COZEN O'CONNOR

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Michelle Pourciau, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

Re: BZA Case No. 21485
Applicant's Prehearing Statement

Chairperson Pourciau and Honorable Members of the Board:

On behalf of Applicant Capitol Hill Hotel Owner 1, LLC (the "**Applicant**"), please consider this Prehearing Statement for the above-referenced case. The Applicant owns the "Capitol Hill Hotel," a 153-room hotel that has been operating a legal non-conforming transient use for four decades at 200-220 C Street SE (the "**Property**").

Despite the on-going transient use of the Capitol Hill Hotel, the Applicant is requesting a use variance to update the Certificate of Occupancy from "apartment" to "lodging." The Applicant is not proposing to introduce a new, non-permitted use nor is the Applicant seeking to expand an existing non-permitted use. Instead, the Applicant is requesting to update its Certificate of Occupancy to formalize the decades-long use of the Property as a hotel. Therefore, unlike many use variance cases, the difference here is between the existing permitted transient "apartment" use (operating as lodging) vs. the proposed lodging use. As explained in the original application and below, the current unconventional zoning designation creates undue hardship.

I. Additional Support for Undue Hardship

The Applicant has worked with the Office of Planning ("**OP**") during review of the application. OP requested additional information explaining why the existing apartment use classification creates an undue hardship for the Capitol Hill Hotel.

The hardship is not theoretical. The subject property is unique because of its decades-long transient use that is legally allowed under a Certificate of Occupancy for an apartment. However, this uniqueness directly contributes to confluence of compounding hardships relating to financing,[1] licensing, employment compliance, insurance, hotel management opportunities, and the feasibility of converting the property to a conforming apartment use.

[1] Economic use of property has been considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990).

Board of Zoning Adjustment
District of Columbia
CASE NO. 21485
EXHIBIT NO. 19

To further support this argument, the Applicant is enclosing a letter from HHM Hotels, the hotel's manager, describing the operational consequences of the current classification. (**Exhibit A**). Based on this letter and the case record, the current apartment classification creates the following undue hardships for the hotel:

- **Legal Compliance** – As reiterated in **Exhibit A**, the Capitol Hill Hotel operates in a legal gray area with respect to employment and operational laws. There are many employment and operational laws that apply to hotels but not apartment buildings. The distinction between the hotel's actual operations and the formal zoning use classification creates confusion and uncertainty for determining legal compliance requirements. For employees, the uncertainty affects workplace policies, job classifications, and compliance planning. For the hotel, it increases legal risk and makes recruitment and retention more difficult because qualified employees and managers expect a hotel operation to have a clear legal status.

- **Liability** – Hotels operate under a substantially higher duty of care to employees and guests as compared to an apartment building. Hotels carry risks that are different from apartment buildings. A hotel has short-term guests, front-desk and housekeeping operations, frequent public access, guest turnover, and hotel employees working throughout the building. Insurers evaluate those risks differently than they evaluate a residential apartment building. Because the property operates as a hotel but is classified as apartment use, insurers must reconcile the actual operations with the formal use classification. That uncertainty can reduce the number of willing carriers, increase premiums, limit coverage, or lead to exclusions that would not exist if the Certificate of Occupancy accurately reflected the lodging use.

- **Management/Franchising** – The Capitol Hill Hotel is currently an independent hotel that is managed by HHM Hotels. Conversely, many hotels operate under management or franchise arrangements with established brands such as Marriot, Hilton, Hyatt or IHG. For these managed hotels, the property owner/developer will build or renovate the hotel building, but the brand will "fly their flag" and be responsible for managing all day-to-do hotel operations.

  Yet, the zoning use discrepancy makes it substantially more challenging to attract brands to manage or franchise the Capitol Hill Hotel in the future. Large-scale hotel brands are very discerning in the opportunities they pursue, especially on the management side. These arrangements are subject to extensive management agreements and brands must be able to assess their legal rights and obligations at a particular property. The current mismatch between the actual hotel operation and the apartment Certificate of Occupancy creates uncertainty about the scope of permissible operations, brand standards, guest services, and long-term compliance. That uncertainty makes the property less attractive to hotel brands and limits the Applicant's ability to pursue ordinary hotel management or franchise opportunities.

- **Licensing** – The hotel currently operates with a basic business license for a "housing" business because the Certificate of Occupancy does not identify the property as a hotel. That classification does not match the way the property is actually used. The hotel provides lodging to transient guests, not apartment units for long-term residential occupancy.

Without the requested use variance, the Applicant cannot obtain the proper license to reflects the true use of the property as a hotel. The lack of a proper license creates undue hardship due to regulatory uncertainty.

