

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

Application of SB Urban, LLC  
ANC 2F

**STATEMENT OF THE APPLICANT**

This is the application of SB Urban, LLC (“**Applicant**”) for variance and special exception relief to permit the construction of two buildings that will function as one apartment community. The properties that are the subject of this application are located at 90 Blagden Alley NW (Square 368, Lot 165) (“**M Street Property**”) and 91 Blagden Alley NW (Square 368, Lot 164) (“**9<sup>th</sup> Street Property**”) (collectively, the “**Properties**”). The Applicant has filed an application for each Property but requests that the applications be considered as one since it will be one project. The Properties are shown on the Surveyor’s Plat attached as Exhibit B. The Properties are located in the C-2-A Zone District, as shown on the excerpt of the Zoning Map attached as Exhibit C.

**I. NATURE OF RELIEF SOUGHT**

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

1. Variance from Section 775.5 (side yard) for a side yard not providing the minimum required width (9<sup>th</sup> Street Property);
2. Variance from Section 776.3 (court width) for two open courts not providing the minimum required widths (M Street Property);
3. Variance from Section 2101.1 (number of required parking spaces) to provide zero parking spaces with a requirement of 22 (9<sup>th</sup> Street Property);

4. Variance from Section 2604.2 (lot occupancy, as modified by this Section) to provide a lot occupancy of 89% on the ground floor when the maximum allowed is 75% (M Street Property);
5. Special exception under Section 2120.6 (required parking spaces for historic resources) to provide zero parking spaces with a requirement of 39 (M Street Property); and
6. Special exceptions under Section 411.11 (roof structure) for two roof structures on one building (both Properties).

## **II. JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2 and 3104.1).

## **III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA**

The Properties are located in the northwest quadrant of the District and in Ward 2. The Properties are located in close proximity to the downtown central business district. They are also included in the Blagden Alley/Naylor Court and Shaw Historic Districts. The M Street Property is rectangular shaped and contains approximately 15,976 square feet of land area. It is bounded to the north by Blagden Alley, to the south by M Street, to east by Blagden Alley and a row dwelling, and to the west by Blagden Alley. The 9<sup>th</sup> Street Property is irregularly shaped and contains approximately 8,303 square feet of land area. It is bounded to the north by a moderate density commercial building (currently under construction), to the south by Blagden Alley, to the east by 9<sup>th</sup> Street, and to the west by Blagden Alley. The Properties are oriented perpendicular to each other and separated by 30 feet of Blagden Alley, as shown on the Surveyor's Plat.

The surrounding area contains a mix of row dwellings, flats, apartment houses, office, and retail uses. Directly across M Street from the M Street Property is The Whitman, a 10-story condominium building. Directly across 9<sup>th</sup> Street from the 9<sup>th</sup> Street Property is the Convention

Center. Small offices, dwellings, and retail shops (including a coffee shop and a restaurant) line Blagden Alley to the rear of both Properties. To the north of the 9<sup>th</sup> Street Property along 9<sup>th</sup> Street are primarily retail establishments. To both the east and west of the M Street Property are a mixture of row dwellings and flats.

The M Street Property is improved with a one-story former garage located at the rear of the property. This building is a contributing building in the historic districts. The rest of the M Street Property is used as a parking lot. The 9<sup>th</sup> Street Property is unimproved. It is used as a parking lot.

#### **IV. BACKGROUND AND PROJECT DESCRIPTION**

The Applicant proposes to construct an addition to the garage building on the M Street Property and to construct an entirely new building on the 9<sup>th</sup> Street Property to create a furnished all-studios apartment building containing 120 dwelling units plus amenity spaces (the “**Project**”), as shown in the plans attached as Exhibit D. The new apartment building will technically be two separate buildings on two record lots, but the two buildings will be connected via a connection/walkway over Blagden Alley and will function as one building. The two buildings will share amenities, a lobby, common spaces, and all other building services to create one functional building for residents.

