

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

Application of SB-Urban, LLC
ANC 2F

BZA Case Nos. 18852 & 18853
Hearing Date: December 2, 2014

PREHEARING STATEMENT OF THE APPLICANT

This is the prehearing statement for 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 90 Blagden Alley NW (Square 368, Lot 165) ("M Street Property") and 91 Blagden Alley NW (Square 368, Lot 164) ("9th Street Property") (collectively, the "Properties"). The Properties are located in the C-2-A Zone District.

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 (9th 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 (9th 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 40 (M Street Property); and

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6. Special exceptions under Section 411.11 (roof structure) for multiple nonconforming roof structures (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 9th 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 9th Street, and to the west by Blagden Alley. The Properties are oriented perpendicular to each other and are separated by 30 feet of Blagden Alley.

The surrounding area contains a mix of row dwellings, flats, apartment houses, office, and retail uses. Blagden Alley is an active right-of-way containing a mix of converted carriage houses, former industrial buildings, and rear access to commercial and residential buildings. Many of the buildings fronting on Blagden Alley have been converted to office or retail uses.

Directly across M Street from the M Street Property is The Whitman, a 10-story condominium building. Directly across 9th Street from the 9th 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 9th Street Property along 9th Street are primarily retail and office 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 9th Street Property is unimproved. It is used as a parking lot.

IV. PROJECT DESCRIPTION

The Applicant proposes to construct an addition to the garage building on the M Street Property and to construct a new building on the 9th Street Property to create a furnished all-studios apartment building containing 123 dwelling units plus amenity spaces (the “**Project**”), as shown in the plans attached as the Appendix. The new apartment building will technically be two separate buildings on two record lots, but the two buildings will be connected via a pedestrian 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 garage and will contain 79 apartments. The new structure on the 9th Street Property will contain 44 apartments and a small retail space (approximately 903 square feet) at its southwest corner.

The Applicant’s target population 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 (9th Street), within a quarter mile of two Capital Bikeshare stations, 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 395 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, a living room, a den, and a game room. The Project will offer an 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.

The apartments will provide for all of the residents' basic necessities, so large moves-ins/move-outs will not occur. In addition to being furnished, the apartments will provide linens, dishes, utensils, pots/pans, TVs, etc. Residents will need to arrive with only some suitcases containing clothes and personal effects; everything else will be provided. Accordingly, the Applicant does not expect that new residents will arrive by any means other than taxi/car service.

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 9th 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 9th 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 vehicular right-of-way as well as providing additional outdoor space as an amenity for building residents. Also, the southern side of the 9th 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 9th 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 (5) feet with a small portion that is narrower because of 4th floor balconies projecting into it. 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 width ranging from 7'-2" (where fourth floor balconies project into it) to 12'-7". The required width of this court is 16'-8" feet. This court will provide additional light and air to units on the east side of the building.

The ground floor of the M Street building will have a lot occupancy of 89%. However, the upper floors of the building will have a conforming lot occupancy of 73.5%.

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, 40 parking spaces are required for the addition, but zero will be provided. Similarly, the 9th 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. The roof structure toward the front of the 9th Street building will contain mechanical equipment and a required stairwell; it will have a height of 13.5 feet and will be adequately set back from all exterior walls. The second roof structure, toward the rear of the building, will have height of 13.5 feet in one portion and five (5) feet in another. It will contain mechanical equipment and a stairwell in the taller portion and an elevator override in the shorter portion. It will be adequately set back from all exterior walls except from the center open court, where it will be set back 9'-7" (13.5' is required). The M Street building will have one penthouse with a height of 13.5 feet, near the front of the building, containing mechanical equipment and stairwells; it will be adequately set back from all exterior walls. The second penthouse, near the rear, will have a height of five (5) feet and will contain elevator equipment; it will be adequately set back from all exterior walls.

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 amenities and transit options, the Applicant will encourage greater use of walking, biking, and public transportation.

The Historic Preservation Review Board (“HPRB”) granted concept approval to the Project on July 31, 2014.¹

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 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

¹ HPA No. 14-374.

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; it also occupies a significant portion of the lot. 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 for any property. 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.²

2. *The 9th 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 (57.38 - 63.5feet) for a lot with such a comparatively large area. The northern property line jogs north, resulting in the 9th 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

² BZA Order Nos. 17403 & 17403A, previously provided.

unique in its close proximity to another parcel being developed simultaneously (the M Street Property). These characteristics combine to create an exceptional condition affecting this 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 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 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 will need the setbacks to accommodate the light wells, and units with windows on the alleys will need setbacks to buffer these windows from the alleys, which do not otherwise provide a separation from automobile traffic like sidewalks do for streets. In addition, the western court will help maintain a view of the historic garage by pulling back the new structure to reveal the old when viewed from M Street. These setbacks will not run the length of the building, so they will both be open courts.

