

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

**APPLICATION OF
1300 H STREET NE LLC
1300 H STREET, N.E.**

**BZA APPLICATION NO. 19026
HEARING DATE: JULY 7, 2015
ANC 6A**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 1300 H Street NE LLC (the "Applicant") in support of its application to the Board of Zoning Adjustment ("BZA" or the "Board") for the following special exception and variance relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3104.1 and 3103.2: (i) special exception relief under § 1320.4(f) for new construction on a lot having more than 6,000 square feet in the H Street Neighborhood Commercial Overlay District; (ii) special exception relief under § 1324.10 for an exception to the Overlay to provide no primary residential entrances on H Street, N.E.; and (iii) an area variance from § 2101.1 to provide eight on-site parking spaces where 30 parking spaces are required.

The relief requested will permit the construction of a new residential building with ground floor retail in the HS-A/C-2-A District at 1300 H Street, N.W. (Square 1026, Lots 97-103) (the "Site"). The proposed development is appropriate for the Site, fully compatible with the surrounding area, and not inconsistent with either the Comprehensive Plan or the Zoning Regulations.

The Applicant hereby withdraws its request for a special exception under 11 DCMR §§ 770.6 and 411.5 to provide a roof structure with enclosing walls of unequal height. The penthouse as shown in the attached plans now complies with the Zoning Regulations. If and when the Zoning

Commission takes final action on the new penthouse regulations currently pending in Zoning Commission Case No. 14-13, the Applicant may incorporate habitable space in the penthouse in accordance with those regulations as adopted. Based on the proposed action taken by the Zoning Commission on June 8, 2015, those new regulations are proposed to do the following: permit a height of penthouse of up to 15-feet, but limit any form of habitable penthouse space to 10 feet clear, measured from the roof upon which the penthouse sits; limit habitable space to one story, but allow a second story for mechanical equipment as a matter of right; permit habitable space, but limit specified uses to being permitted only by special exception when permitted in the zone; and permit up to three penthouse heights: one height for mechanical equipment, one height for habitable space, and one height for screening uncovered mechanical equipment. Such habitable space would be located within the penthouse generally as shown in the attached plans.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the special exception relief and variance requested herein pursuant to Sections 3103 and 3104 of the Zoning Regulations.

III. BACKGROUND

A. Description of the Site

The Site consists of Lots 97-103 in Square 1026 and has a total land area of approximately 10,800 square feet. Square 1026 is bounded by I Street to the north, Florida Avenue to the northeast, 14th Street to the east, H Street to the south, and 13th Street to the west, all located in the northeast quadrant of the District of Columbia. The Site is located on the northeast corner of 13th and H Streets, N.E., with 58 linear feet of frontage on H Street and 144 linear feet of frontage on 13th Street. Abutting the Site to the north is a 25-foot wide public alley

running east-west that connects through to 13th Street. The Site has 94 linear feet of frontage on the public alley. To the east of the Site is a dry cleaning facility. The Site is presently improved with a vacant building that was most recently used as the R.L. Christian Public Library. The Applicant proposes to raze the existing building in connection with this application.

B. Description of Surrounding Area

The Site is located along the thriving H Street, N.E. commercial corridor and is surrounded by a mix of uses, including restaurants and bars, shops and boutiques, beauty salons, music venues, and visual and performing arts facilities. H Street is a mixed-use, walkable neighborhood with excellent public transportation options. Anchored by Union Station to the west, H Street provides local, regional, and interstate access via Metrorail, Metrobus, the D.C. Circulator, Amtrak, Capital Bikeshare, and multiple regional bus services. *See* Washington DC Economic Partnership, DC Neighborhood Profiles 2014, p. 27. Development of the Site with the proposed mixed-use building will add to the vibrancy of the neighborhood and further enhance the block on which the Site is located.

C. Existing Zoning

As indicated in the Zoning Map, attached hereto as Exhibit A, the Site is zoned C-2-A and is located in the Arts sub-district of the H Street Overlay (“HS-A”). *See* 11 DCMR § 1320.1. The C-2-A zoning permits residential and commercial uses as a matter of right, with a maximum building height of 50 feet with no limit on the number of stories, and a maximum density of 2.5 floor area ratio (“FAR”), with no more than 1.5 FAR permitted for non-residential uses. 11 DCMR §§ 770.1 and 771.2. Based on the Site’s location within the HS-A Overlay, the Site may be developed with a maximum building height of 55 feet (§ 1324.13) and a maximum density of 3.0 FAR (§ 1326.3), with the density not to exceed 1.0 FAR for non-residential uses (§ 1323.3). Due

to the Site's location within the H Street Overlay, it is also required to comply with the design requirements set forth in 11 DCMR § 1324.

