

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18845 of Latham Owner SPE LLC (“Applicant”) pursuant to 11 DCMR §§ 3103.2 and 3104.1 for variance relief from the rear yard (§ 933), parking (§ 2101.1), and loading (§ 2201.1) requirements and special exception approval to locate 42 parking spaces¹ in an off-site parking facility (§ 2116.5) to permit the conversion of an existing hotel with accessory retail into a mixed-use residential and retail building in the C-2-A and W-1 Zone Districts at premises 3000 M Street, N.W. (Square 1197, Lot 70) (“Property”).

HEARING DATE: October 28, 2014

DECISION DATE: October 28, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 9.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E filed a letter report that indicated that at a regularly scheduled public meeting on September 29, 2014, with a quorum of Commissioners present, the ANC voted to support the application. (Exhibit 25.)

The Office of Planning (“OP”) submitted a timely report, dated October 21, 2014, recommending approval of the application. (Exhibit 29.) The District Department of Transportation (“DDOT”) submitted a report, dated October 21, 2014, stating that it had no objections to the requested relief. (Exhibit 30.) A representative of the Citizens Association of Georgetown (“CAG”) testified in support of the project. No testimony or evidence was presented

¹ Prior to the hearing, the Applicant increased the number of off-street parking spaces to 42 spaces from 20 spaces. The caption reflects this change.

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BZA APPLICATION NO. 18845
PAGE NO. 2

in opposition to the project. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for variances from the rear yard requirement of § 933, the parking requirement of § 2101.1, and the loading requirement of § 2201.1. Based upon the record before the Board, and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with Zoning Regulations, and that the requested relief can be created 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.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 and 2116.5 for special exception approval to locate parking spaces off-site. Based upon the record before the Board, and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104.1 and 2116.5, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBITS 5-6, AS REVISED AT EXHIBIT 28B, WITH THE FOLLOWING CONDITIONS:**

1. Off-Site Parking. The Applicant will secure 42 parking spaces in nearby parking facilities for exclusive use by the Project's tenants, guests, and customers as set forth below:
 - a. The Applicant will negotiate a lease or other contractual arrangement ("Lease") from an operator ("Lessor") of nearby parking garages that provides the Applicant with 42 Monthly Parking Passes ("Passes"):
 - i. The Passes shall be dedicated for the exclusive use of persons affiliated or associated with the Project, to provide access at any time to parking spaces in said garage(s) 24 hours a day, seven days a week, 52 weeks a year.

BZA APPLICATION NO. 18845
PAGE NO. 3

- ii. The Passes shall require the garage operator to grant persons holding such Passes immediate and continuous access to, and use of, a parking space in the garage.
 - iii. Parking spaces for which the Passes provide access will be located within $\frac{1}{4}$ mile of the Project.
- b. The Applicant will make the Passes available on a first priority basis as follows:
 - 1. First, to residential tenants of the Project;
 - 2. Second, to carshare arrangements (to this end, the Applicant will use reasonable efforts to generate carshare companies' use of up to three off-site parking spaces);
 - 3. Third, to employees of the retail portions of the Project; and
 - 4. Fourth, if available, to other persons or parties affiliated with the Project, including the Applicant's employees.
- c. The Applicant, as employer, will make reasonable and ongoing efforts to facilitate and induce its employees to not park on the streets by:
 - 1. Specifically prohibiting employees from parking cars on the street, whether in metered spaces or otherwise;
 - 2. Providing employees with a transportation demand management package that includes free Metro passes as an inducement to use transit; and
 - 3. Offering parking Passes to the senior-most members of Applicant's staff with duties at the Project, only if such Passes are available.
- d. The Applicant will charge market-rate prices for the use of the parking Passes.
- e. In order to facilitate off-site parking by persons affiliated with the Project but not requiring monthly parking (e.g. short-term parking by the customers of the Applicant's retail tenants and the guests of the Applicant's residential tenants), Applicant will secure as part of the Lease the right to parking validation.
 - i. For customers of retail tenants, such parking validation shall be offered to retail tenants at reduced hourly rates, to the extent that such is market for similar leases.
 - ii. For guests of residential tenants, the Applicant shall provide each residential tenant with five daily or overnight validations per month at a reduced rate of 50% of market rate for such daily or overnight parking.

- f. The Applicant will have the right to modify the locations of such monthly parking Passes and short-term parking, so long as the Applicant otherwise remains in compliance with these conditions. In the event that a Lessor terminates a Lease or otherwise can no longer provide such Passes, the Applicant shall not be relieved of its obligations hereunder and shall promptly enter into another Lease in accordance with the above conditions.
- 2. Residential Parking Permits. The property is located in a commercial zone and along a block that is not listed as eligible for Residential Parking Permits (“RPP”).
 - a. The Applicant shall not seek or support any change to designate the property as eligible for RPP.
 - b. The Applicant shall notify all residential tenants of the fact that RPP is not available to them. Furthermore, the Applicant shall cause all residential tenants to agree not to apply for or obtain a residential parking permit. The Applicant shall require that 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.
 - i. All residential tenants who own or lease an automobile in the District shall be required to notify the landlord of such fact and provide evidence of such monthly parking pass.
 - ii. If, for any reason, the tenant does not obtain or maintain such monthly parking pass, the landlord shall furnish to the tenant, at tenant’s expense, a monthly parking permit in a nearby garage (which may be one of the monthly parking Passes defined above) and shall require the tenant to park in the garage.
 - c. Each tenant shall be prohibited from parking overnight on any of the streets within Georgetown, whether or not street parking is otherwise permitted.
 - d. Each of the above parking restrictions shall be prominently featured in each residential lease as a rider that is separately initialed by each residential tenant. Any violations of the above parking restrictions shall be treated as an automatic default under the lease and provide grounds for termination of such lease. Landlord shall use prompt and reasonable efforts to terminate such lease and remove the tenant from the premises.

