

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR**



June 14, 2016

Christine Moseley Shiker  
Holland & Knight LLP  
800 17<sup>th</sup> Street, N.W.- Suite 1100  
Washington, DC 20006

Re: 1300 H Street, N.E. (Lots 97-103, Square 1026) Board of Zoning Adjustment Case No. 19026 -Pedestrian Easement

Dear Ms. Shiker:

This is to confirm the substance of our discussions on December 9, 2015, regarding the minor refinement to the ground floor of the proposed building to be constructed at 1300 H Street, N.E. (Lots 97-103, Square 1026) (the Property). The Property is located in the HS-A/C-2-A District. In BZA Case No. 19026, the Board of Zoning Adjustment approved a variance from the off-street parking requirements under 11 DCMR § 2101.1 and special exceptions from the H Street Neighborhood Commercial Overlay requirements under 11 DCMR §§ 1320.4(f), 1324.10, and 1325.1, to construct a new four-story mixed-use building with ground floor retail and 36 residential units. A copy of BZA Order No. 19026 is attached.

A small portion of the Property is subject to a 4-foot wide pedestrian easement (the Pedestrian Easement), which is shown in red on the attached 1<sup>st</sup> First Floor Plan (Sheet A201). In order to accommodate the Pedestrian Easement, Owner will build the exterior wall around the easement as shown. At the second level, which is part of the open court, the Pedestrian Easement area will be covered by a roof that is at least 51% covered or, if a trellis, it will have horizontal members that are no more than 24-inches on center, as shown on the attached 2<sup>nd</sup> - 4<sup>th</sup> Floor Plans (Sheet A202).

The proposed revision to the approved plan will not change any area of relief granted nor will it create any new areas of nonconformity. Any required guardrail around the Pedestrian Easement at the second level is permitted in a required open space by virtue of 11 DCMR § 2503.2. The minor refinement is located along a shared property line and will not be visible from any public space.

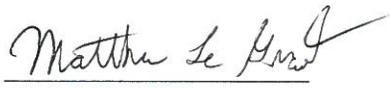
The Property is currently owned by the District of Columbia. The property is subject to a land disposition agreement and will be transferred to 1300 H Street NE, LLC (Owner) at disposition. You informed me that it is anticipated that the Pedestrian Easement will be terminated following disposition of the Property. In the event that it is not terminated, I find that the minor refinement to the approved BZA plans in order to address the existence of the

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Pedestrian Easement can be approved as being within the scope of the plans approved by the BZA in Order No. 19026. Overall, the minor refinement will have an imperceptible visual impact on the design of the project, will not impact any of the special exception or variance relief approved in Order No. 19026 and will not create any new areas of nonconformity.

Accordingly, upon proper presentation of plans for a building permit, I will approve drawings that are consistent with the minor refinement as described herein above as being in compliance with Order No. 19026.

Sincerely,   
Matthew Le Grant  
Zoning Administrator

Attachments:

BZA Order No. 19026

Sheet A201 – 1<sup>st</sup> Floor Plan

Sheet A202 – 2<sup>nd</sup> – 4<sup>th</sup> Floor Plans

File: Det Let re 1300 H St NE to Shiker 6-14-16

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**Application No. 19026 of 1300 H Street NE LLC**, as amended,<sup>1</sup> pursuant to 11 DCMR §§ 3103.2 and 3104.1 for a variance from the off-street parking requirements under § 2101.1 and special exceptions from the H Street Neighborhood Commercial Overlay requirements under 11 DCMR §§ 1320.4(f), 1324.1 and 1325.1, to construct a new four-story mixed-use building with ground floor retail containing 36 residential dwelling units in the HS-A/C-2-A District at premises 1300 H Street, N.E. (Square 1026, Lots 97 - 103).

**HEARING DATE:** July 7, 2015

**DECISION DATE:** July 7, 2015

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 14.) The zoning relief requested was subsequently amended, based on revised plans filed by the Applicant. (Exhibit 29.)

The Board of Zoning Adjustment (“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”) 6A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report indicating that at its regularly scheduled and properly noticed public meeting of June 11, 2015, at which a quorum was in attendance, ANC 6A voted 6-0 to support the application, with two conditions. (Exhibit 29J.) The ANC’s letter noted that the ANC supports the off-street parking variance only on the condition that: (i) a

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<sup>1</sup> The Applicant’s original application requested a special exception from the roof structure requirements of 11 DCMR §§ 411.5 and 770.6 to provide a roof structure with enclosing walls of unequal heights. In its prehearing statement (Exhibit 29), the Applicant withdrew the special exception request for the roof structure relief and provided revised architectural drawings (Exhibit 29C) that show roof structure that does not require zoning relief. The caption has been revised accordingly.