As shown on the Future Land Use Map, attached hereto as Exhibit B, the Site is designated as mixed-use Moderate Density Residential and Low Density Commercial. The Moderate Density Residential designation is used to define the District's row house neighborhoods and low-rise garden apartment complexes and also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. See 10A DCMR § 225.4. The Low Density Commercial designation is used to define shopping and service areas that are generally low in scale and character, with retail, office, and service businesses as the predominant uses. See 10A DCMR § 225.8. The proposed four-story mixed-use building is consistent with these designations and with the policies and goals of the H Street N.E. Small Area Plan.

D. Project Description

The Applicant proposes to develop the Site with a new four-story, mixed-use building with ground floor retail and approximately 36 residential dwelling units above. The ground floor will contain approximately 6,614 square feet of gross floor area devoted to retail use, plus a residential lobby, bicycle storage room, trash facilities, and utility rooms (approximately 2,400 square feet). Floors 2-4 will contain approximately 23,385 square feet devoted to residential use. The proposed building will have a maximum height of 55 feet and a density of 3.0 FAR, as permitted by the Zoning Regulations.

Consistent with Chapter 26 of the Zoning Regulations, the Applicant will dedicate approximately 4,050 square feet of gross floor area to affordable dwelling units, which is the greater of 10% of the gross floor area being devoted to residential use or 75% of the bonus density being utilized for inclusionary units. See 11 DCMR § 2603.1. Half of the floor area devoted to

affordable dwelling units will be set aside for low income households earning up to 50% of the area medium income (“AMI”) and half will be set aside for moderate income households earning up to 80% of the AMI. *See* 11 DCMR § 2603.3.

As shown on the updated Architectural Plans and Elevations (the “Plans”) attached hereto as Exhibit C, the project has been designed to achieve three primary objectives: (1) design a building inspired by the history of H Street and to be compatible with the corridor’s existing architectural character; (2) create ground level retail space that activates the street, facilitates pedestrian engagement and contributes to a stronger sense of community; (3) use building materials and design elements that are complimentary to the existing context and will stand the test of time.

The project draws inspiration from H Street’s rich history and its surrounding context. The building’s architecture is informed by the commercial buildings that line the H Street corridor and contributed to its importance as one of the District’s most lively shopping destinations in decades past. Such buildings were designed to serve their neighborhood by providing pedestrian-centric retail frontage on the ground level, with residential housing above. To facilitate this, the ground floor will have a uniform clear floor-to-ceiling height of 14 feet or greater and more than 50% of the surface area of the first floor street walls will consist of display windows with clear or low-emissivity glass. The balance of the storefront will be of high quality materials such as cast stone, metal and wood. The storefront will be a rich charcoal gray, which is complimentary to surrounding buildings. The residential façade material will consist primarily of warm red brick and complimentary charcoal gray detailing

The primary residential entrance is located on 13th Street, with retail entrances located on H and 13th Streets. Eight surface parking spaces are located at the rear of the Site, which are

accessed from the public alley. Zoning-compliant loading facilities consist of one 30-foot loading berth and one 100+ square foot loading platform and are located on the southeast corner of the Site, also accessed from the public alley. A trash room is located adjacent to the loading facilities. A secure indoor bicycle storage room is located beyond the loading and trash areas, with convenient access to the residential elevators and exterior doors leading to the Site's rear.

IV. **THE APPLICANT MEETS THE TEST FOR SPECIAL EXCEPTION RELIEF**

The Applicant seeks special exceptions from 11 DCMR §§ 1320.4(f) and 1324.10 of the H Street Overlay, as described herein.

