23. Based upon JBG's Pre-Hearing Statement and witness testimony at the hearing, the Mayor's Agent lists the specific provisions from the *Comprehensive Plan*, Title 10, DCMR (1999), applicable to the Project:

Chapter 9 DOWNTOWN PLAN ELEMENT

900 DECLARATION OF MAJOR POLICIES

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 1,800 units. There are housing opportunities north of Pennsylvania Avenue, with the major opportunities between 6th and 9th Streets. . . .

900.8 Museums, theaters, galleries, studios and related restaurants and cafes attract residents and visitors by day and night. Space for the arts in Downtown should be increased:

(a) The general target for public arts space calls for almost doubling existing space, from 470,000 Square feet to 900,000 square feet; and

(b) Cultural and entertainment uses should be actively encouraged to remain and expand, particularly along 7th and E Streets, where the arts are already beginning to flourish.

903 RESIDENTIAL LAND USE (DOWNTOWN)

903.2 The policies established in support of the Downtown residential land use objective are as follows:

(a) Undertake a variety of public and private programs to achieve a major increase in residential units in Downtown; .::

(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.; and

(f) Support the proposed major residential development in the Pennsylvania Quarter area.

906 ARTS, CULTURAL AND ENTERTAINMENT LAND USE (DOWNTOWN)

906.2 The policies established in support of the Downtown arts, cultural and entertainment land use objectives are as follows:

(a) Ensure that arts and entertainment uses become significant components of the land use mix in Downtown;

(b) Encourage the retention and enhancement of arts and cultural facilities and activities in Downtown; and

(c) Encourage the development of additional arts and cultural facilities and activities . . . along E Street to 14th Street.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17030
EXHIBIT NO. 20A2

920 PENNSYLVANIA AVENUE WEST

929.2 The policies established in support of the Pennsylvania Avenue West objective are as follows:

(b) Develop the E Street, N.W. corridor with evening-hour uses in new development . . . to complement present theater activity;

(c) Develop arts and entertainment use in the E Street corridor in new and recycled buildings; and

(d) Promote street level retail frontage which would stimulate movement along Pennsylvania Avenue, N.W., and north into the retail core . . .

930 PENNSYLVANIA QUARTER

930.2 The policies established in support of the Pennsylvania Quarter objectives are as follows:

(a) Support a major residential development in the Pennsylvania Quarter area at a level consistent with the PADC plan (at least one thousand two hundred (1,200) units);

(b) Encourage significant amount of local arts activities . . .

1133 POLICIES IN SUPPORT OF THE DOWNTOWN ARTS DISTRICT OBJECTIVE

1133.1 The policies established in support of the Downtown Arts district objective are as follows:

(a) Develop the E Street, N.W., theater corridor with evening-hours uses in new developments . . .

(e) Encourage the development of an ample and varied supply of spaces for artists, including living, studio, performance and gallery spaces . . .

Ward 2 Plan

1303.10 The Comprehensive Plan designates the Pennsylvania Quarter [formerly Market Square] as a Housing Opportunity Area. A Housing Opportunity Area is one in which the District encourages new or renovated housing through public-private partnerships or other means.

1336.1(a) Implement the adopted policies for the Downtown Arts District with emphasis on the E Street Theater Spine . . .

1327.1(c)(1) Develop a major new urban residential community in the Pennsylvania Quarter area of Downtown (Housing Opportunity Area).

1327.1(c)(2) Retain existing residential development in Downtown and develop new housing in Downtown in the area extending north of Pennsylvania Avenue through Gallery Place, Chinatown and portions of Judiciary Square.

(iii) Social and Other Benefits Having A High Priority for Community Services

24. Based upon the Applicant's Pre-Hearing Statement, witness testimony at the hearing, and written evidence that is part of the record, the Mayor's Agent makes the following additional findings of fact:

a) The Project will provide a variety of significant social and other benefits to the Downtown and the residents of the District of Columbia, including the following:

Preservation-Related

(i) The Project retains those portions of the three (3) contributing buildings that can be seen from the street and which have the most distinguished and important historic and architectural elements.

(ii) The Project is substantially compatible in its 20-foot setback, massing, scale and height with the Pennsylvania Avenue National Historic Site.

(iii) JBG's selection of the massing plan and the 20-foot setback, after carrying out 15 design studies and consultations with HPRB staff, maximizes preservation of the three (3) historic properties, minimizes visibility of the new construction from public space, and allows the required square footage and massing necessary for the Project goals to be reasonably met.

(iv) The new construction will not be visible to a pedestrian in close proximity to the Project.

(v) The new construction is massed in such a way as to minimize its bulk and setback from the restored historic elements of the Project, and is articulated to distinguish it from the retained fabric. As part of the Project, JBG will assist in a variety of ways to preserve, maintain, enliven and protect Booth's Alley.

(vi) In cooperation with the HTC, JBG will permit the HTC to place signage on the back wall of the Project to describe the historical importance of Booth's Alley and provide interpretation of Booth's flight, to coordinate a program to light and maintain Booth's Alley as a clean and safe environment, to investigate and use available, District of Columbia Historic Alley Program assistance for the restoration of Booth's Alley with cobblestone or other historically appropriate paving.

(vii) JBG will work with other developers and owners with a stake in Booth's Alley and the Downtown to devise and implement strategies for its enlivenment and protection, which will also directly benefit the preservation and use of Booth's Alley in other ways, such as providing that the artist studios are accessed from and oriented towards Booth's Alley, making

the artists' activities and studios visible and accessible to visitors to Booth's Alley, attracting cultural/museum/heritage tourism businesses to available retail space in the Project, thereby complementing the preservation uses of Booth's Alley and encouraging the use of the Project's retail space as an attractive means to enter Booth's Alley.

(viii) The Project preserves and restores as much of the three (3) original structures and their context as architecturally and structurally feasible, while still meeting its mixed-use goals in an economically and otherwise reasonable manner.

(ix) JBG's final design and massing are the product of multiple evaluations of a variety of preservation scenarios, from full historic building preservation to complete demolition or retention of as little as 10 feet of the facades and fabric, including HPRB staff, ANC 2C, and the DCPL reviews.

