

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

**APPLICATION OF
TPC 5TH & I PARTNERS LLC
901 5TH STREET, NW**

**BZA APPLICATION NO. 19103
HEARING DATE: NOVEMBER 10, 2015
ANC 6E**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted by TPC 5th & I Partners LLC (the "Applicant"), on behalf of the Government of the District of Columbia, the owner of the property located at 901 5th Street, NW (Square 0516 Lot 0059) (the "Subject Property"), in support of its application to the Board of Zoning Adjustment 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) a special exception from the roof structure setback requirement of Section 770.6(b) and 411.3; (ii) a variance from the rear yard requirements of Section 774; (iii) a variance from the closed court requirements of Section 776; (iv) a variance from the minimum parking requirements of Section 2101.1; and (v) a variance from the parking access requirements of Section 2117. The relief requested will permit development of the Subject Property with a new mixed-use building containing hotel and apartment house uses in the DD/C-2-C/MVT District.

In addition, subsequent to submitting its initial application, on August 11, 2015, the Applicant amended its application to request a special exception from Section 411.4(c) of the proposed penthouse regulations in anticipation of the Zoning Commission taking final action in Case No. 14-13 (Z.C. Case No. 14-13), to allow a bar, cocktail lounge, and/or restaurant use within the penthouse of the proposed building.

The proposed development is appropriate for the Subject Property, fully compatible with the surrounding area, and not inconsistent with either the Comprehensive Plan or the Zoning Regulations.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103 and 3104 of the District of Columbia Municipal Regulations (“Zoning Regulations”).

III. EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

<u>Exhibit A:</u>	Excerpt from DMPED Request for Expressions of Interest (RFEI)
<u>Exhibit B:</u>	Map of Mount Vernon Triangle Historic District
<u>Exhibit C:</u>	Historic Preservation Review Board (HPRB) Action
<u>Exhibit D:</u>	Historic Preservation Office (HPO) staff report
<u>Exhibit E:</u>	Map of Subject Property and surrounding zoning
<u>Exhibit F:</u>	Portion of Comprehensive Plan Future Land Use Map
<u>Exhibit G:</u>	Updated architectural plans and elevations
<u>Exhibit H:</u>	Excerpt of 1909 Baist Map (Vol 1, Plate 35)
<u>Exhibit I:</u>	Excerpt from Geotechnical Engineering Report
<u>Exhibit J:</u>	Excerpt from Groundwater Quality Investigation Report
<u>Exhibit K:</u>	Data sheet and technical specifications for proposed parking lift
<u>Exhibit L:</u>	Parking and Loading Statement
<u>Exhibit M:</u>	Outlines of testimony
<u>Exhibit N:</u>	Resumes of expert witnesses

IV. BACKGROUND

A. Description of the Subject Property

The Subject Property is currently owned by the District of Columbia Government. At present, it is utilized by a private entity as a surface parking lot by leasehold with the District. The Applicant was selected by the District as the preferred developer of the Subject Property following issuance of a Request for Expressions of Interest (RFEI) by the Office of the Deputy Mayor for Planning and Economic Development (DMPED) in April 2013. According to the RFEI, an excerpt of which is attached as Exhibit A, the Applicant's proposal is required to "embody the following set of characteristics:"

- High architectural design quality that maximizes density;
- Economic viability;
- Residential condominium or rental component, including an affordable housing component;
- Robust local and small business neighborhood serving retail; and
- A transit oriented development that reflects the project's adjacency to multiple Metro Stations.

The Subject Property is located within the northwest quadrant of the District of Columbia, in the area commonly referred to as the "East End." It is situated in the southwest corner of Square 516, which is bounded by K Street to the north, I Street to the south, 4th Street to the east, and 5th Street to the west (the "Square"). The Square is bifurcated by a 15-foot public alley running north-south between K and I Streets. The east-west portion of the alley measures 30 feet in width. The Subject Property has limited alley access at the northeast corner.

The Subject Property is currently vacant, has an irregular shape, and consists of approximately 20,614 square feet of land area, which is small considering the proposed use. It has approximately 110 feet of frontage along 5th Street, which is 80-foot wide, and

approximately 170 feet of frontage along I Street, which is 90-foot wide. The Subject Property confronts Reservation 74, which is located directly south of the Subject Property, and is bounded by I Street, 5th Street, and Massachusetts Avenue, which is 160-foot wide.

The Subject Property is also located within the Mount Vernon Triangle Historic District, which is both a federal and District registered historic resource, with many of the neighboring properties to the north and east identified as contributing structures to the historic district. A map showing the Subject Property in relation to the historic district boundary is attached as Exhibit B. According to the historic district's National Register of Historic Places nomination form, the historic district consists of a cluster of 24 historic buildings, ranging in date between the 1870s to 1946, located along 5th Street between Massachusetts Avenue and K Street, and along the 400 blocks of I and K Streets, the 900 block of 5th Street, and the 400 block of Massachusetts Avenue. In addition, the nomination form identifies the Subject Property as having archeological significance.

