with urban amenities and convenient access to public transportation. The apartments will be furnished, so they will attract residents who want as much convenience as possible.

The adaptation of the existing hotel into a furnished all-studios apartment building works particularly well because the existing fenestration pattern of small, punched windows aligns with the proposed apartment units. Because the apartments will each contain approximately 330 square feet or less, the Applicant will provide significant shared-living spaces within the Project that will act as a common “living room” for the residents. The shared-living spaces will be located in the rear of the building, primarily on the second and third floors and will consist of approximately 11,000 square feet of space and will potentially include such features as shared kitchens, shared laundry, living room, den, fitness facility, study / library, and game room. To daylight and animate these spaces, new windows overlooking the park and Canal will be punched into the existing blank brick wall along the southern edge of the Property at the third and fourth floors and carry light down to the second floor through large double-height spaces.

In order to adapt the Hotel for residential use, the Applicant must reconfigure the four underground stories of the building to bring in daylight and permit residential use through two significant alterations. First, the Applicant must eliminate the existing service drive and excavate a new courtyard to bring light and air to the lower portions of the building for residential units. Second, the Applicant must eliminate the existing parking ramp at the rear of the building to daylight the multi-level shared-living spaces that will be used by all of the units. The Applicant will also reconfigure the rear loading area to enclose loading and service functions.

The removal of the parking ramp is a critical component of the Project, and it is required to convert the building to residential use. The removal of the parking ramp allows the Applicant to bring daylight into the lower levels of the building and increase their usability and functionality. The removal of the parking ramp also results in a better design, as it allows the Applicant to provide a more attractive and visually porous use on the rear of the building, facing the Canal, rather than a two-story brick wall.

The Applicant also proposes to remove and replace the existing two-story market shed building on M Street with a new two-story retail pavilion. The new structure will feature higher ceilings and more uniform floorplates to accommodate typical retail tenant needs and preferences. (The existing ground floor features a relatively low ceiling and a floorplate that is an amalgamation of the original building and enclosed arcade spaces.) The modification of the existing structure will also permit the Applicant to reconfigure the lower stories for residential use.

The Project will comply with the height, FAR, and lot occupancy requirements of the Regulations for its respective zones:³

Height:

- *C-2-A Portion.* The Project will maintain the grandfathered height of the existing improvements (approximately 56.5 feet). The new retail pavilion will have a height of approximately 36 feet, which is within the 50-foot height limit in the C-2-A Zone District.
- *W-1 Portion.* The project will maintain the existing height of the W-1 portion of the Project, which is generally located at and below the height measuring point and therefore has no measurable height under the Zoning Regulations.

Floor Area Ratio:

- *C-2-A Portion.* Under Section 771.3 of the Zoning Regulations, the Applicant is permitted to occupy the entire C-2-A portion of the building for residential use. The current Hotel has a gross floor area of approximately 67,734 s.f. as measured using the “perimeter wall method,” which is the more commonly used method for analyzing the FAR of a sloping site.

The Project will consist of approximately 61,596 s.f. of gross floor area, which is less than the existing gross floor area and therefore within the bounds of what is permitted under Section 771.3. The retail space will constitute approximately 0.57 FAR, which is well within the 1.5 FAR maximum for nonresidential uses within the C-2-A Zone.

- *W-1 Portion.* Under the perimeter wall method, the W-1 portion of the building will have a FAR of 0.29, which is within the 2.5 FAR limit of the W-1 Zone.

Lot Occupancy:

- *C-2-A Portion.* Again, under Section 771.3 of the Regulations, the Applicant is permitted to occupy the entire C-2-A portion of the building for residential use. The Project will remain within the lot occupancy of the existing building, which is measured starting at the second floor (the level at which residential use begins).
- *W-1 Portion.* The W-1 portion of the Project will have a maximum lot occupancy of 80%, which complies with the 80% limit within the W-1 Zone District.