If the courts were conforming widths, then the units and the corridor would be squeezed and unworkable. The core cannot be in another location because of the historic building, but it would hamper circulation in a narrow building. Also, the corridor must be a minimum width to function well for units on both sides, and widening the courts would force a constriction of the corridor to approximately five feet in width, which impractically narrow. Further, 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 more constriction would result in infeasibility. While the building 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, closets) in an efficient or livable way. Therefore, the Applicant would face a significant design and functionality burden if the building were to comply with the minimum court width requirements. The design challenge for the core, corridor, and units that would result by increasing the widths of the courts is demonstrated in the illustration on Page A-8 of the Appendix.

b. Lot Occupancy

As the Board 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. The garage occupies 29% of the lot, which would leave only 46% of the lot for a conforming first floor.

Therefore, if the first floor were to conform to lot occupancy, then the Applicant would be unable to create a feasible design, as shown in the illustration on Page A-9 in the Appendix. 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 because of core and plumbing alignments, also shown on Page A-9 in the Appendix. This would result in a building with considerably less FAR than permitted (0.88 FAR – nearly 1/3 of what is permitted – would be “lost”), which would be an extreme financial loss to the Project. Further, shrinking the footprint of the upper floors would result in a narrower corridor and smaller units. As discussed and illustrated above, it is not feasible to shrink the building footprint any more without constructing the corridors and creating non-functional units. Furthermore, constructing such a small structure on such large lot would be economically inefficient based on the fixed land costs and fixed construction costs; therefore, it would not be viable to construct the building.

2. *The 9th 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 building design will incorporate the side yard along the alley to provide a pedestrian separation. 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. However, it would produce a more dangerous situation for pedestrians and cyclists, particularly residents of the Project, who would have to 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. Such units would not allow for an efficient or livable layout, as would be the case for conforming open courts in the M Street building. This burdensome condition of inefficient units is illustrated on Page A-8 of the Appendix.

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. As shown in the illustration on Page A-11 in the Appendix, providing underground parking results in an extraordinarily high rate of inefficiency - 78% would be dedicated to circulation - that would require multiple below-grade levels of parking. The typical portion of an underground parking level dedicated to circulation is 50% in an efficient design. Because so many levels would be necessary, the construction cost per parking space would be prohibitively high, and such parking would add an unnecessary cost to the Project, particularly when the spaces would go unused since residents are highly unlikely to have cars. Constructing parking that will go unused will lead to unnecessarily higher rents that would ultimately render the project non-viable.

Also, excavating to such a great depth on such a narrow lot would be extraordinarily difficult. Because the lot is so long and narrow, locating excavators in or near the site in a way that they could dig the entire lot would be a logistical challenge that may not even be feasible.

Further, providing parking would unnecessarily and detrimentally add cars in the alley. Providing a few surface parking spaces at the rear of the property would create automobile-pedestrian conflicts. Since this is a highly pedestrian alley, that condition would harm the historic character of Blagden Alley by introducing unnecessary surface parking that is not typical of the historic period. Further, if underground parking were provided, then the entrance would have to be off the alley, which would introduce automobile traffic in Blagden Alley and

would be to the detriment of the historic alley character that historically accommodated many types of non-automobile forms of transportation. A conforming condition of providing required parking ultimately would create a practical difficulty for the Applicant by degrading the quality of 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 the courts will open on to the public alley, the courts will not create conditions where the building or nearby building will have inadequate light and air. Indeed, only the eastern court will be adjacent to another property, and it will be only partial; the western court will open entirely onto the alley for its entire length. 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. The eastern court will be narrowest only where balconies project into it, but these balconies will not restrict light and air because balconies are appreciably different than enclosed structure. Also, most of the court's opening will be its length along the alley, thereby permitting access to light and air. Therefore, granting relief for the open courts will not have an adverse impact.

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%, which is only slightly less than the currently proposed first floor lot occupancy of 89%.³

2. *The 9th Street Property*

a. Side Yard

There will be no harm to the adjacent properties or the Zone Plan by granting relief from the side yard width requirement. 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. As stated in the proposed conditions of approval in Exhibit A, the Applicant will record an easement on the property preserving this side yard area for pedestrian access.

