

June 7, 2016

VIA IZIS

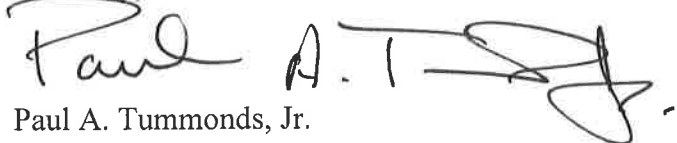
Ms. Marnique Heath
Chairman
Board of Zoning Adjustment
441 4th Street NW
Suite 210S
Washington, DC 20001

Re: **BZA Application No. 19297 – Pre-Hearing Statement of the Applicant for the Property Located at 3000 M Street, NW (Square 1197, Lot 70)**

Dear Chairman Heath and Members of the Board of Zoning Adjustment:

Thor 3000 M Street LLC (the “**Applicant**”) hereby submits its pre-hearing statement in support of the above-mentioned application through IZIS. Please feel free to contact the undersigned if you have any questions regarding this application and the attached materials.

Sincerely,



Paul A. Tummonds, Jr.

Board of Zoning Adjustment

District of Columbia

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CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing document to the following addresses on June 7, 2016 by Hand-Delivery and First Class Mail:

Karen Thomas
Office of Planning
1100 4th Street, SW
Suite E650
Washington, DC 20024
(By Hand Delivery)

Jonathan Rogers
Department of Transportation
55 M Street, SE
4th Floor
Washington, DC 20003
(By Hand Delivery)

ANC 2E
3265 S Street, NW
Washington, DC 20007

ANC 2E05
Commissioner William Starrels
1045 31st Street, NW Apt. 502
Washington, DC 20007

A handwritten signature in dark ink, appearing to read "Paul Tummonds", written over a horizontal line.

Paul Tummonds

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

Application of Thor 3000 M Street LLC
ANC 2E

BZA Application No. 19297
Hearing Date: June 21, 2016

STATEMENT OF THE APPLICANT

This is an application of Thor 3000 M Street LLC¹ (“**Applicant**”) for variance and special exception relief to renovate the former Latham Hotel into a new hotel (with approximately 82 rooms) with retail uses. The property that is the subject of this application is located at 3000 M Street, NW (Square 1197, Lot 70) (“**Property**”). The Property is located in the C-2-A and W-1 Zone Districts.

I. DEVELOPMENT HISTORY OF THE LATHAM HOTEL ON THE PROPERTY

The Property is improved with the former Latham Hotel (“**Existing Building**”) which was constructed in the late 1970s. The Existing Building is comprised of a total of ten above- and below-grade stories. As a result, the Existing Building is actually at-grade at three separate floors: the fifth floor (on M Street), the fourth floor (on 30th Street), and the third floor (facing the NPS land to the south). When viewed from M Street, the Existing Building consists of two primary forms:

- a two-story “market shed” building along M Street, which included ground-floor retail and second-story hotel guestrooms, and
- a multi-story building set back from M Street, which contained the primary hotel lobby, the hotel restaurant, and additional guestrooms.

¹ Thor 3000 M Street LLC is the contract purchaser of the property, the property owner (Latham Owner SPE LLC) has signed an agent authorization letter allowing the Applicant to process this application.

The two structures are separated by an entrance driveway that opens onto both M Street and 30th Street. Vehicular entrances to the Existing Building's parking and loading facilities are located along 30th Street. An outdoor pool deck is located at the rear of the Property and is built out over the ramp to the parking level; this parking ramp runs along the entire southern wall of the Existing Building. As a result, the back wall of the Existing Building that abuts and faces the NPS property and the Canal is a solid masonry brick wall.

The last certificate of occupancy for the hotel authorized 143 hotel rooms. The original zoning computation sheet for the hotel noted that it was to include 102 rooms. Under the Zoning Regulations in effect at the time of construction, the Existing Building was permitted to achieve a height of 60 feet, and was actually constructed to a height of 56.50 feet, as measured from M Street. Because of the significant change in grade, the Existing Building's floor area ratio ("FAR") was calculated using the "grade plane" method; that is, only the gross floor area of floors above the M Street grade plane (that is, the 5th floor and up) were counted against the maximum permitted FAR. If the perimeter wall method of calculating FAR was applied to the Existing Building it would be considered to include 67,734 square feet of gross floor area and would have a FAR of 3.42. Therefore, the Existing Building is deemed to be a non-conforming structure as to FAR.

