

October 4, 2019

Via IZIS and Hand Delivery

Anthony Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: **Zoning Commission Case No. 17-05B: Modification of Significance of Order No. 17-05 and 17-05A for 2121 First Street SW (Square 613, Lot 10) (“Property”)**

Dear Chairperson Hood:

2100 2nd Street SW LLC (the “**Owner**” or “**Applicant**”), hereby requests a modification (Modification of Significance) of Order Nos. 17-05 and 17-05A (together, the “**Orders**”). In Case No. 17-05, the Zoning Commission approved a multifamily building with ground floor retail in the former headquarters for the Coast Guard at 2121 First Street, SW (the “**Building**”). In Case No. 17-05A, the Zoning Commission approved a modification of consequence to make modest modifications to the approved plans (collectively, the approvals granted in the Orders reflect the “**Project**”). The Project was reviewed and approved by the Zoning Commission pursuant to its design review authority of Subtitle K, Section 512.

The Applicant secured its building permit for the Project on November 13, 2018 and started construction shortly thereafter. The Applicant expects to deliver the first approximately 130 units by April 2020. The Applicant expects that the remaining units will be delivered by late 2020. In an effort to activate the Project site immediately, the Applicant is partnering with WhyHotel to introduce occupants upon delivery of units in April. WhyHotel is a hospitality management company that will operate a temporary lodging use at the Building during the Project’s lease-up. Accordingly, the Applicant files this application for a Modification of Significance to allow a lodging use in the Building on a temporary basis (the “**Modification**”).

This modification request is made pursuant to Subtitle Z, Section 704 of the 2016 Zoning Regulations and requires a use variance from Subtitle C, Section 1102.4(h) for lodging use within the 100-year floodplain. Lodging is otherwise a permitted use in the CG-5 Zone District.

A. Modification Background

The Property is located at the southern tip of Buzzard Point on the Anacostia riverfront. The Property is largely surrounded by undeveloped property at this time, though many projects are slated for development in the near future. To the west of the Property is the James Creek Marina and the National Defense University on Fort McNair. To the east is property owned by the National Park Service, as well as Peninsula 88, a residential project approved in Case No. 10-21 and currently under construction. Audi Field is located approximately three blocks to the north of the Property. Much of Buzzard Point, however, remains undeveloped. Consequently, the Property is not frequented regularly by District residents, tourists, or visitors to Southwest at this time. The Property presents a unique and exciting opportunity to activate this southern edge of Buzzard Point and bring people to the Anacostia riverfront.

The Commission approved the Project to redevelop and repurpose the former Coast Guard headquarters as a multifamily building with ground floor retail. The Project will create approximately 480 residential units and 71,120 square feet of ground floor retail. The Project also includes significant improvements between the Building and the Anacostia River, including a pivotal link in the Anacostia Riverwalk Trail.

As the Applicant is finishing the Project, the lack of an established community in the vicinity of the Property raises concerns about the Project's initial operations, and especially about survivability of retail. Buzzard Point is a rapidly changing area with numerous new projects pending; however, it is currently in a state of transition and it does not have the foot traffic that retailers or other prospective street fronting tenants, as well as prospective residential tenants want to see before committing to that location. Accordingly, the Applicant has teamed up with WhyHotel to create a dynamic environment at the Project from the outset.

WhyHotel is a hospitality management company that makes more efficient use of otherwise vacant apartments by operating "turn-key, pop-up hotels" out of the vacancy of newly built, large scale apartment buildings during the lease-up phase. During this interim period, WhyHotel strives to bring energy and a sense of community to the dormant portion of brand-new apartment buildings and the surrounding retail spaces when they first open and features 24/7 onsite hospitality staff and temporary operations. Consistent with its business model, WhyHotel will only operate at the Property for up to two years during the Project's lease up, making the retail and residential uses more viable by providing early activation of the Property during the critical lease-up phase and providing a customer base for nearby retail. WhyHotel will only utilize 150 of the 480 residential units, thus allowing the apartments to lease up simultaneously with its operation.

