

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

Application of Van Ness LP

**4400 Connecticut Avenue NW (Square 1971 Lot 2) and
3415 Yuma Street NW (Square 1971 Lot 26)**

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Introduction and Summary of the Application

Van Ness LP (the “Applicant”), through undersigned counsel, seeks a Modification of Significance pursuant to 11-A DCMR § 102 *et seq* of the 2016 Zoning Regulations (“ZR16”) to modify the condition in BZA Appeal Nos. 7096 and 7097 (the “Order”) (Exhibit A), and Special Exception relief from the requirements of Subtitle C § 701.10 to reduce the number of parking spaces that were required when the existing hotel at 4400 Connecticut Avenue NW (Square 1971 Lot 2) (the “Hotel Lot”) was constructed (78 spaces) to what would be required if the 2016 Zoning Regulations applied to the existing hotel (33 spaces). As discussed more fully below, the requested modification of the condition and reduction in parking will allow the Applicant to extinguish an existing off-site parking covenant currently recorded against the Hotel Lot and an adjacent parking garage structure at 3415 Yuma Street NW (Square 1971 Lot 26) (the “Garage Lot”) that was constructed in connection with the existing hotel on the Hotel Lot. The Hotel Lot and Garage Lot are collectively referred to herein as the “Property.”

II. Background

A. Description of the Property and vicinity

The Property is located in the Van Ness neighborhood of upper Northwest at the intersection of Connecticut Avenue and Yuma Street. As shown on the Property survey plat attached as Exhibit B, the Hotel Lot has approximately 165 feet of frontage along Connecticut Avenue and approximately 140 feet of frontage along Yuma Street. The Hotel Lot is currently improved with a six (6) story hotel (Days Inn) and surface parking. Pursuant to the Order, the existing building and surface parking were constructed in 1963 for hotel purposes, and have since been devoted to hotel use. As shown on the original Zoning Computation Sheet for the hotel attached as Exhibit C, the building contains approximately 69,000 square feet of gross floor area (“GFA”) and 155 guest rooms. The Garage Lot is located due west of the Hotel Lot, on the opposite side of a 20-foot public alley. As shown in Exhibit B, the Garage Lot contains approximately 100 feet of frontage along Yuma Street, and is improved with a three-level parking garage (one below grade level and two above-grade levels) that was constructed at the same time as the hotel building. The parking garage was constructed with approximately 140 parking spaces.

As shown on the zoning / context map attached as Exhibit D, the Hotel Lot is zoned MU-7B and the Garage Lot is zoned R-1B. The Property is surrounded by a range of residential and

commercial uses. The properties directly north of the Property contain one- and two-story retail and services uses and a multi-story apartment building. There are several surface parking lots located off the public alley that separates the Hotel Lot and Garage Lot that provide off-site accessory parking to the aforementioned retail and service uses along Connecticut Avenue. To the south of the Hotel Lot, across Yuma Street, are multi-story office buildings that contain ground floor retail and service uses, as well as the University of the District of Columbia (“UDC”) campus and International Chancery Center. The office building immediately south of Yuma Street is owned by the District of Columbia (which is currently used by UDC). To the east of the Property, across Connecticut Avenue, is the Park Van Ness development, a multi-story apartment building with ground floor retail. A few one- and two-story retail and institutional uses also exist across Connecticut Avenue, beyond which is Soapstone Valley Park. Finally, as shown on the attached context map, much of the area to the west of the Property contains single-family residential uses, with a low-rise apartment complex located immediately west of the Garage Lot. The Van Ness / UDC Metrorail Station is approximately 0.17 miles to the southeast.