³ BZA Order Nos. 17403 & 17403A, previously provided.

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 (previously submitted) demonstrates that automobile ownership in the D.C. region has declined, and non-auto modes of transportation have increased. Second, the property has a Walk Score of 94 (out of 100) because of its proximity to so many services and amenities, as shown on the map attached as Exhibit B. 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 $\frac{1}{4}$ mile. The property has a Transit Score of 100. Two Capital Bikeshare stations are within two blocks of the property, and 19 car-sharing vehicles are within $\frac{1}{4}$ mile. Also, in order to facilitate and encourage bike ownership, the Project will provide ample secure bicycle parking for at least 42 bicycles and a bike repair facility, and it will offer bike helmets for residents to borrow. The property has a Bike Score of 94. Taxis and on-demand car services (e.g., Uber and Lyft) are also likely to be common transportation modes given the strong preference for this mode among the likely demographic profile of residents. Based on the above factors, the transportation study estimates that the “vast majority of trips generated by the [Project]” would be made by modes other than single-occupancy automobiles. Therefore, the 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.

In addition, the Applicant will take (and has taken) steps to actively prohibit residents from having cars and parking them on the streets. First, the Applicant has changed the address of the Project for both buildings to be on Blagden Alley, so residents will not be eligible to

obtain Residential Parking Permits (“**RPP**”) since parking is not allowed on Blagden Alley (see description of RPP policy attached in Exhibit C). Finally, in the unlikely event that a resident has a car, their lease will explicitly prohibit the resident from obtaining any sort of temporary or visitor parking pass.

In addition to the Applicant’s active discouragement of resident car ownership, the Applicant will commit to a robust transportation demand management (“**TDM**”) plan to create incentives for residents to use non-automobile transportation. TDM plans have proven to be effective in reducing demand for automobile use, so the Applicant crafted a TDM plan that will be most effective for this Project. The TDM plan is described in greater detail in the proposed conditions in Exhibit A, but it includes the following elements:

- 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;
- For the life of the Project, all new residents without bikes will be provided Capital Bikeshare memberships for the terms of their initial lease;
- For the life of the Project, all new residents will be provided car share memberships for the terms of their initial lease;
- The lower level of the Project will include a bicycle repair facility; and
- The Project will have at least 10 bicycle helmets available for residents’ use.

Further, because of the expected demand increase on Capital Bikeshare, the Applicant has committed to funding the installation of a new Capital Bikeshare station in the vicinity of the Project.

Therefore, the combination of the transit-oriented location, the TDM plan, the lack of RPP availability, and the funding of the Capital Bikeshare station will result in residents without cars who will rely on transportation modes other than their own cars. Thus, no adverse impact from granting the parking variance relief is likely to result.

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. The difficulty and inefficiency of providing underground parking on the property is demonstrated in the illustration on Page A-10 in the Appendix.

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 79 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 sizes of the units, it is expected that most residents will choose to socialize on-site with other residents in the 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 traffic study describes, the Project will have minimal impact on traffic congestion. Because residents will heavily rely on non-automobile modes of transportation and the Project will create strong disincentives for car ownership, it is expected that the Project will have no discernible impact on the traffic 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 $\frac{1}{2}$ 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 19 car-sharing vehicles are all within $\frac{1}{4}$ 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 ROOF STRUCTURES NOT MEETING ALL REQUIREMENTS

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 a roof structure that does not satisfy the setback requirement under Section 400.7, the single roof structure requirement under Section 411.3, and the uniform roof structure wall height requirement under Section 411.5 when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions relating to the building. Each building will have two roof structures. One roof structure on the 9th Street building will not be set back adequately

form an open court. One roof structure on the 9th Street building will have enclosing walls of varying heights: 13.5 feet and five (5) feet. The two roof structures on the M Street building will have different heights: 13.5 feet and five (5) feet.

Complying with the requirement for a singular penthouse with enclosing walls of a uniform height 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 lobby, which will be in 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. The unnecessarily large size would be exacerbated if the elevator overrun were to have enclosing walls equally tall as the other penthouse. This two-penthouse design was approved by the HPRB, and deviating from it to create one overly large penthouse would likely face resistance from the Historic Preservation Office ("HPO") staff.

On the 9th Street building, the elevator overrun/mechanical penthouse must be separate from the other stairwell penthouse because of the small size and configuration of the building footprint. The electrical room on the roof will be in vertical proximity to the utility rooms on the lower level, while the elevator will be located within the core adjacent to the main building entry. The courtyard will create 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, and increasing the enclosing wall height above the elevator overrun would create an even larger penthouse. Further, 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 with walls of uniform height would create a much more visually intrusive and prominent structure than the two smaller penthouses with wall heights reduced where possible. 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 overly large penthouse would likely face resistance from the HPO staff.