The Project will also comply with the Green Area Ratio requirements.⁴

³ The Applicant has confirmed the following conclusions regarding height, FAR, and lot occupancy with the Zoning Administrator. The Applicant has also confirmed that the proposed alterations to the roof structure will not require relief and the reuse of the existing building will not trigger inclusionary zoning.

The renovations and alterations required to adapt the Project for residential use will require variance and special exception relief from the rear yard, parking, and loading requirements.

- **Rear Yard Variance.** The Applicant proposes to construct a relatively small one-story infill piece at the rear of the property in order to enclose loading and service functions. This will encroach into the required rear yard for the Project.⁵
- **Parking Special Exception and Variance.** The Project requires a total of 70 parking spaces for the proposed residential units and 24 parking spaces for the proposed retail use, for a total of 94 parking spaces. The adaptive reuse requires the removal of the parking ramp in order to daylight the lower levels of the building and create the shared-living spaces that are crucial for the residential program. Accordingly, the Applicant proposes to:
 - Locate 42 required parking spaces within an off-site parking garage, which requires special exception approval; and
 - Provide no parking within the existing building, which requires variance relief.
- **Loading Variance.** The Project's mix of residential and retail uses requires one 55-foot deep loading berth, one 30-foot deep loading berth, and one 20-foot deep delivery space. The existing Hotel contains one 30-foot deep loading berth, and the Applicant will continue to provide this loading berth. In addition, the Applicant proposes to convert the area of the former parking ramp into a 20-foot deep service/delivery space. However, variance relief is requested from the 55-foot deep loading berth requirement and associated platform.

Updated plans are attached as Exhibit B and reflect modifications to the original plans made as a result of discussions with community stakeholders, including the addition of a second loading space and related changes to the rear yard addition, as well as changes to the proposed curbside parking uses.

⁴ The Applicant has confirmed the above conclusions regarding height, FAR, and lot occupancy with the Zoning Administrator. The Applicant has also confirmed that the proposed alterations to the roof structure will not require relief and the reuse of the existing building will not trigger inclusionary zoning.

⁵ The rear yard is located within the W-1- portion of the Property. Under the W-1 portion of the Zoning Regulations, a rear yard must be provided starting at the "residential plane". The Project will lower the "residential plane" of the building from the fifth floor to the second floor. The existing structure within the rear yard is permitted to be occupied pursuant to Section 771.3 of the Regulations, but the small addition requires variance relief.

VI. AGENCY AND COMMUNITY OUTREACH

The Project is located within the boundaries of ANC 2E and the Georgetown neighborhood. In March 2014, the Applicant presented the design of the Project to ANC 2E and the historic preservation and zoning committee of the Citizens Association of Georgetown (“CAG”). In response to feedback received in these discussions, the Applicant removed a proposed roof terrace on the retail pavilion and revised the design of the Project to more closely relate to the surrounding character along M Street.

After the initial meetings, the Applicant has continued to discuss the Project with ANC and CAG leadership as well as with the immediate residential neighbors along 30th Street to the south through collegial and productive conversations about neighborhood concerns regarding the potential impacts of the Project. Through these discussions, the Applicant and CAG reached an agreement on a series of conditions, requirements, and restrictions that addressed CAG’s concerns about the proposed Project, and CAG has agreed to conditionally support the proposed zoning relief based on these conditions. Key conditions and commitments include:

- Increase the number of off-site parking spaces from 20 spaces to 42 spaces;
- Parking validation for short-term customers and visitors;
- Restrictions from participation in the RPP program, including specific affirmative steps with residential tenants to enforce the restrictions;
- Addition of a second off-street service/delivery space;
- Limitations on the hours and use of the pool deck;
- Commitments regarding the placement and buffering of the emergency generator; and
- Commitments regarding trash service.

Based on this agreement, ANC 2E has also voted to conditionally support the project. The revised design and proposed conditions of approval, attached as Exhibit A, incorporate the commitments to CAG and the ANC.

