

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

**APPLICATION OF  
CAPITOL HILL HOTEL OWNER 1, LLC**

**ANC 6B**

**STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of the Applicant, Capitol Hill Hotel Owner 1, LLC (the “Applicant”), the owner of the property located at 200 C Street SE (Square 762, Lot 841) (the “Property”), in support of its application for use variance relief, pursuant to Subtitle X § 1000.1, for a lodging use in the RF-1/CAP zone district and for special exception relief, pursuant to Subtitle X § 901.2, from the requirements for loading (Subtitle C § 909.2).

**II. JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance relief requested herein pursuant to Subtitle X § 1000.1 of the Zoning Regulations. The Board has jurisdiction to grant the special exception relief requested herein pursuant to Subtitle X § 901.2.

**III. BACKGROUND**

**A. The Property and the Surrounding Neighborhood**

The Property is located in the RF-1/CAP Zone District and is a large lot of approximately 23,252 sq. ft. A copy of the Zoning Map is attached at **Tab A**. The Property is improved with two, separate buildings (the “Existing Buildings”) that operate as the Capitol Hill Hotel (the “Hotel”). The western-most building (the “Western Building”) is six stories and the eastern-most building (the “Eastern Building”) is five stories. As explained in more detail below, the Existing Buildings have been used for transient accommodations since at least the early-1980’s.

The Property is a corner lot with frontage on C Street SE and 2<sup>nd</sup> Street SE. A private alley (the “Private Alley”) bisects the two Existing Buildings and is subject to a public access easement that allows for a public connection to the larger alley network in Square 762. The Existing Buildings have 12 parking spaces, five of which are tandem.<sup>1</sup> There are no formal loading facilities at the Property.<sup>2</sup> The Property is within the Capitol Hill Historic District but the Existing Buildings are not contributing structures.

The Property is located in the Capitol Hill neighborhood, which has broad mix of government, residential and commercial uses. The Property is directly across 2<sup>nd</sup> Street SE from the Library of Congress Madison Building and is nearby to other prominent United States government buildings, including the U.S. Capitol, the Supreme Court and the Cannon and Raybourn Office Buildings. To the south and east of the Property are primarily residential neighborhoods. There is a swath of commercial uses along Pennsylvania Avenue SE to the north and east of the Property.

The Property is well-served by public transit. The Capitol South Metrorail Station is 1.5 blocks from the Property and the Eastern Market Metrorail Station is six blocks from the Property. There are numerous Metrobus stops within 2-3 blocks of the Property, including for Lines D1X, D10, 305, and 325. There are three Capital Bikeshare stations within two blocks of the Property and the Hotel offers private bikes for guests use, as well.

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<sup>1</sup> Under ZR-58, the parking requirement for an apartment use in the R-4 zone was 1 per 3 dwelling units (51 spaces for 153 units). Under ZR-16, the parking requirement for a hotel use would be 0.5 spaces per 1,000 sq. ft. in excess of 3,000 sq. ft. The hotel use will occupy approximately 90,632 sq. ft., creating a requirement of 44 parking spaces. This requirement can be reduced by 50% to 22 spaces due to proximity to Metrorail. Under Subtitle C § 705.1, for a change in use “additional parking spaces shall be required only when the minimum number of parking spaces required for the new use exceeds the number of spaces required for the prior use that occupied the same gross floor area.” As such, there is no new parking requirement associated with this application.

<sup>2</sup> The Existing Buildings were constructed prior to the introduction of loading requirements in the Zoning Regulations in February 1959. As such, the Existing Buildings were permitted to be constructed with no loading berth.

## **B. History of Transient Use at the Property**

The Existing Buildings were constructed in the 1950's with the original Certificates of Occupancy authorizing an "apartment house" use in each building.<sup>3</sup> Copies of the Certificates of occupancy are attached at **Tab B**. Importantly, prior to 1989, there was no minimum stay length associated with the definition of "apartment house" in the Zoning Regulations. Dating back to at least the early-1980's, the Existing Buildings were operated as a conforming transient hotel-type use.

