

Holland & Knight

2099 Pennsylvania Avenue, N.W., Suite 100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Christine Moseley Shiker
202.457.7167
christine.shiker@hklaw.com

April 24, 2012

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

RECEIVED
D.C. OFFICE OF ZONING
2012 APR 24 PM 1:04

Re: Board of Zoning Adjustment Application 18344 (33 New York Avenue, NW)
Prehearing Submission

Dear Members of the Board:

On behalf of JBG/New York Avenue Hotel, L.L.C., enclosed please find an unbound original and twenty copies of the prehearing submission in support of the above-referenced application for special exception and variance relief.

Should you have any questions regarding this matter, please do not hesitate to have staff contact me.

Sincerely,

HOLLAND & KNIGHT LLP

Christine Moseley Shiker

Enclosures

cc: Arthur Jackson, Office of Planning
Jamie Henson, DDOT
Advisory Neighborhood Commission 6C

(Via Hand Delivery; w/enclosure)

(Via Hand Delivery; w/enclosure)

(Via US Mail; w/enclosure)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18344

EXHIBIT NO. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.18344
EXHIBIT NO.26

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

**APPLICATION OF THE
JBG/NEW YORK AVENUE HOTEL, L.L.C.
33 NEW YORK AVENUE, N.E.**

**BZA APPLICATION NO. 18344
HEARING DATE: MAY 8, 2012
ANC 6C**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of the JBG/New York Avenue Hotel, L.L.C. (the "Applicant") in support of its application to the Board of Zoning Adjustment for the following variance and special exception relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3103.2 and 3104.1: (i) a variance to reduce the parking required by Section 2101.1 of the Zoning Regulations; and (ii) a special exception for the roof structure to allow walls of unequal height and a reduced set back abutting the southern court wall. When originally filed, the application also included a variance from Section 2115.2 which permits no more than 40% of the required parking spaces to be compact car spaces and a variance from Section 2115.4 which requires compact car spaces to be placed in groups of at least five contiguous spaces. However, as is described further herein, the project has been modified such that these two variances are no longer required.

The relief requested will permit the construction of a hotel at 33 New York Avenue, NW (Lot 27 in Square 671) (the "Site"), as shown on the attached Exhibit A. The proposed development is appropriate for the Site, fully compatible with the surrounding area, and not inconsistent with both the Comprehensive Plan and the Zoning Regulations.

II. **JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103 and 3104 of the District of Columbia Municipal Regulations (“Zoning Regulations”). 11 DCMR §§ 3103 and 3104.

III. **BACKGROUND**

A. Description of the Site

The Site is located at Lot 27 in Square 671. Square 671 is bounded by New York Avenue to the north, North Capitol Street to the west, N Street to the south, and First Street to the east. The Site is a through-lot, located in the western half of the square. The Site is zoned C-3-C and is located within the North Capitol Receiving Zone. The Site is currently improved with a vacant two-story night club and surface parking lot.

B. Description of Surrounding Area

The Site is located at the gateway to NoMA, which is being developed with a wide variety of high-density commercial, residential and mixed-use developments. The proposed hotel will be the first redevelopment in the square. The existing Covenant House is immediately the west of the Site, and an existing food warehouse is immediately to the east of the Site.

The future Land Use Map of the Comprehensive Plan designates the Site and the surrounding area for High Density Commercial Land Use, as shown on the attached Exhibit B. The Site is located within the Central Employment Area and has very close proximity to the New York Avenue Metrorail Station.

C. Existing Zoning

The Site is zoned C-3-C and is located within the North Capitol Receiving Zone. The C-3-C zone district is a medium to high-density zone that permits a variety of uses. As a matter-of-right, the C-3-C district permits a maximum building height of 90 feet and a maximum FAR of 6.5.

The North Capitol Receiving Zone was established with the creation of the Downtown Development ("DD") District to permit increased height and density with the use of transferrable development rights ("TDRs") in appropriate areas throughout the city based on the development of preferred uses and fulfillment of historic preservation goals in the DD District. Pursuant to Section 1709.21, the maximum additional height permitted in a TDR receiving zone is based on the Act to Regulate the Height of Buildings in the District of Columbia ("1910 Height Act"). The 1910 Height Act generally provides that the maximum permitted building height in a commercial district is the width of the street on which the building fronts plus twenty feet, but not greater than 130 feet, with limited exceptions. The Site fronts on New York Avenue, which has a right-of-way width of 130 feet. Thus, the 1910 Height Act permits a maximum height of building of 130 feet for this Site. In the North Capitol Receiving Zone, the maximum permitted FAR for buildings permitted to go to 130 feet is 10.0 FAR. 11 DCMR § 1709.21.

