

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

901 5th Street, NW (Square 0516 Lot 0059)

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 an application pursuant to 11 DCMR §§3104.1 and 3103.2 for a special exception from the roof structure requirements of Section 770.6(b) and 411.3; and area variances from (i) the rear yard requirements of Section 774, (ii) the closed court requirements of Section 776, (iii) the minimum parking requirements of Section 2101.1, and (iv) the parking access requirements of Section 2117, to allow development of the Subject Property with a mixed-use building containing hotel and apartment house uses in the DD/C-2-C/MVT District.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the District of Columbia Board of Zoning Adjustment (the “Board”) no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background: Subject Property, Surrounding Context, and Zoning

Square 516 is located in the northwest quadrant of the District of Columbia and 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 of the site.

The Subject Property is located in the southwest corner of the Square at the intersection of 5th and I Streets. The small, irregularly shaped lot consists of approximately 20,614 square feet and 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. Directly south of the Subject Property, across I Street, is a small, triangular federal reservation, Reservation 74, which is bounded on the south by Massachusetts Avenue, which is 160-foot wide.

The neighborhood surrounding the Subject Property can be characterized as high-density, mixed-use comprised of commercial, residential, and retail and service uses. The area has been undergoing a major transformation for several years with numerous large residential and hotel projects completed to the north. The I-395 air-rights development, known as Capitol Crossing, is currently underway to the southeast of the Subject Property, as are several developments to the west along 7th Street and Massachusetts Avenue. The Subject Property is located in close proximity to several attractions and is well served by public transportation. The Washington Convention Center, Mount Vernon Square, Judiciary Square, Chinatown, and the Verizon Center are all located within 0.3 miles. The Gallery Place–Chinatown Metrorail Station is located approximately 0.2 miles to the southwest. 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 bus routes, as well as the DC Circulator which operates along Massachusetts Avenue and 7th Street.

The Subject Property is zoned C-2-C and is also 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. Finally, the site can be developed to a maximum lot occupancy of 80%.

II. Proposed Development

The Applicant proposes to develop the Subject Property with a mixed-use building containing hotel and apartment house uses. The hotel use will occupy floors 1 – 8 of the building and contain approximately 153 sleeping rooms and approximately 5,500 gross square feet of meeting / function space. The hotel will also contain accessory restaurant and café uses on the ground floor. The proposed apartment house will occupy floors 9 – 12 and contain approximately 52 dwelling units. Above the ground floor the building is “L”-shaped, comprised of two rectilinear, wings with the shorter wing along 5th Street. This configuration is common for hotel and residential developments as it facilitates the efficient layout of the building with guest rooms and/or dwelling units organized along double-loaded corridors. The building’s main circulation core (elevators and egress stairs) is centrally located where the two wings come together. The core has been placed toward the back of the building to maximize the amount of program space that is oriented outward toward 5th and I Streets.

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, and a lot occupancy of 80%. The building will consist of approximately 174,278 gross square feet and have an overall FAR of 8.4. The proposed hotel use will consist of approximately 108,346 gross square feet, or 5.25 FAR. The residential component of the project will consist of approximately 65,932 gross square feet, or 3.19

FAR. In addition, to obtain the density bonus available under the DD Overlay, the Applicant is providing 1.35 FAR (offsite) devoted to affordable housing.

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. The open court is located on the back side of the building facing the alley and has a width of 52 feet where, at most, only 21 feet is required. The closed court is located along the north side of the building and is created by a very small jog in the property line that creates an area too small to build on. While the Zoning Regulations require a minimum closed court area of 250 square feet, the small jog in the property line results in a closed court area of only 24.3 square feet; and therefore, a variance is required. Finally, there is no minimum side yard requirement within the C-2-C District, unless a side yard is provide. The proposed building does not have any side yards.