The units on the 4th and 5th floors will be dedicated to the WhyHotel; the remainder of the units will remain allocated for residential use.¹ As the Project's demands for residents increases, these units will revert to residential use on a unit-by-unit basis for lease to a tenant. WhyHotel

¹ There are three designated inclusionary zoning units on the 4th and 5th floors. These units will remain IZ units during WhyHotel's tenure and will be dedicated to families with a median family income no greater than 50%.

guests will have access to building amenity spaces including the exercise room, rooftop pool, and lounge areas, as well as space in the garage

WhyHotel's operation will attract individuals to the Property and create the important customer base and dynamic environment inviting to prospective residents and retailers. Its operation, however, will not compromise the basis for the Commission's approval. The Applicant and WhyHotel are sensitive to those issues that were important to the community and the Commission during the approval of the Project.

First, the Modification will not negatively impact traffic as the transportation demands of the WhyHotel guests at previous projects have been similar to those of a residential apartment building. Typically, the parking requirements and traffic impacts for WhyHotel units are both lower than the requirements for the currently approved residential units, so there will be no negative impact on the surrounding area. WhyHotel has found that only one (1) in five (5) guests need onsite parking. Based on WhyHotel's previous experience with similarly situated residential projects in the District, it does not anticipate that the transportation assumptions on which the residential project was approved will change. During temporary WhyHotel use, most of its guests take public transportation or ride share, thus there will not be an additional parking or loading demand resulting from its use.² Regarding loading, there will be no change in the way in which the operator of the facility disposes of refuse and garbage as a result of the proposed use. WhyHotel utilizes the building's existing refuse and disposal facilities and service schedule and has a less demanding delivery schedule than a traditional hotel due to the lack of a central kitchen. Finally, the Project's approval included significant transportation and public space improvements which will be sufficient to accommodate the Modification's use. For example, the Project includes improvements to the sidewalk network around the Property and improvements to the surrounding road network that will serve WhyHotel users in the same way they will serve Project residents and customers.

Second, the Modification will not impact the inclusionary zoning ("IZ") units that are part of the Project. The IZ units will be provided at a pace that is proportional to the market-rate units and none of them will be used by WhyHotel. WhyHotel and the Applicant will work to ensure the lodging operations do not negatively impact the affordable units. This approach will include outreach to the IZ unit residents regarding the temporary WhyHotel use on the 4th and 5th floors. The Applicant will also work with the Department of Housing and Community Development ("**DHCD**") to discuss best practices to seamlessly operate the IZ units and WhyHotel use simultaneously during the lease-up period for the Project.

² Temporarily removing 150 residential units from the Project would theoretically reduce the parking requirement by 50 spaces (11-C DCMR § 701.5 requires 1 space per 3 dwelling units). The temporary lodging use of 132,378 square feet would require 66 spaces (11-C DCMR § 701.5 requires 0.5 spaces per 1,000 s.f.). Therefore, with the temporary lodging use, the Project still provides more parking than is required. Temporary loading use of 132,378 square feet would require 3 loading berths. The Project provides 5 loading berths, and pursuant to 11-C DCMR § 901.8 loading can be shared among uses. Therefore, the loading provided at the Project is sufficient for the Modification.

Finally, the Project's floodproofing plan was critical to the Commission's approval and to the Code Modification for the Building. The floodproofing plan provides important safety features for the Project in the event of flooding due to the Property's location in the 100-year flood plain. The floodproofing plan will remain consistent with the plan approved by the Commission and the Flood Emergency Plan filed as part of the Code Modification will be updated to include WhyHotel's operations. The Applicant has met with DOEE to discuss the introduction of a temporary lodging use and DOEE did not note any objections. The Applicant will continue to coordinate with DOEE as it moves forward.

B. The Modification Satisfies the Burden of Proof for Zoning Commission Review of Buildings, Structures, and Uses in the CG-5 Zone District

The Modification satisfies all of the standards for Zoning Commission review of a project in the CG-5 Zone District and does not disturb the Commission's initial findings that the Project overall satisfied these standards.