(x) The Project's massing, its "U" shape, its 20-foot setback from the historic facades – all as presented to the HPRB in Applicant's conceptual design review - optimize the achievement of the Project's mixed use objectives while maintaining and restoring critical architectural elements of the three (3) contributing buildings and maximizing the effective setback of the Project to give greater perceived space behind the restored buildings

(xi) The Project continues important first floor retail uses along the commercial E Street corridor in the re-developed historic buildings in compliance with the *Comprehensive Plan*.

(xii) The Project massing is compatible with adjacent office structures; the 20-foot setback provides a massing configuration that will reduce the visibility of the portion of the Project located behind the contributing buildings from most view sheds along E Street; and the Project is not designed to loom over neighboring properties or impair their light and air as a result of its massing and setback and its surrounding building context.

(xiii) JBG will work closely with the DCPL and the HPRB to assure that final Project design and detailing not only enhances the HPRB-accepted 20-foot setback and massing plan for the Project, but also is responsive to the alignment, articulation and fit of the three (3) contributing buildings within the Pennsylvania Avenue National Historic Site.

(xiv) The Project will maintain and enhance the uniform height,

density and design standards typical of similar historic structures in the Pennsylvania Avenue National Historic Site.

Land Planning-Related and Other Benefits

(i) None of the proposed uses in the Project is required under the existing zoning classification; however, each of the Project's uses – residential, ground floor retail and artists' studios – constitutes a high policy priority for downtown development in the E Street corridor under the *Comprehensive Plan* and the Zoning Regulations.

(ii) The Project will provide increased residential space of and population for the Downtown and the District generally, substantially contributing to the achievement of the residential goals of the "Living Downtown."

(iii) Because of its solely private funding, the Project will be the first privately financed and unsubsidized residential project constructed in Downtown since the Downtown Plan was adopted in 1984-85.

(iv) The Project will be within one (1) to four (4) blocks of the five (5) apartment buildings built with assistance from the Pennsylvania Avenue Development Corporation (PADC), thereby effectively extending the emerging Pennsylvania Quarter neighborhood and helping create a "critical mass" of housing as prescribed in *The Comprehensive Plan*.

(v) The Project's ground floor retail uses along E Street would help maintain retail continuity along the 900 block of E Street, which is especially important because of the complete absence of retail uses across the street in the FBI building.

(vi) The artist studios that will face Booth's Alley will help bring pedestrians to and animate it for other active uses.

(vii) Vehicular access to the Project will be from E Street (rather than F and G Streets) in compliance with the Downtown Plan. *See* 11 DCMR, Sec. 1701.4, thereby relieving Booth's Alley from significant vehicular use by Project occupants.

(viii) The residential component of the Project will support Downtown, businesses, retail and entertainment establishments as well as cultural attractions, and will provide pedestrian activity and improved public safety, especially at night.

(ix) The Project will locate its retail and artist studio uses on the ground floor along the E Street theater spine and Booth's Alley in compliance with the Downtown Plan and Downtown Development (DD) District zone.

(x) The OP determined that the Project is in harmony with land use planning objectives for the Downtown and the community, that it demonstrates superior design, and that it provides a significant amount of housing in an area not required to provide housing under the Zoning Regulations, that it includes artist studios at rents below those which could otherwise be charged for retail space in an area of the Downtown which the *Comprehensive Plan* designates for arts use, and that it will lead to special and positive treatment for Booth's Alley to commemorate its historical significance and to improve the prospects that Booth's Alley may develop as a secondary location for retail.

(xi) The Project, with approximately 130 residential units on the Base Site and approximately 160 units on the Expanded Site, will assist the District of Columbia in meeting the *Comprehensive Plan* target of 5,400 housing units south of Massachusetts Avenue.

(xii) The Project preserves a working artist presence that was an important part of the neighborhood for at least 20 years.

(xiii) JBG's commitment to the preservation and maintenance of Booth's Alley and to work cooperatively with the HTC and other stakeholders for preservation of Booth's Alley will bolster heritage tourism in the Downtown.

(xiv) The Project will contribute to the use and growth of the Downtown Arts and Theater Districts, with the provision of a mixed-use residential project in a critical place along the E Street corridor, a significant commercial activity corridor for the Downtown.

(xv) The Project will stimulate economic development in the E Street corridor, thereby increasing tax revenues to the District of Columbia, supporting and creating additional jobs for District residents and businesses, and attracting more tourists, regional residents and business visitors.

(xvi) The Project will put into economically and socially productive use three (3) under-utilized historic buildings in a critical economic development corridor of the Downtown.

High Priority for Community Services

(i) The Project is fully compliant and compatible with, as well as implements, the policies and purposes of the *Comprehensive Plan*, and *Ward 2 Plan*, the DD District and other Zoning Regulations, the "Living Downtown" development goals, the economic and residential development policies for the Downtown and Ward 2, the cultural/arts objectives for the Downtown, and a number of the preservation goals of the *Comprehensive Plan* and *Ward 2 Plan*.

(ii) The Project has the full support of: 1) key members of the Council for the District of Columbia as well as of Executive Branch agencies (Office of Planning); 2) critical downtown community development and housing advocacy organizations; 3) the affected ANC; and 4) a variety of other organizations and individuals with an interest in the downtown

DISCUSSION

Jurisdiction

Administrative issuance 2-54A, dated July 18, 1991, delegated the authority to conduct hearings as the Mayor's Agent for Historic Preservation under sections 5, 9, 12 and 13 of D.C. Law 2-144 (the Act) to the undersigned, through the Director of the Department of Consumer and Regulatory Affairs (DCRA).

Pursuant to D.C. Code, Secs. 5-1004(a) & 5-1006(a), before the Mayor [or the Mayor's Agent] may issue a permit to, respectively, demolish a building in a historic district or to admit to record any subdivision of a property in an historic district, the Mayor shall review the permit application(s) in accordance with the standards and procedures set forth in the respective Section. Section 5-1004(b) mandates that, before the Mayor makes any finding that demolition should be allowed in an historic district, the Mayor shall refer to the HPRB for recommendation all demolition applications (including the Application here) which are not subject to review by the Commission of Fine Arts under the Old Georgetown Act.

Similarly, Sec. 5-1006(b) also mandates that, before the Mayor makes any finding that subdivision should be allowed in an historic district, the Mayor shall refer to the HPRB for recommendation all subdivision applications (including the Application here). Both Secs. 5-1004(b) & 5-1006(b) direct the Mayor to consider any respective recommendation so rendered by the HPRB pursuant to that referral.

