

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application of Jemal's Gram, LLC and other owners in Square 450
655 New York Avenue, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background:

The property that is the subject of this application, totaling approximately 62,219 square feet of land area and comprised of Lots 4, 6, 21, 33, 34, 40, 803-818 in Square 450 (the "Property"), occupies roughly the western half of Square 450, a triangle-shaped square bounded by L Street, NW, to the north, New York Avenue, NW, to the south, 6th Street, NW, to the east, and 7th Street, NW, to the west, in Washington's downtown area. Immediately to the west of the Property, across 7th Street, NW, is the Walter E. Washington Convention Center and to the southwest is Mount Vernon Square. An eleven-story headquarters building for the Association of American Medical Colleges is under construction immediately to the south of the Property, across New York Avenue, NW, in Square 451.

Square 450 is split-zoned DD/C-2-C and DD/C-3-A, with the zoning boundary line running in a north-south direction through the Property approximately 100 feet from the western edge of Square 450, with the DD/C-2-C portion located to the east of the boundary line, and the DD/C-3-A portion located to the west.

The Property is also located within the Mount Vernon Square Historic District on the District of Columbia Inventory of Historic Sites. The Property is improved with several two-, three-, and four-story commercial buildings, a number of which are being rehabilitated, in whole or part, and are being incorporated into the redevelopment of the Property as an eleven-story mixed-used office, retail and service building with frontage along all three streets.

The proposed new building will contain approximately 432,465 square feet of gross floor area, with a total floor area ratio of 6.95 FAR. The height of the building will vary to respect the historic structures on the site but will reach a maximum height of approximately 130 feet. The mass of the new construction will be centered in the Property and stepped back from the historic buildings along New York Avenue, 7th Street and L Street to allow those improvements to continue to convey the qualities of the historic streetscapes and the larger historic district. The massing of the new construction includes a projecting bay along its western elevation, which projects over the rear portions of some of the historic buildings. Parking and loading facilities will be accessed from L Street, NW.

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EXHIBIT NO. 5

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In the present application, the Applicant seeks the following review and relief from the Board of Zoning Adjustment; (a) special exception pursuant to §2514.2, to permit the zoning regulations applicable to the DD/C-2-C portion of the Property to apply to a portion of the DD/C-3-A-zoned part of the Property; and (b) special exception pursuant to §411.11, relating to the requirement of §770.6 regarding roof structures.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the application. In said 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 relief. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant expects to meet said burden of proof.

II. Burden of Proof:

A. Special Exception - Zoning Boundary

As noted above, a zoning boundary line runs through the Property in a north-south direction, with DD/C-3-A zoning classification to the west and DD/C-2-C zoning classification to the east. In order to accomplish the project design, particularly the western wall of the new construction, the Applicant seeks special exception pursuant to §2514.2 to extend the regulations applicable to the DD/C-2-C zone district 35 feet to the west, into the DD/C-3-A-zoned portion of the Property (as allowed per §2514.2(b)).

Section 2514.2 of the Zoning Regulations provides as follows:

2514.2 If approved by the Board of Zoning Adjustment as a special exception under § 3104, the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive use zone district; provided:

- (a) The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet (35 ft.);
- (b) [Not Applicable];
- (c) The extension shall have no adverse effect upon the present character and future development of the neighborhood; and
- (d) The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.

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Primary among the Applicant's request to extend the DD/C-2-C portion of the Property is the need to accommodate the 110-foot height of the western wall of the new construction. This component of the design is intended to buffer the massing of the 130-foot new construction on the DD/C-2-C portion of the site and to provide a transition down to the smaller-scale two- and three-story historic buildings to the west, along 7th Street. The maximum building height permitted in the DD/C-3-A is 65 feet.

Special exception approval will have no adverse effect upon the present character and future development of the adjacent neighborhood. To the immediate east of the Property, stands the Walter E. Washington Convention Center measuring approximately 130 feet in height at its highest point. To the immediate south, in Square 451, a new office building is under construction measuring approximately 130 feet in height. At the same time, the Applicant's design provides for a step-down from the 130-foot level permitted in the DD/C-2-C zone district to the east, with the greatest height and mass pulled back significantly from the historic building facades along 7th Street to maintain the historic streetscape.

For all these reasons, special exception regarding the zoning boundary line extension provisions is appropriate.

B. Special Exception - Roof Structures Setback

In order to accomplish the proposed design, the Applicant seeks special exception approval pursuant to §§770.6 and 411 of the Zoning Regulations regarding roof structure requirements in the commercial zoning districts. The Applicant intends to demonstrate that it meets the burden of proof for roof structure setbacks in the following manner:

1. 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:

- (a) It shall meet the requirements of §411.
- (b) 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;
- (c) [Applicable only to C-5 zoned properties]; and

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- (d) 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.

The penthouse structure for the proposed building measures 18 feet 6 inches in height and thus complies with §770.6(d). Because the penthouse structure is not set back from all exterior walls a sufficient distance, it does not comply with the provisions of §770.6(b) and thus requires special exception approval by the Board pursuant to §411.11.

2. Section 411

Section 411 establishes numerous criteria for roof structures in all districts. Section 411.11 provides the Board authority to approve as a special exception the location, design, and other aspects of roof structures, including setbacks. 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 the Zoning Regulations are not materially impaired by the structure and the light and air of adjacent buildings are not adversely affected.

In this case, special exception approval is required because the proposed roof structure does not meet the normal setback requirements of the Regulations. Roof structures are permitted up to a maximum height of 18 feet, 6 inches above the roof upon which they are located, provided that they are set back from all exterior walls one foot for each foot of height above the roof. The roof structure is 18 feet, 6 inches in height, and meets the 1:1 setback requirement along all but two corners of the structure - the southwest and southeast corners.

- a. 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 placement of the roof structure is the direct result of the unusual lot configuration and relationship of new construction to the historic building fabric being incorporated into the project, leaving the Applicant limited options for locating the core operations of the building without significantly compromising the layout of the various floors for retail and office tenant use. As the Applicant will demonstrate at the hearing and through its prehearing submission, the relocation of

the core operations of the building from their current proposed location would render layout of the floors unduly restrictive and inefficient.

b. The intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired and the light and air of adjacent buildings are not adversely affected.

With the exception of the setback, the roof structure is fully compliant with the Zoning Regulations and harmonizes with the main structure in architectural character, material, and color. Likewise, any impact of the roof structure on light and air to adjacent buildings would be comparatively minimal.

For all these reasons, special exception regarding the penthouse structure provisions is appropriate.

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