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covenant be recorded in the Land Records of the District of Columbia requiring that each lease or contract for sale of a residential unit prohibit the tenant or owner of the unit from obtaining a residential parking permit ("RPP"), and (ii) the Applicant for all purposes treat the building as fronting on H Street, N.E., including assigning or causing the District to assign an H Street, N.E. address to the building and each of its units. The Board accepted the first condition, requiring the Applicant to record the RPP restriction as a covenant against the property in the Land Records of the District of Columbia. The Board did not adopt the second proffered condition, opining that it was outside of the Board's jurisdiction.

The Office of Planning ("OP") submitted a timely report on June 29, 2015, recommending approval of the application, (Exhibit 30,) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report on June 30, 2015, indicating that it had no objection to the Applicant's requests for variance and special exception relief, provided that the Applicant modify its transportation demand management ("TDM") proffer regarding non-auto transportation incentives. (Exhibit 31.) The Board adopted the recommendation made by DDOT, as reflected in Condition No. 2 of this order.

At the public hearing, a nearby resident, Claude Labbe, testified in opposition, raising concerns about off-street parking in the neighborhood. Mr. Labbe also expressed general support of the development of the property. The Board acknowledged the validity of these parking concerns, but noted that the TDM measures adopted as conditions are intended to address and mitigate potential impacts.

Variance Relief

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 § 3103.2, for a variance from the off-street parking requirements under § 2101.1. The only parties to the case were the ANC and the Applicant. 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 OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2101.1, the Applicant has met the burden of proving under § 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.

Special Exception Relief

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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 1320.4(f), 1324.1 and 1325.1. 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 OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 1320.4(f), 1324.1 and 1325.1, 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29C, AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide 27 long-term bicycle parking spaces and provide a bicycle repair facility in the secure long-term bicycle parking storage room.
2. The Applicant shall provide one of the following non-auto transportation incentives annually for the first five years that the building is open to each new resident and each new retail employee. If the building is developed as a rental building, the incentive shall be provided to all lessees. If the building is developed as a condominium, the Applicant or homeowners' association shall offer to each new purchaser of a unit the incentive annually:
  - a. \$100.00 SmarTrip card,
  - b. Annual Capital Bikeshare membership, or
  - c. Annual car-share membership.
3. The Applicant shall provide information on carpool matching services.
4. The Applicant shall provide a non-auto transportation guide that will include comprehensive transportation information promoting walking, cycling, and transit, and links to [CommuterConnections.com](http://CommuterConnections.com) and [goDCgo.com](http://goDCgo.com).
5. The Applicant shall prohibit owners and/or tenants from obtaining a Residential Parking Pass ("RPP") or a Visitor Parking Pass ("VPP") from the District Department of Motor Vehicles. If the units are offered for-sale, a provision in the condominium declaration and a non-amendable provision of the bylaws shall include consent and authorization to the

Condominium Board to police and enforce this prohibition for the life of the project. If the units are offered for lease, a provision in the lease of each residential unit shall be included. The restriction will be recorded as a covenant against the property in the Land Records of the District of Columbia prohibiting any owner or lessee of the property from obtaining an RPP or VPP for the life of the project.

**VOTE: 4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**  
The 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 15, 2015

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

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ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD 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.