The Applications in these cases were referred to the HPRB for recommendation. On April 27, 2000, the HPRB, at a public meeting in regular session, adopted the HPRB Staff report and Recommendation, and determined that the Applications were not consistent with the purposes of the Act.

Legal Standards for Review

Under D.C. Code, Secs. 5-1004(e) & 5-1006(e), "[n]o permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest . . ." Under D.C. Code, Sec. 5-1002(10), "necessary in the public interest" may mean "necessary to allow the construction of a project of special merit." Under D.C. Code, Sec. 5-1002(11), a project of special merit is defined as "a plan . . . having significant benefits to the District or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services." The Applicant has the burden of proving entitlement to a demolition permit (and, by circumstances here, a subdivision permit). *See, e.g., The Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs,* 655 A.2d 865, 869 (D.C. 1995).

Under the "special merit" provision of D.C. Law 2-144, the Council envisioned the Mayor's Agent balancing the special merit of a project with the historic value of the contributing building, because only projects which offer significant benefits to the District of Columbia or to the community can offset the Council's policy in favor of protecting, enhancing the perpetuating use of properties with historical, cultural and aesthetic merit. *See Don't Tear It Down, Inc. v. D.C. Department of Housing and Community Development,* 428 A.2d 369, 373 (D.C. 1981). In this proceeding, JBG must demonstrate by substantial evidence that its Project will provide specific features of land planning or "social or other benefits benefit having a high priority for community services" for it to be considered a project of special merit. Id. The architectural and historical characteristics of the three (3) contributing buildings must be weighed against their societal functions and the significance of their preservation in human terms. *Citizens Committee to Save Historic Rhodes Tavern v. D.C. Department of Housing and Community Development,* 432 A.2d 710, 717 (D.C.), *cert. denied,* 454 U.S. 1054 (1981), *quoting, Young v. Mellon,* 156 Cal. Rptr. 165, 169 (Cal. App. 1979). Whether demolition is reasonably "necessary" to construct a project of "special merit" must be assessed "in the context of whether 'there are viable alternatives to demolition available.'" *Committee of 100 v. District of Columbia Department of Consumer and Regulatory Affairs,* 571 A.2d 195, 202 (D.C. 1990), *citing, Don't Tear It Down,* 428 A.2d at 380.

In short, in a special merit proceeding, the Mayor's Agent must balance the historical value of the particular landmark against the special merit of the proposed project." *Citizens Committee to Save Historic Rhodes Tavern,* 432 A.2d at 716. *See, also, Committee of 100,* 571 A.2d at 200. Moreover, JBG must demonstrate that the Project's benefits have a "high priority" for community service. D.C. Code, Sec. 5-1002(11), since "[f]actors which are common to all

projects are not considered as special merits." Legislative History, Bill 2-367, "The Historic Landmark and Historic District Protection Act of 1978," at 6.

In this case the Applicant maintains that the proposed demolition is necessary to allow the construction of a project of "special merit." The Applicant does not argue that the Project is one of "special merit" on the grounds of exemplary architecture, but that the Project incorporates specific features of land planning and provides social or other benefits having a high priority for community services.

Preliminary Matters regarding Legal Precedent for This Case

Before applying the above legal standards for review to the Applicant's "special merit" claims, the Mayor's Agent will address certain contentions by JBG regarding possible legal precedent that may support or undermine JBG's claims of "special merit."

JBG contends that the evidence in the record clearly shows that: 1) JBG's "special merit" contentions are entirely consistent with the established legal criteria for "special merit;" 2) JBG's grounds for "special merit" are not generic, or otherwise readily applicable to other mixed-use projects in Downtown historic buildings; 3) JBG's legal claims are supported by specific precedent under the Act, *See In re: Square 456, Old Hecht Company Department Store Complex,* HPA No.'s 95-440-448 (1996); and 4) JBG's factual and legal claims for "special merit" are readily distinguishable from the factual and legal claims of "special merit" in other cases in which requests for "special merit" were denied. *See Kalorama Heights; supra; Committee of 100, supra. See, also, In re: The Archdiocese of Washington,* H.P.A. Nos. 99-219, - 220, - 221, - 222, - 224, - 225, - 226, - 226 & - 285 (November 9, 1999).

(a) Supporting "Special Merit" Precedent

As supporting precedent, counsel for JBG cites *In re: Square 456, Old Hecht Company Department Store Complex,* HPA No.'s 95-440 - 95-448 (1996) *(Square 456)* regarding the restoration and mixed-use re-development of the old Hecht Company Department Store complex in Square 456. Counsel maintains that the applicant's contentions and evidence of "special merit" regarding its mixed-use project in Square 456, and the Mayor's Agent's subsequent determination of "special merit," provide substantial support for JBG's "special merit" claims in this case. Counsel maintains that especially relevant in *Square 456* is the Mayor's Agent reasoning and finding, based upon the evidence, that the housing, retail and arts-related components to be located on that specific site were a significant downtown social benefit and feature of land planning with positive community impact. Of particular relevance to this case, and as stated in the Conclusions of Law in *Square 456:*

> "[38.] Specifically the introduction of housing to the site is a significant social benefit and feature of land planning

> because it could serve as a catalyst for similar non-government subsidized housing in the area and provide a critical link between the housing at Market Square [i.e., Penn Quarter] developed by the Pennsylvania Avenue Development Corporation to the south, and housing that exists and is contemplated in Chinatown and the Mount Vernon Square area to the north. Likewise, the arts and retail uses will enhance the city's cultural and commercial elements that are encouraged by the the Comprehensive Plan. . . " *See Square 456* at 10

In light of many similarities in the evidence of, and legal grounds for "special merit" between the Project and the Hecht Company project, *See Square 456* at 5 - 9, counsel contends that the Mayor's Agent decision in *Square 456* supports the granting of "special merit" status to JBG's Project in this case.

Based upon his review of *Square 456*, the Mayor's Agent concurs with JBG's contention that there are certain key similarities regarding the factual settings and "special merit" claims raised by JBG and by the applicant in *Square 456*, especially because of the similar Downtown locations of the two projects, their similar mixed-use nature, and common grounds for claiming "special merit" based on the respective projects' residential and other contributions to the realization of a "Living Downtown." The Mayor's Agent concludes that the decision in *Square 456* supports JBG's claims for "special merit" for its Project.