A. Standard for Approving Special Exception Relief

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia*

Bd. of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. H Street Overlay (§§ 1320.4(f) and 1324.10) – Relief Requested and Compliance with Standards

The Applicant seeks special exception relief from Sections 1320.4(f) and 1324.10 of the H Street Overlay requirements. Section 1320.4(f) provides that new construction on a lot that has more than 6,000 square feet is permitted only by special exception. Section 1324.10 requires that multiple dwellings with frontage on H Street, N.E. must have at least one primary entrance on H Street directly from the sidewalk. In this case, the Site has 10,800 square feet of land area, thus requiring a special exception from Section 1320.4(f), and the proposed building will not have a primary residential entrance on H Street, thus requiring a special exception from Section 1324.10.

Exceptions from the requirements of the H Street Overlay District are permitted as special exceptions if approved by the Board after a public hearing, in accordance with Section 3104, provided the criteria of Sections 1304.1 and 1325.1 are met. The Applicant meets the applicable special exception standards as described below.

1. The NC Overlay – Section 1304.1

a. Purposes of the Overlay and No Adverse Impacts – Section 1304.1(a)

Under Section 1304.1(a) of the Zoning Regulations, an applicant must demonstrate that the excepted use, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the specific overlay in which the site is located, which in this case is the HS-A Overlay District. The Applicant must also demonstrate that the proposed use will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity.

i. Consistency with the Purposes of the NC Overlay

The NC Overlay is designed to encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, consistent with the Comprehensive Plan. The NC Overlay is also designed to encourage the retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area's residents, workers, and visitors. Finally, the NC Overlay is expected to limit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and older buildings. *See* 11 DCMR §§ 1300.3(a)-(c).

The proposed project will substantially advance the purposes of the NC Overlay District. The segment of H Street, N.E. on which the Site is located is already a pedestrian-friendly destination for neighborhood-serving retail, entertainment, and restaurant establishments. The proposed building is designed to integrate with the surrounding uses at an appropriate scale, will extend the existing pattern of ground floor retail development to serve the needs of surrounding residents, workers, and visitors, and will replace the existing one-story building that was inconsistent with the desired character for the H Street corridor. Moreover, the project was designed with pedestrians in mind, such that it will not adversely affect the existing safe and efficient conditions for pedestrian and vehicular movement along H Street, 13th Street, or along the public alley at the rear of the Site. As indicated in the Transportation Memorandum prepared by Gorove/Slade Associates, Inc. and attached hereto as Exhibit D ("Transportation Memorandum"), parking and traffic conditions associated with the project will not adversely affect adjacent or nearby residences, and the development will yield a low parking and vehicular trip generation demand. In addition, the proposed building height at 55 feet is permitted as a matter-

of-right in the HS-A Overlay District to ensure that development can provide 14-foot floor to ceiling heights at the ground level.

ii. Consistency with the Purposes of the H Street Overlay

Included in the stated purposes of the H Street Overlay are the goals of implementing the policies and goals of the Comprehensive Plan and the H Street N.E. Strategic Development Plan; encouraging residential uses along the H Street corridor; and encouraging the clustering of uses into unique destination districts along the corridor. 11 DCMR § 1320.2(a-c, f). The proposed project will substantially advance these goals, as described below.

The Comprehensive Plan incorporates the policies and goals of the H Street N.E. Small Area Plan (the “Small Area Plan”) under the policy focus area for Capitol Hill known as the H Street/Benning Road Focus Area. 10A DCMR § 1511.2. The Small Area Plan lays out a vision for H Street as a great neighborhood shopping street that serves resident needs, provides connections to the larger city, and improves the livability of the surrounding community. *Id.* The Small Area Plan also recommends the development of four thematic areas along the H Street corridor, designed to guide community, private sector, and public agency action and investments. *Id.* The Site is located within the Arts and Entertainment District, which extends on H Street, N.E. from 12th Street to 15th Street. As noted in the Comprehensive Plan, new arts and cultural uses are encouraged in this area, as are complementary specialty retail uses, sit-down restaurants, arts-related retail, and other community services. Moderate-density residential development is also encouraged. *See* 10A DCMR § 1511.6(c).

