

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

Application for 33 N Street, N.E.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

RECEIVED
D.C. OFFICE OF ZONING
2013 JUL 23 PM 12:13

I. Background

The subject property consists of Lot 254 in Square 672 (the "Site"). The north half of Square 672 in which the Site is located is bounded by N Street to the north, North Capitol Street to the west, Patterson Street to the south, and First Street to the east. The Site is an interior lot and is currently improved with a low-rise office building.

The Site is zoned C-3-C and is located within the North Capitol TDR Receiving Zone. The C-3-C zoning permits an apartment house 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 First Street, and to a maximum FAR of 10.0.

The Site is currently being subdivided with Lots 257, 847 and 848 in Square 672 to create a single record lot. JBG/33 N Street, LLC ("Applicant") owns the Site, which will ultimately be a portion of the record lot. The Applicant proposes the construction of a new apartment building on the Site, having a height of 130 feet and containing approximately 316,553 square feet of gross floor area. The development of this Site is in close proximity to the NoMA-Gallaudet Metrorail Station and will continue the ongoing growth of the NoMA area.

In order to proceed with the proposed development, the Applicant is seeking two areas of relief. First, the Applicant seeks a variance to reduce the size of the loading berth required by Section 2201.1 of the Zoning Regulations. Second, the Applicant seeks a special exception for the roof structure, specifically for set backs abutting the court walls.

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

BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA
CASE NO. 18636
EXHIBIT NO. 3
Board of Zoning Adjustment
District of Columbia
CASE NO. 18636
EXHIBIT NO. 3

(A) Exceptional Condition or Situation:

The Site is an interior lot which is bounded on two sides by lot lines (west and south facades) and one side by an existing building that will ultimately be replaced by a new building (east façade). The Site has street frontage only on N Street and has no alley access.

(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 2201.1 of the Zoning Regulations requires that an apartment house with more than 50 units include the following loading facilities: one berth at 55 feet, one platform at 200 square feet, and one service/delivery space at 20 feet. No loading is required for the proposed retail use. The Applicant proposes providing one berth at 30 feet, one platform at 100 square feet and one service delivery space at 20 feet.

Given the shape of the Site and frontage only on N Street, providing a 55-foot loading berth would adversely impact the layout of the ground floor, including the location of the entry to the building, and would reduce the amount of retail use that could be provided. In addition, the project incorporates only a single curb cut, which was requested by the District Department of Transportation ("DDOT"). The single curb cut will provide access both into the loading area and to the ramp to the below-grade parking garage, as there is no alley access. Given the size of the curb cut and the multiple functions it is serving, it is practically difficult to access the loading area with a 50-foot truck and it is impossible to access the loading area with front-in front-out access as currently required by DDOT's Design and Engineering Manual. In order to provide front-in front-out loading access for a 50-foot truck, approximately one-half of the ground floor space would be required to be devoted to loading functions, making the development practically difficult.

(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. The proposed loading facilities are sufficient to serve the needs of the prospective residents and tenants of the project based on the size of the units. In addition, the Applicant intends to prohibit residents from using large trucks for move-ins and move-outs. Thus, the requested variance will not have an adverse impact.

III. Burden of Proof - Special Exception

Due to the Site being an interior lot and the design of the building for an apartment house 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 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 these provisions for portions of the roof structure abutting the court walls, 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 Section 770.6(b) in order to create a roof structure that contains all of the required mechanical equipment and complies with the intent of Section 411 to the greatest extent possible. The shape of the building is dictated by the interior lot lines abutting three sides of the Site. Specifically, in order to achieve sufficient light and air for the apartment units, open courtyards with a certain depth have been located to create appropriate dimensions of units with windows. Given the location of the building's core and elevators as well as the exit stairs that are required to be located at certain distances, the roof structure does not meet the 1:1 setback from the court walls. However, these courtyards are set back at least 53 feet from the south property line, which provides a significant set back from abutting properties.

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.

STATEMENT OF EXISTING AND INTENDED USE

The Site is currently improved with a low-rise office building. The application proposes the construction of a residential building with ground floor retail and below grade parking.