The Existing Building was deemed to have a compliant rear yard of 27 feet. Floors 1-4 are partially exposed at the rear and are not setback from the rear property line. On the fifth floor, the south tower is setback from the property line 27 feet. However, two pavilions on either side of the former hotel's pool are located along the rear property line and are not set-back from the property line. It is assumed that the use of the "grade plane" method, noted above, is what

allowed the Existing Building to be constructed without a rear yard for the exposed levels 1-4 of the Existing Building.

The first three floors generally occupy the entire lot; starting at the fourth floor, the Existing Building occupies significantly less of the lot because of the setback noted above and entrance driveway. Currently, the Existing Building includes approximately 40 parking spaces in a below-grade level and has one loading berth that is 30 feet deep and is accessed from 30th Street, NW.

II. RECENT BZA APPROVAL FOR RENOVATION OF THE EXISTING BUILDING

On August 5, 2014, the current owner of the property filed an application with the BZA which sought to convert the Existing Building into a mixed-use residential and retail building (BZA Application No. 18845). The mixed-use building included approximately 140 residential units and 9,931 square feet of retail space along M Street, NW. The Zoning Administrator and the BZA determined that the proposed renovations that were necessary to create the mixed-use building did not exacerbate any aspect of the non-confirming nature of the Existing Building and therefore relief from Section 2001 (Nonconforming Structures Devoted to Conforming Uses) of the Zoning Regulations was not required.

The mixed-use building did not provide any parking spaces on site, but located 42 parking spaces within an off-site parking garage. The mixed-use project required rear yard variance relief; special exception and variance relief from the parking requirements; and loading variance relief. On October 28, 2014, the Board approved the application at the conclusion of the public hearing and issued a summary order.

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located in the northwest quadrant of the District and in Ward 2. The Property is roughly rectangular in shape and contains approximately 19,798 square feet of land area. It is a corner lot with frontage on both M Street NW to the north and 30th Street NW to the east. (A small sliver of property extends west to Thomas Jefferson Street, NW. To the south, the Property is bounded by land owned by the National Park Service (“NPS”). The NPS land fronts on the Chesapeake and Ohio Canal (“Canal”), which is a National Historical Park. To the west, the Property is bounded by private properties, which include a two-story retail building at 3030 M Street NW, and a seven-story hotel at 1075 Thomas Jefferson Street NW.

The Property slopes significantly. The Property slopes downward approximately 2 feet from west to east along M Street, then downward 6 additional feet from north to south along 30th Street, and then downward approximately 7 additional feet from east to west along its south side adjacent to the NPS land. The total grade change is approximately 15 feet from the high point of the M Street elevation of 49 feet to the low point of 34 feet abutting the NPS land. As a result the center of the 30th Street frontage is approximately one story below the M Street frontage, and the southern frontage along the NPS property is an additional story below the center of the 30th Street frontage.

The immediate area surrounding the Property consists of a mixture of commercial retail, commercial office, hotel and residential uses. This mix of uses generally extends to the west, south, and east of the Property. As a result, there are a host of retail, service, and entertainment options within a short walk of the Property. Further to the east is the medium- to high-density mixed-use Foggy Bottom/West End neighborhood. Commercial uses are also located across M Street to the north; beyond these commercial properties is the moderate-density residential East Georgetown neighborhood.

The Property is well served by multiple bus lines, including four WMATA-operated lines and two D.C. Circulator lines. Together, the lines provide nearly continuous transit service 24 hours a day with headways of 10 minutes during the majority of the day and up to 30 minutes during off-peak times, nights, and weekends. The Property is also a two-thirds mile walk from the Foggy Bottom-GWU Metrorail station. A Capital Bikeshare station is located two blocks east of the site at Pennsylvania Avenue and M Streets. Finally, the Property is two blocks away from the start of the cross-town L Street and M Street cycle tracks, and the popular Capital Crescent Trail. The Property is also adjacent to the Rock Creek Park bike trail, which connects to the Mount Vernon bike trail.

