GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustments

FROM: Andrew Altman

DATE: September 24, 2000

SUBJECT: BZA Application #16641 (The JBG Companies)
12th & Massachusetts Avenue, NW (Square 283, Lot 50)

BZA
Case No. 16641
Exhibit No. 29

I. APPLICATION

This report summarizes the Office of Planning's (OP) review of the above application from The JBG Companies (the Applicant) to the Board Zoning Adjustments pursuant to 11 DCMR §3104.1 for variances from the Zoning Regulations §776.4.1, §773.3, and §771.2 of Chapter 11 of District of Columbia Municipal Regulations for the property described as Lot 50 of Square 283 (the Property) in northwest DC. The report presents the Office of Planning's findings and recommendations to the Board of Zoning Adjustment.

II. RECOMMENDATION SUMMARY

The Office of Planning recommends the BZA approve the design with conditions.

III. SITE AND AREA DESCRIPTION

Square 283 in northwest DC is trapezoidal in shape, bounded by a short section of 12th Street on the east, Massachusetts Avenue on the north, L Street on the south and 13th Street NW on the West. Lot 50 is an odd shaped lot 14,474 square feet in size located in the center of Square 283 (see Square and Lot Map below). The Lot is formed by two rectangular areas offset from each other with one fronting on Massachusetts Avenue to the north and the other fronting L Street to the south. Lot 50 has an area of approximately 14,474 square feet.

To the west of Lot 50 on Lots 828 & 827 is the Massachusetts House, a 10-story apartment building built in 1969. To the south and east on Lot 40 are the offices of the American Health Care Association built in 1988. To the east along Massachusetts Aveune are two historic townhouses built in 1920 and 1938.

Board of Zoning Adjustment
District of Columbia
CASE NO.16641
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The area is characterized by the wide set backs of L'Enfant's Plan and primary uses include high-density residential, association offices and institutions such as the Church of the Ascension St. Agnes across Massachusetts Avenue.

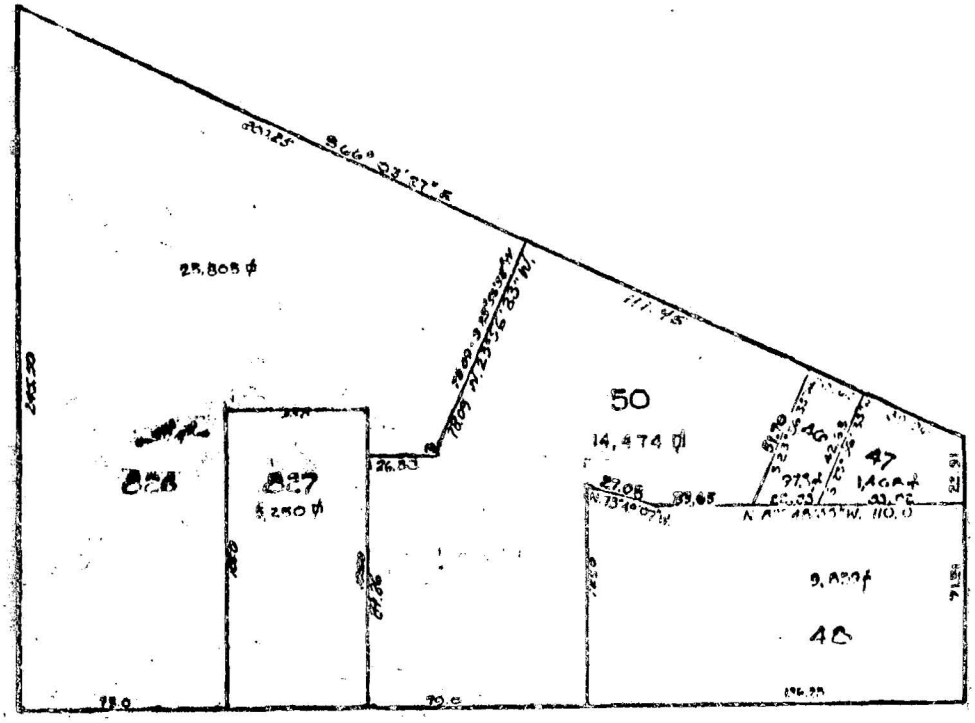


Figure 1.

