

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

**APPLICATION OF
50 PATTERSON OFFICE, L.L.C.,
1250 FIRST STREET OFFICE, L.L.C., and
51 N RESIDENTIAL, L.L.C.**

**BZA APPLICATION NO. 19121
SQUARE 672, LOT 260
ANC 6C06
HEARING DATE: DEC. 1, 2015**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of 50 Patterson Office, L.L.C., 1250 First Street Office, L.L.C., and 51 N Residential, L.L.C.¹ (together, the “Applicant”), in support of its application to the Board of Zoning Adjustment (“BZA” or “Board”) for the following variances and special exception relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3103.2 and 3104.1: (i) an area variance from the off-street parking requirements of 11 DCMR § 2101.1; (ii) an area variance from the loading requirements of 11 DCMR § 2201.1; and (iii) special exception relief from the roof structure requirements of 11 DCMR §§ 770.6 and 411.

The relief requested will permit the construction of the second phase of a mixed-use development project in the C-3-C District at Square 672, Lot 260 (the “Site”). The proposed development is appropriate for the Site, fully compatible with the surrounding area, and not inconsistent with the Comprehensive Plan or the Zoning Regulations.

¹ 50 Patterson Office, L.L.C. and 1250 First Street Office, L.L.C. are the successors in interest to JBG/50 Patterson Street, L.L.C. and JBG/1250 First Street, L.L.C., respectively, which were the named applicant entities in the preliminary application submission. Signed authorization letters from 50 Patterson Office, L.L.C. and 1250 First Street Office, L.L.C., authorizing the law firm of Holland & Knight LLP to file and process this zoning application are attached hereto as Exhibit I.

II.

JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the special exception and variance relief requested herein pursuant to 11 DCMR §§ 3103 and 3104.

III.

BACKGROUND

A. Description of the Site

The Site consists of Record Lot 260 (Assessment and Taxation (“A&T”) Lots 859-862) in Square 672 and has a total land area of approximately 92,302 square feet. Square 672 is bounded by N Street, N.E. to the north, First Street, N.E. to the east, M Street, N.E. to the south, and North Capitol Street, N.E. to the west, and is bisected by Patterson Street. The Site is located in the northern portion of Square 672, with frontage on N Street, N.E., First Street, N.E., and Patterson Street, N.E. The Site is presently improved with a seven-story office building, a two-story office building, and surface parking lots. The Applicant proposes to raze the existing buildings in connection with redevelopment of the Site.

B. Prior BZA Approval

The Applicant proposes to develop the Site with a single mixed-use building constructed in two phases. The first phase of Site development is located on the northwest portion of the Site (A&T Lot 859) where the existing two-story office building is presently located (“Phase I”). Phase I was approved pursuant to BZA Order No. 18636-A, dated October 22, 2013, and effective on October 30, 2013. BZA Order No. 18636-A granted special exception approval from the roof structure requirements of 11 DCMR §§ 411 and 770.6, and a variance from the loading requirements of 11 DCMR § 2201.1, to develop Lot 859 with a residential tower with ground floor retail. The parking and loading entrance for Phase I is provided from a single curb

cut on N Street, and approximately 210 parking spaces will be provided for Phase I in three below-grade garage levels. The loading facilities for Phase I consist of one loading berth at 30 feet deep, one loading platform at 100 square feet, and one service/delivery space at 20 feet deep.

The present application involves the second phase of development on the eastern portion of the Site on A&T Lots 860-862 (hereinafter the “Application Site”), which is described below. The overall project on Record Lot 260 will be developed as a single building for zoning purposes.

C. Existing Zoning

As indicated in the Zoning Map, attached hereto as Exhibit A, the Site is zoned C-3-C and is within the North Capitol TDR Receiving Zone. The C-3-C District permits a maximum height of 90 feet and a maximum density of 6.5 floor area ratio (“FAR”). 11 DCMR §§ 770.1 and 771.2. Based on the Site’s location within the TDR Receiving Zone, and pursuant to 11 DCMR § 1701.7, the maximum permitted building height is that permitted by the Act to Regulate the Height of Buildings (the “1910 Height Act”), which is 130 feet based on the Site's frontage on First Street, N.E., which is 110 feet wide. Pursuant to 11 DCMR § 2602.3(e)(ii), the project is exempt from the Inclusionary Zoning requirements set forth in Chapter 26 of the Zoning Regulations.

As shown on the Comprehensive Plan Future Land Use Map, attached hereto as Exhibit B, the Site and the surrounding area is designated for High Density Commercial use. This designation is characterized by office and mixed use/retail buildings greater than eight stories in height, with corresponding zone districts that include the C-3-C District. The Site is also located within the Central Employment Area, which is the core area of the District where the greatest

concentration of employment is encouraged. North Capitol Street and New York Avenue, both major thoroughfares in the District, are located near the Site.

D. Description of Surrounding Area

The Site is located in the heart of NoMa, which is being developed with a wide variety of high-density commercial, residential, and mixed-use buildings. NoMa is located four blocks from Capitol Hill and directly to the north of Union Station. The area is experiencing growth and transformation and has seen sustained investment for over a decade. NoMa is well-served by multiple public transportation options, including Metrorail, Metrobus, car-share, Capital Bikeshare, and on- and off-street bicycle lanes.

