



May 16, 2018

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

RE: Modification of Significance for BZA Order 19169 on behalf of Birchington, LLC (Lots 20-21, 804-805, 824-825, and 829, Square 526)

Chairperson Hill and Honorable Members of the Board:

We submit this application pursuant to Subtitle Y § 704 of the 2016 Zoning Regulations to request a Modification of Significance to the approval by the Board of Zoning Adjustment in BZA Order No. 19169 (BZA Exhibit #44), for property located at 303-317 K Street NW (Square 526, Lots 20-21, 804-805, 824-825, and 829).

Birchington, LLC (the “Applicant”) requests additional variance relief for nine parking spaces from the off-street parking requirements of Section 2101.1, and the loading requirements for the 55’ loading berth and associated platform and waiver of the drive aisle slope provisions of Section 2201.1 under the Zoning Regulations of 1958 to construct the approved hotel project in the D-4-R Zone (formerly DD/C-2-C) at the aforementioned premises.

This application for a Modification of Significance includes the following materials:

1. Application Form;
2. The Statement of reasons and grounds for the modification of significance;
3. The name and address of the owners of all property located within two-hundred feet of the subject property and two copies of self-stick labels printed with their names and addresses;
4. A copy of expert witness resumes;
5. A copy of applicable Board order and plans; and
6. Proof of service to all parties.

Finally, the Applicant submits a filing fee in the amount of \$811.20 in satisfaction of Subtitle Y § 704.3.

Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'MM', is written over a light blue horizontal line.

By: Meredith Moldenhauer

Certificate of Service

I hereby certify that on this 16th day of May, 2018, a copy of this Request for Modification of Significance with attachments was served, via email, as follows:

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

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

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

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



By: Meredith Moldenhauer

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

**MODIFICATION OF SIGNIFICANCE
BIRCHINGTON, LLC**

**BZA ORDER #19169
303-317 K STREET NW**

STATEMENT OF THE APPLICANT

I. Background of Case

This statement is submitted on behalf of the Applicant, Birchington, LLC (the “Applicant”), the owner of the property located at 303-317 K Street NW, (Square 526, Lots 20-21, 804-805, 824-825, and 829) (the “Property”) in support of its application for a Modification of Significance pursuant to 11 DCMR Subtitle Y § 704 of the 2016 Zoning Regulations (“ZR16”).

Order No. 19169 (the “Order”) is dated February 29, 2016 and became effective on March 10, 2016.¹ In the Order, the Board granted area variances from the 1958 Zoning Regulations (“ZR-58”) rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and loading requirements under § 2201.1, to construct a 130’, 14-story hotel and apartment building in the DD/DD-HPA/C-2-C (now D-4-R) District (the “Original Project”). See BZA Order #19169 at **Tab A**.² The Original Project approved 200 hotel rooms on Floors 2-11 and 30 residential units on floors 12-14, and approximately 2,000 s.f. of bar/restaurant space on the ground floor. Also approved were two below- grade parking decks with 46 parking spaces and one 20’-service delivery space. As approved, the Original Project also includes detailed Traffic Mitigation and Loading Management Plans. As to loading, a 50’-on street loading area along 4th Street is proposed to accommodate the Hotel’s larger loading needs. This space would also serve as a valet parking area during times when it is not used for loading.³

In the Order, the Board’s approval was subject to the Approved Plans at BZA Exhibit #41, (the “Plans”), which are included here at **Tab B**.

II. Proposed Modification of Significance

As part of the modification request, the Applicant is keeping the Original Project’s approved general building footprint, height and massing, and the Traffic Mitigation and Loading Management Plans as approved. The purpose of this modification is to remove the residential component and proceed with an all-hotel project. As revised, the structure would be 13-stories and 130’-in height, approximately 10.4 FAR in density, and provide 247 hotel rooms (the “Modified Project”). The Modified Project also would have approximately 777 s.f. of ground-

¹ Pursuant to the Board’s Order in BZA Case No. 19169A, the validity of the Order has been extended to February 29, 2020. A copy of the Board’s Order in BZA Case No. 19169A is included at **Tab C**.

² Specifically, in the Order, the Board granted 100% relief from the rear yard requirement, a 76-parking space reduction for the hotel use and relief from the required 30’-loading berth and 100’ loading space requirement associated with the hotel use.

