



July 12, 2018

Meridith H. Moldenhauer

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: Birchington, LLC – Modification of Significance (BZA Case #19169C)
Zoning Administrator Correspondence Confirming Zoning Relief**

Chairperson Hill and Honorable Members of the Board:

On behalf of the Applicant, Birchington, LLC (the “Applicant”), please find enclosed correspondence and associated materials from the Zoning Administrator confirming the Applicant’s request for special exception loading relief as reflected in the revised self-certification Form 135 located at Exhibit #8 of the BZA record for the above-referenced case. The application is scheduled to be heard before the Board of Zoning Adjustment on July 25, 2018.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,

COZEN O’CONNOR

By: Meridith Moldenhauer

Certificate of Service

I hereby certify that on this 12th day of July, 2018, a copy of this letter, correspondence, and other documentation was served, via email, as follows:

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
Stephen.cochran@dc.gov

District Department of Transportation
55 M Street SE, Suite 400
c/o Jonathan Rogers
Washington, DC 20003
Anna.chamberlin@dc.gov
jonathan.rodgers2@dc.gov

Advisory Neighborhood Commission 6E
c/o Alexander Padro, Chairperson
6E05@anc.dc.gov

Advisory Neighborhood Commission 6E07
c/o Kevin Rogers, Chairperson/SMD Commissioner
6E07@anc.dc.gov



By: Meredith Moldenhauer

From: LeGrant, Matt (DCRA) [<mailto:matthew.legrant@dc.gov>]

Sent: Wednesday, July 11, 2018 3:11 PM

To: Mazo, Samantha L. <SMazo@cozen.com>

Cc: Moldenhauer, Meridith <MMoldenhauer@cozen.com>; Cochran, Stephen (OP) <stephen.cochran@dc.gov>

Subject: FW: 303-317 K Street NW - BZA Case No. 19169C - Modification Request to prior approval - Confirmation that Loading Relief can be approved pursuant to Special Exception pursuant to Subtitle C § 909.2 - BZA hearing on 7/25

Samantha Mazo:

By means of this email I agree with the analysis and summary in the below email, and as shown in the attachments, and specifically that:

- The Project proposes a new curb cut from 4th Street.
- Subtitle C § 909.2(a) permits the BZA to grant a special exception if “the applicant demonstrates that: The only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in this chapter, or in Chapters 6 or 11 of Title 24 DCMR.”
- The proposed curb cut would not conform to the DCMR Title 24 Chapter 11, or other requirements of DDOT’s Design and Engineering Manual (“DDOT’s DES”).
- Therefore, the requested Modification loading relief can be processed as a special exception because the 4th Street Curb Cut would not be in compliance with either Title 24 Chapter 11 or DDOT’s DES.

Please let me know if you have any further questions

DISCLAIMER: This email is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this email are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this email . Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This email is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this email based on the information submitted for the Zoning Administrator’s review. Therefore this email does **NOT** vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

Matthew Le Grant | Zoning Administrator, Office of the Zoning Administrator



From: Mazo, Samantha L. [<mailto:SMazo@cozen.com>]

Sent: Tuesday, July 10, 2018 7:11 PM

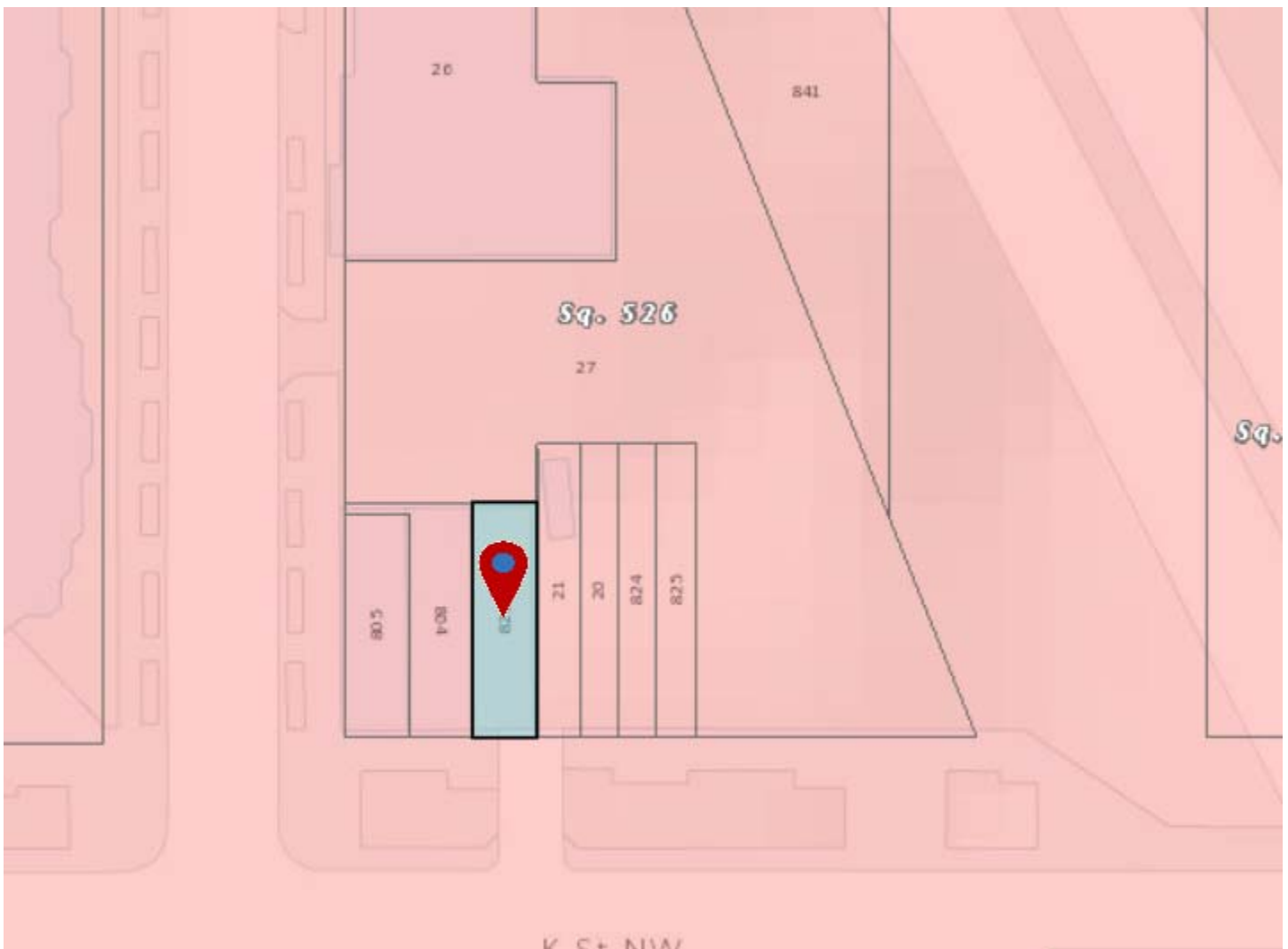
To: LeGrant, Matt (DCRA)