The Property is split-zoned in the C-2-A and W-1 Zone Districts. The bulk of the Property (approximately 17,058 s.f.) is located in the C-2-A Zone District. The southernmost portion of the Property (approximately 2,740 s.f.) is located in the W-1 Zone District. Although the Property is located within the Georgetown Historic District, the Hotel is not considered to be a contributing building in the Historic District.

IV. PROJECT DESCRIPTION

The Applicant proposes to reintroduce an upgraded and modernized hotel use into the Existing Building and create approximately 34,050 square feet of new retail uses (this includes both above-grade and below-grade space) that can be accessed from M Street and 30th Street (“**Project**”). As shown in the plans and materials attached as Exhibit E, the massing and scale of the Project is very similar to the massing and scale of the mixed-use building which was approved by the BZA in Case No. 18845 in 2014.

The Project is located within the Georgetown Historic District, and accordingly the design of the Project is subject to review by the Old Georgetown Board (“**OGB**”) and the U.S.

Commission of Fine Arts (“CFA”). This Project will include a recladding of the south tower, with brick, stone, glass and metal trim elements which help visually tie the new retail pavilion and south tower together. On May 5, 2016, the OGB granted conceptual design approval for the Project (see Exhibit A). The Applicant requests flexibility to modify the design of the Project to respond to outstanding concerns and changes requested by OGB and other preservation officials during the design development phase of the building permit process.

Just as in BZA Case No. 18845, the Applicant proposes to remove and replace the existing two-story market shed building on M Street with a new two-story retail volume. The new structure along M Street will feature floor slabs at street grade, higher ceilings and more uniform floorplates to accommodate current market requirements for retail uses. The mechanical equipment for this new retail use will be provided on the roof of the retail pavilion and will include a screen wall that will be seven feet tall. The screen wall will be setback approximately 10 feet, 8 inches from the edge of the roof along M Street. However, in order to meet that front setback requirement, the screen wall is not able to be setback at a ratio of 1:1 from the open court that is created between the retail pavilion and the existing south tower. Similarly, the screen wall is not setback from the side wall of the building. Therefore, the Applicant is seeking special exception relief from the penthouse setback requirements.

As noted above, the Latham Hotel at one point included up to 143 hotel rooms. The proposed renovation and modernization of the Existing Building will result in a hotel that will include approximately 82 hotel rooms². Just as in BZA Case No. 18845, the existing circular driveway that connected curb cuts on M Street and 30th Street has been removed. This creates a more pedestrian friendly environment along M Street and 30th Street, and also allows for the

² The Applicant also requests the ability to reconfigure the interior portions of the hotel. Such reconfiguration could result in a hotel with a maximum of 100 rooms.

infill of that former driveway with additional hotel and retail uses. A green roof will be located on the top of this infill space as well as other roofs of the Project. The green roof will create an attractive appearance for the guests in the hotel rooms in the south tower and will help the Project satisfy the Green Area Ratio requirements (see p. A23 of Exhibit E). The Project has been designed to achieve LEED Silver certification.

The Project will retain approximately 24 parking spaces on the lowest level of the building. These parking spaces will be valet only and will be accessed by a car elevator that is located adjacent to the existing loading berth along 30th Street. The Applicant is requesting variance relief from the number of required parking spaces for the proposed hotel and retail uses, as well as relief from the size and aisle width requirements for the parking spaces that are being provided in the Project.

The existing 30 foot loading berth will be used to meet the loading demand for the hotel and retail uses. Since more than 10% of the structure will be used for retail uses that are not necessarily commercial adjuncts of the hotel, an additional 30 foot loading berth is required. Therefore, the Applicant is requesting variance relief.