The proposed mixed-use development supports these policies and goals by fulfilling the demand for new retail and moderate-density residential development and providing complementary uses to arts and cultural uses. The project will provide new retail/shopping opportunities to serve resident needs, and will revitalize the underutilized Site, making the area

more attractive to new specialty retail establishments, restaurants, and community services. Moreover, consistent with § 1320.2(b) and (f), the project will incorporate much-needed new residential use along H Street, N.E., including new affordable units, thus improving livability in the surrounding community.

iii. *No Adverse Impacts to Neighboring Property and No Detrimental Effects*

The project will not adversely affect neighboring property nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity of the Site. As indicated in the Transportation Memorandum, the development will yield a low parking and vehicular trip generation due to the anticipated tenant mix, the neighborhood-serving orientation of the retail space, the numerous public transit options in the vicinity of the Site, and the extensive transportation demand management (“TDM”) measures that the Applicant will implement (*see* Transportation Memorandum, pp. 12-13, 24). The development is expected to generate a conservative total of 11 morning peak hour vehicular trips and 17 evening peak hour trips, which will have a negligible additional impact on the surrounding roadways (*see* Transportation Memorandum, p. 9). In addition, based on a review of parking supply and demand of other comparable properties, the project is anticipated to generate a parking demand of approximately seven on-site parking spaces, which is less than the eight on-site parking spaces provided (*see* Transportation Memorandum, p. 12). Moreover, the project will provide new housing on the H Street corridor, including affordable housing, and will offer new neighborhood-serving retail at a convenient location that will increase the competitiveness of existing businesses and attract new investment to the area.

b. Exceptional Circumstances Justifying the Exception – Section 1304.1(b)

In support of the request for special exception relief, an applicant must demonstrate that

exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver. 11 DCMR § 1304.1(b).

With respect to Section 1320.4(f), the Site has 10,800 square feet of land area, and therefore exceeds the 6,000 maximum land area requirement. However, the Site has operated as a single, 10,800 square foot site for several decades, serving several distinct uses. Moreover, the District specifically intended the Site to be redeveloped as a single site upon disposition to the Applicant. Maintaining the already existing site configuration is appropriate for the proposed use and will not cause any adverse impacts or abrupt changes.

With respect to Section 1324.10, the Applicant cannot provide a primary residential entrance on H Street due to the development program anticipated by the District's disposition of the Site, which envisioned neighborhood-serving ground floor retail to serve as a neighborhood anchor and community gathering place. As a result, the Applicant's design team maximized the amount of ground floor retail in the building and oriented retail frontage towards H Street to increase visibility and achieve the District's goals. In addition, with only 58 linear feet of frontage on H Street, there is limited space available to provide ground floor retail frontage and a primary residential entrance. Accordingly, it is necessary for the Applicant to locate the primary residential entrance to the building on 13th Street.

Based on the foregoing, exceptional circumstances exist that justify the waiver from Sections 1320.4(f) and 1324.10.

c. Safe Pedestrian and Vehicular Access – Section 1304.1(c)

Section 1304.1(c) of the Zoning Regulations requires an applicant to demonstrate that vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions. In this case, there is no proposed vehicular access from H Street or 13th Street

onto the Site, thus maintaining a pedestrian-friendly environment along these corridors that will not be interrupted by crossing vehicular traffic. Vehicular access is proposed only for the rear of the Site, accessed from the public alley, and this access is limited to eight vehicles for the eight on-site parking spaces. As indicated in the Transportation Memorandum, the roadways in the immediate vicinity of the Site provide satisfactory pedestrian facilities and connectivity throughout the area, with wide, continuous sidewalks and crosswalks linking segments at intersections (*see* Transportation Memorandum, p. 5). Due to the appropriate location and few number of parking spaces on the Site, there is little opportunity for the surrounding pedestrian ways to be adversely affected, and it is unlikely that any dangerous or otherwise objectionable traffic conditions will arise.

d. Special Conditions Related to Design – Section 1304.1(d)

Section 1304.1(d) provides that the Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district in which the Site is located. As shown on the Plans, the project architect designed the building to be compatible with the existing streetscape and surrounding structures and consistent with the purposes of the H Street Overlay. Consequently, the Applicant does not anticipate the need for any additional conditions or design requirements.

Based on the foregoing, the Applicant has demonstrated that it meets the test for special exception relief under Section 1304 of the Zoning Regulations.

2. The H Street Overlay – Section 1325.1

Under Section 1325.1, the buildings, structures, and uses listed in Section 1320.4, and the exceptions from the requirements of the H Street Overlay District, are permitted as a special exception if approved by the Board after a public hearing, provided the following criteria are met:

a. Design Requirements

Section 1325.1(a) requires projects to be consistent with (i) the intent of the design requirements of Section 1324 and (ii) the design guidelines of the H Street N.E. Strategic Development Plan (the “Strategic Development Plan”). The project complies with the requirements and effectuates the intent of Section 1324 and the Strategic Development Plan, as follows:

- i. *Buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets (§ 1324.2).*

More than 75% of the street wall abuts the property line.