³ Approval of the on-street loading/ valet area will be issued by DDOT’s Public Space Committee and is outside the scope of the BZA application.

floor level bar area. As revised, the Modified Project would provide 44 parking spaces in two levels of below-grade parking with the entrance off of 4th Street. Further, the Applicant now proposes an additional, on-site 20'-service space. Accordingly, the Modified Project would provide *two* 20'-service loading spaces, in a location near the vehicular entrance. The Modified Project also proposes a penthouse with a small amount of meeting space on the first level and mechanical space on the second level; the penthouse would satisfy the zone's height and setback requirements.

The Modified Project requires additional zoning relief for nine parking spaces and one 55'-loading berth and the associated 200'-loading platform due to the change from hotel/residential to all hotel.⁴ Additionally, in order to provide the additional 20'-service loading space, the Modified Project seeks a waiver from the maximum slope requirements for access aisles of Section § 2204.4, pursuant to the conditions listed in Section § 2204.13. Accordingly, a Modification of Significance is required as shown on the "Zoning Data A-01 Revised" sheet in **Tab D** and excerpted below.⁵

Height	130'-0"	130'-0"
Closed Court at Hotel Floors 1-11 (Height of Court - 100')	Current: Hotel width 3' per foot but not less than 12'-0". Required width=25'0" Minimum area - Note less than 250 SF and not less than twice the square width of required court (25x25) x 2 = 1,250 SF Revised: Hotel use increased. Hotel Floors 1-13 (Height of Court - 110'-0" = 27'-5" min area 1513 sf)	Approx. 35'-4" X 54'-4" (Irregular shape) = 2,166 SF
Closed Court at Residential Floors 12-14 (Height of Court - 30')	Residential width 4" per foot but not less than 15'-0". Required width=15'0" Minimum area - Note less than 350 SF and not less than twice the square width of required court (15x15) x 2 = 450 SF	Residential Use Removed
Rear Yard Setback	15'-0"	None Provided Relief approved in BZA Case No. 19169
Side Yard Setback	None required	None
Penthouse Height	18'-6"	18'-6"
Hotel Parking (Based on floors 2-11 hotel/200 rooms and 2,040 hotel public space/bar)	Current: 1 space per 2 rooms plus 1 for each 150 SF of floor area for largest function room. 100 + 14 = 114 Revised: Hotel use increased (Based on floors 2-13 hotel/247 rooms and 777 sf of hotel public space/bar). 124 + 5 = 129	44 spaces provided Relief already granted for 76 spaces in BZA Case No. 19169. Additional relief only required for 9 spaces.
Residential Parking (Based on floors 12-14 as residential, 30 units total)	1 for each 4 dwelling units = 8 spaces	Residential Use Removed
Total Parking	Current: 122 spaces Revised: Hotel use increased & Residential use removed. 114 spaces	44 Spaces
Hotel Loading Berth	Current: 1 @ 30'-0" Deep Revised: Hotel use increased = 1 @ 55'-0" Deep	None Provided Relief from 30' berth approved in BZA Case No. 19169. Additional relief required for the 55' loading berth.
Hotel Loading Platform	Current: 1 @ 100 SF Revised: Hotel use increased = 2 @ 100 SF	None Provided Relief for 100' platform approved in BZA Case No. 19169. Additional relief needed for the 200' platform.
Hotel Service/Delivery Loading Space	1 @ 20'-0" Deep	2 @ 20'-0" Deep
Residential Loading Berth, Platform, Space	None - Less than 50 units	Residential Use Removed
Hotel Bikes	None required	14 Spaces Provided
Residential Bikes	1 space per 3 units. Required 10	None. Residential use removed.
GAR	Approx. 30% site area to be vegetated	Approx. 30% site area to be vegetated

⁴ As the Project is vested under ZR-58, the additional relief requested here is also from ZR-58. However, if the Applicant is directed to seek the relief under ZR-16, it can do so in a follow-up submission.

⁵ The Applicant notes that it initially filed a request for a Modification of Consequence to obtain approval for the Modified Project. See BZA Case No. 19169B. However, after it was determined that additional relief was required, the Applicant withdrew that application. A copy of the BZA Letter Confirming Withdrawal of BZA Case No. 19169B is attached here at **Tab E**.