1. The Modification Satisfies the Standards with Regard to Zoning Commission Review Under the CG-5 Design Review Regulations

The regulations identify several standards for Design Review projects in the CG-5 Zone District, and the Commission found that the Project met all of these standards as required by the Regulations. These standards are as follows:

- a. *The proposed building will achieve the objectives of the Capital Gateway as defined in Subtitle K, §500.1 (11-K DCMR § 512.3(a)).*
- b. *The proposed building will help achieve the desired use mix, with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses (11-K DCMR § 512.3(b)).*
- c. *The proposed building will be in context with the surrounding neighborhood and street patterns. (11-K DCMR § 512.3(c))*
- d. *The proposed building will minimize conflict between vehicles and pedestrians. (11-K DCMR § 512.3(d))*
- e. *The proposed building will minimize unarticulated blank walls adjacent to public spaces through facade articulation. (11-K DCMR § 512.3(e))*
- f. *The proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. (11-K DCMR § 512.3(f))*
- g. *The building or structure shall provide suitably designed public open space along the waterfront. (11-K DCMR § 512.4(a))*

- h. *The plans for the project include suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and assure private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront. (11-K DCMR §512.4(b))*
- i. *The application includes a view analysis that assesses openness of waterfront views and vistas around, and views and vistas toward the Capitol Dome, other federal monumental buildings, existing neighborhoods, South Capitol Street, and the Frederick Douglass Bridge. (11-K DCMR §512.4(c))*

The Project furthers the objectives of the Capitol Gateway and encourages the use mix desired through the introduction of a temporary lodging use that will make the long-term retail and residential uses more viable. Additionally, as detailed above, the Modification will not impact the Building's design, its situation within the neighborhood, or the overall site benefits. Therefore, the Modification does not change the Commission's initial conclusion that the Project is consistent with the standards for Design Review in the CG-5 Zone. Further, the new temporary use will serve the goals for the desired use mix in the Capitol Gateway area. Specifically, section 512.3(b) of Subtitle K noted above encourages hotel uses. Further, the WhyHotel use will specifically advance the broader uses at the Project by helping to establish strong residential and retail uses at the Property.

2. The Modification Satisfies the Standards with Regard to Zoning Commission Design Review Under the Design Review Regulations

The Modification also satisfies the general Design Review standards. Subtitle X, Section 604.7 sets forth the following standards for the Commission to consider in a Design Review case:

- a. *Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including: (1) Multiple pedestrian entrances for large developments; (2) Direct driveway or garage access to the street is discouraged; (3) Commercial ground floors contain active uses with clear, inviting windows; (4) Blank facades are prevented or minimized; and (5) Wide sidewalks are provided.*
- b. *Public gathering spaces and open spaces are encouraged, especially in the following situations: (1) Where neighborhood open space is lacking; (2) Near transit stations or hubs; and (3) When they can enhance existing parks and the waterfront.*
- c. *New development respects the historic character of Washington's neighborhoods, including: (1) Developments near the District's major boulevards and public spaces should reinforce the existing urban form; (2)*

Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and (3) Development should respect and protect key landscape vistas and axial views of landmarks and important places.

- d. *Buildings strive for attractive and inspired façade design, including: (1) Reinforce the pedestrian realm with elevated detailing and design of first (1st) and second (2nd) stories; and (2) Incorporate contextual and quality building materials and fenestration.*
- e. *Sites are designed with sustainable landscaping.*
- f. *Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including: (1) Pedestrian pathways through developments increase mobility and link neighborhoods to transit; (2) The development incorporates transit and bicycle facilities and amenities; (3) Streets, easements, and open spaces are designed to be safe and pedestrian friendly; (4) Large sites are integrated into the surrounding community through street and pedestrian connections; and (5) Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront.*

As detailed above, the Modification does not affect the Building design, the design of any of the surrounding open space, Riverwalk trail, or public space improvements. Therefore, the Modification does not impact the Commission's initial conclusion that the Project satisfied the standards for Design Review. Further, the Modification's emphasis on establishing a community of people at the Project site will encourage greater pedestrian circulation than would otherwise exist, which in turn, enhances the Building's connectivity with the neighborhood, a key goal of of the CG Overlay.