Cc: Cochran, Stephen (OP); Moldenhauer, Meridith

Subject: 303-317 K Street NW - BZA Case No. 19169C - Modification Request to prior approval - Confirmation that Loading Relief can be approved pursuant to Special Exception pursuant to Subtitle C § 909.2 - BZA hearing on 7/25

Dear Mr. LeGrant:

As a follow up to our discussion today (7/10), my firm represents Birchington LLC, the owner of the property at 303-317 K Street NW (Square 526, Lots 20-21, 804-805, 824-825, and 829) (the "Property"). A zoning map identifying the Property, which is entirely surrounded by Lot 27, is below.



Background on the Pending Modification request

In February 2016, the BZA approved Case No. 19169, which granted variance relief from the loading (one, 30'- loading berth), parking and rear yard requirements associated with a 130'-tall, 200-hotel room + 30 residential unit mixed-use project in the, then, DD/DD-HPA/C-2-C zone. A copy of the 2016 Order is attached here.

On May 17, 2018, Birchington LLC filed a Modification of Significance request with the BZA for the additional loading-related relief necessary for an all-hotel project of the same height, massing, etc (the "Modification Request"), which is being processed as BZA Case No. 19169 C.

In the Modification Request, Birchington has requested special exception relief pursuant to Subtitle C § 909.2 from the requirement for two, additional on-site 30'-loading berths and Subtitle C § 909.3 from the requirement for 12% maximum slope for driveways. These areas of relief have been identified in the Revised Self-Certification Form at BZA Exhibit No. 8, which is attached here. The Project will provide two-levels of below-grade parking and access to two, on-site service spaces via a new curb cut from 4th Street (the "4th Street Curb Cut"). The Modification Request is supported by the ANC and DDOT.

Property located within DDOT's Downtown Streetscape Area and curb cuts are regulated by DDOT's Design and Engineering Manual

The Property is located in DDOT's Downtown Streetscape Area as identified in the attached "Downtown Streetscape Regulations." Accordingly, curb cuts and driveways are regulated by DCMR Title 24 Chapter 11, in addition to other requirements of DDOT's Design and Engineering Manual ("DDOT's DES").

DCMR Title 24 § 1110.2 and § 1110.3 includes numerous requirements for curb cut/ driveways in the Downtown Streetscape area, including,

- (b) Driveway shall be a minimum width of twelve feet (12') and a maximum width of twenty-five feet (25');
- (c) The radius for curb returns for driveways shall be six feet (6');
- (d) There must be a minimum six feet (6') wide pedestrian safety island between two driveways that are more than twenty four feet (24') wide. This pedestrian island shall match the same material used for the sidewalk. It shall have a three feet (3') radius at the curb of the street;
- (e) All alleys are required to have a minimum width of twenty feet (20') and radius at curb shall be ten feet (10'). Driveway shall not be located within sixteen feet (16') of another driveway or alley;
- (f) **Driveway shall be at least eight feet (8') from the adjacent interior property line;**
- (h) Driveways shall be designed to avoid vehicle backing and vehicle waiting within the street;
- (i) Where the driveway provides access to a parking facility, the driveway shall provide a sufficient off-street storage area for vehicles waiting to enter the parking facility; and
- (i) Driveway shall have a maximum grade of twelve percent (12%) within the public space.

1110.3 **Driveways shall be located according to the Driveway Location Standards approved by the Director.**

Also, DDOT's DES includes its own requirements for curb cuts. In particular, Section 31.5.1 of the DDOT DES states: "A curb cut and/or respective portion of the driveway, including the flare or radius at the curb cut, must be within the public space abutting the same lot with the building or structure it is intended to serve."

