

Board of Zoning Adjustr

OUTLINE OF TESTIMONY OF PAMELA BENOIT, REPRESENTATIVE OF SQUARE 456 ASSOCIATES, APPLICANT

I. Introduction.

II. Explanation of how Square 456 Associates became involved with development of the subject property.

III. Brief discussion of how the regulations enacting the Downtown Development District have impacted the development of Square 456.

IV. Identification of the specific special exception and variance requested by BZA Application No. 16387.

V. Request from Golden Rule Plaza.

VI. Assurance of ability to proceed after payment to Golden Rule Plaza.

V. Conclusion.

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OUTLINE OF TESTIMONY OF COLDEN FLORANCE, ARCHITECT
SQUARE 456 DEVELOPMENT

I. Introduction.

II. Explanation of design of Square 456 Development.

III. Brief discussion of how the buildings in the Square 456 Development comply with historic preservation regulations.

IV. Explanation of why the special exception relief from the roof structure setback requirements is necessary and justified.

V. Design flexibility regarding further approvals from the Historic Preservation Review Board and the Mayor's Agent.

VI. Conclusion.

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OUTLINE OF TESTIMONY OF STEVEN E. SHER,
DIRECTOR OF ZONING SERVICES
WILKES, ARTIS, HEDRICK & LANE, CHARTERED,
EXPERT IN LAND PLANNING AND ZONING

I. Introduction.

II. Explanation of the Downtown Development District and how it applies to Square 456.

III. Description of areawide design standards.

IV. Description of areawide use requirements.

V. Description of the Downtown Arts District.

VI. Description of Housing Priority C.

VII. Description of Combined Lot Development.

VIII. Reservation of right to adjust preferred uses.

IX. Statement of eligibility for transferable development rights.

X. Conclusion.

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OUTLINE OF TESTIMONY OF WILLIAM A. DAVIS, JR.,
OWNER'S REPRESENTATIVE OF
GOLDEN RULE PLAZA, INC.

I. Introduction.

II. General description of Golden Rule Plaza including nature of the project, square footage and number of units.

III. Description of predevelopment activities including plans for the construction as well as the financing of Golden Rule Plaza.

IV. Explanation of why it is highly desirable that Applicant post a $500,000 payment prior to the settlement of the construction loan.