Due to its location within the historic district the proposal is subject to review by the Historic Preservation Review Board (HPRB), which commented favorably on the project on October 1, 2015. In its comments, attached as Exhibit C, the HPRB found the scale and massing of the project to be compatible with the Mount Vernon Triangle Historic District, and recommended the Applicant continue to develop the scale of the building's base; to provide a stringer building top; to ensure roof furniture is not visible from the street; and to prepare an archeological work plan in consultation with Historic Preservation Office (HPO) staff. The HPO staff report that was prepared for the HPRB's concept review, attached as Exhibit D, reinforces the Subject Property's archeological importance by noting that a prior archeological investigation yielded a high concentration of artifacts and that remnants of former structures are

known to still be in place. Therefore, as a part of its approval should the Board deem it appropriate to grant the application, the Applicant requests flexibility to make design refinements to the exterior of the building in response to final review by the HPRB so long as such refinements do not increase the extent of relief requested, or create any new areas of zoning relief.

B. Description of Surrounding Area

The area surrounding the Subject Property can be characterized as a high-density, mixed-use neighborhood comprised of commercial, residential, and retail and service uses. The area has been undergoing a major transformation for several years with numerous large-scale residential and hotel projects completed to the north. In addition, the I-395 air-rights development, known as Capitol Crossing, is currently underway to the southeast, as are several large office developments to the west and northwest along 7th Street, Massachusetts Avenue, and New York Avenue. The Subject Property is located in a very walkable, bike-friendly, and transit-rich neighborhood that has several attractions and neighborhood amenities in close proximity; including the Washington Convention Center, Mount Vernon Square, Judiciary Square, Chinatown, and the Verizon Center, which are all located within 0.3 miles.

The Subject Property is well served by multiple modes of public transportation. Supporting the RFEI's call for a transit-oriented development, the Gallery Place–Chinatown Metrorail Station is located only 0.2 miles to the southwest. In addition, the Mount Vernon Square-7th Street-Convention Center and Judiciary Square Stations are located approximately 0.3 miles to the northwest and south, respectively. The Subject Property is also accessible by several Metrobus routes, as well as the DC Circulator which operates along Massachusetts Avenue and 7th Street. The DC Circulator has stops directly south of the Subject Property along

Massachusetts Avenue, and provides eastbound service towards Union Station, and westbound service toward Georgetown. Finally, a Capital Bikeshare station is also located to the south along Massachusetts Avenue.

C. Existing Zoning and Comprehensive Plan Land Use Designation

As shown in Exhibit E, the Subject Property is zoned C-2-C and is located within the Mount Vernon Triangle District of the Downtown Development (DD) Overlay. While under the base C-2-C zoning a building height of 90 feet is permitted, the Subject Property can achieve a maximum height of 130 feet pursuant to Section 1701.7 of the DD Overlay. With regard to density, pursuant to Sections 1706.4(a) and 1706.7(a)(2) of the DD Overlay, the Subject Property is permitted a maximum floor-area-ratio (FAR) of 8.5, and has no FAR limitation for the residential component of the project. Finally, the site can be developed to a maximum lot occupancy of 80%.

Regarding parking and loading, pursuant to Chapters 21 of the Zoning Regulations the Applicant is required to provide one parking space for every four dwelling units, one space for every two hotel guest rooms, and one space for every 250 square feet of floor area in the largest hotel function of exhibit space. In addition, pursuant to D.C. Code §50-1641.05, the Applicant is required to provide bike parking for the apartment house portion of the project.

Regarding loading, pursuant to Chapters 22 of the Zoning Regulations the Applicant is required to provide a 30-foot loading berth and 20-foot delivery space for the hotel guest rooms. There is no loading requirement for the proposed apartment house since less than 50 dwelling units are proposed. There is also no loading requirement for the hotel function room since it is less than 10,000 square feet.

The Future Land Use Map of the Comprehensive Plan (January 2013), adopted as part of the District Elements of the Comprehensive Plan for the National Capital (the “Comprehensive Plan”), designates the Subject Property as Mixed-Use (High Density Commercial / High Density Residential), as shown in the attached Exhibit F. According to the Framework Element of the Comprehensive Plan, Mixed-Use areas are those where the mixing of two or more land uses is encouraged. The High Density Commercial land use category defines the central employment district of the city and other major office employment centers on the perimeter of downtown. These areas are characterized by office and mixed office/retail buildings greater than eight stories with lower scale buildings (including historic buildings) interspersed. The High Density Residential land use category defines neighborhoods and corridors where high-rise (8-stories or more) apartment buildings are the predominate use.

Finally, the Subject Property is located within the Mount Vernon District Policy Focus Area of the Central Washington Element of the Comprehensive Plan which includes policies that promote land uses that support the nearby Washington Convention Center, residential development within the Mount Vernon Triangle area, improvements to the existing network of parks, and the creation of pedestrian-oriented streets. The proposed development is consistent with Comprehensive Plan policies and future land use designation.

D. Project Description

As shown in the plans attached hereto as Exhibit G, the Applicant proposes to develop the Subject Property with a mixed-use building containing hotel and apartment house uses. The building will be constructed to a height of 130 feet, measured from the elevation at the midpoint of the façade along 5th Street to the top of the parapet. The building will contain approximately 173,903 square feet of gross floor area (GFA) and have an overall FAR of 8.44.

The proposed hotel use will contain approximately 108,810 GFA, or 5.28 FAR. The residential component of the project will consist of approximately 65,093 GFA, or 3.16 FAR.

The minimum rear yard requirement for developments within the C-2-C District is 15 feet. However, as discussed below, the Applicant is unable to provide a rear yard as a result of exceptional conditions that affect the Subject Property, and thus has requested a variance from this requirement. The proposal includes one open court and one closed court, the latter of which requires a variance from the Board as it does not meet the minimum width and area requirements. There is no minimum side yard requirement within the C-2-C District, unless a side yard is provided. The proposed building does not have any side yards.