Upon conversion, the existing garage on the M Street Property will contain the community/amenity spaces for the entire Project. The new structure on the M Street Property will be an addition to the warehouse and will contain 81 apartments. The new structure on the 9<sup>th</sup> Street Property will contain 44 apartments and a small retail space (approximately 903 square feet) at its southwest corner.

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 Project will offer small-household, small-unit, furnished rental apartments with distinctive shared living spaces for people who live a very urban and career-prioritized lifestyle. Residents will be attracted to the Project because they will seek to live in downtown Washington with few belongings and will choose to live in 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; they will not have or use their own cars. Therefore, they will not park on the streets of the neighborhood. The Project will be within three blocks of a Metro station (Mt. Vernon Square – Convention Center), adjacent to a Metrobus corridor (9<sup>th</sup> Street), and within walking distance of many restaurants, supermarkets, drug stores, gyms, and other retail establishments; thus, the Project will embody the principles of transit-oriented development.

Because the apartments will each contain approximately 350 square feet, the Applicant will provide significant shared-living spaces and amenities within the Project. The furnished apartments will attract residents who want as much convenience as possible. The large amenity spaces will include shared kitchens, shared laundry, living room, den and game room. The Project will offer a large equipped gym for exercising and a library for working and studying. Also, the Project will provide a large, secure bike storage room with bike maintenance facilities offered.

Each of the buildings will have a height of 50 feet, which is the maximum permitted in the C-2-A zone. The Project will have a maximum total FAR of approximately 3.0 (3.0 on the M Street Property and 3.0 on the 9<sup>th</sup> Street Property), which is the maximum permitted in the C-2-A zone. The Project will comply with the requirements of inclusionary zoning and the green

area ratio. Except for the relief requested herein, the Project will comply with the Zoning Regulations.

The proposed building on the 9<sup>th</sup> Street Property will have a six-foot wide side yard along its southern side, but a width of 8'-4" feet is required. Since the alley is only 10 feet wide, this side yard will allow pedestrians to walk along the alley out of the traffic right-of-way as well as providing additional outdoor space as an amenity for building residents. Also, the southern side of the 9<sup>th</sup> Street building will have a large conforming open court opening on to the alley. This court will allow for more light into apartments as well as providing more outdoor space for residents. Further, the building on the 9<sup>th</sup> Street Property will have a conforming residential lot occupancy of 74%.

The M Street building will contain two nonconforming open courts: one on the west side and one on the east side. The western court will open parallel to Blagden Alley; it will have a width of five feet. The building will be recessed for this court because of the necessity to provide light and air to the lower-level units. The required width of this court is 16'-8". The eastern court also will open parallel to Blagden Alley; it will have a minimum width of 7'-4" feet. The required width of this court is 16'-8" feet. This court will provide light and air to units on the east side of the building.

The proposed addition on the M Street Property will increase the gross floor area of the historic garage by greater than 50%, so parking is required for the addition on the M Street Property. As such, 39 parking spaces are required for the addition, but zero will be provided. Similarly, the 9<sup>th</sup> Street building will have a parking requirement of 22 spaces but will provide zero.

Each building will include two roof structures. One roof structure for each building will contain mechanical equipment and a required stairwell. The other roof structure for each building will contain elevator override equipment. All roof structures will be set back from exterior walls at least a 1:1 ratio.

The Project will comply with the height and bulk that is permitted in the C-2-A Zone District and will be otherwise consistent with the nature and character of neighborhood which contains a mixture of historic structures and taller new construction. The Project will not displace any existing residential units or disturb any planned open gardens or backyards. It will add to the residential character of the neighborhood by eliminating surface parking areas, renovating a historic garage, and adding an attractive residential building. By not providing parking and by adding residential units close to multiple transit options, the Applicant will encourage greater use of public transportation.

The Historic Preservation Review Board (“**HPRB**”) granted concept approval to the Project on July 31, 2014.<sup>1</sup> The HPRB delegated final approval to the Historic Preservation Office staff.