Other "Special Merit" Precedent

JBG also contends that JBG's Applications and evidence in support of "special merit" are entirely consistent with the legal standards and opinions in three (3) other "special merit" cases, although in those cases, certain claims of "special merit" were subsequently found lacking or insufficient. First, in *Committee of 100 v. District of Columbia Department of Consumer and Regulatory Affairs*, 571 A.2d 195 (D.C. 1990), involving the proposed total demolition of the landmark Woodward Building located on 15th Street, N.W., in the Fifteenth Street Financial District, the developer attempted to justify a special merit claim on the grounds of the provision of 30,000 square feet of undefined residential space on the top two (2) floors of a 12 story office building, provision of 2000 square feet for a daycare center for 57 children, and provision of underground parking.

The developer used the "Living Downtown" sections of the *Comprehensive Plan* as well as the daycare provisions to justify special merit. *See* 571 A.2d at 200 – 201. The District of Columbia Court of Appeals reversed the "special merit" approval by the Mayor's Agent, and found that these "amenities were insufficient to support a special merit claim." *See* 571 A.2d at 201-202.

JBG cites the following distinguishing features of its "special merit" claims from those in *Committee of 100, supra*:

a) JBG's proposal for its housing and mixed use Project was the original ground for its Applications, not a mere after thought or add-on to another primary use as in *Committee of 100.* See 571 A.2d at 203 – 204.

b) JBG is providing substantial evidence to the Mayor's Agent of housing, arts-related, retail, preservation-based and economic amenities and feasibility for its Project, unlike the developer in *Committee of 100. Id.*

c) Evidence in the record shows that JBG's Project is specifically supported by provisions in the "Living Downtown" and other sections of the *Comprehensive Plan*, not on inappropriate or out-of-context sections of the *Comprehensive Plan* as in *Committee of 100.* See 571 A.2d at 201 – 202.

d) Evidence in the record shows that JBG's Project is located in a Downtown commercial corridor that specific provisions of the *Comprehensive Plan* clearly favor for housing and mixed use development, unlike the Woodward Building's location in a designated financial and office district where housing was not prioritized. See 571 A.2d at 202, 203.

e) A number of Woodward Building's amenities such as parking were required by the Zoning Regulations, *See, e.g.*, 571 A.2d at 201, whereas the evidence shows that the housing, retail and arts related amenities of JBG's Project are not required by the Zoning Regulations, and JBG made no separate and distinct claims of "special merit" based on provision of off-street parking.

f) In *Committee of 100*, there were several parties in opposition to the project, including the ANC, See 571 A.2d at 198, unlike this case where there are no parties in opposition, and the ANC and numerous other downtown organizations are strong supporters of JBG's Project.

g) JBG's Project is not a complete demolition office project with a relatively small and undefined housing amenity as the Woodward Building, See 571 A.2d at 201 – 202, but is a partial demolition to permit a residential mixed-use Project with dedicated retail, arts-related and preservation-based amenities.

Second, JBG contends that its case is distinguishable from another housing-based special merit case – *The Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 (D.C. 1995). In *Kalorama Heights*, the developer proposed a complete demolition of a contributing building (a former embassy) on Wyoming Avenue to

develop the site as 12 new luxury condominiums. The developer's special merit claim was based upon the project's: 1) ability to increase tax revenues to the District; 2) increase in the stock of luxury condominiums in the city; and 3) preventing the building from becoming a chancery. See 655 A.2d at 869 & n. 6. The Court of Appeals upheld the Mayor's Agent's decision to deny the developer's application, on the grounds that the developer failed to show any evidence to the Mayor's Agent that: 1) he had considered alternatives to complete demolition, and 2) that his project had social or other benefits to distinguish it from other condominium projects. See 655 A.2d at 874.

JBG cites the following distinguishing features of its case from *Kalorama Heights*, *supra*:

a) Unlike the developer's failure to consider any reasonable alternatives to demolition in *Kalorama Heights*, See 655 A.2d at 870, the evidence here demonstrates that JBG considered 15 demolition and design options, assessed them against Project goals, and chose the demolition and design plans that allowed JBG to meet its Project goals while retaining as much of critical historic fabric of the contributing buildings as possible.

b) The evidence shows that JBG is not predicating its "special merit" claim on the general contribution of housing to the community, as did the developer in *Kalorama Heights*, See 655 A.2d at 869 & n.6, but rather that "special merit" is inextricably related to the Project's site and location on E Street in the Downtown and to the important public interest in providing housing and mixed-uses in the arts-theater district north of Pennsylvania Avenue as expressed in numerous local plans and policies.

c) Unlike the developer in *Kalorama Heights*, See 655 A.2d at 868, JBG's Project has the support of the relevant ANC and has no parties in opposition.

d) Unlike the substantial evidence presented by JBG, the developer in *Kalorama Heights* presented no evidence that its housing proposal met any specific provisions of District of Columbia laws or policies related to zoning or land use development at the location of its proposed development. See 655 A.2d at 869 & n.6.

e) JBG's evidence demonstrates that the benefits of JBG's Project are not directed solely at potential Project occupants as in *Kalorama Heights* See 655 A.2d at 873, but that the Project will provide retail, arts, and preservation-related benefits to the District of Columbia community, especially by its significant

contribution to the Downtown and the arts and entertainment corridor along E Street.

f) The evidence shows that JBG's Project is in the defined "Downtown" and is a matter-of-right use in a medium-height density commercial zone, whereas the *Kalorama Heights* project was well outside downtown, in a residential zone, and required substantial zoning variances. *See* 655 A.2d at 867 & n. 2.

Third and finally, JBG contends that the Mayor's Agent's decision in *In re: The Archdiocese of Washington*, H.P.A. Nos. 99-219, - 220, - 221, - 222, - 224, - 225, - 226, - 226 & - 285 (November 9, 1999) (hereinafter referred to as "*St. Patrick's*"), which is currently on appeal to the District of Columbia Court of Appeals, is important and instructive regarding JBG's Application for several reasons. In *St. Patrick's*, the Catholic Archdiocese of Washington (the Archdiocese) sought to demolish all but the first 20 feet of facades and fabric of seven (7) contributing buildings that it owns which are located in the 900 block of F Street in the Downtown Historic District, and to subdivide 14 record lots into a single lot of record to construct an 11 story, 200,000 square foot, mixed-use commercial building.