The ground floor of the proposed building will contain lobby space for both the hotel and residential uses, an accessory restaurant, back of house service space and a fire control room, and loading facilities. Above the ground floor, the building will have an “L-shaped” configuration formed by two rectilinear wings built to the lot lines along 5th and I Streets, and a large open court located on the backside of the building that opens onto the alley.

The hotel use will occupy floors 2 – 8 and contain approximately 175 guest rooms. The proposed apartment house will occupy floors 9 – 12 and contain approximately 48 dwelling units. The roof level of the building will contain residential and hotel outdoor terraces, a pool, and two roof structures. The main roof structure contains the elevator cores for both the hotel and apartment house uses, mechanical equipment, and residential amenity space. The Applicant is also proposing a restaurant, bar, nightclub, or cocktail lounge within the main roof structure which requires a special exception under the proposed penthouse regulations currently

under consideration in Zoning Commission Case No. 14-13.¹ The second roof structure is a separate egress stair located at the east end of the roof.

Both roof structures have a height of 18'-6" above the roof and meet the 1:1 setback requirement from the exterior walls adjoining 5th and I Streets, as does the pool and all glass guardrails. The egress stair is also setback from the court wall facing the alley. However, the main roof structure does not meet the setback requirement along the walls of the court that opens toward the alley; and therefore, the Applicant has requested a special exception pursuant to Section 411.11. In addition, the Applicant is seeking relief from the requirement that all roof structures be located within a single enclosure to allow the stand alone egress stair to be separate from the main roof structure.

In addition to the above grade program, the proposed building will include below grade program. The below grade program will consist of one level, plus a mezzanine, located immediately below the ground floor. As shown in the attached plans, and as is customary in hotels of this size, the below-grade level will include an approximately 5,500 square foot ballroom as well as additional meeting, pre-function, and support space associated with the proposed hotel use. Additional space for a kitchen, restrooms, storage, and staging that are intended to support the ballroom and meeting space are also proposed on this level. Finally, this level will also contain a residential amenity space such as a community room or business center. Within the mezzanine, a fitness area and spa is proposed and will be available to both hotel

¹ At the time the Applicant submitted its application, the Zoning Commission had taken proposed action on Z.C. Case No. 14-13, Penthouse Regulations. In the interest of administrative efficiency, and in anticipation of the Zoning Commission taking final action prior to the hearing for this application, the Applicant requested the special exception required pursuant to proposed Section 411.4(c) to allow the development to have a penthouse-level nightclub, bar, cocktail lounge, or restaurant. At the time this prehearing statement was prepared, the Zoning Commission was scheduled to consider final action on the proposed penthouse regulations at its November 9th meeting. The proposed rooftop accessory residential recreation space is already permitted.

guests and residents. The mezzanine will also include a modest amount of administrative office and staff space

Pursuant to Chapter 21 of the Zoning Regulations, the Applicant is required to provide a total of 12 parking spaces for the proposed apartment house, 88 parking spaces for the hotel guest rooms, and 37 spaces for the hotel ballroom. The overall minimum parking requirement for the proposed development is 137 spaces. As discussed below, as a result of multiple exceptional conditions that affect the Subject Property, the Applicant is only able to provide 92 parking spaces located on one level, located below the ballroom and meeting space, that will actually function as two levels of parking through the use of a parking lift system. In addition, these same exceptional conditions make it difficult to provide access to the below-grade parking in a manner that satisfies the zoning requirements for, and instead a dual parking elevator system is proposed. Thus, the Applicant has requested variances from the minimum parking requirements of Section 2101.1, and from the parking access, maintenance, and operation requirements of Section 2117.

V.
THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION RELIEF

Pursuant to Sections 3104.1 and 411.11, the Applicant seeks special exception relief to allow roof structures not meeting the requirement that all penthouses and mechanical equipment be placed in a single enclosure (§411.3), and not setback from all exterior walls a distance equal to their height above the roof upon which they are located (§770.6(b)). In addition, the Applicant is requesting a special exception from Section 411.4(c) of the proposed penthouse regulations that are being considered by the Zoning Commission in Case No. 14-13, Penthouse Regulations, to allow a bar, cocktail lounge, and/or restaurant use within the penthouse of the proposed building. For purposes of administrative efficiency, the Applicant has requested this special

exception in anticipation of the Zoning Commission taking final action on the proposed penthouse regulations in advance of the public hearing for this case.

A. Standard for Approving Special Exception Relief

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 relief requested 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 regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board 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.*

Section 411.11 of the Zoning Regulations empowers the Board of Zoning Adjustment to grant a special exception from the location, design, number, and other aspects of roof structures regulated under §§ 411.3 through 411.6, if the Applicant can demonstrate that full compliance would be 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 provided the intent and purpose of the Zoning Regulations are not materially impaired, and the light and air of adjacent buildings are not adversely affected.

B. Description of Roof Structure Relief Requested

As described above, the Applicant's proposed roof plan includes two roof structures. The main roof structure has a height of 18'-6" and meets the 1:1 setback requirement from the exterior walls facing both 5th and I Streets, as required by Section 770.6(b). However, due to the

shape and configuration of the building, the need to provide efficient elevator circulation within the building and access to the rooftop, and the inability to get setback relief from exterior walls that adjoin a public street due to federal restrictions under the 1910 Height of Buildings Act, the main roof structure is not setback from the exterior walls of the open court that opens onto the alley. The second roof structure, a separate egress stair proposed at the east end of the roof with a height of 18'-6", meets the 1:1 setback requirement from all exterior walls. However, the egress stair is separated from the main roof structure rather than placed within one enclosure as required by Section 411.3.

