

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment

FROM: Matt Jesick, Case Manager
JL Joel Lawson, Associate Director Development Review

DATE: November 24, 2015

SUBJECT: BZA #19121 – JBG NoMa N Street

I. RECOMMENDATION AND BACKGROUND

The Zoning Commission, in case #14-13, recently voted to approve updated penthouse regulations, but the effective date was not known when the applicant submitted their supplemental statement on November 17. The applicant, therefore, requested relief from specific penthouse regulations under both the current and the new regulations. This makes the application somewhat confusing, especially since the applicant has not requested variance relief to allow habitable space within the penthouse, which would be required under the current regulations but not under the newly approved regulations. The new penthouse regulations will not be in place as of December 1st but are expected to be in place by the end of this year.

The BZA may wish to postpone this hearing until the new penthouse regulations are effective, as the Board did with case number 19103, 901 5th Street, NW which also involved a request for relief from the newly adopted penthouse regulations. More recently, however, in Case 19122 which also included habitable space within a penthouse, the BZA elected to proceed forward with the hearing in anticipation of the effectiveness of the newly adopted regulations. In this case, evaluation under the new rules would be a less burdensome test, and allowing habitable space is clearly the intent of the Zoning Commission. Under the new regulations, relief to allow habitable space within the penthouse and to allow penthouses of multiple heights would not be required, but rather only relief from a side setback provision.

If the Board proceeds with the hearing, OP recommends **approval** of the following relief:

- § 2101 Parking variance (419 spaces required, 245 provided);
- § 2201 Loading variance (Required and provided as detailed in this report);
- § 411.18 Penthouse Side Setback special exception (1:1 setback required from a side lot line if the adjacent property has a lower permitted building height; 0' setback proposed in one location).

Also under the newly approved regulations, all penthouse habitable space would be subject to an affordable housing requirement – for the residential component, the Inclusionary Zoning (IZ) provisions would be applied at a standard of 50% AMI, while for the office component a housing

linkage requirement would apply. Because of the extent of the habitable space in this case, this would be a considerable contribution. And because the regulations are in flux, if the BZA proceeds with review of the application at this time, OP recommends that any approval of penthouse relief be subject to full compliance with these affordable housing requirements as a condition of approval, as was the case with BZA Case 19122. OP understands that the applicant has agreed to this.

OP further notes that the 1910 Height Act limits penthouses above the height act limit to one story. As the proposed buildings are at the Height Act limit of 130 feet, the penthouses would be subject to this limit. Although there are places where the drawings show mechanical space on top of the enclosed, habitable penthouse space, it appears from the drawings that the mechanical space is screened but not covered, so would not be considered a “story”.

II. LOCATION AND SITE DESCRIPTION

Address	51 N Street, 50 Patterson Street and 1250 First Street, NE
Legal Description	Square 672, Lot 260
Zoning	C-3-C with TDR Receiving Zone
Ward and ANC	6, 6C
Historic District	None
Lot Characteristics and Existing Development	The property is a large, t-shaped lot spanning between N Street on the north and Patterson Street on the south, and also with frontage on 1 st Street on the east. The lot slopes very slightly down from west to east. It is currently developed with a two-story and a seven-story office building, as well as surface parking lots.
Adjacent Properties and Neighborhood Character	Some adjacent properties have lower-scale commercial buildings, but the entire neighborhood is redeveloping with high density mixed use buildings including residential, office, retail and hotel. A new building on the undeveloped property directly to the west, because of a smaller street width, would be limited in height to 70 feet. The site is one block from the NoMa metro station.

III. PROJECT DESCRIPTION IN BRIEF

The applicant proposes to develop what is, for zoning purposes, a single mixed use building, consisting of residential, office and retail components. Previous BZA relief was granted for the northwest residential “building”, and the current application is only for the remaining, eastern two-thirds of the site. That portion of the site would consist of a residential component, a traditional office component, and a loft-office component, as well as a large central courtyard which would form part of the “NoMa Meander”, a pathway through the large private lots between North Capitol and 1st Streets. The building would be 130 feet tall, with proposed occupiable penthouses above the 130 foot level. Retail would occupy much of the ground floor, and a movie theater would occupy four levels below grade at the western side of the subject site. Parking and loading would be accessed from Patterson Street.

IV. ZONING REQUIREMENTS AND REQUESTED RELIEF

The site is zoned C-3-C and is in a Transfer of Development Rights (TDR) receiving zone, meaning 130 feet and 10.0 FAR are permitted as a matter-of-right. The proposed building would be 130 feet tall and have an FAR, over the entire project site, of 9.43. In order to construct as proposed, the application requests relief from parking, loading and penthouse regulations. All other aspects of the development are conforming to the Regulations.