The Archdiocese's claim of "special merit" arose from its intended use of ground rents from the commercial building to fund and assist in the renovation and preservation of the historic St. Patrick's Church complex (including the historic Carroll Hall) and to fund and centralize the administration of social and charitable programs of the Archdiocese. *See St. Patrick's* at 1 – 7. The Mayor's Agent rejected the Archdiocesan claims of "special merit" on several grounds, including its failure to present evidence that the demolition plans were the only viable alternative for its project to succeed. *See St. Patrick's* at 14 – 19.

JBG notes the following distinguishing features of its claims and facts from those in *St. Patrick's, supra*:

a) The evidence shows that JBG's commitment to and promotion of the appropriate heritage use of Booth's Alley is not "an off site amenity" whose benefits accrue solely to the Archdiocese and other project occupants as those in *St. Patrick's*, *See St. Patrick's* at 17 – 18, but that Booth's Alley immediately abuts the Project, that it is "public" property, that certain amenities like signage will be placed immediately on or in the Project building, and that the Project's benefits accrue to the District of Columbia community through the Project's contribution to the "Living Downtown," the Pennsylvania Avenue National Historic Site, surrounding properties like the Ford's Theater, and to the local heritage tourism efforts.

b) Unlike the Archdiocese's failure to present any evidence of its project's implementation of important local policies, including provisions of the *Comprehensive Plan*, *See St. Patrick's* at 16 – 17, JBG has presented substantial expert evidence to show how its Project embodies and implements several specific policies of the *Comprehensive Plan*, the Zoning Regulations and the plans for a "Living Downtown."

c) Unlike the project in *St. Patrick's* where the Archdiocese's plans undermined the Downtown Arts District by removing artist studios and theater uses, *See St. Patrick's* at 16, the evidence shows that JBG's Project will provide much-needed artist studios to the Downtown and will enhance the use and development of the arts and theater district along E Street, adjacent streets and Booth's Alley.

d) Unlike the Archdiocese in St. Patrick's, *See St. Patrick's* at 15, the evidence shows that JBG has no responsibility whatsoever for the current or historic physical status and under-utilization of the Project's buildings, but rather that JBG will put the three (3) currently-underused contributing buildings into productive downtown residential, retail and arts-related uses, and will maintain their contribution to the Pennsylvania Avenue National Historic site by retention and restoration of the most historically significant, visible historic elements of the three (3) contributing buildings and preservation efforts for Booth's Alley.

e) Unlike the St. Patrick's project, *See St. Patrick's* at 15 – 16, JBG's expert evidence shows that its Project will have no deleterious physical impacts on neighboring properties, such as deprivation of light and air, and that Project massing and design are predicated on bringing light and air in the use and experience of the historic buildings that would otherwise not be seen or experienced.

f) JBG's evidence shows that its Project will not negatively loom over neighboring low rise historic or other properties, unlike the project in *St. Patrick's*, *see St. Patrick's* at 15, since Project height will not exceed that of the abutting Pepco building, and the current proposed design and massing of the Project are consistent with that of neighboring buildings and others in the Pennsylvania Avenue National Historic Site.

g) JBG's evidence demonstrates that its Project also enjoys widespread public support from a variety of resident and community organizations, unlike the project in *St. Patrick's*. *See St. Patrick's* at 3 – 4.

h) Unlike JBG's substantial evidence that it reviewed and evaluated several alternative demolition scenarios before selecting the partial demolition option that its studies showed would allow for the maximum preservation of the contributing buildings while reasonably accomplishing JBG's Project objectives, the Archdiocese failed to provide any evidence that its demolition plans were the only plans that would make its project economically viable. *See St. Patrick's* at 17.

The Mayor's Agent has carefully reviewed JBG's contentions that the merits of its "special merit" claims are entirely distinguishable from the respective merits of similar claims in *Kalorama Heights*, *supra*, *Committee of 100*, *supra*, and *St. Patrick's*, *supra*., and is persuaded by JBG's contentions that its "special merit" claims are sufficiently distinguishable in factual and legal substance from those cases. Moreover, the Mayor's Agent concludes that, on the basis of the substantial supporting evidence of record for JBG's "special merit" claim, the same legal standards of review in *Kalorama Heights*, *supra*, *Committee of 100*, *supra*, and *St. Patrick's*, *supra*, which are effectively identical to those cited above by the Mayor's Agent, support a determination of JBG's Project as a project of "special merit" under the Act. The Mayor's Agent conclusion is based upon the application of the appropriate legal standards to the evidence.

Application of Legal Standards of Special Merit to JBG's Project

JBG has carried its burden of proof, *See, e.g., Kalorama Heights*, 655 A.2d at 869, in submitting substantial evidence of record to support its claims of "special merit" either for the Project's specific features of land planning or the Project's social or other benefits having a high priority for community services.

Equally important, JBG has submitted uncontested and substantial evidence to show that, following a rigorous design and program review process, it determined that no economically viable alternative exists to its partial demolition plans in order to meet JBG's important, mixed-use goals for its Project. To offset the impact of the partial demolition, JBG has offered substantial evidence that its proposed massing of the Project is not only compatible with the scale, design, context and purpose of Pennsylvania Avenue National Historic Site, but also, at considerable expense, JBG added 10 feet to its fabric and façade preservation efforts at the request of HPRB staff. Moreover, through its commitment to work with the HTC in preservation, maintenance and heritage tourism efforts regarding Booth's Alley, JBG is providing a substantial preservation-based benefit to the Pennsylvania Avenue National Historic Site, the Downtown and the community. Finally, based on substantial evidence provided by expert testimony and reports from preservation and design professionals, as well as from the HPRB staff report, the Project is substantially compatible with its historic district and neighboring buildings.

JBG has also offered substantial evidence, and the Office of Planning has re-affirmed, that the Project's residential, retail, arts and preservation-based

benefits will serve Project occupants, the Project's neighborhood, the Downtown, the Pennsylvania Avenue National Historic Site and the District of Columbia community. Moreover, JBG has shown by substantial evidence a number of unique features of land planning for the Project, not the least of which is that the mixed-use Project is not required by the Zoning Regulations, the Project embodies and implements a significant number of general and specific policies of the *Comprehensive Plan*, Ward 2 Plan and the Zoning Regulations, and the Project will help stimulate the economic development of the Arts and Theater District, the E street commercial corridor, and the Downtown generally.

