

TAB D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19169-A of Birchington, LLC, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 19169 approving variances from the rear yard requirements under § 774.1, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District (now D-4-R)¹ at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829).

HEARING DATE (Case No. 19169): February 6, 2016
DECISION DATE (Case No. 19169): February 23, 2016
ORDER ISSUANCE DATE (Order No. 19169): February 29, 2016
TIME EXTENSION DECISION: March 28, 2018

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 19169

The Underlying BZA Order

On February 23, 2016, the Board of Zoning Adjustment (the "Board") approved the Applicant's² request pursuant to the 1958 Zoning Regulations³ under 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C (now D-4-R) District at

¹ The zone name has changed as a result of the update of the zoning regulations as described in footnote 3. New zone names went into effect on September 6, 2016. The zone name of the property was DD/DD-HPA/C-2-C at the time of the original approval and is now D-4-R.

² Birchington, LLC, the Applicant for the time extension herein, is the successor in interest to the original Applicant in Case No. 19169, which was 311 K Street, LLC.

³ This and all other references to the relief granted in Order No. 19169 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 19169.

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EXHIBIT NO. 7

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premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829). The Board issued its written order ("Order") on February 29, 2016. Pursuant to 11 DCMR § 3125.9 (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on February 29, 2016 and took effect 10 days later. Under the Order and pursuant to 11 DCMR § 3130 (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until February 29, 2018.

Motion to Extend Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

On February 13, 2018, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 19169. This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations of 2016, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. Pursuant to Subtitle Y § 705.1(a), the record reflects that the Applicant served the only party to the original application, Advisory Neighborhood Commission ("ANC") 6E, as well as the Office of Planning. (Exhibit 3.) ANC 6E submitted a report, dated March 19, 2018, in support of the time extension request. The ANC's report indicated that at a duly noticed and scheduled public meeting on March 6, 2018, at which a quorum was present, the ANC voted 5-0-0 to support the Applicant's Request for Extension, raising no issues or concerns. (Exhibit 6.) The Office of Planning ("OP") submitted a report, dated March 16, 2018, recommending approval of the request for the time extension. (Exhibit 5.)

As required by Subtitle Y § 705.1(b), the Applicant demonstrated that there has been no substantial change in any of the material facts upon which the Board based its original approval in Order No. 19169. There have also been no substantive changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the application.

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To meet the burden of proof for good cause required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding factors causing a delay in obtaining a building permit. (Exhibit 3.) The good cause basis for the Request was the Applicant's inability to obtain sufficient financing due to economic and market conditions beyond its control, pursuant to Subtitle Y § 705(c)(1). The Applicant submitted exhibits detailing the softening of the hotel market during 2016-2017 due to the rapid increase in new hotel rooms and the decreased availability of mortgage backed securities. The Applicant documented how the combination of a rapid increase in new hotel rooms in 2016-2017 and the decreased availability of commercial mortgage backed securities led to difficulties in financing the project, thus causing a delay in completing the project. The property was purchased by a new owner in December 2017 and the Applicant states that financing has now been obtained. (Exhibit 3.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(1). The Board finds that the delay in securing the necessary financing to purchase the Property is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

Having given the written reports of ANC 6E and OP great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.


Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of a two-year time extension of Order No. 19169, which Order shall be valid until **February 29, 2020**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Robert E. Miller to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:

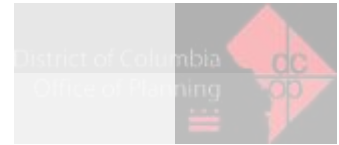

SARA A. BARDIN
Director, Office of Zoning

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FINAL DATE OF ORDER: March 29, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

T A B L E



EMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Stephen Cochran, Case Manager
JL Joel Lawson, Associate Director for Development Review
DATE: January 19, 2016

SUBJECT: BZA No. 19169 – Area Variance relief from parking, loading and rear yard requirements for construction of a new building at 317 K Street, NW – Square 526, Lots 20,21, 804, 824, 825, 829)

I. OFFICE OF PLANNING RECOMMENDATION

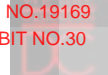
The Office of Planning (OP) recommends **approval** of the following relief:

- Area Variances
 - § 774.1, Minimum Rear Yard Depth: (15 ft. required; 0 provided);
 - § 2101.1, Minimum Amount of Parking: (122 spaces required; 48 spaces provided)
 - § 2201.1, Loading: (One 30-ft. berth, one 100 SF loading platform, and one 20-foot service/delivery space required; one 20-foot service/delivery space provided)

The relief requested by the applicant and recommended for approval differs from the applicant’s original application and reflects the amended self-certification and relief requests filed January 12, 2016.