1300 H Street NE  
 Washington, D.C. 20002

**maurice wallers | architect**  
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**Client/Owner:**  
 Insight Property Group LLC  
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**Structural Engineer:**  
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**Engineer - MEP:**  
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**Engineer - Civil:**  
 Stevens Consulting Group, P.C.  
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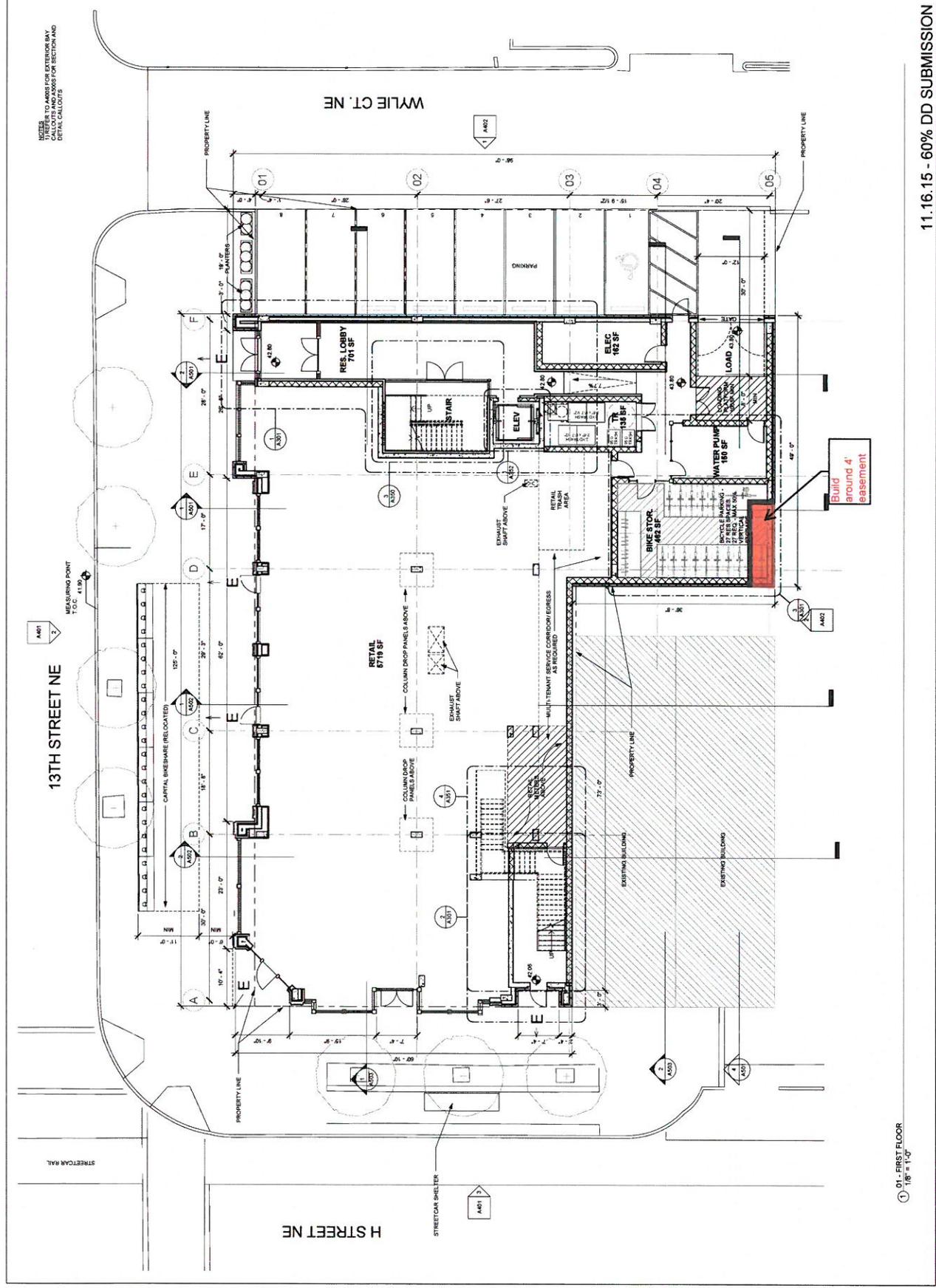
Project No. 052507020  
 Date: 11/18/15  
 Sheet No. 01

Date: 11.18.15  
 Project No: 0525  
 Drawn by: PC, TC  
 Checked by: MW

11.18.15  
 0 4' 8'  
 1" = 16'

11.18.15  
 0 4' 8'  
 1" = 16'

**A201**  
 Scale As Indicated



11.16.15 - 60% DD SUBMISSION

01 - FIRST FLOOR  
 1/8" = 1'-0"

**1300 H Street NE**  
 1300 H Street NE  
 Washington D.C. 20002

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NO.	DESCRIPTION	DATE	BY
01	ISSUED FOR PERMIT	03/11/15	MM

Date: 11.18.15  
 Project No: 12015  
 Drawn by: PC/TC  
 Checked by: MM

**2ND - 4TH FLOOR PLANS**  
 Drawing Title



Sheet No. **A202**  
 Scale: As indicated

**NOTES:**  
 REFER TO A205 FOR EXTERIOR BAY  
 CALLOUTS AND A206 FOR SECTION AND  
 DETAIL CALLOUTS



① 2D - SECOND FLOOR  
 1/8" = 1'-0"

11.16.15 - 60% DD SUBMISSION