Description of the 4th Street Curb Cut

The Property is a corner lot with no alley. The existing curb-cuts on K Street will be extinguished, and all vehicular and service access to the below-grade garage will be via the 4th Street Curb Cut.

As shown on the attached "flare of curb cut" image, the 4th Street Curb Cut is located directly adjacent to the northern property. Further, due to DDOT requirements, the 4th Street Curb Cut must be designed such that the "flare" of the curb cut apron cannot be provided within the Property's public space and must extend five feet into the public space of the adjacent property (Lot 27). The 4th Street Curb Cut must be in this location in order to accommodate the necessary below-grade parking garage circulation area as well as the need to provide provide sufficient on-street loading/ valet space along 4th Street.

30'- Loading Berths Cannot be Provided on Site

As explained in the Modification Request application materials and supported by DDOT, Birchington cannot provide the required 30'-loading berths on site. Indeed, the DDOT report for the Modification Request, which is attached here, states, "As part of BZA Order No. 19169, DDOT reviewed the feasibility of providing a 30-loading berth without back-in maneuvers across the sidewalk, as required by DDOT's Design and Engineering Manual, and found that the 30-foot berth could not be provided in a manner consistent with DDOT standards." Accordingly, Birchington has requested the necessary loading relief.

Loading Special Exception Criteria

In reviewing the Modification Request, the Office of Planning has requested confirmation that the loading relief can be processed as a special exception pursuant to Subtitle C § 909.2. A copy of this section is attached, but in relevant part, Subtitle C § 909.2(a) permits the BZA to grant a special exception if "the applicant demonstrates that: The only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in this chapter, or in Chapters 6 or 11 of Title 24 DCMR."

During our meeting today, you explained that special exception for loading relief under Subtitle C § 909.2 is appropriate in situations where there is no alley access and even when a curb cut would be possible with public space committee approval and supported by DDOT, the curb cut would not be in full compliance with Title 24 Chapter 11 or DDOT's DES.

Modification Request should be processed as a special exception because the 4th Street Curb Cut is not in full compliance with regulations in Title 24 Chapter 11 or DDOT's DES.

The Property has no alley access. Accordingly, all access must be from the 4th Street Curb Cut, which cannot be moved closer to K Street to satisfy either Title 24 Chapter 11 or DDOT's DES due to the below-grade parking garage layout and the necessary on-street loading and valet area that DDOT has supported.

First, the 4th Street Curb Cut does not comply with DCMR 24 § 1110.2(f) because it cannot be at least eight feet from the adjacent interior property line.

Second, the “flare” of the 4th Street Curb Cut extends 5-feet into the adjacent property’s public space. Therefore, it does not comply with Section 31.5.1 of the DDOT DES, which, as stated above, requires “... [the] flare or radius at the curb cut, [to] be within the public space abutting the same lot with the building or structure it is intended to serve.”

Accordingly, the 4th Street Curb Cut will “violate” regulations of both Title 24 Chapter 11 and DDOT’s DES.

For these reasons, the Modification Request’s loading relief can be processed as a special exception because even if the 4th Street Curb Cut would be possible (with public space approval), it would still not be in compliance with either Title 24 Chapter 11 or DDOT’s DES.

We would request your written confirmation as soon as possible. The BZA hearing is on July 25th, and the hearing notices have been posted citing the special exception relief.

Thanks in advance for your assistance with this matter. If you have any questions, please do not hesitate to contact me.

