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Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 16603
5th Street and Massachusetts Avenue, N.W.

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

October 3, 2000

I. Site location and description

A. Location

1. Northwest corner of the square bounded by 4th, 5th, H and I Streets and Massachusetts Avenue, N.W.

2. Site also fronts on twenty foot wide alley to the south and east

3. Project site consists of lot 50 in Square 517

4. Site located two blocks southeast of Mt. Vernon Square

B. Size

1. Total site area is approximately 44,833 square feet

2. Frontage of approximately 76 feet on I Street, 175 feet on 5th Street and 367 feet on Massachusetts Avenue

C. Existing site condition – vacant, used as a parking lot

BZA
Case No. 16603
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO.16603
EXHIBIT NO.49

II. Description of surrounding area

A. Mt. Vernon Square East area

B. Area contains broad mix of uses and building types

C. No significant new development in recent years

D. Remainder of Square 517

1. Two and three story buildings used for offices at the northwest corner of 5th and H Street

2. Judiciary House apartments at 461 H Street (90 foot high rise housing for the elderly)

3. Parking lot to the east fronting on both Massachusetts Avenue and H Street

4. Two and three story vacant structures, including a former D.C. Fire House

5. Restaurant at the corner of 4th Street and Massachusetts Avenue

E. Uses to the south in Squares 518 and 486, (bounded by 4th, 6th, G and H Streets)

1. General Accounting Office

2. St. Mary's Church

3. Vacant 90 foot office building at 450 H Street

4. Red Roof Inn hotel at the corner of 5th and H Streets

5. Other miscellaneous buildings, some vacant, some commercial

6. Parking lots

F. Uses to the east in Squares 528 and 529 (bounded by 3rd, 4th G and I Streets)

1. Miscellaneous commercial buildings, many unoccupied

2. Parking lots

3. Best Western Hotel at 724 3rd Street

4. Second Baptist Church at 816 3rd Street

5. Further to the east is the Center Leg Freeway (depressed roadway between 2nd and 3rd Streets)

G. Uses to the North in Squares 516 and S-516 (bounded by Massachusetts Avenue and 4th, 5th and K Streets)

1. House of Ruth at the corner of Massachusetts Avenue and I Street

2. Parking lots

3. Vacant lots and buildings

4. Used car lot at the corner of Massachusetts Avenue and 4th Street

5. Chester Arthur Building (90 foot office building leased to the General Services Administration)

H. Uses to the west in Squares 484 and 485, (bounded by 5th, 6th, I and K Streets)

1. 2 and 3 story buildings devoted to miscellaneous commercial uses

2. Parking lots

3. Corinthian Baptist Church at the corner of 5th and I Streets

III. Existing zoning: C-2-C (adopted by emergency action of the Zoning Commission on September 21, 2000)

A. Uses (§§720 – 734)

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 6.0 FAR, with nonresidential uses limited to 2.0 FAR (§771.2)

D. Lot occupancy - 80 percent permitted (§772.1)

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

F. Rear yard – fifteen feet (§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 office use, minimum of one space for each 1,800 square feet of gross floor area in excess of 2,000 square feet

I. Downtown Development (DD) Overlay District

1. Applies to new buildings and alterations or additions to existing buildings involving more than 100 percent of assessed value of building in any twelve month period

2. Height is maximum permitted under the Act of 1910 (130 feet for subject site), with a setback required above 110 feet facing Massachusetts Avenue

3. Housing Priority Area B

a. Maximum FAR is 8.0

b. Minimum of 4.5 FAR required to be devoted to residential use (3.5 FAR available for commercial)

4. With purchase of TDRs, allowable on-site FAR is 8.5

5. With maximum off-site residential, on-site commercial density could be 4.85 FAR

IV. Proposed development

A. Use – apartment house of approximately 450 units

B. Gross floor area of approximately 464,470 square feet (10.36 FAR)

C. Height - overall maximum height is 130 feet, with 1:1 setback above 110 feet facing Massachusetts Avenue

D. A total of 226 parking spaces on two levels

V. Relief required

A. Variance from the residential recreation space requirement

1. Required area is 69,671 square feet

2. Proposed area is 18,200 square feet

3. Variance of 51,471, square feet

B. Variance from the rear yard requirement

1. Required minimum depth is fifteen feet

2. No rear yard is provided

C. Variance from the FAR limitation

1. Maximum permitted density is 381,081 square feet (8.5 FAR)

2. Proposed density is 464,470 square feet (10.36 FAR)

3. Variance is 83,389 square feet (1.86 FAR)

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 15% requirement for a 10.36 FAR building requires the equivalent of 1.55 FAR of recreation space)

