

February 28, 2008

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VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
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Re: Zoning Commission Case No. 07-32 – 1111 New Jersey Avenue, S.E.
Lots 48, 52, 53, 74, and 78 in Square 743-N
Proposed Findings of Fact and Conclusions of Law


Dear Members of the Commission:

On behalf of NJA Associates LLC and the Washington Metropolitan Area Transit Authority (the "Applicants"), enclosed please find twenty copies of the Applicants' Proposed Findings of Fact and Conclusions of Law in the above-referenced case. We look forward to the Commission's decision on this application.

Sincerely,

HOLLAND & KNIGHT LLP

By: 
Norman M. Glasgow, Jr.

By: 
Jeffrey T. Johnson*

cc: Advisory Neighborhood Commission 6D
Stephen Rice, D.C. Office of Planning

ZONING COMMISSION
District of Columbia

CASE NO. 07-32

EXHIBIT NO. 22

* Admitted only in Virginia; supervision by principals of the firm who are members of the DC Bar

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 07-32
Z.C. Case No. 07-32
Capitol Gateway Overlay Review
NJA Associates LLC and the Washington Metropolitan Area Transit Authority

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on January 31, 2008 to consider an application filed by NJA Associates LLC ("NJA") and the Washington Metropolitan Area Transit Authority ("WMATA") for review and approval of a new development pursuant to the Capitol Gateway ("CG") Overlay District provisions set forth in Sections 1604 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The property that is the subject of this application is designated as Lots 48, 52, 53, 74, and 78 in Square 743-N. WMATA and NJA are collectively referred to as the "Applicants."

In addition, the Applicants sought special exception relief pursuant to Section 1610.7 for a waiver of the rear yard requirement of Section 774.1.¹ The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On November 9, 2007, the Applicants filed an application for review and approval of a new development with frontage on M Street, S.E. pursuant to the CG Overlay District Provisions for property located at 1111 New Jersey Avenue, S.E. The subject property is designated as Lots 48, 52, 53, 74, and 78 in Square 743-N and contains approximately 22,041 square feet of land area. Square 743-N is bounded by L Street on the north, New Jersey Avenue on the east, M Street on the south, and First Street on the west in Southeast Washington, D.C. The square is bisected by a north-south public alley that is approximately fourteen feet in width. The site is located within the C-3-C District and also falls within the Capitol South Transferable Development Rights ("TDR") Receiving Zone. The southern portion of the site, including Lots 48, 52-53, 74, and the portion of Lot 78 formerly known as Lots 44-47 and 816-817, is located within the CG Overlay District. The CG Overlay District extends into the subject property to a depth of approximately 150 feet from M Street and covers approximately sixty percent of the site. The subject property is not listed on the D.C.

¹ The Board of Zoning Adjustment (the "Board") granted an application for special exception relief from the rear yard requirement for a nearly identical building at this location. *See BZA Application No. 17604 of NJA Associates LLC* (effective December 13, 2007). The project previously approved by the Board did not include any lots that abutted M Street within the CG Overlay District and was thus not subject to review by the Commission. The present application seeks the same relief approved in BZA Order No. 17604.

Inventory of Historic Sites, nor is it located within an historic district. The site is currently improved with a surface parking lot and the east entrance of the Navy Yard Metrorail station.

2. The Applicants filed a prehearing statement in support of the application on January 11, 2008 (the "Prehearing Statement"), which is marked as Exhibit 13 of the record in this case. The Prehearing Statement included a revised set of architectural plans and elevations, marked as Exhibit 14 of the record.
3. After proper notice, the Commission held a hearing on the application on January 31, 2008. Parties to the case included the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the subject property is located.
4. At its duly noticed meeting on January 14, 2008, ANC 6D voted 7-0-0 to oppose the proposed project. In its report to the Commission, dated January 30, 2008 and marked as Exhibit 17 of the record in this case, the ANC stated that its opposition to the project was based on the Applicants' failure to provide a community benefits package.
5. Expert witnesses appearing on behalf of the Applicants included Siti Abdul-Rahman of WDG Architecture (building design), Trini Rodriguez of Parker Rodriguez (landscape architecture), Christopher L. Kabatt of Wells & Associates (transportation), and Lindsley Williams of Holland & Knight LLP (land use and zoning). Robert Donohoe, Jr. of Donohoe Development was also available for questions from the Commission.
6. At the conclusion of the hearing, the Commission directed the Applicants to submit a resume for each of their expert witnesses, as well as a Leadership in Energy and Environmental Design ("LEED") certification checklist. By submission dated February 21, 2008 and marked as Exhibit 21 of the record, the Applicants provided the supplemental materials requested by the Commission. The Commission left the record open until February 21, 2008 for a further report from DDOT. No such report was submitted to the Commission.
7. At its public meeting on March 10, 2008, the Commission took proposed and final action by a vote of 4-0-1 to approve both sets of architectural plans and elevations submitted into the record. The Commission determined that the proposed project satisfied all applicable requirements of the CG Overlay District and met the requirements for the requested special exception relief.