All the best,

Samantha



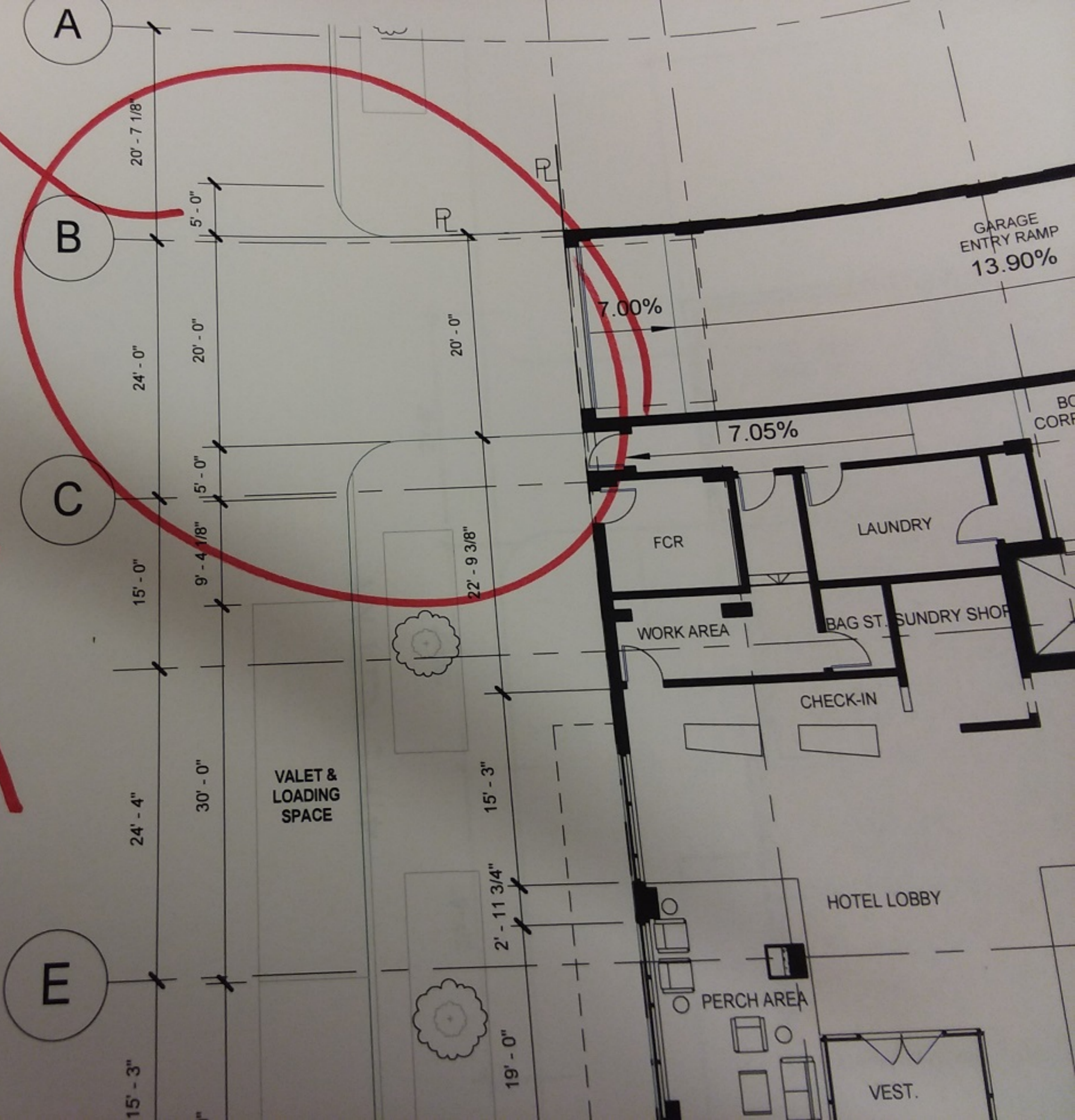
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Flare
cut of curb
not provided
within
public space
abutting
our property

4TH STREET NW





District Department of Transportation

Design and Engineering Manual

June 2017





District Department of Transportation

DISTRICT OF COLUMBIA

DEPARTMENT OF TRANSPORTATION



LEIF DORMSJO, DIRECTOR

SAMUEL ZIMBABWE, CHIEF PROJECT DELIVERY OFFICER

DAWIT MULUNEH, PE, CHIEF ENGINEER

SUZETTE ROBINSON, CHIEF OPERATIONS OFFICER

WASI KHAN, PE, CHIEF QUALITY ASSURANCE AND QUALITY CONTROL DIVISION

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

grades established to meet as closely as possible the existing grades of the abutting land parcels. The longitudinal grade should not be less than 0.3 percent.

Alley cross sections will be V-shaped with transverse slopes leading 2 to 9 inches above and toward a center V gutter that directs runoff to a catch basin, either in the alley itself or to the connecting street gutter system. The transverse slope or “dish” may be modified to meet existing features or conditions and to provide proper drainage. See DDOT’s **Standard Drawings** for details.

31.4.1. DDOT Requirements for Alleys:

- When entering and exiting any private or public space alley, all traffic must head-in and head-out from any District street. Vehicles are not allowed to back into a public alley from a District street.
- Private and public alleys must allow safe vehicular exit via a minimum 15-foot sight-distance from the edge line of the alley on a 45 degree angle from the property line to the back edge line of the sidewalk. If no sidewalk exists, then use the curb line of the street. No over-height fencing or vegetation over 42 inches in height at maturity is allowed within this area, excluding city trees.
- Curb radii for alleys must be 10 feet.
- All alleys must be flush with the grade of the sidewalk at the sidewalk crossing area. No step-down curbs or ramps are allowed at alley entrances.

31.5. Curb Cuts

- While curb cuts can be necessary to provide vehicular access to private property, DDOT aims to minimize their presence for the following reasons: A curb cut creates an additional conflict point between vehicles, pedestrians and bicycles
- A curb cut removes on-street parking spaces
- A curb cut detracts from the site aesthetically and removes trees and landscaped pervious areas

Therefore, the number and impact of curb cuts and driveways on public space should be minimized to improve pedestrian circulation and safety by:

- Restricting the number of curb cuts at all properties, regardless of land use. The maximum number of curb cuts, including those intended for circular driveways, must be no more than two for a property abutting one street, and no more than three for a property abutting two or more streets (see DCMR Title 24, Subsection 605.9). Despite these limits, DDOT policy is that, absent a compelling need, there should be no more than one curb cut per building.