E. Project Description

As shown on the architectural plans and elevations (the “Plans”) attached hereto as Exhibit C, the Applicant proposes to develop the Application Site with a mixed-use structure with residential, office, and retail uses, as well as a 7-screen movie theater in below-grade space. The new construction will have a maximum height of 130 feet, as measured from N Street, and approximately 554,194 square feet of gross floor area. Combined with Phase I, the overall building will have approximately 870,434 square feet of gross floor area (approximately 9.43 FAR on the Site).

The proposed new construction on the Application Site will contain approximately 143,960 square feet of gross floor area devoted to residential use (approximately 210 units); approximately 382,057 square feet of gross floor area devoted to office use (traditional and loft layouts); approximately 28,177 square feet of gross floor area devoted to retail use; and approximately 30,000 square feet below-grade devoted to the 7-screen movie theater (approximately 1,158 seats). The primary residential entrance to the building will be from N

Street. Separate retail spaces will be accessed from N Street, First Street, and Patterson Street, as well as from the NoMa Meander, described below. The office uses will be accessed from N Street and Patterson Street.

The project incorporates an important segment of the NoMa Meander. The NoMa Meander is a four-block long pedestrian promenade that is intended to break up the superblocks between North Capitol and First Streets, N.E. The segment of the NoMa Meander that crosses the Application Site will provide a pedestrian and retail connection from N Street through to Patterson Street. The NoMa Meander traverses through a large internal courtyard on the Application Site, which is activated by entrances to the various retail spaces and the movie theater in the building.

Parking and loading for the new construction will be separate from the parking and loading approved for Phase I and will be accessed from Patterson Street. Parking will be provided in four below-grade levels with space for 245 vehicles. Loading will be accommodated in a consolidated, at-grade loading area, with space for trucks to make on-site front-in, front-out turning maneuvers. At least 147 long-term bicycle parking spaces will be located in the P1 garage level, and approximately 20 additional long-term bicycle parking spaces will be located on the ground level of the building (167 total long-term, secure bicycle parking spaces). The Applicant proposes to include approximately 32 short-term bicycle parking spaces within the public space on First and N Streets, N.E., adjacent to the building and as approved by DDOT, and/or within the NoMa Meander on the Site, based on the final design for that public space.

As shown on the Plans, the northeastern-most portion of the building with frontage on N Street and First Street is an 11-story tower with a traditional office layout and ground floor retail. The façade is predominantly glass and will include a two-story terra cotta mullion frame system

atop a ground level glass storefront. To the west of the office tower, with frontage on N Street, is a 12-story residential tower with ground floor retail. This portion of the building is designed to evoke the era of glazed terra cotta as seen in prominent Washington DC buildings. Terra cotta is used to create a level of interest by incorporating coursing, piers, spandrels, cornices, and detailing. The base of the residential tower consists of a glass storefront between the masonry pilasters. To the south of the residential component is a ten story tower dedicated to loft-style office use above ground floor retail. The architectural design of this portion of the building is reminiscent of an industrial warehouse with exposed structure throughout. A rhythm of brick piers breaks down the façade, and the tower features large scale windows with gridded muntins and articulated brick spandrel panels.

IV. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the parking requirements of 11 DCMR § 2101.1 and the loading requirements of 11 DCMR § 2201.1. Due to the multiple uses contained within the project, the Zoning Regulations require 419 off-street parking spaces for the combined residential, office, retail, and movie theater uses. However, the project can only fit 245 parking spaces within the proposed four levels of below grade parking. Similarly, due to the requirement to provide loading for each use, the loading requirements are exceptionally large. The loading requirements and proposed facilities for the project are set forth in Table 1:

Table 1

Use	Berth	Platform	Service/Delivery
Residential	1 @ 55 feet	1 @ 200 sf	1 @ 20 feet
Office	3 @ 30 feet	3 @ 100 sf	1 @ 20 feet
Retail	1 @ 55 feet	1 @ 200 sf	1 @ 20 feet
	1 @ 30 feet	1 @ 100 sf	
Movie Theater	1 @ 30 feet	1 @ 100 sf	1 @ 20 feet
Total Required	2 @ 55 feet	2 @ 200 sf	4 @ 20 feet
	5 @ 30 feet	5 @ 100 sf	
Total Provided	4 @ 30 feet	2 @ 100 sf	2 @ 20 feet ²

A. Standard for Approving an Area Variance

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, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

² As shown on the Plans, three service/delivery spaces will be provided. However, pursuant to 11 DCMR § 2204.5, “[f]or a building or structure having three or more required loading berths in one location, the loading berths may be arranged so that access to a loading berth is across the length of one other loading berth.” Therefore, although three service/delivery spaces are provided and will be used for the project, only two count for zoning purposes.