B. Zoning history for the Property

On January 16, 1963, the Board granted variance and special exception relief to permit construction of the existing hotel and parking garage. Specifically, pursuant to the Order, the Board granted a use variance to permit construction of a three-level parking structure on the Garage Lot to provide required accessory off-street parking for a hotel to be constructed on the Hotel Lot. In granting the use variance, the Board determined that topographic conditions and the proximity of the Garage Lot to commercial uses along Connecticut Avenue and the (former) U.S. Bureau of Standards operation to the south (now occupied by UDC and the International Chancery Center) made it difficult to develop the Garage Lot in accordance with existing R-1-B zoning with single-family residential use. In addition to the use variance, the Board granted a special exception to allow a portion of the hotel’s required parking to be located within the parking garage. The Board ultimately found that the applicants at the time “suffer a hardship because the [Garage Lot] cannot be developed for its zoned purpose in view of the physical condition of the [Garage Lot] and the surrounding commercial and governmental use, and that the use of the [Garage Lot] for accessory off-street parking 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.” *See* Order at p.2. As required under the zoning regulations in effect at that time, the Board conditioned its approval of the special exception for off-site hotel parking on the recordation of a covenant that requires the parking garage to only be used for accessory parking for the hotel on the Hotel Lot, or for as long as the accessory parking is required by the Zoning Regulations. The specific language of the Order condition states:

“The parking spaces authorized under the terms of this Order are required parking spaces which will require the owner of the land upon which such parking is to be located to agree to become a party to a covenant with the District of Columbia to run with the land and to be binding upon him and his successors in title, which requires that the area approved for required off-street parking shall be reserved exclusively for that purpose so long as the improvements to be served exist or so long as said accessory off-street parking is required by the Zoning Regulations.”

As required by the Order, a covenant was recorded in the land records of the District of Columbia, as copy of which is attached as Exhibit E (the “Parking Covenant”). Per the condition in the Order, the Parking Covenant stipulates that the Garage Lot shall be used for accessory parking for the hotel so long as the Hotel Lot and associated hotel building are used as a hotel or similar use that require off-street parking spaces in accordance with the Zoning Regulations.

B. Summary of parking requirements under the 1958 Zoning Regulations (“ZR58”) and request to reduce the number of required parking spaces for the existing hotel based upon the current minimum parking requirements of ZR16

As stated above, the existing hotel was constructed in 1967 pursuant to the provisions of ZR58 in effect at the time. At that time, a hotel use was required to provide a minimum of 1 vehicle parking space for each two (2) guest rooms. According to the original Zoning Computation Sheet for the hotel, the hotel was constructed with approximately 155 guest rooms, which would have triggered a minimum parking requirement of 78 parking spaces. At the time the hotel was constructed, ZR58 did not allow for an automatic reduction in parking due to proximity to Metrorail or other transit.

Under ZR16, a hotel use is currently required to provide 0.5 spaces for every 1,000 square feet of GFA in excess of 3,000 GFA. Based upon this standard, the existing hotel on the Hotel Lot would generate a minimum parking requirement of 33 spaces if constructed today, which could be automatically reduced by 50% (or to 17 spaces) since the hotel is located within 0.5 miles of the Van Ness – UDC Metrorail station. *See* 11-C DCMR § 702.1. The following table compares the minimum parking requirements for the existing hotel under the ZR58 requirements in effect at the time the hotel was constructed and the existing minimum parking requirements under ZR16.

Use	Guest Rooms / GFA	C-3-A ZR58	MU-7 ZR16	Parking Spaces Provided on the Hotel Lot
Hotel / Lodging	155 guest rooms / 69,000 GFA	1 for each 2 guest rooms = 78 spaces <i>(No transit reduction available)</i>	0.5 / 1,000 GFA in excess of 3,000 GFA = 33 spaces <i>(17 spaces with transit reduction per C-702.1(a))</i>	41 spaces

The Office of the Zoning Administrator (“ZA”) has determined that Subtitle C § 701.10 (which states “The number of required parking spaces shall not be reduced below the minimum required as long as the use that generated that requirement remains in existence.”) requires the Applicant to provide the 78 parking spaces that were initially required on the Hotel Lot when the

hotel was constructed, despite ZR16 now requiring significantly less vehicular parking. Therefore, the Applicant is seeking relief from C § 701.10 through the special exception approval criteria of Subtitle C § 703 *et seq*, to reduce the amount of required parking for the existing hotel to what would be required for the hotel under ZR16.

C. Need for modification of Order condition and special exception relief to reduce required parking

The Applicant is the owner of the Garage Lot and parking garage, and is the long-term ground leaseholder of the Hotel Lot and owns the actual hotel building. Over the last few years, the Applicant has been evaluating its near- and long-term strategy for both the parking garage and hotel building. The parking garage has nearly reached the end of its usable life. In fact, the Applicant has recently had to install substantial structural reinforcements on the lower level of the garage, which is no longer utilized for parking.