A chart summarizing the differences in relief between the Original Project and the Modified Project is below:

	Rear Yard Relief	Parking Relief	Loading Relief
<u>Original Project</u> (BZA Case No. 19169)	100% Rear Yard relief granted	<u>Required:</u> 114 spaces	<u>Required:</u> One 30' - loading berth One 100' -loading platform One 20' - service space
		<u>Provided:</u> 46 spaces	<u>Provided:</u> One 20' -service space
		<u>Relief Granted:</u> From 76 spaces	<u>Relief Granted:</u> One 30' - loading berth One 100' -loading platform
<u>Modified Project</u>	No change to rear yard	<u>Required:</u> 129 spaces	<u>Required:</u> One 30' - loading berth One 55' -loading berth One 100' -loading platform One 200' - loading platform One 20' - service space Driveway slope of 14%
		<u>Provided:</u> 44 spaces	<u>Provided:</u> Two 20' -service space Driveway slope of 14%
		<u>Relief:</u> From 85 spaces	<u>Relief</u> One 30' - loading berth One 55' -loading berth One 100' -loading platform One 200' - loading platform Driveway slope of 14%
Additional Relief required for the Modified Project	No additional rear yard required	Additional relief for 9 parking spaces.	1 55' -loading berth One 200' - loading platform Driveway slope of 14%

III. Community Outreach

The Applicant met with ANC 6E's Development and Zoning Committee on April 26, 2018 to discuss the Modified Project. After the modification request is filed, the Applicant will present the request to that Committee and the full ANC at their next regularly-scheduled meetings.

IV. Compliance with Subtitle Y § 704

The Applicant's request for a Modification of Significance complies with the relevant subsections of Subtitle Y § 704 as follows:

- *Subtitle Y § 704.1 - Any request for modification that cannot be processed pursuant to Subtitle Y § 703 shall require a public hearing.*

The Applicant's request for additional relief requires a full Board hearing and may not be processed pursuant to Subtitle Y § 703.

- *Subtitle Y § 704.2 - An application for a modification of significance shall be made in an appropriate manner provided by the Director. The applicant shall furnish two (2) copies of all information required by the form at the time of filing the application, including the following:*

- a. A completed application form,*

A copy of the application form is included herein.

- b. The nature of, reason(s), and grounds for the technical correction, minor modification, or modification of consequence,*

The nature of the Modification of Significance is described in this Statement.

- c. The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and two (2) copies of self-stick labels printed with their names and addresses;*

The name and addresses of owners within 200 feet is attached herein.

- d. A copy of the resume of any expert witness who will be testifying in the case;*

- e. A written summary of the testimony of all witnesses;*

Stephen Varga, Planning Services Director at Cozen O'Connor, and qualified expert witness in land use, will provide testimony that the proposed relief satisfies the planning and zoning requirements of the Zoning Regulations. Mr. Varga's resume is included herein at **Tab F**.

- f. A copy of any Board final order, map, plan, or other action or relief proposed to be modified or corrected, and*

A copy of BZA Order #19169 is included in the record at **Tab A**. Also, a copy of the BZA Order No. 19169A, which extended the validity period to February 2020 is in the record at **Tab C**.

- g. Proof of service to all parties.*

This request was served on all parties to the original application, as evidenced by the attached Proof of Service. The only party to the original application was ANC 6E.

- *Subtitle Y § 704.3 - No application for modifications of significance shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.*

A filing fee of \$811.20 is enclosed. This fee represents 26% of the original filing fee of \$3,120.00 submitted with BZA Application No. 19169, in accordance with Subtitle Y § 1600.1(e).

- *Subtitle Y § 704.4 - All written requests shall be served by the moving party on all parties in the original proceeding at the same time that the request is filed at the Office of Zoning.*

ANC 6E was the only party to the original proceeding besides the Applicant. The Applicant will provide the ANC with all written requests.

- *Subtitle Y § 704.5 - All requests for modifications of significance shall be served on all other parties to the original application at the same time as the request is filed with the Board.*

ANC 6E was the only party to the original proceeding besides the Applicant. The Applicant will provide the ANC with all requests.

- *Subtitle Y § 704.6 – A public hearing on a request for a significant modification shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification.*

The requested modification is for minor additional parking and loading and loading access relief and the evidence provided will be focused on these considerations. Three conditions were approved as part of BZA Order #19169:

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

The conditions are not impacted by the request for additional relief, and will be carried forward as part of a modified order for the Modified Project.

- *Subtitle Y § 704.7 - The scope of a hearing conducted pursuant to Subtitle Y § 704.1 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.*

The Applicant will not request the Board to opine on any other area of relief except for the parking and loading and loading requirements of Sections §§ 2101.1 and 2201.1 of ZR58.