The roof level of the building will contain two roof structures. The main roof structure contains the elevator cores for both the hotel and apartment house, mechanical equipment, and a small amount of amenity space that is accessory to the outdoor roof terrace. The second roof structure is a standalone egress stair located at the east end of the roof. Both roof structures meet the 1:1 setback requirement from the exterior walls facing 5th and I Streets. The standalone egress stair is also properly setback from the courtyard wall facing the alley. However, the main roof structure does not meet the setback requirement along the courtyard; 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.

Access to parking and loading will be provided off the alley at the northeast corner of the Subject Property. With regard to parking, the minimum requirement for a hotel in the C-2-C District is one space for each two rooms usable for sleeping, plus one space for each 150 square feet (sq ft) of floor area in either the largest function room or exhibit space. Based on the intended program of the proposed hotel this equates to a hotel parking requirement of 114 spaces. For the proposed apartment house, the Applicant is required to provide one parking space for each four dwelling units, which based on the current number of dwelling units results in a requirement of 13 spaces, for a total building requirement of 127 parking spaces. Due to the irregular shape and small size of the Subject Property, and the limited amount of alley access, the Applicant is only able to provide 86 parking spaces. In addition, these exceptional conditions make it difficult to provide access to the below-grade parking in a manner that satisfies the parking access requirements of Section 3117. Thus the need for the requested parking variances.

Pursuant to 2201.1, the Applicant is required to provide loading facilities for both the residential and hotel components of the building. Collectively, the loading requirement for the building consists of a 55-foot loading berth; a 30-foot loading berth; two, 20-foot service delivery spaces; and a 200 sq ft loading platform and 100 sq ft loading platform. The Applicant will provide the requisite loading facilities which will be located on the back side of building and accessed via the existing alley.

III. The Applicant Meets The Burden of Proof For Special Exception Relief

Pursuant to Sections 3104.1 and 411.11, the Applicant is requesting a special exception 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)).

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 of the building, which is designed to maximize efficient hotel and residential circulation and room configuration, and the desire to minimize visibility from public streets, the main roof structure is not properly setback from the courtyard walls facing the alley. The second roof structure, a standalone egress stair, is proposed at the east end of the roof, has a height of 18'-6", and is properly setback 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.

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.

Full compliance with the setback requirements for the main roof structure would be impracticable as it would create non-compliant setbacks along exterior walls that face public streets. Due to the narrowness of the two building wings, shifting the main roof structure to the south and/or west to meet the setback requirement along the courtyard would result in the roof structures being located directly at the edge of the roof along 5th and I Streets. This would also create substantial operating difficulties as it would relocate the elevator cores and impact the efficient double-loaded corridor layout of the building.

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 structures from public streets, and impact the light available to properties to the north.

The requested special exception 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.

IV. The Applicant Meets The Burden of Proof for the Requested Area Variance

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 153 sleeping rooms and 52 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 exceptional conditions inherent to the Subject Property include its irregular shape, narrowness, and small size relative to the intended uses. In addition, the Subject Property has unique access constraints arising from its corner location, the depth of the adjacent properties, and the configuration of the alley where it abuts the Subject Property.

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 intended mix of uses and the permitted lot occupancy. Furthermore, the Subject Property is unusually shaped, having an irregular “L”-shape, and a northern lot line that has several odd jogs toward the rear of the site.

The Subject Property also has unique access constraints. As a result of the site’s corner location and depth of the abutting property to the north, alley access is concentrated at the northeast corner of the property and 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 happens to be located at the point where the alley direction changes from east-west to north-south, with the north-south portion being only 20-feet wide and shared with two other properties to the north.

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

1. 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 as a result of the Subject Property’s small size, the maximum lot occupancy of 80%, and the need to design the building for efficient circulation and access to light and air. 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 28 hotel sleeping rooms and approximately eight dwelling units. It

would also create a 15-foot gap in the street wall along I Street and open up views to the loading area.