1. Roof structure setback (§770.6(b))

Due to the shape of the building and width of the two building wings, full compliance with the setback requirements for the main roof structure would be impracticable as it would cause considerable operating difficulties and result in non-compliant setbacks along exterior walls that face public streets, which is not permitted under the federal 1910 Height of Buildings Act. The proposed L-shape of the building, and width of the building wings, which are approximately 66'-0" wide, are common in residential and hotel projects as it allows use of industry standard depths for dwellings and guest rooms. In addition, it allows dwellings and guest rooms to be efficiently configured along a double-loaded corridor with a centrally located main circulation core (elevator and egress stair).

For the proposed project, the main circulation core will be centrally located where the two building wings come together near the corner of the building. In addition, the Applicant has shifted the core toward the back side of the building to minimize disruption to internal building circulation, maximize the amount of outwardly focused active program space, and meet the 1:1

setback along 5th and I Streets. The placement of the core for these reasons causes the non-compliant roof structure setback along the court on the back side of the building.

Having to shift the core to the south and west to meet the 1:1 setback requirement along the court would cause significant operating difficulties as it would cut off, or require significant reconfiguration of the circulation corridor on each floor of the building. In addition, shifting the core from its proposed location would result in substantial disruption to the hotel lobby space, impact the Applicant's ability to utilize an efficient double-loaded corridor configuration, cause a loss of dwellings and guest rooms, and create non-compliant setbacks along 5th and I Streets.

The requested special exception from the roof structure setback and uniform enclosure requirements can be granted without materially impairing the intent and purpose of the Zoning Regulations, and without adversely affecting the light and air to adjacent buildings. The general intent of the provisions regulating the location, design, number, and other aspects of roof structures is to establish a reasonable degree of control with regard to ensuring adequate light and air to neighboring properties, establish a level of architectural consistency, and to minimize visual impacts. The requested setback relief for the main roof structure is consistent with this stated intent as it will not adversely affect the light and air to neighboring properties as a result of the required setbacks being provided from all surrounding streets, and the main roof structure being separated from the neighboring property to the east by 27'-0", from the property to the north by 18'-6" to 36'-9", and from the property to the west, across 5th Street, by approximately 110 feet. In addition, the main roof structure is removed from the north lot line along the public alley by the large open court provided on the back side of the building a distance of approximately 50 – 68 feet. Finally, having two separate roof structures rather than providing a single uniform enclosure will avoid having unnecessary mass on the rooftop of the building,

thereby minimizing view of the roof structure especially from the important Massachusetts Avenue corridor.

2. Roof structure uniform enclosure (§411.3)

Compliance with the requirement that all roof structures be placed in a single enclosure would also be impracticable as it would unnecessarily add to the overall mass and perceived height of the building's mechanical penthouse. The location of the standalone egress stair is a function of the stairway below which is dictated by the building code. Having to extend the main roof structure enclosure to include the egress stair would require construction of unnecessary screen walls or an enclosed corridor that would only increase views of the roof structure from public streets, especially views from the south along Massachusetts Avenue, and have impacts on views, light, and air for properties to the north.

3. Penthouse use (§411.4(c))

According to the Section 411.4(c) of the proposed penthouse regulations, nightclub, bar, cocktail lounge, or restaurant uses are only permitted in a penthouse by special exception pursuant to the Section 3104, which requires a showing that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to adversely affect the use of neighboring property.

The requested special exception to allow a nightclub, bar, cocktail lounge, or restaurant use within the penthouse of the proposed building is in harmony with the general purpose and intent of the Zoning Regulations. Specifically, one of the principle objectives of the Mount Vernon Triangle District is to “promote a lively, mixed-use and high density Mount Vernon Triangle neighborhood...” (§1720.1(b)). This type of rooftop use will contribute to the

ongoing revitalization of the neighborhood, add vibrancy to the Massachusetts Avenue corridor, and provide an opportunity to experience the corridor from a unique perspective.

The requested relief can be granted without adversely affecting the use of neighboring property in accordance with the Zoning Regulations. In this case, the most immediately affected properties are the Applicant's apartment units located directly beneath the proposed rooftop use. With respect to adjacent properties to the north, the Subject Property is buffered from adjacent properties by a vacant lot and the existing public alley. In addition, as shown on the roof plan, the proposed penthouse use is oriented toward the south and will not be visible from neighboring properties to the north. To the south, across Massachusetts Avenue, the Subject Property is separated from the closest residential use by more than 250 feet. To closest property to the south is currently improved with an office building. The property immediately east of the Subject Property will contain an apartment house, which is currently under construction, with a height of 110 feet, twenty feet lower than the building proposed by the Applicant. While the neighboring building will contain rooftop community recreation space, the majority of this space will be located on the east side of the roof, with mechanical space located closest to the Subject Property. Finally, the requested penthouse use will not adversely affect the neighboring property to the west as it is separated from the Subject Property by 5th Street

VI.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

The Applicant is requesting area variances from the requirements of Section 774 (rear yard), Section 776 (closed court), Section 2101.1 (minimum parking), and Section 2117 (parking access). As described above, the Applicant is proposing to construct a mixed-use building containing hotel and apartment house uses on the Subject Property with approximately 175 sleeping rooms and 48 dwelling units.