The Applicant's transportation engineer, Nelson Nygaard Consulting Associates, evaluated the transportation impacts of the Project and prepared a Transportation Study which is attached as Exhibit B. The Transportation Study noted:

[t]he Project will capitalize on and expand multiple transportation options to serve the Project's guests, customers, and visitors. The Project will provide twenty-four (24) on-site valet parking spaces to serve the demands of the development as well as providing both a robust transportation demand management plan and a detailed loading management plan; therefore, as a result of the lack of private automobile use and reliance on alternative modes of transportation, the Project will result in a net decrease in vehicular traffic compared to the previous hotel use. The Applicant will also undertake significant measures to ensure that the Project will not generate adverse parking or loading impacts on the surrounding community. (Ex. B, p. 1)

The Transportation Study concluded:

In summary, we find that traffic impacts of the Project on the surrounding network and operations will be negligible. Given the location, available transportation options, targeted customer market, and benefits package offered by the developer, parking and loading demands are similarly found to be negligible and those that may arise are easily accommodated within the existing available off-street parking resources of the immediate area. (Ex. B, p.2)

The existing pool, located above the ramp and loading dock will be removed. The Existing Building included two pavilions on the 5th level of the building which flanked either side of the pool. With the removal of the pool, the Project will infill that space between the two existing pavilions and will introduce five new hotel rooms and mechanical space at this level. This infill space includes approximately 1,480 square feet. This infill space requires rear yard relief, as it will not be setback from the edge of the Existing Building. The Project will also include a new outdoor restaurant terrace located on the 6th level of the Project. This outdoor restaurant terrace will overlook the National Park Service property to the south.

The existing mechanical penthouse space on the south tower is 18 feet, 2 inches tall and is set-back from the southern edge of the south tower by 14 feet, 2 inches. This height satisfied the Zoning Regulations at the time that the Existing Building was constructed. The recently adopted amendments to the penthouse regulations limit the maximum height of mechanical penthouse space in the C-2-A Zone District to 15 feet and the maximum height of penthouse habitable space to 12 feet. The Applicant believes that having three separate penthouse heights (the existing 18 feet, 2 inches; 15 feet for the new penthouse mechanical space; and 12 feet for the new penthouse habitable space) will be more visually obtrusive than having two penthouse heights, one height for the mechanical penthouse with a height of 18 feet, 2 inches, and one height of 12 feet for the habitable penthouse space. Therefore, the Applicant is seeking variance

and special exception relief in order to continue the height of the penthouse mechanical space at 18 feet, 2 inches.

In addition to a modernization of the existing building's systems, the proposed renovation and modernization of the south tower will result in new penthouse habitable spaces on the south tower. The habitable space will include a bar/lounge of approximately 990 interior square feet. The Applicant's satisfaction of the special exception standards for the proposed bar/lounge use are addressed below.

V. COMMUNITY OUTREACH

The Project is located within the boundaries of ANC 2E and the Georgetown neighborhood. As noted in the initial filing in this case, the Applicant reached out to representatives of ANC 2E and the Citizens Association of Georgetown ("CAG") prior to the filing of this application. Since that time, the Applicant and representatives of ANC 2E and CAG have met and discussed this application and the proposed Project on numerous occasions. As a result of those meetings and discussions, the Applicant has proposed a number of conditions of BZA Approval which address: (i) the proposed bar/lounge use on the roof of the hotel; (ii) Transportation Demand Management issues; and a (iii) Loading Management Plan. These proposed conditions of approval are included in Exhibit C.

The Applicant and its development team made presentations to ANC 2E on May 2, 2016 and May 31, 2016. At the May 31, 2016 meeting, ANC 2E adopted a unanimous resolution in support of this application. It is the Applicant's understanding that CAG is also fully supportive of this application. The Applicant is not aware of any opposition to this application.

VI. NATURE OF RELIEF SOUGHT

The renovations and modernizations noted above require the following variance and special exception relief.