By providing two smaller penthouses on each building, the Applicant will reduce an objectionable penthouse appearance more than would one large structure. 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 with enclosing walls of unequal heights on each building will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map.

In addition, adequately setting back one of the penthouses on the 9th Street building from the open court would be unnecessarily restrictive and unreasonable. As explained above, the location of this penthouse is dictated by the small lot size and building footprint. Because of the utility rooms and lobby below, the electrical equipment and elevator overrun must be located in the penthouse in this location. This will result in a setback that is approximately 3'-11" less than required, but it will not create much greater visibility of the penthouse since it will be in the far

corner of the court. Because the insufficient setback will be from a court not directly visible from the street, the penthouse will have minimal visual impact. Also, because of the narrow alley width, it will be difficult to see the penthouse from the ground in any event. Accordingly, the rear penthouse location on the 9th Street building will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map.

VIII. EXHIBITS

EXHIBIT A	PROPOSED CONDITIONS OF APPROVAL, INCLUDING TDM PLAN
EXHIBIT B	MAP OF NEIGHBORHOOD AMENITIES
EXHIBIT C	RPP POLICY FROM DEPT. OF MOTOR VEHICLES
APPENDIX	PROJECT PLANS, INCLUDING DIAGRAMS ILLUSTRATING AREAS OF RELIEF

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

Cary Kadlec

EXHIBIT A

BZA Case Nos. 18852 & 18853 – 90 & 91 Blagden Alley NW

Proposed Conditions of Approval

1. Prior to the issuance of a Certificate of Occupancy for the buildings, the Applicant shall:
 - A. Record an easement in the land records for 91 Blagden Alley NW that will preserve the six-foot side yard along the alley for pedestrians and prevent future development in that area; and
 - 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.
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 an electronic display in a common, shared space in the Project 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 without bikes 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. Because units will be fully furnished, tenants will arrive and depart by taxi/Uber/car service. In the rare event that tenants will need temporary parking for more than brief arrival and departure loading and unloading, such 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 9th Street. The property management team shall direct all private courier services (UPS, FedEx, DHL, Peapod, etc.) to park in the provided loading spaces on 9th 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 9TH STREET. DELIVERIES MAY BE LEFT AT PACKAGE DELIVERY ROOM ON 9TH 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