- Consolidating curb cuts for different uses, such as loading and parking garage entrances.
- Providing curb cuts only where leading to multiple vehicular parking spots, since a curb cut typically removes at least one on-street vehicular parking space.
- Limiting the number of curb cuts for multi-phased developments and adjacent developments through shared curb cuts, potentially requiring easements.
- Locating the curb cut on the street with the lower volume of vehicular traffic when a property fronts on two or more streets and when consistent with area planning and historic preservation objectives.
- Prohibiting backing movements through public space due to safety concerns. Turning movements must be accommodated on private property to ensure head-in/head-out vehicle movements through public space as established in this manual.
- Choosing a driveway design that is as narrow as practical and meets the standards established in this manual.
- Establishing appropriate distances between curb cuts and other disruptions to the sidewalk; see **Section 31.5.5** for minimum setbacks for driveways.
- Providing adequate line-of-sight setbacks behind sidewalks at parking garage exits.
- Using driveway paving materials that continue the paving color and texture of the adjoining sidewalk across the driveway as an indication to drivers that they are crossing a pedestrian pathway.
- Maintaining a continuous canopy of street trees.
- Maintaining a pedestrian clear path width across the driveway or alley that is no less than the minimum required width for the sidewalk as specified in this manual.
- Complying with the ADA sidewalk slope requirements, as specified in this manual, for the full width and length of the pedestrian clear path crossing the driveway or alley.
- Complying with the sidewalk surface requirements set forth in the ADA standards for the full width and length of the pedestrian clear path crossing the driveway or alley.

31.5.1. Curb Cut Requirements

- A new curb cut or driveway is not permitted from any property with alley access, potential access through an improved alley, alley widened onto private property or with potential access to an expanded alley network on private property, unless the applicant provides documentation demonstrating that alley access is not possible due to topography, or that alley access would conflict with existing land uses and is not supported by guidelines in the current **DC Comprehensive Plan** and those outlined in **Section 31.4**.

- Driveway entrances should be constructed perpendicular to the curb line of the street through the entire public space area to the property line.
- All driveways must be flush with the grade of the sidewalk when crossing the entire sidewalk area. No step-down curbs or ramps are permitted.
- The grade of any driveway within a public space must not exceed 16 percent, and the algebraic difference of the driveway grade with the counter slope must not be greater than 20 percent.
- A curb cut and/or respective portion of the driveway, including the flare or radius at the curb cut, must be within the public space abutting the same lot with the building or structure it is intended to serve.
- Sight-distance for safely exiting driveways and parking garages must be a minimum of 15 feet from the edge line of the driveway on a 45-degree angle from the property line or building line at the garage exit, as applicable, to the back edge line of the sidewalk. No over-height fencing or vegetation over 42 inches in height at maturity is allowed in this area, excluding city trees.
- Signalized driveways must be designed to meet all intersection guidelines.
- All driveway entrances must be constructed of poured concrete in accordance with the **DDOT Standard Specifications for Highways and Structures**.
- Driveway paving materials must continue the paving color and texture of the adjoining sidewalk across the driveway as an indication to drivers that they are crossing a pedestrian pathway.
- Driveways and parking pads must be constructed so that the parking of a motor vehicle thereon does not cause any portion of the vehicle to intrude in part or whole over any portion of the public space.
- When changes are made at a property due to redevelopment or new businesses, all existing driveways must be restored with new curb and gutter, tree space and sidewalk to current DDOT standards.
- Any existing curb cut proposed for new use must be applied for as a new curb cut and driveway at the DDOT Public Space Permit Office, and the above requirements must be met.

31.5.2. Commercial Curb Cut Requirements

- Driveway entrances must be constructed with 6-foot-radius curb returns at the street in accordance with the “Type A” driveway entrance specified in the **DDOT Standard Specifications for Highways and Structures**.
- Driveways accessing a street must be a minimum of 10 feet wide from edge line to edge line for one-way circulation of motor vehicles, but must not exceed 12 feet wide.

- Driveways accessing a street must be a minimum of 18 feet wide from edge line to edge line for two-way circulation of motor vehicles, but must not exceed 24 feet for two-way circulation when unusually heavy vehicular traffic is anticipated. Narrower driveways matching residential width standards may be considered for small commercial projects.
- Where unavoidable, driveways that must be more than 24 feet wide to accommodate large, heavy and frequent vehicles must have a minimum 6-foot-wide pedestrian safety island. This pedestrian island must be paved as an 8-inch-thick sidewalk that matches the material used for the existing or proposed adjacent sidewalk. The pedestrian island must have minimum 3-foot-radius curb returns at the street. This 6-foot-wide island must be designed to prohibit vehicles from crossing within the public space area and may be landscaped.
- Two driveways accessing a single property must be at least 12 feet apart. (This does not apply to a single driveway with ingress/egress separated by a 6-foot-wide pedestrian island.)
- Driveways for loading docks with entrances on the roadway must be a minimum of 12 feet wide from edge line to edge line, but must not exceed 24 feet wide, regardless of the number of loading bays.
- All motor vehicles accessing a loading dock driveway from a roadway must both enter and exit the driveway entrance in a forward direction to avoid vehicles backing into the public space.
- All turning and backing movements associated with accessing a loading dock from a driveway entrance on a street must take place on private property.
- All parking and standing associated with the use of a loading dock must be on private property, and no portion of a standing or parked motor vehicle is allowed to intrude in part or whole over any portion of the public space.
- Driveways within the Downtown Streetscape area and other areas designated by DCMR Title 11, Hotel-Residential Incentive Overlay District, must be constructed at a right angle (90 degrees) to the curb line of the roadway through the entire public space area to the property line, and must have 6-foot-radius curb returns at the roadway. Driveway edge lines must be located a minimum of 8 feet from any interior property line.

31.5.3. Residential Curb Cut Requirements

- A residential curb cut is defined as typically having a “Type D” driveway entrance with 6-foot-radius curb returns that are used to access single-family residences, flats and duplexes, but not condominiums or apartment buildings.