However, in 1989, the Zoning Commission enacted amendments to the Zoning Regulations under ZC Case 87-31 (the "Text Amendment") in order to address the conversion of residential properties to transient uses in residential zone districts. A copy of ZC Order 87-31 is attached at **Tab C**. The Text Amendment revised the definition of "apartment house" to require "accommodation on a monthly or longer basis." *See **Tab C***.

As a result of the Text Amendment, the transient use of the Existing Buildings became non-conforming. In 1993, at the request of then owner of the Property, Zoning Administrator Joseph Bottner, Jr. issued a written determination that the Existing Buildings "have the right to continue as an apartment house use without limitation to the period of rental." A copy of the 1993 determination is attached at **Tab D**. Mr. Bottner's decision was based on the fact the Existing Buildings were constructed prior to 1989 and the Zoning Regulations. *See **Tab D***. Mr. Bottner's decision was affirmed in writing by Zoning Administrator Matthew LeGrant in 2021. *See **Tab E***. Accordingly, to this day, the Existing Buildings operate as a legal non-conforming transient hotel-like use; but as clear from this application do not have a Certificate of Occupancy for a hotel use.

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<sup>3</sup> An apartment house use was permitted in the RF-1 (formerly R-4) zone prior to the enactment of the 1958 Zoning Regulations.

### **C. The Corrected Use**

The Applicant seeks a use variance for a lodging use in the Existing Buildings (the “Corrected Use”). As part of this request, the Hotel will largely remain as-is. A copy of architectural plans are attached at **Tab F**. The Applicant does not propose any exterior structural changes to the Existing Building.<sup>4</sup> The operation of the Hotel will remain the same under the Corrected Use, with limited improvements from time to time. The Corrected Use will maintain the 153 rooms in the Existing Building – 105 rooms in the Western Building and 48 rooms in the Eastern Building. The western building’s first level has a lobby area with seating, a fitness center, office space for staff and other back-of-house functions. The Eastern Building’s first level has a small conference room, a breakfast room, storage and mechanical/utility areas. The Hotel will continue to have 12 parking spaces and valet parking service. Although there is no formal loading berth, loading activities will continue to be conducted within the Private Alley as has been the case for the Existing Buildings.

### **IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW**

The Applicant is seeking use variance relief for a lodging use at the Property. While the current transient use of the Property is permitted, a lodging use is otherwise not allowed as matter-of-right or by special exception in the RF-1 zone.

Under D.C. Code § 6-641.07(g)(3) and 11 DCMR Subtitle X § 1000.1, the Board is authorized to grant variance relief 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 or undue hardship if the zoning regulations were strictly applied; and

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<sup>4</sup> To the extent the Existing Buildings have any structural non-conformities, including as to multiple primary buildings on a single record lot, such non-conformities can be maintained as part of the Corrected Use. *See* Subtitle C §§ 201.2, 202.1.

(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. 11 DCMR Subtitle X § 1001.1; *see also French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (1995); *see also Capitol Hill Restoration Society, Inc. v. Board of Zoning Adjustment*, 534 A.2d 939 (1987).

## **V. THE APPLICANT MEETS THE STANDARD FOR VARIANCE RELIEF**

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

A property's "exceptional situation or condition" applies to both the land and permanent structures on the land. *See Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291, 293 (D.C. 1974). Further, the exceptional situation or condition can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *DeAzcarate v. D.C. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978); *See also Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, "extraordinary circumstances" need not be limited to physical aspects of the land).