## **V. 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

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<sup>1</sup> HPA No. 14-374.

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 variances from the side yard, court width, lot occupancy, and parking requirements.

#### **A. The Properties are 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).

##### *1. The M Street Property*

Multiple characteristics combine to create the exceptional condition of this property. This property is unique because it is improved with an existing building that is contributing to the historic districts, because of the shape of the lot, and because of its proximity to Blagden Alley. The historic garage's location at the property's rear makes it an unusual condition for constructing an addition to a building that must be retained. The garage is one story, but it is built to the north, west, and east lot lines. Furthermore, the lot is very narrow (69 feet) compared to its length (233 feet). In addition, it is bounded on three sides by a historic alley, which is a rare condition. The Board previously found that the M Street Property has an

exceptional condition that gives rise to a practical difficulty in complying with the Zoning Regulations.<sup>2</sup>

## 2. *The 9<sup>th</sup> Street Property*

A culmination of factors creates the exceptional condition affecting this property. This property is unique because it is irregularly shaped and has a narrow width for a lot with such an area. The northern property line jogs north, resulting in the 9<sup>th</sup> Street Property being wider at the rear than at the front. Also, it is bounded on two sides by a historic alley, but the southern bounding alley is only 10 feet wide. Furthermore, the property is unique in its close proximity to another parcel being developed simultaneously (the M Street Property). These characteristics combine to create an exceptional condition affecting the property.

### **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

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<sup>2</sup> BZA Order Nos. 17403 & 17403A, attached as Exhibit E.



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. *The M Street Property*

a. Court Width

In this case, the practical difficulty in complying with the court width requirements results from the tension between providing light and air to units while providing an internal corridor that is sufficiently wide and units that are functionally large enough. Because the property is long and narrow with an alley on both the east and west sides, setbacks are necessary to provide light and air through windows that are not on the property and alley line. In particular, the cellar units need the setbacks to accommodate the light wells, and all units with windows on the alleys need setbacks to buffer from the alleys, which do not otherwise provide a separation from automobile traffic like sidewalks do for streets. In addition, the western court helps maintain a view of the historic garage by pulling back the new structure to reveal the old when viewed from M Street. These setbacks do not run the length of the building, so they are both open courts.

If the courts were conforming widths, then the units and the corridor would be squeezed. The corridor must be a minimum width to meet the requirements for egress under the Building Code, and widening the courts would force a constriction of the corridor such that it likely would not be able to maintain a minimum width. Also, if the courts were widened, then the widths of the units would have to decrease. Since the Property is long and narrow, the most efficient layout is to have the double-loaded corridor in the center running north-south. The narrowness of the property already limits the unit layout and size. While the program calls for small units,

narrowing them any more to create conforming courts on both sides of the building would result in units so narrow that they could not accommodate all necessary functions (kitchens, bathrooms) in an efficient way. Therefore, the Applicant would face a significant design and functionality burden if the building were to comply with the minimum court width requirements.

b. Lot Occupancy

As the BZA previously found in Case No. 17403, the practical difficulty in complying with the lot occupancy requirement results from the retention of the historic garage. Above the first floor, the building will comply with the lot occupancy limit. However, on the first floor, the building will exceed it because it would be very burdensome to create a design that would conform to the lot occupancy limit given the footprint of the existing historic garage. Due to historic constraints, the garage must be retained, which consumes a large portion of the lot, particularly once the new structure is added. However, if the first floor were to conform, then the Applicant would face a large burden creating a feasible design. It is not practical to shrink the footprint of the first floor of the new structure without shrinking the footprint of the rest of the new structure. However, as discussed above, it is not feasible to shrink the building any more without creating non-compliant corridors or inefficient units.