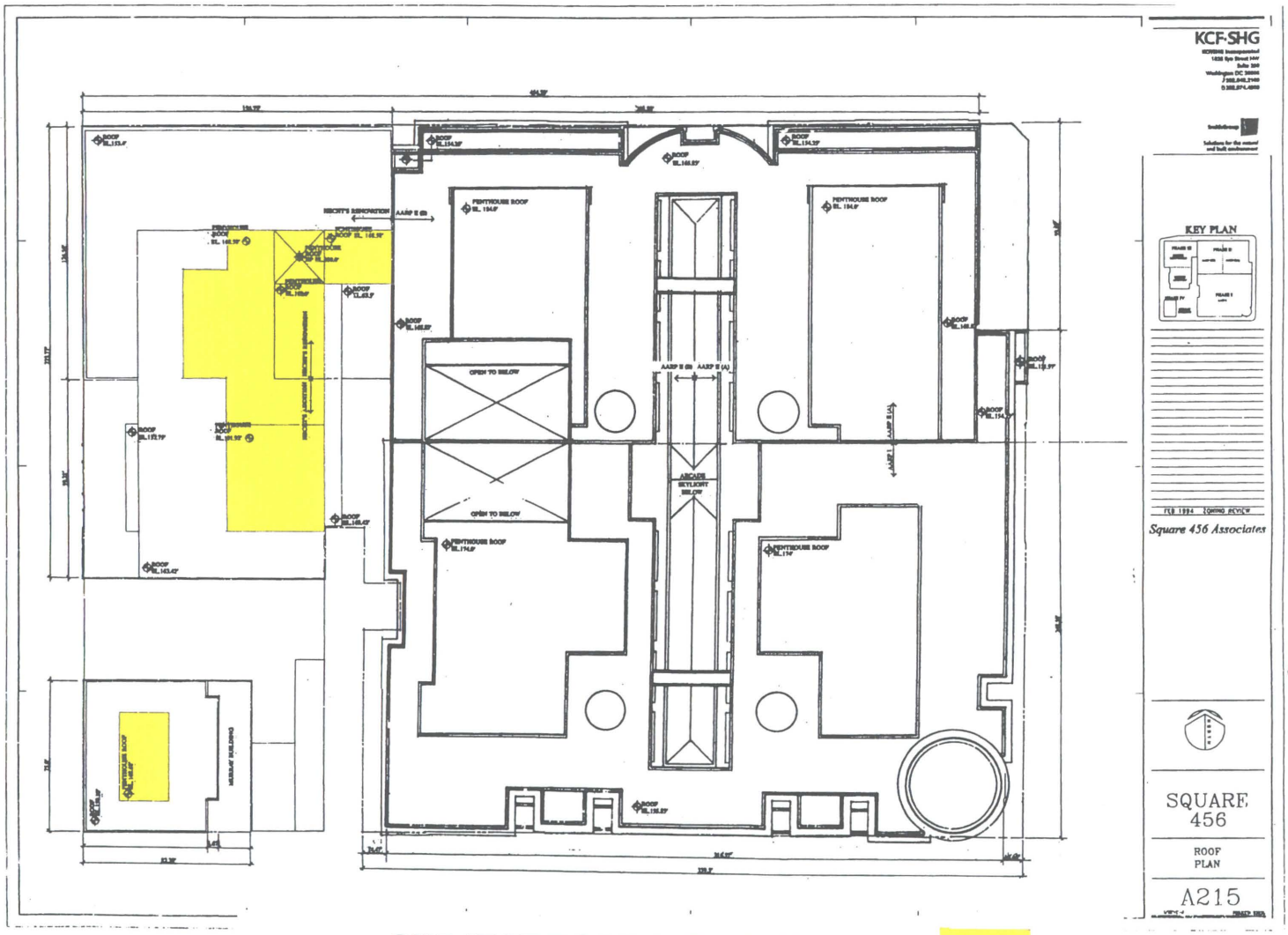
V. Conclusion.

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SEE ATTACHED PLANS

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KCF-SHG
KEY PLAN
FEB 1994 ZONING REVIEW
Square 456 Associates
SQUARE 456
ROOF PLAN
A215
SUBJECT ROOF STRUCTURES



Vote of the Zoning Commission on proposed action on July 16, 1990, on Sections 1700.1 - 1700.6, 1701 - 1705, and 1707 - 1713: 5 - 0 (Tersh Boasberg, Lloyd D. Smith, Maybelle Taylor Bennett, John G. Parsons, and William E. Ensign to approve proposed action to amend the Zoning Regulations and Zoning Map.

Vote of the Zoning Commission on the remainder of Section 1700, and Section 1706, on September 17, 1990: 3-2 (Tersh Boasberg, John G. Parsons, and William Ensign to approve proposed action to amend the Zoning Regulations; Lloyd D. Smith, Maybelle Taylor Bennett, opposed).

Vote of the Zoning Commission on December 17, 1990 to adopt this order and the foregoing amendments to the Zoning Regulations and Zoning Map, in part 3-2 and in part 5-0: (Tersh Boasberg, John G. Parsons, and William Ensign to adopt Sections 1706.4(c) and (d), 1706.5(c) and (d), and 1706.6(c), as revised; Maybelle Taylor Bennett and Lloyd D. Smith opposed; Tersh Boasberg, Lloyd D. Smith, Maybelle Taylor Bennett, John G. Parsons, and William Ensign to adopt the remaining amendments to Chapter 17, to adopt Section 3204, and to approve amendments to the Zoning Map.

In accordance with the 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on January 18, 1991.