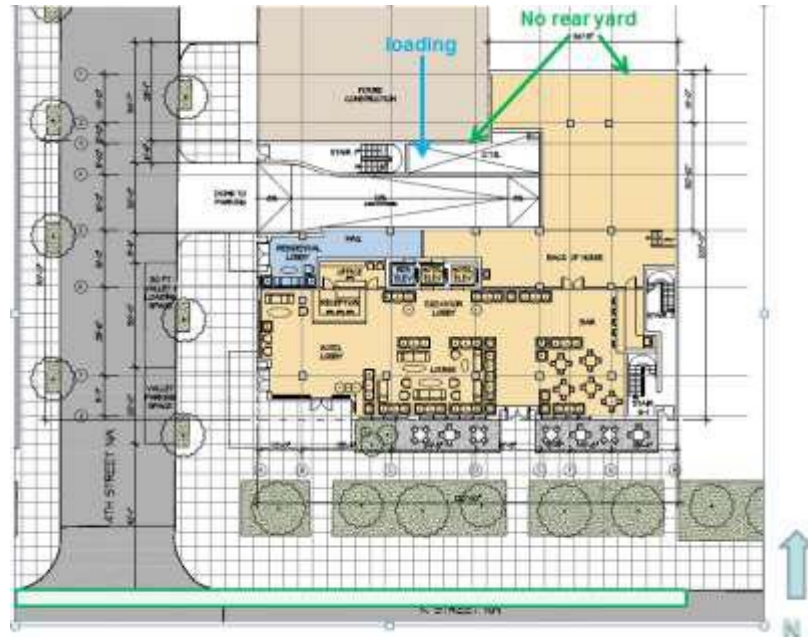
II. LOCATION AND SITE DESCRIPTION:

Address:	901 5 th Street, NW.	Legal Description:	Square 516, Lot 59	Ward, ANC:	6, 6E
Lot Characteristics:	The irregularly-shaped, level, 10,767 square foot lot is on the northeast corner of the intersection of 4 th and I Streets, N.W., in the central employment area. The eastern 40% of the lot’s northern boundary is approximately 15 feet farther from the K Street property line than is the portion of the northern boundary closer to 4 th Street. The site does not have alley access and the District Department of Transportation does not permit curb cuts from K Street at this location.				
Zoning:	DD/C-2-C/HPA-A – High-Density commercial and/or residential buildings in the central employment area, and within Housing Priority Area A.				
Existing Building(s):	Three one-to-three story commercial structures.				
Historic Dist.:	None				



Adjacent and Nearby Properties	The site is bordered to the north and to the east by a single property adjacent to the Center Leg Freeway. A building permit application for a 223-unit residential project to the north has been filed and a curb cut on 4 th Street, has been approved for that site. The property across 4 th Street is occupied by high-rise housing for the elderly. Property on both the southwestern and the southeastern corners of the intersection are occupied by surface parking lots. 130 foot buildings could be constructed on these sites, but no applications are in process. The Gallery Place and Mt. Vernon Square metro stations are within 1/3 mile.
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III. PROJECT DESCRIPTION IN BRIEF



The proposed development would be a new 11.0 FAR, 14-story, 130 foot high mixed use building containing approximately 200 hotel rooms on floors 2 through 12, the hotel lobby and an approximately 2,000 square foot restaurant and bar on the ground floor, and 30 furnished corporate apartments on the top two floors. Because the DD/C-2-C zoned site is also in Housing Priority Area A, and the 2.5 FAR of on-site residential use does not meet the 4.5 residential FAR requirement, the applicant would also be employing combined lot development and other DD mechanisms to meet the remainder of its housing requirement.