3. Covenant. Prior to the issuance of the certificate of occupancy for the Project, the Applicant shall record a covenant in the District of Columbia land records that memorializes the above Off-Site Parking and Residential Permit Parking restrictions as a covenant running with the land. The purpose of the covenant shall be to put future owners on notice of the above parking restrictions.
4. Transportation Demand Management. The Applicant shall implement the following Transportation Demand Management measures:
 - a. Designate a member of the property management team as a Transportation Management Coordinator (TMC). The TMC shall provide information to residents and retail tenants identifying the available alternative modes of transportation and other supportive programs as well as parking restrictions and parking resources.
 - b. Direct new residents to the property's website, which will include information on transportation options.
 - c. Provide a transportation information screen in a common, shared space in the building that will show real-time availability information for nearby trains, buses, and other transportation alternatives.
 - d. Provide at least 66 secured, covered bicycle parking spaces within the building and at least 10 bicycle parking racks in public space near the building's entrance, the latter subject to approval by public space officials. The Applicant shall work with public space officials to ensure that the placement of the bicycle racks does not cause pedestrian conflicts.
 - e. Provide a bicycle repair facility within the building.
 - f. Offer an annual Capital Bikeshare membership to all new residential tenants for the initial term of each lease in perpetuity.
 - g. Offer an annual membership in either a traditional or a point-to-point carshare program to all new residential tenants for the initial term of each lease in perpetuity.
 - h. Offer a WMATA SmarTrip card preloaded with \$20 to all new residents not already possessing a SmarTrip card, in perpetuity.

- i. Provide all residents with a free download of a multimodal trip planning mobile app (e.g. Ridescout).
5. Loading Management Plan.
- a. The Applicant shall designate a loading management coordinator to coordinate all loading activities of the building.
 - b. The Applicant shall require all residential tenants to notify the loading management coordinator before moving in or out. Tenants requiring a moving truck shall provide the loading management coordinator with the following information: time and date that the truck is anticipated to arrive, size of truck being used, and name of moving service, if applicable.
 - c. The Applicant shall require all retail tenants to schedule deliveries that utilize the loading dock with the loading management coordinator. If the retail tenant is a restaurant or food store, the Applicant shall require that the tenant designate its own loading manager to coordinate with the loading management coordinator.
 - d. The loading management coordinator shall schedule deliveries so that deliveries do not exceed the dock's capacity. In the event that an unscheduled delivery vehicle arrives when the dock is full, the driver shall be directed to return at a later time when a delivery space is available.
 - e. The loading management coordinator shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular traffic from accessing 30th Street or adjacent driveways except during those times when a truck is actively entering or exiting a loading berth.
 - f. The loading dock shall be open seven days a week. The potential overlap of service vehicle traffic with 30th Street traffic shall be monitored at all times, and management measures shall be taken if necessary to reduce conflicts between truck, vehicular, and pedestrian movements.
 - g. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR Chapter 9, Section 900 (engine idling), regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System. The

BZA APPLICATION NO. 18845
PAGE NO. 7

loading management coordinator shall also be responsible for disseminating information regarding the above regulations to retail tenants and to drivers from delivery services that frequently use the loading dock. The loading management coordinator shall also post these documents in a prominent location within the service area.

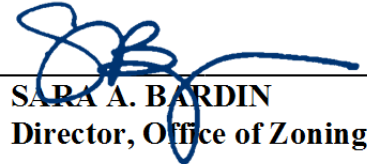
- h. The loading management coordinator shall coordinate with the community quarterly to discuss any specific issues regarding the loading dock or loading operations.
 - i. The loading management coordinator shall ensure that bicycle access to the service elevator remains available at all times and is not blocked by trucks or delivery vehicles.
6. Pool. The Applicant will outfit and manage the pool deck in a manner that will minimize any disturbance to abutting residential properties. The outdoor deck shall be for the use of the Applicant's residents and their guests. Hours of operation shall be limited to 7:00 a.m. to midnight. The Applicant shall not permit amplified music in the pool area.
7. Emergency Generator. The Applicant shall locate the Project's emergency generator on the roof and provide adequate sound baffling in conformance with all codes and ordinances to reduce noise transmission.
8. Trash Operations.
 - a. All trash shall be collected and compacted in a trash room in the basement of the Project, which shall not be audible outside the building.
 - b. Dumpsters shall be wheeled up to the loading dock by building personnel for trash servicing.
 - c. The dumpsters shall be picked up by a rear-end loading style truck.
 - d. Trash pickups shall not be made between the hours of 9:00 p.m. and 7:00 a.m.
9. OGB Flexibility. The Applicant shall have flexibility to modify the design of the building to respond to refinements and changes requested by the Old Georgetown Board and other preservation officials during final review of the project so long as such modifications do not require any additional areas of relief or substantial impact on the Approved Plans submitted to the BZA.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Peter G. May to APPROVE; S. Kathryn Allen, not present or participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 6, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY

BZA APPLICATION NO. 18845
PAGE NO. 9

BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.