The Project is located within the Georgetown Historic District, and accordingly the design of the Project is subject to review by the Old Georgetown Board (“OGB”) and the U.S. Commission of Fine Arts (“CFA”). After a series of presentations starting in April 2014, the concept design was approved by OGB and CFA at their September 2014 meetings. (See Exhibit D: CFA Letter.) The Applicant requests flexibility to modify the design of the Project to respond to refinements and changes requested by OGB and other preservation officials.

VII. TRANSPORTATION PLAN AND COMMITMENTS

The Project is intended to provide a housing alternative for those who are moving to DC for an indeterminate amount of time for professional reasons and seek small-household living accommodations that are close to transit, work, and urban amenities. These individuals will generally arrive with few possessions. The Project will provide them with a furnished apartment, on-site social amenities, and a location that is proximate to transportation alternatives, centers of employment, and urban amenities both for day-to-day errands and social nightlife.

The Project also includes retail space that will be generally consistent with the character and size of other retail space throughout Georgetown. The Georgetown retail corridor is well-served by transit and it is frequented by customers who often visit multiple establishments rather than one destination. Most of the retail destinations lack their own on-site parking. Instead, the corridor contains multiple public parking garages which provide parking options for those who choose to drive to shop and eat in Georgetown. Data provided by Colonial Parking confirms that multiple parking garages in close proximity to the Project, including the garage within the Foundry

and other garages on Thomas Jefferson Street, have available parking spaces for both daily parkers and monthly permits.

Accordingly, the Project's residents, employees, and customers are very unlikely to own cars or bring them to the Project. To further facilitate the lack of need for a car and ensure that the Project will not create adverse impacts on the surrounding neighborhood, the Applicant proposes a robust transportation demand management program that includes a combination of incentives, amenities, off-site parking, and restrictions on RPP eligibility, which are described below. The Applicant will memorialize these commitments as conditions of the BZA Order, which are binding on the Applicant as well as any future owner of the Project. As appropriate, the Applicant will also memorialize these commitments through covenants that are recorded in the D.C. land records and run with the land.

Transportation Incentives

The Applicant will provide its residents with a number of features intended to encourage transit, carsharing, bikesharing, and bicycle use, including:

- At least 66 bicycle parking spaces and an on-site bicycle repair facility;
- Capital Bikeshare memberships for all new residents who do not otherwise own a bicycle for the initial term of their lease, in perpetuity;
- Membership in a carsharing service for all new residents for the initial term of their lease, in perpetuity; and
- A WMATA SmarTrip card preloaded with \$20 for all new residents, in perpetuity.
- Free download of a multimodal trip planning mobile app (e.g., RideScout).
- Real-time multimodal transportation service displays (e.g., TransitScreens) in the main lobby of the building.

The Applicant will proffer all of these incentives as conditions of approval.

Curbside Space Management

In addition, the Project will result in the closure of existing curb cuts around the property on M Street and 30th Street. This will enhance pedestrian safety by reducing pedestrian-automobile conflicts and free up curbside space for other uses, including:

- 1-2 vehicular parking spaces on M Street;
- 4 vehicular parking spaces on 30th Street, including one space for a carsharing vehicle;
- and
- 10 bicycle racks on 30th Street providing 20 short-term bicycle parking spaces

The Applicant will proffer the proposed curbside space allocation as conditions of approval, and has discussed the proposed allocation with DDOT staff, but the curbside space remains subject to final approval by DDOT and public space officials.

The Applicant will retain one curb cut, on 30th Street, which will provide access to the Project's off-street loading berths. As discussed above, the Applicant agreed to provide two off-street loading and service spaces in response to requests from CAG and nearby neighbors. In order to accommodate both spaces, the Applicant proposes to widen the existing curb cut from 22 feet to 24 feet. Again, approval of the widened curb cut is subject to final approval by DDOT and public space officials; the Applicant has commenced discussions regarding the proposed curb cut with DDOT staff and will continue to pursue such approval.

RPP Restricted Eligibility

The Applicant has taken steps to ensure that residents do not bring a car and park it on neighborhood streets by restricting eligibility for Residential Permit Parking ("RPP") and will memorialize this restriction in a condition of the BZA order as well as in a covenant that runs with the land.