The on-site parking and loading would be accessed from 4th Street. There would be 48 zoning-compliant parking spaces on two below-grade levels, which would be valet-parked. The applicant has requested relief from providing the additional 74 spaces, but has submitted letters of intent to accommodate these spaces at nearby parking lots. The applicant is working with the District Department of Transportation (DDOT) to secure permission for two valet drop-off spaces adjacent to the hotel. Proposed Traffic Demand Management (TDM) measures are included as Exhibit C in the applicant's January 12, 2016 filing and are summarized on pages 9 and 10 of the applicant's "pre-hearing" statement (Case Exhibit 29).

A 20-foot service/delivery space would be provided on-site, but relief has been requested from the requirement for a 30 foot loading berth and 100 square foot loading platform. The applicant is continuing to work with the DDOT to accommodate other loading needs on 4th Street and has submitted

a draft loading management agreement to DDOT, which is described on pages 8 and 9 of the applicant's January 12, 2016 filing.

Atop the roof would be one ten foot high mechanical penthouse, elevator over-run and access stairway, set back from building walls at an at-least 1:1 ratio. There would be no habitable uses on the roof.

No side yards are required or planned. Relief has been requested to provide no rear yard.

IV. ZONING REQUIREMENTS

10,767 sf lot	Required / Permitted	Exist.	Proposed	Relief
FAR (1706.4, 1706.7) For DD/C-2-C/HPA-A	11.35 Max FAR, (pursuant to §1706.7(b)(1-2), of which 4.5 FAR must be residential either on-site or otherwise satisfied	0.51 FAR	11.0 FAR, of which 2.5 FAR would be on site residential and 8.5 FAR would be hotel. (Remaining residential requirement to be satisfied through other DD mechanisms).	None requested.
Lot Occ.	100% for hotel 80% for residential	51%	82%- Ground floor 78% Typ. hotel floor 77% Typ, residential floor	None
Height (770.1)	130' (DD, 110' ROW)	20'	130'	None
Parking (2101.1 & 2119.2)	<u>Vehicle</u> : Res.: 8 (30 du's @ 1:4) Hotel: 114 (Total: 122 <u>Bicycle</u> : 5% required auto pkg. = 7	n/a	Vehicle: Res: 8 Hotel: 40 Total: 48 Bicycle: 22	Variance from 74 spaces
Loading (2201.1)	<u>Res.</u> : None required <u>Hotel</u> : 1 service loading space @ 20 ft; 1 loading berth @ 30 ft.; 1 loading platform @ 100 ft	n/a	1 service loading space @ 20'	Variance, 30 ft. berth and 100-ft platform
10,767 sf lot	Required / Permitted	Exist.	Proposed	Relief
Rear Yd. (774.1)	> 15 ft. or 2.5"/ft. bldg. ht.; i.e., 27' 1" for 130 ft. -	4 ft.	None	Variance requested
Side Yd. (775)	IF provided, > 8 ft. or 2 in./ft. bldg. height.	West: 0 East: 48'8"	None	None

Closed Court	<p><u>Hotel floors:</u> <u>Width:</u> 3" / ft. hotel height (100 feet), but $\geq 12'$; i.e., 25 ft. ($100' \times 3" / 12 = 25$). <u>Area:</u> ≥ 250 SF and \geq twice the square width of the required court ($25' \times 25'$) = 1,250 SF</p> <p><u>Residential floors:</u> <u>Width:</u> 4" / per ft. of res. height (30 ft.), but $\geq 15'$; i.e., 5 feet ($30 \times 4 / 12 = 10$). <u>Area:</u> ≥ 350 SF and \geq twice the square width of required court (15×15) $\times 2 = 450$ SF.</p>	n/a	<p>From 2nd floor up –</p> <ul style="list-style-type: none"> - <u>Court Width:</u> 37' – 8" - <u>Court area:</u> = 2201 SF 	None
Roof Structure	<p>Z.C.14-13 (new Penthouse Regs)</p> <ul style="list-style-type: none"> -Max height: 20' w/2nd story permitted for mechanical only -Setback from: <ul style="list-style-type: none"> -front building wall: 1:1 - rear building wall: 1:1 - side building walls: 1/2:1 	n/a	<p>Approx. height 10' for mechanical penthouse/ elevator overrun</p> <p>Setback from:</p> <ul style="list-style-type: none"> - front wall: 20' - rear wall: 13' – 6" - east side wall: 18' - west side wall: 30' 	None
GAR	0.2	n/a	0.2 +	None