2. *The 9<sup>th</sup> Street Property*

a. Side Yard

The practical difficulty in complying with the side yard width requirement results from the property's adjacency to a vehicular-trafficked 10-foot wide historic alley. The Applicant incorporated the side yard along the alley to provide a pedestrian separation from the alley. The

side yard will be distinguished from the alley through material differences (brick color and type) and markers. Since the Project lobby will be accessed from the alley into the M Street building, residents of the Project and patrons of the retail establishments within the square will frequently bike or walk in the alley, particularly when walking from the nearby Mt. Vernon Square – Convention Center Metro station. The side yard will allow cyclists and pedestrians to safely move out of the automobile right-of-way, even in the absence of a traditional sidewalk.

Creating a conforming side yard, either by eliminating it or by widening it, would result in a practical difficulty for the Applicant. Eliminating the side yard, which is not required in this zone, would create a conforming condition but also would produce a more dangerous situation for pedestrians and cyclists, particularly residents of the Project, who must walk in the narrow automobile right-of-way of the 10-foot alley. Widening the side yard to a conforming width would compromise the viability of the Project by making the units excessively small.

b. Parking

The practical difficulty in complying with the parking requirements results from the shape and narrowness of the lot and the proximity to the historic alley. The shape and narrowness of the lot cannot efficiently accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense. Given the very low likelihood of residents having cars, the cost per parking space would be prohibitively expensive and add an unnecessary cost to the Project, particularly when most of the spaces will go unused. Constructing parking that will go unused will lead to unnecessarily higher rents. In addition, providing a few surface parking spaces at the rear of the property would create automobile-pedestrian conflicts (since this is a high pedestrian alley) while harming the historic character of

Blagden Alley. Further, if underground parking were provided, the entrance would have to be off the alley, which would generate more automobile traffic in Blagden Alley and would be to the detriment of the historic district. This conforming condition ultimately would create a practical difficulty for the Applicant by degrading the quality of the one of the Project's best features: proximity to historic Blagden Alley.

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

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variances can be granted without causing any adverse impact on the neighboring properties.

*1. The M Street Property*

a. Court Width

There will be no harm to adjacent properties or zone plan by granting the relief from the court width requirements. Because they will open on to the public alley, the proposed courts will not create conditions where the building or nearby building will have dark and small spaces. Indeed, only the eastern court will be adjacent to another property, and it is only partial; the western court will open entirely onto the alley. The proposed courts may have substandard widths, but their lengths parallel to and opening on the alley (103 feet long on the west and 62 feet long on the east) will allow sufficient light and air. Furthermore, the eastern court will be nonconforming only for a small portion of its length that is directly parallel to the alley; less than 30 feet of its total length of approximately 123 feet will have a nonconforming width. Where the eastern court will be parallel to the neighboring property, it will have a conforming width. Therefore, adverse light and air conditions will not be created with the proposed courts.

b. Lot Occupancy

In addition, there will be no harm to adjacent properties or the zone plan by granting the relief from first floor lot occupancy. The nonconforming first floor lot occupancy will result from the preservation of the garage building. However, the lot occupancy relief will not allow the Applicant to build a larger or bulkier building. Since the upper stories of the building will have a conforming lot occupancy, the building will still allow for sufficient air and light consistent with the purpose of the zone plan. Thus, nearby properties will be unable to perceive the greater lot occupancy because it will be limited to the first floor and concentrated at the rear of the property. The Board previously granted relief from the lot occupancy requirement for an apartment building on the property, permitting a lot occupancy of 87%.<sup>3</sup>

2. *The 9<sup>th</sup> Street Property*

a. Side Yard

There will be no harm to the adjacent properties or the zone plan by granting the relief from the side yard width. The side yard will be entirely adjacent to the alley, so it will not impact nearby properties that could otherwise be affected if they shared a property line. In addition, the width of the side yard will not create a condition that will restrict light and air into the units in the building. That the building could be constructed without a side yard – which potentially could be more restrictive to light and air – demonstrates that there will be no adverse effect on adjacent properties or the zone plan by having a side yard with a substandard width along an alley.