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 affected by exceptional 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, the Applicant meets the three prongs of the area variance 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 may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Subject Property is affected by several exceptional conditions that individually and collectively make it practically difficult to comply with the Zoning Regulations. As previously noted, the Subject Property is a corner lot fronting along 5th and I Streets, NW, and has a land area of approximately 20,614 square feet which is small considering the intend mix of uses and permitted lot occupancy. Furthermore, the Subject Property has an unusual shape, having an irregular "L"-shape that extends behind the adjacent properties to the north, and a northern lot line that has several odd jogs along the portion adjacent to the alley.

The Subject Property also has unique access constraints. As a result of the site's corner location and the depth of the abutting properties to the north and east, alley access is concentrated at the northeast corner of the property, where only a small portion of the northern lot line actually abuts the alley. In addition, access is further constrained as the limited amount of alley frontage has an irregular lot line created by the intersection of the north-south and east-west portions of the alley, with the north-south portion being only 20-feet wide and shared with two other properties to the north. These access constraints are a result of subdivisions that have occurred over a long period of time since the original subdivision of the Square. As can be seen on the 1909 Baist Map, attached hereto as Exhibit H, the Subject Property is actually made up of a collection of much smaller lots that once existed, with two lots fronting on the alley, Lots 40 and 41, and almost all of the lots along 5th and I Street having no alley access. As described below, these constrained alley conditions severely limit how the Applicant can provide access to parking and loading.

The Subject Property also possesses several unique subsurface conditions resulting from its historic use. As noted above, the property is located within the Mount Vernon Triangle Historic District, and is specifically identified as having known archeological artifacts that, as stated in the National Register of Historic Places nomination form for the Historic District and the attached HPRB staff report, could provide new and useful information on the living conditions of the poor and under-employed African Americans that resided in the alley behind the Subject Property, Prather Alley, as compared to the working-class white immigrants who occupied the dwellings facing the public streets. As discussed in more detail below, these unique conditions will require the Applicant to carry out excavation in accordance with specific District guidelines. While the Applicant is pleased to undertake these measures, this will impact cost and

construction timing due to additional steps required in carrying out the excavation, as well as additional documentation and reporting.

In addition to the unique archeological conditions described above, the Subject Property is also affected by shallow ground water and subsurface contamination that will require special measures during construction, and even after the proposed building is complete. According to a Geotechnical Engineering Report (the “Geotechnical Report”) prepared for the Subject Property, an executive summary of which is attached hereto as Exhibit I, groundwater was encountered at depths between 17 – 33 feet below surface grade. As currently designed, the proposed building will extend approximately 42 feet below grade; therefore, groundwater will be 9 – 25 feet above the proposed lowest level of the building. According to the Geotechnical Report, a greater volume of water inflow into the excavation will occur thus requiring significant dewatering of the site during construction, as well as subdrainage below the floor slab and behind the exterior below-grade walls after construction. The Geotechnical Report also indicates that “greater than normal” trenching and sumping will be required in order to control groundwater.

The need for the Applicant to carry out significant dewatering during and after construction will be further complicated by groundwater contamination that has been confirmed to exist on the Subject Property. In addition to the Geotechnical Report, the Applicant has conducted a Groundwater Quality Investigation (the “Groundwater Report”), attached hereto as Exhibit J. The Groundwater Report was prepared to evaluate the current site conditions with respect to potential soil and groundwater contamination resulting from prior uses at the Subject Property, which have included dry cleaning, auto repair, and a printing / engraving uses, as well as past and present uses on adjacent and nearby properties.

As discussed in Groundwater Report, elevated levels of multiple volatile organic compounds (VOCs) were found within the soil at levels that exceed applicable standards, including benzene, which was found at a concentration well above the District Department of Energy and Environment (DOEE) soil screening standard. Benzene was also detected within groundwater samples at levels that exceed the allowable Washington Area Sewer Authority's (WASA) discharge level. As a result of the soil and groundwater contamination identified at the Subject Property, the Groundwater Report states that "disposal of excavated fill materials may be problematic due to odors and random pockets of impacted soil." In addition, the report states that "in order to maintain compliance with the WASA permitted discharge standards, groundwater treatment (e.g. with a carbon filtration system) may be necessary prior to discharging groundwater from a dewatering system during construction and/or from a permanent subslab underdrain system post construction."

Another exceptional characteristic of the Subject Property is that it is currently owned by the District of Columbia, and the Applicant was selected through a competitive process and is required to meet certain District of Columbia policy goals and requirements, which are described in the RFEI. Most notably, the RFEI's Transportation Planning Framework section stipulates that the Subject Property "presents opportunities and challenges from a transportation perspective....," further stating that "[District Department of Transportation] supports minimizing parking due to the constraints of site access (existing traffic) and the transit access which offers other transportation opportunities." Furthermore, the Development Program section of the RFEI encouraged applicants to submit proposals that, among other things, "include an appropriate amount of parking that reflects the project's adjacency to multiple Metro Stations."

Finally, while the proposed development would typically not be subject to the inclusionary zoning (IZ) provisions of the Zoning Regulations due to its location within the DD Overlay, per the conditions of the RFEI, the Applicant is required to provide an amount of affordable housing that is equivalent to the IZ requirements. The Applicant will meet this requirement through a joint venture with a District-based small business enterprise to construct a new, off-site, senior affordable residential development at the intersection of V Street and Martin Luther King Jr. Avenue, SE, consisting of approximately 64 units.