IV. OP ANALYSIS OF REQUESTED VARIANCE RELIEF

Rear Yard (§ 774.1):

Unusual or Exceptional Conditions or Situations Leading to Practical Difficulties if Zoning Regulations Were Strictly Applied

The applicant has demonstrated that the relatively small size (for Downtown) of the lot, its irregular “L” shape and its corner location constitute exceptional conditions that make for practical difficulties in providing a rear yard. In addition, the District’s design intentions for K Street as a landscaped boulevard and linear park spine for the Mount Vernon Triangle resulted in DDOT’s preferring that any curb cut for parking or loading be located on 4th Street. This change in the curb cut and driveway location resulted in a re-design that further exacerbated the difficulty in providing a rear yard.

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

The granting of relief from rear yard requirements would not pose a substantial detriment to either the public good or the zone plan. Because the provision of a rear yard would result in a fifteen-foot gap in the building wall on 4th Street, the absence of a rear yard would enable a more cohesive

pedestrian environment on that street, where the sidewalk will already be interrupted by curb cuts for two developments to the north, and by the applicant's own parking access. The applicant has also demonstrated that the relief could result in benefits to the neighborhood; with the proposal's curb cut needing to be on 4th Street because of DDOT requirements, a further reduction in ground floor space from providing a rear yard could interfere with ramping to accommodate even the reduced parking proposed by the applicant.

Parking (§ 2101.1) and Loading (§ 2201.1)

Unusual or Exceptional Conditions or Situations Leading to Practical Difficulties if Zoning Regulations Were Strictly Applied

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. Up to five levels of below grade parking would be needed to meet the requirements of § 2101.1. Combined with the demonstrated presence of infiltrating groundwater below a second below-grade level, the absence of parking relief would result in disproportionately greater construction-mitigation and operating expenses for each below-grade level. The applicant has further noted that with the size and configuration of the site, approximately 32% of those levels would be occupied by ramping, elevator, service and other back-of-house operations. The applicant has demonstrated the difficulty in accommodating more than 48 parking spaces in the remaining space on these levels.

The truck turning diagrams provided in Exhibit D of the applicant's January 12, 2016 filing demonstrate the difficulty in accommodating access for 30-foot trucks below grade. The applicant has also noted that DDOT prefers that a curb cut on 4th Street be no wider than is needed to accommodate parking, and that even if DDOT did permit a wider curb-cut to accommodate loading, providing such loading on the ground level would pose a practical difficulty because of the displacement of hotel functions that would result from the loading and from the turning space needed to meeting DDOT's head-in/head-out loading requirements.

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

The transportation and parking statement demonstrate that the site is well-served by MetroRail and by MetroBus, by bicycle and car-sharing services, and that, should demand exceed the capacity of the proposed on-site parking, there are four parking facilities in the area that have expressed an interest in absorbing additional parking needs. Coupled with existing metered parking and the off-site parking agreements being negotiated by the applicant, 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.

Additionally, as summarized on pages 9 – 11 of the applicant's January 12, 2016 filing, the applicant is continuing to work with DDOT to develop a TDM program that would include a transportation coordinator, a transit screen and transit information for both hotel guests and residents, bikeshare passes for hotel guests, alternative transportation incentives for initial residents, and more than the required number of bicycle parking spaces.

V. OTHER GOVERNMENT AGENCY COMMENTS

The applicant has met with the DDOT several times about the project and has modified its private and public space plans, and TDM proposals accordingly. DDOT is expected to file a report with the Office of Zoning in a timely manner.

No other government agency reports had been filed at the time this OP report was completed.

VI. COMMUNITY COMMENTS

ANC 6E voted 5-1-1 on January 5, 2015 to support the revised relief requests and has submitted a filing to the case record.

No other community comments had been filed at the time this OP report was completed.