Item	Requirement	Proposed	Relief
§ 1709.21 Height	130'	130'	Conforming
Lot Area	n/a	92,302 sf – entire site 59,509 sf – subject site	Conforming
Lot Width	n/a	592'6" – entire site 330' – subject site	Conforming
§ 1709.21 FAR	10	9.43	Conforming
§ 772 Lot Occ.	100%	86%	Conforming
§ 774 Rear Yard	2.5" / foot of ht.; 12' min.; Or court in lieu	Court in lieu	Conforming
§ 775 Side Yard	None required	None provided	Conforming
§ 2101 Parking	See below	See below	Requested
§ 2201 Loading	See below	See below	Requested
§ 411 Penthouses	See below	See below	Requested and Required

V. ANALYSIS

Parking Variance

In order to be granted a variance, the applicant must show that they meet the three part test described in § 3103.

1. Exceptional Situation Resulting in a Practical Difficulty

Parking would be required as shown in the following table:

Use	Number Required
Office	212
Retail	38
Residential	53
Theater	116
TOTAL REQUIRED	419

The proposed design would only accommodate 245 parking spaces, 174 less than required. Because of the proposed below grade movie theater, only a portion of the lot can be used for underground vehicular parking. Within that footprint, a deeper garage could be constructed, but the property is encumbered by an exceptional condition with a water table close to the surface. According to the geotechnical report submitted with the application, the lower levels of the proposed four-level garage would already be below the level of the water table (Exhibit 28D). The applicant's construction contractor states that adding three more levels to the garage to provide the additional 174 spaces would increase costs associated with drainage, waterproofing and construction. Please refer to Exhibit 28E. The applicant states that the cost per space for a seven level garage in this location would be more than double the District average. No documentation is provided for the figures provided in the written statement, but it is reasonable to assume that the costs would rise significantly with a deeper garage below the level of the water table. It is practically difficult, therefore, given the presence of the water table, for the applicant to provide the required parking.

2. No Substantial Detriment to the Public Good

Granting the requested parking relief should not impact the public good. The applicant's transportation consultant estimates that peak parking demand on any given weekday would be 188 spaces, well below the 245 provided in the garage. The subject site is very metro accessible, walkable and bikeable, and there are numerous bus lines nearby on North Capitol Street and New York and Florida Avenues. There are also bikeshare stations in the neighborhood, and the Metropolitan Branch Trail is nearby. Because of the multi-modal accessibility of the site, fewer people would need to use private vehicles to reach the project. The applicant is also proffering transportation demand management (TDM) measures to further reduce the number of vehicles driving to the site. The TDM measures would include either a carshare membership, a bikeshare membership, or a Smartrip card. In addition, the peak demand for movie theater parking would be in the evening, when the demand for office parking has decreased. Movie patrons, therefore, could use parking spaces that office workers had used earlier in the day. Finally, a total of 167 indoor and 32 outdoor bicycle parking spaces would be included in the project, providing significant storage opportunities for people biking to and from the site.

3. No Substantial Harm to the Zoning Regulations

Granting the requested relief would not impair the intent and integrity of the Zoning Regulations. The Regulations intend to provide adequate parking where required. In this case, the applicant has demonstrated that the total amount of parking required would not be necessary, and that potential automobile trips to the site could be offset through the use of TDM measures and by the significant presence of multi-modal transportation options.

Loading Variance

In order to be granted a variance, the applicant must show that they meet the three part test described in § 3103.

1. Exceptional Situation Resulting in a Practical Difficulty

Loading would be required and provided as shown in the following table:

Use	55' Berth	30' Berth	20' Delivery Space	200 sf platform	100 sf platform
Residential	1	-	1	1	-
Office	-	3	1	-	3
Retail	1	1	1	1	1
Theater	-	1	1	-	1
TOTAL REQ.	2	5	4	2	5
Proposed	0	4	2*	0	570 sf total

* Although three 20' delivery spaces will be provided, only two count for zoning purposes.

The property has an exceptional condition in that it is located in the large block between North Capitol Street and 1st Street, NE. This block was conceived to have a pedestrian pathway running from north to south through several squares in order to break up the mass of the blocks and to provide some open space within NoMa. This pathway, known as the NoMa Meander, limits the potential ground floor layout for the subject property. The loading facility, which would be located on the ground floor of the building east of the Meander, could provide extra room to the west to accommodate the 55' berths and concomitant maneuvering room, but that would cut off the Meander. Likewise, more loading area could be placed to the north or east, but that would impact the core of the office building, and potentially eliminate lobby and retail space, creating blank façades. Similarly, loading could be provided underground, but that would eliminate parking and / or theater space. The location of this property and its need to accommodate the Meander create a practical difficulty for the applicant in providing all of the required loading facilities.