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

To meet the standard for practical difficulty, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider “... a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’....” *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

1. Minimum Rear Yard (§774)

As stated above, developments within the C-2-C District are required to provide a rear yard of 15 feet. The front of the proposed building is considered to be along 5th Street, thereby making the Subject Property's east lot line the rear lot line for purposes of zoning. The strict application of the rear yard requirement to the proposed mixed-use project would result in a practical difficulty for the Applicant. The proposed building footprint is already constrained considering the Subject Property's small size in relation to the proposed use, the maximum permitted lot occupancy of 80%, and the above described efficient configuration of the proposed dwelling units and guest rooms along double-loaded corridors within two, 66-foot wide building wings. Having to provide the required 15-foot rear yard along the full length of the east lot line would further constrain the allowable footprint and result in a loss of approximately 16 hotel guest rooms and approximately eight dwelling units. This equates to a substantial loss of approximately 9% of the hotel and 17% of the apartment house programs. In addition, it would require the Applicant to shift the loading facilities 15 feet to the west which would impact the back of house program on the ground floor, create conflicts with the entrance to the proposed parking elevator system, and make access to the loading area more complex given the constraints on alley access and limited area for truck maneuverability. Finally, provision of a rear yard would result in an undesirable 15-foot gap in the street wall along I Street, and open up views to the alley from I Street and Massachusetts Avenue. This would also result in inferior urban design and inconsistency in the street wall within the historic district.

2. Closed Court (§776)

The strict application of the closed court requirements of Section 776 also gives rise to a practical difficulty due to the shape of the Subject Property, and specifically as a result of the irregular north lot line. As described above, the Subject Property's north lot line follows an

irregular path with several odd jogs adjacent to the alley that results in an extremely narrow notch that is too small for the Applicant to build on in any meaningful way. Consequently, the north wall of the proposed building does not encompass this area which technically results in a closed court, as that term is defined in the Zoning Regulations, that is only four feet wide and approximately 24 square feet in area. The height of the building adjacent to the closed court is approximately 16'-9", which results in a court width requirement of 5.6 feet and a minimum area requirement of 250 square feet. To meet the width and area requirements, the Applicant would either need to eliminate the closed court by extending the building into this exceptionally small area, or reduce the footprint of the building to allow this area to be considered part of the open court that opens onto the alley. Both of these options would be unnecessarily burdensome for the Applicant. First, considering the extreme narrowness of this area the only option available to eliminate the court is to extend an unnecessary wall or cantilevered covering into the area. In addition to not providing any additional value to the project, elimination of the closed court will possibly adversely affect the property to the north which likely crosses this portion of the Subject Property to access the alley as it only has six feet of actual alley frontage.

Second, having to reduce the building footprint to make this area part of the open court would eliminate one of the proposed parking elevators, which would significantly reduce the Applicant's ability to efficiently operate the below-grade parking garage by 50 percent, or require relocation of the parking elevator all together, which would impact the proposed loading facilities and truck maneuverability and adversely impact important back of house program space located adjacent to the loading area.

3. Minimum Parking (§2101.1)

As described above, based on the proposed building program the Applicant is required to provide a total of 137 parking spaces. However, as a result of the small size and unique subsurface condition of the Subject Property the Applicant is only able to provide 92 parking spaces, or 67% of the minimum requirement. The parking is proposed on one level of below-grade parking with two vehicles stored per parking space, one stacked above another. The parking will be accessed using an elevator system that is accessed from the alley.

In addition to being contrary to the direction given by DMPED in the RFEI, the strict application of the minimum parking requirement would result in a significant burden to the Applicant. As described above, a modest-sized ballroom, meeting, and pre-function spaces will be located immediately below the ground floor which is anticipated to be used primarily by groups that are also staying at the hotel. The one level of parking will be located below the ballroom level, beginning approximately 25 feet below grade and extending to approximately 42 feet.

To provide the full complement of required spaces without having to excavate deeper than already planned, the Applicant would have to eliminate the proposed ballroom and meeting spaces which would significantly impact the viability of the hotel operation. According to information provided by the anticipated hotel operator, SLS Hotels, the proposed hotel cannot be successful without group and convention business, which is anticipated to make up between 25 to 30% of the hotel's total business. In addition, elimination of these spaces to provide additional parking would put the proposed hotel at a significant competitive disadvantage compared to other hotels considered to be within the proposed hotel's competitive set, which includes: The

Hay-Adams, Hotel Monaco, W Hotel, The St. Regis, The Mandarin Oriental, and The Ritz-Carlton. Information related to the number of guest rooms and the amount of event / meeting space available at these hotels is provided in the table below which was obtained from each hotel's respective website. Elimination of the ballroom and meeting space would force the future hotel operator to rely exclusively on transient (night-to-night) business rather than group business, which is known to be less stable and more challenging for operators to anticipate hotel performance. Also, marketing of such a hotel is much more difficult and less efficient as marketing to group business can target multiple guests at one time. Of note, the Board has previously acknowledged the lack of adequate meeting space and the impact this has on a hotel's ability to be competitive with other hotels as being a factor that can lead to a practical difficulty.² In addition, as discussed below in more detail, group business will have less impact on the surrounding neighborhood as a result of less nightly guest turnover and fewer vehicular trips.

