

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

Application of Thomas Jefferson Real Estate, LLC
Modification of Significance

ANC 6B
Case No. 19616

STATEMENT OF THE APPLICANT

This is the application of Thomas Jefferson Real Estate, LLC (the “**Applicant**”) for a Modification of Significance to Order No. 19616 (“**Order**”) to change the principal use of and add special exception relief for the approved project at 818 Potomac Avenue SE (Square 930, Lot 23) (the “**Property**”). The Property is located in the NC-6 zone and contains approximately 9517 square feet of land area.

I. Background and Revised Project

Pursuant to the Order, dated January 9, 2018, the Board of Zoning Adjustment (“**BZA**” or “**Board**”) approved special exception relief from the lot occupancy, ground floor designated use, and penthouse setback requirements to allow the construction of a new four-story plus habitable penthouse 49-unit residential apartment building with underground parking and a total gross floor area of approximately 28,289 square feet (the “**Project**”). An existing historic two-story row dwelling is located at the northwest corner of the Property that is also part of the Project.¹ A site plan of the Property and Project is included with this application.

At the time of BZA approval, the Project was intended to be all market-rate rental apartments. The NC-6 zone in which the Project is located is exempt from Inclusionary Zoning.

¹ The Property is located in the Capitol Hill Historic District, and the Project’s design was approved by the HPRB.

In February 2019, the Applicant received a building permit for the Project, and construction began in July 2019. The Project is now substantially complete, and the Applicant anticipates that the Project will deliver in April or May 2021.

With this application, the Applicant proposes to change the principal use of the Project so that the 49 apartments may be rented furnished on a short-term (nightly) basis. The Applicant is not proposing any changes to the design, massing, or other physical aspects of the Project. In all other respects, the Project will remain as approved and permitted. The only proposed change from what the BZA previously approved is the principal use: it is now proposed to be lodging instead of multifamily residential. Lodging use is permitted as a matter-of-right in this zone, and the maximum permitted FAR in the zone is the same regardless of use.² Except for the relief already granted, the Project will conform to all development standards in the zone for lodging use, other than loading.³

Lodging use in the Project has a loading requirement that does not exist for residential use, so the Project was permitted and is being constructed without loading.⁴ However, with the use change to lodging, the required loading for the Project is one (1) loading berth since the loading requirement for lodging is based on gross floor area.⁵ There is no ability to provide loading in any event.

II. Nature of Relief Sought

The Applicant requests that the Board approve, as a Modification of Significance, the following:

² See Subtitle H §§ 702.1 & 1108.1(f).

³ With the change to lodging use, the Project will conform to the lot occupancy requirement for which relief was previously granted for residential use, making it more conforming in that respect.

⁴ There is no loading required for a residential building with fewer than 50 units per Subtitle C § 901.1.

⁵ See Subtitle C §§ 901.1 & 901.5(a) for the loading requirement.

1. A change to the principal use from that approved in the Order to lodging pursuant to Subtitle A §§ 304.10(d) & 304.13, with the flexibility to include either lodging or residential use; and
2. A special exception from the loading requirements in Subtitle C § 901.1.

III. Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to Subtitle C § 909.2, Subtitle X § 900.2, Subtitle Y § 100.3, and Subtitle Y § 704 of the Zoning Regulations.

IV. Justification for Principal Use Change

Since the Board's approval in early 2018, the market in Washington, DC for rental apartments has declined considerably, with new market-rate buildings being particularly challenged to find renters. Indeed, the rental market experienced a particularly acute decline in one year because of the COVID-19 pandemic. Vacancies in the Capitol Hill/Capitol Riverfront/Southwest submarket increased to 7.7%, and rents fell 3.3% on average.⁶ Across the District, annual apartment absorption was 25% lower, and the median rent for a one-bedroom apartment was down 8.1%.⁷ With the depressed rental market expected when the Project delivers, the Applicant would have an extremely difficult time making the Project financially viable with fewer renters at lower rents. Therefore, with the Project not yet completed but expected to deliver soon, the Applicant explored alternatives to rental apartments and determined that short-term rentals of furnished apartments, particularly in areas such as this, remains a viable market despite the declines in long-term rentals and travel. Realizing that the Project could be used for

⁶ CBRE H1 2020 Mid-Atlantic Multifamily Report.

⁷ *Id.*; "Why Now Might be a Good Time to Get a Discount on Your Rent," *Washington Post*, November 9, 2020 (www.washingtonpost.com).

transient/lodging use without any changes to the building, the Applicant determined that this is the highest and best use for the Project.

As a lodging use, the Project would operate without different impacts on the neighborhood. The building would look and feel like a residential apartment building, but with guests able to stay for less than 30 days. Based on the Applicant's research, most guests would stay on average eight (8) nights, so there would not be an influx or an abundance of traffic to the building. Further, the building does not and will not include a restaurant or bar, and it does not include any central gathering or event spaces for the public that are typical of hotels. Thus, it would not accommodate large gatherings or result in excessive noise or traffic or similar disruptions. No staff would continuously work on site, and the only employees in the building would be the periodic cleaning crew between guest stays, which means that there would be minimal traffic for which their parking could be accommodated in the garage.

In addition, the use change would not result in a loss of needed housing because of the already declining rental market and over supply. And no affordable housing would be lost since the Project is already exempt from IZ. Finally, if the market for rental apartment returns, then the Applicant can easily change the building back to residential use.