C. Project Description

The Applicant proposes to replace the existing night club and parking lot with a Hyatt Place Hotel, having a height of 130 feet and containing approximately 102,788 square feet of gross floor area. The Hyatt Place Hotel is a limited service hotel, which means that it provides reduced services and amenities when compared to a full service hotel. This hotel is proposed to include 200-keys and approximately 1,200 square feet of meeting space. The project is located

in the northern portion of the NoMA area and will continue the revitalization and growth that is currently underway in this area.

The hotel has been designed to create a gateway presence for this portion of the NoMA neighborhood, with an emphasis on the views of the building as one travels into the neighborhood from both North Capital Street and New York Avenue. The design of the building's façade is primarily a glassy exterior wall, upon which a series of both architecturally-treated concrete walls and rain-screen systems are applied to create texture and architectural detail. Detailed renderings of the building are included on Sheets A207 and A208 of the Architectural Plans submitted as Exhibit K.

The base of the building is treated in more of a retail manner with simple natural stone and storefront systems. The primary pedestrian entrance will be on N Street, with close proximity to the New York Avenue Metrorail Station. The project proposes a lay-by on N Street for those guests arriving by taxi, bus or personal vehicle. The required loading is provided from a curb cut on N Street, which has been placed as far as possible to the west of the primary pedestrian entrance and the pedestrian path to the Metrorail Station. A secondary pedestrian entrance is located on New York Avenue. Both pedestrian entrances are marked by architectural canopies to provide locational markers for the entrances and to provide protection from the elements.

The building is striving for LEED Silver certification. The building will feature many sustainable design concepts, such as water-reducing fixtures, energy efficient equipment and lighting, and a rain-screen exterior cladding system.

V.
THE APPLICANT MEETS THE TEST FOR
VARIANCE RELIEF TO REDUCE THE PARKING REQUIRED
PURSUANT TO 11 DMCR § 2101.1

A. Standards for Granting Area Variances

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:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) 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.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, the Site and development of the hotel project with the variance requested meet all three prongs of this test.

B. Exceptional Conditions or Situations

The Site is affected by several exceptional conditions due to its unique shape and size. First, the Site is an irregularly-shaped through lot. Second, the Site is small in size, having only 10,280 square feet of lot area. Third, the Site is very narrow on its western edge, having a depth of only approximately 67 feet. The eastern edge is longer, having an approximate depth of 115 feet. Along N Street, the Site is approximately 109 feet in width. This dimension is reduced due to encroachments from the existing buildings on both the east and west property lines. Specifically, the building to the east encroaches approximately one foot, six inches, and the

building to the west encroaches approximately one foot, for a total encroachment of two feet, six inches.

C. Variance from Parking Requirement of Section 2101.1

Section 2101 of the Zoning Regulations requires that a hotel in the C-3-C District provide parking as follows:

Zoning Requirement	Calculation	Parking Required
1 space for each 4 rooms usable for sleeping	$200 \text{ rooms} / 4 = 50$	50 spaces
1 space for each 300 sf of floor area in either the largest function room or the largest exhibit space, whichever is greater	$1,173 \text{ sf} / 300 \text{ sf} = 3.91$	4 spaces
	TOTAL	54 spaces

Given the irregular shape of the Site, its small size and its narrowing at the west property line, the project originally proposed 5 full size zoning compliant parking spaces, 14 compact spaces for which variances were requested from Sections 2115.2 and 2115.4, and an additional 20 spaces located partially within vaults and/or as tandem spaces. These spaces were accessed from a curb cut proposed to be located on New York Avenue and were the maximum number of spaces that could be located within the two below-grade levels due to the small size and narrow shape of the Site and the required ramping to access the parking garage as well as the required drive aisle and core location.