The site address is currently not listed under the RPP system, nor is it eligible for RPP because the 3000 block of M Street is zoned commercial.⁶ Going forward, the Applicant will not seek or support any change to designate the property as eligible for RPP. Furthermore, to ensure that tenants are aware of this provision, the Applicant will notify all residential tenants of the fact that RPP is not available to them, and will cause all residential tenants to affirmatively acknowledge this limitation in their lease. The Applicant will also require each residential tenant agree to either (a) not maintain an owned or leased automobile within the District of Columbia for the term of the lease; or (b) maintain a monthly parking pass for and park any owned or leased automobile on an off-street parking space. Tenants will also be prohibited from parking overnight on any of the streets within Georgetown, even if street parking is otherwise permitted.

The Applicant will also take the following steps to redirect tenants to park in an area parking garage if they do somehow circumvent the clear lack of eligibility for RPP. If the Applicant learns that a residential tenant is regularly parking their vehicle on neighborhood streets with an RPP permit, the Applicant will secure a monthly parking permit for that resident in an area garage, automatically charge them for the cost of that permit, and require that they park the car in the garage.

The above restrictions will all be prominently featured in the residential lease as a rider that is separately initialed by each tenant. Any violation will be treated as an automatic default under the lease and provide grounds for termination of the lease.

While important as a backstop, the RPP provisions will likely not be necessary because residents who choose to live at the Project will do so precisely because they do not want or need a car. Those who want a car will choose another apartment complex that provides parking. This is

⁶ The Applicant worked with DDOT to specifically remove the 3000 block of M Street from the list of blocks eligible for RPP.

akin to a prospective tenant who wants to own a pet; such tenant would only seek out apartment buildings that allow pets.

The Applicant has proposed conditions of approval that memorialize these RPP commitments. The proposed conditions represent language that was carefully negotiated with and agreed to by CAG and its counsel, and the Applicant strongly encourages the Board to adopt the conditions as proposed. The Applicant will also record the above restrictions in a covenant in the land records to put future owners on notice of the above parking restrictions.

Off-Site Parking

As stated above, the Project's residents are very unlikely to park cars on neighborhood streets in Georgetown, both because they are unlikely to own cars or bring them to the Project and because of restrictions on RPP eligibility. However, in direct response to requests from CAG and nearby residents to provide some parking as a "safety valve," the Applicant has arranged to secure 42 parking passes that will provide access at any time to nearby parking facilities for exclusive use by the Project's tenants and employees as well as carshare companies.

Specifically, the Applicant will secure 42 monthly parking passes from nearby parking garage operators or building owners. These passes will provide access to parking spaces located within ¼ mile of the Project.⁷ Access to the parking spaces will be available 24 hours a day, 7 days a week. The passes will require the garage operator to provide immediate and continuous access to and use of a parking space in the garage.

⁷ Among other options, Colonial Parking has agreed that it can guarantee availability of at least twenty 24-hour monthly permits for employees and residential tenants in its garage at the Foundry Building at 1055 Thomas Jefferson Street, NW, which is located approximately 400 feet from the Project.

The Applicant will make these parking spaces available on a first priority basis to residential tenants of the Project. Some spaces may also be allocated to carsharing services. If demand by residential tenants and carsharing services is insufficient, the Applicant will then make the spaces available as parking for employees of the retail tenants and the Applicant's employees. The passes will be restricted to use by individuals who are affiliated with the Project.

Because the spaces are close to the Project, their use will be nearly as convenient as spaces within the garage, and it will impose no greater financial burden on residential tenants and employees than if parking were available within the Project. The Applicant will charge the tenants and employees market-rate prices for the parking passes, just as they would if the parking were located on-site. This is a critical transportation demand management measure to ensure that driving is not incentivized or subsidized over other forms of transportation.