Given the age and condition of the parking garage, the Applicant has no intention to make any significant investments into rehabilitating the structure, especially since the Applicant no longer needs the parking garage to accommodate the hotel's parking demand. Instead, the Applicant has determined that the best strategy is to sell the parking garage and allow the new owner to redevelop the Garage Lot in accordance with applicable zoning regulations. To ensure a successful and efficient conveyance of the Garage Lot, the Applicant wishes to clear title to the Garage Lot by extinguishing the Parking Covenant, which is appropriate given the hotel's proximity to Metrorail and that the parking garage is not needed to meet the hotel's minimum parking requirement under current ZR16 parking requirements.

Based on the aforementioned ZA interpretation of Subtitle C § 701.10 and a recent Board approval¹, to extinguish the Parking Covenant the Applicant must request a special exception to reduce the number of hotel parking spaces to what is currently required under ZR16 and modify the language of the Order condition to: (i) note that the parking spaces in the garage are no longer required spaces for the hotel, and (ii) state that the Parking Covenant may be extinguished. Assuming approval by the Board, the Applicant can then proceed to recording the necessary documentation to extinguish the Parking Covenant. While the Applicant is seeking to extinguish the Parking Covenant, it is cognizant that the Board and/or community may be interested in ensuring that the parking garage continue to be used solely for hotel parking until the Garage Lot is redeveloped. As such, the Applicant respectfully requests that the condition in the Order be modified as follows (inserted text is reflected in **bold underline** and deleted text is in ~~strikethrough~~)²:

“The parking spaces authorized under the terms of this order are **non**-required parking spaces **for the existing hotel use on Lot 2 in Square 1971, but shall nonetheless continue to** ~~which will require the owner of the land upon which such parking is to be located to agree to become a party to a covenant with the District of Columbia to run with the land and to be binding upon him and his~~

¹ BZA Order No. 7468B

² The Applicant has submitted the modified condition language for the Board convenience, and recognizes that the Board may deem it necessary to modify the Applicant's proposed language in its final zoning order.

~~successors in title, which requires that the area approved for required off-street parking shall be reserved exclusively for that purpose~~ **for so long as the parking structure on Lot 26 in Square 1971 exists.** ~~so long as the improvements to be served exist or so long as said accessory off-street parking is required by the Zoning Regulations.~~ **Upon raze or demolition of said parking structure, the Board's approval of the parking structure and parking spaces authorized under the terms of this order shall cease, and use of Lot 26 in Square 1971 shall revert to what is permitted under zoning at such time. The Board's approval of this modification shall permit the Applicant, including its successors and assigns, to extinguish the parking covenant previously required under BZA Appeals #7096 and #7097 as it is no longer required.**

Clean version of proposed modified condition language:

“The parking spaces authorized under the terms of this order are non-required parking spaces for the existing hotel use on Lot 2 in Square 1971, but shall nonetheless continue to be reserved exclusively for that purpose for so long as the parking structure on Lot 26 in Square 1971 exists. Upon raze or demolition of said parking structure, the Board's approval of the parking structure and parking spaces authorized under the terms of this order shall cease, and use of Lot 26 in Square 1971 shall revert to what is permitted under zoning at such time. The Board's approval of this modification shall permit the Applicant, including its successors and assigns, to extinguish the parking covenant previously required under BZA Appeals #7096 and #7097 as it is no longer required.”

I. Satisfaction of the Special Exception Relief Requirements

A. Jurisdiction of the Board

Under the Zoning Act and the Zoning Regulations, the Board is authorized to grant zoning relief as a special exception if the exception:

- (a) will be in harmony with the general purpose and intent of the Zoning Regulations and Maps;
- (b) will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) will meet such special conditions as may be specified in the Zoning Regulations.