B. The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In BZA Order No. 18636-A, the Board found an “exceptional or extraordinary situation or condition related to the property that creates a practical difficulty to the owner in complying with the Zoning Regulations.” See BZA Order No. 18636-A, p. 2. The Site has an exceptionally large land area (92,302 square feet) and is an irregular T-shape with frontage on N Street, N.E., First Street, N.E., and Patterson Street, N.E., and with no alley access. The T-shape results in a long, shallow lot for most of the Site and eight distinct lot lines, five of which abut private property. The multiple frontages and the lack of alley access limit the possible locations for vehicular access onto the Site, and the narrow dimensions limit the amount of land area available for on-site parking and loading.

Moreover, the Site is being developed in multiple phases with many different types of uses, resulting in an exceptionally high number of required parking spaces and loading facilities. For example, the below-grade movie theater use generates a significant parking requirement, whereas retail use in the C-3-C District does not generate any parking requirement for below-grade square footage. In addition, the current Zoning Regulations do not allow for shared loading facilities, since loading requirements are generated for individual uses. Since the Applicant proposes four distinct uses for the Site, four distinct and duplicative loading requirements are generated. Together, these exceptional conditions place substantial restrictions on the Applicant’s ability to meet the strict requirements of 11 DCMR §§ 2101.1 and 2201.1.

C. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner

1. Off-street Parking

The strict interpretation of 11 DCMR § 2101.1 will result in a practical difficulty. Pursuant to 11 DCMR § 2101.1, the building is required to provide (i) one parking space for each four dwelling units (53 spaces) (residential requirement); (ii) one parking space for each 1,800 square feet of gross floor area in excess of 2,000 square feet devoted to office use (212 spaces) (office requirement); (iii) one parking space for each 750 square feet of gross floor area in excess of 3,000 square feet devoted to retail use (38 spaces) (retail requirement); and (iv) one parking space for each ten seats of occupancy capacity (116 spaces) in the movie theater (movie theater requirement), for a total of 419 required parking spaces. In this case, the Applicant is providing 245 off-street parking spaces located in a four-story below-grade parking garage, and requests a variance for the remaining 174 required parking spaces.

The Applicant has maximized the number of parking spaces that can reasonably fit on the Application Site. However, due to the irregular shape, subsurface conditions, and wide variety of uses proposed for the Application Site, it is practically difficult to construct additional levels of the below-grade garage to add 174 more parking spaces in compliance with 11 DCMR § 2101.1. The Applicant cannot provide additional parking levels below the proposed parking garage on the eastern portion of the Application Site, because at four levels below grade the elevation is already below the water table. Full compliance with 11 DCMR § 2101.1 would require three additional levels of below-grade parking (a total of seven below-grade levels), which would be well below sea level and would make the proposed development practically difficult.

As indicated in the Preliminary Report of Subsurface Exploration and Geotechnical Engineering Analysis, Prepared by ECS (the "ECS Report") attached hereto as Exhibit D, during

subsurface exploration testing, water was observed at depths ranging between 13.5 feet and 23 feet below the existing Site grade (elevation +29 feet and +41 feet, respectively). *See* ECS Report, p. 6. The lowest garage level finished floor elevation for the project is anticipated to be at elevation +13.5 feet. *Id.* Thus, high groundwater in-flow is expected around the perimeter of the excavation for the proposed development such that “aggressive dewatering will be a critical aspect of the project.” *Id.* at 17. Uncontrolled groundwater can result in disturbing an otherwise acceptable foundation subgrade. If groundwater is not effectively controlled and lowered at least two feet below foundation subgrade levels, frequent foundation subgrade undercutting may be needed. Thus, due to potential complications of below grade excavation work and infiltrating groundwater, the project will have to include waterproofing and water stops between the walls and the floor slab at the lowest level of the garage (*id.* at pp. 8 and 10), which will result in significant additional efforts and costs associated with development.

The anticipated cost of excavating four levels below grade is approximately \$55,000 per parking space. This cost is a 57% premium over the typical cost of a below grade parking space in the District, which is approximately \$35,000 per space. In order to provide the required 419 parking spaces, the Applicant would have to excavate to seven levels below grade, which would increase significantly and incrementally more with each additional level according to the letter from Clark Construction attached hereto as Exhibit E. These cost increases are driven by deeper excavation, deeper piles, more dewatering, and increased coordination within the Site. The incremental cost increases are on top of the additional direct cost of soil excavation and removal. Given these cost increases, the Applicant estimates that the total cost of a garage with 419 parking spaces would equal approximately \$75,000 per parking space, or more than twice the District’s average. Additional excavation would also have a negative impact on the project’s

development schedule, thereby increasing financing costs, delayed revenue, and longer trade buy-outs and coordination. When these costs are increased, the cost of a compliant garage is estimated to be 2.5 to 3 times more expensive than currently planned. Accordingly, a practical difficulty exists that prevent full compliance with the parking requirements.

Furthermore, the Applicant cannot provide below-grade parking on the western portion of the Application Site because this is the location proposed for the movie theater. Excavating additional levels below the theater would result in the same practical difficulties described above.