2. No Substantial Detriment to the Public Good

Granting the required relief would not be likely to impact the public good. The submitted traffic study indicates that the number of loading facilities would be adequate to accommodate the expected number of deliveries for the project. In addition to the traditional loading facilities located on the ground floor, the application also states that small residential moving vans would have spaces reserved for their exclusive use on the P-1 level. The application states that a loading management plan would be implemented, and while the details of the plan are not developed at this time, it appears that it would include a loading manager for the entire project that would coordinate residential and non-residential use of the loading bays so that they do not conflict, and so that they do not use the street for loading purposes. Furthermore, the loading area has been designed so that trucks can pull in and pull out, resulting in greater safety for pedestrians on the sidewalk.

3. No Substantial Harm to the Zoning Regulations

Granting the requested relief would not impair the intent and integrity of the Zoning Regulations. The Regulations intend to provide adequate loading where required. In this case, the applicant has demonstrated that the total amount of loading required would not be necessary, and that providing more loading space could negatively impact other planning goals for the

neighborhood, such as creating an active pedestrian pathway through the block and creating active streetscapes with significant retail spaces.

Rooftop Structure Relief

The design proposes two penthouses – one over 51 N Street and 50 Patterson Street, and one over 1250 1st Street. Both penthouses are proposed to have occupiable space on one level, with open-air mechanical equipment surrounded by a screen wall above the occupiable space. Please refer to Exhibit 28C, Sheets S103 and A107 et seq., for plans, sections and elevations showing the proposed penthouses. On November 9th the Zoning Commission approved new penthouse regulations that could impact the relief required for this application. The new regulations, however, will not become effective until published in the DC Register, which will likely happen after December 1st. The Zoning Commission had not yet taken final action on that case when the application was filed, and therefore the applicant applied for one area of special exception relief (enclosing walls of equal height) if this case were heard under the current regulations, and another area of relief (special exception for penthouse side setback relief) if heard under the newly approved regulations. As the Zoning Commission has now taken final action to approve the amendments, and they would apply to this development, the appropriate relief for consideration is under the newly adopted regulations, for special exception relief from the 1:1 setback requirement from a side property line. No other relief under the newly adopted regulations was requested by the applicant, or would appear to be needed, but this would be confirmed at the time of building permit application by the DCRA.

Relief from 411.18, Side Property Line setback, not required under the current regulations, but required under the newly adopted and therefore applicable regulations:

The design proposes a zero penthouse setback along the western side property line off Patterson Street NE, shown as “Lot Line 2” on Sheet S103 of Exhibit 28C. Under the approved penthouse regulations, a 1-to-1 setback is required if the adjacent property has a lower matter-of-right height because it would be limited by the Height Act to a height of 70’. The applicant seeks relief from that provision.

1. Meeting the requirement 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.

The proposed location of the office building core largely dictates the footprint of the penthouse structure for this portion of the building. With the elevators, elevator overrides and other back of house space at this side of the building, it would be challenging to provide a setback at the western wall. The core location is dictated by the layout of the ground floor, which accommodates the NoMa Meander, a pedestrian path passing through the large blocks between North Capitol Street and 1st Street, and is dictated by the desire to have viable retail space. The Meander passes, approximately, through the middle of the office building’s ground floor. The core could be placed either to the west or the east of the Meander, but the east is ruled out

because that is the only feasible location for the loading dock and parking ramp. These factors combine to push the penthouse to the west, toward the property line.

However, the applicant should address why the portion of the penthouse at this location used as habitable space (loft office, as shown on Sheet A107 of Exhibit 28C) could not provide the 1:1, or at least some amount of, setback. This portion of the penthouse is the closest to the front street (although it does provide the setback from the street-facing façade) so would be the potentially most visible from the street and from the side.

2. The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

The intent of this regulation is to minimize the visibility of rooftop structures, and to minimize impacts on light and air to surrounding lots. Future development on the adjacent lot and at the west end of this square, where a 130' building would be possible, could block much of the view of this building from the west, including the penthouse. To the south, Patterson Street is narrow, limiting view angles up to the penthouse level. An existing 130' apartment building on North Capitol, on the south side of Patterson, already obstructs views of the subject site. There should be little detrimental shadow cast by the non-conforming portion of the penthouse; most shadow would fall on the subject site or on the roofs of future buildings, and windows in the penthouse space would be limited by internal uses and possibly by the building code. Granting relief would not materially impair the intent of this regulation, particularly if the habitable portion of the penthouse provided the now required setback.

VI. COMMUNITY COMMENTS

As of this writing, no ANC report has been entered into the record, but OP understands that ANC 6C has voted to support the project. OP has received no other comments on the project from the community.