IV. PROJECT DESCRIPTION

The Project is a 110' tall (128' w/service core), 119,753 square feet (8.3 FAR) infill apartment building constructed on a site that has long been a parking lot. The main entrance will be on the north side of the site fronting on Massachusetts Avenue. The building will consist of 116 units, of which roughly 40% will be 1-bedroom w/dens or 2-bedroom units. Located on the south side fronting L Street will be roughly 1000 sf of retail, the garage entrance to 64 underground parking spaces, plus another 46 vault spaces and the building's loading bays.

There will be two closed courts, one on the east side overlooking Massachusetts Avenue of roughly 1,050' square feet and the other on the west side of the property adjacent to the courtyard of the Massachusetts House Apartments of roughly 1,857 square feet. The location of the eastern court is such that it preserves the view of the mural of Fredrick Douglas located on the adjacent building.

Due to the shape of the site, the building, for all practical purposes, will be two towers joined by an elevator core located at the center of the structure. Two stairwell and mechanical cores serve the northern and southern halves of the building. The elevator core and the two service cores will result in 3 rooftop structures.

Recreation space is being provided by the two courtyards, an exercise room, and a two-floor party room. The site also benefits from the open space created by Massachusetts Avenue's wide set backs.

V. COMPREHENSIVE PLAN

In the Comprehensive Plan there are several references to facilitating the development of housing in this section of downtown. Chief of these is the goal set in 900.7, which states:

900.7 A significant residential community is necessary to a vital Downtown. A general target of five thousand four hundred (5,400) residential units has been established, a significant increase from the base of one thousand eight hundred (1,800) units.

Another notable section particularly relevant to this case is found in 903.2:

903.2 (c) Facilitate the mixed-use development of Massachusetts Avenue, NW, that emphasizes the residential component of that mix, primarily in high-rise apartment buildings, and coordinate development to avoid substantial time lag between the nonresidential developments;

903.2 (d) Encourage residential use as part of mixed-use projects south of Massachusetts Avenue, NW;

903.2 (i) Encourage improvement and development of residential areas adjacent to and near downtown; and

It is therefore clear that the Comprehensive Plan supports in concept facilitating the development of housing in this location.

VI. ZONING

Zoning divides Square 283, the western half of the square (Massachusetts House) is R-5-E, while the eastern half is C-2-C. R-5-E allows a density of 5.0 and heights of 90 feet, while C-2-C is comparable with density of 6.0 and heights of 90 feet. The square is also part of Housing Priority Area B of the Downtown Development District zoning overlay. The DD overlay designation is designed to encourage housing in downtown. Most significantly it

would permit buildings of up to 130 feet. The table below outlines DD requirements and incentives and compares them with the C-2-C and C-4 designations. To the southwest of Square 283 is the C-4 zoning classification beginning on Squares 284 and 248.

	Base C-2-C	DD/C-2-C	Requirements	Base C-4
Height	90 feet	110' on 90' streets		130' on 110' streets
FAR	6.0 Residential 2.0 Other	8.0 + 0.5 w/ Residential	4.5 Residential (minimum) 0.5 Retail (NA to housing)	8.5
Special Incentives		Generation of TDR	Use must be transferred via Combined Lot Mechanism	
Residential Lot Coverage	80%	80%		100%
Recreation Space	15%	15%		5%
Rear Yard	Below 20' height, 15' from center of Alley Above 20' height, 15 from alley curb.	Same as C-2-C		

Table 1.

A. Zoning History

The Zoning Commission undertook a major rezoning of a portion of Downtown, including Square 283 and the surrounding area, in 1990 in the Downtown Development District case (Zoning Commission Case No. 89-25, Zoning Commission Order 681, adopted December 17, 1990 and effective January 18, 1991).

It is important to note that the Housing Priority Areas designated in the DD with their incentives and requirements are falling well short of the number of housing units set as a goal by the Comprehensive Plan (5,400). While a large part of this failure may have been due to the extended down cycle the District faced in the first half of the 1990's, the resurgence in housing interest downtown has coincided with a booming office market. Still, despite having to compete with the office market, there are several significant new housing projects planned for downtown, all of which have received or have asked for some form of incentive or relief to be completed. These include:

- Gallery Place - a mixed-use development partially subsidized by the use of TIF financing.
- Square 406 & 457 - resulting from a Government Services Administration RFP, which wrote down the cost of land.
- Avalon Bay - received extra density and relief from recreation space and retail requirements.

- JBG E Street - Project has applied to be included in the Housing Priority C to receive DD incentives.
- 5th & Massachusetts Apartment - received extra density and relief from recreation space.
- American Housing - a mixed income project receiving HFA financing.