2. Loading Facilities

The Applicant requests a variance from the following: (i) one loading berth at 30 feet deep and two loading berths at 55 feet deep; (ii) three loading platforms at 100 square feet and two loading platforms at 200 square feet; and (iii) two service delivery spaces at 20 feet deep. Given the variety of proposed uses on the Site and the large amount of square footage devoted to each use, the required number and size of loading facilities for the second phase of Site development is especially large.

The Applicant is already proposing to dedicate approximately 9,680 square feet of gross floor area to loading facilities in a shared, centrally-located, ground-floor space on the Application Site. Providing the additional required loading facilities would take up approximately 6,650 additional square feet on the ground floor (a total of over 16,000 square feet devoted to loading facilities), such that approximately 30% of the building's ground floor would be devoted to loading rather than to retail, entrance lobbies, and the NoMa Meander, which itself takes up approximately 8,150 square feet of the ground floor. The required loading facilities and the NoMa Meander together would take up approximately 44% of the Application Site's ground floor.

The Applicant cannot provide the additional loading facilities to west of the proposed loading area, since doing so would impact the minimum size of the public space in the NoMa Meander, which has been sized to create a safe, secure, and active retail environment. The Applicant also cannot extend the loading facilities north towards N Street or east towards First Street, since doing so would eliminate the egress corridors to the north of the loading facilities and the entire retail component of the office portion of the building at the corner of First and N Streets. Incorporating loading facilities in this location would severely impact the location of the building's core elements and office lobby and would eliminate valuable retail space, which is a top priority of the District and NoMa residents. Alternatively, if the Applicant provided the additional loading facilities below-grade, rather than on the ground floor, it would eliminate space currently proposed for required parking spaces and the movie theater. Moreover, loading trucks would not be able to physically clear the ground floor slab to get down to the first below-grade level in the garage.

In addition, and as described above, loading for all uses on the Application Site, including trash pick-up, will access the building from a single curb-cut on Patterson Street, as requested by DDOT and which has been approved by the Public Space Committee. Loading will be located in a centralized space with adequate room for trucks to make on-site turning maneuvers, such that trucks will be able to enter and exit the site front-first. The Applicant worked extensively with DDOT to establish this preferred configuration. The Applicant also notes that it will be removing eight existing curb cuts on the Site, to be replaced with a total of two curb cuts for the overall Project (Phase I and Phase II).

Furthermore, as indicated in the Comprehensive Transportation Review Report ("CTR Report"), prepared by Gorove/Slade Associates and attached hereto as Exhibit F, at 50 feet wide,

Patterson Street is not wide enough to accommodate 55-foot trucks or permit front-in, front-out maneuvers onto the Site. Therefore, providing 55-foot loading berths in the building would be impractical, since they could not be accessed by 55-foot trucks. *See* CTR Report, p. 16.

D. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

1. Parking

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. The proposed 245 parking spaces will be more than sufficient to serve the needs of all building residents, visitors, employees, and patrons. As indicated in the CTR Report, the peak overall parking demand for all uses in the project is anticipated to be 188 parking spaces. *See* CTR Report, p. 14. With 245 proposed on-site parking spaces, the project will exceed the maximum anticipated parking demand generated by the mix of uses in the building. Moreover, the parking spaces can reasonably be shared among uses such that there is no parking spillover onto surrounding streets. Parking spaces that are used during the day for office employees can be used at night for movie theater patrons.

Providing a below-grade movie theater rather than additional below-grade parking spaces will result in a positive impact to the neighborhood, since the theater will draw visitors to NoMa and will spur patronage at nearby retail and restaurant establishments. The theater will serve as an important entertainment venue in NoMa and will be a positive addition for the many residential uses in the surrounding community. Moreover, the theater will be a strong anchor tenant for the overall building and will help attract and retain other retail and service uses to the building and surrounding area.

In addition, as indicated in the CTR Report, it is anticipated that many office employees, retail patrons, and theater-goers will walk, bike, or take public transportation to the Site, given

the Site's convenient location in a vibrant, mixed-use neighborhood with many alternative transportation options. The Site is located approximately one block to the west of the NoMa/Gallaudet Metrorail Station, which services the Red Line, and is located approximately 0.5 miles from Union Station, which provides local, regional, and interstate access via Metrorail, Metrobus, the D.C. Circulator, Amtrak, MARC, intercity buses, and Capital Bikeshare. The Site is located within 0.3 miles of nine Metrobus routes (80, 90, 92, 93, 96, D3, D4, P6, and X3), seven of which are within 0.1 mile of the Site. The Site is also in close proximity to 14 permanent car-share spaces, two Capital Bikeshare docking stations, and has ample access to Car2Go vehicles and other one-way, point-to-point car-share services. The Site has a walkscore of 91/100 and is considered a "Biker's Paradise" (*see* www.walkscore.com), such that residents, employees, and patrons will be able to easily access the Site by foot and/or utilize dedicated on- and off-street bicycle lanes.