1110 STANDARDS FOR STREET ACCESS

1110.1 The location of curb cuts and driveways shall be approved when the following conditions are fulfilled:

- (a) The land use, traffic and pedestrian patterns, and transit operation in the area have been considered;
- (b) Where feasible, access to loading and parking facilities shall be from an alley;
- (c) Where feasible, loading facilities shall be located below grade;
- (d) On the following streets, curb cuts and driveways shall be approved only if the applicant demonstrates that there is no other means or method of providing vehicular access to the property:
 - (1) F Street, NW between 7th Street and 15th Street;
 - (2) G Street, NW between 7th Street and 15th Street;
 - (3) 7th Street, NW between Pennsylvania Avenue and Massachusetts Avenue;
 - (4) 8th Street, NW between Pennsylvania Avenue and Massachusetts Avenue;
 - (5) 10th Street, NW between Pennsylvania Avenue and H Street; and
- (e) Circular driveways, building entrance driveways, porte cocheres, and laybys shall not be permitted in the Downtown Streetscape Area, unless approved by the Director.

1110.2 The design of a driveway shall fulfill the following requirements:

- (a) Driveways and their aprons shall be poured concrete and flush with grade of sidewalk;
- (b) Driveway shall be a minimum width of twelve feet (12') and a maximum width of twenty-five feet (25');
- (c) The radius for curb returns for driveways shall be six feet (6');
- (d) There must be a minimum six feet (6') wide pedestrian safety island between two driveways that are more than twenty four feet (24') wide. This pedestrian island shall match the same material used for the sidewalk. It shall have a three feet (3') radius at the curb of the street;
- (e) All alleys are required to have a minimum width of twenty feet (20') and radius at curb shall be ten feet (10'). Driveway shall not be located within sixteen feet (16') of another driveway or alley;
- (f) **Driveway shall be at least eight feet (8') from the adjacent interior property line;**
- (g) Driveway shall be at least forty feet (40') from the point of the intersection of the two (2) street curbs;

- (h) Driveways shall be designed to avoid vehicle backing and vehicle waiting within the street;
- (i) Where the driveway provides access to a parking facility, the driveway shall provide a sufficient off-street storage area for vehicles waiting to enter the parking facility; and
- (i) Driveway shall have a maximum grade of twelve percent (12%) within the public space.

1110.3 Driveways shall be located according to the Driveway Location Standards approved by the Director.

1110.4 The use of shared driveways for more than one (1) property or building and the shared use of parking and loading facilities by more than one (1) property or building shall be permitted.

SOURCE: Final Rulemaking published at 47 DCR 7117 (September 1, 2000).



