

February 13, 2015

VIA IZIS

Chairman Lloyd Jordan  
D.C. Board of Zoning Adjustment  
441 4<sup>th</sup> Street NW, Suite 210S  
Washington, DC 20001

Re: **BZA Case Nos. 18852 & 18853 – Applicant’s Rebuttal to Opponents’ Filings**

Dear Chairman Jordan and Members of the Board:

Enclosed is the Applicant’s rebuttal to the opposition statements and letters (Exhibit Nos. 54, 56-61, and 63 in the record for Case No. 18852) filed immediately preceding or during the January 27, 2015 public hearing for the above-referenced cases.

In summary, the enclosed rebuttal materials prove the following:

- The requested relief is supported by OP, DDOT, and ANC 2F; all three extensively reviewed the Project and submitted detailed reports. The recommendations of OP and ANC 2F are entitled to great weight.
- The proposed parking relief will not have adverse impacts on the parking and traffic conditions in neighborhood because of the TDM Plan and the conditions of approval, which both create incentives for alternatives to car ownership and use, and disincentives to prevent Project residents from parking on the street.
- Residents will be unable to obtain RPP passes, and the Applicant will employ robust monitoring and enforcement (lease provision, covenant) of the conditions to prevent any on-street parking.
- Numerous studies (including new citations), significant nearby transit options, neighborhood characteristics, and resident profiles demonstrate that the TDM Plan will be effective, that Project residents are highly likely to be car-free, and that parking will not be needed.
- Public transit and alternative transportation modes will be available with sufficient capacity to accommodate Project residents.

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- Only the Applicant has provided substantial data to support its conclusions about unlikely car ownership among Project residents, effectiveness of TDM plans in reducing car use, and the lack of need for parking in the Project.
- A parking entrance cannot be accommodated through the certified historic garage without compromising its historic integrity and appearance.
- As described herein, both Properties are affected by an exceptional condition that gives rise to a practical difficulty from the strict application of the Zoning Regulations.
- Inefficiency in design and uneconomical use of property constitutes a practical difficulty as matter of law.
- As described herein, granting of all of the requested variances and special exceptions will not have adverse impacts on the community or the zone plan.

For the reasons described in the Applicant's prior submissions, in its testimony at the public hearings, and in the enclosed rebuttal, the Applicant urges the Board to approve the requested variance and special exception relief.

Sincerely,



Cary Kadlecak

Enclosure

## **BZA CASE NOS. 18852 & 18853**

### **Applicant's Rebuttal to Neighbors' Statements**

The proposed Project is something new and different for the neighborhood and the District. It provides rental housing for the growing small-household cohort in the District for whom the old conventions about automobile ownership and use will not apply. The Project will offer completely furnished rental, studio apartments with distinctive shared living and socializing spaces for people who desire a very urban and career-prioritized lifestyle with little interest in car usage or conventional apartment living.

Residents will be attracted to this Project because they will seek to live in downtown Washington with few belongings and will choose a place centrally located with the convenience of an auto-free but multi-modal means of getting around. Residents will embrace transit, bikes, walking, and variegated forms of car-share.

The group of ten neighbors in opposition (referred to generally as the “**Neighbors**”) have asserted that they do not believe this Project will be different. They submitted multiple documents dated January 20, 2015, January 23, 2015, January 25, 2015, January 26, 2015, and January 27, 2015 in opposition (Exhibits 54, 56-61, and 63 in the record).<sup>1</sup> A careful review of the Neighbors’ opposition materials reveals nothing that negates the conclusion that Applicant has sufficiently proven its case to justify the granting of the requested variance and special exception relief. OP, DDOT, and ANC 2F also carefully reviewed the Applicant’s case and agreed with the Applicant’s conclusions.

The Applicant’s rebuttal to the Neighbors’ assertions is organized around the following five points:

1. The proposed parking relief will not have adverse impacts on the surrounding neighborhood.
2. The Applicant satisfied the special exception standard for parking for the M Street Building because the historic garage would be compromised.
3. The Applicant has satisfied the burden of proof for the variances from the side yard width, open court width, and lot occupancy regulations.
4. Loading is not required, but the Applicant is nonetheless committed to a robust loading plan.
5. After extensive public discussions, the ANC and OP both support the requested relief and their determinations are entitled to great weight.

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<sup>1</sup> All references to exhibits in the record pertain to the record for Case No. 18852.

## I. The Proposed Parking Relief Will Not Have Adverse Impacts on the Surrounding Neighborhood

The majority of the Neighbors' assertions challenge and dispute, without any evidence, the Applicant's proposed Transportation Demand Management Plan ("TDM Plan") and corresponding impacts on the neighborhood. However, as detailed below, the Neighbors' claims are without merit. The Project is centrally located near the Central Business District and adjacent to multiple forms of transportation. The Applicant has produced a comprehensive TDM Plan that offers a combination of transit incentives and street parking disincentives to support the Project and its residents. This Plan will be enforceable and effective, and these conclusions are supported by extensive studies and data in the record.

As presented to the Board, the Applicant's TDM Plan consists generally of two components:

1. Incentives: transit incentives that promote alternatives to car ownership, including site location, mass transit, biking, and car-sharing.
2. Disincentives: disincentives that prohibit residents from parking cars on surrounding streets, including lease provisions and restrictions within the District's RPP system.

The Applicant has memorialized the TDM Plan in an exhaustive set of proposed conditions of approval ("Conditions"), which are attached as Exhibit A that will be incorporated into the BZA's decision and Order in this case.<sup>2</sup>

A. *Despite the Neighbors' meritless argument, the TDM Plan and Conditions will be effective and will be enforceable.*

(i) Residential Permit Parking

The underlying premise of the Neighbors' arguments regarding the enforceability of the conditions is without merit. The Neighbors would like the Board to believe that a person who owns a car will choose to live in a building where they know parking is not available, will risk eviction by parking on the street, will accrue hundreds of dollars of parking tickets per year, or will constantly have to move their car or will go to the police station every few days for new visitor parking permits to avoid parking tickets. This makes no sense.

If a person really wants to live in a new building in this neighborhood with a car, there are multiple options within two blocks where on-site parking is available or where they would be eligible for Residential Permit Parking ("RPP").<sup>3</sup> It is not plausible that a person would spend their time and money breaking laws and violating lease terms just to live in this Project.

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<sup>2</sup> The attached conditions include additional conditions proffered by the Applicant to respond to concerns about enforceability of the restrictions on neighborhood street parking.

<sup>3</sup> For example, there are many new rental apartment buildings with parking or RPP-eligible recently completed or under construction at 1250 9<sup>th</sup> Street NW, 926 N Street NW, 1232 10<sup>th</sup> Street NW, 1234 10<sup>th</sup> Street NW, and 1013 M Street NW.

Despite the Neighbors' assertions, residents will **not** be able to obtain RPP under any circumstances. As the Applicant and the District Department of Transportation ("DDOT") have made clear, the addresses of the buildings are ineligible for RPP, so any resident who would attempt to obtain an RPP pass would be denied because these Blagden Alley addresses are not in the DMV's RPP database.<sup>4</sup> Since Blagden Alley is not an eligible street for RPP parking, it will never be in the RPP database. As such, if a resident were to apply for an RPP sticker at the DMV, she would be denied. This process is clear, and Boardmember Peter May confirmed this understanding at the January 27, 2015 hearing when he stated:

When you go to get an RPP permit from DMV, your block, where your legal address is, has to be in the database... They've told us that the legal address of this building is going to be in the alley, and the alley block will not be in RPP... There's a database that DDOT compiles and DMV uses in order to issue those permits... If the building's address is not in the database, then you will not be able to get a Residential Parking Permit.

Furthermore, RPP's will never be available because the addresses of the buildings cannot be changed. If the Applicant were to attempt to change the addresses, this would violate the Applicant's commitment to the ANC and the community. The Applicant welcomes the Board imposing a condition in the BZA Order that prohibits any change of the Project addresses.

Any resident who would want to long-term park on the street in the neighborhood would have a nearly impossible task of finding a space for the following reasons:

- As the map attached as Exhibit B shows, nearly all of the streets in the vicinity of the Project are RPP-zoned streets, and one side of most of these streets is RPP-only. The other side of the RPP-zoned streets limits parking to two hours from 7:00 am to 8:30 pm. The remaining streets in the vicinity are metered and allow only two-hour parking. Parking meters in the area generally are in effect from 7:00 am to 6:30 pm, but many of the meters just south of the Project site remain in effect until 10:00 pm.
- Because RPP restrictions and meters are in effect well past the time most residents return home after work, parking in these spaces is not a viable option. Parking in a RPP area without a valid permit constitutes a \$30 fine for the first and second offenses in a calendar year. More than two offenses in a calendar year constitutes a \$60 fine per offense. A resident of the Project would either have to pay hundreds (or thousands) of dollars in fines per year or would have to move their car every two hours every day for 10 or more hours per day to park on the streets in the neighborhood.
- No resident who owns a car would incur these kinds of significant time burdens or monetary penalties when they could choose to live in a different building that provides parking or allows them to obtain an RPP sticker, or they could simply park in a garage.