In addition, the Applicant proposes to implement a Transportation Demand Management ("TDM") program, such that travel by private vehicle to and from the Site will be even further reduced. The Applicant's proposed TDM measures are set forth in the CTR Report and include the following:

1. Appointing a Transportation Management Coordinator;
2. Installing one transit screen in the residential lobby and one transit screen in each of the office lobbies;
3. Establishing a marketing program that provides detailed transportation information to building residents and employees;
4. Offering the first occupant of each residential unit and each initial office employee a one-year carshare membership, a \$100 SmarTrip card, or a one-time, one-year Capital Bikeshare membership;
5. Providing secure on-site bicycle parking spaces; and

6. Providing information about ridematch and ridesharing programs.

Therefore, although the Applicant is not providing the required 419 parking spaces, the 245 spaces that it is providing will adequately serve the anticipated parking demand at the Application Site, which is expected to be limited due to the extensive transit, bicycle, and pedestrian amenities in the area, as well as the implementation of the Applicant's proposed TDM measures.

2. Loading

In addition, the proposed loading facilities will not result in harm to the public good or zone plan. As mentioned above, the Applicant is providing a substantial amount of loading facilities, which include four loading berths at 30 feet deep, two loading platforms at 100 square feet, and two service/delivery spaces at 20 feet deep. In addition, the Applicant proposes to reserve two full-sized parking spaces at all times for residential moving vans, located on the P1 level in close proximity to the service corridor leading to the freight elevator. Moreover, the Applicant will implement a loading management plan, such that move-ins and move-outs will be scheduled to avoid overlap with other loading activities and to ensure that tenants use the residential loading facilities provided rather than double-parking on the street.

As indicated in the CTR Report, the amount of loading activity expected to take place at the Application Site will be adequately served by the loading facilities provided. The mix of uses at the Application Site can easily share space, and the use of the loading facilities will be carefully directed through a loading management plan. Moreover, the building is designed with extensive below-grade service corridors, which will provide access from the loading facilities to each of the individual uses within the building. The lack of any 55-foot loading berths will not result in any negative impacts, since 30-foot trucks will be able to adequately accommodate

deliveries for the retail, office, and movie theater uses and will be appropriate for residential move-ins and move-outs, given the size of the proposed residential units. Thirty foot trucks will also be able to complete on-site front-in, front-out maneuvers, consistent with DDOT's policy for new buildings.

V.

**THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION APPROVAL**

The Applicant seeks special exception approval for the roof structure requirements set forth in 11 DCMR §§ 411.5 and 770.6, to allow roof structures with enclosing walls of unequal heights.

A. Standard for Approving Special Exception Relief

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the zone plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. 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 requested relief 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 regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. 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.*

B. Description of Roof Structure Relief Requested

The Applicant seeks special exception approval pursuant to 11 DCMR §§ 411.11 and 3104.1 for relief from the requirement that roof structure walls be of an equal height. *See* 11 DCMR §§ 411.5 and 770.6(a). In this case, the Applicant proposes to provide two roof structures, one for the elevator cores for the residential and loft office towers and one for traditional office tower, which is permitted pursuant to 11 DCMR § 411.4. However, each roof structure will have enclosing walls with two heights: one at 12 feet and one at 18 feet, 6 inches. As shown on Sheet A202 of the Plans, the central portion of each roof structure will be 18 feet, 6 inches in height to enclose mechanical equipment, including the elevator override, on top of occupiable space. The penthouses will step down to 12 feet where they are planned to include only occupiable space in anticipation of the new penthouse regulations, discuss in more detail below. The roof structures meet or exceed all required setbacks, pursuant to the Zoning Regulations in effect as of the date that this BZA application was submitted and as of the date of this Prehearing Submission. Aside from the walls having unequal heights, the proposed roof structures meet all other requirements under 11 DCMR §§ 411 and 770.6.

On November 9, 2015, the Zoning Commission approved Zoning Commission Case No. 14-13, which includes text amendments to the penthouse regulations, including 11 DCMR §§ 411 and 770 (the “Approved Regulations”). The Approved Regulations provide building owners the opportunity, under certain conditions, to include occupiable space in penthouses. The Approved Regulations also modify certain design requirements to provide for more flexibility with respect to penthouse design. Under the Approved Regulations, the proposed penthouses on the building would be permitted to have a maximum height of 20 feet (*see* § 770.6 of the

Approved Regulations) and would be permitted to have multiple heights (*see* § 411.9 of the Approved Regulations).

Specifically for multiple heights, Section 411.9(a) of the Approved Regulations states that enclosing walls of penthouse habitable space may be of a single different height than the enclosing walls of penthouse mechanical space. Section 411.9(c) of the Approved Regulations states that required screen walls around uncovered mechanical equipment may be of a single, different uniform height. For the proposed penthouses, the habitable space has a height of 12 feet. In the center of the penthouse, the elevator override will extend to a maximum height of 18 feet, 6 inches (or 20 feet once the Approved Regulations are effective). Screen walls surround the mechanical equipment, which has been placed on top of the habitable space to a height of 18 feet, six inches (or 20 feet once the Approved Regulations are effective). Thus, the penthouse includes two separate heights, which is consistent with Section 411 of the Approved Regulations.