There is also substantial evidence in the record that the three (3) historic buildings are background, not primary, resources in the nationally important Pennsylvania Avenue National Historic Site. There is ample evidence to demonstrate that JBG's plan for the Project demonstrates its best efforts to maximize the preservation of the three (3) historic structures, while maintaining an economically viable development program. Finally there is significant support for the Project from ANC 2C, the Office of Planning, Downtown Housing Now, the Downtown Cluster of Congregations, and neighboring residents and business people. As required under law, the Mayor's Agent must give "great weight" to the recommendation of the affected ANC.

The Mayor's Agent has reviewed the concerns and opposition of the DCPL, including the belated Motion to Reopen the record to accord DCPL party status, and denied said motion in an Order issued on August 25, 2000. Contrary to the DCPL's position, the Mayor's Agent finds substantial evidence in the record to demonstrate that the Project's benefits are "special," and that the partial demolition is "necessary" to construct the Project. Unlike the developer in *Kalorama Heights, supra*, JBG is not relying on broad policies of *The Comprehensive Plan* to justify its Project's "special merit." It is also clear from JBG's evidence that the parking and tax revenue benefits of the Project are ancillary to its direct residential, retail, arts and preservation-based contributions to its residents, neighborhood, the Downtown and the community generally. Moreover, JBG's comprehensive analysis of options before arriving at an optimal preservation solution, and its further compliance with HPRB staff's request for additional historic building preservation at a substantial cost to JBG's program, demonstrate that the partial demolition is "necessary" to construct the Project.[4]

---

[4] The DCPL's contention regarding the Project's impact on the light and air to the Pepco building ignores the fact that the Project is a matter-of-right project in the DD/C-4 zoning district. The proposed height, bulk, and mass of the Project is being built in compliance with the Zoning Regulations, and the overall density and FAR will be the same for this building, even if it were an office building, which the Applicant could have elected to build as a matter of right, rather than residential and mixed use, as proposed. Moreover, Booth's Alley is a public alley owned by the government. Any historic structures or archeological study regarding Booth's Alley would have to be either done or permitted by the government as property owner. However, such a report would likely be a condition of any government assistance to preserve and maintain Booth's Alley.

Furthermore, the Mayor's Agent notes that the critical element of DCPL's conditional support of the Project is JBG's retention of an additional 10 feet of building fabric. The DCPL has not shown how the satisfaction of this condition would resolve its three (3) major grounds of opposition, i.e., how, for example, a 30-foot setback would positively impact on neighboring properties or how it would resolve the DCPL's concerns about the Project's "special merit" and the necessity of partial demolition. Moreover, JBG has provided substantial evidence of the exceptionally negative impact on the Project of a 30-foot setback. In response to the DCPL's Project design issues, the Mayor's Agent notes that there is substantial evidence in the record that the Project's massing and 20-foot setback provide a building configuration that will reduce the visibility of the portion of the Project located behind the contributing buildings from most view sheds along E Street; and the massing of the Project minimizes its bulk and setback from the restored historic elements of the Project, and is articulated to distinguish it from the retained fabric.

As well, the Mayor's Agent previously addressed several of DCPL's concerns in this case, and likewise addressed those concerns in his Order of August 25, 2000, in which he declined to accord DCPL a belated party status. In revisiting DCPL's concerns independent of having denied DCPL's request for party status, the Mayor's Agent gave consideration to each of the positions taken and raised by DCPL, and is of the opinion that DCPL's position in this matter concerning the housing priority issue, special merit features of this Application, the "combined lot" issue, and other component aspects raised of this case are all without particular merit.

CONCLUSIONS OF LAW

The foregoing having been fully considered, the Mayor's Agent now concludes as follows:

1. The Mayor's Agent has carefully reviewed JBG's contentions that the merits of its "special merit" claims are entirely distinguishable from the respective merits of similar claims in *Kalorama Heights*, *Committee of 100*, and *St. Patrick's*, is persuaded by JBG's contentions, and concludes that its Project is one of "special merit" and sufficiently distinguishable in factual and legal substance from those three (3) above-noted applications and cases.

2. The Mayor's Agent concludes that there is substantial evidence in the record to demonstrate that JBG's Project meets the legal standards for "special merit" under the Act and in case law.

3. In balancing the substantial evidence of the Project's "special merit" against the preservation of the three (3) contributing buildings in the Pennsylvania Avenue National Historic Site, the Mayor's Agent concludes that JBG has shown by substantial evidence that its Project is "necessary in the

public interest as a project of special merit," and, as such, that JBG's partial demolition plans will be "consistent with the purposes of the Act."

4. JBG has shown by substantial evidence that the Project not only reflects important and unique features of land planning, but that the Project will also generate social and other benefits having a high priority for community services. The Mayor's Agent also concludes that the massing plan and estimated gross floor area amounts for the mixed-uses submitted by JBG for its Project are appropriate, and that final design review and approval for the Project will be made by the HPRB.

5. The Mayor's Agent further concludes that there is substantial evidence in the record that the massing, the respective gross floor area estimates for the mixed uses, the land use plans and other evidence submitted by the Applicant at the hearing for construction of its mixed-use Project incorporate such specific features of land planning that would qualify the Project as one of "special merit," as defined by the Act.

6. The Mayor's Agent further concludes that the variety of residential, retail, arts-related and preservation-based benefits of the Project, which the Applicant presented with substantial evidence, constitutes social or other benefits that have a high priority for community services and would qualify the Project as one of "special merit," as defined by the Act.

7. The Applicant, JBG, has sustained its burden of proof in demonstrating that the issuance of the requested partial demolition and subdivision permits for three (3) contributing buildings in the Pennsylvania Avenue National Historic Site is necessary to allow JBG to construct a project of special merit and, as such, would be consistent with the purposes of the Act.

8. Finally the Mayor's Agent concludes, on the basis of the evidence submitted by JBG, that the Project is feasible and that JBG has sufficient resources, financial and otherwise, to assure the completion of this Project.

ORDER

ACCORDINGLY, it is this **12th day of September, 2000:**

ORDERED that JBG's applications for partial demolition of 915, 917 and 919 E Street, N.W., H.P.A. Nos. 00-332, -333, -334, and the petition for subdivision of the three (3) properties located in Square 377 into one (1) lot of record are hereby **GRANTED**, because the proposed partial demolition and subdivision are deemed to be necessary in the public in order to construct a project of special merit, and it is

FURTHER ORDERED that, pursuant to 10 DCMR, Sec. 2523.4, this

Order will take effect fifteen (15) days from the date of its service as evidenced by the following Certificate of Service pursuant to 10 DCMR, Sec. 2503.5(c).