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<sup>4</sup> See p. 119 of the 12/2/14 Transcript.

- As DDOT confirmed in its report, these conditions are unsuitable for long-term on-street parking by a Project resident.<sup>5</sup> That a person would undertake these extraordinary burdens just to live in this Project is highly unlikely.

(ii) Applicant's Monitoring System

The Applicant has repeatedly indicated its commitment to being vigilant in its monitoring and enforcement of the prohibition on on-street parking. The Applicant expects that the community will be undoubtedly and rightfully watchful for any tenants who park on the street. If any tenant violates these prohibitions, a zoning sanction triggered by the community or a lawsuit initiated by Applicant would be virtually guaranteed. The Applicant will adopt the following mechanisms to enforce these prohibitions:

1. All leases with tenants at the Project will prohibit on-street overnight parking. The leases will state that residents are not permitted to own cars unless they park them in off-street locations. If they own or are leasing a car, they will have to produce a monthly parking permit from a commercial garage. The leases will provide that the residents cannot obtain an RPP or any other type of permit allowing on-street parking. A violation of these restrictions will constitute a default under the lease. When a default of this lease provision occurs, the landlord will terminate the lease and, if necessary, take all necessary action to have the tenant evicted.
2. The Applicant will actively monitor tenants to enforce these lease provisions. In addition, the Applicant will conduct periodic studies, at least annually, to ascertain which residents own cars and where they park. In addition, the Applicant will conduct studies annually for three years to verify the efficacy of the TDM Plan.
3. The Applicant will record covenants on the subject properties indicating that the residents are not be eligible for RPP or any other type of on-street parking pass or permit, and that the residents are prohibited from parking their cars overnight on the street. The covenants will specify the enforcement mechanisms to ensure compliance with these requirements.

The Neighbors have incorrectly asserted that Project residents and the Applicant will just violate these restrictions without regard to the potential consequences, and, therefore, these restrictions will not be effective. There is no basis in fact for this bald assertion and it flies in the face of human self-interest. To ensure compliance, the Applicant proffered numerous Conditions with redundancy (covenant, address change, lease provision) to ensure that the goal of preventing on-street parking can be enforced through multiple means. The Applicant expects that the lease restrictions and covenants will be obeyed by the vast majority of the tenants, who will be law-abiding, and as to those few who may try to skirt the restrictions, it will move quickly and forcefully to prevent on-street parking by its residents. The Neighbors' skepticism on this point provides no basis to believe that the Office of the Zoning Administrator cannot or will not be able to enforce the Conditions, or that the Applicant will shirk its legal obligations.

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<sup>5</sup> See p. 1 of Exhibit 41 of the record.

*B. The TDM Plan and Conditions will be effective.*

Through extensive testimony from its expert in transportation planning as well as detailed studies provided not only from the Applicant's expert but also from multiple other reputable sources, the Applicant has demonstrated that the proposed TDM Plan will be effective. Ample data exists to support the Applicant's core assertions that:

- The Project site is surrounded by a wealth of transportation alternatives.
- Regional studies demonstrate that TDM plans are effective in promoting the use of these alternatives and reducing single-occupancy automobile trips.
- The Project's residents are unlikely to bring cars to the pedestrian- and transit-oriented site.
- National and regional studies support trends towards car-free households.
- The Project will not otherwise generate adverse traffic impacts because of its high transit and low auto use.

Although the Neighbors have generally challenged the Applicant's above assertions, they have failed to produce any quantitative data or evidence to support their position. The Neighbors ignore the significant demographic, cultural, and technological shifts that facilitate a different, transit and pedestrian-oriented, and car-free lifestyle in a rapidly changing city, which is likely to appeal to the residents of the Project.

(i) Despite the Neighbors' assertions, transit options are sufficient to accommodate the residents and mitigate potential impacts.

According to the Center for Transit Oriented Development, approximately 72% of people who live within ¼ mile of the Mount Vernon Square/7<sup>th</sup> Street – Convention Center Metro Station take public transportation, walk, or bike to work. Such a significant percentage demonstrates that transportation options and walking and biking infrastructure in the area are sufficient to support the proposed Project without parking.

Despite the Neighbors' assertion, the Project will not overburden the Capital Bikeshare system. In order to assure sufficient Capital Bikeshare capacity, the Applicant has committed to pay for the installation and first year of operating costs for a new Capital Bikeshare Station in the Project vicinity. According to DDOT, Capital Bikeshare stations pay for themselves after the first year of operation, which is why they typically request only one year of operating expenses when a third party pays for a new station. This commitment will ensure that the Project will not have a negative impact on the existing Capital Bikeshare stations in the neighborhood.

While four Zipcars located in a nearby lot one block from the Project site have been removed, the Applicant's transportation expert verified with Zipcar that 17 car sharing vehicles

(including Zipcar and Enterprise Car Share) remain within ¼ mile of the Project site (as of February 5, 2015).

Car2Go use by Project residents is not likely to have a notable impact on parking supply in the neighborhood for two of reasons: 1) reservations for Car2Go can only be made up to 30 minutes in advance, so they are unlikely to remain in any location for long; and 2) Car2Go vehicles (unlike Zipcar and Enterprise Car Share) do not have to be returned to the same location, so they are constantly moving between locations. As such, the cars are not likely to occupy on-street parking spaces for any long duration. Further, while Car2Go vehicles can park in any legal parking space in the District (including permit-only spaces), to the extent that the Project residents would attract some additional Car2Go vehicles in the neighborhood, the Applicant views this consequence as a benefit to the entire neighborhood since the Car2Go vehicles would be available to anyone in the neighborhood who may choose to use them.

(ii) Contrary to the Neighbors' claims, the TDM studies demonstrate the effectiveness of TDM plans.

Prior to the January 27, 2015 hearing, the Applicant provided four studies of projects in the region (one of which is in D.C.) that demonstrate the effectiveness of TDM plans in reducing automobile use.<sup>6</sup> Each of these studies shows that the goals of trip reduction for single-occupancy automobiles were exceeded. The TDM studies do not demonstrate a need for parking simply because parking is provided in those projects. The Neighbors interpret these studies the opposite of what they actually reveal. In fact, the studies show that significant reductions were realized for those projects despite the fact that parking was available. Additionally, in three of the four studies provided, the projects were located at least ¾ of a mile from the nearest Metro station, showing that TDM can affect substantial reductions even without being located near a Metro station. Therefore, the fact that the studied projects had parking provides even stronger support for a conclusion that a TDM plan for a project without parking is likely to have an even greater impact.

(iii) Contrary to the Neighbors' unfounded assertions, residents are highly unlikely to bring cars because of the transit options and walk score for the Project site; there is no need for parking.

Data show that proximity to transit correlates with lower parking demand, and residents without cars tend to choose such locations. As demonstrated in Wells + Associates' Transportation Assessment for the Project, dated April 18, 2014 (the "Traffic Study")<sup>7</sup>, the Project will be well-served by a high quality transit system and other transportation options. In addition to the regional and national trends that support a shift toward non-auto transportation options and reduced auto ownership, the *Right Size Parking Project* in King County, Washington analyzed parking utilization rates of 208 multi-family residential sites.<sup>8</sup> The King County study correlated parking utilization with 100 factors, including urban form, transit access, walk score,

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<sup>6</sup> Exhibit 53 of the record.

<sup>7</sup> Exhibit 15 of the record.

<sup>8</sup> Rowe, Daniel, et. al. "Do Land Use, Transit, and Walk Access Affect Residential Parking Demand?" *ITE Journal* 83.2 (2013): pp. 24-28. Print.

and parking supply, to name a few. The study authors found that the data suggests that sites within the Central Business District (“CBD”) had lower parking utilization rates than urban sites, and both CBD sites and urban sites had lower parking utilization rates than suburban sites. This, despite the fact that the parking supply provided for each urban form exceeded the parking demand.

Importantly, the King County study also found that “higher supply of parking appears to consistently correlate with greater parking demand.” This finding also is consistent with a study conducted by Arlington County, which found that vehicle ownership in residential projects in the County decreased as the number of spaces provided decreased.<sup>9</sup> Therefore, providing parking is more likely to encourage car ownership than an absence of parking

The King County study also found that parking utilization at sites with high transit access was 47 percent lower than parking utilization at sites with low transit access and 32 percent lower than parking utilization rates at sites with moderate transit access. The proposed Project undoubtedly has high transit access, so the King County study supports a conclusion that parking utilization at the Project site is likely to be low.

The King County study further found that parking utilization decreased as Walk Score increased. The Walk Score for the Project site is 94 out of 100 and is considered by Walkscore.com as a “walkers’ paradise.” Therefore, the data-based conclusion is that a high Walk Score for the Project site most likely will correlate with a low parking utilization for the Project.