The Property presents a unique and exceptional condition rooted in its distinctive zoning history. As set forth above, the Existing Buildings have operated as a transient hotel-like use since at least the early 1980s, predating the 1989 Text Amendment. Critically, this use was expressly recognized by the Zoning Administrator in 1993 and reaffirmed in writing in 2021. That unbroken chain of official recognition over more than four decades constitutes precisely the kind of "unfortunate and unusual chain of events" presenting "an exceptional situation unique to this property." *Oakland Condo. v. D.C. Bd. of Zoning Adjustment*, 22 A.3d 748, 753 (D.C. 2011) (affirming variance where property had been openly and continuously operated in a particular use for over 30 years).

Under D.C. law, a zoning history that approved a use and gave rise to good-faith, detrimental reliance by a property owner helps establish the exceptional situation necessary to support variance relief. *Id.* at 752. The Applicant's reliance here is far stronger than that found sufficient in *Oakland Condo.*, where owners relied only on building permits and the absence of enforcement action. *Id.* at 753-54. Here, three successive Zoning Administrators have confirmed the Property's right to continue its transient use in writing over more than thirty years. Finally, because the transient use predates the 1989 Text Amendment, granting the requested relief does not implicate the non-proliferation concerns that animated that regulation. As recognized in *Oakland Condo.*, where a use predates a restrictive regulation and operates as a legal nonconforming use, the regulation's core purpose is not undermined by its continuation. *Id.* at 757.

#### **B. The Applicant Will Face Undue Hardship with Strict Zoning Compliance**

The Applicant faces an undue hardship due to on-going investment, operational and regulatory uncertainty associated with the Property's apartment house classification. First, as in any real estate transaction, investors and lenders conduct due diligence to assess a variety of issues, including regulatory compliance. The divergence between the Property's formal use classification and its decades-old transient use creates significant uncertainty for investors and lenders, which can make it significantly more challenging to attract investments and obtain financing for the Property.

Second, the apartment house classification creates compliance issues from an employment and liability perspective. Employment and liability obligations differ for an apartment building and hotel. Hotel owners have a much higher duty of care for guest safety as compared to a landlord's obligations to tenants. The divergence between the Certificate of Occupancy and the actual use of the Existing Buildings creates challenges for the Applicant in working with insurance

companies. The Applicant recently purchased the Property and wishes to resolve this complicated, arcane and grandfathered inconsistency.

Third, the use categorization leads to challenges in obtaining appropriate licenses and to meet other regulatory requirements. For example, the Hotel has been operating under a Basic Business License for “Rental Housing.” While this is technically correct based on the Certificate of Occupancy, it is not consistent with the actual use of the Property.

In addition to the above factors, the Applicant faces an undue hardship in using the Existing Buildings for a non-lodging use. Despite a Certificate of Occupancy authorizing an “apartment house” use, the rooms in the Existing Buildings do not have cooking facilities and, therefore, do not meet the definition of a “dwelling unit” under the Zoning Regulations.<sup>5</sup> To meet the definition of a dwelling unit, the Applicant would have to install a cooktop appliance in all 153 units. This would also require new utility connections for the appropriate electric or gas lines.

Taken together, these challenges satisfy the undue hardship standard. The divergence between the Property's formal apartment house classification and its long-established transient use creates compounding financial, regulatory, and operational burdens that cannot be resolved without the requested relief. The cost and practical infeasibility of converting 153 units to meet the definition of a dwelling unit, combined with the ongoing uncertainty facing investors, lenders, and insurers, demonstrates that the Property cannot reasonably be adapted to a zoning-compliant use without exceptional hardship to the Applicant. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990) (recognizing that economic harm, “coupled with

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<sup>5</sup> While some of the rooms have a sink, small refrigerator, and microwave, a “wet bar” is not considered to be full “cooking” facilities. To establish “cooking” facilities, a dwelling unit must have a permanently affixed cooktop appliance with two or more burners where the power supply is served by an electrical connection (minimum 220-240 volts) or natural gas line. See OZA-011.

the significant limitations on the utility of the structure,” constitutes the undue hardship necessary to satisfy the variance standard).