TERSH BOASBERG
Chairman
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 787
Case No. 94-20
(Text Amendment - 11 DCMR 1707.4)
November 13, 1995

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia to consider the application of the law firm of Wilkes, Artis, Hedrick and Lane, on behalf of Square 456 Associates, requesting the Zoning Commission to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was filed on December 1, 1994, and requested the Zoning Commission for the District of Columbia to add a new paragraph 1707.4(w) to Subsection 1707.4, the Downtown Development District section applicable to the Downtown Historic District. The proposed paragraph 1707.4(w) include Lot 857 and part of Lot 867 in Square 456 in the list of properties governed by the Downtown Historic District provisions of the DDD regulations. The proposed amendment would reduce the FAR of the above-referenced lots in Square 456 from 10.0 to 6.0, eliminate the minimum requirements of 2.0 FAR for residential use, create the opportunity to utilize transferrable development rights (TDRs) to make-up off-site, what is lost in on-site development, and allow the applicant to develop the site as a matter of right.

By memorandum dated February 3, 1995, the Office of Planning (OP) for the District of Columbia analyzed the planning and zoning issues relative to the application. The report indicated that in the adoption of the Downtown Development District, the Zoning Commission included the entirety of the Downtown Historic District within the historic preservation provisions of 1707.4, with the exception of the lots along the 7th Street frontage of Square 456. This approach was adopted based on a petition by the D.C. Preservation League. The Preservation League did not include the subject frontage in its petition because it had (and has) a covenant with the property owner governing some critical development and preservation/restoration matters. Accordingly, the subject properties were subject to preservation-related development restrictions, but did not become formally subject to the restrictions and incentives of the DDD related to historic properties. This exclusion also left the properties subject to a housing requirement, a regulatory outcome that the then property owner concurred with.

The OP noted that if Lot 857 and a part of Lot 867 (now known as Lot 868) are included in Subsection 1707.4, two adjacent historic Lots 34 and 37 owned by other persons and separated from each other by the applicant's corner property on Lot 857, should also be included in Subsection 1704.4 The OP recommended that the case be set down for a public hearing and that Lots 34 and 37 be included in the text to be advertised for the public hearing to provide for uniformity and equal treatment of the lots in Square 456.

By letter dated February 2, 1995, the Residences at Market Square, The Pennsylvania, requested that the Commission not set the case down for a public hearing. The letter pointed out that the proposed text amendment is inconsistent with the Comprehensive Plan. The letter emphasized that the Comprehensive Plan Amendments Acts of 1994 designated the area as the prime generator of downtown housing, particularly along 7th Street. It added that the proposal would reduce the housing requirement on a site which was already counted in the housing target for the area, and which already has been substantially reduced by the Council's arena approval for the Gallery Place site.

The Advisory Neighborhood Commission (ANC) 2C, in a letter dated February 9, 1995 indicated that the ANC at its meeting held on February 1, 1995, voted 4 to 0 in support of a set down for the case.

On February 13, 1995, at its regular monthly meeting, the Commission considered the applicant's request, the recommendation of the OP, and the letter from the Residences at Market Square, The Pennsylvania. The Commission was persuaded by the OP recommendation to set the application for hearing and include Lots 34 and 37 in the proposed text. Accordingly, the Commission authorized a public hearing for the case and included Lots 34 and 37.

On March 31, 1995, the Office of Zoning (OZ) published the public hearing notice of the proposed amendment in the District of Columbia Register, and in the Washington Post. The public hearing notice indicated that the Commission would consider modifications to the text of the proposed amendment or alternative proposals that are reasonably related to the scope of the proposed amendment.

On May 11, 1995, the public hearing of the case scheduled for May 15, 1995 was cancelled after the Office of Zoning determined that the number of Commissioners likely to participate in the hearing would not constitute a quorum. The public hearing was rescheduled and readvertised for June 26, 1995.

Councilmember Jack Evans, by letter dated May 9, 1995 supported the amendment. He indicated that the text amendment would treat this site in the same manner as other properties included in the

Downtown Historic District, allowing the property owner to restore the vacant existing building to active use.

At the public hearing session on June 26, 1995, the Commission heard the presentation of the OP and the testimony of about six witnesses in support of the application.

