

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

Application for Square 672, Lot 260

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by JBG/51 N Residential, LLC, JBG/1250 First Street, LLC, and JBG/50 Patterson Street, LLC (together, the “Applicant”), the owner of property located at Square 672, Lot 260 (the “Site”), in support of its application pursuant to 11 DCMR §§ 3104.1 and 3103.2 for (i) special exception relief from the roof structure requirements under §§ 770.6 and 411; (ii) an area variance from the off-street parking requirements under 11 DCMR § 2101.1; and (iii) an area variance from the loading requirements under 11 DCMR § 2201.1, to permit the construction of the second phase of a mixed used development in the C-3-C District at the Site.

Pursuant to 11 DCMR § 3113.8, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 14 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 special exception and variance relief. Following herein, as required by the Board's application process, is a preliminary statement indicating how the Applicant meets the burden of proof.

I. 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, 1st 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 north half of the Square, 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 is developing the Site with a single mixed-use building in multiple 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 relief 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 ground floor retail and approximately 342 residential units. The parking and loading entrance for Phase I is provided from a single curb cut on N Street, and 216 parking

spaces will be provided in three below-grade 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 west portion of the Site and consists of A&T Lots 860-862 (hereinafter the “Application Site”). The overall project will be developed as a single building for zoning purposes.

C. Existing Zoning

The Site is located in the C-3-C District 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, the Site may be developed with a building having a maximum height of 130 feet, based on its frontage on First Street, N.E. which is 110 feet in width.

The Comprehensive Plan Future Land Use Map designates the Site and the surrounding area 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, are located near the Site.

D. Description of the 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 rapid growth and transformation and has seen sustained investment for over a decade that has ushered in a number of prominent commercial businesses, government organizations, and retail establishments. NoMa is well-served by multiple public transportation options, including Metrorail, Metrobus, car-share locations, Capitol Bikeshare docking stations, and on- and off-street bicycle lanes.

II. PROJECT DESCRIPTION

The Applicant proposes to develop the Application Site with a mixed-use structure with residential, office, and retail uses, as well as a seven-screen movie theater. The new construction will have a maximum height of 130 feet, as measured from N Street, and approximately 543,839 square feet of gross floor area. The structure will contain a mix of uses, with approximately 147,135 square feet of gross floor area devoted to residential use (220 units); approximately 366,161 square feet of gross floor area devoted to office use (traditional and loft layouts); approximately 30,543 square feet of gross floor area devoted to retail use; and approximately 30,000 square feet below-grade devoted to the movie theater (approximately 1,200 seats). The primary residential entrance will be from N Street. Separate retail spaces will be accessed from N Street, First Street, and Patterson Street. The office uses will be accessed from N Street and Patterson Street.

The project will include 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. This segment of the NoMA Meander will provide a pedestrian and retail connection from N Street to Patterson Street, with a larger internal courtyard and activation from both entrances to the various retail spaces and 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 216 vehicles. Loading will be accommodated in a consolidated ground-level loading area, with space for trucks to make on-site front-in, front-out maneuvers. Secure long-term bicycle parking spaces will be located in the P1 and P2 garage levels with space for a minimum of 84 bicycles.

The most northeastern 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 includes a two-story terra cotta mullion frame system atop a ground level storefront. To the west of the office tower is a 12-story residential tower with frontage on N Street and evokes the era of glazed terra cotta as seen in prominent Washington DC buildings. Along N Street, there is a series of arched top window bays featuring operable casement windows. Terra cotta is used to create a level of interest, including coursing, piers, spandrels, cornices and detailing. Courtyard-facing facades transition to a light colored brick. The base of this portion of the building consists of a glass storefront between the masonry pilasters.

To the south of the residential component is a nine story tower dedicated to loft-style office use above ground floor retail. The architectural design of this portion of the building is in keeping with an industrial warehouse with exposed structure throughout. A rhythm of brick piers break down the façade, and the tower features large scale windows with gridded muntins and articulated brick spandrel panels. At the base between the brick piers is a point supported by the glass storefront system, which acts as a modern intervention to the industrial character.

III. SPECIAL EXCEPTION RELIEF

The Applicant seeks special exception approval pursuant to 11 DCMR §§ 770.6 and 411. Subsection 411.5 of the Zoning Regulations requires that the enclosing walls of roof structures shall be of an equal height. Subsection 770.6(a) applies the requirements of 11 DCMR § 411 to commercial districts. In this case, the Applicant proposes to provide a single roof structure on the western portion of the Phase II construction, with enclosing walls rising to a maximum height of 16 feet, 6 inches above the stair tower and 18 feet, 6 inches for the remaining portion of the structure, thus requiring special exception relief.