**C. The Variance Relief Will Not Cause Substantial Detriment to the Public Good or the Zoning Regulations and Maps**

The variance relief will not cause substantial detriment to the public good or Zoning Regulations. The Property has been used for transient accommodations for at least four decades and, as a result of this application, will continue to be used for transient accommodations. Granting the relief addresses that Applicant’s hardships but does not change the use or create any impact to the public. The Applicant does not propose any exterior structural expansion to the Existing Buildings. The Applicant also does not propose to increase the number of rooms in the Existing Buildings. This means there will be no detriment to the public in terms of light, air, privacy or otherwise related to the intensity of the Corrected Use as compared to existing conditions.

**VI. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW**

The Applicant is seeking special exception relief from the loading requirements of Subtitle C § 901.1. Under Subtitle C § 901.5(a), when a property changes use categories, additional loading berths are required when the loading required for the new use category exceeds the loading required for the prior use category. It is assumed that the prior use provided the minimum number of loading spaces required. *See* Subtitle C § 901.5(b).

While there is no loading berth serving the Existing Buildings, the prior use – an apartment with more than 50 units – required one loading berth. The proposed lodging use of greater than 50,000 sq. ft. but less than 100,000 sq. ft. requires two loading berths pursuant to Subtitle C § 901.1. Accordingly, relief from the requirement of one loading berth is needed.<sup>6</sup>

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<sup>6</sup> No service/delivery space is required for a lodging use.

Pursuant to D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR Subtitle X § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 68 (D.C. 2003); *see also Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

## **V. APPLICANT MEETS BURDEN FOR SPECIAL EXCEPTION RELIEF**

### **A. The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps**

While there is no formal loading berth at the Property, the Applicant conducts loading activities in the Private Alley between the two Existing Buildings. This area provides sufficient off-street space to meet all loading needs of the Corrected Use. Further, although technically a change of use, the Corrected Use seeks to formalize the on-going transient use of the Property. Since the Applicant does not propose to change the intensity of the use, the loading area that adequately serves the Existing Buildings will be sufficient to meet the loading needs of the Corrected Use.

**B. The Relief Will Not Tend to Adversely Affect the Use of Neighboring Property**

The Existing Buildings are largely comprised of space for guest rooms with limited common areas. The Existing Building may host events for guests and small gatherings in the lobby area. However, the existing loading area in the Private Alley is sufficient to meet the loading needs for such small events as well as for laundry services, deliveries and trash.

**C. The Corrected Use Satisfies the Special Conditions for Loading Relief**

In addition to the general special exception criteria, the Corrected Use also satisfies the special conditions for loading relief pursuant to Subtitle C § 909.2, as follows:

*(a) The use or structure will generate a lower loading demand than the minimum loading standards of Subtitle C §§ 901 and 905 require, as a result of:*

*(1) The nature of the use or structure...*

As noted above, the Existing Buildings are limited to guest rooms and common areas and, therefore, do not have the loading needs of similarly sized hotels that are more likely to have large event spaces. The Corrected Use will not substantially change the layout of the Existing Buildings, nor will the Corrected Use increase the intensity of the on-going transient use at the Property. As demonstrated by the past 40+ years, the nature of the Corrected Use does not require a formal loading berth.

**VII. COMMUNITY OUTREACH**

In accordance with ANC 6B's procedures and guidelines, the Applicant will contact ANC 6B after the application is filed. The Applicant will formally present the application to ANC 6B at its next available public meeting

**VIII. SUMMARY OF WITNESS TESTIMONY**

A representative of the Applicant, Brian Friedman, will testify regarding the lodging use and community outreach. The Applicant reserves the right to add witnesses or expert witnesses as necessary

**IX. CONCLUSION**

For the reasons stated above, the Project meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board grant the application.

Respectfully Submitted,  
COZEN O'CONNOR



Meridith H. Moldenhauer



Eric DeBear