The Office of Planning by memorandum dated April 28, 1995, and through testimony presented at the public hearing indicated that Lots 867 and 857 in Square 456 are located in the Downtown Historic District, and/or the Pennsylvania Avenue historic area, and that both historic areas are subject to development restrictions and incentives pursuant to the Downtown Development District (DDD) regulations. The purposes of the restrictions are to encourage restoration of historic buildings while also providing a modest degree of excess density for the construction of additions, to provide for compatibility in historic design, and to ensure a reduced scale of buildings in the historic district compared to the normal height and bulk of buildings in the Downtown.

Additionally, the OP pointed out that Section 1707, provided for combined lot development, making it possible for unused development rights of up to 4.0 FAR to be transferred to a receiving lot or lot within the DDD boundaries or within either of two designated receiving zones for transferable development rights (TDRs). This provision provides financial renumeration to assist in the restoration of the historic properties and to provide a degree of compensation for the restrictions on on-site development. The second incentive is that the enumerated historic properties are not subject to a housing requirement in locations where such a requirement might normally apply pursuant to DDD provisions.

The OP further indicated that the applicant has plans for renovation, adaptive reuse and new development of its properties. The proposed development would renovate the main frame of the existing "old" Hecht Company building and construct an addition that continues behind the facades of the adjacent 7th Street buildings, including the "dogleg" portion of the "Old Hecht Company Complex." The new construction and the renovated parts of the historic buildings would be joined as a single building complex and would be occupied with arts uses at and below grade and offices on the upper floors. The large vacant property along F Street would be developed with a major office building, projected to be expansion space for the adjacent American Association of Retired Persons (AARP) Headquarters building that was built several years ago in the south-western corner of the square. The AARP expansion site is subject to a housing requirement under the provisions of the DDD. The housing requirement is proposed to be provided in Lot 857,

known as the "Murray" Parcel, at the corner of 7th and E Streets, N.W. The AARP and the Murray parcel will be legally linked in accordance with the provisions of the DDD combined lot development agreement.

The OP also testified that the purpose of requesting the proposed text amendment is to be able to proceed with the development as a matter of right, rather than to require Board of Zoning Adjustment (BZA) variances to reduce the housing requirement. The report added that the project has been approved by the Mayor's Agent for Historic Preservation and by the Historic Preservation Review Board (HPRB). The project's aim is to comply with the DDD requirements. The applicant's specified development package which will be contained in the combined lot development covenant, will then comply with both the zoning and historic preservation requirements. The OP concluded its report and presentation by recommending that the Commission adopt the text amendment as advertised in the Notice of Public Hearing.

The applicant and his team of expert witnesses by written statements submitted to the record and in presenting their case at the public hearing testified as follows:

- Square 456 Associates views this case as one of uniformity of construction of similarly situated properties under the provisions of the DDD Regulations that apply to historic properties, under Section 1707.4. Additionally, the amendment is required from the standpoint of the uniformity clause of the D.C. Code.

- The historic properties located in Square 456 are the only historic properties which are not subject to the requirements of and permitted to proceed with the benefits accorded under the provisions of Section 1707. These properties are the only buildings that are within both the Downtown Historic District and the Downtown Development District and which are not now subject to the 6.0 FAR limitation on on-site development. The proposed amendment would treat the subject properties in the same manner as all other properties which meet the same two criteria.

- These properties were not included within the scope of Subsection 1707 because of the preservation agreement negotiated by DCPL and the former owner/developer. The present regulations allow a greater amount of on-site density, but also prevent any unusable density from being transferred off the site.

- The site also carries the double burden of historic preservation requirements and the costs of compling with D.C. Law 2-144 and a housing requirement under the DD District, either on or off-site. No other historic property in the DD District must comply with both those requirements. The Zoning Commission clearly recognized the difficulties created by an overlap between preservation and housing, and in Subsection 1706.20, specifically provided that "The residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR."

- Square 456 contains the only buildings within the Downtown Historic District which are subject to the housing provisions. The historic properties on Square 456 are also the only properties in the Downtown Historic District not limited to 6.0 FAR. On the other hand, the existing buildings along 7th Street in Square 456 are prevented from achieving the allowable 10.0 FAR due to their historic character and location within the Historic District (i.e., the constraints imposed by D.C. Law 2-144). While these buildings are not able to achieve the density permitted by the DD District, they are also not eligible for any of the benefits accorded to all other historic properties within the Downtown Development District, such as the ability to utilize transferrable development rights (TDRs) if the maximum density cannot be achieved on-site.