**GOVERNMENT OF THE
DISTRICT OF COLUMBIA**

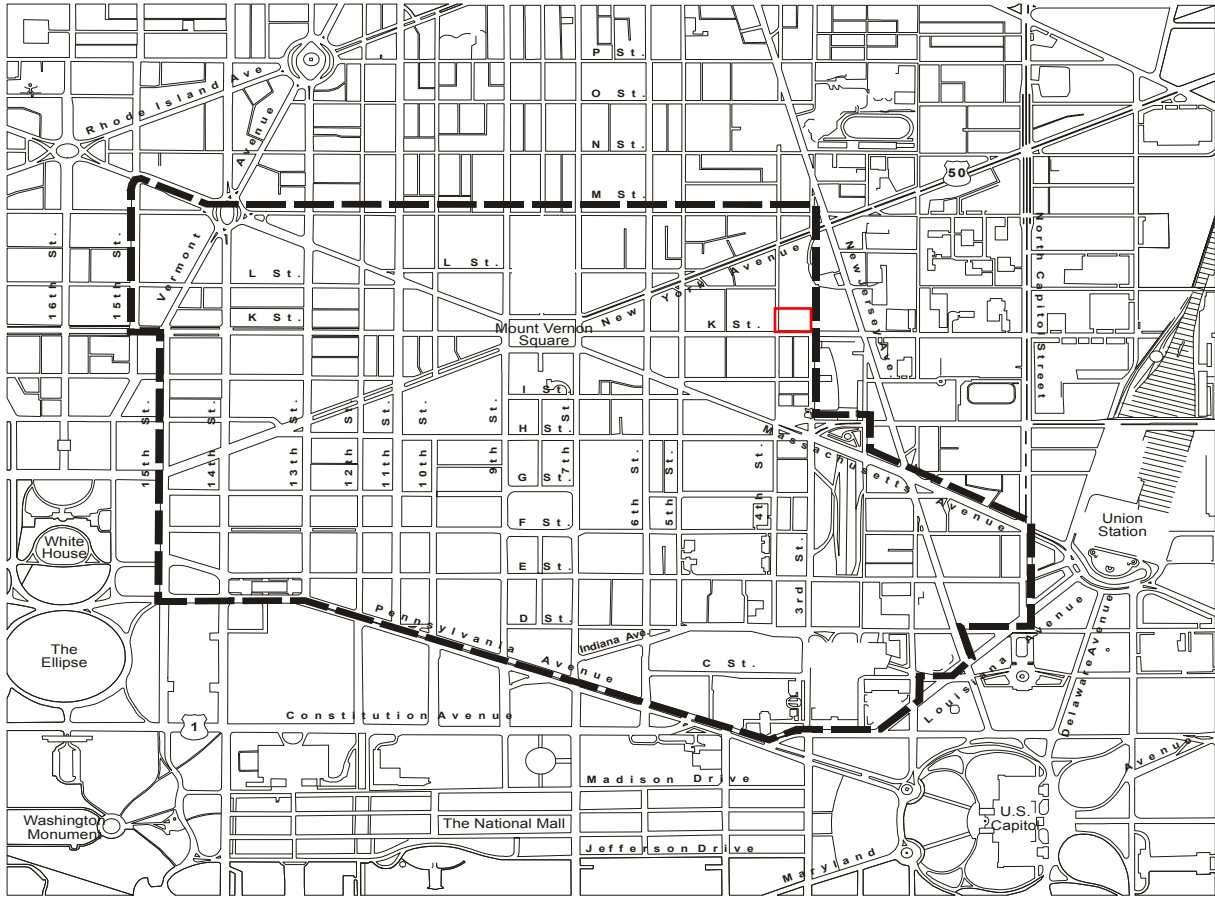


DOWNTOWN STREETSCAPE REGULATIONS

**DEPARTMENT OF PUBLIC WORKS
OFFICE OF INTERMODAL PLANNING
AUGUST 2000**

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STREETSCAPE IMPACT AREA BOUNDARIES

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909 SPECIAL EXCEPTIONS FROM LOADING REQUIREMENTS

909.1 This section provides flexibility from the loading requirements when providing the number of spaces required is impractical or contrary to other District regulations.

909.2 The Board of Zoning Adjustment may grant, as a special exception, a full or partial reduction of the number of loading berths or service/delivery spaces required by Subtitle C § 901.1 if, in addition to meeting the general requirements of Subtitle X, Chapter 9, the applicant demonstrates that:

- (a) The only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in this chapter, or in Chapters 6 or 11 of Title 24 DCMR; or
- (b) The loading berths or service/delivery spaces are required for an addition to a historic resource, and providing the required loading facilities would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the historic resource.

909.3 The Board of Zoning Adjustment may grant, as a special exception, a waiver of the access requirements of Subtitle C §§ 904.2 and 904.3 if, in addition to meeting the general requirements of Subtitle X, the applicant demonstrates:

- (a) The lot has unusual topography, grades, shape, size, or dimensions; or
- (b) Alternate access arrangements would improve site design, landscaping, or traffic patterns or provide safer ingress or egress.

909.4 The Board of Zoning Adjustment may grant, as a special exception, modifications, or waivers of the screening requirements of Subtitle C § 908 if, in addition to meeting the general requirements of Subtitle X, the applicant demonstrates that:

- (a) Existing protective and screening walls on the lot or on adjacent property are adequate to prevent adverse impacts on adjacent property; or
- (b) Provision of protective screening walls would result in the removal of healthy trees or other landscaping, or architectural features determined by the Board of Zoning Adjustment to be worthy of protection or to provide equal screening benefits.

909.5 When granting a special exception under this section, the Board of Zoning Adjustment may impose conditions as to screening, lighting, coping, setbacks, fences, location of entrances and exits, widening of abutting alleys, loading management or transportation demand management practices, or any other

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION



d. Planning and Sustainability Division

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Anna Chamberlin
Project Review Manager

DATE: June 29, 2018

SUBJECT: BZA Case No. 19169C - 317 K Street NW

Birchington LLC (the "Applicant"), pursuant to 11 DCMR Subtitle Y § 704, seeks a modification of significance to the relief approved by BZA Order No. 19169 to include special exceptions from the loading requirements of Subtitle C § 901.1, and from the access requirements of Subtitle C § 904.2, to construct a hotel in the D-4-R Zone at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829). Table 1 shows compares the proposed development program to the approved development program under BZA Order No. 19169.

Table 1 Comparison of Building Program

	BZA Order No. 19169	Current Proposal
Hotel	200	247
Apartment	30	0
Parking	46	44
Loading	One (1) 20-foot service/delivery space	Three (3) 20-foot service/delivery spaces

While the previous building program was evaluated under ZR-58, the current proposal is being reviewed under ZR-16. The Applicant seeks relief from all three (3) required 30-foot berths.

As part of BZA Order No. 19169, DDOT reviewed the feasibility of providing a 30-foot loading berth without back-in maneuvers across the sidewalk, as required by DDOT's Design and Engineering Manual, and found that the 30-foot berth could not be provided in a manner consistent with DDOT standards. In lieu of the on-site 30-foot loading facilities, DDOT found the approved Loading Management Plan, one (1) service/delivery space, and a combined curbside loading and valet zone were sufficient to accommodate the loading and pick-up/drop-off demands.

The revised program is likely to generate additional demand for pick-up/drop-off activities given the increase in hotel rooms. DDOT finds the proposed addition of a second 20-foot service/delivery space in combination with the proposed combined curbside loading and valet zone and approved Loading Management Plan will

be sufficient to accommodate loading needs of the site. Of note, the loading and valet zone will require public space permits from DDOT, during which time final design will be determined.