In addition to the monthly spaces, the Applicant will also secure, as a part of the lease for the parking passes, the right to parking validation, which is intended to facilitate off-site parking by persons affiliated with the Project who do not require monthly parking (e.g. short-term parking by retail customers and residential guests). For retail customers, the parking validation will be offered to retail tenants at reduced hourly rates, to the extent that such is market for similar leases. For residential guests, the Applicant will provide each residential tenant with 5 daily or overnight validations per month at a reduced rate of 50% of market for such daily or overnight parking.

The Applicant proposes to memorialize the above commitments as conditions of approval of the BZA Order, and they are included in Exhibit A. Again, the specific language of the proposed conditions was carefully negotiated with CAG and its counsel, and the Applicant

requests the Board adopt the proposed conditions. The Applicant will also separately record the commitments in a covenant that will run with the land in order to put future owners on notice of the commitments.

VIII. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variance from the rear yard, parking, and loading requirements.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

Here, the Property is unique because of the confluence of the existing slope of the Property, the nature and configuration of the existing improvements on the Property, and the Property's split zoning between the C-2-A and W-1 Zone Districts. The Property is improved

with a hotel. Because the previous use was a hotel, the building was constructed such that the lower four floors were generally buried underground, because the hotel uses did not require daylight. The previous hotel use also led to a fenestration pattern composed of small, punched windows roughly corresponding to the location of each hotel room. The previous hotel use also resulted in the creation of a service drive for hotel guest pickup and dropoff that bisects the above-grade portion of the improvements. The split zoning of the site also informed the design and configuration of the existing Hotel, and specifically the location and design of the rear pool deck/loading/parking ramp portion of the Hotel.

As a result of the slope of the Property, the site is at grade at three different elevations – the third, fourth, and fifth floors of the existing Hotel. The design of the Hotel responded to this context. The Property is also located adjacent to land owned by the National Park Service on its south, which is an unusual condition. Finally, although not a contributing building in the Georgetown Historic District, the Property is located within the district and its design is therefore subject to review by OGB and CFA.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that 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." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors

for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

1. Rear Yard

The practical difficulty in complying with the rear yard requirement results from the confluence of the adaptive reuse of the existing structure and other unique conditions affecting the Property. As described above, the rear yard setback begins at the 5th floor. Below the rear yard plane, a portion of the lower four stories of the structure extend all the way to the southern property line. (The remainder of the rear yard is open to the sky and consists of the Hotel's loading area and parking ramp.) Under the W-1 Zone District, a rear yard is required beginning at the level where residential use begins. Here, the conversion of the structure to residential use will lower the level at which residential use begins to the second floor. Although Section 771.3 permits the occupancy and use of the existing structure, the rear yard requirement of the Regulations otherwise limits the Applicant's ability to further alter the rear portion of the Property.

In order to reconfigure the existing structure to accommodate the proposed residential use, the Applicant must construct a small one-story infill addition in the rear yard. The infill addition will consist of approximately 464 square feet of area. The infill area will facilitate loading and service within the Project. The infill piece will include, among other features, a service elevator that will provide direct access to the retail establishments along M Street through the 1st floor. Without this enclosure, the Applicant would be required to either run a corridor on the 4th floor to the retail space (right through the heart of the residential lobby and access to the shared living spaces), relocate the loading closer to M Street, or add a second

loading area closer to M Street. The infill piece allows for the enclosure of the existing trash area; without it, the trash would continue to remain open and exposed.

Finally, note that the service elevator proposed within the infill area will also provide the building's residents with direct access to covered, secured bike parking within the building on the first floor.

2. Parking

The practical difficulty in complying with the parking requirement similarly stems from the challenges of adapting the existing below-ground portions of the structure for residential use on the sloping site. As discussed above, the structure contains one parking level and three occupiable floors that are largely underground because of the prior hotel use. However, as a result of the slope of the site, two of these floors are at grade on the Property's eastern and southern frontages. Furthermore, as a result of the prior hotel use, the Property is occupied with a service driveway that separates the main hotel structure from the front "market shed" structure.

