GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: JLS for Andrew Altman
Director

DATE: June 28, 2004

SUBJECT: BZA Application 17186

APPLICATION
On behalf of Avalon Bay Communities, Inc., and 777 6th Street, LLC, TC MidAtlantic Development, Inc., the Applicant, requests a variance from the rear yard setback requirement, and a special exception for the roof structure location for an office building proposed on property located at 777 6th Street, N.W. (Square 486 Lots 10, 11, 12, 13, 36, 93, 804, 805, 806, 807 & 808). This request is pursuant to Sections 770.6, 774, 411.11, 3103 and 3104 of Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning,

On December 1, 2003, the Board of Zoning Adjustment approved Application No. 17078 granting a special exception for the roof structure on a ten-story office building planned at this location. The instant application seeks to modify this approval, and obtain addition relief from the Zoning Regulations necessitated by retention of the existing row building previously planned for demolition.

SUMMARY RECOMMENDATION
The Office of Planning recommends approval of the variance to reduce the required rear yard setback from 15 to 0 feet, and a special exception to allow the roof structure to be located adjacent to the eastern building wall.

SITE AND AREA DESCRIPTION
Eleven contiguous lots that compose this site occupy the northwest quadrant of Square 486, immediately adjacent to the intersection of 6th and H Streets, N.W. The total 0.44-acre (19,124 square feet) bounded to the east by an alley 16.75 feet wide extending south from H Street, and to the south by an alley 30 feet wide extending east from H Street. A commercial parking operation occupies 10 of these lots. The southernmost lot at 719 6th Street, N.W., is developed with Hockemeyer's Hall, a vacant four-story row building.

Development nearby consists mostly of 2-3 story mixed-use residential buildings with ground floor retail to the north across H Street, and 3-9 story commercial and residential buildings to the south across the alley from 6th Street, N.W. An 11-story Red Roof Inn stands to the east across

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the alley extending from H Street. Note that the hotel is set back approximately 15 feet from the alley to provide perpendicular parking spaces and a sidewalk. To the west across 6th Street, N.W., are 2-5 story commercial buildings. The site and most surroundings properties are in Community Business Center (C-2-C) and Downtown Development Overlay (DD) zone districts (refer to Exhibit 1). Properties west of 6th Street are in Central Business (C-4) and Downtown Development Overlay zone districts. Referenced properties are also located in the Chinatown area of Downtown and are subject to Chinatown Design Review procedures.

APPLICANT'S PROPOSAL

Subsequent to the previous special exception approval, The District of Columbia Preservation League (DCPL) filed an application with the Historic Preservation Office requesting historic landmark status for Hockemeyer's Hall (circa 1888). The application notes the building's significance as "one of the few remaining upper-class Victorian houses in the 'old downtown' section ..." of the District, and the last example of halls that "once were the most important forums for Washington's public life." Applicant negotiations with DCPL to avoid such designation resulted in modified construction plans that incorporate the existing Hall. HPRB action on the DCPL application is still pending.

The Applicant explained the modified proposal consists of an 11-story office building with approximately 203,000 square feet of gross floor area including 3,000 square feet in Hokemeyer's Hall, and reduces the ground floor area devoted to preferred arts and retail uses from 12,000 to 9,200 square feet. Other changes include:

- a portion of the upper office floors and the roof level would extend further south to the alley across Hockemeyer's Hall instead of setting back 20 feet; and
- reducing the size of the rooftop penthouse and shifting it further south.

The penthouse would continue to be 18.5 feet in height; contain mechanical equipment, an elevator and pair of stairs; and be located adjacent to the eastern exterior building wall.

EXISTING ZONING AND RELIEF REQUESTED

The subject property is zoned C-2-C/DD. Section 774.1 of the Zoning Regulations generally requires a *minimum rear-yard setback of 15 feet*, however subsequent sections also state:

"774.7 In a C-1, C-2, or C-3-A district, *where a lot* upon which a building or other structure is located *abuts an alley, the rear yard*, as required by §§ 774.1 through 774.6, *may be measured as follows*:

(a) For that portion of the structure *below a horizontal plane twenty feet (20 ft.) above the mean finished grade at the middle of the rear of the structure from the center line of the alley* to the rear wall of the portion; and
(b) For that portion of the structure *above the horizontal plane described in § 774.7 (a), the depth of rear yard shah be measured from the rear lot line to the rear wall of that portion immediately above the plane*."