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<sup>3</sup> BZA Order Nos. 17403 & 17403A.

b. Parking

Further, there will be no harm to the adjacent properties or the zone plan by granting relief from the parking requirements. First, the transportation study (attached as Exhibit F) demonstrates that automobile ownership in the D.C. region has declined, and non-auto modes of transportation have increased.<sup>4</sup> Second, the property has a walk score of 97 (out of 100) because of its proximity to so many services. Third, the property is well-served by many modes of public transportation that will create a large incentive for residents to forgo car ownership. The Metro station is within less than a four minute walk (approximately three blocks), and seven bus routes are within ¼ mile. Two Capital Bikeshare stations are within two blocks of the property, and 21 car-sharing vehicles are within ¼ mile. Also, the Project will provide ample secure bicycle parking for at least 42 bicycles to facilitate easy bike ownership. Because the Applicant changed the address of the Project (for both buildings) to be on Blagden Alley, residents will not be eligible to obtain Residential Parking Permits since parking is not allowed on Blagden Alley. Based on the above factors, the transportation study estimates that the “vast majority of trips generated by the [Project] would be made via non-auto modes of transportation.” Therefore, the expected impact of the Project on traffic and parking in the nearby neighborhood is expected to be minimal, so the requested parking relief will not harm the purposes of the zone plan.

Despite the myriad extant non-automobile transportation incentives, to provide greater assurance that there will be only a minimal impact from the granting of the variance, the Applicant will commit to a transportation demand management (“**TDM**”) plan to create incentives to use non-automobile transportation. The TDM plan is described in greater detail on page 9 of the transportation study in Exhibit F, and includes the following elements:

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<sup>4</sup> The Applicant will provide a more thorough and updated traffic study with its prehearing submission.

- A member of the property management team will be a designated Transportation Management Coordinator;
- Information about transportation options will be provided on the property management website;
- An electronic display will be provided in the common shared space of the Project that will provide public transit information;
- New residents without bikes will be provided Capital Bikeshare memberships for the initial lease term for the first five years the Project is open;
- The lower level of the Project will include a bicycle repair facility;
- The Project will have at least 10 bicycle helmets available for residents' use; and
- New residents will be provided car share memberships for the first five years that the Project is open.

#### **VI. THIS APPLICATION SATISFIES THE CRITERIA FOR A SPECIAL EXCEPTION FOR PARKING FOR A HISTORIC RESOURCE**

Section 2120.6 provides that the Board “may grant relief from all or part of the parking requirements of [Section 2120] if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource.” Providing the required parking at the M Street Property would compromise the architectural integrity of the historic garage.

Underground parking is not possible because the Applicant cannot excavate under the historic garage without a high risk of damaging it. Preservation of a historic resource is the very point of this special exception. Further, it is not possible to provide parking under only the new structure because of the space constraints of providing necessary drive aisle widths and turning radii that would consume more area than is available. The property is narrow, cannot accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense, and this constraint is exacerbated by the fact that the area under the garage is not practically available for parking.

In addition, as required under Section 2120.6, this application satisfies the four stated criteria below.

**A. Section 2120.6(a) – Maximum Number of guests who can reasonably be expected to use the proposed building or structure at one time**

The building will have approximately 77 units, which will likely be occupied by only one person each. In addition, the Project will have a few on-site staff members. Residents may also have visitors from time to time, but given the small size of the units, it is expected that most residents will choose to socialize on-site with other residents in the on-site amenities spaces or elsewhere at any of the many restaurants, parks, recreational facilities, bars, clubs, and other social venues located within a short walk, bike ride, taxi ride, or Metro ride of the Project.

**B. Section 2120.6(b) – Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood**

As the preliminary traffic study describes, the Project will have minimal impact on traffic congestion. Because of the anticipated high level of use of transit, biking, and walking, it is expected that the Project will have no discernible impact on the surrounding street network.