In addition to the specific standards noted above, the Design Review standards also require that the project not be inconsistent with the Comprehensive Plan. 11-X DCMR § 604.5. The Modification does not change the Commission's initial analysis concluding that the overall Project is not inconsistent with the Comprehensive Plan. The Commission initially concluded that the Project furthered several policies of the Comprehensive Plan regarding land use, urban design, transportation, environmental protection, and housing. The Modification continues to support those policies by making the Project's initial operations viable. The Modification itself serves policies of the Comprehensive Plan by "activating waterfront spaces" through "land use" that "draw[s] people to the water." (Policy UD-1.3.6: Activating Waterfront Spaces) Additionally, while the Comprehensive Plan discourages "conversion of viable, quality housing units to non-residential uses" (Policy H-2.2.1: Housing Conversion), the Modification is not such a conversion that is inconsistent with the Comprehensive Plan. The Modification is a temporary use to make all of the Project's housing units more viable in the long-term.

The Project and Modification also further the goals of the Lower Anacostia Waterfront and Near Southwest Area Element of the Comprehensive Plan by helping vitalize a “new waterfront neighborhood” at Buzzard Point with innovating uses that will make not only this Project but others around it stronger moving forward. (Policy AW-1.1.2: New Waterfront Neighborhoods) The Modification also brings a temporary new lodging use to the waterfront, diversifying the uses in the Buzzard Point neighborhood. (Policy AW-1.1.3: Waterfront Area Commercial Development)

3. The Modification Satisfies the Special Exception Requirements with Regarding to Zoning Commission Review

Pursuant to 11-X DCMR Section 604.6, the Zoning Commission must find the Project meets the general special exception requirements of the Zoning Regulations. There is a two-pronged test to justify the request for special exception relief: an applicant must demonstrate that the project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and that it will not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. As noted above, the Modification is consistent with the Zoning Regulations and Zoning Map applicable to the Property as it will help ensure the success of the Project approved by the Commission. The Modification’s purpose is to support and encourage the success of the Project rather than redefine the Project.

Additionally, the Modification will not adversely affect the use of neighboring properties. First, the properties nearby that are being developed are used for similar mixed-use retail and residential projects. In fact, the Modification will bring people to this growing, but yet underdeveloped, neighborhood and support new projects as they come online in this area, including Peninsula 88 and 1900 Half Street. WhyHotel guests will help establish the critical mass necessary for successful retail and residential uses not only this Project, but other nearby projects. Therefore, the Modification satisfies the special exception requirements.

C. The Modification Satisfies the Requirements For Variance Relief

The CG-5 Zone generally allows lodging use as a matter of right. However, 11-C DCMR § 11012.4(h) prohibits lodging within the 100-year flood plain. Therefore, the WhyHotel requires a use variance to operate as a lodging use at the Property, albeit only temporarily. The Zoning Commission may grant a variance as part of a Design Review case pursuant to 11-X DCMR §603.3. In order to grant a use variance, the Zoning Commission must find that “as a result of the attributes of a specific piece of property . . . the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property” (11-X DCMR § 1002.1(b)). Further, the Zoning Commission must find that “the relief 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.” (11-X DCMR § 1000.1) The Modification meets these standards and should therefore be granted a temporary use variance for WhyHotel’s operation at the Property.

1. The Property is Affected by Unique Attributes

The Property is affected by a confluence of unique factors. First, the Property is one of few in the District with an existing building located in the 100-year flood plain. If the Project were being built new, the Applicant would elevate the building out of the 100-year flood plain, obviating the need for relief for the lodging use. However, the adaptive re-use of the existing Building requires the maintenance of the existing elevation. Further, the Property is located in an area that, as of now, is underdeveloped. This part of Buzzard Point is disconnected from other parts of the city. This separation is in part because of its geography, as it is surrounded by water on three sides. Further, it is surrounded by many institutional users that separate it from the mixed-use development further north and east of the Property. Fort McNair, a large institutional user, has a wall surrounding it and takes up 100 acres of land in Buzzard Point. There are other nearby institutional users, including an old Pepco power plant and substation. Development has been piecemeal on neighboring properties as well. In addition to the Peninsula 88 and 1900 Half Street developments discussed above, both under construction, other surrounding property to the north is vacant up to the new Audi Field. While Audi Field does bring people to the area, this is not a consistent stream of traffic but rather an influx only on game days. As such, there is not an immediate pedestrian or residential presence near the Property. This section of Buzzard Point is a unique neighborhood in Southwest DC in this way, as most of the other areas of Southwest are developed with existing active uses. The combination of the Building already existing in the 100-year flood plain combined with its location in a largely undeveloped area of DC is a unique attribute of the Property.