2. Closed court (§776)

The strict application of the closed court requirements of Section 776 also gives rise to a practical difficulty as a result of the irregular shape of the Subject Property, and specifically along the north lot line. As described above, the Subject Property's north lot line follows an irregular path that results in an extremely narrow "fin" that is surrounded on all sides by the neighboring property and 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 by the Zoning Regulations. The height of the building adjacent to the closed court is approximately 16'-9", which computes to a court width requirement of 5.6 feet and a minimum area requirement of 250 square feet. To meet both of these requirements, the Applicant would either need to eliminate the closed court by extending the building into this exceptionally small and narrow portion of the Subject Property, 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, eliminating the closed court by building in this area would involve additional costs to the Applicant without any added benefit to the building or the surroundings. Second, having to reduce the building footprint to make this area part of the open court would substantially impact the ability to provide the proposed parking lift system in this location, which is essentially the only area it can be located without impacting the Applicant's ability to provide the required loading facilities.

3. Parking and Parking access (§2101.1 & §2117)

Due to the size and shape of the Subject Property, and the limited and oddly configured alley access, the strict application of the minimum parking, and parking access requirements of Sections 2101.1 and 2117 would result in practical difficulties for the Applicant. As described above, based on the proposed building program the Applicant is required to provide a total of 127 parking spaces. However, as a result of the small size of the Subject Property, the Applicant is only able to provide 86 parking spaces. 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 a lift system that is accessed from the alley.

At approximately 20,614 square feet, the Subject Property is relatively small for a mixed-use project of this type. With a maximum lot occupancy of 80%, this results in an allowable building footprint of only 16,500 square feet within which to accommodate necessary lobby space for both the hotel and residential uses; elevator cores; fire control and other required mechanical and operational spaces; loading; and access to below grade parking. In addition, the small size of the lot has required the Applicant to locate all of the required hotel exhibit / function space, including back of house support space, and residential amenity space below grade, which results in the proposed one level of parking to be located two levels underground, or approximately 25 feet to the top of the garage and approximately 41 feet to the garage floor. Thus, requiring the Applicant to provide parking that is sufficient to meet the minimum zoning requirements would necessitate further excavation for an additional level of parking.

Finally, the strict application of the parking access requirements of Section 2117 would also result in practical difficulties for the Applicant. As a result of the limited and oddly configured alley access at the northeast corner of the Subject Property, and the narrowness of the site, the Applicant is limited in where it can locate the required loading facilities which affects the location

of the below-grade parking access. Due to these limitations, the proposed location of the loading facilities is the only feasible option that can accommodate the truck maneuvers necessary to back in and pull out of the loading berths. This results in the parking access having to be located where the parking lift is currently proposed.

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). As previously stated, as a result of the small size of the Subject Property, the proposed parking is located below the hotel's exhibit / function space. To access the parking in a manner that is consistent with the Zoning Regulations, an all-weather ramp that is approximately 225-feet long would be required. However, providing such a ramp rather than the proposed parking lift is not feasible as the ramp would need to wind around the small and narrow site resulting in the elimination of the lower-level function and amenity space. Finally, the Applicant's parking plan includes stacked parking, where two vehicles are essentially stored in the same parking spot with one on a rack above the other. This arrangement is inconsistent with the striping and access requirements of Section 2117. The strict application of these requirements would require the Applicant to excavate another level of parking only to have the same number of parking spaces as proposed.

C. No Substantial Detriment to the Public Good Nor 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 chosen 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 consist, walkable streetscape, and will avoid exposing views of the loading facilities and alley.

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 property to the north which only has six feet of actual alley frontage. Finally, the closed court requirements exist primarily for purposes of ensuring adequate light and air are provided to the spaces that face 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 lift 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 Subject Property is accessible by several modes of transportation. In addition, given the modest size of the hotel's function space it is unlikely that events will generate a large volume of vehicular traffic. Rather, it is more likely that visitors will arrive by public transportation or other alternative ride services such as taxi or Uber.

Finally, the variance from Section 2117 to allow the parking to be provided in a stacked (one over the other) configuration and accessed via a parking lift rather than a ramp will not cause substantial detriment to the public good. The proposed parking access is appropriate given the constraints on alley access, and operation of the proposed parking lift will be managed by hotel staff. Finally, all vehicle movements to access and exit the parking lift will be accommodated onsite and not impact circulation within the alley.