11-X DCMR § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the relief requested are satisfied. *See National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n.1 (D.C. 2000); *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995); *see also Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

B. Compliance with the Special Exception Standards for Parking Relief (Subtitle C § 703)

Section 703.1 provides flexibility from the minimum required number of parking spaces when providing the required number of parking spaces would be unnecessary due to a lack of demand for parking or the site's proximity to transit options or would be contrary to other District of Columbia regulations. In this case, as discussed above, the existing hotel was constructed pursuant to ZR58, and the number of parking spaces that were required to satisfy zoning far exceed the number of parking spaces that would be required if the hotel was constructed today under ZR16. However, pursuant to Subtitle C § 701.10, "the number of required parking spaces shall not be reduced below the minimum required as long as the use that generated that requirement remains in existence." This provision has been interpreted by the Zoning Administrator to mean that a building or structure built under ZR58 must continue to provide the number of parking spaces that were required under ZR58 at the time of construction unless relief is sought from the Board.

The Applicant is seeking relief to reduce the number of parking spaces from the 78 spaces that were required when the hotel was constructed under ZR58, to 41 spaces that will be located entirely on the Hotel Lot. Under ZR16, based upon the gross floor area of the hotel the minimum parking requirement for the existing hotel would be 33 spaces. This can be reduced to 17 spaces due to the hotel's proximity to the Van Ness – UDC Metrorail station. Thus, even with the requested reduction in parking, the Applicant will still exceed the minimum parking that would be required by the current minimum parking requirements under ZR16.

An applicant seeking relief from the vehicular parking requirements must demonstrate compliance with the provisions of Subtitle C § 703. As demonstrated below, the Applicant fully satisfies all applicable criteria.

C-703.2: The Board of Zoning Adjustment may grant a full or partial reduction in the number of required parking spaces, as a special exception pursuant to Subtitle X, Chapter 9, and subject to the applicant's demonstration to the Board's satisfaction of at least one (1) of the following:

(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities.

The existing hotel is particularly well served by mass transit. The Hotel Lot fronts Connecticut Avenue which is served by the L2 Metrobus Route. The L2 route runs from downtown to Chevy Chase. The Hotel Lot is also located within 0.17 miles of the Van Ness - UDC Metrorail Station. Because the existing hotel is well served by mass transit, the Applicant meets this standard for special exception parking relief.

(d) Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood;

The proposed reduction in parking will help reduce traffic congestion. It is well established that the provision of lower amounts of parking helps to reduce the number of

vehicle trips to a site by forcing travelers to choose public transit rather than drive their vehicle. The portion of the Connecticut Avenue corridor traversing upper Northwest is well-known to have congestion during morning and afternoon peak hours of travel. As stated above, the proposed reduction in required hotel parking and modification to the Order condition will facilitate the removal of the existing parking garage and redevelopment of the Garage Lot. The resulting reduction in hotel parking spaces will help reduce the number of vehicle trips generated by the hotel, and consequently help reduce traffic congestion on Connecticut Avenue, as well as Yuma Street.

C-703.3: Any reduction in the required number of parking spaces granted under Subtitle C § 703.2 shall be:

- (a) Proportionate to the reduction in parking demand demonstrated by the applicant;
- (b) Limited to the number of spaces that the applicant demonstrates cannot reasonably be provided on the site as proposed to be developed in the application; and
- (c) Limited to relief from the minimum number of parking spaces required by this section and shall not provide relief from the location, access, size or layout, screening, or other requirements of this chapter.

Although the Applicant is requesting to reduce the number of parking spaces that were required under ZR58 when the hotel was constructed, the Applicant will still provide 41 parking spaces on the Hotel Lot. This amount of parking still exceeds the 33 parking spaces that would be required if the hotel was constructed under ZR16, which in fact could be automatically reduced to 17 spaces due to the Hotel Lot's proximity to the Van Ness – UDC Metrorail station. The 41 required parking spaces that the Applicant will provide on the Hotel Lot is more than adequate to meet the hotel's current parking demand.

The proposed reduction in required parking is also proportionate to the reduction in parking demand generated by the hotel since its construction. As is well known, the minimum parking requirements under ZR58 were extremely autocentric, often requiring far more vehicle parking than necessary for a particular use. Such is the case for the existing hotel, which when constructed in 1963 was required to provide 78 parking spaces for its 155 guest rooms (1 for each 2 guest rooms).³ While the hotel may have generated a parking demand for 78 spaces, it most certainly does not generate the same parking demand today given the hotel's proximity to the Van Ness – UDC Metrorail, which was constructed in 1981.