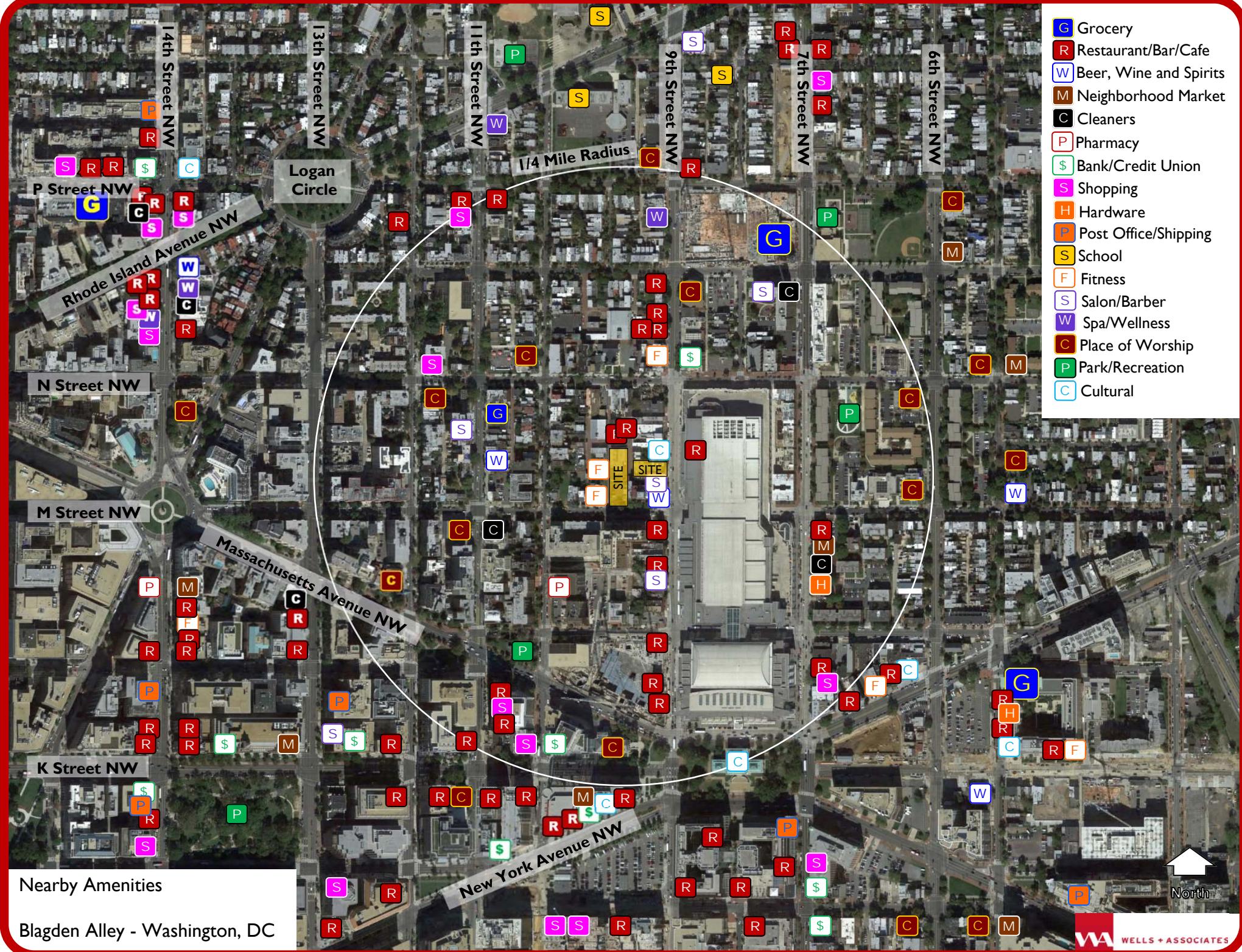


EXHIBIT C



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Obtain Residential Parking Permit (RPP)

A Residential Parking Permit (RPP) allows a DC registered vehicle, or a vehicle with reciprocity, to be parked without restriction in the permit area of the residential address. In order to be eligible for a Residential Parking Permit (RPP), your street must be zoned for RPP as indicated by a two-hour residential restriction sign on your block. If you live in a particular ward or zone, you cannot automatically park in that ward or zone unless you have a Residential Parking Permit (RPP). RPP is a permit number designation on your vehicle registration sticker, which is located on the driver side of your windshield, reflecting the zone you live in. There are a number of blocks in a zone or ward that have not been established for residential parking. Therefore, anyone can park, for an unlimited time, on a block which does not have a sign restricting parking to a certain zone. However, many blocks in a ward or zone do require visitors and residents of the district to have an appropriate parking permit (i.e., zone sticker) if they desire to park their vehicle for more than two hours on a block designated for residential permit holders. In addition, residents can only display one RPP zone sticker at a time. You must remove all outdated/expired RPP stickers from your vehicle windshield. If you display more than one sticker, you could be subject to a ticket.

If you live in zone 8 and the block (street) you live on does not have street sign restricting parking, your vehicle registration will read, "NO RPP". The "NO RPP" label means you cannot park your vehicle on a block where RPP signs are displayed for more than two hours, even though you live in zone 8. If the block (street) you live on does have RPP signs posted for zone 8, the vehicle registration on your windshield will display the number "8" (assuming you paid the appropriate fees to obtain RPP parking from DMV) which will allow you to park on that block and in that zone all day, every day without limitations. Therefore, the block you live on reflects your parking status and not the zone. RPP blocks are certified by the DC Department of Transportation. Information on the program and a database of [eligible blocks](#) can be found on the [DC Department of Transportation website](#).

Commercial Vehicles*, buses, vehicles longer than twenty-two feet, and sightseeing vehicles are not eligible for residential parking permits.

Residential parking permits are issued by DMV as a part of the vehicle registration service. Applicants may visit a [DMV Service Center](#), submit the following documents, and [pay applicable parking permit fees](#) (Residential Parking Permit).

- Valid DC vehicle registration card
- Valid DC Drivers License or Valid DC Non-Drivers ID card

OR

- Valid DC Reciprocity Permit

You may [request a Residential Parking Permit online](#) if you have a valid vehicle registration and qualify for a Residential parking permit.

Need a replacement permit? See information for [Replacing your Residential Parking Permit](#)

* A motor vehicle displaying unremovable commercial advertising or insignia is considered a commercial vehicle.

Contact TTY: 711