1. Variance from Section 933 (rear yard) - to permit the small infill addition between the existing pool pavilions at the 5th level of the Project.
2. Variance from Section 2101.1 (number of required parking spaces), Section 2115 (size of parking spaces), Section 2117 (access, maintenance, and operation of parking spaces) - the Project generates a parking requirement of 149 parking spaces, the Project will include 24 parking spaces accessed by a valet operated car elevator. In addition, the Project requires relief from the requirements of Section 2115 regarding the size of the proposed parking spaces and Section 2117 regarding the width of the drive aisles.
3. Variance from Section 2201.1 (number of required loading spaces) - the Project is required to include two 30 foot loading docks and one service delivery space, the Project will include one 30 foot loading dock.
4. Special Exception pursuant to Section 411.11 (roof structure setback) – the renovated building and proposed retail uses along M Street require a screen wall around the mechanical space that will not be setback from the open court which separates the two portions of the building. The Project seeks to extend the portion of the roof structure on the south tower that is 18 feet, 2 inches tall. This extension is not setback from the southern edge of the building at a ratio of 1:1; it is setback 14 feet, 2 inches from the southern edge of the building.
5. Special Exception pursuant to 411.4(c) (bar/lounge use in penthouse habitable space) – the project will include a space of approximately 990 interior feet on the roof of the southern tower that will include a bar/lounge.

6. Variance from Section 770.6 (penthouse height for mechanical space) – the existing penthouse mechanical equipment on the southern tower has a height of 18 feet, 2 inches, the Project seeks to maintain that same height for the additional penthouse mechanical equipment, rather than satisfy the newly required maximum height of 15 feet for penthouse mechanical space.

The Board has jurisdiction to grant the relief requested pursuant to Sections 3104.1 and 3103.2 of the Zoning Regulations.

VII. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested variance from the rear yard, parking, and loading requirements.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the

physical aspects of the land. *See Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

Here, the Property is unique because of the confluence of the existing slope of the Property, the nature and configuration of the Existing Building located on the Property, and the Property's split zoning between the C-2-A and W-1 Zone Districts. As discussed above, the Property is improved with a former hotel that included up to 143 rooms. The building was constructed such that the lower four floors were generally buried underground, because the hotel uses did not require daylight. The previous hotel use resulted in the creation of a service drive for hotel guest pickup and dropoff that bisects the above-grade portion of the improvements. The split zoning of the site also informed the design and configuration of the Existing Building, and specifically the location and design of the rear pool deck/loading/parking ramp portion of the Existing Building.

As a result of the slope of the Property, the site is at grade at three different elevations – the third, fourth, and fifth floors of the Existing Building. The design of the Existing Building responded to this context. In addition, the Existing Building was deemed to be compliant with the Zoning Regulations based on the Grade Plane method of calculating FAR. That method is no longer accepted by the Zoning Administrator. Finally, although not a contributing building in the Georgetown Historic District, the Property is located within the district and its design is therefore subject to review by OGB and CFA. In BZA Application No. 18845, the Board determined that the topographical conditions on the Property and the Existing Building on the Property satisfied the first prong of the variance test.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

1. Rear Yard

The practical difficulty in complying with the rear yard requirement results from the confluence of the adaptive reuse of the existing structure and other unique conditions affecting the Property. As described above, the utilization of the grade plane method when the Existing Building was constructed allowed the rear yard setback to begin at the 5th floor. Below the rear yard "ground" plane, a portion of the lower four stories of the structure extend all the way to the southern property line. Under the W-1 Zone District, a rear yard is required beginning at the level where residential use begins, (pursuant to Section 933.4, hotel use is deemed to be a residential building or structure for the purpose of calculating the rear yard). Here, the infill of hotel guestroom and mechanical space between the two pool pavilions requires rear yard relief.

2. Parking

As discussed above, the structure contains one parking level and three occupiable floors that are largely underground because of the prior hotel use. However, as a result of the slope of the site, two of these floors are at grade on the Property's eastern and southern frontages. Furthermore, as a result of the prior hotel use, the Property is occupied with a service driveway that separates the main hotel structure from the front "market shed" structure. The Applicant is faced with a practical difficulty in providing the required 149 parking spaces in the Project due to the configuration of the existing structure and the necessity of locating the modern utility and mechanical systems in the below-grade levels of the Project. In addition, retaining the existing building precludes the addition of new underground parking spaces below the existing structure.