Despite this study and others cited in the Traffic Study that show travel characteristics and parking in urbanized areas are changing and that parking supply, transit access, and walkability all impact parking demand and utilization, the Neighbors asserted that parking is needed simply because parking is provided for other projects in the vicinity of the site. As the data show, this assertion is without merit. Numerous studies have indicated that residential parking demand increases when parking supply increases (i.e., “If you build it, they will come.”), so less supply leads to less demand.<sup>10</sup> Simply put, if there are two identical projects – one with parking and one without – residents in the project with parking will have a higher car ownership rate than residents in the project without parking.

Actual studies, transit proximity, and walk score are the best indicators of parking demand for a residential project in a central urban area. Therefore, because of the ample transit options and high walk score for the Project, it is highly unlikely that residents in the Project will want or bring cars.

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<sup>9</sup> *Residential Building Performance Monitoring Study*, Arlington County Commuter Services, September 2013.

<sup>10</sup> See, e.g., Shoup, Donald. “The High Cost of Free Parking.” *Journal of Planning Education and Research* 17.1 (1997): 3-20; Weinberger, Rachel. 2011. “Death by a Thousand Curb-cuts: How minimum parking requirements stimulate driving”; Guo, Zhan. “Does Residential Parking Supply Affect Household Car Ownership? The Case of New York City.” *Journal of Transport Geography* 26 (2013): 18-28; Manville, Michael, Alex Beata, and Donald Shoup. “Turning Housing into Driving: Parking Requirements and Density in Los Angeles and New York.” *Housing Policy Debate* 23.2 (2013): 350-75.

(iv) Contrary to the Neighbors' claims, the Applicant's studies demonstrating car ownership rates and rates of car usage are valid and applicable to the Project.

The Applicant's cited studies show that Washington, D.C. has the second highest rate of car-free households among major U.S. cities. The Neighbors offered no evidence to rebut or invalidate these studies. The Applicant's transportation expert cited four recent studies in the Traffic Study that demonstrate trends toward reduced car ownership rates and reduced car usage. These studies were published by reputable organizations that study travel behavior and transportation characteristics, including the University of Michigan Transportation Research Institute, the University of California Transportation Center, and U.S. PIRG Education Fund. The Applicant's transportation expert also included citations from a study of residential buildings in Arlington County, providing applicable regional data in addition to the data on nation-wide trends.

The Project's neighborhood has a comparatively low automobile ownership rate and most likely will continue to decline in concert with national trends. According to the Center for Transit Oriented Development, the auto ownership rate of people who live within ¼ mile of the Mount Vernon Square/7<sup>th</sup> Street – Convention Center Metro Station is 0.65 vehicles per occupied housing unit, compared to 1.78 for the entire Washington Metropolitan area, thereby demonstrating that the availability of alternative modes of transportation near the site and the site's location within an amenity-rich area reduces the likelihood that residents will need or want a car. It is important to note that the auto ownership rates in the vicinity of the Project are significantly lower than the city average despite the fact that few, if any residential buildings in the area have been developed for and marketed toward carless households, which is precisely what the Applicant intends to do. Equally important, very few, if any, of the residential buildings in the Project area are subject to aggressive TDM plans, such as that proposed for the Project. Combined, the trends of lower automobile ownership, the already comparatively low rates of car ownership in the neighborhood, and the aggressive TDM Plan likely will result in very low – if any – demand for personal cars among Project residents.

(v) Contrary to the assertions of the Neighbors, the trip generation rates in the Traffic Study are based on accepted practice and actual data.

The trip generation estimates provided in the Traffic Study are based on accepted methodology that DDOT vetted and accepted. The base rates were taken from the Institute of Transportation Engineers' ("ITE") *Trip Generation Manual*. Because the ITE rates are based almost entirely on suburban sites with an abundant supply of parking, little or no transit service, virtually no bicycle infrastructure, limited walkability, and few, if any, amenities within walking distance, it is standard practice to take non-auto mode split reductions. The assumed 90% non-auto mode split was based on the facts that no parking would be provided with the Project, the site has excellent transit service, excellent bicycle facilities, and a variety of amenities within walking distance, coupled with an extensive network of pedestrian facilities. Furthermore, the

methodology employed in the study was reviewed and approved by DDOT, and the BZA previously approved two other parking variances based on the same methodology.<sup>11</sup>

The assumptions used in the Traffic Study are further substantiated by trip generation characteristics at a similar site in Boston, MA. Factory 63 is a residential development consisting of 38 micro apartment units. Traffic counts and surveys of its residents were conducted by Nelson/Nygaard in April 2014.<sup>12</sup> The data revealed an 85% lower trip generation rate than the ITE baseline numbers during the AM peak hour and an 89% lower trip generation rate than the ITE baseline number during the PM peak hour (compared to 90% assumed in the Traffic Study). A few points pertinent to the Blagden Project are worth noting:

1. The Factory 63 site is located approximately 1.0 mile from the CBD, compared to the Blagden Alley site, which is located just two blocks from the CBD;
2. The Factory 63 site is located along major bus routes but not near metro (or similar) rail, unlike the Blagden Alley site; and
3. The difference between an 85% non-auto mode split and a 90% mode split assumption would equate to just four vehicle trips during the AM, while the difference between an 89% non-auto mode split and a 90% mode split assumption would equate to just one vehicle trip during the PM peak hour.

### *C. Conclusion*

Based on the foregoing comprehensive documentation supporting the Applicant's position, and the lack of credible and specific evidence countering this position, the Applicant respectfully submits that: (i) the special exception approval from the parking requirements for the M Street Building will not tend to affect adversely the use of neighboring property and is in harmony with the general purpose and intent of the zone plan; and (ii) the variance relief from the parking requirement for the 9<sup>th</sup> Street Building will not cause substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan.

## II. The Applicant has proved the special exception standard for parking for a historic resource in connection with the M Street Building because the historic garage would be compromised if it were required to provide parking.

Contrary to the Neighbors' claims, the Applicant has demonstrated that the M Street Building meets the standard for special exception relief from the parking requirement under Section 2120.6 of the Zoning Regulations. The existing historic garage on the M Street Property has been established as a contributing historic resource, and providing parking in the M Street Building would result in substantial architectural difficulty in maintaining the integrity of that resource.

The appearance and integrity of the historic garage would be compromised if the Applicant were required to provide parking under the M Street Building. Entrances to parking

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<sup>11</sup> BZA Case Nos. 18744 & 18845.

<sup>12</sup> *Transportation Study and TDM Plan for 3000 M Street, NW*, Nelson Nygaard, June 2014.

on either side of the M Street Property would result in a greatly inefficient and impractical building, ramp, and garage configuration<sup>13</sup> because: (i) parking entrances from either the west or east side would eliminate the lobby/main entrance, some first floor apartments, and the lower level apartments, as illustrated in Exhibit C; (ii) such side entrances would result in dangerous automobile-pedestrian conflicts; and (iii) due to the narrow 15-foot width of the alley, turning in and out of a western side entrance would be impossible, as shown in Exhibit C. No entrance would change the fact of a highly inefficient layout of the parking level itself, as illustrated in the Applicant's pre-hearing submission.<sup>14</sup>

Since a side parking entrance is not possible due to alley width and configuration, the only remaining location for a theoretically possible parking entrance would be at the Property rear through the historic garage. However, adding a parking entrance through the garage would compromise the historic appearance and integrity of the garage because the only way to potentially accommodate a parking entrance of the Code-required width would be to punch new openings into the garage, as illustrated in Exhibit C. Adding or expanding openings would severely damage the historic appearance of the garage and most likely would not be permitted by the Historic Preservation Review Board and/or the Historic Preservation Office.<sup>15</sup> Further, such an entrance through the garage would still not change the highly inefficient layout of the parking level. Therefore, as demonstrated through illustrations and testimony, the appearance and integrity of the historic garage would be compromised by providing a parking entrance through it, so the Applicant is entitled to special exception relief from the parking requirements for the M Street Building.

### III. The Applicant has met the variance standards for the relief it requested for the 9<sup>th</sup> Street Building.

Despite the Neighbors' assertions, the Applicant has met the variance test for parking relief for the 9<sup>th</sup> Street Building. As described in the pre-hearing submission, with testimony, and herein, the lot is affected by an exceptional condition that results in a practical difficulty in complying with the parking requirements since it would be impractical to construct underground parking. And, for the reasons set forth in detail above, the satisfaction of the third prong of the variance test has been met.

#### *A. Parking Relief for 9<sup>th</sup> Street Building*

##### *(i) The 9<sup>th</sup> Street Property is affected by an exceptional condition that warrants parking variance relief.*

The exceptional condition affecting 9<sup>th</sup> Street Property is the confluence of the following features: the irregular shape, narrow width, boundary on two sides by Blagden Alley, and inclusion as part of a project that includes another lot (M Street Property). The Applicant described this exceptional condition in its pre-hearing submission<sup>16</sup> and with testimony.<sup>17</sup>

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<sup>13</sup> See pp. 117-18 of the 12/2/14 Transcript.

<sup>14</sup> See p. A-10 of Exhibit 37 of the record; pp. 111-13 of the 12/2/14 transcript.

