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BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Application of the Washington Metropolitan Area Transit Authority For Three Special Exceptions to Allow Construction of An Office Building At the Benning Road Metrorail Station

February 9, 2005

I. Nature of Relief Sought

This is an application for special exception relief pursuant to § 3104 of the Zoning Regulations to allow construction of a new office building at 45th Street and Benning Road, N.E., (the "Property"). The following relief is being requested: (1) a special exception to reduce the number of required parking spaces (§ 2107); (2) a special exception to authorize accessory parking in a residential zone (§ 214); and (3) a special exception to deviate from the roof structure setback requirement (§§ 411.11, 770.6). The Property is zoned C-3-A, which is a medium-density commercial zone that allows a wide variety of commercial uses, including office, retail, service and hotel uses, as well as residential uses. The proposed development is a five-story, 37,806 square foot office building at the Benning Road Metrorail station.

II. Jurisdiction of the Board of Zoning Adjustment

The Board of Zoning Adjustment has jurisdiction to grant the relief requested pursuant to §§ 3104 of the Zoning Regulations.

III. The Applicant

The property owner and applicant is the Washington Metropolitan Area Transit Authority ("WMATA," the "Applicant"). WMATA, of course, owns and operates the region's rapid transit system, including Metrorail and Metrobus. WMATA included the parcel at the Benning Road Metrorail station as one of a number of Joint Development offerings in recent years. The goal of Joint Development is to secure compact developments at Metrorail stations that will help carry out the *Comprehensive Plan for the National Capital* and that will also provide efficient relationships between land use patterns and rapid transit service. The specific developments are intended to be suitable to Metrorail station locations and to increase Metrorail ridership as well.

BZA
Case No. 17304
Exhibit No. 4

Board of Zoning Adjustment
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The principal developer is Benning 45 LLC, a newly formed affiliate of The Jenco Group. The Marshall Heights Community Development Organization ("MHCDO") is also a member of the Benning 45 LLC. The architect is Shalom Baranes Associates, and the sole tenant of the building will be the District of Columbia Court Services and Offender Supervision Agency ("CSOSA").

Benning 45 LLC will purchase the site from WMATA, subject to WMATA's easements for operation and maintenance of the station and its facilities. The Jenco Group has extensive experience in the Washington Metropolitan area retail and commercial real estate market. Founded in 1980, Jenco has been an innovator in the redevelopment of older shopping centers and properties. Jenco has developed in excess of 1,250,000 square feet of urban real estate projects. Jenco has successfully completed joint development projects with WMATA at the Courthouse Metrorail Station in Arlington, Virginia and the U Street-Cardozo Metrorail Station at 13th and U Streets, N.W. Several of Jenco's developments include leases to District of Columbia agencies as well as private tenants.

The MHCDO has been a partner with Jenco since 1985. Together they have been the single largest commercial developer in Ward 7, having developed over 250,000 square feet of projects including the East River Park Shopping Center, Fort Davis Shopping Center and the John Wilson Community Center.

IV. The Property, Surrounding Area and Zoning

The Property is located on the site of the Benning Road Metrorail station, bounded by Central Avenue on the south, Benning Road and 45th Street on the west and 46th Street on the east. The site consists of two parcels separated by a public alley.[1] Parcel 1 consists of approximately 34,053 square feet of land, inclusive of land expected to be transferred from the District to WMATA, and is zoned C-3-A. This parcel includes the station entrances and all other Metrorail facilities. The Metrorail station site is improved with the entrance platform, an elevator and a set of escalators that lead down to the Metrorail train platforms. Also on-site are a chiller plant, vent shafts, and a Kiss and Ride area with six spaces. The topography slopes from south to north by approximately seven feet.[2]

Parcel 2 contains approximately 5,523 square feet of land and is zoned R-2 (single-family, detached and semi-detached dwellings). It is a rectangular property located immediately to the east of the Metro station at the intersection of Central Avenue and 46th Street, N.E. Parcel 2 will be used for surface parking accessory to the office building, if approved as a special exception in this application.

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[1] See the Survey of the Property, attached as *Exhibit A*.

[2] See the "Neighborhood Context Map" in *Exhibit B,* the "Zoning Map" in *Exhibit C* and the photographs of the site on Sheets A-09 and A-10 of the Project Plans attached as *Exhibit E*.

The Property includes Square 5138, part of Lots 84-87 and 45th Street realignment; all of Lots 140, 829, 83 and 126; and Square 5139, Part of Lot 806. Lots 83 and 126 in Square 5138 are zoned R-2. The remainder of the Property is zoned C-3-A.