Name	Meeting Space Range (sf)	Total Meeting Space (sf)	Number of Rooms	Meeting Space / Room
The Hay-Adams	391 - 3262	16,145	145	111.3
Hotel Monaco	384 - 3074	5956	183	32.5
W Hotel	192 - 6205	10924	317	34.5
The St. Regis	552 - 2508	11268	175	64.4
The Mandarin Oriental	Not Available	38313	400	95.8
The Ritz-Carlton	156 - 10578	38731	300	129.1
			Avg. Meeting Space (sf) / room	77.9
Proposed Hotel	~ 350 - 5500	~ 7650	175	43.7

Providing the required number of parking spaces by constructing an additional level of below-grade parking would also be unnecessarily burdensome to the Applicant in light of the substantial subsurface historic resources and soil and groundwater contamination known to exist at the Subject Property. With regard to historic preservation, based on correspondence with HPO

² See Page 6 of final order for BZA Application No. 17672, LHO Washington Hotel Four, LLC - "The Board concurs with the Applicant that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the property. Absent the proposed addition, the hotel at the subject property would be unable to create a larger meeting space that the Applicant testified was integral to the successful operation of the hotel."

staff, because the Subject Property is government owned the Applicant will need to conduct an archaeological survey in consultation with the District Archaeologist, and in accordance with the District of Columbia Guidelines for Archaeology Investigations, including development of a plan for unexpected discoveries. This will add complexity and cost to the excavation and construction of the proposed building due to, among other things, additional documentation, reporting requirements, multiple site investigations, and the use of controlled excavation techniques. In addition, deeper excavation to provide another level of parking could require the Applicant to construct additional underpinning of the adjacent historic structures depending upon the extent and condition of their foundations.

Finally, due to the soil and groundwater contamination at the Subject Property, constructing an additional level of parking would substantially increase the costs associated with soil screening and disposal, and groundwater treatment and discharge. As described above, according to the Groundwater Report disposal of excavated fill materials will require special handling due to VOC contamination. In addition, prior to discharging groundwater during and after construction the Applicant will be required to treat the contaminated groundwater with a carbon filtration system. As currently proposed, the Applicant estimates soil disposal costs to range between \$2.3 – 2.7 million, soil screening costs to be approximately \$84,000, and groundwater monitoring and treatment costs to be approximately \$115,000. Furthermore, an additional \$290,000 will be required for the installation of enhanced multi-layer subslab waterproofing.

Along with the added cost to construct the additional level of parking, there would also be substantial increases in the cost to treat and dispose / discharge additional contaminated soil and groundwater. One additional level of parking would require another nine feet of excavation,

or approximately 14,140 tons of material, and would extend the project timeline by approximately 2 - 3 months. The additional 14,140 tons of excavated soil would increase disposal costs by at least \$452,480. In addition, as a result of the extended excavation period, soil screening costs would increase between \$28K – 42K, and groundwater monitor and treatment costs would increase \$40K – 60K.

4. Parking Access (§2117)

Finally, the strict application of the parking access requirements of Section 2117 would cause practical difficulties for the Applicant as a result of the small size, narrowness, and odd configuration and location of alley access to the Subject Property. As noted above, these factors severely limit where the required loading facilities can be located so as to maintain adequate and efficient truck maneuverability in and out of the alley, which consequently dictates where parking access can be located. The proposed location of the loading facilities will allow safe and efficient back in / head out truck access, as opposed to other locations, such as where the parking elevator is proposed, that would require additional maneuvering.

Pursuant to Section 2117, all required parking spaces must be clearly striped and lined (§2117.3), and accessible at all times via graded and unobstructed private driveways that form an all-weather surface (§2117.4). Providing an all-weather driveway / ramp that is located at the same location as the proposed parking elevator would require a substantial reduction in the ground floor residential lobby and necessary back of house support space. In addition, providing a ramp to a below grade parking garage immediately below the ground floor would require the construction of three full levels of parking and, as discussed above, significantly impact the successful operation of the hotel by eliminating the proposed ballroom and meeting space.

Providing an all-weather ramp to parking that begins below the ballroom level would require a ramp that is approximately 225-feet long, however, providing such a ramp rather than the parking elevators would be substantially burdensome as the ramp would need to wind around the small and narrow site and still result in a significant reduction to the size of the ballroom and virtually eliminate all of the meeting space. Finally, if constructed to the same depth as the proposed garage, this approach would result in fewer parking spaces than the Applicant is currently proposing.

Finally, in order to maximize the number of parking spaces that are provided within the proposed parking garage, the Applicant proposes to use a parking lift system, where two vehicles are stored in the same parking space, one above the other. Information on the type of parking lift system that could be used is attached as Exhibit K. This arrangement requires does not comply with the striping and access requirements of Section 2117. The strict application of these requirements would require the Applicant to excavate and construct another level of parking only to have the same number of parking spaces as proposed. In addition to the increased construction costs, as discussed above, additional excavation would also be substantially burdensome as it would substantially increase the already significant costs associated with soil and groundwater treatment and disposal. Incurring such costs would be unreasonable only to end up with the same number of the parking spaces that is already being proposed.

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 variances can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the Zone Plan. With regard to the Zone Plan, the intent of the rear yard requirement is to protect the public good by providing open space and adequate light and air to buildings. The requested rear yard

variance will not substantially impair what the rear yard requirement is intended to achieve given the Subject Property's corner location and the large open court that is provided on the alley side of the building which will ensure that adequate light and air are available to the Subject Property and neighboring properties. Furthermore, not providing a rear yard along the east lot line of the Subject Property will have the same outcome had I Street been identified as the front of the building and the building was constructed without a side yard along the east lot line, which is permitted in the C-2-C District. Therefore, the abutting property will not be adversely impacted and there will be no substantial detriment to the public good. In fact, not providing a rear yard will avoid the creation of a 15-foot gap in the street wall along I Street, an important urban design consideration for establishing a consistent, walkable streetscape, and will avoid exposing views of the alley from I Street and Massachusetts Avenue.