The existing underground levels and service driveway represent both a challenge and an opportunity for the adaptive reuse of the Property for residential use. On one hand, the underground levels and driveway are features that are tied to the previous hotel use and are not compatible with the proposed residential use. On the other hand, when combined with the slope of the site, these features provide an opportunity to daylight the lower levels of the building to allow for residential use starting at the second floor and extending throughout the building.

The fenestration pattern of the existing building is particularly well-suited to the Applicant's proposed residential program, which is composed of all-studios apartments supported by generous shared living spaces for the building's residents. The shared living spaces are a critical component of the building program for such small-household living

accommodations. In order to be attractive and desirable to the residents, these amenities spaces cannot be located in underground portions of the existing building. The rear portion of the building, which faces the Canal and has southern exposure, provides an ideal opportunity to daylight the lower levels of the existing building and create desirable amenities space.

However, in order to create these windows and spaces, the Applicant must remove the existing parking ramp that runs along the rear of the Property. Put another way, removing the parking ramp eliminates parking that the small-unit residential customer does not need and allows for the creation of desirable shared amenities spaces—a critical feature that the small-unit residential customer does need.

The configuration of the rest of the existing improvements combined with the slope of the property precludes the relocation of the parking ramp to another location. The ramp is currently located at the lowest point of street frontage. Any new location would require a steeper ramp to get down to the parking level. Furthermore, that ramp would need to cut through and bifurcate multiple levels of the existing building. Accordingly, without a ramp, the Applicant cannot provide access to the existing or any new underground parking.

The existence and the configuration of the existing structure also precludes the addition of new underground parking spaces below the existing structure.

3. Loading

The practical difficulty in complying with the loading requirement is due to the existing improvements, which occupy virtually 100% of the lot on all at-grade levels and preclude the introduction of any additional off-street loading facilities. The existing loading dock is not deep enough to accommodate a 55-foot berth or wide enough to accommodate a 20-foot service/delivery space (let alone both loading spaces in addition to the existing 30-foot loading

berth). As discussed above, the Applicant proposes to widen the existing dock to accommodate a 20-foot service/delivery space in addition to the 30-foot loading berth. The provision of a 55-foot berth, however, would either (a) push back the proposed service elevator and trash enclosure (thereby significantly cutting into the daylighting of shared living spaces and the practical difficulties discussed above with respect to parking) or (b) eliminate the service elevator and trash enclosure (thereby leading to the practical difficulties already discussed above with regard to the rear yard variance).

The existing service driveway is also not an option for the required additional loading facilities. Even if the existing service driveway could accommodate a 55-foot truck, for the reasons described above, the Applicant must remove the existing service driveway to daylight the lower levels for the proposed residential use.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Here, the requested variances can be granted without causing any adverse impact on the neighboring properties. First, no adjacent property is adversely impacted by the rear yard variance, which will actually improve existing conditions by enclosing trash operations. The Project also includes a green screen that will screen the loading entrance from the NPS land and other properties to the south, which represents an improvement over existing conditions.

The variance to eliminate the existing parking spaces will not adversely impact traffic or on-street parking availability in the neighborhood. As discussed in Section VII above, the Project's residents, employees, and customers are very unlikely to own cars or bring them to the Project. To facilitate the lack of need for a car and ensure that the Project will not create adverse impacts on the surrounding neighborhood, the Applicant has proposed a robust transportation demand management program that includes a combination of incentives, amenities, off-site

parking, and other parking management tools. These measures are all discussed in detail in Section VII, and both CAG and the ANC have agreed to support the Project and its requested zoning relief based on these commitments.

Finally, the loading variance will not result in adverse traffic or parking impacts. The units are furnished and small, which means that resident move-in and move-out will not require large moving trucks. In fact, the Applicant expects that most new residents will not arrive with a moving truck at all. The Applicant will develop a loading management plan that will coordinate resident move-in and retail service and deliveries at the loading dock.