- ii. *New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses (§ 1324.3).*

This provision is not applicable.

- iii. *In C-2 Districts within the HS Overlay District, a seventy percent (70%) residential lot occupancy shall be permitted (§ 1324.4).*

A 72% lot occupancy is proposed, which is permitted pursuant to the Inclusionary Zoning bonus density, which permits a maximum lot occupancy of 75% (see 11 DCMR § 1326.3).

- iv. *For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin (§ 1324.5).*

Percentage of lot occupancy has been calculated at the second level, which is the lowest level where residential use begins.

- v. *For the purposes of § 1324.5, "residential uses" includes single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities (§ 1324.6).*
- vi. *Parking structures with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street N.E., or 15th Street, N.E. shall provide*

not less than sixty-five percent (65%) of the ground level frontage as commercial space (§ 1324.7).

This provision is not applicable.

- vii. *Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building (§ 1324.8).*

Approximately 72.6% of the of the surface area of street walls at the ground level have display windows with clear or clear/low- emissivity glass on H Street.

- viii. *Security grilles shall have no less than seventy percent (70%) transparency (§ 1324.9).*

Security grilles will have no less than 70% transparency.

- ix. *Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street N.E., 14th Street, N.E., or 15th Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one (1) primary entrance on H Street directly accessible from the sidewalk (§ 1324.10).*

The commercial use will have multiple public entrances directly accessible from the public sidewalk on H and 13th Streets. Special exception relief is requested in conjunction with this application to provide the primary residential entrance on 13th Street, which will be designed to be unique from the commercial entrances.

- x. *Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby (§ 1324.11).*

New construction is designed so as not to preclude an entrance every 40 feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to the ground floor uses and main lobby.

- xi. *The ground floor level of each new building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.) if the building (a) fronts on H Street, N.E., or (b) Fronts Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. and would have ground floor space occupied by one (1) or more service, retail, or office uses permitted as a matter of right in the underlying zone (§ 1324.12).*

The ground floor level of the new construction will have a minimum clear floor-to-ceiling height of 14 feet.

The Strategic Development Plan designates the Site as part of the “Arts and Entertainment District,” which is envisioned as a destination for restaurants, cafes, galleries, small shops, and studio spaces serving the needs of theatergoers, the District arts community, and neighborhood residents. *See* Strategic Development Plan, p. 4-3. The Strategic Development Plan designates the Site as a “Type II Development,” which type of development is intended to promote active uses at the ground floor and in the living or office space above. Buildings are to be set on the front and side property lines with a rear setback to allow limited parking behind the building, and are intended to be two and four stories tall. *See* Strategic Development Plan Design Guidelines, p. 5. Owners are encouraged to treat all street-facing elevations with equal attention, eliminate blank walls, and utilize durable materials and finishes. *Id.* at 7-8.

As shown on the Plans, the project will effectuate the design intentions of Section 1324 by providing large display windows and entrances, regular ingress and egress from H and 13th Streets, and a 14-foot ground floor ceiling height, thus enhancing the pedestrian experience and aesthetic quality of the block. The project is also consistent with the Strategic Development Plan’s Design Guidelines by providing active ground floor retail space to attract the District’s arts community and neighborhood residents and encouraging visitors to support new and existing retail businesses along the H Street corridor. The building will be constructed up to the front and side property lines, will have limited and screened parking behind the building, and will have active facades made of durable and attractive materials.

b. Urban Design Features

Section 1325.1(b) requires the architectural design of the project to enhance the urban design features of the immediate vicinity in which it is located. If a historic district or historic landmark is involved, the Office of Planning report to the Board is required to include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board.

As shown on the Plans, the project is designed to enhance the urban design features of its surrounding vicinity. The height and massing of the building are of a similar scale to the surrounding urban fabric. The prominent retail band on the ground floor speaks to the engaging commercial nature of H Street and is designed to be inviting to pedestrians and to activate the street. The Site is not in an historic district and is not an historic landmark.

c. Vehicular Access

Section 1325.1(c) requires vehicular access and egress to be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions.

