

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19297 of Thor 3000 M Street LLC**, pursuant to 11 DCMR §§ 3103.2, 3104.1, and 411, for variances from the penthouse height requirements under § 770.6, the rear yard requirements under § 933, the off-street parking requirements under § 2101.1, the size of parking space requirements under § 2115, the access, maintenance, and operation requirements under § 2117, and the loading requirements under § 2201.1, and special exceptions from the penthouse use requirements under § 411.4(c), and the penthouse setback requirements under § 771, to permit the renovation and modernization of an existing hotel with additional retail uses in the C-2-A and W-1 Districts at premises 3000 M Street N.W. (Square 1197, Lot 70).

**HEARING DATE:** June 21, 2016  
**DECISION DATES:** June 21 and July 19, 2016<sup>1</sup>

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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<sup>1</sup> At its public hearing on June 21, 2016, the Board voted to approve variance relief from the rear yard requirements under § 933, the off-street parking requirements under § 2101.1, the size of parking space requirements under § 2115, the access, maintenance, and operation requirements under § 2117, and the loading requirements under § 2201.1, as well as special exceptions from the penthouse use requirements under § 411.4(c), and the penthouse setback requirements under § 771. The Board deferred its decision on the variance for penthouse height requirements under § 770.6 and requested that the Applicant amend its plans to withdraw the height variance or provide additional justification for that relief. In advance of the Board's public meeting on July 19, 2016, the Applicant submitted revised plans that lessened the degree of penthouse height relief necessary and provided a memorandum from a vertical transportation consultant to support its request for variance relief. (Exhibits 39A and 39B.)

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The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report on June 6, 2016 indicating that at a duly noticed and regularly scheduled public meeting on May 31, 2016, at which a quorum was in attendance, ANC 2E voted unanimously (6-0) in support, with conditions attached. (Exhibit 28.) The Applicant submitted the same list of proposed conditions in a pre-hearing submission (Exhibit 30C) and testified at the hearing that it accepts the conditions.

The Office of Planning ("OP") submitted a timely report recommending approval of the application, subject to the conditions proposed by the ANC and accepted by the Applicant. (Exhibit 32.) OP also testified at the hearing in support of the application. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the granting of the application, with conditions. (Exhibit 33.) Specifically, DDOT requested that the Applicant:

1. Offer daily Capital Bikeshare passes to hotel guests.
2. Unbundle parking costs from the cost of hotel rooms.
3. Remove the following elements from the Transportation Demand Management ("TDM") plan, which are not specifically designed to discourage auto use and/or encourage non-auto transportation modes:
  - a. Engage in discussions with the community and DDOT regarding converting a portion of 30th Street to two-way operations.
  - b. Work with off-site parking facilities to utilize unoccupied spaces if needed

At the public hearing on June 21, the Applicant testified that it agreed to DDOT's first two conditions. With regard to DDOT's request to remove elements from the TDM plans, the Applicant testified that DDOT would be satisfied with removing the elements from the "TDM" section of the conditions and placing them under a separate heading. A representative from DDOT confirmed that this would address their concerns about the provisions not being designed to discourage single-occupancy vehicle travel and, therefore, not TDM measures.

Special Exception

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1, for special exceptions from the penthouse use requirements under § 411.4(c), and the penthouse setback requirements under §§ 771, to permit the renovation and modernization of an existing hotel with

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additional retail uses in the C-2-A and W-1 Districts. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to §§ 3104.1, 411.4(c) and 771, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Variance

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to 11 DCMR § 3103.2, for variances from the penthouse height requirements under § 770.6, the rear yard requirements under § 933, the off-street parking requirements under § 2101.1, the size of parking space requirements under § 2115, the access, maintenance, and operation requirements under § 2117, and the loading requirements under § 2201.1, to permit the renovation and modernization of an existing hotel with additional retail uses in the C-2-A and W-1 Districts. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from §§ 770.6, 933, 2101.1, 2115, 2117, and 2201.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, 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.

It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 39A AND THE FOLLOWING CONDITIONS:**

- I. Use of Private Outdoor Space for Lounge/Restaurant Use

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- A. Private Outdoor Space is any privately owned space associated with the 3000 M Street, NW project (the “Project”) including but not limited to sidewalks, roof decks, side or back yards, patios, summer gardens, and balconies.
- B. Regulation of Noise Impacts
  - 1. The Applicant shall not create any noise from live entertainment within the Project that can be heard outside of the Project.
  - 2. There shall be no dumping of bottles between the hours of 10:00 p.m. and 7:00 a.m. for any uses located within the Project.
  - 3. There shall be no amplified entertainment, including temporary speakers, and no special lighting associated with any private outdoor space operated by the Applicant unless specifically agreed to under a special provision by the ANC or CAG through the ABRA and/or BZA process.
  - 4. The Applicant shall not allow any noise to be generated by a private outdoor space that can be heard from a point that is 149 feet to the north of the proposed private outdoor space, or a point that that is 60 feet to the south of the proposed private outdoor space, unless specifically agreed to under a special provision by the ANC or CAG through the ABRA process.
  - 5. The Applicant shall not allow any noise to be generated in a private outdoor space related to the operation of the Project that can be heard inside a nearby residence.
  - 6. There shall be no amplified entertainment located within the Project that produces bass that can be heard or felt in any nearby residential property.
  - 7. The Applicant shall hire an acoustical engineer to address the potential noise impacts from the use of the private outdoor space. The acoustical engineer shall provide the Applicant and members of the community with advice regarding appropriate measures that may need to be taken to ensure that the use of the private outdoor space does not create any adverse impacts on surrounding residences.
  - 8. No plastic furniture shall be permitted to be used in any of the private outdoor spaces.
- II. Transportation Demand Management. The Applicant’s Transportation Demand Management plan shall include the following components:

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- A. Designate a member of the property management team as a Transportation Management Coordinator (TMC). Specific duties of the TMC shall include:
- i. Serving as the worksite coordinator between transportation providers and the management of the hotel and its employees;
  - ii. Serving as the central source of commute information and assistance to hotel employees;
  - iii. Preparing and distributing material on commute options, including rideshare, bikeshare and transportation access information to the hotel;
  - iv. Ensuring that transportation orientation information is presented to new employees;
  - v. Offering daily Capital Bikeshare passes to hotel guests;
  - vi. Unbundling parking costs from the cost of hotel rooms; and
  - vii. Monitoring the TDM plan and helping to implement new strategies as required.
- B. Provide a transportation information screen (such as TransitScreen or other similar product) in a common, shared space in the building that will show real-time availability information for nearby trains, buses, and other transportation alternatives.
- C. Provide at least 16 secured, covered bicycle parking spaces within the building with associated locker rooms and showers. The Applicant shall install 10 DDOT standard bicycle parking racks (providing 20 short-term bicycle parking spaces) in public space near the building's entrance, the latter subject to approval by public space officials. The Applicant shall work with public space officials to ensure that the placement of the bicycle racks does not cause pedestrian conflicts along 30th Street.
- D. A WMATA SmarTrip card, preloaded with \$20, shall be provided to all new employees of the hotel and retail establishments.

- III. Loading Management Plan. The Applicant's Loading Management Plan shall include the following components:
- A. The Applicant shall designate a loading management coordinator to coordinate all loading activities associated with the project. The loading management coordinator will be on duty during all delivery hours noted below.
  - B. The Applicant shall require all retail tenants and the hotel to schedule deliveries that utilize the loading dock (defined as any loading operation conducted using a truck 20 feet in length or larger) with the loading management coordinator. If the retail tenant includes a restaurant or food store of greater than 10,000 square feet, the Applicant shall require that such tenant designate its own loading manager to coordinate with the project's loading management coordinator.
  - C. The loading management coordinator shall schedule deliveries so that deliveries do not exceed the dock's capacity. In the event that an unscheduled delivery vehicle arrives when the dock is full, the driver shall be directed to return at a later time when a delivery space is available so as not to impede the 30th Street roadway that passes in front of the loading dock.
  - D. The loading management coordinator shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular traffic from accessing 30th Street or adjacent driveways except during those times when a truck is actively entering or exiting a loading berth.
  - E. The loading dock shall be open seven days a week. The potential overlap of service vehicle traffic with 30th Street traffic shall be monitored at all times, and management measures shall be taken if necessary to reduce conflicts between truck, vehicular, and pedestrian movements.
  - F. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR Chapter 9, Section 900 (engine idling), 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 management coordinator shall also distribute flyers and other written materials, such as DDOT's Freight Management and Commercial Vehicle

Operations document to drivers, as needed, to encourage compliance with idling laws.

- G. The loading management coordinator shall be responsible for providing suggested truck routing maps to the building's tenants and to drivers for delivery services that frequently use the loading dock. The loading management coordinator shall also post these documents in a prominent location within the service area.
- H. The loading management coordinator shall coordinate with the community quarterly to discuss any specific issues regarding the loading dock or loading operations.
- I. The loading management coordinator shall ensure that bicycle access to the service elevator remains available at all times and is not blocked by trucks or delivery vehicles.

IV. Trash Operations. The Applicant shall require that all trash operations will be conducted in accordance with the following conditions:

- A. All hotel trash shall be collected and compacted in a trash room that is adjacent to the loading area. All trash from the retail/restaurant uses shall be collected and compacted in a trash room located in the basement of the Project. Noise associated with collection and compaction from trash shall not be audible outside the building.
- B. Building personnel shall wheel all dumpsters up to the loading dock, and will utilize the car elevator as necessary, for trash servicing.
- C. The dumpsters shall be picked up by a rear-end loading style truck.
- D. Trash pickups shall not be made between the hours of 9:00 PM and 7:00 AM.

V. Miscellaneous.

- A. The Applicant shall work with ANC 2E, the Citizens Association of Georgetown, the Georgetown Business Improvement District, and members of the community to engage the District Department of Transportation in discussions to allow for two-way traffic on the portion of 30<sup>th</sup> Street, N.W. that is located north of the entrance to the loading area and the parking garage elevator.

B. The Applicant has noted that there are five existing parking facilities within 600 feet of the property that include over 1,000 parking spaces and that those facilities are on average only 80% occupied. The Applicant shall work with those facilities to allow for the use of those unoccupied spaces by the hotel, when the operator of the hotel expects periods of peak parking demand.

**VOTE: 4-0-1** (Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May (by absentee ballot) to APPROVE; Marnique Y. Heath not participating.)

**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**

**FINAL DATE OF ORDER:** July 25, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

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AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.