However, the Approved Regulations change current interpretations for when setbacks are required from interior property lines. Under the Approved Regulations, a 1:1 setback would be required along the west property line of the loft office tower (on A&T Lot 862), abutting 40 Patterson Street, N.E. to the west (Lot 253, Square 672) ("Lot 253") because Lot 253 is permitted a lesser height based on 11 DCMR § 1709.1 and the 1910 Height Act (i.e., 70 feet based on Patterson Street's right-of-way width of 50 feet). *See* "Lot Line 2" on the Site Plan/Lot Lines Sheet S103 of the Plans.

A comparison of the project's compliance with the current regulations and Approved Regulations is set forth below:

<u>Current Regulations</u>	<u>Approved Regulations per Z.C. Case No. 14-13</u>	<u>Proposed Project</u>
Multiple roof structures when separate elevator cores are required (§411.4)	Multiple roof structures when separate elevator cores are required (§411.8)	No relief needed
Enclosing walls shall be of equal height (§411.5)	Multiple heights permitted for occupiable space (§ 411.9(a))	Relief needed under Current Regulations No relief needed under Approved Regulations. <i>See</i> Sheet A202 of the Plans.
No setback required for interior lot lines (§ 770.6(b))	Setback of 1:1 required for side building walls that are adjacent to a property that has a lower permitted matter-of-right height (§ 411.18(a)(4))	West property line of A&T Lot 862 abutting Lot 253: No relief needed under Current Regulations Relief needed under Approved Regulations . <i>See</i> Lot Line 2 on Sheet S103 of the Plans.
No setback required for interior lot lines (§ 770.6(b))	No setback is required from any side building wall that is adjoining another building wall with an equal or greater matter of right height (§ 411.19)	East property line of A&T Lot 862 abutting Lot 844 which is currently built to the property line and which is permitted to have the same matter of right height as the Project: No relief needed. <i>See</i> Lot Line 3 on Sheet S103 of the Plans.
No setback required for closed courtyards (§ 770.6(b))	No setback required for closed courtyards (§ 411.20(a))	Closed Court on western side of Site: No relief needed. <i>See</i> Court Line 1 on Sheet S103 of the Plans

The Office of Planning has indicated that the Approved Regulations will be published and effective sometime in the coming weeks. Accordingly, this Prehearing Statement provides evidence for the relief required under both sets of regulations and establishes that the Applicant complies with its burden of proof under whichever set of regulations is in effect as of the date of the hearing on this application.

C. Compliance with Special Exception Standard for Roof Structures

Section 411.11 of the Zoning Regulations empowers the Board to grant a special exception under 11 DCMR § 3104 from the location, design, number, and other aspects of roof structures regulated under 11 DCMR §§ 411.3 through 411.6, if the Applicant can demonstrate that full compliance would be 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, provided the intent and purpose of the Zoning Regulations are not materially impaired, and the light and air of adjacent buildings are not adversely affected.

1. Relief from Multiple Heights under Current Zoning Regulations

In this case, full compliance with the requirement that all roof structure enclosing walls be of an equal height would be impracticable. The Applicant could theoretically provide one roof structure height by either lowering the enclosing walls to a uniform 12 feet or raising the enclosing walls to a full 18 feet, 6 inches. Lowering the enclosing walls to 12 feet would cause substantial operating difficulties for the building. The Applicant proposes to provide a roof terrace, such that access to the roof, including handicapped, ADA-compliant access (i.e. an elevator) is required. A minimum of 18 feet, 6 inches is necessary to accommodate an elevator, override equipment, and associated mechanical space on the roof. Thus, reducing the roof

structure's enclosing wall height to 12 feet would prevent the installation of elevator override equipment and eliminate rooftop access.

Alternatively, the Applicant could increase the height of the roof structures to a uniform 18 feet, 6 inches in height in order to provide the required mechanical space, maintain rooftop elevator access, and comply with the requirement of providing enclosing walls of an equal height. However, to require this would be unduly restrictive and unreasonable, given that it would add unnecessary mass to the roof and would undermine the purpose of the regulations, which is to exercise a degree of architectural control over roof structures. *See* 11 DCMR § 411.1.

Moreover, in order to meet the required roof structure setbacks for a 18 foot, 6 inch penthouse, the layout and circulation space within the roof structures would be adversely impacted, and the opportunity to provide usable space would be eliminated or severely constrained. For example, typical office buildings require a minimum depth from exterior wall to core to allow for optimal office layout. With a single height roof structure, that optimal depth cannot be met. In this instance, however, the desired result is better achieved by providing two heights for each roof structure. A penthouse with two heights would allow for significantly more depth on the roof, which would create better designed and more flexible space. Moreover, providing multiple heights will minimize the roof structures' appearance from the street, protect the building's visual quality, and help to ensure that adequate light and air is provided to adjacent properties and abutting streets.