<sup>15</sup> See p. 114 of the 12/2/14 transcript.

<sup>16</sup> See pp. 8-9 of Exhibit 36 of the record.

As relevant case law describes, an exceptional condition affecting a property can arise from many factors – including history, shape, and location – and a confluence of factors may combine to give rise to the exceptional condition. Further, it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property and that a confluence of factors may demonstrate the exceptional condition.<sup>18</sup> The Court of Appeals in *Monaco v. D.C. Bd. of Zoning Adj.* explained that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property.<sup>19</sup> Finally, it is not necessary that the Property be unreservedly unique. Rather, the applicant must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.<sup>20</sup> In this case, the confluence of the identified features of the 9<sup>th</sup> Street Property satisfies this legal standard because it creates a practical difficulty for the Applicant in complying with the Zoning Regulations.

Even if some of the property's characteristics – considered individually – may be favorable for development, the combination of characteristics is not favorable for this development to comply with the side yard and parking requirements. It is not valid to compare this lot to residentially-zoned single-family dwelling and flat lots in the square because of the different development and use standards that affect the property. This narrow and commercially-zoned lot with two alley frontages in this location is unique because the highest and best use of the lot (the apartment building proposed by the Applicant) results in a situation where parking cannot be provided without significant inefficiency in design, which is described in greater detail in the Applicant's pre-hearing submission<sup>21</sup> and testimony.<sup>22</sup>

- (ii) Despite the Neighbors' objections, inefficiency in design and wasteful use of property is a legitimate practical difficulty that would affect the Project without the parking variance.

The Applicant has proven that it cannot comply with the Zoning Regulations with respect to the variances requested, particularly for parking, without resulting in a practical difficulty due to an inefficient/uneconomical design and the wasteful use of the property that would result. This is extensively described and illustrated in the Applicant's pre-hearing submission<sup>23</sup> and with testimony.<sup>24</sup> In addition, as Boardmember Peter May acknowledged during the January 27, 2015 public hearing for BZA Case No. 18902 with regard to the added expense of underground parking, "I think the Board in the past, certainly the Zoning Commission in the past, has developed at least a general understanding of the extra costs associated with excavating for additional parking below grade..." The Board has previously found that the cost of providing an

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<sup>17</sup> See pp. 116-17 of the 12/2/14 transcript.

<sup>18</sup> *Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990).

<sup>19</sup> 407 A.2d 1091 (D.C. 1979).

<sup>20</sup> *Gilmartin*, 579, A.2d at 1168.

<sup>21</sup> See pp. 12-14 of Exhibit 36 of the record.

<sup>22</sup> See pp. 116-118 of the 12/2/14 transcript.

<sup>23</sup> See pp. 9-14 of Exhibit 36 of the record and pp. A-8 – A-11 of Exhibit 37 of the record.

<sup>24</sup> See pp. 111-14 and 116-17 of the 12/2/14 transcript.

inefficient underground parking garage constitutes a practical difficulty when it flows from an exceptional condition, and the Court of Appeals has confirmed this principle.<sup>25</sup>

According to the D.C. Court of Appeals, economic or efficiency burdens are among those that the Board may evaluate as legitimate practical difficulties imposed by Zoning Regulations on the owner of a property.<sup>26</sup> It is appropriate for the BZA to assess the burdens that the Zoning Regulations would impose on a property owner's actual proposed use of the property, so the idea of a "self-created hardship" resulting from the proposed design is not a factor for the Board to consider.<sup>27</sup> The inquiry made by the BZA regarding a practical difficulty may include an examination of the efficient use of the property.<sup>28</sup> Indeed, it is legally proper for the BZA to grant a variance where it would result in a more economic and efficient use of property.<sup>29</sup> Consistent with this case law, the BZA has previously granted variance relief based on a practical difficulty of inefficient use of property that would result from compliance with the Zoning Regulations.<sup>30</sup> Therefore, in this case, the demonstrated inefficient use of the property and inefficient design of the building that would result from the compliance with the parking and side yard requirements would impose practical difficulties upon the Applicant. As a matter of law, these inefficiencies constitute a practical difficulty that justifies variance relief.

Car elevators/automated parking systems are not viable alternatives that would eliminate a practical difficulty. The Neighbors offer these as a solution for underground parking, but they are offered without any study or explanation of how they would actually function in this Project. While a car elevator/automated system may allow better access to an underground garage, it cannot change the high inefficiency of the layout of the garage in this case because parking spaces and drive aisles still must satisfy the minimum dimension requirements in Sections 2115.1 and 2117.5 of the Zoning Regulations. Furthermore, car elevators/automated parking systems are not permitted as a matter-of-right and would require variance relief themselves; the BZA has approved several such cases.<sup>31</sup> Thus, the Applicant would still face a practical difficulty with a parking elevator/automated parking system, so it would not be a feasible alternative.

*B. The Applicant has satisfied the burden of proof for the variances from the side yard width, open court width, and lot occupancy regulations.*

The Neighbors also assert that the Applicant has not met the variance test for the other requested relief from the side yard width, open court width, and lot occupancy regulations. However, as detailed in the Applicant's evidence and testimony already in the record, and

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<sup>25</sup> See, e.g., BZA Case Nos. 17644, 17789, 17936, 18544, 18632, 18668, and 18866.

<sup>26</sup> *Palmer v. District of Columbia Bd. of Zoning Adj.*, 287 A.2d 535, 542 (D.C. 1972).

<sup>27</sup> *Association For Preservation of 1700 Block of N St., N.W v. District of Columbia Bd. of Zoning Adj.*, 384 A.2d 674, 678 (1978) (rejecting petitioners' assertion of self-created hardship and upholding variance granted by BZA that allowed YMCA to build indoor pool).

<sup>28</sup> *Tyler v. District of Columbia Bd. of Zoning Adj.*, 606 A.2d 1362, 1367 (1992) ("we have recently eliminated any doubt that '[e]conomic use of property' may be properly 'considered as a factor in deciding the question of what constitutes an unnecessary burden of practical difficulty in [area] variance cases'"), quoting, *Gilmartin*, 579 A.2d at 1170.

<sup>29</sup> See *Wolf v. District of Columbia Bd. of Zoning Adj.*, 397 A.2d 936 (1979).

<sup>30</sup> See, e.g., BZA Case Nos. 18365 & 18668.

<sup>31</sup> See, e.g., BZA Case Nos. 16498 & 18308.

summarized below, the Applicant has met the burden of proof for these variances, which are needed solely as a result of the unique and exceptional conditions confronting the properties and their surrounding context. Furthermore, the relief is generally minor and, in the case of the court width and side yard variances, it allows for open spaces that are not otherwise required by regulation.

- (i) The Properties are affected by an exceptional condition that warrants side yard, open court, and lot occupancy variance relief.

The exceptional conditions confronting the 9<sup>th</sup> Street Property have been reiterated above. As the Applicant thoroughly described in its pre-hearing submission<sup>32</sup> and as it testified<sup>33</sup>, the following features of the M Street Property combine to create the exceptional condition that give rise to a practical difficulty: (i) the presence and location of the historic garage at the rear of the Property; (ii) the long and narrow dimensions of a lot considerably larger than many other in the square; and (iii) the presence of the historic Blagden Alley on three sides. The Neighbors' contention that these characteristics do not amount to an exceptional condition is patently incorrect.

In addition to the Applicant's sufficient proof of the legal standard, the BZA previously granted variance relief to a previously proposed project on the M Street Property in Order Nos. 17403 & 17403A. The Board found in that case that the Property was affected by an exceptional condition. It would be unprecedented for the Board to conclude the opposite in this case when the Property's characteristics have not changed.

- (ii) Inefficiency in design and wasteful use of property is a legitimate practical difficulty that would affect the Project without the side yard, open court, and lot occupancy variances.

The Applicant has proven that if it were to comply with the Zoning Regulations with respect to side yard width, open court width, and lot occupancy, then an inefficient/uneconomical design and wasteful use of the properties would result. This is extensively described and illustrated in the Applicant's pre-hearing submission<sup>34</sup> and with testimony.<sup>35</sup> As described above, economic and efficiency burdens are legitimate practical difficulties.

- (iii) No substantial detriment to public good would result from the side yard, open court, lot occupancy, and parking variances.

The nonconforming side yard width, lot occupancy, open court widths, and parking (as described above) will not cause substantial detriment to public good and will not substantially impair the integrity of the zone plan as embodied in the Zoning Regulations and Map. A theoretical redesign of the Project does not prove that these particular variances, themselves, cause a detriment to the public good. The Neighbors attempt to weave a tenuous connection between parking impacts and these three variances, but they fail to explain how side yard width,

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<sup>32</sup> See p. 8 of Exhibit 36 of the record.

<sup>33</sup> See pp. 110-111 of the 12/2/14 transcript.

<sup>34</sup> See pp. 9-14 of Exhibit 36 of the record and pp. A-8 – A-11 of Exhibit 37 of the record.