Vehicular access and egress to the Site has been designed to encourage safe and efficient pedestrian movement. There is no vehicular access to the Site from H or 13th Streets, thus maintaining a pedestrian-friendly environment that will not be interrupted by crossing vehicular traffic. Vehicle access to the Site is available only from the public alley at the rear of the Site, and this access is limited to eight vehicles. As described above, the project is expected to generate a negligible number of morning and evening peak hour trips (*see* Transportation Memorandum, p. 9), since most residents and retail patrons/employees are expected to walk, bike, or take public transit to the Site. As a result, there is little opportunity for principal pedestrian ways to be

adversely affected or obstructed, and dangerous or objectionable traffic conditions are not likely to arise. Moreover, the ground floor use will have multiple entrances on H and 13th Streets, accessible directly from the adjacent sidewalk, and the primary residential entrance will be located on 13th Street to make more efficient use of the irregularly-shaped Site. Together, the vehicular and pedestrian access points will be sufficiently separated to minimize conflict and eliminate any dangerous or otherwise objectionable traffic conditions.

d. Parking and Traffic Conditions

Section 1325.1(d) provides that parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences. In this case, the Site is located in an extremely walkable and transit-rich location with convenient access to numerous Metrobus routes, the Metrorail at Union Station, car-share locations, Capitol Bikeshare docks, and the future DC Streetcar line, which will operate on H Street directly in front of the Site. The Applicant anticipates that the majority of residential tenants, visitors, retail employees, and patrons will access the Site by foot, bike, or public transportation. Thus, the project is not expected to exacerbate traffic in the area or increase demand for on-street parking. *See* Transportation Memorandum, pp. 9-16.

e. Noise Impacts

Section 1325.1(e) provides that noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences. In this case, any noise associated with the residential and retail uses at the Site will be minimal and will not adversely affect adjacent or nearby residences. The Applicant intends to incorporate a neighborhood-serving retail establishment in the ground floor space. Neither the retail use nor the residential use will produce any objectionable loud or late night noise. The Applicant will want to ensure that noise does not

impact its tenants or owners. Furthermore, the other closest residential use to the Site is across the 25-foot public alley at the rear (north) of the Site.

f. Building Signage

Section 1325.1(f) requires the size, type, scale, and location of signs to be compatible with the surrounding corridor and consistent with the design guidelines of the H Street N.E. Strategic Development Plan. As shown on the Signage Plan attached as Exhibit E, the building's signage is compatible with the surrounding corridor and is consistent with both the design guidelines of the Strategic Development Plan and the H Street Signage Design Guide, issued by ANC 6A. Pursuant to Section 1325.2, an Applicant may demonstrate compliance with § 1325.1(f) by demonstrating that the signage will be exclusively located on upper facades, awnings, and transom windows, constructed of durable materials, and sensitively designed; and will not affect more than 20% of display windows, consist of blacklit box signs or neon product advertisements, block visibility into a store, or be overly obtrusive. The project will comply with these requirements. Based on the foregoing, the Applicant has demonstrated that it meets the test for special exception relief under Section 1325.1.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the parking requirements of Section 2101.1 of the Zoning Regulations. Under D.C. Code §6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and

(3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035

(D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

A. **The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition**

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

In this case, the Site’s soil and ground water contain hazardous and impacted materials that were released from the adjacent dry cleaning facility, located directly to the east of the Site, and from the former Cooper Suppliers coal yard and filling station, formerly located on the northern portion of the Site. The contamination and the associated remediation requirements make it cost-prohibitive to excavate the Site to provide below-grade parking. In 2013, Environmental Consultants and Contractors (“ECC”) evaluated the Site’s environmental contamination and produced a Phase II Environmental Site Assessment (“ESA”), which documented soil and groundwater quality on the Site (Exhibit F). In addition, in 2015, ECC prepared draft Environmental Estimate Reports, which summarize the estimated environmental costs of

excavating the Site to provide below-grade parking in one, two or two and one-half levels of below grade parking (Exhibit G).