- *Subtitle Y § 704.8 - A decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application.*

The Applicant's Modification of Significance request requires modification of the plans approved in BZA Order #19169, and included at **Tab B**. The revised plans proposed by the Applicant for the Modified Project are provided at **Tab D**.

- *Subtitle Y §704.9 –The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.*

On March 28, 2018, the BZA approved the two-year time extension of BZA Order #19169, extending its effective date to March 29, 2020. *See* BZA Order 19169A at **Tab C**. Consequently, this modification is filed within the effective period of BZA Order #19169A.

V. The Applicant meets the burden of proof for area variances for the parking and loading requirements under Sections §§ 2101.1 and 2201.1 of ZR-58

As determined by the Board in approving BZA Case No. 19169, the Original Project met burden of proof for variance relief from the parking and loading requirements. The Modification of Significance requests additional relief from the parking and loading requirements of ZR-58. As discussed below, the requested Modification of Significance satisfies the variance requirements for much of the same rationale on which the Board for approval of the original approval.

Variance relief is required from the requirements regarding parking (§ 2101.1) and loading (§ 2201.1). Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance need to demonstrate that

they will encounter "practical difficulties" in the development of the property if the variance is not granted. See *Palmer v. District of Columbia Bd. Of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D. C. 1990). As discussed below, and as will be further explained in the Prehearing Statement and at the public hearing, all three prongs of the area variance test are met in this Application.

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition

The phrase "exceptional situation or condition" in the variance test applies not only to the land, but also to the property's history. See, *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). the Property is unusual and affected by the following exceptional situations and conditions that individually and collectively make it practically difficult to comply with the Zoning Regulations: (1) the Property is irregularly shaped; (2) the Property is small in size and located on a corner lot; (3) lack of rear alley access; (4) the Property fronts on K Street NW, with its wide, pedestrian-friendly sidewalk area limiting curb cut usage; and (5) the Property is located in an area with a high water table, restricting that ability to construct more than two levels of below-grade garage.

1. Irregularly Shaped Property

The Property is an assemblage of seven (7) lots. Four (4) of those lots, Lots 21, 20, 824 and 825, jut out 20 feet beyond the rear lot lines of the rest of the Property (the "Dogleg Lots"). As a result, the Property forms a wide L shape that presents design and efficiency challenges.

2. Small Property Size and Corner Location

The Property is a corner lot that fronts along K and 4th Streets NW, and has a lot area of only approximately 10,767 square feet, which is small considering the intended hotel uses and permitted height and densities. Further, the Applicant is unable to assemble more land due to the other recently constructed developments on 4th and K Streets, as well as the proximity to the highway.

3. Lack of Rear Alley Access

The Property has no rear alley. Rather, it is a landlocked parcel that must obtain vehicular access through DDOT approval of curb cuts from the public rights of way. Although the Property currently has a curb cut along K Street, DDOT has informed the Applicant that it will not support continued use of that curb cut. Accordingly, all access to the Property must be from one curb cut off of 4th Street.

4. Significance of K Street

The Property's K Street frontage contributes to its exceptional situation because K Street is flanked by a broad, approximately 50'-wide public sidewalk area that is attractive to pedestrians and provides a significant viewshed for the City. Accordingly, due to the pedestrian-nature of the wide sidewalk, DDOT has stated that it would not support continued use of the curb cut from K Street. Therefore, all access to the Project and valet parking spaces must be consolidated on 4th Street.

5. High Water Table

The Property has a high water table that restricts excavation to two levels of below grade parking. Accordingly, the high water table is an exceptional condition on the Property that limits the depth of below-grade excavation.

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

Due to the Property's exceptional conditions, strict application of the Zoning Regulations with respect to the parking requirements of § 2101.1 and the loading requirements of § 2201.1 would continue to result in practical difficulties for the Applicant as so noted by OP in their report for the original application.⁶

1. Off-street parking (§ 2101.1)

As noted, the Modified Project provides 44 parking spaces in two below-grade garage levels. As identified in the Board's approval of the Original Project, requiring additional parking spaces would be a practical difficulty due to the Property's small size, irregular shape, and required ramping. Accordingly, in the Order, the Board granted an area variance for 76 parking spaces. That relief was supported by both OP and DDOT.