**C. Section 2120.6(c) – Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete**

As the transportation study explains, there are approximately 41 public parking facilities available to the public within ½ mile of the Properties, and these facilities have available capacity. However, for all of the reasons set forth above, it is very unlikely that residents of the Project will bring a car and need parking. Similarly, it is also likely that residents' visitors will be transit- and bike-oriented individuals who come to the Project by means other than driving. Thus, it is unlikely that residents or visitors will need to use off-site parking facilities.

**D. Section 2120.6(d) – Proximity to public transportation ... and availability of either public transportation service in the area, or a ride sharing program...**

The property is in very close proximity to many modes of public transportation. As described above, a Metro station, seven bus lines, two Capital Bikeshare stations, and 21 car-sharing vehicles are all within ¼ mile of the Properties.

Because this application satisfies the criteria set forth in Section 2120.6, the proposal to provide no off-street parking in the M Street building (and the Project) 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.

**VII. THIS APPLICATION SATISFIES THE CRITERIA FOR A SPECIAL EXCEPTION FOR MULTIPLE ROOF STRUCTURES**

Section 411.11 provides that “where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the [Board] shall be empowered to approve, as a special exception under § 3104, the location, design, number, and

all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements...” Accordingly, under this Section, the Board may approve an additional roof structure that does not satisfy the requirement that there be one roof structure under Section 411.3 when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions relating to the building.

Complying with the requirement for a singular penthouse would be unnecessarily restrictive for the Applicant. Each building in the Project will have two penthouses. One larger penthouse will contain the mechanical equipment, the stairwell, and other core facilities; the other smaller penthouse will contain the elevator overrun. For Building Code and programming necessities, the elevator for the M Street building must be located adjacent to the building lobby, which is close to the amenity space at the building rear. However, the larger penthouse must be in its proposed location because of the layout of the roof top units for the building’s mechanical system and the need to meet GAR requirements by maximizing space for the green roof. The elevator overrun cannot be incorporated into the rest of the penthouse without creating an unnecessarily large penthouse. The size of the penthouse would increase significantly simply to include the space between its planned location and the location of the overrun. This two-penthouse design was approved by the HPRB, and deviating from it to create one large penthouse likely will face resistance from the Historic Preservation Office staff.

On the 9<sup>th</sup> Street building, the elevator overrun must be separate from the larger penthouse because of the small size and configuration of the building footprint. The electrical room on the roof is in vertical proximity to the utility rooms on the lower level, while the elevator is located within the core adjacent to the main building entry. The courtyard creates a narrow connection between the two main portions of the building. Connecting the two roof

structures would create an unnecessarily large and more visible structure. Connecting the two penthouses to create one conforming penthouse would be physically difficult and costly for the Applicant because the connection would have to wind around the center courtyard. In addition, a connection would create one large penthouse that would include significant unused space because of the distance between the two clusters of rooftop equipment. One large penthouse would create a much more visually intrusive and prominent structure than the two smaller penthouses. As is the case for the M Street building, this two-penthouse design was approved by the HPRB, and deviating from it to create one large penthouse likely will face resistance from the Historic Preservation Office staff.

By providing two smaller penthouses on each building, the Applicant will reduce an objectionable penthouse appearance more than would one large structure. Further, the elevator overruns are small and not likely to have visual impacts alone. Overall, the visual impact of two penthouses (as opposed to one large penthouse) from the vantage points where they are visible will be significantly lessened as proposed. Therefore, two penthouses on each building will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map.

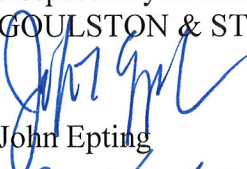
### **VIII. EXHIBITS**

Exhibit A	Application Form, Self-Certification Form, Filing Fee Form, and Authorization Letters
Exhibit B	Surveyor's Plat
Exhibit C	Excerpt from Zoning Map
Exhibit D	Plans and elevations, including photographs of the site
Exhibit E	BZA Order Nos. 17403 & 17403A
Exhibit F	Transportation Study
Exhibit G	List of Property Owners within 200 Feet of the Site

### **IX. 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



John Epting



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