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Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 16881
400 Massachusetts Avenue, N.W.

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

June 11, 2002

I. Site location and description (see aerial photograph, attached)

A. Location

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

2. Project site consists of lot 51 (formerly lots 40, 41, 47, 48, 803 - 805, 808, 809, 811 - 817, 854, 855, 857 - 863 and 868 – 870) in Square 517

3. Site located three blocks southeast of Mt. Vernon Square

B. Size

1. Total site area is approximately 27,150 square feet

2. Frontage of approximately 335 feet on H Street, 17.5 feet on 4th Street and 330 feet on Massachusetts Avenue, interrupted by the thirty foot width of the former Fire House at 438 Massachusetts Avenue

C. Existing site condition

1. Predominantly vacant and used as a parking lot

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Exhibit No. 30

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District of Columbia
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EXHIBIT NO.30

2. Vacant one-story former restaurant at the corner of 4th Street and Massachusetts Avenue

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

1. New residential buildings under construction or proposed

2. New convention center under construction north of Mount Vernon Square

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. Two story vacant former D.C. Fire House (historic landmark on the D.C. Inventory)

4. Former parking lot to the west fronting on Massachusetts Avenue and 5th and I Streets, currently under construction for a high-rise apartment house

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. Commercial 90 foot 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. High-rise apartment building under construction at 770 5th Street between G and H Streets

7. 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

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 90 feet (§770.1)

C. Density - maximum of 6.0 FAR, with nonresidential uses limited to 2.0 FAR (§771.2)

D. Lot occupancy – 80% permitted (§772.1)

E. Residential recreation space - minimum area equal to 15% of the gross floor area devoted to residential use (§773.3)

F. Rear yard – 15 feet (§774.11)

G. Side yard - not required (§775.5)

H. Parking (§2101.1)

1. For apartment house use, minimum of 1 space for each 4 units

2. For retail use, minimum of one space for each 750 square feet of gross floor area in excess of 3,000 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. No maximum FAR for residential uses

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

c. Residential recreation space requirement reduced to 5%

IV. Proposed development

A. Use – apartment house of approximately 264 units

B. Gross floor area of approximately 329,244 square feet (12.13 FAR)

C. Height

1. Thirteen stories overall

2. Maximum height is 130 feet

3. 1:1 setback above 108.67 feet facing Massachusetts Avenue

4. Wing to the west of the former Fire House is 35.67 feet in height

D. A total of 221 parking spaces on four levels

V. Relief required

A. Variance from the lot occupancy requirement

1. Maximum permitted lot occupancy is 80%

2. Proposed lot occupancy is 97%

3. Variance of 17%

B. Special exception for multiple roof structures and walls of unequal height

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. Exceptional or extraordinary situation or condition

1. Triangular shaped lot, deep at the wider end and shallow at the narrow end

2. Landmark former Fire House is not part of site, creating a "missing tooth" along Massachusetts Avenue and potentially isolating the portion of the site which lies west of the Fire House, if a conforming court was created

3. Design approved by the Commission of Fine Arts required to hold the street line

4. Finished building facades on three frontages, including long frontages on Massachusetts Avenue and H Street

B. Practical difficulty

1. Substantial costs imposed by having to underpin the former Fire House and the Judiciary House apartment building

2. Shape of site causes requirement to add fourth underground parking level to meet market demand, also adding costs

3. Need to achieve maximum density to compete with apartment buildings on nearby sites that are not faced with those conditions

4. Depth of site, presence of Fire House and need to hold street wall result in inefficient layouts for required apartment house construction and inability to meet minimum residential, lot occupancy and court requirements at same time

C. No detriment to the public good

1. Two major streets provide substantial "breathing space" around the building

2. Commission of Fine Arts has approved the design

3. Appearance from the street would be no different with an interior court

4. Interior court would serve no useful purpose

VIII. Standards for the roof structure 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 for roof structure

A. Size of building lot and other conditions

1. Building is long with essentially one double loaded corridor

2. Elevator tower is centrally located, stair towers are located towards end of halls

3. Roof structures are located over the core and the stair towers

4. Size of lot would require substantial connection between the three separate elements

B. Unduly restrictive and unreasonable

1. Would need more than 150 feet of enclosing wall to make single connection

2. Elevator penthouse is 18 feet, 6 inches in height; stair penthouse is only 12 feet

3. Unreasonable to provide single enclosure of equal height, which would require more structure and higher structure on the roof

4. Would have to cover or span around the rooftop pool, compromising usefulness of and reducing area available for outdoor recreation space

C. Impact on light and air of other buildings

1. Roof structures meet all setback requirements

2. Stair penthouse is lower than the maximum permitted

3. Allowing two roof structures has significantly less impact than connecting into one

X. 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))

XI. Conclusions

A. Subject property is affected by exceptional conditions, because of the shape of the site, presence of historic landmark out-parcel and the nature of the proposed building (required residential use)

B. Strict application of the Regulations would result in an interior court at the west end of the building, substantially impacting the residential floor plate, impairing the ability to hold the streetwall and prevent achieving the density necessary to off-set higher costs because of underpinning, parking and site inefficiencies

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

D. The building has two major street frontages, providing the "breathing space" otherwise achieved through a lot occupancy limitation

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

Greystar's *Square 517* and Surrounding Environs, Aerial View from approximately 1995.