The requested special exception will allow the Applicant to meet the 1:1 setback requirement from all exterior walls and make the most efficient use of habitable and mechanical space on the roof. Moreover, as shown on the Plans, the roof structures' enclosing walls will be

of quality material to integrate the roof structures into the overall design of the building, such that the proposed roof structures are in harmony with the purpose and intent of the Zoning Regulations and meet the test for special exception relief under 11 DCMR §§ 411.11 and 770.6.

As noted above, the provision of multiple roof structure heights is consistent with the Approved Regulations, which permit one height for mechanical space and a second height for habitable space. The Approved Regulations also permit a maximum height of 20 feet for roof structures. Although the roof structures on the building are proposed to have a maximum height of 18 feet, 6 inches, they are setback 20 feet from the exterior walls of the building, such that the Applicant may increase their height to 20 feet upon publication of the Approved Regulations.

2. Relief from Roof Structure Setback Provision of Approved Regulations

Under the current Zoning Regulations, the roof structures meet all of the required setbacks. However, under the Approved Regulations, the western-most roof structure on the loft office and residential towers does not meet the setback requirements from the west-side building wall, since the abutting Lot 253 is permitted a lesser height based on 11 DCMR § 1709.21 and the 1910 Height Act (i.e., 70 feet based on Patterson Street's right-of-way width of 50 feet). *See* Lot Line 2 on Sheet S103 of the Plans. Providing a setback in this location would create significant operating difficulties for the project, due to a variety of factors, including the proposed use of a movie theater on the Site and the incorporation of the NoMa Meander through the center of the project. These factors dictate that the core of the loft office tower is located on the western-most portion of the Application Site, and cannot be relocated as described below.

i. Location of Core in Center of Building

The core cannot be located centrally within the loft office tower structure for the following reasons. First, the loft office tower is a relatively thin structure, having a width of only

approximately 72 feet. This width is dictated by the size of the NoMa Meander which has been sized to create an active public plaza and pedestrian thoroughfare. Due to the narrow width, the core cannot be located in the center of the loft office tower without adversely impacting the usable floor space on the north and south portions of the floorplate throughout the building. A typical office building requires a minimum depth from exterior wall to core of approximately 40 to 45 feet, plus five additional feet on each side of the core to provide for circulation space. With the core (approximately 30 feet wide) in the center of the loft office tower, the usable depth of the office tower would be reduced from approximately 72 feet of open floor space to approximately 16 feet on either side of a centrally-located core, which would be too narrow to create efficient office space, even with a more creative-use office product (depth of 72 feet, less 30 feet occupied by the core, results in approximately 42 feet, with 21 feet on each side of the core. With five feet required on both sides of the core for circulation, only 16 feet remain). Similarly, moving the core further to the north or to the south would violate setbacks from Patterson Street, which is not permitted by the 1910 Height Act, or from the NoMa Meander.

Second, as noted above, the NoMa Meander has been designed with sufficient widths to create an active public plaza that will attract pedestrians through the block and ensure adequate lines of sight. To ensure this desired level of activation, the NoMa Meander will provide views through the project all the way from N Street to Patterson Street. On the Patterson Street side, the width of the entrance to the NoMa Meander is approximately 35 feet, and the location of that entrance was established to provide the desired views to N Street. If the core of the loft office tower was relocated to the center of the loft office tower, it would fall within a portion of the NoMa Meander, thus adversely impacting the Meander's proposed dimensions.

Third, the core cannot be located in the center of the loft office tower because it would conflict with the location of or eliminate entirely the following building elements: (i) the required emergency egress fire stair from the movie theater below grade, which is required to be 30 feet wide and serve all below-grade levels (*see* Sheets A100-A103 of the Plans), (ii) the below-grade service corridor, which provides access from the freight elevator to the loading facilities (*see* Sheet A100 of the Plans), (iii) transfer beams in the P1 Level that are used to eliminate columns in the below-grade movie theater (*see* Sheet A100 of the Plans); and (iv) significant ground floor retail space adjacent to the NoMa Meander. Collectively, the loss of these building elements in order to provide a 1:1 setback along the west side of the loft office tower would result in a severe redesign of the entire project, which has already been laid out as efficiently as possible given the physical constraints that result from providing so many uses in a single building.

ii. Location of Core on Eastern Side of the Building

The core of the loft office tower also cannot be relocated to the eastern side of the tower because doing so would position it within the ramp to the parking garage, which cannot be relocated. First, the ramp cannot be relocated elsewhere on Patterson Street because it would either eliminate the access to the consolidated loading facilities or would significantly limit space devoted to the below-grade movie theater.

Second, the curb cut cannot be re-located to First Street, since First Street is the main pedestrian thoroughfare of NoMa. Inserting a curb cut in this area would result in the elimination of a significant amount of retail use (approximately 3,930 square feet), introduce vehicular/pedestrian conflicts in an area where few exist, and be contrary to the planning goals of attracting and concentrating retail use to activate the street. Moreover, First Street is classified as

a collector street, and thus DDOT does not permit curb cuts when a lower classified street is available.

