

**APPLICATION TO THE BOARD OF ZONING ADJUSTMENT OF THE
DISTRICT OF COLUMBIA**

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**5545-5549 SOUTH DAKOTA AVENUE, NE and
5553-5575 SOUTH DAKOTA AVENUE, NE**

by

DAKOTA POINTS, LLC

JANUARY 4, 2007

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 17606

EXHIBIT NO. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17606
EXHIBIT NO. 55

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of Dakota Points, LLC

BZA Application No. _____
ANC 4B

STATEMENT OF THE APPLICANT

This is an application of Dakota Points, LLC (“Applicant”), for special exception relief under Title 11, Section 411.11 of the District of Columbia Municipal Regulations (DCMR) (“Zoning Regulations”) from the requirements of 11 DCMR Section 411.5. The Applicant is currently redeveloping the property located at 5545-5549 South Dakota Avenue (Lot 10 in Square 3760) and 5553-5575 South Dakota Avenue, NE (Parcel 137/86) (the “Property”), as shown on Exhibit J, for residential use.

The Applicant proposes to construct a four-story residential structure on the Property that will contain ample parking. However, for reasons explained herein, the Applicant is requesting approval of a roof structure that does not conform to the uniform height requirement of the Zoning Regulations. The Project will conform to the Zoning Regulations in all other ways.

I. NATURE OF RELIEF SOUGHT

The Property is located in the C-2-A Zone District (see pertinent portion of the Zoning Map attached as Exhibit J)¹ which permits residential uses as a matter-of-right.

¹ Although the Zoning Map indicates that the Property is located in the C-3-A Zone District, it is actually in the C-2-A Zone District. Pursuant to Zoning Commission Order Nos. 762 and 774.

Under Section 411.5 of the Zoning Regulations, a building's roof structure enclosing walls must be of uniform height (up to a maximum height of eighteen (18) feet six (6) inches). The Applicant requests that the Board of Zoning Adjustment (the "BZA" or the "Board") approve a special exception pursuant to §3104.1 from the roof structure requirement of §411.5 of the Zoning Regulations. The Applicant requests special exception relief in order to construct a roof structure of varying heights to minimize the building's appearance of height by keeping the majority of the roof structure shorter (ten (10) feet nine (9) inches above the roof) and permitting the elevator enclosure and mechanical equipment housing to be taller (thirteen (13) feet nine (9) inches above the roof). The necessary zoning relief has been self-certified as shown on the attached Exhibit B. The Applicants' satisfaction of the standards for granting special exception relief is discussed in detail in Section IV of this statement.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the special exception relief requested pursuant to §3104.1 of the Zoning Regulations.

III. BACKGROUND

Description of the Property and Surrounding Area

The Property is located in the Fort Totten neighborhood of the District of Columbia on the east side of Riggs Road, NE and the South Dakota Avenue, NE off ramp (See Exhibit J). It is currently improved with one larger three-story residential structure and several other low-scale buildings with commercial uses. The remainder of the Property is a patchwork of open landscaped space, parking lots, and vehicular access ways among the existing buildings.

The surrounding neighborhood generally is characterized by a variety of uses, including various commercial properties of small scale and residential uses including duplexes and multi-family housing. To the north and east, the Property is abutted by single family houses and residential duplexes; to the west, the Property is abutted by an open triangle of property owned by the District of Columbia and further to the west, across Riggs Road, NE, is a commercial strip mall of one story retail and service uses surrounded by a parking lot; to the south, across South Dakota Avenue, NE, is multi-story residential housing. The parcels to the west of the Property are being redeveloped by affiliates of the Applicant in a coordinated development that will assist in revitalizing this neighborhood. Dakota Square, LLC, is the owner and developer of 300-320 Riggs Road, NE and has submitted BZA Application No. 17600 for a variance from the residential loading berth size requirement of §2201.1 of the District of Columbia Zoning Regulations. South Dakota Holdings, LLC is negotiating the purchase of the triangle of land to the south of the Property owned by the District and desires to construct a residential building on that site.

The Property is walking-distance to the Fort Totten Metrorail station. The Property is designated as Moderate Density Commercial on the Generalized Land Use Map of the Comprehensive Plan². The areas surrounding the Property include Moderate Density Commercial (to the north and west), Low Density Residential (to the very north, southeast and east), and Commercial High Density and Residential Medium Density (to the southwest).