<sup>35</sup> See pp. 111-14 and 116-17 of the 12/2/14 transcript.

lot occupancy, and court width variances would directly cause substantial detriment to the public good. When deciding the side yard, lot occupancy, and court width variances, the Board should evaluate them in the context of the plan presented by the Applicant. That some building, in theory, could be designed without these variances does not mean that there is a detriment to the public good by granting the actual variances requested in this case.

As a matter of law, an applicant for a variance is not required to prove that its proposed design is the sole potential design for the property.<sup>36</sup> In general, the BZA does not consider alternative designs when determining whether the proposed design would have a substantial negative impact on the surrounding neighborhood.<sup>37</sup> The fact-based inquiry into potential impacts on the surrounding neighborhood from a proposed design occurs after the applicant has demonstrated uniqueness and practical difficulties.<sup>38</sup> Thus, the proper role of the Board is to analyze only the potential effect of the proposed design, not other putative design alternatives. Accordingly, in this case, the theoretical design alternatives offered by the Neighbors are not germane to an analysis of the potential impacts of the Project.

Thus, the side yard width, open court width, and lot occupancy variances will not cause substantial detriment to the public good and will not substantially impair the integrity of the zone plan. As described in Section 101 of the Zoning Regulations, the purpose of side yards and courts is to provide adequate light and air, and the purpose of lot occupancy is to prevent the overcrowding of land. As described, the side yard and open court variances will not restrict light or air because they open parallel onto the alley, and they will provide more open space than if they were not provided at all.<sup>39</sup> Side yards and courts are not required in this zone. Further, as described, the lot occupancy variance will not permit overcrowding of land because the overall height and density (FAR) of the building will be within the permitted zone limit, and the upper stories of the building will remain within the lot occupancy limit.<sup>40</sup>

#### IV. Loading is not required, but the Applicant has nonetheless committed to a robust loading plan.

Despite the Neighbors' contention, loading is not required for the M Street Building. The Neighbors argue that the M Street building requires loading despite the plain language of Section 2200.5 and decades of precedent to the contrary. In fact, the Applicant confirmed this with the Zoning Administrator, as shown in the email correspondence attached as Exhibit D.

The existing garage on the M Street Property is a contributing building in the Naylor Court/Blagden Alley Historic District. The certification signed by the Historic Preservation Office, attached as Exhibit E, confirms this. Under Section 2200.5, loading is not required for any addition to a contributing building in a historic district. Because the garage is a contributing

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<sup>36</sup> *Washington Canoe Club v. District of Columbia Zoning Com'n*, 889 A.2d 995, 999 (2005) (upholding Zoning Commission grant of variance and stating that generally "the applicant is not charged with considering every option that any party in opposition might conceptualize") (internal quotations omitted).

<sup>37</sup> *Gilmartin*, 579 A.2d at 1170-71, 1172; *Monaco*, 407 A.2d at 1100-02; *Association For Preservation of 1700 Block*, 384 A.2d at 678; *Wolf*, 397 A.2d at 945.

<sup>38</sup> *Id.*

<sup>39</sup> See pp. 14-15 of Exhibit 36 of the record.

<sup>40</sup> See p. 15 of Exhibit 36 of the record.

building, no loading is required for the addition to the garage that will comprise the balance of the M Street Building. The Zoning Administrator agreed with this conclusion.

Despite the fact that loading is not required for either of the buildings, the Applicant proposed a robust loading plan in response to concerns from neighbors and the ANC. First, as the Applicant testified, it is important to note that it is highly unlikely that residents would arrive with a moving truck or van because they will need only clothes and a few personal items.<sup>41</sup> Apartments will be fully furnished, including utensils, dishes, cooking supplies, and linens. And because units will be small, they will not have space available for residents to bring more than a few suitcases. Nevertheless, as described in proposed Condition #3b, in the rare instance that a resident arrives with a moving truck or van, then the designated loading coordinator will assure that the resident follows the proper process to obtain temporary loading signs and loads in accordance with DDOT policy.

Second, to accommodate regular deliveries to residents, as the Applicant previously testified<sup>42</sup> and as described in proposed Condition #3c, the Applicant will direct delivery services to park in the commercial loading spaces on 9<sup>th</sup> Street just south of the 9<sup>th</sup> Street Building. To facilitate this, the Applicant will post signs in the alley and will provide a package delivery room directly accessible from 9<sup>th</sup> Street. The ANC endorsed this plan, and it will accommodate the vast majority of deliveries to the Project.

Finally, to minimize the potential inconvenience to the neighborhood from trash pickup, as described in proposed Condition #4, the Applicant will minimize the amount of time that trash pickup occurs without congesting the alley. The building management will have the trash containers ready when the trash haulers arrive, and the trash haulers will bring them outside to the truck. If necessary, the Applicant will have multiple weekly trash pickups to limit the amount of time for each pickup.

**V. The ANC, OP, and DDOT support the requested relief, and their recommendations are entitled to great weight.**

The Applicant's position is also supported by three key independent authorities that have weighed in on the matter based on the Applicant's extensive discussions with them: the Office of Planning, the District Department of Transportation, and Advisory Neighborhood Commission 2F.

The ANC held multiple public meetings at which the perspectives of the Neighbors were presented, and the ANC vote indicates its disagreement with those perspectives.

Each of OP, DDOT, and ANC 2F submitted detailed written reports in which they carefully explained their support of the requested relief.

As the Board is aware, the OP and ANC 2F reports are each entitled to "great weight" in the Board's decision. Although the Neighbors may disagree with those recommendations and the reasoning therein, the fact remains that these two important agencies support this Project, and

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<sup>41</sup> See pp. 124-126 of the 12/2/14 transcript.

<sup>42</sup> See p. 127 of the 12/2/14 transcript.

articulated their positions based on a detailed and careful understanding of the Project. Accordingly, regardless of the ANC vote or minor errors in the OP report, the recommendations of ANC 2F and OP are entitled to great weight in the Board's decision.

## VI. Conclusion

The Applicant has provided ample evidence prepared by experts in their fields to support its conclusions about exceptional condition, practical difficulty and impacts, particularly with respect to the requests for parking relief.

The burden of proof, which lies with the Applicant, has been met. The Neighbors' opposition materials are anecdotal, suppositions, unpersuasive, and do not overcome the Applicant's hard data and testimony from professionals.

The record established by the Applicant provides evidence, verifiable data, illustrations, and professional testimony in support of its application. When the Board evaluates the application on its merits and considers whether the Neighbors or the Applicant have actually proved their case with evidence, the only reasonable conclusion is that Applicant has met its burden and proved its case in support of the requested zoning relief.

# **EXHIBIT A**

## **Conditions of Approval**

1. Prior to the issuance of a Certificate of Occupancy for the buildings, the Applicant shall:
  - a. Record an easement with the Recorder of Deeds for 91 Bladgen Alley NW that will preserve the six-foot side yard along the alley for pedestrians and prevent future development in that area;
  - b. Pay the cost of installing a new Capital Bikeshare station (27 docks and 14 bikes), and one year of its operating expenses, within ¼ mile of the Project site at an exact location to be determined by DDOT; and
  - c. Record a covenant with the Recorder of Deeds for both properties that prohibits the Project and its residents from eligibility for Residential Permit Parking and for any other temporary parking passes or permits.
2. The Applicant shall implement a transportation demand management (TDM) plan that includes the following:
  - a. Designate a member of the property management team as the Transportation Management Coordinator (TMC), who will be responsible for disseminating information to tenants. This position may be part of other duties assigned to that person.
  - b. Notify residents that they are not eligible for a Residential Parking Permit (RPP). Include a provision in all leases that residents are not eligible for RPP and they are prohibited from applying for or obtaining any short term, temporary, or visitor parking passes. The Applicant will work with DDOT to ensure that these restrictions are enforced.
  - c. Provide information and/or links to the following programs and services on the property management website:
    - i. Capital Bikeshare,
    - ii. Car-sharing services (ZipCar, Enterprise Carshare, Car2Go, etc.),
    - iii. Uber,
    - iv. Ridescout,
    - v. DDOT's DC Bicycle Map,
    - vi. goDCgo.com,
    - vii. WMATA,
    - viii. Commuter Connections Rideshare Program,
    - ix. Commuter Connections Guaranteed Ride Home, and
    - x. Commuter Connections Pools Program.
  - d. Provide two electronic displays – one in each building – in a common, shared space to provide real time availability information for nearby trains, buses, and other transportation alternatives.
  - e. Offer covered, convenient, and secure bike parking facilities inside the Project for at least 42 bicycles.

- f. Provide a bicycle repair facility near the bike parking facilities.
- g. For the life of the Project, provide all new residents Capital Bikeshare memberships for the terms of their initial leases.
- h. Provide at least 10 shared bicycle helmets for use by the residents.
- i. For the life of the Project, provide all new residents car-share memberships for the terms of their initial leases.
- j. Host an annual bicycle training event conducted by the Washington Area Bicycle Association or similar organization for residents.