Hockemeyer's Hall predates current Zoning Regulations, and is nonconforming because it does not meet the referenced rear yard requirement. Rear walls on all four floors align with the western property boundary along the alley extending south from H Street. The existing building cannot meet the required rear yard setbacks because the centerline of the 16.75-foot wide alley centerline is less than 9 feet away from the rear wall, and the upper floors abut the alley. Incorporating this building into the proposed development would shift the rear property line to the Hall's southern façade that abuts the alley extending east from 6th Street. Because this alley is 30 feet wide, the proposed development would provide the required 15-foot setback from the alley centerline. However, the required setback above the 20-foot elevation would not be provided because all upper floors of the existing Hall, and proposed construction, extend to the alley.

The regulations also include the following provisions for penthouse structures in commercial districts:

"770.6 If housing for mechanical equipment or 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; …*
(c) It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing."

"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, as a special exception under § 3104, 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."

The penthouse would continue to be located against the eastern building wall, and not be set back a distance equal to its height. It would, however, become smaller and move further south along this frontage than in the previous plan.

This application therefore requires BZA approval of a variance and special exception, respectively, for an expanded building plan that does not provide the required rear yard setback above the 20-foot plane above grade, and for changes in the penthouse location.

ANALYSIS
Section 3103.2 grants the Board of Zoning Appeals (BZA) the power to grant variances from regulations set forth under the Zoning Act "[w]here by reason of exceptional narrowness, shallowness or shape of a piece of property at the time of the original adoption of the regulations, or other *extraordinary or exceptional situation* or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§ 5-413 to 5-432 (1981) would result in peculiar and extraordinary 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; Provided the relief can be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

This request is for an "area" variance requiring circumstances surrounding this application to be "unique" such that the usual application of the referenced regulations would result in "peculiar and extraordinary practical difficulties." This variance from Section 774.2 (b) would reduce the required rear yard setback above a horizontal plane 20 feet above grade to 0 feet.

Compliance with Section 3103.2:
Consistent with Section 3103.2 of the Zoning Regulations, the Preliminary Statement of the Applicant includes the following justifications for granting the requested variance:

- Extraordinary or exception conditions: This proposal previously met the Zoning Regulations, in part, by demolishing Hockermeyer's Hall. As explained in the submitted Preliminary Statement of Compliance with Burden of Proof submitted with this application, the Hall was immediately granted landmark protection upon submittal of DCPL's application to allow HPRB time to consider the application's merits. Thus, the Applicant was prevented from securing permits necessary to proceed with previously approved construction. If the application were to move forward, HPO staff indicates that they would support designation. Final local landmark designation would make demolition more difficult because Mayor's Agent review and approval would be required.

- Peculiar and Extraordinary Practical Difficulties: The result of the DCPL negotiations is that the Hall exterior must remain largely intact even though it would be incorporated into the larger development. Thus the south facade and upper floor plates of the Hall abutting the (new) rear property line and alley *cannot be altered* to meet the requirement of Section 774.7 (b).

Based on this information, Staff concurs that these circumstances constitute an extraordinary and exception condition that creates a peculiar practical difficulty, and thinks this variance can be granted without impairing the intent, purpose and integrity of the zone map as embodies in the Zoning Regulations and Map.

Compliance with Section 3104.1:
Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "to grant special exceptions where in the judgment of the Board, those special exceptions 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 referenced special exception, to allow the penthouse to be located less than a distance "equal to its height" from the eastern building wall, is subject to the provisions of Section 411.11.

Compliance with Section 411.11
The Applicant indicates in the Preliminary Statement, "The (proposed) placement of the roof structure is the direct result of the small depth of the building lot, measuring only 85 feet." Placement of the 30-foot wide penthouse in the middle of the building "could not readily be accommodated within the column grid anticipated without negatively impacting the functionality of the structure." It would also "... force relocation of the elevator and facilities core to the center of the building footprint, significantly compromising the layout of the various floors for multi-tenant use." During conversations concerning the previous special exception application, the Applicant further explained the importance of providing:

- a formal lobby and grand hall to the principal elevator core;
- as much of the retail space as possible along the 6th and H Street frontages, and away from the alley; and
- as much continuous office space as possible on the upper floors, also primarily along busy street frontages, to be flexible to future tenant needs.