3. Loading

The practical difficulty in complying with the loading requirement is due to the existing improvements, which occupy virtually 100% of the lot on all at-grade levels and preclude the introduction of any additional off-street loading facilities. The existing loading dock area is not deep enough to accommodate a second 30-foot berth or wide enough to accommodate a 20-foot service/delivery space. Providing the second 30 foot loading berth and 20 foot service/delivery space would be unnecessarily burdensome.

4. Penthouse Mechanical Space Height

The practical difficulty in complying with the Penthouse Mechanical space maximum height of 18 feet, 2 inches is that in order to minimize the visual appearance of the penthouse structure, consistent with previous guidance from OGB, the Applicant is proposing two penthouse heights rather than three. The Applicant believes that if it were required to provide three penthouse heights, it would be difficult to obtain OGB's approval of the design. As noted above, the Applicant has received OGB conceptual design approval with the two penthouse

heights. For these reasons, the Applicant is faced with a practical difficulty in providing new penthouse mechanical space that is taller than 15 feet.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Here, the requested variances can be granted without causing any adverse impact on the neighboring properties and without impairing the intent, purpose and integrity of the Zone Plan.

Rear Yard

The two existing pool pavilions already exist at the edge of the fifth level of the Existing Building. The proposed infill space between these pavilions will not extend further than the Existing Building and since it is at the grade level of the building, it will not create any additional shadows or loss of light on any adjacent or nearby properties. In addition, no adjacent property is adversely impacted by this requested rear yard relief since the adjacent property is owned by the National Park Service.

Parking

The variance to eliminate the existing parking spaces will not adversely impact traffic or on-street parking availability in the neighborhood. With the provision of 24 parking spaces in the Project, accessed by a valet operated car elevator, the Applicant expects that the parking demand for the hotel (with approximately 82 guest rooms and no large conference rooms or meeting spaces) at this location will be accommodated on-site. Near the Project there is available off street parking capacity already constructed with sufficient vacancy to house the potential parking demands that may not be able to be accommodated by the proposed parking within the Project. These parking resources are signed and available as a “park once” consolidated parking location

for retail patrons to the many establishments of Georgetown. This should continue. The

Transportation Study determined that

within less than 600 feet of the Property there are five existing parking facilities accommodating well over 1,000 parking spaces. A sixth facility is just two blocks away and includes an additional 675 parking spaces. Utilization surveys of these facilities found occupancy rates of approximately 80%, which means that additional parking is available in these facilities to accommodate parking demand generated by the Project. All garages offer hourly, daily, overnight or monthly parking.

The Transportation study concluded that “sufficient area spaces are available to more than adequately meet the demands of the proposed development program with off-street parking resources alone.”

In regard to the demand for parking generated by the retail uses in the Project, the Georgetown retail corridor is well-served by transit and it is frequented by customers who often visit multiple establishments rather than one destination. Most of the retail destinations lack their own on-site parking. Instead, the corridor contains multiple public parking garages which provide parking options for those who choose to drive to shop and eat in Georgetown. Data provided by Colonial Parking confirms that multiple parking garages in close proximity to the Project, including the garage within the Foundry and other garages on Thomas Jefferson Street, have available parking spaces for both daily parkers and monthly permits.

In addition, since the parking level will only be accessed by a valet operator from one car elevator, the requested relief from the size of the required parking spaces and the aisle width requirements of the parking regulations is appropriate as members of the public will not be driving in this parking level and the number of cars being driven around the parking level will be limited by the access from a single car elevator.

As noted in the Transportation Study, the Applicant is proposing a robust and reliable Transportation Demand Management (TDM) Plan. In this case, unlike BZA Application No.

18845, the Applicant will be providing parking spaces on-site (24 spaces) in order to meet the expected parking demand for the hotel and retail uses. Based on discussions with ANC 2E and CAG, the Applicant agreed to the following Conditions regarding truck traffic and potential overflow parking:

The Applicant will work with ANC 2E, the Citizens Association of Georgetown, the Georgetown Business Improvement District, and members of the community to engage the District Department of Transportation in discussions to allow for two-way traffic on the portion of 30th Street, NW that is located north of the entrance to the loading area and the parking garage elevator.