Within the C-3-A District surrounding Metro and the Benning Road/East Capitol Street major intersection, the principal commercial activities are moderate scale retail establishments including restaurants such as Denny's, Popeye's, service retail such as 7-11 and Foot Locker, as well as several gasoline service stations.

To the east of 44th Street and Benning Road the existing residential zoning is R-5-A, a low-density apartment house zone that typically includes a mix of lower density residential building types as well as apartments. In this area the predominant development pattern is garden apartments, including the large Fort Chaplin Park Apartment complex with 430 units. In the area zoned R-2 semi-detached dwellings are the predominant use, together with scattered detached dwellings.

The Benning Road Metrorail Station is located in the Central Northeast and Capitol View neighborhoods, where there are increasing signs of private investment. Development activity includes new and renovated housing units and the reopening of previously boarded up stores along East Capitol Street and Benning Road. A significant recent development is the Unity Health Center adjacent to the station. The Benning Road station is on Metro's Blue Line, 17 minutes travel time from Downtown. Metrobus service is provided by a number of routes: 96, 97, E32, S51, U5, U6, U8, W4 and W54.

V. The Project

The proposed five-story office building will have approximately 37,806 square feet of gross floor area ("g.f.a.") on Parcel 1, which is zoned C-3-A and has 33,924 s.f. of land area. This results in a floor area ratio of 1.11 FAR, which is well within the 2.5 FAR of commercial development allowed in the C-3-A District. The proposed height of 65 feet also complies with the matter-of-right height limit of 65 feet.[3]

The footprint of the building will be approximately 7,500 square feet. The site plan also accommodates 15 parking spaces (including 2 handicapped spaces) accessed via a 24-foot-wide driveway from Benning Road, N.E. In addition, 13 spaces are located on the rectangular, R-2-zoned property at the corner of 44th Street and Central Avenue, N.E. Thus, a total of 28 parking spaces are provided, some of which are stacked spaces. The six existing drop-off ("Kiss-and-Ride") spaces will be relocated to the east of the proposed office building and immediately north of the Metro escalators. The site will be landscaped as indicated on the plans.

The project is being developed for, and will be leased in its entirety by the D.C. Court Services and Offender Supervision Agency ("CSOSA"). The CSOSA Community

[3] See the Project Plans attached as *Exhibit E.*

Supervision Services Division constitutes the probation and parole system for adult offenders in the District of Columbia. It provides a range of case management and related supervision services. CSOSA is locating facilities throughout the City to improve supervision of offenders in the community. The principal CSOSA occupants are Community Supervision Officers, who are unarmed Federal Law Enforcement Officers. The location of this site is extremely attractive to CSOSA, as this facility is intended to serve primarily residents of Ward 7. The project demonstrates the agency's commitment to the community and to transit-oriented growth, and many of the agency's employees will use Metrorail and Metrobus for commuting. CSOSA will bring approximately 90 professional employees to the site, and approximately 500 clients per day will visit the site. This represents significant new daytime population and activity in an under-developed commercial corridor, activity that will benefit local businesses.

VI. Description of Zoning Relief Requested

Three special exceptions are requested for the project, as follows:

- Pursuant to § 2107 of the Zoning Regulations, a special exception to reduce the parking requirement for the project from 61 required spaces to 28 provided;
- Pursuant to § 214 of the Zoning Regulations, a special exception to allow off-site accessory parking spaces on Parcel 2, which is zoned R-2; and
- A special exception pursuant to § 411.11 to deviate from the roof structure setback requirements.

A. Special Exception to Reduce Parking Provided at a Metrorail Station- § 2107

The Applicant requests a reduction in the parking requirements from 61 required spaces to 28 provided spaces. The parking requirement calculation is 38,500 gross square feet of office space, minus 2,000 g.f.a. exclusion by regulation (=36,500) divided by 600 based on the requirement for one parking space for each 600 square feet of general office space (§ 2100.1) for a requirement of 61 spaces.

Section 2107 authorizes the BZA to reduce or eliminate the amount of required parking spaces for nonresidential buildings or structures located outside the Central Employment Area where the building has a direct connection to a Metrorail station. Section 2107 does not define what is meant by a "direct connection" (i.e., whether there has to be a physical link between the Metro escalators or station and the project or whether it is sufficient for the project site to be directly linked to the Metro station above grade). The Applicant notes, however, that the Board, in Order No. 16868 approving a similar office development at the U Street-Cardozo Metrorail Station, determined that a connection had been provided by dint of the office building being on the Metrorail station site. The instant application is the same situation – a building on the Metrorail site itself.