The Statement concludes, "The roof structure would be setback from the edges of the building along fronting along 6th and H Streets, thus insuring no visual impact on the skyline of vistas of those streets". With respect to the Red Roof Inn east of the alley from H Street, the building most impacted by this proposal, "any impact of the proposed building roof structure (placement) on light and air to the hotel will be negligible."

Staff agrees the modified penthouse location "would not affect ... adversely" the air and light of the neighboring hotel due to the intervening alley 16.75 feet wide, and the hotel being further set back a distance nearly equal to the alley width. OP concurs with Applicants' explanation of the potential operational difficulties, and the anticipated impacts of this proposal on adjacent properties.

Compliance with Section 3104.1:
Based on the findings under Section 411.11, granting the requested relief would be in harmony with the general purpose and intent of the Zoning Regulations, and Zoning Map, and proposed changes will not tend to affect adversely the use of the neighboring properties.

COMPREHENSIVE PLAN
The Comprehensive Plan Generalized Land Use Map designates this area for a mixture of High Density commercial development including employment, retail, office, cultural and entertainment centers, and High Density residential development with high-rise apartment buildings as predominant uses.

The Generalized Land Use Policy Map of the Plan includes the subject property in the Chinatown Special Treatment Area. Policies established for this treatment area under Section 1126.2 include:

"(a) Retain and enhance Chinatown as a thriving, mixed use Downtown community, including substantial housing with community and cultural facilities, street-level retail uses with related wholesale operations, supporting office and professional uses, and hotels; ..."

Based on this information, this proposal is not inconsistent with the Comprehensive Plan.

COMMUNITY COMMENTS
Advisory Neighborhood Commission (ANC) 6C reviewed this application during a "duly-noticed" meeting on June 9, 2004, and unanimously voted to support this request pending results of the DCPL negotiations.

The proposed office building has undergone the required Chinatown Design Review, including multiple reviews by the Chinatown Design Review Subcommittee and by the full Chinatown Steering Committee. Chinatown design features of this project (designated Application CDR 03-16) include elements of the building façade including a tower at the corner of Sixth and H Streets, N.W., streetscape elements and a general signage concept incorporating Chinese calligraphy. Specific signage will be reviewed when the building is completed and retail tenants lease ground floor space. The Chinatown Steering Committee voted to recommend to the Office of Planning that the Chinatown design features of the building are approved at their monthly meeting on April 5, 2004, subject to requested revisions of the tower feature to further accent its Chinese related design.

Since the April 5 meeting, the Applicant proposed changes to the south end of the new building to incorporate Hockemeyer's Hall. These changes will not affect referenced Chinatown design features of the new construction.

RECOMMENDATION
The Office of Planning recommends approval of a variance to reduce the required rear yard setback from 15 to 0 feet, and a special exception to allow the roof structure to be located adjacent to the eastern building wall.

AA/afj

Attachments:

Exhibit 1 Aerial Including Zoning
Exhibit 2 Surveyor's Plat (edited to show previous proposal)
Exhibit 3 Surveyor's Plat (edited to show current proposal)

Exhibit 1



BZA Application No. 17078
777 6th Street NW

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Feet
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★ ★ ★ **Government of the District of Columbia**
Anthony A. Williams, Mayor

Office of Planning ~ October 21, 2003

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

- Owner Points
- Street Centerlines
- Property Squares

Exhibit 2

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., August 27, 2003

Plat for Building Permit of SQUARE 486 LOTS 10;11,12,13,804,805,806,807,808,36

Scale: 1 inch = 30 feet Recorded In Book 30 Page 110
REC. 2 Page 486

Receipt No. 06606 MICROFILM

Furnished to: FREDA HOBAR

Surveyor, D.C.