Rohulamin Quander
Administrative Law Judge, D.C., and
Mayor's Agent for Historic Preservation

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September 2000, I mailed or otherwise caused to be delivered by D.C. Government interoffice mail, the foregoing Decision and Order by regular first class mail to the following persons:

JBG, Inc., Applicant
C/o Peter Szegedy-Maszak, Esquire
Arnold & Porter
555 12th Street, N.W., Suite #1100
Washington D.C. 20004-1206

Steve Raiche, Program Manager
DCRA, Historic Preservation Division
941 North Capitol Street, N.E., Suite #2500
Washington, D.C. 20002

Andrea C. Ferster, Esquire
1100 Seventeenth Street, N.W., 10th Floor
Washington, D.C. 20036
Counsel for DCPL

And

Lawrence W. Thomas, Chairman
Advisory Neighborhood Commission, 2C
1200 S Street, N.W., #201
Washington, D.C. 20009

Stacey Washington
Certifying Officer, DCRA/OAD

F

ADVISORY NEIGHBORHOOD COMMISSION 2C
PO Box 26182
Ledroit Park Station
Washington, DC 20001

June 20, 2003

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Application No. 17030
913-919 E Streets, N.W.
Square 377, Lots 37, 42, 806 and 7000

Dear Members of the Board of Zoning Adjustment:

This letter is to advise that Advisory Neighborhood Commission 2C at its regularly scheduled June 4, 2003, public meeting, at which a quorum was present, unanimously voted 4 to 0 to support the application of JBG/JER E Street, L.L.C. for the construction of an apartment house with first floor retail/arts-related uses. The applicant is requesting a special exception from the roof structure setback and one enclosure requirements and a variance from the dimension requirements for residential recreation space.

The ANC finds that compliance with the roof structure requirements is impractical because of operating difficulties and other conditions relating to the building, including preservation of the historic facades, creating a courtyard and roof deck for the required residential recreation space, and creating a workable interior layout, which makes full compliance with the regulations unduly restrictive and unreasonable. Furthermore, the intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired by the structure and the light and air of adjacent buildings are not adversely affected.

Furthermore, due to the configuration of the roof, including the internal courtyard, the historic preservation of the façades and the required placement of the primary penthouse, the roof deck includes areas that cannot comply with the twenty-five foot minimum dimension requirement of Section 773.7. The ANC believes, however, the requested variance relief will not be detrimental to the public good and will not substantially impair the intent, purpose or integrity of the zone plan.

The ANC supports the project as an important addition to the community and requests that the Board grant the special exception and variance relief.

Very truly yours,

Leroy Thorpe, Jr.
Chairman, ANC 2C

WAS1 #1191981 v1

G

Form 135 - Side 1
(Revised 03/15/02)

Case No. _____

ZONING SELF-CERTIFICATION FORM

911 - 919 E ST, NW	377	37,42,806 854 & 7000	DD/C-4	ANC 2C/2C03

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is required from the Board of Zoning Adjustment in this matter pursuant to:

Relief Sought	☐ [illegible]	☐ [illegible]	☐ [illegible]
Pursuant to Subsections		773	411

Pursuant to 11 DCMR §3113.2, the undersigned agent certifies that:
(1) the agent is duly licensed to practice law or architecture in the District of Columbia;
(2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
(3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the Board of Zoning Adjustment.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

Owner's Signature	Owner's Name (Please Print) Porter Dawson — Managing Member 1336 E Street LLC
Agent's Signature	Agent's Name (Please Print) C.R. Dow, Prime Issue, Work Area
Date	Or Application No. DD 002998

OFFICE OF ZONING DETERMINATION
(DCMR Title 11 §3113.2)

☐	Accepted for filing.
☐	Referred to the Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, for determination of proper zoning relief required.
☐	Rejected for failure to comply with the provisions of ☐ DCMR Title 11 §3113.2; or ☐ DCMR Title 11 Zoning Regulations. Explanation _____

Signature _____ Date _____

Zoning Director

441 4th Street, N.W. Ste. 210-S, Washington, D.C. 20001

Side 2

INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on Form 135. All certification forms must be completely filled out (front **and** back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of paper to complete this form.

2. Complete one self-certification form for each application filed. Present this form with the Form 120 Application to the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	21,159 SF	N/A	N/A	21,159 SF	NONE
Lot Width (ft. to the tenth)	133'-2"	N/A	N/A	133'-2"	NONE
Lot Occupancy (building area/lot area)	100%	N/A	100%	100%	NONE
Floor Area Ratio (FAR) (floor area/lot area)	1.8	N/A	SEE 1706.6 & 1706.7	8.6	NONE
Parking Spaces (number)	NONE	NONE	N/A	78	NONE
Loading Berths (number and size in ft.)	NONE	NONE	N/A	1@ 55'-0" DEEP 1@ 20'-0" DEEP	NONE
Front Yard (ft. to the tenth)	NONE	20'-0" HPRB SETBACK	N/A	20'-0" SETBACK PER HPRB	NONE
Rear Yard (ft. to the tenth)	NONE	23'-0" FROM ℄ OF ALLEY	N/A	23'-0" FROM ℄ OF ALLEY	NONE
Side Yard (ft. to the tenth)	NONE	NONE	N/A	NONE	NONE
Court, Open (width by depth in ft.)	NONE	32'-0" DIA.	N/A	37'-10" DIA.	NONE
Court, Closed (width by depth in ft.)	N/A	N/A	N/A	N/A	NONE
Height (ft. to the tenth)	73'-0"	N/A	110'-0"	110'-0"	NONE

H

OUTLINE OF TESTIMONY
THE APPLICANT

I. Introduction

A. Description of the Applicant and The JBG Companies

B. History and Experience of JBG in Development of Washington

II. Background and Description of Project

A. Housing in Downtown

B. Retail and Arts-Related Uses

C. Historic Preservation

III. Special Exception and Variance Relief

A. Relief Necessary to Provide High Quality Development with Historic Preservation

B. Brief Description of Relief Requested

1. Variance Relief from Residential Recreation Space Dimensional Requirement

2. Special Exception Relief for Roof Structures

3. Architects to Provide Detailed Description

IV. Community Support

V. Conclusion

1

OUTLINE OF TESTIMONY
WDG ARCHITECTS, PROJECT ARCHITECTS

I. Introduction

A. Description of WDG Architects

B. History and Experience in Washington

II. Description of Project

A. Description of Area

B. Description of Building Design

C. Compatibility with Surrounding Area

D. Historic Preservation

E. Number and Types of Units

F. Parking and Loading

III. Relief Requested

A. Deviation from the Residential Recreation Space Dimensional Requirement

1. Exceptional Condition or Situation

2. Practical Difficulty

3. No Detriment to Public Good

B. Special Exception Relief Requested

1. Deviation from Roof Structure Requirement of Section 411.4

2. Standard for Special Exception Relief Met

IV. Conclusions

ل

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

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

Annapolis
Atlanta
Bethesda
Boston
Bradenton
Chicago*
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Miami
New York
Northern Virginia
Orlando
Portland
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

International Offices:
Caracas**
Helsinki
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv**
Tokyo

*Holland & Knight LLC
**Representative Office

Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 17030
913-919 E Street, N.W.