B. Current Rezoning Efforts

In an effort to fulfill the goals for housing in the downtown, the District has undertaken two separate but related efforts to complete the development of the Downtown Development District. First was the Mayor's Downtown Housing Task Force, which looked at the problems facing the development of housing downtown. Second, was the Downtown Action Agenda, which coordinated the findings and recommendations of several task forces into a report with a comprehensive set of recommendations and implementation steps to complete the goals and objectives of the DD.

The Mayor's Task Force investigated the obstacles facing housing downtown and prepared a set of recommendations designed to help housing development overcome those obstacles. Chief of the obstacles is the need for housing to compete for land at prices driven by the office market. The focus of the task force's recommendation was therefore methods by which the playing field could be leveled. In addition, the Office of Planning has submitted other changes as a result of meetings with developers and stakeholders. The recommendation most relevant to this case is as follows:

- Allow greater density in the DD for housing built on streets that permit buildings to reach 130 feet in height. This is based on the fact that housing does not have the same slab-to-slab construction requirements that offices have. New offices typically require 12 to 13 feet between floors for HVAC and telecommunication systems. However, housing development has fewer requirements on the space between floors, therefore more floors (and therefore greater FAR) can be achieved on the same site. It is important to point out that this does address concern of whether this intensity is appropriate for the surrounding area. Questions such as traffic impact and unit quality have yet to be fully reviewed.
- Reduce the recreation space requirement of housing developments in the DD to the nearest functionally equivalent base zone. For instance, Table 1. demonstrates that a DD/C-2-C housing project is very similar housing project in the C-4 zone but outside of the DD Overlay, yet the Zoning Regulations currently require the C-2-C recreation requirement of 15% compared to C-4's 5%. After lot coverage, air and light, and other requirements, 15% of a project in the DD/C-2-C will result in more than one complete floor of recreation space. This greatly reduces the number of possible units and threatens the fiscal feasibility of downtown housing projects.

VII. ANALYSIS

The Applicant is requesting a special exception from Section 411 (Rooftop Structures), variance relief from Subsections 773.4 (Recreation Space), and 776.4 (Closed Court) the discussion for each request is below:

A (1). Special Exceptions Requested

The applicant has requested a special exception from the setback and enclosure requirements of Section 411 Rooftop Structures. In accordance with §3104.1, special exceptions are granted when they *"will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps,..."* The relevant subsections are cited below:

411.3 *All penthouse and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character.*

Sub-Section 411.4 below does permit more than one roof enclosure, but specifies when separate elevator cores are required.

411.4 *When roof levels vary by one (1) or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.*

The powers of the Board of Zoning Adjustment to grant special exceptions on rooftop structures is located in Sub-section 411.11, cited below.

411.11 *Where 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 Board of Zoning Adjustment shall be empowered to approve the location, design, number, and all other aspects of such structure regulated under §§411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing, construction used if not in accordance with §§411.3 and 411.5; 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.*

As referenced Section 411.11 also governs Sub-section 770.6, which states the following:

770.6 *If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:*

a. It shall meet the requirements of §411;

b. It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;

A. (2) Special Exception Analysis

Sub-section 411.11 gives the BZA the authority to determine the "location, design, number and all other aspect..." of rooftop structures. It does so with language covering 1) lot characteristics, 2) prohibitive cost, and 3) intent and purpose of the chapter. This language is comparable to the tests for variances.

The Office of Planning confirms the applicant's statement that the general purpose and intent of Section 411 was to prevent unsightly roof elements that would detract from the city's skyline and to protect light and air. Due to the location of the cores at the center of the Square, there are very few pedestrian views that would be affected by a lack of set backs and multiple structures (see Picture 6.). The project's impact on the city's skyline would therefore be mostly be limited to neighboring buildings at similar heights.

However, Sub-section 411.11 specifically mentions light and air and should therefore be considered more carefully than the city's skyline. OP concurs with the applicant's statement that the western court and the location at the site's center almost eliminates any negative affects on light and air caused by the lack of setback. The occupants along the western face of the American Health Care Association (see Pictures 2 & 4) would be most affected by the height of the project at that point. This is somewhat mitigated by the fact the windows directly on the alley are on the 4th floor and other windows are located in a setback in building visible in the pictures and from the aerial orthograph (Picture 6.). In addition, the American Health Care Association is a commercial use in a commercial district. Locating window at the property line is a risk taken by developer.