Here, the 247-room Modified Project generates the need for seven additional parking spaces than the Original Project (129 parking spaces to the Original Project's 122, spaces).⁷ Accordingly, the modification seeks approval for the additional nine parking spaces over what was previously approved. (129 parking spaces required - 44 parking spaces provided = 85 spaces – 76 spaces for which the relief is already granted = 9 spaces).

The exceptional conditions associated with the Property remain the same as they were at the time of approval of the original application two years ago, and cause the same practical difficulties. The Property's small size is exacerbated by its unusual, elongated "L" shape that creates an area in the northeast corner of the site that is too wide and shallow for the efficient

⁶ "The Applicant has demonstrated that lot size and shape and corner location, as well as the absence of alley access and the presence of groundwater at elevations twenty feet below the surface are exceptional conditions that make for practical difficulties in providing both the full parking and the full loading required by the zoning regulations." See OP Report at BZA Exhibit #30, pg. 5.

⁷ As the Board is aware, under ZR-16, no parking is required for this use. Accordingly, by continuing to seek the parking relief under ZR-58, the Applicant is providing an additional benefit in comparison to other projects being processed under ZR-16 for which no parking is being provided.

parking of multiple cars. Further, the high water table combines to limit the number of parking spaces to 44.⁸

The Property's small lot area and odd shape make it very difficult to efficiently accommodate the necessary ramping, central core elevator lobby, trash room, staircases, bike room and other required below grade mechanical and operational spaces. Indeed, these circulation areas (which cannot be used for parking) account for more than 30% of the Garage Level 1 and Garage Level 2 square footage.

Additional hotel parking will be provided on site by the valet operators. Under the prior approval, the Applicant had space on-site for valet parking as well as approximately 60 off-site parking spaces in nearby parking facilities for valet use.⁹ Therefore, the Applicant will be more than able to accommodate the Project's anticipated parking demands through the provision of valet parking both on and off site. This is particularly the case due to the limited proposed space for events, and lack of high-profile restaurants or other associated uses that may generate additional traffic demand. In any case, the Modified Project will implement the approved robust Transportation Demand Mitigation plan (described in detail below), which should further reduce the number of vehicles visiting and parking on the site.¹⁰

Requiring more than 44 spaces would be unnecessarily burdensome because of the extreme challenge of additional parking below grade, as acknowledged by OP:¹¹

The applicant has demonstrated that lot size and shape and the corner location, as well as the absence of alley access and the presence of groundwater at elevations twenty feet below the surface are exceptional conditions that make for practical difficulties in providing both the full parking and the full loading required by the zoning regulations.

See January 19, 2016 OP report, (the "January 2016 OP Report") attached here at **Tab G**.

Accordingly, due to these constraints any additional parking spaces would need to be located above-ground – either in surface parking lots or above-grade structured parking. Requiring surface lots would substantially shrink the building's footprint and the various floorplates. Above-grade structured parking would result in reducing the amount of gross square footage that could be devoted to hotel, because multiple stories of the proposed building would have to be devoted to above-grade parking structure. Such would be unduly burdensome, severely limiting

⁸ Further, the addition of the second 20'-service space accounts for the two-space difference between the 46 spaces approved in the Original Project and the 44 spaces proposed in the Modified Project.

⁹ As noted in DDOT's February 16, 2016 Report on the Original Project, (the "February 2016 DDOT Report") at BZA Exhibit No. 42, attached here at **Tab H**, another 145 additional spaces had also been secured by the Applicant through various agreements on nearby properties.

¹⁰ During the public hearing for the case, DDOT stated that "the level of relief [related to parking] is not something that DDOT would object to with the proper TDM measures in place." *See* the BZA transcript for February 9, 2016, pg. 176.

¹¹ Also, it should be noted that under ZR16, no parking is required for the Project because it is located in the Downtown District ("DD").

the ability to redevelop this Property as a higher-density hotel development, as envisioned in the zone.

2. Loading (§ 2201.1)

As noted, the Modified Project provides two 20'-service spaces in the below-grade garage. The Property's small size/irregular shape and lack of K Street curb cut create practical difficulties because the record in the original approval established that no 30'-truck could enter the site "front-in" as required by DDOT.¹² Indeed, the record includes truck turning diagrams demonstrating that a 30-foot truck could not enter the site "front-in" as required (the "Truck Turning Diagram"). See BZA Exhibit #29D, included here at **Tab I**.