By: L.M.A. ✓TJ

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation: and it is further certified and agreed that accessible parking area wi required by the Zoning Regulations will be reserved in accordance with the Zo Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

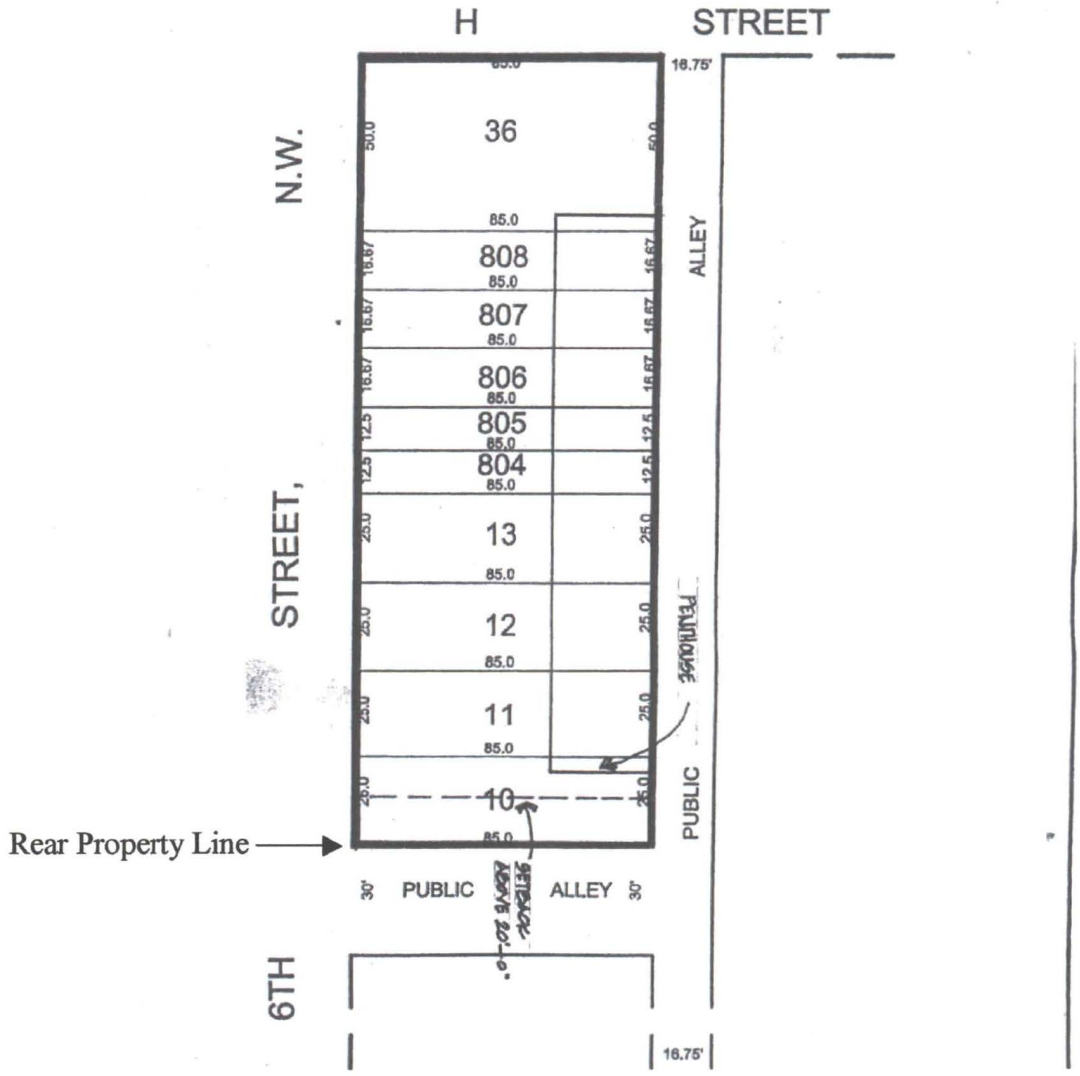


Exhibit 3

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., August 27, 2003

Plat for Building Permit of SQUARE 486 LOTS 10,11,12,13,804,805,806,807,808,36

Scale: 1 Inch = 30 feet Recorded in Book 30 Page 110
REC. 2 Page 486
Receipt No. 06608 MICROFILM

Furnished to: FREDA HOBAR

Surveyor, D.C.

By: L.M.A. VTJ

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