Law Offices
HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

202-955-3000
FAX 202-955-5564
www.hklaw.com

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Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 16601
New Jersey Avenue, S.E.

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP

September 19, 2000

I. Site location and description

A. Entire square bounded by New Jersey Avenue, 2nd, K and L Streets, S.E. (except for one small lot at the northwest corner of the intersection of 2nd and L Streets)

B. Site is trapezoidal in shape

C. Site contains approximately 48,108 square feet and includes a portion of a public alley proposed to be closed

D. Site is currently occupied by mostly vacant buildings, some formerly industrial and some formerly residential

II. Description of surrounding area

A. Site is part of Capitol South area

B. Mix of vacant land and commercial and warehouse buildings to the west

C. D.C. Government storage facility to the north across K Street, followed by the former Washington Post warehouse and the Southeast Freeway

BZA
Case No. 16601
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16601
EXHIBIT NO.35

D. To the east, 2nd Street, followed by public land, used for storage of school buses, and the Arthur Capper public housing project

E. South of M Street is the site of the Southeast Federal Center and, further to the east, the Washington Navy Yard

F. Two new office buildings are under construction, one on the north side of M Street between 3rd and 4th Streets and the other at 80 M Street

III. Existing zoning: C-3-C

A. Uses (§§741 – 744)

1. Commercial use permitted as a matter-of-right, including retail, service and office use

2. Hotel

3. Residential use permitted as a carry-over from the Special Purpose and Residential Districts

B. Height - maximum of ninety feet (§770.1)

C. Density - maximum of 6.5 FAR (§771.2)

D. Lot occupancy - 100 percent permitted (§772.1)

E. Residential recreation space - minimum area equal to ten percent of the gross floor area devoted to residential use (§773.3)

F. Rear yard - for a corner lot fronting on three or more streets, minimum depth of 2.5 inches per foot of height may be measured from the centerline of the street at the rear (§774.11)

G. Side yard - not required (§775.5)

H. Parking (§2101.1)

1. For apartment house use, minimum of one space for each four units

2. For hotel use, minimum of one space for each four rooms usable for sleeping

I. Capitol South Receiving Zone

1. No change in permitted uses

2. With purchase of transferable development rights (TDRs):

   a. Allows maximum height permitted under the Act of 1910 (130 feet for the subject site) (§1709.21)

   b. Allows a maximum of 10.0 FAR for a site permitted to be in excess of 110 feet in height (§1709.21)

IV. Proposed development

A. Uses – apartment house of approximately 375 rooms and hotel of approximately 170 rooms

B. Gross floor area of approximately 464,013 square feet (9.65 FAR overall)

1. Apartment house is approximately 347,443 square feet of gross floor area (10.0 FAR on its site)

2. Hotel is approximately 116,570 square feet of gross floor area (8.72 FAR on its site)

C. Height

1. Overall maximum height is 130 feet

2. Building is setback 10 feet above 93 feet along New Jersey Avenue

D. A total of 246 parking spaces on two levels

V. Relief required

A. Variance from the residential recreation space requirement

1. Required area is 34,744 square feet

2. Proposed area is 15,155 square feet

B. Variance from the requirement to purchase TDRs for the residential portion of the project

1. Residential building is 347,443 square feet of gross floor area

2. Maximum permitted density without TDRs is 225,838 square feet

3. 121,605 square feet of TDRs would be required; none are to be purchased

C. Special exceptions for roof structures

1. To permit more than one roof structure; and

2. To permit roof structures not meeting the 1:1 setback from the edge of the roof

VI. Standards for a variance (§3103.2)

A. Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,

B. the strict application of any regulation adopted under D.C. Code §§5-413 to 4-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;

C. Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

VII. Compliance with the variance standards

A. Residential recreation space

1. Exceptional or extraordinary situation or condition

a. Size of building related to size of lot (the 10% requirement for a 10.0 FAR building requires the equivalent of 1.0 FAR of recreation space)

b. Construction of a new apartment building on a site where commercial use would be the most likely development