- **Investment and Borrowing** – The hotel's financing problem is direct and practical. Lenders underwrite a hotel based on hotel revenue, hotel operations, and hotel risk. The current hospitality financing market is already characterized by cautious equity, tightened underwriting standards, reduced leverage, constrained conventional lending, and increasing reliance on private credit and other supplemental capital sources. Senior debt is frequently insufficient on its own, banks are actively managing or reducing commercial real estate exposure, and hotel owners are being required to contribute additional equity or assemble more complex and expensive capital structures. Recent industry reporting confirms that "[r]evenues are flat or declining, while expenses are up….The expected 2025 rebound for hotels never materialized. The year instead brought a 1.2% year-over-year decline in occupancy and a 0.3% decline in revenue per available room." As such "[c]oncentration risk within certain chains and elevated delinquencies in select [markets] highlight the importance of asset selection and market conditions." *See attached* reporting from Bisnow (**Exhibit B**).

  Against this already challenging backdrop, the Capitol Hill Hotel's zoning-use status introduces an additional, property-specific uncertainty concerning the continued operation, income, and value of the lender's collateral. The inconsistency in the Certificate of Occupancy requires lenders and investors to evaluate whether the hotel can continue operating, whether future permits and licenses will be issued without dispute, and whether enforcement or compliance issues could impair revenue. As a result, the property faces a narrower pool of lenders, more due diligence questions, higher perceived risk, and less favorable loan terms. Thus, the zoning issue does not operate in isolation. It compounds an already difficult hotel-financing environment and places the Hotel at an immediate financial disadvantage.

- **Taxation** – Finally, although not a hardship, it is worth noting that the hotel is taxed as a residential building, not a commercial building. While this is legally correct, the current use is limiting revenue for the city because a commercial hotel building will be taxed at a higher rate than a residential building. Therefore, if the relief is granted, the application will directly benefit the city.

II. In-Room Cooking Facilities

In connection with the undue hardship prong, the Applicant has outlined the difficulties in converting the Capitol Hill Hotel to a compliant, non-lodging use. Specifically, to convert the property to a true "apartment" use, the Applicant would need to install full cooking facilities in each of the 153 rooms. While some rooms in the hotel have a "wet bar," none of the rooms have full cooking facilities. At OP's request, the Applicant is enclosing photographs of the interior of a room, to demonstrate the limited nature of the wet bar facilities. (**Exhibit C**). As reflected in the picture, the wet bars, which are only in certain rooms, include a sink, a microwave and a small refrigerator. The wet bars do not have electric or gas lines that allow for full cooktop appliances.

Notwithstanding the undue hardship in converting the property, the Applicant and any reasonable owner of the property would not conceivably change the use of the property. The Property can and would continue to operate as a lodging operation under the transient "apartment" use. Additionally, the Applicant is attached pre-1989 Certificates of Occupancy, as requested by OP. (**Exhibit D**).

III. De Minimis Nature of Relief

Although a use variance is considered the highest standard of zoning relief, the requested relief is *de minimis* in nature. The Applicant is not proposing to introduce a new, non-permitted use nor is the Applicant seeking to expand an existing non-permitted use. Instead, the Applicant is requesting to update its Certificate of Occupancy to formalize the decades-long use of the Property as a hotel. Therefore, unlike many use variance cases, the difference here is between the existing permitted transient "apartment" use (operating as grandfathered lodging) vs. the proposed lodging use. Despite this change being *de minimis* in nature, the distinction creates real hardship for the Applicant as explained above.

The Board can consider several factors in review of a variance, including the *de minimis* nature of relief. In *Gilmartin v. D.C. Bd. Of Zoning Adjustment*, the Court of Appeals acknowledged that the Board

> has the flexibility to consider a number of factors including, but not limited to: 1) the weight of the burden of strict compliance; 2) the severity of the variance(s) requested; and 3) the effect the proposed variance(s) would have on the overall zone plan.
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> *Gilmartin v. D.C. Bd. Of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990).

Here, the Applicant has demonstrated the burden of strict compliance with the existing "apartment" use designation, including financing, licensing, employment compliance, insurance, and hotel management opportunities. These burdens compound upon each other to create confusion and uncertainty in operating the hotel.

Despite these hardships, the requested use variance is not "severe," but is *de minimis* in nature. The Applicant requests to formalize the same lodging use of the Property for the past four decades. Since the Applicant is not introducing a new use the variance relief will not be detrimental to the overall zone plan. Use variances are intended to prevent the imposition of new uses on the surrounding neighborhood. Due to the unique zoning history of the Capitol Hill Hotel, that is not the case here.

IV. Community Outreach

Finally, the Applicant attended a meeting of Advisory Neighborhood Commission 6C's Planning and Zoning Committee on June 4, 2026 and a public meeting of Advisory Neighborhood Commission 6B on June 9, 2026. At the public meeting, the ANC voted unanimously to support this application. The ANC's resolution is in the case record at Exhibit 17.

V. Witness Testimony

The Applicant identifies Barry Allen, the general manager of the Capitol Hill Hotel, to testify regarding the management of the Capitol Hill Hotel, including the hardships under the current zoning use designation.

VI. Closing

We look forward to presenting the application to the Board of Zoning Adjustment on September 9, 2026. Thank you for your attention to this matter.

Sincerely,

Eric J. DeBear

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2026 a copy of the foregoing Prehearing Statement was served, via electronic mail, on the following:

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