Project Overview

8. The Applicants seek to construct an eleven-story office building on the subject property. The proposed building will have an overall density of up to 10.0 FAR and will be constructed to a maximum height of 130 feet. The building will contain approximately 220,410 square feet of gross floor area devoted to office and preferred retail, service, entertainment, and arts uses. The building's proposed height and density are permitted as a matter of right within the Capitol South TDR Receiving Zone in the C-3-C District.

9. The proposed development will provide three thirty-foot loading berths, a twenty-foot service/delivery space, and a 300 square foot loading platform. These loading facilities will be accessed from the north-south public alley along the western boundary of the Subject Property.
10. The development will include an underground parking garage containing approximately 177 parking spaces, ninety four of which will be counted towards the off-street parking requirements. The proposed building is entitled to a 25-percent reduction in the off-street parking requirements under Section 2104.1 by virtue of its proximity to the Navy Yard Metrorail station. The parking satisfies the requirements set forth in Chapter 21 of the Zoning Regulations. No relief was requested from the Commission concerning on-site parking.
11. In the original architectural plans for the project, dated November 9, 2008 and marked as Exhibit 8 of the record in this case (the "Original Plans"), access to the underground parking garage was provided from New Jersey Avenue. In response to concerns raised by DDOT prior to the public hearing, the Applicants submitted a revised set of architectural plans, dated January 11, 2008 and marked as Exhibit 14 of the record in this case (the "Modified Plans"), which relocated the garage entrance from New Jersey Avenue to the north-south public alley on the west side of the property. During the public hearing on the application, the Applicants requested that the Commission approve both of these alternatives.

Description of the Surrounding Area

12. The subject property is located on the northwest corner of the intersection of New Jersey Avenue and M Street in Southeast Washington, D.C. The adjacent property to the north is currently improved with the St. Matthew's Baptist Church. The subject property is separated from the western half of Square 743-N by a north-south public alley that is approximately fourteen feet in width. A twelve-story office building (100 M Street, S.E.) and a fourteen-story residential building (1100 First Street, S.E.) are currently under construction on the western half of the Square. A large office building completed in 2003 (1100 New Jersey Avenue, S.E.) is located to the east directly across the street from the subject property.
13. Although much of the surrounding property is currently vacant or underutilized, the area is quickly becoming a magnet for both public and private investment due to its proximity to the Anacostia Waterfront, the Southeast Federal Center, and the Washington Nationals Baseball Stadium that is now under construction.
14. Much of the surrounding property is zoned C-3-C to the north and west and CR to the south. The areas to the west, north, and east of the subject property are designated for high-density commercial use, while the property across M Street to the south is designated for mixed-use development including high-density commercial and high-density residential land uses. The site is located northwest of the new U.S. Department of Transportation headquarters and Southeast Federal Center and west of the Capper/Carrollsborg planned unit development and the proposed Canal Blocks Park.

Capitol Gateway Overlay District Design Requirements

15. The proposed project is subject to the requirements of Section 1604 of the Zoning Regulations because the new building will have frontage on M Street, S.E. within the CG Overlay District. The project is also subject to the requirements of Section 1610 because the new building will be located on a lot that abuts M Street, S.E. within the CG Overlay District.
16. The proposed project will not involve the construction of any new driveways or curb cuts from M Street. The building's loading facilities will be accessed from the north-south public alley on the west side of the site, and the underground parking garage will be accessed from either New Jersey Avenue or the public alley.
17. The proposed building will be set back approximately thirty-one feet from the face of the adjacent curb along M Street.
18. The proposed building will provide approximately 5,726 square feet of preferred retail, service, entertainment, and arts uses on the ground floor. This represents approximately thirty-five percent of the gross floor area on the building's ground floor. With the exception of areas devoted to building entrances, these preferred uses will occupy 100 percent of the new building's frontage along M Street.
19. On the ground floor, at least fifty percent of the building's streetwall along M Street will be covered by commercial entrances and display windows with clear or low-emissivity glass.
20. All portions of the proposed building devoted to ground-floor retail uses will have a clear floor-to-ceiling height of no less than fourteen feet.
21. The height, bulk, and design of the proposed building, as well as its landscaping and sidewalk treatment, are consistent with the Zoning Regulations, the Comprehensive Plan, and the general scale of development in the surrounding neighborhood. The new commercial and retail uses in the proposed project will result in an appropriate balance of commercial and residential uses within Square 743-N and the broader vicinity.
22. The proposed development will provide a sidewalk that is over thirty feet in width in order to improve the flow of pedestrian traffic near the Navy Yard Metrorail station.
23. The overall project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. With the exception of the requested special exception relief from the rear yard requirement, the proposed project will comply with all applicable zoning requirements.
24. Both of the alternative building designs submitted by the Applicants will minimize conflicts between vehicles and pedestrians.