With regards to the requirements of 411.3, the Zoning Regulations make specific allowances for multiple rooftop structures when needed by separate elevator cores (411.4 cited above). While the applicant needs the special exception for stair and services cores, the existence of 411.4 suggests that granting a special exception for multiple rooftop structures needed for the stair and service cores would be within the "general purpose and intent of the Zoning Regulations and Map."

B. (1) Variances Requested

The applicant has requested a variance from the recreation space requirements found in 773.3. and the Closed Court requirements found in 776.4. In accordance with Section 3103.2, the Board of Zoning Adjustments may grant variances when:

1. The Property exhibits unique characteristics of size, shape, topographical conditions or other extraordinary or exceptional situation…
2. Strict enforcement would result in exceptional practical difficulties or undue hardship; and
3. Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

773.3 *An area equal to not less than the following percentage of the gross floor area devoted to residential use shall be provided as residential recreation space:*

DISTRICT	PERCENTAGE OF GROSS FLOOR AREA
C-1, C-2-A	20%
C-2-B, C-2-C, C-3-A	15%
C-3-B, C-3-C	10%
C-4, C-5 (PAD)	5%

776.4 *In the case of a closed court for a building, or portion of a building, devoted to residential uses, the minimum area shall be at least twice the square of the width of court based upon the height of court, but not less than three hundred fifty square feet (350 ft^2).*

B. (2) Variance Analysis

Recreation Space:
As noted by the applicant and section VI.B., of this report, the Office of Planning has set down for a public hearing of the Zoning Commission, amendments resulting from suggestions from the Mayor's Task Force on Downtown Housing and the Downtown Action Agenda. This case is a prime example of why amendments to the recreation requirements have been proposed. If the 15% standard were applied to this project, it would result in 17,963 square feet of recreation space or roughly 1.65 FAR.

The applicant is proposing 6,528sf of recreation space. At roughly 1,032 of gross square feet per unit, the difference would mean the loss of 11 leasable units. 48% of the recreation space is provided outdoors by the courts discussed below. While this falls just shy of the 50% requirement of 773.8, the site, as mentioned, benefits from the wide setbacks of L'Enfant's plan for Massachusetts Avenue. Given the unique lot configuration, the permitted extra density of the DD, the opportunity for urban recreation activities, and the open space set back of Massachusetts Avenue, 5% reserved for recreation space is appropriate.

Close Court:
The project as designed proposes a closed court of 1,960.5 square feet, which is 79% of the required minimum of 2,471.75. The court is of sufficient width per the regulations, but due to the irregular angle of the western property boundary the project is unable to meet the required "twice the square of the width of court." It is defined as a closed court due to building on one side and the property boundary on the other. The central concern is the provision of light and air to the court. Currently, the closed court opens to the court of the adjacent property. Therefore light and air would only be impacted should the adjacent property be redeveloped. However, the Massachusetts House apartment building is in the R-5-E zone, which has stricter lot coverage requirements (75%). This makes it unlikely that any redevelopment of the Massachusetts House could harm the light and air of the applicant's project.

C. Other Issues

The Office of Planning feels it is necessary to point out to the Board of Zoning Adjustment that the Applicant has designed windows located along the northern section of the western wall of the building, which abuts the property line. Should the adjacent property be redeveloped such that the project affects the Applicant's building, the Applicant is responsible to make changes to their building to maintain building compliance with code. As expressed in the District of Columbia Register, Vol. 46 - No. 47, dated Friday, November 19, 1999, page 9477, Subsection 705.3.3, such openings "shall not be counted towards natural light, natural ventilation, or smoke control requirements." The regulations go on to state in 705.3.3.7 that a covenant shall be required to "ensure responsibility for the maintenance of those conditions will be conveyed to any future owner of the building." A copy of the register is found in Appendix B.

VIII. COMMUNITY COMMENTS

Community review of the project falls under the jurisdiction of Advisory Neighborhood Commission 2F. After meeting with the ANC, the applicant modified their proposal. Initially the design entailed vehicular entrance to the site from Massachusetts Avenue. In response to community input, in addition to the Office of Planning's, the applicant relocated vehicular access to the site to the L Street side. As seen in Picture 4, L Street is already used for vehicular access by the American Health Care Association building.