C-703.4: Any request for a reduction of more than four (4) spaces from the required number of parking spaces shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval.

³ The fact that the hotel provided 155 parking spaces when it was constructed (15 on-site spaces and 140 spaces in the parking garage) is further evidence of the degree of car dependency at the time.

The Applicant will provide 41 parking spaces on the Hotel Lot, which still exceeds the minimum parking requirement of 33 parking spaces for the existing hotel under ZR16. Further, as stated above, the Hotel Lot is located approximately 0.17 miles from Metrorail and is well served by Metrobus routes running along Connecticut Avenue. Given the amount of on-site parking that will be provided and high degree of transit access, the Applicant does not believe a Transportation Demand Management (“TDM”) plan is necessary in this instance.

X-901: Compliance with the General Special Exception Standards

In addition to the specific special exception standards of Subtitle C § 703, the requested parking relief will also be in harmony with the general purpose and intent of the Zoning Regulations as the parking that will be provided on the Hotel Lot will more than satisfy the vehicular parking requirements of the current (2016) Zoning Regulations.

The requested parking relief is likewise in harmony with the general purpose and intent of the Zoning Maps. It will not have any adverse effect on the character of the zone district in which it is located; does not impact the suitability of the zone and uses permitted therein; has no negative effect on the stability of the zone district or its land values; and does not affect the consistency of the Zoning Maps with the Comprehensive Plan. *See* 11-A DCMR § 101.2. Moreover, approval of the requested special exception will facilitate the Applicant’s efforts to sell the Garage Lot for future redevelopment by another owner, likely for residential use.

Additionally, the proposed parking relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. First, as stated the existing hotel will continue to provide more than adequate parking on-site, and no longer requires the parking spaces located within the adjacent parking garage. Additionally, the uses surrounding the Hotel Lot and Garage Lot can continue to serve their intended purposes upon the granting of the requested relief. Indeed, the single- and multi-family residential uses to the north and west of the Garage Lot arguably will benefit when the parking garage is eventually redeveloped with more appropriate residential uses, especially given the security issues currently taking place within the garage during off-hours. Based on the foregoing, Because the Applicant will meet the specific requirements for parking relief, the special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning district. *See National Cathedral Neighborhood Ass’n, supra.*

II. Modification of Significance

Pursuant to Subtitle Y §704, the Applicant is seeking a Modification of Significance of BZA Appeals Nos. 7096 and 7097. By granting the requested modification to the condition in BZA Appeals Nos. 7096 and 7097 and special exception relief, the minimum parking requirement for the existing hotel on the Hotel Lot would be reduced to 41 spaces, which would be provided entirely on the Hotel Lot. While the spaces in the existing parking garage on the Garage Lot would continue to be solely devoted to hotel parking, the spaces would no longer be needed to meet the hotel’s minimum parking requirement, and thus the parking covenant currently recorded against the Hotel Lot and Garage Lot can be extinguished. By extinguishing the parking covenant, the Applicant can advance its efforts to market and sell the Garage Lot - with clear title – so that it

may be redeveloped with a use that is in accordance with zoning, better utilizes the site's potential, and is better suited to the surrounding context.

III. Community Engagement

The Property is located within the boundaries Advisory Neighborhood Commission ("ANC") 3F and within single member district ANC 3F05. The Applicant is coordinating with ANC 3F on the application and will seek a formal vote of support from ANC 3F in advance of the public hearing.

IV. List of Exhibits

Exhibit A – BZA Appeal Nos. 7096 and 7097

Exhibit B – Survey plat depicting the Hotel Lot and Garage Lot, including existing buildings and other improvements

Exhibit C – Original zoning computation sheets for existing hotel and parking garage

Exhibit D – Zoning / context map of Hotel Lot and Garage Lot and surrounding context

Exhibit E – Parking covenant

V. Conclusion

Based on the foregoing, the Applicant meets the special exception standards for parking relief and the standards for Modification of Significance approval. Accordingly, the Applicant respectfully requests the Board of Zoning Adjustment to grant the application.

Respectfully Submitted,

/s/
Christine Roddy

/s/
Olivia K. Torres