AC:jr



May 29, 2018

Meridith H. Moldenhauer

Direct Phone 202-747-0763
Direct Fax 202-683-9389
mmoldenhauer@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

RE: Revised Form 135 - Modification of Significance for BZA Case #19169C on behalf of Birchington, LLC (Lots 20-21, 804-805, 824-825, and 829, Square 526)

Chairperson Hill and Honorable Members of the Board:

After further consultation with the Office of Planning, the Applicant hereby revises the Modification of Significance request to meet the requirements of ZR-16, which requires relief from the loading requirements of Subtitle C § 909.1 of the 2016 Zoning Regulations ("ZR-16"), and a waiver from the maximum slope requirements for access aisles under Subtitle C § 904.2.

Consequently, please find enclosed a revised Form 135 self-certification. **This filing supersedes the originally-submitted Form 135 included in the record at Exhibit #6.** The Modification request will allow construction of a building originally approved by the Board of Zoning Adjustment in BZA Order No. 19169, for property located at 303-317 K Street NW (Square 526, Lots 20-21, 804-805, 824-825, and 829).

Please let us know if you have any questions.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "MM", with a horizontal line underneath.

By: Meridith Moldenhauer

Certificate of Service

I hereby certify that on this 29th day of May, 2018, a copy of this revised Form 135 was served, via email, as follows:

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
c/o Stephen Cochran
Washington, DC 20024
planning@dc.gov
Stephen.cochran@dc.gov

District Department of Transportation
55 M Street SE, Suite 400
c/o Jonathan Rogers
Washington, DC 20003
Anna.chamberlin@dc.gov
jonathan.rodgers2@dc.gov

Advisory Neighborhood Commission 6E
c/o Alexander Padro, Chairperson
6E05@anc.dc.gov

Advisory Neighborhood Commission 6E07
c/o Kevin Rogers, Chairperson/SMD Commissioner
6E07@anc.dc.gov



By: Meredith Moldenhauer



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



FORM 135 – ZONING SELF-CERTIFICATION

<i>Project Address(es)</i>	<i>Square</i>	<i>Lot(s)</i>	<i>Zone District(s)</i>
303-317 K St. NW	526	20-21, 804-805, 824-825 and 829	D-4-R

Single-Member Advisory Neighborhood Commission District(s): **6E07**

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to:

Relief Sought	<input type="checkbox"/> X § 1000.1 - Use Variance	<input type="checkbox"/> X § 1002.1 - Area Variance	<input checked="" type="checkbox"/> X § 901.1-Special Exception
Pursuant to Subsections			C-901.1, C-904.2

Pursuant to 11 DCMR Y § 300.6, the undersigned agent certifies that:

- (1) the agent is duly licensed to practice law or architecture in the District of Columbia;
- (2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
- (3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner’s behalf in this matter.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22-2405)

 <small>Agent's Signature</small>	Habte Sequar <small>Owner's Name (Please Print)</small>
 <small>Agent's Signature</small>	Meridith Moldenhauer <small>Agent's Name (Please Print)</small>

Date	5/29/18	D.C. Bar No.	494695	or	Architect Registration No.	
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INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on this form. All certification forms must be completely filled out (front and back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form.
2. Complete one self-certification form for each application filed. Present this form with the Form 120 - Application for Variance/Special - Exception to the Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001.

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	10,767	N/A	N/A	N/A	N/A
Lot Width (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Lot Occupancy (building area/lot area)	N/A	N/A	N/A	N/A	N/A
Floor Area Ratio (FAR) (floor area/lot area)	N/A	N/A	N/A	N/A	N/A
Parking Spaces (number)	N/A	N/A	N/A	44	N/A
Loading Berths (number and size in ft.)	N/A	2 30' berths	N/A	2 20' loading spaces	C-901.1 (2 30' berths)
Front Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Rear Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Side Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Court, Open (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Court, Closed (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Height (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A

If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19169 of 311 K Street LLC, as amended¹, pursuant to 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829).

HEARING DATE: February 9, 2016
DECISION DATE: February 23, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 25 (revised).)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report in this case, indicating that at a duly called and properly noticed public meeting on January 5, 2016, at which a quorum was present, the ANC voted 5-1-1 to support the application, as amended. (Exhibit 26.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application and testified in support at the hearing. (Exhibit 30.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had an objection to the requested loading relief. (Exhibit 31.). At the February 9, 2016 public hearing, the Board scheduled the case for decision but requested that the Applicant continue to

¹ The Applicant amended its application to add a request for variance relief from the loading requirements under § 2201.1 and submitted a revised self-certification. (Exhibit 25.) The caption has been amended accordingly.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcz@dc.gov

Web Site: www.dcoz.dc.gov

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work with DDOT on the issues regarding loading and gave leave for DDOT to submit a supplemental report. Subsequently, DDOT submitted a supplemental report, dated February 16, 2016, that stated that it had no objection to the requested relief with conditions. (Exhibit 42.) The Board, in granting approval to the application, adopted DDOT's conditions in this order.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for area variances from the rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR §§ 774.1, 2101.1, and 2201.1, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 41 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall limit the financial incentive as part of the TDM plan to bikeshare and carshare memberships only.
2. The Applicant shall provide a minimum of eight short-term bicycle spaces.
3. The Applicant shall amend the Loading Management Plan to require any delivery using a truck 20 feet in length or shorter to use the on-site delivery space.

VOTE: **3-0-2** (Frederick L. Hill, Robert E. Miller (by absentee ballot), and Jeffrey L. Hinkle (by absentee ballot), to APPROVE; Marnique Y. Heath not participating or voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

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ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 29, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR,

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RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.