

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application for 33 New York Avenue, NE

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PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

The subject property consists of Lot 27 in Square 671 (the "Site"). 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 currently improved with a vacant two-story night club and parking lot.

The Site is zoned C-3-C and is located within the North Capitol TDR Receiving Zone. The C-3-C zoning permits a hotel as a matter-of-right, with a maximum height of 90 feet and 6.5 FAR. Based on the Site's location within the North Capitol TDR Receiving Zone, the Site may be developed with a building having a maximum height of 130 feet, based on its frontage on New York Avenue, and to a maximum FAR of 10.0.

The Site is currently under contract for purchase by JBG/New York Avenue Hotel, L.L.C. (the "Developer"). The Developer proposes the construction of a new Hyatt Place Hotel, having a height of 130 feet and containing approximately 102,745 square feet of gross floor area. The development of this Site will continue the revitalization and growth of the NoMA area.

In order to proceed with the proposed development, the Applicant is seeking two general areas of relief. First, the Applicant seeks a variance to reduce the number of required parking spaces required by Section 2101.1 of the Zoning Regulations. Given the challenges associated with development of the Site, the application also includes a variance from Section 2115.2 which permits no more than 40% of the required 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. Second, the Applicant seeks a special exception for the roof structure, including for walls of unequal height and for set backs abutting the southern court wall.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than fourteen days prior to the public hearing for the present application. In this statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested variance and special exception relief. Following herein, as required by the Board's application process, is a preliminary statement indicating how the Applicant meets the burden of proof.

II. Burden of Proof - Variances

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some

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practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

(A) Exceptional Condition or Situation:

The Site is an irregularly-shaped through lot. The Site is also small in size, having only 10,280 square feet of lot area. The lot is very narrow on its western edge, having a length of only approximately 67 feet.

(B) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. Specifically, Section 2101.1 of the Zoning Regulations requires parking as follows:

Zoning Requirement	Calculation	Parking Required
1 space for each 4 rooms usable for sleeping	$192 \text{ rooms} / 4 = 48$	48 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	52 spaces

Section 2115.2 permits that any accessory parking garage containing 25 or more required parking spaces may designate up to 40% of the parking spaces for compact cars, but these compact cars spaces must be placed in groups of at least five contiguous spaces with access from the same aisle pursuant to Section 2115.4.

Given the irregular shape of the Site, its small size and its narrowing at the west property line, the project can provide only 39 parking spaces within the two level below-grade parking facility. Of these 39 spaces, only 19 parking spaces are zoning compliant. Specifically, one parking space is a tandem space and 19 additional spaces are located partially within vault space. Thus, the Applicant must request a variance from the number of parking spaces required. The requested variance results from the small size of the parking garage due to the small shape 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.

In addition, of the 19 zoning compliant spaces, variances are needed with respect to the Sections 2115.2 and 2115.4 relating to compact spaces. Because the full size spaces are primarily provided partially in vault space, these do not count towards the required zoning spaces. If counted, the project would comply with Section 2115.2, having at least 25 required spaces in the garage and having no more than 40% devoted to compact spaces (i.e., total 38 spaces with 14 being compact, which is equal to approximately 37% being compact). Similarly, because the garage is exceptionally tight and locating complying parking spaces is difficult, the compact car spaces are not located within contiguous groups of 5 from the same aisle, and thus a variance from Section 2115.4 is required. This variance results from the effort to incorporate as

many full size spaces as possible within the limited space available. Both of these variances result from the small size of the parking garage due to the small and narrow shape of the Site, the required ramping, and the required drive aisle and core location.

(C) No Harm to Public Good or Zone Plan:

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. While only 19 parking spaces count towards zoning compliance, the parking garage will include 39 total spaces to be used. This total number of spaces will be sufficient to serve the hotel. Furthermore, because this project will be a hotel use, this parking facility will be managed through a valet system. Finally, this project is located only 1,200 feet (approximately 1.5 blocks) from the New York Avenue Metrorail Station and is well-situated in close proximity to numerous bus routes as well as the Metropolitan Branch Trail. Thus, the variances requested will not have an adverse impact.

III. Burden of Proof - Special Exception

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, Section 411.5 of the Zoning Regulations provides that enclosing walls from roof level shall be of equal height, and Section 770.6(b) requires that the roof structure be set back at least 1:1 from all exterior walls. Because the proposed project does not fully comply with both of these provisions, 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.

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. Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure requirement 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." 11 DCMR § 411.11.

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 13.5 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 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 12.5 feet 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 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.