2. The Property's Unique Attribute Results in an Undue Hardship

The Building's existence in the 100-year flood plain coupled with its isolation create an undue hardship for the success of the retail and occupancy of the residential units. In many neighborhoods, developers can rely on the population of the existing neighborhood to activate the retail or attract tenants. These existing conditions help a project's initial viability during the critical lease-up period of a mixed-use building. In situations where there is not an existing neighborhood to create this environment, developers must create a ready population to jump-start the project. Providing a temporary lodging use solves this issue by instantly bringing people to the property to patronize the retail establishments and enliven the building to attract residents.

The Project's location in a largely undeveloped area means the Applicant must find a way to attract people to the Property. Transient uses are often a successful means for activating an area because they bring people to the property early on for a short period of time. Instead, they provide an instant population for these underdeveloped areas. The Office of Planning ("OP") recently discussed how lodging uses are a positive in the city because "the city [is] currently underserved by the hotel industry [and] guests . . . support local businesses and get a better appreciation for DC as a city of unique and vibrant neighborhoods." OP Public Hearing Report, Z.C. Case 19-15 (Short-Term Rentals). However, the Building's location in the flood plain prevents it from taking advantage of this otherwise effective and successful tool to provide the Project the early patronage it needs. The lack of a critical mass of people in the neighborhood at,

and surrounding, the Property during the critical lease-up presents an undue hardship that could compromise the viability of the Project. The sensitive period when a development starts, especially one as large as the Project, is critical. Due to the Property's location in an undeveloped area at this time makes the lease-up period even more tentative. By preventing the Project from using the most rational and successful way to bring people to the Project, the Applicant faces an undue hardship.

This undue hardship is a unique situation that does not create a likely precedential situation for a use variance. First, the confluence of factors of the timing of this Project compared to other area developments, along with the existing Building's location in the 100-year flood plain, is highly unlikely to be replicated elsewhere in the District. Further, the requested relief here is temporary. The temporality of the hardship does not make it less of a hardship – the Project's success and its ability to help spur development in the rest of Buzzard Point hinges on resolution of this hardship. However, once the neighborhood has developed and the Project has gone through its lease-up, the use variance will no longer be necessary, as there will be an adequate population on-site to support the retail and create a sense of community for the tenants.

3. The Variance Can be Granted Without Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan

Allowing WhyHotel to operate in a limited capacity at the Project, only occupying approximately 30% of the total residential units, for a maximum of two years would not be a detriment to the public good or impair the intent, purpose, or integrity of the Zone plan. First, the concern over lodging use in the flood plain is largely mitigated by the extensive floodproofing the Project includes, which has been significantly reviewed and approved by the Department of Energy and Environment. Second, the variance will allow the Project, which the Commission has already found was not a detriment to the public good and furthers the purpose of the Zone plan for the CG-5 Zone, to begin and help create the Buzzard Point community the District envisions. Third and finally, the variance is only temporary and its limited time span minimizes its impact on the Zone plan and the public.

For these reasons, the Applicant requests the Commission approve WhyHotel's temporary lodging use at the Property as a use variance.

D. Exhibits

Set forth below are the exhibits included herewith supporting this Modification. Also included are two sets of labels of the surrounding property owners and a check for \$10,533.69, which represents the application fee in this matter.

- A. Agent Authorization Letter and Signature Page
- B. Orders
- C. List of Owners within 200' of the Property
- D. Certificate of Notice
- E. Surveyor's Plat

E. Conclusion

The Modification is consistent with the Zoning Commission's previous Design Modification approval and promotes the goals of the Capitol Gateway Zones. Further, the use's temporary nature to alleviate a unique attribute of the Property that causes the hardship of initial viability does not harm the public good or Zone plan, but rather furthers these important goals. All other conditions of Order No. 17-05 and 17-05A will remain as approved. Therefore, the Applicant requests the Commission consider and approve this Modification of Significance at a public hearing in the near future.

Please feel free to contact the undersigned if you have any questions or comments regarding this consent calendar modification application.

Respectfully Submitted,



Christine Roddy



Meghan Hottel-Cox

Certificate of Service

I hereby certify that I sent the foregoing document to the addresses below on October 4, 2019, by first class mail and hand delivery.

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