Since the application was filed, the Applicant was informed by DDOT that it would not support a curb cut on New York Avenue, which was the proposed access to the below-grade parking (See DDOT Letter attached as Exhibit C). The only other location for the parking access could then be from N Street. Based on the architect's evaluation of this access point, it was determined that the practical difficulties that led to a reduced amount of parking when accessed from New York Avenue are further exacerbated if access is taken from N Street. Specifically, while the below-grade parking garage can be accessed from a parking ramp, the acute angle of

the left-turn created for vehicles when they reach the bottom of the ramp along with required slope of the ramp, the ramp and drive aisle dimensions and the location of the core lead to practical difficulties in providing a reasonable number of parking spaces. In addition, the location of the ramp on N Street creates a major difficulty for the limited frontage on N Street. Specifically, the N Street frontage must accommodate the loading dock, required egress from the building as well as the primary hotel entrance. Incorporating the parking garage entrance and ramp constrains the ground floor layout in an already tight site. These additional issues and the unique site conditions, including an irregularly-shaped through lot that is small and narrow, result in a practical difficulty to provide any parking on the site. Accordingly, the Applicant amended its application to request a full variance from the parking requirement. Because no parking is proposed to be provided, the variances from Sections 2115.2 and 2115.4 relating to compact car spaces are no longer necessary.

The Site's exceptional conditions result in a practical difficulty in complying with the strict application of the Zoning Regulations. Due to the Site's irregular shape and small size, which is further reduced by the encroachments from the adjacent buildings, the footprint of the parking garage would be very small. As shown on the parking plans attached as Exhibit D, the below-grade parking facility would be almost entirely taken up by ramps, required drive aisles at 20 feet and the core of the building. The location of the core - which is primarily comprised of the three needed elevators - is generally in the center of the building. This location is dictated by the size and shape of the Site, the dimensions and layout that are required to create appropriate hotel room and corridor configurations, and the requirement to set back the elevator penthouse 1:1 from exterior walls. Based on these plans showing two below-grade levels, the project could provide only thirteen zoning compliant, full-size spaces within the private property, which would

include five spaces on the B-1 level and eight spaces on the B-2 level. The project would need to have seven levels of below-grade parking in order to provide the required number of complying spaces.

Despite the fact that so few spaces can be provided in the below-grade parking garage due to the small size of the Site, the costs associated with the construction of only two below-grade levels, including sheeting and shoring, underpinning, and dewatering, among other costs, is estimated to be approximately \$2,085,000, which would equal a cost of more than \$160,000 per space compared to the more typical cost in the District of approximately \$35,000 per space per underground parking space. To excavate additional levels to get to the number of required spaces, the costs increase significantly due to deeper excavation, deeper piles and more dewatering. It is estimated that there is an additional 15% cumulative premium per level to construct additional levels and achieve full compliance, resulting in an additional cost of more than \$8,000,000 to construct the five additional levels, or more than \$188,000 per space. A copy of a letter from Herman Stewart summarizing these costs is attached as Exhibit F.

The Board and the D.C. Court of Appeals have recognized that economic factors may form the basis of practical difficulties in the strict application of the Zoning Regulations. In *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992), the court found that economic viability is an appropriate consideration for the Board. The court explained that any argument claiming that the BZA does not have authority to grant variances to make a particular project economically feasible misconstrues the court's precedents. *Id.* at 1366. The court reiterated its previous holdings that "'increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration.'" *Id.* at 1367-68, citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990).

and *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 943 (D.C. 1979). Accordingly, the significant increase in cost to construct a minimal number of parking spaces that represents less than 25% of the requirement is a practical difficulty leading to the provision of no parking spaces at the Site.

Relief can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zone Plan, as embodied in the Zoning Regulations and Map. There will be no adverse impact to the request to eliminate parking for the Site as there is a very low demand associated with this type of limited service hotel, based on a study of comparable hotels in the District. This is especially true given that the Site is well-situated to mass transit. The Site is approximately 1.5 blocks from the New York Avenue Metrorail Station, numerous bus routes, and the Metropolitan Branch Trail. Additionally, the proposed hotel will be situated in a mixed-use, pedestrian-oriented neighborhood where guests can find amenities such as restaurants within walking distance, thereby reducing the need for automobiles. Furthermore, a valet operator will be on-site to manage the limited demand by using existing and proposed off-site parking spaces nearby. Based on both the Transportation Assessment prepared by Wells & Associates, a copy of which is attached as Exhibit E, and information from DDOT, there is significant capacity in the area for the valet operator to locate spaces. Finally, not incorporating a curb cut on N Street creates a better streetscape along that frontage, which is an important pedestrian thoroughfare to Metro. Accordingly, there will be no detrimental impact on the public or on the Zone Plan.

