

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



**Application No. 17473 of JPI Development Services LP**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the residential recreation space requirements under section 773, and a special exception for multiple roof structures with walls of uneven height pursuant to sections 411 and 770.6, to allow the development of a multi-family residential building in the C-3-C District at premises 909 New Jersey Avenue, S.E. (Square 738, Lots 1, 11, 14-18, 21, 25 and 27).

**HEARING DATE:** May 16, 2006  
**DECISION DATE:** May 16, 2006 (Bench Decision)

**DECISION AND ORDER**

**SELF CERTIFICATION:**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

**PRELIMINARY MATTERS:**

1. The Board of Zoning Adjustment (the "Board"), pursuant to its rules, 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") 6D and to owners of property within 200 feet of the subject site.
2. The subject site is located within the jurisdiction of ANC 6D, which is automatically a party to this Application. ANC 6D submitted a letter on May 15, 2006 opposing the Application. Opposition to the requested relief was based on the project's lack of affordable housing.
3. As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance pursuant to 11 DCMR § 3103.2 and for a special exception pursuant to 11 DCMR § 3104.1.
4. The Office of Planning ("OP") timely filed a report on May 9, 2006 in support of the Application. The Office of Planning ("OP"), by its report and by testimony at the hearing recommended that the Application be approved with the condition that future rooftop antenna installations include screened or stealth antennas.

**FINDINGS OF FACT:**

The Subject Property and the Surrounding Area

1. The subject site is known as 909 New Jersey Avenue, S.E. and consists of Lots 1, 11, 14-18, 21, 25 and 27 in Square 738 (the "Site"). The Site is located in the C-3-C Zone District and in the Capitol South Receiving Zone. Square 738 is bounded by I Street, S.E. on the north, New Jersey Avenue, S.E. on the east, K Street, S.E. on the south, and 1<sup>st</sup> Street, S.E. on the west. The Site occupies the majority of the square, with the exception of Lot 28 located in the southwest corner of the square.
2. To the north of the Site are I Street and United States government property, including an electrical substation. To the east of the Site are New Jersey Avenue and a D.C. Department of Sanitation plant. To the south of the Site are K Street and additional office/industrial uses. To the west of the Site are 1<sup>st</sup> Street and vacant land.
3. The C-3 Districts are designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District. The C-3-C District permits medium-high density development, including office, retail, housing, and mixed-use development.
4. The Site is irregularly shaped and is exceptionally shallow. It is also located in the Capitol South Receiving Zone, which permits development to a Floor Area Ratio ("FAR") of 10.0 and a height of 130 feet given the width of New Jersey Avenue, instead of the 6.5 FAR permitted as a matter-of-right in the C-3-C Zone District.
5. The proposed building includes a total of 231,938 square feet of residential gross floor area with 238 units, first- floor retail and 202 below-grade parking spaces.
6. The proposed development provides 10,486 square feet of residential recreation space - including a community room, fitness center, activity room, conference rooms, and swimming pool.
7. The proposed development includes an elevator machine/control room; a stair with screen wall for the stair pressurization fan; and a screen wall for an additional stair pressurization fan. All walls will be approximately nine feet in height.
8. The proposed development includes multiple roof structures in order to avoid a large connecting wall that would add to the visual bulk of the building.

**CONCLUSIONS OF LAW AND OPINION:**

Based upon the foregoing Findings of Fact, the Applicant is seeking a variance under Section 773 and a special exception under Sections 770.6 and 411 of the Zoning Regulations.

**Variance Relief from § 773 – the Residential Recreation Space Requirement**

Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist: the property is unusual because of its size, shape, topography or other extraordinary or exceptional situation or condition; the owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and 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. The Applicant is seeking variance relief from the residential recreation space requirement of the C-3-C District to allow the construction of a new residential multiple family building with a small amount of ground level retail. Based upon the evidence and testimony, the Application meets all three prongs of the area variance test.

The Property Is Unusual Because of its Size, Shape or Topography or is Affected by an Exceptional Situation or Condition. The Site is irregularly shaped and exceptionally shallow. Its configuration limits the Applicant's ability to provide the 23,194 square feet of required recreation space – an exceptional amount of required residential recreation space - based on the square footage of the development. In addition, the proposed development provides first floor retail in response to the desirability of retail uses in the Capitol South Receiving Zone, further limiting the available space for more residential recreation space.

Strict Application Would Result in a Practical Difficulty to the Owner. The strict application of the Zoning Regulations would result in a practical difficulty upon the Applicant. Strict adherence to the Zoning Regulations would require that ten percent of the gross floor area dedicated to residential use be provided as recreation space. In this case, ten percent equals 23,194 square feet – almost one and one half floor plates of the proposed development. Because of the unusual shape of the lot and its exceptional shallowness, location of the roof structures leaves insufficient space on the roof for meaningful residential recreation space. The Applicant is providing meaningful residential recreation space in all available areas not dedicated to other critical building uses. Providing the required amount of residential recreation space would diminish the area that could be devoted to actual residential units and would most likely require loss of the retail space and some amount of below-grade parking, as testified to by applicant's residential marketing expert witness.