- On April 1, 1988, when the owner entered into the agreement with DCPL, no residential use was required on the site and no TDRs were available to recapture density which could not fit on the site. The DD District had not even been presented for public review by the Office of Planning, considered by the Downtown Partnership, presented to the Zoning Commission or set for public hearing. The assumptions which underpinned the agreement were that all the space to be built on the site could be and would be used exclusively for commercial purposes.

- With the DD District now in place, the development contemplated under the DCPL agreement cannot be accomplished. The economic consequences of proceeding under the adopted Downtown Development District provisions combined with the current office market conditions completely stifle development on the site.

- During the sua sponte review by the Zoning Commission of the March 8, 1991, BZA Order approving an application for a variance from the housing requirements on this site, a member of the Commission suggested that if the property owner

experienced difficulties as a result of the present regulations, a text amendment would be the appropriate process to address those difficulties.

There was no testimony in opposition to the proposed amendment. ANC-2C did not testify, but submitted a letter to the record in support of the amendment.

The legal representative for the Market Square East-West Condominimum Association and the Pennsylvania Avenue Condominimum Association submitted a letter in opposition to a set down of the case. However, he testified in support of the application at the public hearing.

During closing remarks, the applicant's representative summarized testimony, and requested the Commission to decide the case from the bench or as soon as possible. He reminded the Commission that the application has the support of ANC-2C, the OP, the residents of nearby apartment buildings and Councilmember Jack Evans. He added that Square 456 Associates is anxious to go forward with this project.

The Commission reviewed, discussed and evaluated all evidence, testimony and information provided at the hearing and submitted to the record of this case, and was persuaded that a bench decision to approve the proposed amendment was justified. At the close of the public hearing on June 26, 1995, the Commission took proposed action to approve the application from the bench.

A notice of proposed rulemaking was published in the D.C. Register on September 1, 1995. The notice of proposed rulemaking was also referred to the Zoning Administrator, the OP and to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act.

The NCPC, by report dated July 27, 1995, found that the proposed amendment would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded the ANC the "great weight" to which it is entitled.

The Zoning Commission believes that its decision to approve the text amendment provides for uniform treatment of properties in the Downtown Historic District that are governed by provisions of the Downtown Development District.

The Zoning Commission believes that its decision to approve the text amendment is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby ORDERS APPROVAL of the following amendment to the Zoning Regulations.

Add a new Paragraph 1707.4(w) to read as follows:

1707.7(w) Square 456, lots 34, 37, 857 and 868.

Vote of the Commission taken on June 26, 1995 3-0: (Maybelle Taylor Bennett, John G. Parsons and Jerrily R. Kress, bench decision to approve - William L. Ensign, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its public meeting of November 13, 1995 by a vote of 3-0: (John G. Parsons, Maybelle Taylor Bennett and Jerrily R. Kress, to adopt - William L. Ensign, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on FEB 2 6 1996.

JERRILY R. KRESS
Chairperson
Zoning Commission

MADELIENE H. DOBBINS
Director
Office of Zoning

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Summary of Compliance with Provisions of §1706.22(c), the Computation of Total Project Cost and Contribution for Affordable Housing if Applicant Selected the Contribution Option of §1706.23

Formula from §1706.24:

C = GFA (AV/LA)/FAR x 90%

Where:

GFA = the amount of additional commercial space to be built on-site, measured in square feet

AV = the assessed value of the land and improvements on the July 1st preceding the date on which the application for a building permit is filed

LA = the number of square feet of land included in the property

FAR = the commercial FAR used by the tax assessor to determine the assessed value

Calculation:

GFA = 40,991 square feet

AV = $15,218,000

LA = 51,239 square feet

FAR = 8.0

C = 40,991 ($15,218,000/51,239)/8.0 x 0.9

C = 40,991 ($297/8.0) x 0.9

C = 40,991 ($37.13) x 0.9

C = 40,991 x $33.42

C = $1,369,919

Total Project Cost for Golden Rule Plaza: approximately $13.5 million