Changing the principal use of the Project to lodging does not affect any of the underlying facts on which the prior relief was granted. All of the relief that the Board approved was based on structural or Property conditions irrespective of the use. In other words, the need for the relief did not depend on or directly relate to the building being residential. Indeed, the lot occupancy relief is no longer necessary with the proposed lodging use since the lot occupancy limit in the zone applies only to residential use. The penthouse setback relief was based on the location of the building's core and similar height of the adjacent building. The preferred use relief was based

on the Property's location away from much pedestrian activity and the retail corridor. These conditions are the same with the proposed lodging use.

In the event that the market conditions improve for rental apartments, the Applicant requests the ability to change the Project back to residential use. That flexibility would be consistent with the use in the original Order and would not create any additional adverse impacts.

V. The Application Satisfies the Criteria for the Requested Special Exception Relief from the Loading Requirements

As noted above, the Applicant requests approval from the loading requirement because loading is required for lodging use but is not required for residential use in the same building. Relief from the loading berth required by Subtitle C § 901.1 is permitted as a special exception, subject to the specific requirements in Subtitle C § 909.2 and the general provisions of Subtitle X § 901.2. For the reasons set forth below, the application satisfies these requirements.

1. *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 (C § 909.2(a)).*

As shown in the included site plan, the Property does not have access to a public alley. Therefore, any vehicular access to the Project requires a curb cut. The Project already has one curb cut on L Street to access the parking. Most of the parking is below grade accessed via an automated system, and the ADA-required accessible parking space is provided at grade next to the underground parking entrance and between the new building and the historic row dwelling. Loading could not be accommodated from this curb cut because it would obstruct access to parking or require removal of parking. Therefore, the existing L Street curb cut cannot be used to accommodate loading, and a second curb cut would be necessary.

A second curb cut to accommodate loading would violate 24 DCMR § 605.8, which states, “All curb cuts and driveways shall meet the specifications of and be permitted by the District Department of Transportation.” DDOT’s curb cut and driveway specifications are set forth in the Design and Engineering Manual (“**DEM**”). Under Section 31.5.2(h) of the DEM, multiple curb cuts serving the same property must be at least 12 feet apart. In addition, a driveway accessed by a curb cut must be at least 60 feet from an intersection (Section 31.5.5(a) of the DEM), and the minimum distance between adjacent curb cuts on separate properties is 24 feet (Section 31.5.5(b) of the DEM).

A second curb cut on any of the Property’s street frontages to access loading would violate the specifications from the DEM described above. A second curb cut on L Street separated from the existing curb cut by at least 12 feet would either confront the historic row dwelling on the Property, which could not accommodate loading, or it would be less than 60 feet from the intersection of L Street and 9th Street. Along 9th Street, the Property has 89 feet of frontage, which means there is nowhere that a curb cut could be located that would be more than 60 feet from both the 9th and L Street intersection or the 9th Street and Potomac Avenue intersection. Similarly, along Potomac Avenue, the Property has 78 feet of frontage. To be at least 60 feet from the Potomac Avenue and 9th Street intersection, a curb cut on Potomac Avenue would have to be located in the westernmost 18 feet of frontage. However, this location also would violate the specifications because, under Section 31.5.2 of the DEM, a curb cut must be offset at least six (6) feet from the property line to the west, and the curb cut must be at least 18 feet wide for two-way circulation; all of this cannot be accommodated in the 78 feet of street frontage.

The violations of DDOT’s specifications for curb cuts are notwithstanding the fact that a curb cut in any location would not be able to accommodate loading in any event. The building

façade occupies its entire frontages along both 9th Street and Potomac Avenue, meaning that part of the building would have to be removed and the Project entirely reconfigured to accommodate loading. This curb cut and building façade opening on either street would severely disrupt the streetscape and most likely would not be approved by the HPRB in any event.

2. *The requested relief 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 (X § 901.2).*

Granting relief from the required loading berth will be in harmony with the general purpose and intent of the Zoning Regulations and Maps to limit adverse impacts from loading activity. In consultation with DDOT, the Project's limited loading activity will be accommodated from on-street. The Applicant will provide additional analysis regarding the Project's loading operations and management in a supplemental submission.

In any event, the amount of loading activity at the Project will be very limited. With furnished short-term apartments, the Project will not have move-ins or move-outs by residents. Guest will arrive simply with personal belongings. In addition, since the Project will not have a restaurant or any public gathering or event spaces, there will be no regular or large deliveries of food, beverages, or equipment. Thus, the impacts on the surrounding streets from on-street loading will be nominal at worst, and neighboring properties will not tend to be adversely affected by granting relief from the loading requirements.

VI. List of Publicly Available Documents

1. Zoning Regulations and Zoning Map of the District of Columbia, available at dcoz.dc.gov.
2. Orders of the District of Columbia Zoning Commission and Board of Zoning Adjustment, available at dcoz.dc.gov.

VII. List of Documents Included with this Application

1. BZA Order No. 19616
2. Site plan of the Project from the approved plans.
3. Summary of witness testimony.
4. Names and addresses of property owners located within 200 feet of the Property.

VIII. Conclusion

For all of the above reasons, the Applicant is entitled to the requested Modification of Significance in this case.

Respectfully submitted,
GOULSTON & STORRS, P.C.

_____/s/_____
Cary Kadlecek

Certificate of Service

The undersigned hereby certifies that copies of the foregoing documents were delivered by electronic mail to the following on March 8, 2021.

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