2. Practical difficulty

a. Insufficient space on the exterior to meet the requirement

b. Would require substantial amount of interior space devoted to recreational use

c. Compliance would require reducing the size of the apartment building, thereby jeopardizing the critical mass necessary to support an apartment building

3. No detriment to the public good

a. Building shares recreational amenities with adjoining hotel

b. Are other nearby recreational opportunities existing and planned (e.g., conversion of public open space east of 2nd Street to park use and potential riverfront park along the Anacostia Park, both referenced by the Office of Planning)

c. Recognition by the Office of Planning that requirement is probably too high and should be adjusted for high density residential development

B. TDRs

1. Exceptional or extraordinary situation or condition

a. This is the only site proposed for construction of an apartment house in the Capitol South Receiving Zone

b. Site is adjacent to other residential development

c. Zoning history is clear that the purchase of TDRs was intended for commercial buildings (primarily office buildings) to support preferred uses (including apartment houses) and historic preservation Downtown

(1) TDRs are derived from the Downtown Development District either from bonus density or historic preservation

(2) Bonus density is awarded for providing preferred uses (e.g., department store, apartment house) at a ratio specified in Regulations

(3) Historic preservation provision (§1707) reduces on-site density to a maximum of 6.0 FAR and allows

remainder of density to be moved elsewhere as a TDR

(4) Both provisions were intended to help underwrite the goals of the DD District and in particular to help subsidize the costs of providing uses which were otherwise impractical

(5) It is contrary to the intent of the DD regulations to require an apartment house to subsidize preferred uses

2. Practical difficulty

a. Standalone apartment building requires a minimum threshold of units to be realistic, to spread fixed costs over a sufficient number of units

b. Critical mass of units would not be met if building was limited to 6.5 FAR

c. Apartment building is not economically feasible if required to purchase TDRs

3. No detriment to the public good

a. Uses are permitted as a matter-of-right

b. TDRs will be purchased for the hotel

c. Building is less than the maximum density for any building using TDRs

d. Planning policies for the Near Southeast area are supportive of mixed use development, including residential

VIII. Standards for the special exception (§411.11)

A. Where impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

B. that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable

C. the Board of Zoning Adjustment shall be empowered to approve the location, design, number and all other aspects of such [roof] structure ...

D. Provided that 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.

IX. Compliance with the special exception standards

A. Operating difficulties

1. Footprint of the building and desirable widths of floorplates for double loaded corridors for both apartment units and hotel rooms make it difficulty to meet setback requirements

2. Length of corridors and need for access at ends require stair towers and elevator cores to be dispersed along the path of travel

B. Unduly restrictive and unreasonable

1. Connecting separate roof structures would require substantial roof top construction which adds to the mass of the building, is expensive and would otherwise serve no purpose

2. Reducing the height of the roof structures to meet the setback requirements would make it impossible to provide adequate elevator service for a 130 foot building

3. Reconfiguring the building or redesigning the roof structures to increase the setback is unreasonable for an apartment building

C. Impact on other buildings

1. Property is surrounded by streets on all sides except for one small lot, which would not be affected by the proposed roof structures

2. Roof structures are set back from the main facades of all street frontages

3. There are limited areas from which the roof structures can be seen

X. Conclusions

A. Subject property is affected by exceptional conditions, because of the nature of the proposed building (an apartment house) and the requirements of the Regulations as to recreation space and the purchase of TDRs

B. Strict application of the Regulations, requiring the equivalent of 1.0 FAR of recreation space and the purchase of TDRs, would create significant difficulties for the construction of a new apartment building in an area where no new residential construction has occurred

C. The variances can be granted without substantial detriment to any surrounding properties

D. The building is separated from adjoining properties such that the location of the roof structure will not have any impact on the light and air of adjacent buildings

E. Approval of the application, allowing a new apartment house, would be a significant contribution to city policy of encouraging mixed use in an area formerly devoted to and planned for all commercial buildings

F. The application should be granted