IX. THE APPLICATION SATISFIES THE CRITERIA FOR LOCATING PARKING SPACES OFF-SITE

Section 2116.5 permits the Board to locate required parking spaces elsewhere than on the lot upon which the building or structure is located, provided that the applicant demonstrates that the off-site parking meets the criteria of Sections 2116.6 through 2116.9. For the reasons set forth below, the Applicant's proposed 42 off-site parking spaces meet this requirement.

A. Section 2116.6: It is not practical to locate the spaces on-site because locating the spaces on another lot results in a more efficient use and better design for the Project.

Section 2116.6 sets forth a list of potential conditions that each independently justify locating parking off-site. One of those criteria is that "the location of required parking spaces . . . on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties." 11 DCMR § 2116.6(d).

Here, the location of spaces in another existing parking garage facilitates the removal of the existing parking ramp within the Hotel, which is key to achieving the most efficient use of the Property. As described above, the removal of the parking ramp is a critical component of the Project, and it is required to convert the building to residential use. The removal of the parking

ramp allows the Applicant to bring daylight into the lower levels of the building and increase their usability and functionality. The removal of the parking ramp also results in a better design, as it allows the Applicant to provide a more attractive and visually porous use on the rear of the building, facing the Canal, rather than a two-story brick wall. The change in use also reduces the impact of the Project because it allows for the removal of the Hotel's drop-off driveway and two associated curb cuts. As a result, pedestrian access and safety is improved around the Project.

B. Section 2116.7 and 2116.8: The accessory parking spaces are located in a reasonable and convenient location.

Sections 2116.7 and 2116.8 set forth the criteria for the location of the off-site parking. Although Section 2116.7 expresses a preference for locating such parking on adjacent lots, Section 2116.8 permits the parking to be located further away so long as the parking spaces will “furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures that they are designed to serve.” 11 DCMR § 2116.8.

Here, the Applicant has committed to locate the accessory parking within ¼ mile of the Project, which is a reasonably short and convenient walking distance, particularly in pedestrian-friendly Georgetown. The Applicant has initially identified spaces within the Foundry Garage, which is located a short 400 foot walk from the Project. The Foundry Garage and other garages in the commercial areas of Georgetown each provide convenient access to K Street and M Street, the primary east-west arteries out of the commercial district.

C. Section 2116.9: The Applicant has agreed to enter into a covenant to provide these spaces.

Section 2116.9 permits the Board to impose conditions as appropriate to either screen and mitigate the impact of the proposed parking or ensure that it will continue to be provided. Here, the proposed parking spaces will be located within existing established parking garages in the commercial areas of Georgetown, so they will not have any visual impacts. The location and

access to these garages already exists. The Applicant has agreed to memorialize its commitment to these off-site parking spaces in a covenant that will run with the land.

Because this application satisfies the criteria set forth in Section 2116.6 through 2116.9, the proposal to locate parking in an off-site location will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property.

X. UPDATED PLANS AND REPORTS AND PROPOSED TESTIMONY

Since the filing of the initial application, the Applicant has revised the plans to, among other changes, incorporate the second loading space, reduce the rear yard addition, and revise the proposed allocation of curbside space. Revised plans reflecting these changes are included as Exhibit B. The Applicant has also updated and supplemented the traffic study to reflect the increase in off-site parking from 20 spaces to 42 spaces, and the revised study is included as Exhibit C.

At the public hearing, the Applicant intends to offer a representative of the Applicant as well as representatives of the architect and the traffic consultant as witnesses. The representatives of the architect and traffic consultant will be proffered as experts in their respective fields. Outlines of the proposed testimony are included as Exhibit E, and resumes of the proffered experts are included as Exhibit F.

XI. EXHIBITS

Exhibit A	Proposed Conditions of Approval
Exhibit B	Revised Plans and Elevations
Exhibit C	Revised Transportation Report
Exhibit D	Letter from the U.S. Commission of Fine Arts
Exhibit E	Outlines of Witness Testimony
Exhibit F	Resumes of Expert Witnesses

XII. CONCLUSION

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

Respectfully submitted,
GOULSTON & STORRS, PC

_____/s/____

John Epting

_____/s/____

David Avitabile

October 14, 2014