² The Property remains designated Moderate Density Commercial on the proposed Generalized Land Use Map that accompanies the draft Comprehensive Plan that is currently before the D.C. City Council.

The Property has a land area of 75,290 square feet and is located in the C-2-A Zone District. The Property is located in a cluster of parcels of C-2-A to the west of the intersection of Riggs Road, South Dakota Avenue, and 3rd Street, NE. To the north and the east of the cluster of C-2-A, R-2 is the primary Zone District. Properties south of the Property are zoned R-5-A and properties to the southwest of the Property are zoned in the Fort Totten Overlay (“FT”)/C-3-A Zone District.

The maximum height for a building in the C-2-A Zone District is 50 feet and the maximum lot occupancy for a residential structure is 60%. The maximum floor area ratio (“FAR”) in the C-2-A Zone District is 2.5 FAR, of which 1.5 FAR may be nonresidential FAR. Accordingly, the Applicant would be permitted to construct, as a matter-of-right, a 50 foot building of 188,225 square feet, including 112,935 square feet of nonresidential use.

Section 400.7 of the Zoning Regulations allows a penthouse height of eighteen (18) feet six (6) inches above the roof. However, since the building will be adjacent to a residential area including single family homes and duplexes, care has been taken to minimize the penthouse as much as possible, while allowing for the necessary elevator override, common storage, and mechanical equipment on the roof. The result is a two-level roof structure that does not comply with zoning.

History of the Property

The existing buildings on the Property were constructed in the 1950’s and 1960’s and comprise a series of commercial and residential buildings. The Property has large parking lots on it that surrounds the commercial and residential structures. The buildings on the Property have an FAR of 0.6, or 45,174 square feet of gross floor area, and a maximum height of 32 feet.

While the existing buildings provide outdated residences for the surrounding community and limited commercial uses, the Property is inefficiently utilized.

Description of the Proposed Development

The Applicant proposes to demolish the existing buildings on the Property and develop a four-story residential building containing approximately 171 residential units, comprising approximately 168,018 of square feet (the “Project”) as shown on Exhibits B and I. The proposed building will be approximately 50 feet in height under the Zoning Regulations. The proposed building will have a FAR of 2.2. Therefore, the proposed building would be at or under the 50 foot maximum height and the maximum FAR allowed in the C-2-A Zone District. The proposed Project would have 90 parking spaces, although only 86 would be required under the Zoning Regulations.

No side yard is required at the Property and none will be provided. If a side yard is provided in the C-2-A Zone District, it must be at least two (2) inches per foot of height of the building and no less than six (6) feet. The Project will have a lot occupancy of 56%. The Applicant will provide one (1) 55’ loading berth and one (1) 20’ delivery space for the residential units.

The Project will be comprised of one building located in the middle of the irregularly-shaped Property. The building will be wedge-shaped extending from a point at one end to a wider, taller structure at the other end to fit with the shape and contour of the lot (as shown on Exhibit D).

The Project is intended to compliment and enhance the appearance and character of the neighborhood – which is comprised of an eclectic mix of uses and designs, much of it modern.

The Project will replace two large lots containing non-descript, inefficient and outdated residential and commercial buildings with a single cohesively- designed building. Although the immediate neighborhood is too eclectic to have a definitive style, the Project's highly-articulated façade and detailed design will energize the neighborhood and fit well within the existing fabric. By focusing on the design and integrating the site with the two neighboring properties, the Project will replace the sense of disinvestment that the Property currently creates. The Project will be a key investment at a prominent corner location which will stimulate and compliment other investment in the neighborhood. The proposed Project capitalizes on the existence of the nearby Fort Totten Metro station and the proposed Clark and Cafritz projects.

Perhaps most important, the Project's residential units will be priced to be "workforce housing." The price points for the residential units are intended to be set at a level that will be affordable to those District residents priced out of Northwest or the Downtown areas of the District. This middle segment of the District's population is under-served by housing in the District, particularly housing that is close to a Metro station. Such transportation access gives the workforce great access to the Downtown core. In addition, South Dakota Holdings, LLC, an affiliate of the Applicant, will also provide substantial affordable housing on the site adjacent to the Property if that property is successfully acquired from the District of Columbia. The residents of the Project will be a key addition to the surrounding neighborhood and support and enliven the active social and retail streetscape planned on Riggs Road, NE.