The Applicant has noted that there are five existing parking facilities within 600 feet of the property that include over 1,000 parking spaces and that those facilities are on average only 80% occupied. The Applicant agrees to work with those facilities to allow for the use of those unoccupied spaces by the hotel, when the operator of the hotel expects periods of peak parking demand.

Just as in BZA Case No. 18845, the closure of the existing curb cuts on M Street, NW and 30th Street, NW will enhance pedestrian safety by reducing pedestrian-automobile conflicts and will also allow curbside space for other uses, including:

- Installation of 10 DDOT-standard bike racks on the sidewalk in front of the property on 30th Street;
- Designation of a no parking/drop off zone along the Property's 30th Street frontage to be used by the valet car parking operator for queuing of vehicles and for taxis, Uber, Bikeshare, and/or Car-Share spaces, etc.;
- Creation of two (2) additional metered spaces for retail parking immediately in front of the Property on M Street;

Loading

The Transportation Study thoroughly analyzed the loading and access management components of the Project. The Transportation Study determined that the Project will generate approximately 10-15 deliveries a day. The Applicant's proposed Loading Management Plan to address the impacts of those deliveries is included as part of Exhibit C.

The Transportation Study reviewed the proposed turning movements for trucks to access the loading berth from 30th Street and the interior loading circulation to both the hotel and retail uses. Based on a review of this information, the Transportation Study concluded that the proposed loading operations will not adversely impact the surrounding roadway network.

Penthouse Mechanical Space

The variance for the mechanical penthouse height is appropriate in that it will create a penthouse structure on the south tower that will be less visually obtrusive than a structure that would have three different heights. The extended penthouse height of 18 feet, 2 inches will not create any adverse impacts on neighboring properties. The proposed penthouse structure of two heights has been reviewed and approved by ANC 2E and OGB.

VIII. THE APPLICATION SATISFIES THE CRITERIA FOR SPECIAL EXCEPTION APPROVAL FOR SCREEN WALL SET-BACK RELIEF, ROOF STRUCTURE RELIEF ON THE SOUTH TOWER, AND PROPOSED BAR/LOUNGE USE IN THE PENTHOUSE HABITABLE SPACE

Screenwall Setback Relief

Section 411.11 of the Zoning Regulations authorizes the Board of Zoning Adjustment to approve the location of a penthouse or screen wall that does not meet the setback requirements upon a showing of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly, or unreasonable. In addition, the Applicant must show that the intent and purpose of the penthouse regulations will not be materially impaired by the structure; and that light and air of adjacent buildings will not be affected adversely.

The screen wall will be seven feet tall and will be covered in brick, in order to have the same general appearance as the building below. The relatively shallow depth of the building along M Street provides significant constraints on the ability to provide a screen wall

surrounding the mechanical equipment which is necessary for the modernization of this portion of the Existing Building. The width of the mechanical equipment has been minimized to the greatest possible extent. The proposed screen wall meets the intent and purpose of the penthouse regulations as the views from the public streets, M Street and 30th Street, have been minimized. Moreover, the views of the screenwall along the open court are obscured by the south tower of the building as one walks along 30th Street, NW. The Applicant has thoroughly reviewed and analyzed the ability of placing this mechanical equipment elsewhere in the Project and has been unable to find any other suitable location. There will be no adverse impacts on the light and air provided to adjacent buildings as a result of this screen wall not meeting the required setbacks. For these reasons, making the Applicant comply with the setback requirements would be unduly restrictive in this case.

Roof Structure Setback Relief on the South Tower

The existing roof structure on the south tower is 18 feet, 2 inches tall and it is setback 14 feet, 2 inches from the southern edge of the roof for a distance of 36 feet. The previous BZA approval (BZA App. No. 18845) showed that the roof structure would be extended at the same 18 feet, 2 inch height for a distance of 56 feet, 7 inches from the southern edge of the roof (See p. A34 of Exhibit E). This application proposes to extend the distance of this taller penthouse height to 61 feet, 5 inches along the southern edge of the building. The proposed penthouse meets the penthouse setback requirements for the eastern and western edges of the building.