Other issues voiced by the community included protection of the Fredrick Douglas mural visible in Picture 3 and the overall height of the project. Members of the community were concerned about the potential for the project to reach 130', however the current height of 110' is considered to be acceptable.

IX. OFFICE OF PLANNING RECOMMENDATIONS

The Office of Planning believes the applicants project meets the test for both special exceptions and variances, and therefore recommends to the BZA that the project be approved. OP reached this conclusion based on the following pieces of evidence.

1. Lot 50 of Square 283 is certainly a unique shape.
2. Strict interpretation of the code would appear to cause a substantial reduction of leaseable square footage and threaten the economic feasibility of project. The long vacant status of the property provides some evidence of this.
3. Due to the surrounding conditions and current design of the project the relief can be granted without substantial detriment to the public good or the integrity of the Zoning Regulations.

The Office of Planning does believe that certain conditions should be placed on the project.

1. The size of the Closed Court shall be permitted for the current height of 110 feet. A change in height shall require a proportional change in the area of the court; therefore the height should not exceed 110.
2. Should the Zoning Commission approve the increase in density permitted for residential projects in the DD, the Office of Planning:
    a. Strongly encourages a portion be dedicated to additional ground floor retail to be provided along Massachusetts Avenue.
    b. Requires a minimum of 5% of the project's total square footage be provided for recreation space.
3. Units with windows affected by Vol. 46 - No. 47, dated Friday, November 19, 1999, page 9477, Subsection 705.3.3 shall not be marketed as 2-bedroom units, but leased or sold as 1-bedroom with dens. This will be reflected in the lease and sale documents.



Picture 1. View of Site Facing Southwest



Picture 2. View of Site Facing Southeast

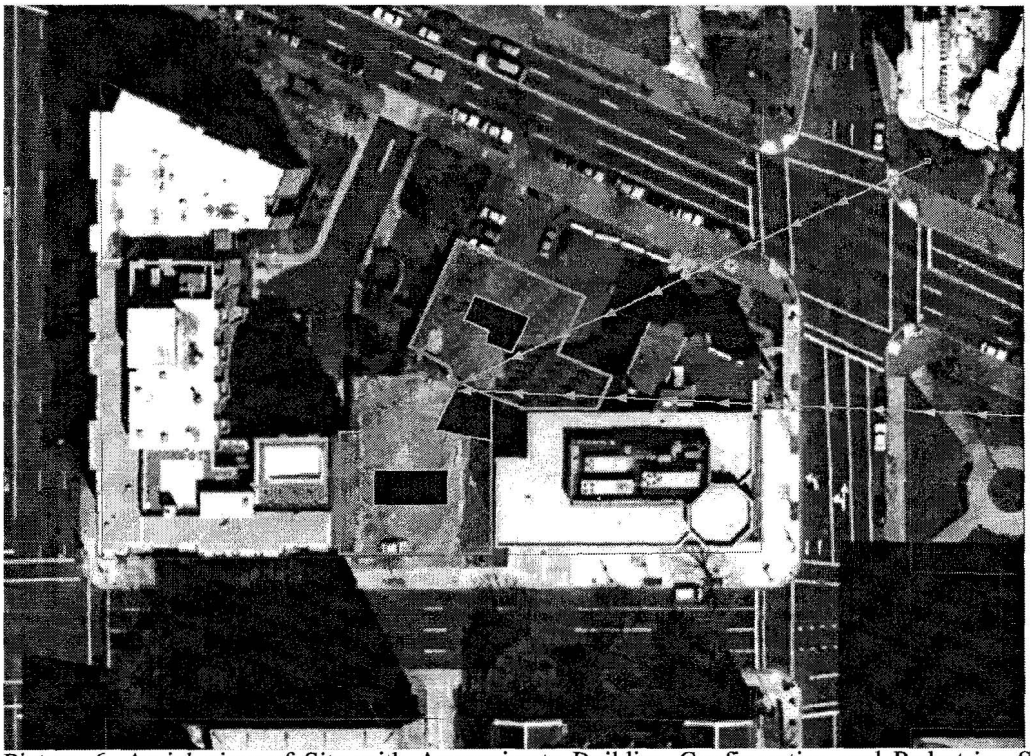


Picture 3. View of Fredrick Douglas Mural


Picture 4. View of Site Facing Northeast



Picture 5. View of Square 283 Facing Northwest



Picture 6. Aerial view of Site with Approximate Building Configuration and Pedestrian Sight Lines of Roof Top Structures.