As indicated in the ESA and the Environmental Estimate Report, the Site's soil is impacted with petroleum such that all excavated soil will, at a minimum, be classified as non-hazardous petroleum impacted and disposed as such at a premium cost. The reports also indicated that some of the Site's soil located near the off-site dry cleaning facility is also impacted with chlorinated solvents at a depth near the ground water level, such that this excavated soil will be classified as hazardous and disposed as such at a significant premium. Furthermore, the studies found that the Site's ground water is impacted with petroleum and chlorinated solvents. With any excavation for below-grade parking, both construction activities and future foundation drainage systems are expected to generate contaminated water that will require permitting and treatment for compliance with DC Water regulations. As described in more detail below, the contamination present at the Site results in extraordinarily high costs to construct below-grade parking.

In addition, the Site is relatively small and is irregularly-shaped, with 58 linear feet of frontage on H Street, N.E., 144 linear feet of frontage on 13th Street, N.E., and 94 linear feet of frontage along the public alley to the rear of the Site. The size of the Site impacts the cost of construction of any below-grade parking while the irregular shape impacts the ability to provide below-grade parking from the rear while also providing other needed facilities. Collectively, the Site's environmental contamination and its small and irregular shape place substantial restrictions on potential parking configurations and the Applicant's ability to provide below-grade parking.

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

The strict interpretation of Section 2101.1 of the Zoning Regulations will result in a practical difficulty. Pursuant to Section 2101.1, the building is required to provide one parking

space for each two dwelling units, plus one parking space for each additional 300 square feet of retail space in excess of 3,000 square feet. In this case, the Applicant is required to provide 18 parking spaces for the 36 proposed residential units, plus 12 parking spaces for the 6,614 square feet of retail use, for a total of 30 parking spaces. However, the Applicant proposes to provide a maximum of eight off-street surface parking spaces located at the rear of the Site and accessed from the public alley.

The Applicant has maximized the number of surface parking spaces that can reasonably fit on the Site. However, due to the Site's environmental contamination, it is practically difficult to locate 30 parking spaces in a below-grade parking garage. As shown on the theoretical garage plan (Exhibit H), 30 parking spaces would require two and one-half levels of below grade parking, which would significantly disrupt the hazardous and impacted materials found in the soil and ground water beneath the Site. As indicated in the Environmental Estimate Report, the estimated total environmental remediation cost to construct two and one-half levels of below-grade parking is between \$2,426,300 (low range) and \$3,627,900 (high range). As indicated in the Moriarty letter dated June 16, 2015, attached hereto as Exhibit I, the hard cost to construct the two and one-half levels of below-grade parking on the Site is an additional \$2,792,669 due to the size and shape of the site. Together, the total cost to provide the required number of on-site parking spaces ranges between \$5,218,969 and \$6,420,569. This results in a per parking space cost of between approximately \$174,000 and \$214,000, which is approximately five to six times more expensive than the average cost of a typical below-grade parking space in the District of Columbia. This exceptionally high cost to provide zoning-compliant on-site parking would make development of the Site cost-prohibitive and practically difficult to the Applicant.

If the Applicant was theoretically able to construct the required below-grade parking, providing a parking ramp to access the parking would adversely impact the proposed retail space, loading facilities, bicycle storage room, trash room, utility rooms, and residential lobby, and would potentially impact the location of the primary residential stair tower and elevator shaft, which would adversely affect the layout of the residential units above.

C. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. Due to the small size of the residential units and the Site's location in a vibrant, mixed-use, neighborhood where many services and activities are located within walking distance, it is anticipated that most building residents will not own a car while living at the Site. As indicated in the Transportation Memorandum, a review of parking supply and demand at other comparable DC properties demonstrates that on-site parking is utilized at a ratio of 0.16 spaces per studio unit and at a ratio of approximately 0.19 spaces per 1-bedroom unit. Applying these ratios to the proposed mixed-use project at the Site, which will be comprised of a similar size and type of units, the parking demand is estimated to be approximately seven parking spaces. Based on that anticipated demand, the eight proposed on-site parking spaces (0.22 spaces per unit) for the 36-unit development will adequately support the demands of the Site. *See* Transportation Memorandum, p. 12. Furthermore, the proposed ground floor retail use at the Site will be neighborhood-serving, such that patrons and employees are expected to walk, bike, or take public transportation to access the retail use, and additional on-site parking will not be needed.