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 11 DCMR § 411.11, the Board may grant special exception relief from the strict requirements for roof structures 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." *Id.*

The proposed roof structure is a necessary feature of the building, and its location is driven by the location of the building's core, column spacing, and the layout and design of the mix of uses within the building. The stair tower is necessary to provide access to the roof in compliance with the Building Code requirement to provide both elevator access and separate means of egress to publically accessible roofs. The structure is located at least a 1:1 distance from all exterior walls, thus minimizing its appearance from the street and any potential impact on light and air.

A single 18.5-foot roof structure could theoretically be built to enclose the entire roof structure, in compliance 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. In this instance, the desired result is better achieved by providing varying heights for the roof structure to minimize its appearance, protect the visual quality of the building from the street, and help to ensure adequate light and air to adjacent property and abutting streets. Furthermore, the surrounding walls will be of quality material to integrate the roof structure into the overall design of the building. Accordingly, the proposed roof structure is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under 11 DCMR §§ 411.11 and 770.6.

III. VARIANCE RELIEF

An area variance is requested from the off-street parking requirements of 11 DCMR § 2101.1 and the loading requirements of 11 DCMR § 2201.1. The project requires 416 off-street parking spaces for the combined residential, office, retail, and movie theater uses; however, the project can only provide 216 spaces within the proposed four levels of below grade parking. Figure 1 indicates the required and proposed loading facilities for the project:

Figure 1

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

¹ As shown on the ground floor plan of the architectural drawings, 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

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 affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation;
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 Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)). *See also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. 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.

A. Exceptional Condition or Situation

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 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. In addition, the below-grade movie theater use generates a parking requirement, whereas retail use in the C-3-C District only generates a parking requirement for above-grade square footage (gross floor area), which counts towards FAR. Together, these site characteristics place substantial restrictions on the Applicant’s ability to meet the strict requirements of 11 DCMR §§ 2101.1 and 2201.1.

one other loading berth.” Therefore, although three service/delivery spaces are provided and will be used for the project, only two count for loading purposes.

B. Resulting Practical Difficulty

(i) Off-street Parking

The Applicant will demonstrate that 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 (55 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 (204 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 (41 spaces) (retail requirement); and (iv) one parking space for each ten seats of occupancy capacity (116 spaces) (movie theater requirement), for a total of 416 required parking spaces. In this case, the Applicant is providing 216 off-street parking spaces located in a four-story below-grade parking garage, and requests a variance for the remaining 200 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, narrow dimensions, 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 200 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 make the proposed development practically difficult. The Applicant also cannot provide below-grade parking on the western portion of the Application Site because this is the location proposed for the movie theater, and excavating further would result in the same practical difficulties associated with digging at a negative elevation under the parking garage.

(ii) Loading Facilities

The Applicant requests a variance from (i) one loading berth at 30 feet deep, and two loading berths at 55 feet deep; (ii) three platforms at 100 square feet, and two platforms at 200 square feet; and (iii) two service delivery spaces at 20 feet deep. Given the Application Site's exceptionally large land area, the variety of proposed uses, 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 dedicating a significant amount of space to loading facilities in a shared, centrally-located space on the Application Site. Providing the additional facilities would result in a much larger portion of the building's ground floor being devoted to loading rather than to retail use and the NoMA Meander. Given the Site's irregular shape and narrow dimensions, providing the required loading facilities would impede development of a usable ground floor layout, or else take up below-grade space proposed for parking and the movie theater use. In addition, all loading will access the building from Patterson Street, which is not wide enough to accommodate 55-foot trucks or permit front-in, front-out maneuvers.

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 216 parking spaces will be more than sufficient to serve the needs of all building residents, employees, patrons, and visitors. 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. Moreover, providing a below-grade movie theater rather than additional below-grade parking levels will result in a positive impact to the neighborhood, since the theater will serve as a much-needed amenity to the NoMa area, which is presently developed primarily with residential use. The theater will also serve as the anchor tenant for the building, which will attract and retain other retail to the building and surrounding area.

In addition, 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 0.3 miles from 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 seven 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 89/100 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. Therefore, although the Applicant is not providing the required 416 parking spaces, the 216 spaces that it is providing will adequately serve the anticipated parking demand at the Application Site.

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. These facilities will adequately accommodate the mix of uses on the Site, which can share loading space and 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 and users on the Application Site. The lack of a 55-foot loading berth 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 policy for new buildings.

The Applicant has engaged a transportation consultant who will evaluate and confirm that the proposed parking and loading at the Site is sufficient to meet the anticipated demand for the project. The Applicant will include this information in its prehearing submission and provide it

to DDOT as required under the Zoning Regulations. Moreover, the Applicant will show that the public good will be served by a high-quality infill development project that will replace an outdated office building and surface parking with a state-of-the-art new mixed-use building that will contribute to the revitalization and resurgence of the NoMa neighborhood.