Area of Necessary Relief

The Project requires a special exception under Section 411.11 of the Zoning Regulations from Section 411.5. Under Section 411.5 of the Zoning Regulations, a roof structure must be of uniform height. As shown on Exhibit I, the roof structure labeled as "Penthouse A" will have

two different heights. One height will be thirteen (13) feet nine (9) inches above the roof and contain mechanical equipment and the elevator override and the remainder – and majority – of the roof structure will be ten (10) feet nine (9) inches above the roof and contain space for residential units to access roof decks. The height difference between the two sections of the roof structure will be three (3) feet. Both heights of the proposed roof structure are well below the eighteen (18) feet six (6) inch maximum height permitted as a matter of right under the Zoning Regulations.

The slight relaxation of the roof structure requirements of the Zoning Regulations allows the Applicant to install the necessary mechanical equipment and elevator override onto the roof, yet minimize the appearance of the roof structure's height. Therefore, the special exception will minimize the impact of the building on adjacent properties and adjacent District residents.

The Applicant has experimented with several different roof structure designs in order to develop a roof plan that maximizes the efficient use of an oddly-configured lot and the functionality of the resulting building, while minimizing the effect of the Project on the surrounding properties. The resulting Project plan, as attached hereto as Exhibit I, requiring this special exception, allows for a more well-designed and efficient roof structure given the Property's constraints.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER §§ 411.11 AND 3104.1 OF THE ZONING REGULATIONS

The Applicant is seeking special exception relief pursuant to Section 411.11 from 11 DCMR Section 411.5 for constructing a roof top structure on the proposed building with varying heights. In order to obtain relief, the special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and must not tend to affect

adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

11 DCMR § 3104.1. Under Section 411.11 of the Zoning Regulations, the Board of Zoning Adjustment is authorized to grant the Property relief from strict compliance with the Zoning Regulations that require certain design characteristics for roof structures. Section 411.11 of the Zoning Regulations states:

Where impracticable 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 Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

As will be discussed below, the Applicant meets the standards set forth in Section 411.11 of the Zoning Regulations.

A. Strict compliance with the uniform height of roof structure requirements would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

Strict compliance with the roof structure requirements for the Project is impracticable. Since the building is on a commercially-zoned property immediately adjacent to a residential area containing lower scale residential structures such as single family homes and duplexes, the height of the roof structure is a sensitive feature of the building. As a result, minimizing the effect of the height of the building on the neighborhood is a key consideration for the development of the Property.

Another primary consideration in the development of the Property is that the Property has an elongated shape and sloped topography. To allow for a functional and economical building on the Property, any building must have a similar length and shape and a higher height towards the southeastern end of the Property, where it slopes down. Such a configuration creates difficult design considerations. At its greatest length, the building is 590 feet long and the slope of the Property changes by fourteen (14) feet four (4) inches. Given the long and relatively narrow nature of the lot and the elongated building such a lot requires, the Applicant wishes to alter the roof structure heights and break up the massing of the building. Providing two heights to the penthouse would assist the Applicant in that effort by aligning with Applicant's desired design.

B. Strict compliance with the uniform height of roof structure requirements would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable

Strict compliance with the roof structure height requirements under Section 411.5 would be both expensive and inconvenient for the Applicant and future residents of the Project and unnecessarily contribute to the appearance of the height of the building.

There is no practical way to push the elevator override and other mechanical equipment in the higher portion of the roof structure down into the roof of the building to create a uniform roof structure height without adding great expense and inconvenience to the development and ongoing operation of the Property. There are many technical and design reasons that the proposed roof structure is desirable. Such a plan will require significantly less infrastructure and cumbersome and costly supporting structural elements. The requirement of the uniform roof structure height would require additional construction considerations that would greatly add to the expense and maintenance requirements for the Project and the complexities of the design of

the Project. As stated above, there is no way to make the lower portion of the roof structure higher without adding unnecessary height to the building.