No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The Applicant is providing 10,486 square feet of meaningful residential recreation space - including a community room, fitness center, activity room, conference rooms, and swimming pool. This space meets the intent of the Zoning Regulations by adequately meeting the recreational needs of the future residents. The proposed development provides needed housing in the Capitol South Receiving Zone in relatively close proximity to the new baseball stadium and the proposed Canal Blocks Park. The zone plan will not be compromised, as the development is a permitted matter-of-right use in the C-3-C zone; it is in accordance with the FAR, lot occupancy and height regulations, as well all other Zoning Regulations other than those for which relief is sought in this application.

**Special Exception Relief Pursuant to §§ 3104.1, 770.6 and 411**

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested 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 regulations.” *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the Applicant meets its burden, the Board must ordinarily grant the application.

Under 11 DCMR § 3104.1, the Board is authorized to grant special exception approval to roof structures not meeting the requirements set forth in §§ 770.6 and 411 of the Zoning Regulations.

**Section 770.6.** Section 770.6 of the Zoning Regulations provides that, if housing for mechanical equipment or a stairway or elevator penthouse is provided on a building's roof, it must be erected or enlarged in compliance with the provisions of §770.6 as follows:

- It shall meet the requirements of §411.
- It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
- It shall not exceed more than 18 feet, 6 inches in height above the roof on which it is located, nor shall mechanical equipment extend above the permitted 18 feet 6 inch height of the housing.

Section 411 establishes numerous criteria for roof structures in all districts. In particular, § 411.3 requires that all penthouse and mechanical equipment be placed in one enclosure. The proposed roof structures do not comply with the provisions of §770.6(a) (by reference to § 411.3) and thus requires special exception approval by the Board pursuant to § 411.11.

Section 411.11 provides the Board authority to approve as a special exception the location, design, and other aspects of roof structures that do not meet the standard matter-of-right requirements. In order to obtain such special exception approval, an applicant must demonstrate that: (1) compliance with the roof structure regulations is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable and (2) the intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired by the structure and the light and air of adjacent buildings are not adversely affected.

- i.** Compliance with the roof structure regulations is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

The Site is irregularly shaped and exceptionally shallow, constraining the potential roof structure configurations. Two means of egress must be provided throughout the building, and these areas extend to the rooftop, although only one stairway accesses the rooftop. If all the roof structures were connected, there would be significantly more structure on the roof than under applicant's proposal.

- ii.** The intent and purpose of Section 400.7 of the Zoning Regulations are not materially impaired and the light and air of adjacent buildings are not adversely affected.

The roof structures will harmonize with the main structure. Any impact of the structure on light and air to adjacent buildings will be minimal, as the addition to the existing penthouse is setback the required distances from all building lines.

Based on the above, the Board concludes that the Applicant has met each of the criteria for special exception relief from the roof structure requirements.

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues

and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

ANC 6D opposed the application because it did not include affordable housing units and requested that the Board require such housing as a condition of approval. While the Board recognizes the importance of affordable housing in the city, it lacks jurisdiction to impose such a condition in the context of this case. The Board has authority to impose a condition to offset any potential adverse impacts that might be related to the relief granted. The Board finds no adverse impacts related to the requested relief in this case that affordable housing would address.

The Board concurs with the Office of Planning that the proposed Project meets the variance and special exception tests and that the project, with the condition proposed by the Office of Planning will present no substantial detriment to the public good, nor will it substantially impair the intent, purpose, or integrity of the zone plan. A condition limiting rooftop antenna installations to screened or stealth antennas will address potential adverse visual impacts. The Board further concludes that the Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of the neighboring property in accordance with the Zoning Regulations and Zoning Map.

In light of the foregoing, the Board **ORDERS** that the Application is hereby **GRANTED**, **SUBJECT** to the **CONDITION** that future rooftop antenna installations shall include screened or stealth antennas.

**VOTE:**       **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr.,  
John A. Mann II and Michael G. Turnbull to approve.)

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

Each concurring member has approved the issuance of this Order.

**ATTESTED BY:**

  
**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning 

**FINAL DATE OF ORDER:**           **AUG 22 2006**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITION 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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C.LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT. THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITY, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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



**BZA APPLICATION NO. 17473**

As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 22, 2006**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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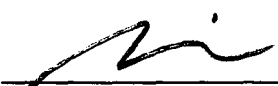
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**ATTESTED BY:**

  
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