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

July 22, 2003

I. Site location and description

A. North side of E Street between 9th and 10th Streets, N.W.

B. Square 377, Lots 37, 42, 806 and 7000

1. Lot 7000 is an air rights lot over 911 E Street (McDonald's)

2. All lots to be combined with Lot 854 into a single record lot

C. Rectangular site

D. Frontage of approximately 133 feet on E Street

E. Land area of approximately 21,159 square feet

F. Improved with:

1. One story fast food restaurants at 911-913 E Street

2. Three story commercial building at 915 E Street

3. Two story commercial building at 917 E Street

4. Three commercial building at 919 E Street

5. The buildings at 915-17-19 are contributing buildings to the Pennsylvania Avenue Historic Site

II. Description of surrounding area (see aerial photo, attached)

A. Part of Downtown area, within the retail core

B. Within the Pennsylvania Avenue National Historic Site

C. To the north:

1. Nine story (approximately 110 feet) Riggs Bank Building at the southwest corner of 9th and F Streets, now converted to a Courtyard by Marriott Hotel of 188 rooms

2. Proposed residential building with ground floor retail at 910-916 F Street

3. Seven story (approximately eighty-five feet) National Union Life Insurance building rehabilitated for use by the American Immigration Lawyers Association

4. Site of Atlantic Building redevelopment, comprising 920-942 F Street

D. To the east

1. Five story building used as the Weschler auction gallery at 905 E Street

2. Ten story office building with first floor retail at 901 E Street

3. National Portrait Gallery/National Museum of American Art on the north side of F Street between 7th and 9th Streets

4. Commercial buildings under redevelopment including the Atlas/LeDroit Buildings on the south side of F Street between 8th and 9th Streets

5. Parking lot on the north side of E Street between 8th and 9th Streets

E. To the south

1. E Street

2. FBI Building

F. To the west

1. Ten story office building at 999 E Street (containing the Hard Rock Cafe on the ground floor)

2. Ford's Theater on the east side of 10th Street between E and F Streets

III. Existing zoning: DD/C-4

A. Uses

1. Office, retail, service, hotel and residential permitted as a matter-of-right

2. In the SHOP subarea of the DD, within the Downtown Arts District

a) All of the leasable space on the ground floor, not less than 0.5 FAR, must be devoted to retail and service uses

b) At least fifty percent of the space must be devoted to arts uses (from §1711)

B. Height

1. Maximum permitted under the Act of 1910 (§1701.7)

2. Since E Street is 90 feet wide, maximum permitted is 110 feet

C. Density

1. Permits a maximum of 8.5 FAR

2. Residential FAR not limited

D. Rear yard - not required (§1707.6)

E. Side yard - not required (§775.4)

F. Parking - not required (§2100.5)

G. Loading - not required (§2200.5)

IV. Proposed development

A. Apartment house of approximately 160 units, with ground floor retail/arts uses

B. Retain and incorporate the buildings at 915-17-19 for a depth of twenty feet

C. Gross floor area:

1. Approximately 177,182 square feet (8.37 FAR) in the new building

2. Approximately 3,829 square feet in McDonald's (0.18 FAR)

D. Twelve stories, 110 feet in height

E. Seventy-eight parking spaces provided

V. Relief required

A. Variance from the dimensional requirements for residential recreation space (§773.7)

1. Required: minimum of 25 feet

2. Proposed: varies, minimum of 5 feet

3. Variance: up to 20 feet

B. Special exception for roof structure setback and multiple enclosures (§411.11)

1. Main elevator penthouse setback:

a) Required: 18.5 feet

b) Provided: 0 feet

2. Stair towers setbacks:

a) Required: 10 feet

b) Provided: 0 feet

3. Multiple enclosures

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. Retention of first twenty feet of three contributing buildings

2. Design and program of apartment house use, resulting in courtyard required for light and air

3. Roof structures required for building service and roof access

B. Practical difficulty

1. Maximum roof area has been provided, in excess of the minimum total required

2. Limiting area of roof which can be counted reduces the amount to below the level otherwise required

C. No detriment to the public good

1. Providing more than minimum residential recreation space

2. Residential use at this location is consistent with goals for Downtown

3. Roof area devoted to residential recreation space totals approximately 5,460 square feet and narrower areas are part of a larger functional whole

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. Operating difficulties

1. Requirement for first floor retail/arts space constrains location of residential core

2. U-shaped residential layout around courtyard has single loaded corridor on the east and west sides

3. Relief required because of preservation induced setbacks at the front and need to accommodate standard roof functions at the rear

4. Roof deck requires two separate means of egress

B. Unduly restrictive and unreasonable

1. Would need to relocate elevators more toward center of site, reducing functionality of floor plans

2. Placing all roof functions in single enclosure would create greater mass on the roof and would destroy the functionality of the roof deck

C. Impact on light and air of other buildings

1. Roof structures are setback approximately more than thirty feet from the edge of the roof facing the street

2. Buildings to the west is setback approximately ten feet from the property line

3. Building to the east is only five stories in height and is on the property line

X. Conclusions

A. Subject property is affected by exceptional conditions, because of the constraints imposed by the contributing buildings, the residential design and program of the building and the requirements of the Zoning Regulations

B. Strict application of the Regulations would cause a practical difficulty for the owner by limiting the area of the roof deck which could be included in residential recreation space

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

D. The special exception can be granted without impairing the intent and purpose of the Regulations because it will result in lass visible mass from the street

E. The application should be granted

N