The strict compliance with the requirement for uniform height of the roof structure would have a negative impact on the aesthetics of the Project. By minimizing the height, the dual-height roof structure will allow for more focus on the high level of design throughout the Project. Effectively, the strict adherence to the Zoning Regulations' uniform height requirement results in the Project needlessly adding several extra feet of perceived mass and height, which would detract from the extensive effort by the Applicant to integrate the Project into the neighborhood and minimize the effect on the neighborhood as much as possible.

C. The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

The general purpose and intent of the Zoning Regulations and Zoning Map is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR § 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted; and must be designed to encourage the stability of districts and of land values. 11 DCMR § 101.2.

The requested relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zone Plan. The Zoning Regulations allow a much taller roof structure, but require it to be of one height. The Applicant has developed the plans in order to allow for lesser height for a portion of the roof structure and thereby create a lesser effect of the building height on the surrounding neighborhood. As a result, the intent of the Zoning Regulations would be furthered by allowing the Applicant to blend the building with the surroundings as much as possible. The negative impact of the special

exception is negligible, particularly in light of such an effort to lower the perceived height of the roof structure and therefore, the building. Essentially, the Applicant is asking the Board to exchange the uniform height of the roof structure for less of an appearance of height. As such, the proposed roof structure certainly serves to meet the spirit of the Zoning Regulations.

The varied heights also break up the massing of the building and diminish the “box-like” appearance that pervades many of the District’s buildings. It is also important that the portion of the roof structure that is the subject of this application will be somewhat hidden by a tower element that is on the building’s façade facing South Dakota Avenue, NE.

In addition, the light and air of adjacent buildings will not be adversely affected. Since the disparity in heights of the roof structures is only three (3) feet and well under the maximum roof structure height allowed under the Zoning Regulations, the difference in heights would not cause any negative impact on the light and air for any District residents or properties. In fact, the Applicant is actually carving away as much of the roof structure as possible and leaving primarily the immovable roof structure from the elevator override, the housing for the mechanical equipment, and other necessary building operational space in the taller portion of the roof structure. This application will not change the overall permitted density on the Property or the total size of development.

The Project advances the intent and goals of the Comprehensive Plan for this area and is in compliance with the intended development at this intersection under the Zone Plan. The proposed Project will bring an important investment and a vibrant use to a site that is currently under-utilized. In addition, the Project will allow for a more active streetscape, residents to support more desired retail uses, and more residential options to this neighborhood, while

strengthening and improving the physical and aesthetic character of the surrounding neighborhood. As a result, the Project will assist in rejuvenating the neighborhood and bring a highly-desired mixed-use, including a high degree of “workforce” residential use to the area. It will also contribute towards achieving the Mayor’s goal to bring 100,000 households to the City, and use “right-sized” development to do so.

The special exception application will be reviewed by the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”), ANC 4B. In addition, the Applicant will meet with Muriel Bowser, the Property’s Single Member District ANC Commissioner. To date, the Applicant has met informally with community members and is not aware of any opposition to this case. The community has been supportive of the Project and related development of nearby parcels.

V. EXHIBITS IN SUPPORT OF APPLICATION

Exhibit A - BZA Form 120, Application

Exhibit B - BZA Form 135, Self Certification

Exhibit C - Surveyor’s Plat with Project

Exhibit D - Authorization Letter from Property Owners

Exhibit E - Statement of Existing and Intended Uses

Exhibit F – Statement of the Burden of Proof and Description of Project

Exhibit G - Photographs of the Property

Exhibit H - List of Owners of Property within 200 feet of the Subject Site

Exhibit I - Proposed Plans

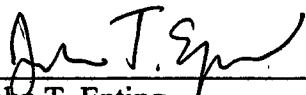
Exhibit J – Zoning Map & Sanborn Atlas Excerpts with Property outlined in red

Exhibit K - Filing Fee

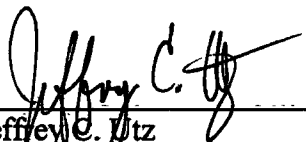
VI. CONCLUSION

For all of the above reasons, the Applicants respectfully request approval of the subject application.

Respectfully submitted,



John T. Epting



Jeffrey C. Utz

January 4, 2007