The requested variance from the closed court requirements can also be granted without causing substantial detriment to the public good and without compromising the Zone Plan. The noncompliant closed court is a result of the Subject Property's irregular north lot line and is unusable for any building purpose. While the Applicant could potentially devise some building feature that could eliminate the closed court, doing so would be unnecessarily burdensome for the Applicant, and would constrain alley access for the abutting property to the north, which only has six feet of actual alley frontage. Finally, the closed court requirements exist primarily for ensuring adequate light and air are provided to the interior spaces that face, or open onto, the court. In this instance, no hotel guest rooms or dwelling units face the closed court. Rather, the court is purely a result of an anomaly in the Subject Property's north lot line and only the north wall of the proposed parking elevator abuts this space.

Regarding the requested parking relief, the variance from the minimum parking requirement will not have a substantial impact on the public good as the number of parking spaces proposed by the Applicant is an appropriate amount considering the multitude of transportation alternatives available in close proximity to the Subject Property, including multiple Metro Stations and Metrobus routes; DC Circulator; taxi; Uber, Car2Go, and Capital Bikeshare. In addition, the proposed building is located in a very walkable and bike-friendly area of the city. In fact, according to the Walk Score website, the Subject Property has a Walk Score of 98, which is considered a “Walker’s Paradise,” a Transit Score of 100, a “Rider’s Paradise,” and a Bike Score of 91, a “Biker’s Paradise.” These statements regarding the adequacy of the proposed 92 parking spaces, and the extensiveness of nearby transportation options, are further supported by the results of the Applicant’s “5th and I Streets Hotel and Residential Parking and Loading Statement” (the Transportation Statement”), attached hereto as Exhibit L.

As part of the Transportation Statement, vehicle trips were calculated for the project. Given the expected upscale nature of the proposed hotel and apartment house, at DDOT’s request, restaurant trips were generated separately from the hotel, and an additional 10% mode share for taxi, Uber, and other ridesharing services were included in the trip generation analysis in order to provide a more conservative estimate. Despite the conservative nature of the trip generation analysis, the proposed project is still only expected to generate a total of 34 auto trips during the morning peak, and 51 auto trips during the afternoon peak. Based on this expected number of trips, and after taking into consideration the capacity of the proposed parking elevator and that parking at the development will be valet only, the Transportation Study concludes that the proposed number of parking spaces will adequately serve the needs of the proposed

development, that minimal queuing is expected, and that any queuing that does occur can be accommodated onsite outside the parking elevator entrance.

It is instructive that under the proposed Zoning Regulation Rewrite (ZRR) there would be no minimum parking requirement for the proposed development, clearly demonstrating the present day approach to multi-modal transportation planning and growth in public transportation use, as opposed to the auto-centric model upon which the current Zoning Regulations are predicated. Nonetheless, notwithstanding the support expressed by DMPED and DDOT for providing minimal parking on the site, the many transportation alternatives that exist in close proximity to the Subject Property, and the Transportation Study results that clearly show 92 parking spaces will satisfy the project parking demand, the Applicant has committed to several Transportation Demand Management (TDM) measures to further reduce the number of trips to the Subject Property. These TDM measures are fully described in the Transportation Report. In addition, the Applicant has received favorable responses from nearby parking garage operators as to their capacity to accommodate any additional valet or self-parking needs should the occasional need arise. DMPED's support of a transit-oriented development, and as a corollary to minimizing parking, was translated into District policy for the award of the development rights for this site, and as previously stated, made part of the selection criteria.

Finally, the variance from Section 2117 to allow the proposed parking garage to be accessed via a parking elevator, rather than an all-weather surface driveway / ramp, and the provided parking spaces to be stacked, one over the other, through the use of a parking lift system will not cause substantial detriment to the public good. The proposed parking access is appropriate given the constraints on alley access, and parking at the proposed development will be managed solely through a valet service. Therefore, the potential for queuing will be minimal,

and all vehicle movements to access and exit the parking elevator will be accommodated onsite, and not impact circulation within the alley or access to other properties along the alley. Lastly, in the event there is queuing of vehicles during times of egress, the queuing will occur within the garage itself. If queuing occurs during times of ingress, there is sufficient overflow capacity onsite in the open court provided in the northeast corner of the Subject Property. In both instances, the queuing will be managed by the valet operation rather than having individual drivers trying to access and egress the garage.

VII.
WITNESSES

- A. Donahue Peebles, Development Associate, The Peebles Corporation
- B. Siti Abdul-Rahman, AIA, Principal, WDG Architecture
- C. Erwin Andres, Principal, Gorove / Slade
- D. Shane L. Dettman, AICP, Director of Planning Services, Holland & Knight LLP

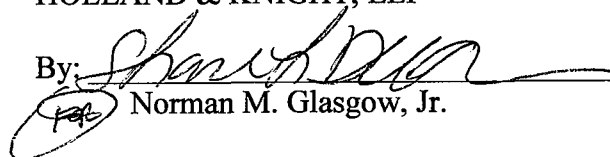
VIII
CONCLUSION

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

Respectfully submitted,

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