The Property is unique, in that it is improved with Metrorail facilities above and below grade, including rail lines and platforms within the shell of the tunnel, escalators, an elevator, a chiller plant, vent shafts with surface grates and a drop-off area with 6 parking spaces. In addition, the Metrorail facilities are encumbered with easements that preclude the construction of any physical improvements (i.e., connections) around the escalators or below-grade excavation for parking. The result is that the proposed office building is situated on virtually the only part of the site where it is physically feasible to construct the building. Because of the underground facilities, construction of a parking garage beneath the building is clearly infeasible. The presence of the Metrorail facilities makes it virtually impossible to provide the required number of parking spaces.

In addition to a Metro connection, Section 2107 requires evidence that the parking spaces normally required are not necessary to serve the use located in the building or structure. In determining whether the parking spaces are necessary, the Board is directed to give consideration to the following criteria set forth in Section 2107.2:

(1) The nature and location of the building or structure and the nature and location of the connection to Metrorail.

The building will be located immediately adjacent to the Benning Road Metrorail station and at a location on arterial streets well served by a number of Metrobus lines. Although not complying with the required number of spaces, a substantial number (28) of spaces are provided. It is the intent of § 2107 that fewer spaces may be provided because of immediate Metrorail access, the desirability of increasing Metrorail ridership by means of development adjacent to stations and the impossibility of constructing parking garages underground in such locations. The nature and location of the connection have been addressed immediately above.

(2) The maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time.

CSOSA employs approximately 90 persons, and approximately 500 clients per day will come to the building. Based on the WMATA Development-Related Ridership Survey of December 1989, it is estimated that the proposed development will attract 510 new person trips per day at the Benning Road Metrorail station. Approximately 78 of these new person trips will be transit trips and the remainder will be walk trips and other non-transit trips. Because the site resides on top of the Metro and has limited parking (28 spaces), virtually all employees will have to use public transit for their daily commute. Many of CSOSA's clients reside in Ward 7 and already use public transportation as their primary means of transportation. CSOSA will promote Metrorail and Metrobus ridership by its employees.

(3) The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood.

As to vehicular trip generation, a significant percentage of CSOSA's employees use public transportation for the work commute and will continue to do so at this transit-oriented location. Moreover, the number of employees (90) is not large. Many of the 500 daily client visits will use public transit, and virtually all of these clients reside in Ward 7. Benning Road is a major cross-town arterial connecting nearby with East Capitol Street, also a major cross-town arterial. These streets have the capacity to accommodate the relatively minor amount of additional traffic to be generated by this building. The client/visitor trips will primarily occur in non-peak traffic periods. The D.C. Department of Transportation will report to the Board on the project and its traffic implications. Note that there is a similar CSOSA facility serving Ward 8, located on South Capitol Street.

(4) The quantity of existing public, commercial, or private parking, other than on-street parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use.

In addition to the 28 parking spaces provided by the project, there is curbside parking available on 45th Street adjacent to the project and within the C-3-A District.

(5) The availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works. (§ 2107.2)

The location of the office building right at the Metrorail station will maximize the opportunity for commuting by subway. Also, the bus stop on Benning Road will continue to have direct access to the Metro entrances, and numerous Metrobus lines serve this location, including 96, 97, E32, S51, U5, U6, U8, W4 and W54. CSOSA has surveyed its employees to determine their commuting method to this location and will develop a system for ride sharing among employees and other transportation management measures as feasible. The location at the Metrorail station with Metrobus connections as well will enable the maximum number of CSOSA's clientele to arrive and depart by public transit.

For the reasons stated above, the Applicant believes that the project qualifies for the special exception under § 2107 to reduce the quantity of parking provided.

B. Special Exception – Accessory Parking Spaces (§ 214)

The Applicant proposes to provide 13 parking spaces on a rectangular site on Central Avenue, immediately across a 15-foot-wide alley from the Metrorail escalators. Subsection 214.1 authorizes such use in a residential zone as a special exception subject to criteria set forth in §§ 214.2 to 214.7. These conditions are addressed below.

> *214.2 Accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.*

Complies. The parking spaces are in an open area.

214.3 Accessory parking spaces shall be located in their entirety within two hundred feet of the area to which they are accessory.

Complies. The accessory spaces are within 200 feet of the defined footprint area of the proposed building.

214.4. Accessory spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.

Complies. The accessory spaces are separated only by an alley from the Property and use.

214.5 All provisions of chapter 23 of this title regarding parking lots shall be complied with . . . [with the potential exception of § 2303.2].

Complies. The parking lot as designed complies regarding the standards in § 2303, which relate to surface materials, no extension into public space, no other use than parking, location of vehicular access, directional control of lighting, a masonry wall screening adjacent residential property and landscaping. The Applicant's architect will present these features graphically at the public hearing.

