ANC 6B

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October 5, 2004

Board of Zoning Adjustment
DC Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001

Re: BZA Case #17224
JPI – Jenkins Row

Dear Board Members:

At its regularly scheduled and properly noticed meeting on September 14, 2004, ANC 6B voted X-0-0 (6 being a quorum for the conduct of business) to support the request by JPI variance from the lot occupancy requirement (section 772) and from the 15% residential recreation space requirement (section 773) for their development of a 5-story mixed-use building at Pennsylvania and Potomac Ave (BZA Case # 17224).

First of all, the ANC is extremely pleased that the project now includes a large grocery store. The inclusion of such retail at this space has been a neighborhood goal for many years and the developer is to be commended to listening to and acting upon the neighborhoods' desires.

The request for the variance from the lot occupancy requirements stems directly from the decision to include the grocery store. Under zoning regulations, 100% lot occupancy is allowed for a commercial building in this C-2-B zone and 80% lot occupancy for residential buildings. As proposed, the first floor of the building will contain the grocery store, other retail, and the lobby (and incidental space) for the residential portion of the building – and a small residential space in existing buildings that will be incorporated into the building. The upper floors will contain the residential units. In essence, the building is a commercial building on the first floor and a residential building on the remaining floors. The residential floors will surround a courtyard and occupy a footprint of 72% lot occupancy. The commercial ground-level first floor will not include the courtyard, as a matter of necessity to accommodate the grocery store, and will occupy a footprint of 96% lot occupancy.

Thus, if the building were treated as two separate buildings – a one story commercial building and a 4 story residential building – each building would satisfy the

BZA
Case No. 17224
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO. 17224
EXHIBIT NO. 26

The second variance is for the residential recreation space. Under the current requirements, 40,131 sq ft of recreational space is required – 20,075 of which must be outdoors. The applicant proposes 22,550 sq. ft, of which approximately 17,800 sq ft would be outdoors.

The test for zoning relief in the form of a variance is threefold: extraordinary or exceptional situation or condition; hardship or practical difficulty; and that the relief does not create harm to the public good or the zoning plan.

ANC 6B believes that the proposal meets the test for a variance.

On the lot occupancy issue, the developer finds themselves in an extraordinary situation due to their attempt to meet neighbor needs and desires for additional retail at this location. Had the developer simply gone ahead with a residential building, as originally proposed as is their right under law, the lot occupancy issue would never have arisen. As everyone is aware, the neighborhood has long and vociferously argued the importance of this site for retail as well as residential use. We have consistently pointed out that this site is the key to the revitalization of the neighborhood – and without a retail/residential component, further development and regeneration of the neighborhood would be harmed. Thus, it is neighborhood's needs that have placed the developer in an extraordinary situation.

In addition, each portion of the building – commercial and residential – separately complies with the requirements under section 772. An extraordinary situation arises from the combination of the two uses in one building.

The application also meets the tests of practical difficulty and hardship. Inability to locate a grocery story on the site if the 80% lot occupancy requirement is strictly imposed would create a practical difficulty for the developer and a hardship for the neighborhood.

ANC 6B also believes that the provision of over 22,000 sq ft of recreation space is sufficient, especially in the amount of outdoor space provided, and that the shape of the property precludes the inclusion of more recreational space without the lose of either residential or retail space, to the financial hardship of the applicant and the detriment of the neighborhood. Thus, ANC 6B believes that the application meets the variance tests.

In the case of waiving either 772 or 773, ANC 6B believe that no harm will come to the public good or to the integrity and the goals of the zone plan. In fact, we would argue that not granting the variances will cause harm to public good and to the zoning plan. The proposed development is exactly the type of mixed-used development that the neighborhood needs and that the zoning plan calls for.

On a technical note, we note that both sections 772 and 773 pertain to building that are "devoted" to residential uses. Under the section 199.2, the term "devote" has the meaning as described in *Webster's Unabridged Dictionary.* According to Webster's Unabridged, "devoted" means "dedicated" and "to give over or direct (as time, money, or effort) to a cause, enterprise, or activity." As described in Merriam-Webster's Pocket Dictionary, "devote" means "to give up to wholly or chiefly". One can question whether a building that has almost 1/4 of its floor space and over 1/3 of its parking spaces used for commercial purposes is "wholly or chiefly" a residential building. We believe that this is clearly mixed-use building and therefore the proposed development clearly meets the spirit of zoning law, and that a strict interpretation of sections 772 and 773 should not apply.

The purpose of the BZA process is to insure that the letter of the law does not constrain or conflict with the spirit of the law. Thus, the ANC support the request for variances from section 772 and 773.

Sincerely,

Julie Olson
Chairperson