The Transportation Memorandum also indicates that the Site is situated in a transit-rich location with convenient access to multiple public transportation options, such that the Site is

easily accessible without a car. The Site is located directly on the H Street/Benning Road DC streetcar line, which is anticipated to begin operations in 2015, and will connect directly to Union Station. The Site is located within 0.1 mile of nine Metrobus lines (B2, D3, D4, D8, X1, X2, X3, X8, and X9); within 0.3 miles of four Capital Bikeshare stations, including one station located directly in front of the Site; and a half-mile from seven permanent car-share parking spaces. The Site and has ample access to Car2Go vehicles and other one-way, point-to-point ride-share services. Moreover, the Site has a walkscore of 88/100 (*see* www.walkscore.com), which will enable residents and retail employees and patrons to easily access the Site by foot. Given the urban nature of the Site and its proximity to many non-auto modes of transportation, the eight proposed on-site parking spaces will adequately serve the parking demand of the development. *See* Transportation Memorandum, pp. 12-13.

In addition, the Applicant proposes to implement an extensive TDM program and offer secure on-site bicycle parking facilities, such that travel by private vehicle will be even further reduced. The Applicant's proposed TDM measures are set forth in the Transportation Memorandum and include restricting all building residents from obtaining a Residential Parking Permit or a Visitor Parking Permit. Collectively, the TDM measures will alleviate any vehicular demand that may be generated by the Site. *See* Transportation Memorandum, pp. 13-14.

In the unlikely event that additional parking is needed for residents, visitors, or employees of the retail space, parking will be available in nearby off-street parking facilities for daily use (e.g. developments with on-site parking available to the public are currently approved or under construction at 600 H Street, 625 H Street, and 901 H Street). *See* Transportation Memorandum, pp. 14-15, 19. Additional parking is also available for longer-term vehicle storage farther away

from the Site, closer to Union Station and NoMa, that can be reached by Metrobus or Streetcar in under ten minutes. *See* Transportation Memorandum, pp. 15, 19.

VI. COMMUNITY SUPPORT

The Applicant has worked with the community and is pleased to have support for the project. On June 11, 2015, at its regularly scheduled, duly noticed Advisory Neighborhood Commission (“ANC”) 6A meeting, with a quorum of commissioners present, ANC 6A voted 6-0 to support the application. This vote was taken after ANC 6A’s Economic Development and Zoning Committee voted unanimously on May 20, 2015, to recommend support of the application by the full ANC. A copy of the ANC’s letter of support is attached as Exhibit J. The Capitol Hill Restoration Society also voted to support the application at its June 11, 2015, Zoning Committee meeting.

The ANC’s support letter includes two conditions: (i) that a covenant be recorded in the land records of the District of Columbia requiring that each lease or contract for sale of a residential unit prohibit the tenant or owner of the unit from obtaining a residential parking permit, and (ii) that the Applicant for all purposes treat the building as fronting on H Street, N.E., including assigning or causing the District to assign an H Street, N.E. address to the building and each of its units. The Applicant agrees to the first condition and generally agrees with the second condition; however, the assignment of the address is done by the Department of Consumer and Regulatory Affairs (“DCRA”). The Applicant agrees to work with both the ANC and DCRA to try to achieve an H Street address for the building.

VII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

- Exhibit A: A portion of the Zoning Map showing the Site
- Exhibit B: A Portion of the Future Land Use Map
- Exhibit C: Updated Architectural Plans and Elevations for the Project
- Exhibit D: Transportation Memorandum
- Exhibit E: Signage Plan
- Exhibit F: Phase II Environmental Site Assessment (without attachments)
- Exhibit G: Draft Environmental Estimate Report
- Exhibit H: Theoretical Parking Garage Plan
- Exhibit I: Letter from General Contractor John Moriarty & Associates of Virginia, LLC
- Exhibit J: Letter of Support from Advisory Neighborhood Commission 6A
- Exhibit K: Outlines of Testimony
- Exhibit L: Resumes of Expert Witnesses

VIII.
WITNESSES

- A. Rebecca Snyder, 1300 H Street NE LLC / Insight Property Group
- B. Nicholas Mroczkowski, Stoiber + Associates, architects for the project
- C. Erwin Andres, Gorove/Slade, traffic consultant for the project
- D. John P. Diehl, CPG, Environmental Consultants and Contractors, environmental consultant for the project
- E. Steven E. Sher, Holland & Knight LLP, urban planner

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for special exception and variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

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