Accordingly, in the Order, the Board granted an area variance for one 30'-loading berth and one 100'-loading platform. Indeed, in the February 2016 DDOT Report, DDOT found, "Due to the relative small size of the lot and desire to avoid creating a curb cut on K Street, DDOT determined that a 30' loading berth could not be accommodated on-site without backing maneuvers."

Here, the 247-room Modified Project generates the need for an additional 55'-loading berth and 200'-loading platform. No 55'-truck could enter the site "front-in" due to the same site conditions. Accordingly, the modification seeks approval from the additional loading requirement over what was previously approved.

1. *Small Size*

The Property's small size is exacerbated by its unusual, elongated "L" shape that creates an area in the northeast corner of the site that is too wide and shallow for the efficient movements of loading vehicles within the building.

During the February 9, 2016 public hearing, Erwin Andres, the Applicant's traffic expert, testified that the Applicant had tested various designs, but no 30' internal loading area that could accommodate a "front-in" loading was possible without eliminating a significant portion of the lobby or impacting a significant amount of the back of house area. The Truck Turning Diagram established that the Property's small and unusual size created a practical difficulty that would make providing the required on-site loading unduly burdensome.

2. *No Alley Access and No K Street Curb Cut Permitted*

¹² DDOT's Design and Engineering Manual requires front-in, front-out loading, and discourages back-in only loading maneuvers. Indeed, in the February 2016 DDOT Report, DDOT states, "DDOT requires that loading take place in private space and that no back-up maneuvers occur in the public realm. This often results in loading being accessed through an alley network." Similarly, if the modification request is required to be processed under ZR-16, the Applicant would require relief from two additional 30'-loading berths. As discussed at length in the Approval, the Property's exceptional conditions would create practical difficulties to accommodate additional 30'-loading berths on the site, as any and all 30'-loading berths could not be accommodated without a back-in maneuver, and such maneuver would not be permitted by DDOT.

The site has no alley access, which requires the provision of curb cuts. However, in consultation with DDOT as part of the original application, the Applicant was informed that curb cuts along K Street would not be supported due to the predominance of pedestrian movements along that street. The Applicant made subsequent design changes to relocate both the garage entry and loading curb cuts along 4th Street. However, this design was not looked favorably-upon by DDOT for the reason that two curb cuts would be located next to one another. Accordingly, the lack of a K Street curb cut was determined to be a practical difficulty for providing loading on site. See February 2016 DDOT Report: “due to the relative small size of the lot and the desire to avoid creating a curb cut on K Street, DDOT determined that a 30’ loading berth could not be accommodated on-site without backing maneuvers.”; See also the January 2016 OP Report: “The site does not have alley access and the District Department of Transportation does not permit curb cuts from K Street at this location.”

3. *55’ Loading Space Not Possible*

The challenges of providing the 30’ internal loading area are only magnified if a 55’ internal loading area and 200’ s.f. platform were also required. As shown on the Truck Turning Diagram given the Property's size, unique shape and configuration, and the inability to obtain curb cut access from K Street, the Property is not equipped to provide a front-in front-out loading for a 30’-truck, much less a 55’ truck.¹³

In summary, it would be a substantial practical difficulty to require the Applicant to provide the required 55’ loading berth and 200’ s.f. loading platform plus an area devoted to maneuvering space for trucks, as the building's ground floor would be significantly restrained and the Applicant would lose substantial portions of the back of house area that is necessary to support the hotel use. Further, given access is only possible from 4th Street and that the parking garage ramp is located on the northern-most portion of the Property, if the Applicant were required to have a separate loading access, it would double the size of the curb cut area. This is not supported by DDOT due to the potential negative impacts on the 4th Street pedestrian network, as well as the proximity to the approved curb cut for the project directly to the north. Such a requirement would result in a curb cut layout that could impact the building's efficiency and layout, thereby making development unduly burdensome for the Applicant.

C. No Substantial Detriment to the Public Good; No Substantial Impairment of the Zone Plan

Granting the additional relief for parking and loading now requested will not cause a substantial detriment to the public good, or substantially impair the intent, purpose or integrity of the zone plan.

1. Parking relief – No Substantial Detriment to the Public Good from the Additional Nine Parking Spaces Associated with the Modified Project

¹³ Further, as no 30’ truck can access the site “front-in”, it would be a practical difficulty for the Applicant to need to provide the two 30’ loading berths required under ZR-16.