V.
**THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION RELIEF TO ALLOW ADJUSTMENTS TO THE ROOF
STRUCTURE REQUIREMENTS UNDER 11 DCMR § 411**

A. Description of Special Exception Relief Requested

Due to shape of the Site and the design of the building for hotel use, the project does not fully comply with the roof structure requirements set forth in Section 411 and 770.6 of the Zoning Regulations. Specifically, the roof structure does not have walls of equal height and is not set back 1:1 from the southern court wall as required by Sections 411.5 and 770.6(b) of the Zoning Regulations, respectively. Accordingly, the Applicant requests special exception relief to deviate from the strict compliance of the Zoning Regulations as permitted under Sections 411.11 and 3104.1 of the Zoning Regulations.

B. Standard for Approving Special Exception Relief

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 relief requested 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. *Id.*

C. Standard of Review for Roof Structure Special Exceptions

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area"

and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR § 411.11. The Board may approve deviations from the roof structure requirements provided 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 shall not be affected adversely." *Id.*

Section 411.5 of the Zoning Regulations provides that enclosing walls from roof level shall be of equal height; however, the enclosing walls of the roof structure are not of equal height for the hotel. In addition, Section 770.6(b) requires that the roof structure be set back at least 1:1 from all exterior walls. The Applicant requests relief from Sections 411.5 and 770.6(b) in order to create a roof structure that contains all of the required mechanical equipment, is as small as possible, and complies with the intent of Section 411 to the greatest extent possible. In order to meet the 1:1 setback requirement for all street walls, the roof structure has varying heights - ranging from 10.5 feet to the full 18.5 feet. Specifically, the roof structure on the southwest portion of the roof has been reduced to 13 feet to meet the setback requirement for the south street wall and the north street wall. Given the unlikely development of the parcel to the west, the roof structure has also been set back 1:1 from this party wall, even though not required, to minimize its visibility from North Capitol Street.

The roof structure has been lowered to the greatest extent possible in the central portion of the building; however, the roof structure is not set back at all for a portion of the frontage of the court wall fronting the open court on N Street and is only set back 10 feet, 5 inches for the remaining portion of that court wall. The court begins at the second level and has a minimum depth of 21 feet, 4 inches from the street wall increasing to more than 48 feet from the street wall, which provides a significant set back from the street wall abutting N Street. Given the required placement of the building's core at the center of the building's floor plate and necessity

of a court to provide appropriate floor plates for hotel use, the roof structure cannot achieve the required set back in this location. As noted above, the roof structure is set back in excess of the minimum requirement in all other locations using reduced heights.

The proposed roof structure does comply, however, with the spirit and intent of the roof structure provisions and the Zoning Regulations by ensuring adequate light and air to adjacent properties and abutting streets. The creation of a roof structure that is as low and small as possible preserves the light and air of other buildings and has no adverse impacts. Similarly, given the set back of the court wall, the light and air of other buildings will not be adversely impacted. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.11.

VI. COMMUNITY SUPPORT

The Applicant presented the project to the Advisory Neighborhood Commission 6C ("ANC 6C") Planning Zoning and Environment subcommittee on April 4, 2012, and to the full ANC 6C at its meeting on April 11, 2012. At its regularly-scheduled public meeting on April 11, 2012, at which a quorum was present, ANC 6C voted unanimously to support the application.

VII. EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

- | | |
|-------------------|---|
| <u>Exhibit A:</u> | A portion of the Zoning Map showing the Site; |
| <u>Exhibit B:</u> | Generalized Land Use Plan and Interpretive Legend; |
| <u>Exhibit C:</u> | DDOT Letter regarding Curb Cut dated February 16, 2012; |
| <u>Exhibit D:</u> | Parking Plans; |
| <u>Exhibit E:</u> | Transportation Assessment from Wells & Associates; |
| <u>Exhibit F:</u> | Letter of from Herman Stewart; |

- Exhibit G: Outline of Testimony of representative of the Applicant;
- Exhibit H: Outline of Testimony and Resume of Andrea Schaub, Cooper Carry Architects;
- Exhibit I: Outline of Testimony and Resume of Jami L. Milanovich, Wells & Associates;
- Exhibit J: Outline of Testimony and Resume for Steven E. Sher, Land Planner; and
- Exhibit K: Updated Architectural Plans and Drawings for the project.

VIII.
WITNESSES

- A. Brook Katzen or Andrew McIntyre, representative of the Applicant
- B. Andrea Schaub, Cooper Carry Architects, architect for the project
- C. Jami L. Milanovich, Wells & Associates, traffic consultant for the project
- D. Steven E. Sher, Land Planner

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: 
Christine Moseley Shiker, Esq.

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000