3. The Applicant shall implement a loading and delivery management plan that includes the following:

- a. A member of the property management team will be designated as the loading coordinator, who shall be responsible for coordinating the limited loading activities in the building and informing residential tenants of the guidelines and procedures for loading and delivery operations.
- b. Include a provision in all leases that, for tenants who need temporary loading, tenants will be required to notify, at least three weeks in advance, the loading coordinator before moving in or out so that the loading coordinator can assist in the establishment of curb-side loading consistent with DDOT policies and procedures.
- c. The project shall include a clearly marked package delivery room accessible to delivery vendors directly from 9<sup>th</sup> Street. The property management team shall direct all private courier services (UPS, FedEx, DHL, Peapod, etc.) to park in the provided loading spaces on 9<sup>th</sup> Street, and to observe signs which applicant shall post and maintain on and near the building entrance in the alley stating, "NO DELIVERY PARKING. DELIVERY PARKING ONLY IN LOADING SPACES PROVIDED ON 9<sup>TH</sup> STREET. DELIVERIES MAY BE LEFT AT PACKAGE DELIVERY ROOM ON 9<sup>TH</sup> STREET." The final locations of and language on the signs shall be subject to DDOT approval.

4. All trash pickup will occur from M Street. No trash containers shall be kept outside of the building. Trash haulers shall bring the trash containers outside when they arrive for pickup, and the trash haulers shall return the trash containers to inside the building once they have collected the trash.

5. The Applicant shall have flexibility to modify the design of the buildings to address any comments from the D.C. Historic Preservation Review Board or Historic Preservation Office staff during final review of the Project, so long as such modifications do not require any additional areas of relief or have a substantial impact on the final plans approved by the BZA.

## **EXHIBIT B**

### **Neighborhood Map of RPP**

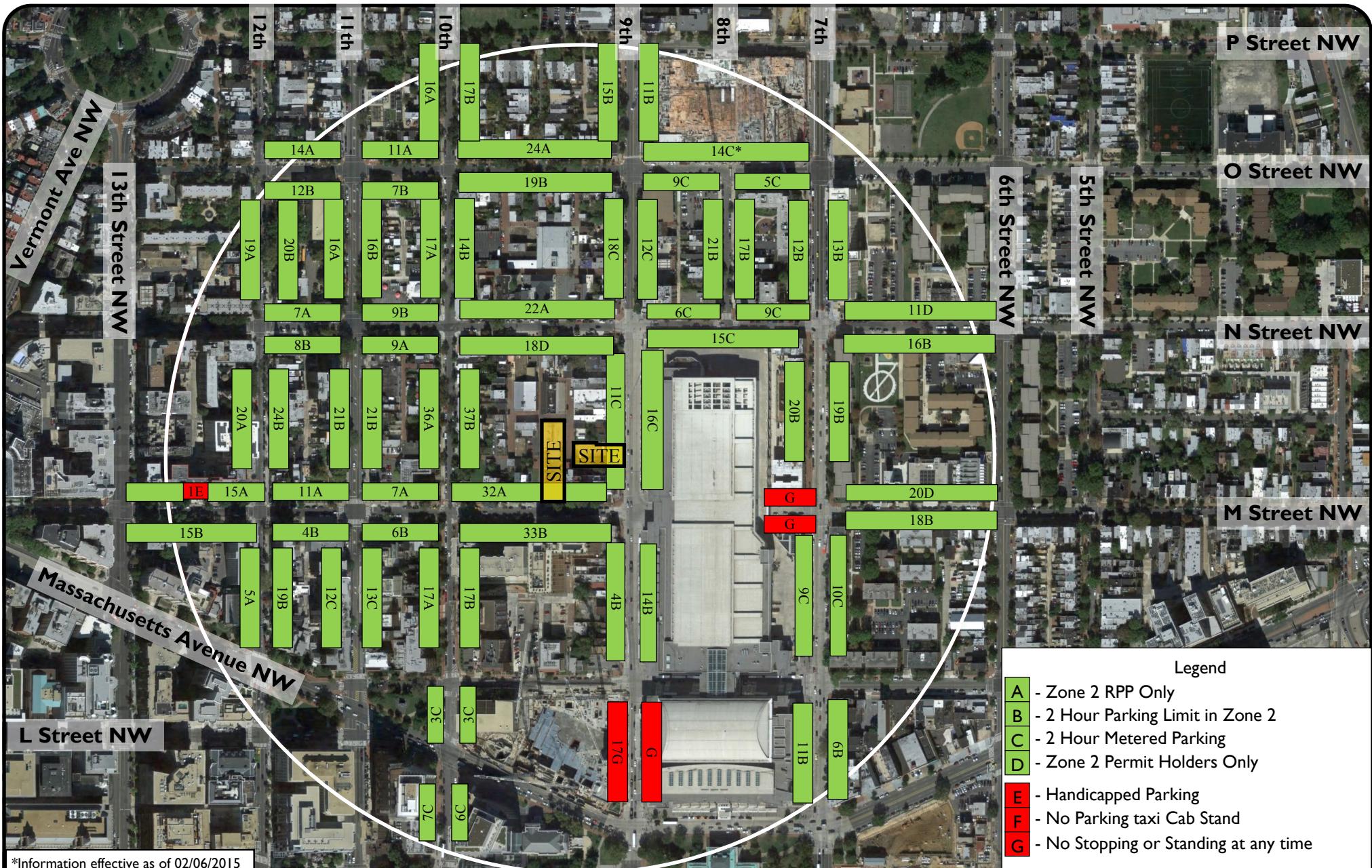


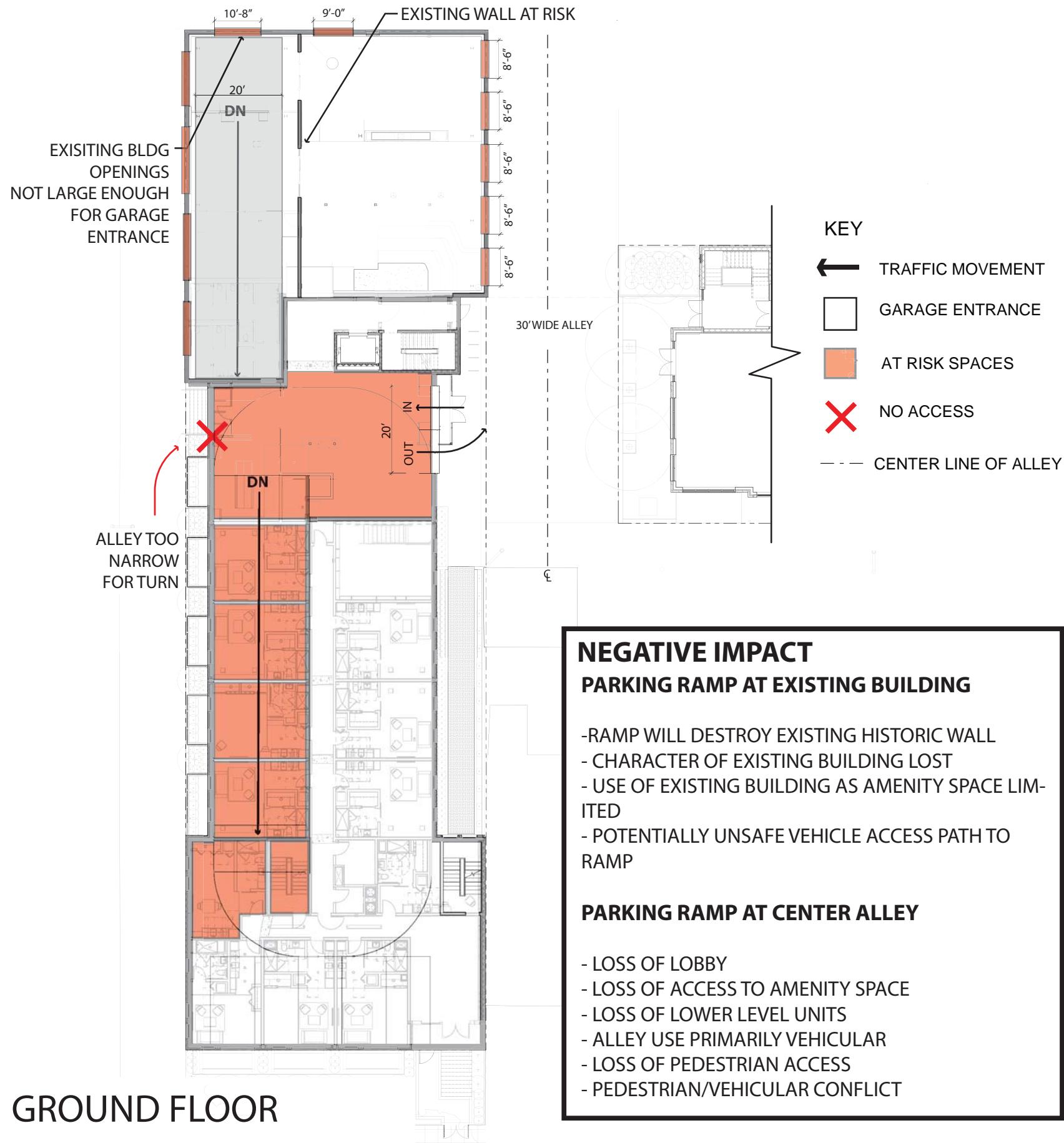
Figure 1  
On-Street Parking

\* Two spaces reserved for 15 minute hotel drop-off/pick-up.