The Property is located downtown and is well-served by the surrounding transit network; therefore, the requested variance for nine parking spaces will not have a substantial impact on the public good. Also, the Applicant has worked diligently to establish valet and off-site parking arrangements to store vehicles elsewhere, and the Project includes substantial TDM measures that should result in reducing the number of vehicles that need to be parked. Indeed, in the February 2016 DDOT report, DDOT found, “Due to the high availability of excellent non-auto transportation options, it is likely that auto usage by... hotel guests will be low and the proved on-site parking supply is likely to be sufficient.”

It is anticipated that most hotel guests will be arriving from out of town and will not have cars. Further, given the modest size of the hotel's function space, it is unlikely that events will generate a large volume of vehicular traffic. Rather, it is more likely that visitors will arrive by public transportation or other alternative ride services such as taxi, Lyft or Uber, especially in light of the Property's close proximity to Union Station. Also, the removal of the residential component also decreases the parking demand, as the Modified Project will no longer have residents.

Those hotel visitors who do arrive by car or desire a parking space will be able to utilize one of the 44 spaces provided as well as the additional valet spaces. Further, many car and bike sharing spaces are located nearby, providing guest with ample transportation options other than by car. Therefore, the requested parking variance relief will have no detrimental impact.

The January 20, 2016 Traffic Report prepared by Gorove Slade (the “January 2016 Traffic Report”) at BZA Exhibit #32B and attached here at **Tab J** concluded that minimal, if any, vehicular parking is anticipated to be necessary in addition to that being provided on-site.

Proposed Traffic Demand Management Measures

The Modified Project will implement the TDM measures approved in the original Application, namely:

- Transportation Management Coordinator (“TMC”) - The TDM plan will be implemented and managed by a selected coordinator at the Project, who will be charged with the preparation and distribution of TDM information and promotional brochures to residents, hotel guests, visitors, and employees.
- TransitScreen - A TransitScreen will be installed in the hotel and residential lobbies to provide residents, hotel guests, visitors, and employees available transportation choices and provide real-time transportation updates.
- Marketing Program - The TMC will establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit. With respect to hotel guests, the TDM marketing program will include a multi-level approach, as follows:
 - Prospective guests will be informed about parking and alternate modes of transportation as part of the pre-reservation and reservation process, through

check-in. Detailed transportation and parking information will be prominently displayed on:

- The hotel and restaurant websites
 - Online Travel Agency (OTA) websites
 - Other on-line booking and informational website the hotel or restaurant partners with (including rating review websites)
 - Email booking confirmations
 - Email booking reminders
 - Verbally via reservationists
 - Printed brochure available for distribution
 - Hotel confirmations will contain notice to guests that limited parking is available on-site and that the hotel encourages and emphasizes alternative modes.
- Hotel Guest Transportation Incentives: The TMC will coordinate, daily Capital Bikeshare passes to hotel guests as a part of Capital Bikeshare's Bulk Membership program for hotels.
 - Bicycle Amenities: The Project provides 14 bike spaces on site, a rate that exceeds the requirements of ZR-58 and will be provided consistent with the requirements of ZR16 in Subtitle C § 801.
 - Ride-matching/Ridesharing Program: Employees who wish to carpool will be provided detailed carpooling information as part of the TDM marketing program and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments.

2. *Parking relief – No Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan*

As referenced in the January 2016 OP Report, no substantial detriment to the public good or impairment of the zone plan would occur from the granting of the parking relief. First, the Property is well-served by public transportation and bicycle and carsharing services, and, should demand exceed the capacity of the proposed on-site parking, there are numerous parking facilities in the area that could absorb the parking needs. Further, as OP states in its report: "...it does not appear likely that the granting of the requested parking relief would result in a substantial detriment to the public good or impairment of the zone plan for this downtown site." See January 2016 OP Report. Second, the OP report also notes the Applicant's TDM measures will work to offset demand.

Further, the parking relief will not cause substantial impairment to the Zone Plan, because, as noted above, the D-Zones in the ZR-16 have no parking requirement. Accordingly, by providing 44 parking spaces, the Modified Project is providing additional parking over what would be required of a project that is sought under the current zoning regulations.