The Applicant is proposing to continue the same set-back distance from the southern edge of the building which currently exists. A requirement to have the new penthouse structure be “indented” from the existing structure (in order to meet the 1:1 setback requirement) would create unduly restrictive conditions on the Applicant in locating the necessary upgraded

mechanical equipment in the penthouse structure. Moreover, an indented roof structure would not appreciably increase or benefit the amount of light and air provided to adjacent buildings. For these reasons, the requested setback relief satisfies the relevant standards.

Proposed Bar/Lounge Use in the Penthouse Space

Section 411.4 (c) of the Zoning Regulations authorizes the Board of Zoning Adjustment to grant approval for a “nightclub, bar, cocktail lounge, or restaurant use” if the special exception requirements of Section 3104 are satisfied. Section 3104 notes that the BZA is authorized to grant special exceptions when the special exceptions will be “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property”.

In this case, the small (990 square feet of interior space) bar/lounge provided in the penthouse of the south tower is a use that is entirely consistent with the hotel use in the building below. The small size of the bar/lounge means that it will more likely be frequented by guests of the hotel and is not likely to result in large crowds gathering on the roof. The Applicant’s initial proposal for the roof of the south tower included a roof terrace area of approximately 2,759 square feet. At the May 2, 2016 ANC 2E meeting, members of the ANC and CAG noted that they felt that terrace area was too large, that the occupiable terrace area needed to be pushed back from the edges of the roof of the building, and that the noise associated with the potential bar/lounge space on the roof could create adverse impacts on neighboring properties.

At the May 31, 2016 ANC 2E meeting, the Applicant presented a revised roof plan that created a planted buffer around the edges of the roof and reduced the size of the roof terrace area by approximately 20%. In addition, the Applicant noted that it had retained an acoustical engineer to review the expected noise levels from the roof space to various adjacent properties, and the

Applicant proposed a series of conditions of BZA approval that are designed to mitigate and regulate the potential noise impacts of the bar/lounge space. Those conditions are included in the attached Exhibit C. The Applicant agrees to these conditions being included in the BZA's order approving this application. Based on these revisions to the physical attributes of the roof terrace area and the conditions guiding the operations of the bar/lounge, the proposed bar/lounge use will not affect adversely the use of neighboring property.

IX. EXHIBITS

Exhibit A	Letter dated 20 May 2016 from Commission of Fine Arts (Old Georgetown Board) evidencing conceptual design approval for the Project
Exhibit B	Transportation Impact Study prepared by Nelson Nygaard Consulting Associates
Exhibit C	Proposed Conditions of BZA Approval – Addressing Use of Private Outdoor Space for Lounge/Restaurant Use, Transportation Demand Management Plan, Loading Management Plan, and Trash Operations
Exhibit D	Resumes of Proposed Expert Witnesses and Outlines of Witness Testimony
Exhibit E	Plans, elevations, and renderings of the Project, Zone Map for the Property, Surveyor's Plat, and photographs of the Property and surrounding area

X. ISSUANCE OF WRITTEN ORDER

The Applicant is the contract purchaser of the Property. The contractual agreement of the Applicant and the Property owner requires that the Applicant close on the purchase of the Property prior to the issuance of a written order approving this BZA Application. As noted earlier in this statement, the Applicant is not aware of any opposition to this application and ANC 2E and CAG are in support. In the event that the Board determines that it is appropriate to

render a decision on this application at (or following), the June 21, 2016 Public Hearing, the Applicant requests that the written order approving the application not be issued or filed in the record prior to August 31, 2016.

XI. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested variance and special exception relief requested in this case. If there are any questions or comments regarding this application, please feel free to contact the undersigned.

Respectfully submitted,
GOULSTON & STORRS, PC



Paul Tummonds

June 7, 2016