Third, the curb cut cannot be re-located to N Street without adversely impacting the layout of the project. If a curb cut is inserted on N Street between the core of the building and First Street, the ramp would be required to dive down to the P-1 level, parallel to the First Street façade. Placing the ramp closest to the core would result in a very shallow retail depth perpendicular to First Street, which would not be viable for retail use. If the ramp was located farther to the east, all retail fronting on First Street would be eliminated (which is approximately 6,608 square feet). If the ramp was located on the west side of the core, there would be significant challenges with the ramp clearing the structure to maintain the NoMa Meander in its location, given the slope of the Site from north to south. If the NoMa Meander was located farther to the west to allow the ramp to access the below-grade level, all of the retail on the west side of the project (approximately 4,720 square feet) would be lost. Locating a curb cut on N Street would also adversely impact the central plant and main electrical rooms of the proposed building and would adversely impact the proposed consolidated front-in, front-out loading facility. N Street is also a primary pedestrian path to the NoMa/Gallaudet Metrorail Station, and thus DDOT has expressed its disfavor in locating a curb cut on N Street.

iii. Location of Core on Western Side of Building

As described above, the core for the loft office tower cannot be located centrally within the office tower or on the eastern side of the office tower. Therefore, the core is located on the western side of the tower. This location provides many benefits to the operation of the building. It allows the loft office core to tie into the residential building. It permits use of structural transfer beams in the P1 Level to eliminate columns in the below-grade movie theater. It also

allows for a service corridor to connect the loading facilities to the residential core with a freight elevator that provides service to both the residential tower and the loft office tower. Moreover, locating the loft office core on the west side of the building allows for an open office floor plan that is conducive to creative industries and non-traditional office tenants, which the Applicant intends to attract through the innovative architecture and design.

iv. No Adverse Impact

The lack of a setback at the property line with Lot 253 will not result in any adverse impacts. The proposed roof structure will have limited visibility from public space. Specifically, Lot 253 is surrounded by buildings that can be constructed to 130 feet. Given Patterson's narrow right-of-way, the angle of viewsheds from the sidewalk will prevent pedestrians from seeing the penthouse from most locations if Lot 253 is developed to 70 feet. There would be a limited area in which a pedestrian walking east on Patterson Street would be able to see the penthouse. Furthermore, the property to the west of Lot 253 is permitted to have a maximum height of 130 feet, which will eliminate the view of the penthouse from North Capitol Street. Given the 130-foot building to the east and north, the penthouses would not be visible from First or N Streets. Moreover, as noted above and as shown on the Plans, the roof structures' enclosing walls will be of quality material to integrate the roof structures into the overall design of the building, such that the proposed roof structures are in harmony with the purpose and intent of the Zoning Regulations.

Finally, the provision of occupiable space on the roof of the project will further the intent of the goals of the Approved Regulations. In order to allow occupiable space on the roof, the Applicant will be required to make a contribution to the Housing Production Trust Fund ("Trust

Fund") for production of affordable housing. Based on the current proposal, the Applicant will contribute more than \$1,000,000 to the Trust Fund.

VI. COMMUNITY SUPPORT

The Applicant has worked with the community and is pleased to have support for the project. On November 12, 2015, at its regularly scheduled, duly noticed Advisory Neighborhood Commission ("ANC") 6C meeting, with a quorum of commissioners present, ANC 6C voted unanimously to support the application. This vote was taken after ANC 6C's Planning, Zoning, and Environment ("PZE") Committee voted 6-0-0 on November 4, 2015, to recommend support of the application by the full ANC. The PZE committee requested that the Applicant provide a variety of additional information to the ANC prior to the ANC taking its vote on the issue. In response, the Applicant submitted a memorandum and updated architectural drawings to the PZE Committee, dated November 12, 2015, which included (i) the provision of additional long-term bicycle parking spaces, (ii) an explanation of the location for trash and recycling facilities and the operations of trash trucks, (iii) the addition of two full size parking spaces reserved for residential moving vans at all times, and (iv) additional information regarding the proposed number of parking spaces and residential units in the project. The Applicant has incorporated those commitments into this Prehearing Submission and the Plans.

VII. EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

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| <u>Exhibit A:</u> | A portion of the Zoning Map showing the Site |
| <u>Exhibit B:</u> | A Portion of the Future Land Use Map |
| <u>Exhibit C:</u> | Updated Architectural Plans and Elevations for the Project |
| <u>Exhibit D:</u> | Preliminary Report of Subsurface Exploration and Geotechnical Engineering Analysis, Prepared by ECS |

- Exhibit E: Letter from Clark Construction
- Exhibit F: Comprehensive Transportation Review
- Exhibit G: Outlines of Testimony
- Exhibit H: Resumes of Expert Witnesses
- Exhibit I: Revised Authorization Letters

VIII.
WITNESSES

- A. Jay Kelley, The JBG Companies
- B. Steve Smith, Cooper Carry Architects, architects for the project
- C. Erwin Andres, Gorove/Slade Associates, transportation consultant for the project

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for special exception approval and variance 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
Christine Moseley Shiker, Esq.

By: Jessica Bloomfield
Jessica Bloomfield, Esq.
800 17th Street, N.W.
Suite 1100
Washington, DC 20006
(202) 955-3000