3. *Loading relief – No Substantial Detriment to the Public Good Due to Granting Relief from the Additional Loading Requirement associated with the Modified Project.*

The requested loading relief will, similarly, have no detrimental impact because the Applicant anticipates a minimal number of large trips per day, and the vast majority of deliveries will be accommodated in the proposed *two* internal 20' delivery areas. Indeed, DDOT acknowledged that "A well-designed service delivery space would be able to accommodate a portion of the site's loading needs, thereby reducing demand for curbside loading space." See BZA Exhibit #36.

Further, as discussed above, larger loading can be accommodated on the street in the anticipated 50' dedicated loading/valet area. Also, the removal of the residential use from the Project reduces the need for large truck loading, as there will be no residential "move-ins" or "move-outs." Finally, if additional large loading is required, it could be accommodated in the 30' loading zone in front of the Ellisdale project further north on 4th Street.

Loading Management Plan

The Modified Project will implement the approved Loading Management Plan, which includes the following:

- Vendors and on-site tenants will be required to coordinate and schedule deliveries and a loading coordinator will be on duty during delivery hours.
- Trucks accessing the on-street loading space will be limited to a maximum of 30 feet in length.
- All tenants will be required to schedule any loading conducted using a truck greater than 20 feet in length.
- Deliveries will be scheduled such that the on-street loading capacity is not exceeded and so as not to conflict with potential valet operations. In the event that an unscheduled delivery vehicle arrives while the loading space is full, that driver will be directed to return at a later time when the loading space will be available so as to not impede traffic along 4th Street.
- Deliveries from 30' trucks or 20'-service vehicles will be prohibited from being delivered directly from K Street and instead will be required to use the loading area on 4th Street.
- Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
- The loading area operation will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading space with notification also

given to tenants. The use of the on-street space for loading will be coordinated with valet operations so as to determine the most optimal times for loading.

- Any delivery using a truck 20 feet in length or shorter will be required to utilize the on-site delivery space.

4. *Loading relief – No Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan*

No substantial impairment of the zone plan would occur from granting the variance for the additional loading relief. The intent of the loading regulations is to provide adequate facilities for certain uses, and DDOT has determined in this instance that a 20'-service space, in conjunction with the loading management plan, will provide the necessary facilities for the efficient and orderly provision of supplies to the hotel use. Accordingly, it goes to reason that having two 20'-service spaces below grade will better meet the goals of the Zone Plan by permitting additional delivery trucks to park on-site. Additionally, the Applicant will continue to work with DDOT as required. In doing so, the Applicant demonstrates that the zone plan will not be substantially impaired by the granting of the requested relief.

D. Compliance with Conditions of Section § 2204.13: Waiver from the Access Aisle Slope Requirements

Due to the challenges caused by the irregular shape and small size of the lot, necessary reconfigurations to the slope of the ramp are required to provide a 14% slope. Therefore, the Applicant requests a waiver from the access aisle slope requirements. This waiver is necessary for the provision of a second 20'-service space proposed in the Modified Project. This request complies with the relevant conditions of Section § 2204.13 as follows:

(a) Existing protective and screening walls on the lot or on adjacent residential property are adequate;

Any protective and screening walls provided or required will meet all applicable requirements.

(b) The modifications do not adversely affect traffic conditions or use of other public space;

Traffic conditions will not be adversely affected by the provision of an access aisle slope of 14%, nor will the modification impact public space.

(c) No adverse effect would be caused by the requested waiver or modification of standards on adjacent properties or topography;

No adverse effect would be caused by the request, and adjacent properties would not be affected.

(d) The resulting loading berths and approaches to the berths are usable by the type of vehicles they are designed to serve;

The loading berth located in the garage of the Modified Project will not be impacted by the request. Indeed, the request would result in the ability to provide a second 20'-service space.

(e) The Board may impose conditions as to screening, lighting, coping, setbacks, fences, the location of entrances and exits, widening of abutting alleys, or any other requirement it deems necessary to protect adjacent or nearby property and to promote the public health, safety, and welfare; and

The Applicant does not believe additional conditions will be necessary, as impacts to adjacent property and questions of public health and safety are not introduced by the waiver request.

(f) Before taking final action on an application, the Board shall refer the application to the D.C. Department of Transportation for review and report.

The Applicant will work with DDOT to address any concerns raised by the waiver request.

VI. Conclusion

For the reasons stated above, the Modified Project meets the applicable standards for variance relief under the Regulations. Accordingly, the Applicant respectfully requests that the Board grant the Modification of Significance.

Sincerely,

COZEN O'CONNOR



By: Meredith H. Moldenhauer