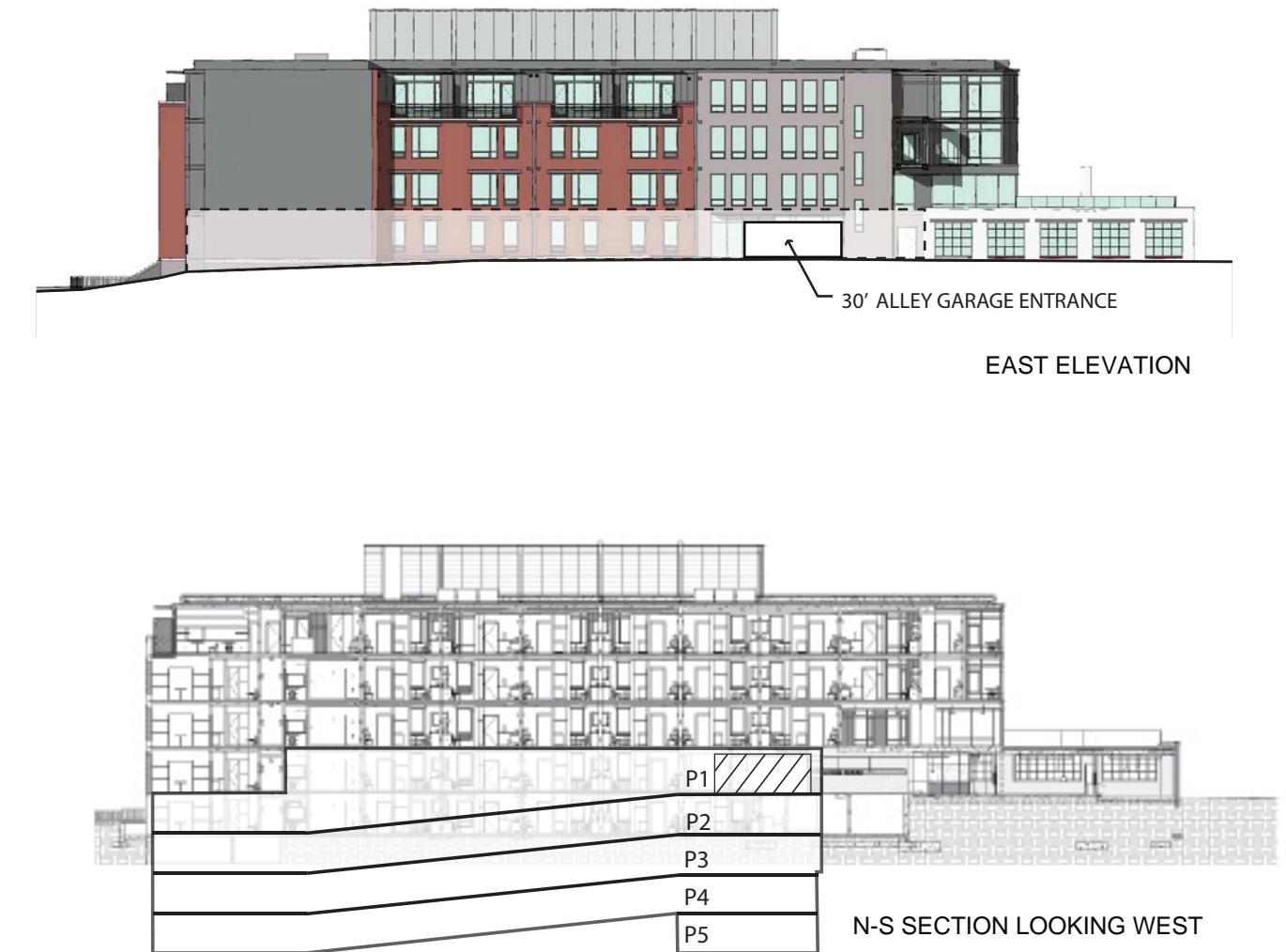


## **EXHIBIT C**

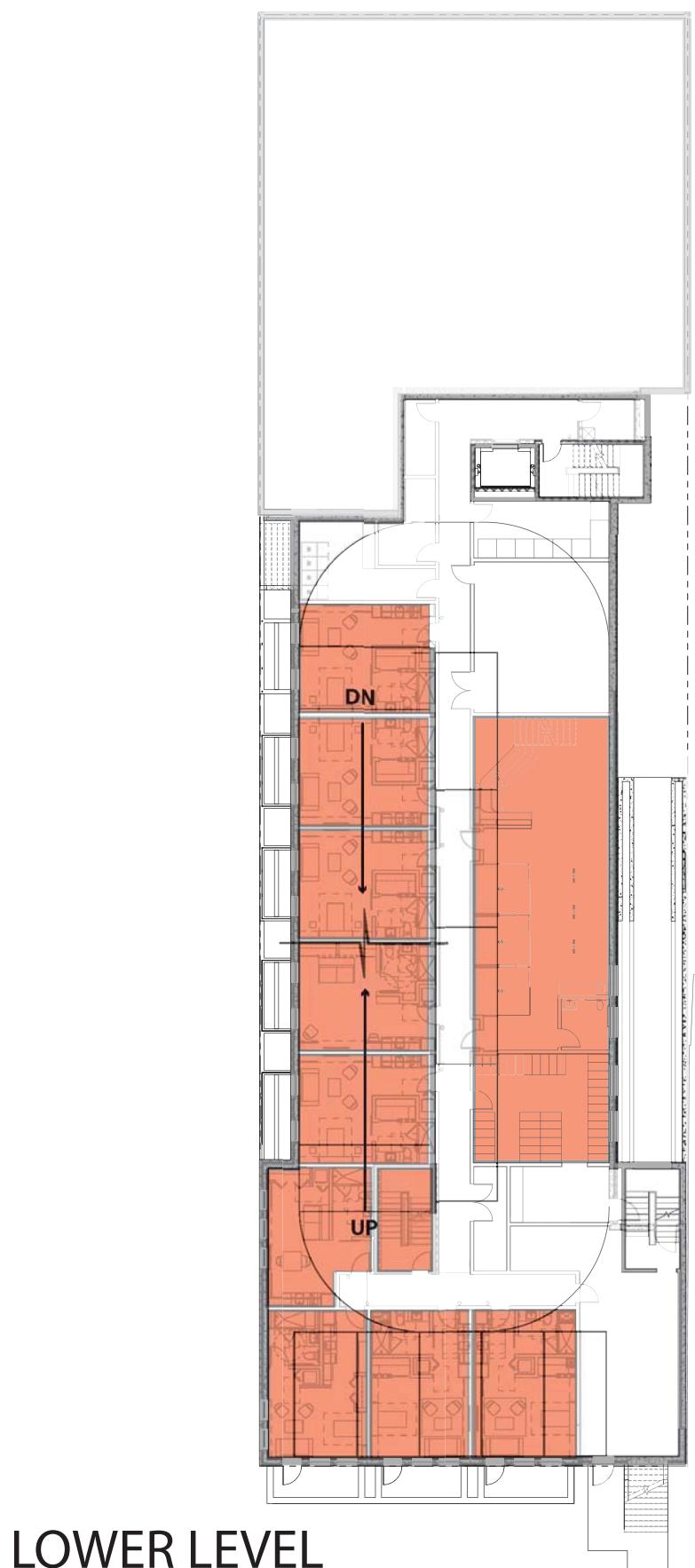
### **Inefficiency/Impracticality of Underground Parking in M Street Building**



90 BLAGDEN ALLEY

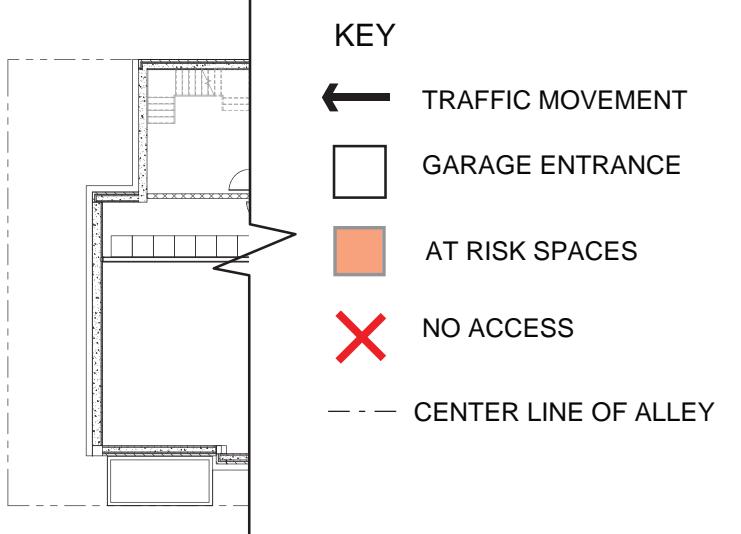


N  
PARKING DIAGRAM



LOWER LEVEL

90 BLAGDEN ALLEY



KEY

- ← TRAFFIC MOVEMENT
- GARAGE ENTRANCE
- AT RISK SPACES
- ✗ NO ACCESS
- CENTER LINE OF ALLEY

**PARKING INEFFICIENCIES**

**90 BLAGDEN ALLEY**

CURRENT UNIT COUNT: 79

UNITS LOST: 13

NEW COUNT: 66 UNITS

.5 SPACED PER UNIT: 33 SPACES

OPTIMAL EFFICIENCY:

@ 400 SQFT/SPACE

P1: 2400 SQFT (RAMP, NO SPACES)

P2-P4: 8200 SQFT (27 SPACES)

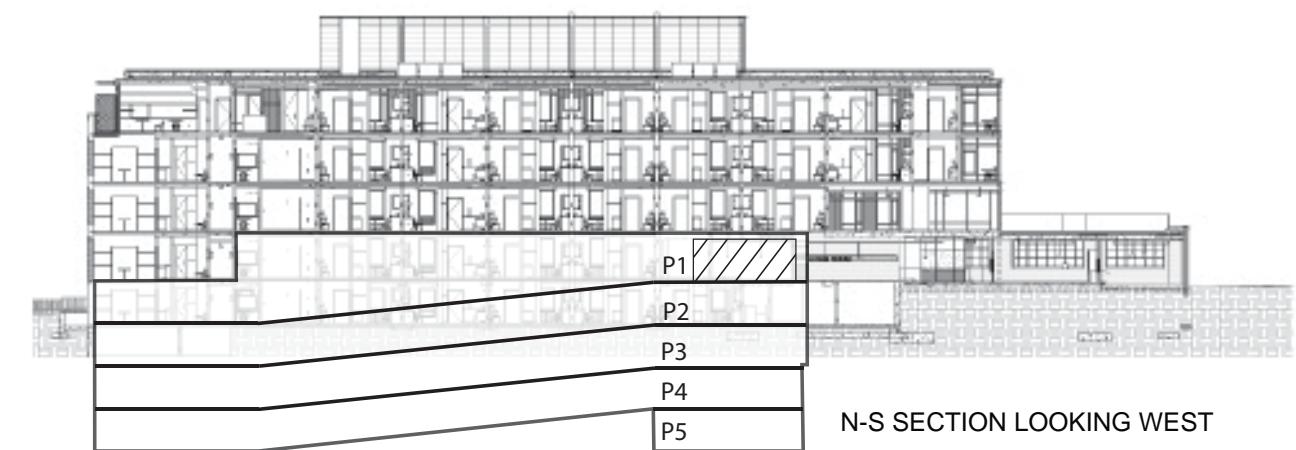
P5: 6700SQFT (9 SPACES)

TOTAL: 33,700 SQFT (33 SPACES)

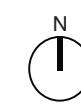
1021 SQFT PER SPACE (250% LESS EFFICIENT)



EAST ELEVATION



N-S SECTION LOOKING WEST



PARKING DIAGRAM

## **EXHIBIT D**

Email from Zoning Administrator re: Loading

## Kadlecek, Cary

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**From:** LeGrant, Matt (DCRA) [matthew.legrant@dc.gov]  
**Sent:** Thursday, January 22, 2015 5:03 PM  
**To:** Epting, John; Kadlecek, Cary  
**Subject:** RE: question regarding loading for addition to historic building - section 2200.5  
  
**Importance:** High

John Epting and Cary Kadlecek-

I apologize for the delay in responding. Yes, I can confirm that, under the plain language of Section 2200.5, no loading would be required for an addition to the historic building at 90 Blagden Alley NW, since it is within the Blagden Alley/Naylor Court Historic District, and the site is improved with a building that is a contributing building in the historic district.

Here is the wording of that Section:

2200.5      No additional loading berths, loading platforms, or service/delivery loading spaces shall be required for a historic landmark or a building or structure located in a historic district that is certified by the State Historic Preservation Officer as contributing to the character of that historic district.

Please let me know if you have any further questions.

Best Regards,

**Matthew Le Grant**

Zoning Administrator  
Dept of Consumer and Regulatory Affairs  
Government of the District of Columbia  
1100 4th St SW - Room 3100  
Washington, DC 20024  
Phone: 202 442-4652  
Email: [matt.legrant@dc.gov](mailto:matt.legrant@dc.gov)  
Web: <http://dcra.dc.gov/service/zoning-dcra>

---

**From:** Epting, John [mailto:[JEpting@goulstonstorr.com](mailto:JEpting@goulstonstorr.com)]  
**Sent:** Thursday, January 22, 2015 4:14 PM  
**To:** Kadlecek, Cary; LeGrant, Matt (DCRA)  
**Subject:** RE: question regarding loading for addition to historic building - section 2200.5

Matt, just following up on this. Thanks for your help. John.

\*\*\*\*\*  
John T. Epting

*Director*  
Direct (202) 721-1108  
Direct Fax (202) 263-0508

***goulston&stevens PC***

A Professional Corporation  
1999 K Street, NW, Suite 500 \* Washington, DC 20006-1101  
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\*\*\*\*\*  
This communication may contain information which is privileged and/or confidential under applicable law. Any dissemination, copy or disclosure, other than by the intended recipient, is strictly prohibited. If you have received this communication in error, please immediately notify us via return e-mail to [jepting@goulstonstorr.com](mailto:jepting@goulstonstorr.com) and delete this communication without making any copies. Thank you for your cooperation.

**From:** Kadlecek, Cary  
**Sent:** Wednesday, January 21, 2015 2:29 PM  
**To:** 'LeGrant, Matt (DCRA)'  
**Cc:** Epting, John  
**Subject:** question regarding loading for addition to historic building - section 2200.5

Hi Matt,

We are hoping you can clarify one issue on a project pending before the BZA. The project site is located at 90 Blagden Alley NW. The site is located within the Blagden Alley/Naylor Court Historic District, and the site is improved with a building (a garage) that is a contributing building in the historic district. The project will consist of an addition to the garage to create a new residential building. The addition will be much larger than the existing garage but the garage will be renovated and be used as part of the project.

Our question concerns loading. Our understanding, based on a long-standing interpretation, is that, under section 2200.5, loading is not required for an addition to a historic building, no matter the size of the addition. As I'm sure you are aware, this interpretation has been reaffirmed on multiple occasions. The attached determination letters illustrate this interpretation.

Recently, some neighbors to this project have questioned whether an addition to a historic building is exempt from loading under section 2200.5. We believe it is under the long-standing interpretation. Can you please confirm that, under section 2200.5, no loading would be required for an addition to the historic building at 90 Blagden Alley NW?

Thanks for your help,

\*\*\*\*\*  
Cary R. Kadlecek  
*Associate*  
Direct (202) 721-1113  
Direct Fax (202) 263-0513

***goulston&stevens***

A Professional Corporation  
1999 K Street NW, Suite 500 \* Washington, DC 20006-1101  
(202) 721-0011 \* Fax (202) 721-1111 \* [www.goulstonstorr.com](http://www.goulstonstorr.com)

\*\*\*\*\*  
This communication may contain information which is privileged and/or confidential under applicable law. Any

## **EXHIBIT E**

### **Historic Certification of Garage**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION OFFICE



APPLICATION TO CERTIFY A HISTORIC BUILDING  
FOR D.C. ZONING REGULATIONS OR CONSTRUCTION CODES

I hereby request certification that the following property is a historic landmark or a building or structure contributing to the character of a historic district in the D.C. Inventory of Historic Sites, for the purpose of D.C. Zoning Regulations or the D.C. Construction Code. A photograph of the front of the building is attached.

Address: 90 Blagden Alley NW  
Square: 368 Lot: 165

PURPOSE OF REQUEST:

Waiver of Additional Off-Street Parking Spaces (DC Zoning Section 2100.5)  
 Waiver of Additional Off-Street Loading Spaces (DC Zoning Section 2200.5)  
 Increase in Number of Sleeping Rooms in a Bed-and-Breakfast Facility (DC Zoning Section 203.8)  
 Non-Mandatory Compliance with Code Provisions (DC Construction Code)  
 Alternative Compliance Provisions for Historic Buildings (DC Construction Code)

Cary Kadlecek, Goulston & Storrs 202-721-0011  
Applicant Telephone

1999 K St. NW, Ste. 500  
Address

Cary Kadlecek 1-28-15  
Signature Date

HISTORIC PRESERVATION OFFICE USE ONLY

I hereby certify that this property is either a historic landmark or a building or structure contributing to the character of a historic district listed in the D.C. Inventory of Historic Sites. *This certification does not constitute an interpretation of zoning or building codes and does not entitle the applicant to any relief not authorized by zoning or building code officials pursuant to the applicable codes.*

J. Ralph Hays  
State Historic Preservation Officer

1-30-15  
Date