b. Construction of a new apartment building on a site where mixed commercial and residential 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. Are other nearby open spaces available for passive recreation (e.g., Federal reservations, Mount Vernon Square, public space along Massachusetts Avenue)

b. Other recreational opportunities available in the broader Downtown area (e.g., YWCA, MCI Center)

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

B. Rear yard

1. Exceptional or extraordinary situation or condition

a. Shape of lot, narrowing to less than fifty-six feet at the east end

b. Use of property for an all residential development

2. Practical difficulty

a. Apartment building requires design to provide for sufficient light and air for units

b. Generally accepted wall-to-wall depth of sixty-five feet

c. Requiring fifteen foot rear yard across the back of the lot substantially compromises residential design, especially at the east end of the site

3. No detriment to the public good

a. Building is articulated to provide open courts at the rear

b. Site abuts twenty foot alley to the south

c. Existing apartment house to the south is set back approximately thirty feet from the lot line, providing for a separation of fifty feet between the two buildings

C. Floor area ratio

1. Exceptional or extraordinary situation or condition

a. Subsurface soil conditions requires extra costs to support a high rise apartment building

b. Site is key location, at the intersection of the 7th Street/ Chinatown residential corridor and the Mount Vernon Square East/NoMA area

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 8.5 FAR

3. No detriment to the public good

    a. Use is permitted as a matter-of-right; residential is required under the DD District

    b. Planning policies for the Mount Vernon Square area strongly encourage mixed use development, including residential

    c. Proposed development wold forego the commercial opportunity on this site and be an all residential building

VIII. Consistency with the Comprehensive Plan

A. Land Use element and maps - property included in mixed-use high density commercial/high density residential category

B. Downtown element

1. Major policies

    a. Emphasizes significant residential community

    b. Mount Vernon Square subarea should be a primary location for residential development

    c. Massachusetts Avenue between 2nd and 7th Streets should have a mixed use character (residential/ commercial)

2. Residential land use

    a. "Undertake a variety of public and private programs to achieve a major increase in residential units"

    b. "Encourage residential in-fill as well as compatible major new residential development"

c. "Facilitate mixed-use development along Massachusetts Avenue, N.W., that emphasizes the residential component of that mix, primarily in high-rise apartment buildings"

d. "Encourage residential use as part of mixed-use projects south of Massachusetts Avenue, N.W."

e. "Encourage residential use as part of mixed use projects extending south through Chinatown and Gallery Place to connect with the proposed residential area on Pennsylvania Avenue, N.W."

3. Mount Vernon Square:

"Develop the primary residential neighborhood of Downtown at Mount Vernon Square with a mix of other uses including offices, hotels, and neighborhood retail" (§932.1(a))

C. Ward Two Plan (10 DCMR Chapter 13)

1. Housing

a. "Stimulate production of new and rehabilitated housing to meet all levels of nee d and demand and to provide incentives for the types of housing needed at desired locations" (§1304.1(a))

b. "Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies" (§1305.1(a))

c. "Recommend suitable regulatory, zoning, tax and financing incentives under appropriate controls to meet housing production goals" (§1305.1(c))

2. Land Use

a. Objectives for residential land use:

"Develop new housing in Downtown in the area extending north of Pennsylvania Avenue through Gallery Place, Chinatown, and portions of Judiciary Square" (§1327.1(c)(2)

b. Development Opportunity Areas:

"Develop a major new residential mixed-use community, including hotels, in the Mount Vernon Square area" (§1339.1(b))

IX. Conclusions

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

B. Strict application of the Regulations, requiring the equivalent of 1.55 FAR of recreation space, creating a slice along the back of the site for rear yard and limiting the FAR to 8.5, 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 lack of a rear yard will not have any adverse 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 residential in this part of Downtown

F. The application should be granted