214.6 It shall be deemed economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the following:

The constraints preventing provision of parking on the lot with the principal building relate to § 214.6(b): ". . . substantial improvements adjoining or on the lot." As described in detail elsewhere in this application, the location of the building on the site of a Metrorail station severely constrains the ability to provide parking on site, above or below grade.

214.7 Accessory parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions.

Complies. A masonry wall will separate the small parking lot from the only abutting residential neighbor. The lot will be attractively landscaped. The Metrorail station is to the immediate west of the parking lot, commercial zoning and uses are located to the south. The residential uses to the east of the parking lot are separated by 46th Street, N.E., as well as the landscaping along the eastern edge of the parking lot.

Based on the factors cited above, the Applicant believes the project complies with the special exception criteria for accessory parking under § 214.

C. Special Exception – Roof Structure Setback (§§ 770.6, 411.11)

Subsection 770.6 applicable to the Commercial zones, provides, in part:[4]

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;

Section 411 governs roof structures in all zone districts and authorizes a special exception to deviate from specified standards, including the setback requirement of § 770.6(b). The following section reviews the requirements of § 411 and indicates areas of compliance and noncompliance;[5]

411.1 Purpose clause. Not regulatory.

411.2 Cross reference to specific standards in zone districts, including § 770.6 applicable to the C-3-A District among others and the Property.

411.3 All penthouses and mechanical equipment shall be placed in one enclosure and shall harmonize with the main structure in architectural character, material and color.

Complies. The mechanical equipment and penthouse will be combined within one rooftop built form. This built form will harmonize with the main structure in architectural character and color and will appear as a vertical extension of the building.

411.4 When there are varying roof levels, multiple elevator cores are allowed.

Comment: Not applicable. The proposed building has only one roof level and one elevator core.

411.5 Enclosing walls shall be of equal height and rise vertically to a roof.

Comment: Complies. Enclosing walls are of equal height and rise vertically to the roof of the penthouse.

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[4] The roof structure is less than 18 ½ feet in height and thus complies with 770.6(d), and 770.6(c) is not applicable as it applies only to properties in the C-5 District.

[5] A copy of the entirety of § 411 is in *Exhibit D.*

411.6 Allows no roof on penthouse structure when it encloses solely mechanical equipment.

Comment: Not applicable. The proposed penthouse is covered with a roof.

411.7 Additional density of 0.37 FAR is allowed solely for the roof structure.

Comment: Complies. The proposed roof structure is only 692 g.f.a. for an FAR of 0.02, well within the 0.37 FAR (12,600 g.f.a.) allowed.

411.8 Roof structures not to exceed 1/3 of roof area in those zones having a limit on the number of stories.

Comment: Not applicable because the C-3-A District does not have a limit on the number of stories.

411.9 In addition to the floor area ratio allowed by § 411.7, mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system shall be permitted in addition to roof structures permitted in this section.

Comment: This provision clarifies that the roof structure proposed for the office building in this Application does not conflict with any roof structure on-site for the Metrorail facilities.

411.10 Zoning Administrator to refer plans to the Office of Planning for review and report.

Comment: This provision applies to a matter-of-right project. In the instant case, because there will be a public hearing, the Office of Planning will report its findings to the Board of Zoning Adjustment.

411.12 through 411.17 These subsections provide rules of interpretation rather than regulations. The special exception provision is § 411.11:

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.

This is the critical regulation authorizing a special exception from the setback standards of § 770.6. The justification for setting back less than 1:1 from all exterior walls derives, again, from the extreme complications of constructing a building atop an operating rapid transit station. Because the site is irregular in shape, the floor plate will be highly inefficient if the elevator core were to be in the middle of the building.

Consistency with the Intent and Purpose of the Zoning Regulations and Map

Regarding all three special exceptions, the relief requested can be granted without impairing the intent and purpose of the Zoning Regulations and Map. The project is a moderate to medium sized office building in an established commercial district. This is a high-activity area at a Metrorail station, where employees and visitors can commute by Metrorail and bus and where additional daytime population will help revitalize a marginal but improving commercial precinct. As stated in § 740.1: "The C-3 District is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District." The proposed office building is consistent with this purpose, and the requested flexibility from matter-of-right standards are relatively minor and do not deviate from the intended development pattern in C-3-A District.

No Substantial Detriment to the Public Good and No Adverse Effect on Neighboring Property

The responses to the detailed criteria in the two special exceptions requested in this application demonstrate quite thoroughly that the requested relief will not tend to adversely affect neighboring property. The use is in keeping with the public good in terms of economic development and jobs, as well as the important social services provided by the CSOSA agency.

VII. Conclusion

For the reasons set forth in this Statement, the Applicant believes that the project complies with the requirements for approval of the requested special exceptions and requests that the Board approve the application.

Respectfully submitted,
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Attachments