25. There will be no unarticulated blank walls on any portion of the building along M Street or New Jersey Avenue.
26. The proposed project will be designed in accordance with the standards for LEED-Silver certification and will have no significant impact on the natural environment. The new building will incorporate a number of sustainable design features such as energy-efficient mechanical and electrical systems. The project's proximity to the Navy Yard Metrorail station will also promote increased transit use by the building's occupants.

Special Exception Relief from the Rear Yard Requirement

27. The Applicants requested special exception relief from the rear yard requirement of Section 774.1 pursuant to Sections 1610.7 and 3104.1. Section 774.1 of the Zoning Regulations requires all structures located within the C-3-C District to provide a rear yard with a minimum depth of 2.5 inches for each foot of vertical height between the mean finished grade at the middle of the building's rear wall and the highest point of the building's main roof or parapet. When a lot abuts a public alley in the C-3-C District, the rear yard may be measured from the building's rear wall to the centerline of the adjacent alley under Section 774.9. Because the proposed building will rise to a maximum height of 124 feet as measured from the mean finished grade at the rear of the building, the proposed project is required under Section 774.1 to provide a rear yard that is 25 feet, 10 inches in depth. The proposed project will have a rear yard that is only seven feet deep.
28. The proposed building will be sufficiently removed from all adjacent structures and will provide adequate light, air, and privacy to building occupants. The minimum distance between the rear wall of the proposed building and the 100 M Street office building across the alley will range between fourteen feet and approximately thirty-five feet. The 100 M Street building is separated from the public alley by a vacant lot that is unlikely to be developed. The 1100 First Street residential building will be separated from the proposed building by the public alley and a large courtyard. The distance between the rear wall of the proposed building and the facing windows in the residential building across the alley will range from fifty feet to over 100 feet.
29. The residential units in the 1100 First Street building are located along First Street and L Street. The facing windows of the proposed building and the residential building with the most direct sight lines will be separated from one another by a distance of approximately 100 feet. There are no habitable rooms in either the proposed building or in the office building at 100 M Street.
30. The proposed building will provide adequate off-street service functions such as parking, loading facilities, and vehicular access points. The underground parking garage, spaces, and aisles will satisfy the size, location, access, maintenance, and operational requirements set forth in Chapter 21 of the Zoning Regulations. The loading facilities will comply with the all of the applicable requirements set forth in Chapter 22 of the Zoning Regulations.

31. Under Section 774.9(a) of the Zoning Regulations, no rear yard is required below a horizontal plane drawn twenty feet above the mean finished grade at the rear of the building. The requested reduction in the required rear yard will therefore have no effect on vehicular traffic within the alley and will not undermine the efficient provision of public services to the buildings within the square.
32. This application was referred to the Office of Planning and the District Department of Transportation for review.
33. The requested waiver of the rear yard requirement will have no adverse impacts on neighboring properties. The Applicants have received letters in support of the application from the owners of the adjacent properties at 100 M Street at 1100 First Street. These letters were attached as Exhibit G to the Applicants' Prehearing Statement.

Office of Planning Report

34. By report dated January 21, 2008 and marked as Exhibit 16 of the record in this case, the Office of Planning recommended approval of the application. The report concluded that the proposed project was consistent with the requirements of the CG Overlay District and that the Applicants had met the requirements for special exception relief from the rear yard requirement of 11 DCMR § 774.1. Stephen Rice and Joel Lawson of the Office of Planning testified in support of the application at the Commission's public hearing on the application.

Other Agency Reports

35. By report dated January 31, 2008 and marked as Exhibit 18 of the record, DDOT requested a number of modifications to the proposed project. First, the report requested that the Applicants place the entrance to the underground parking garage on the public alley along the west side of the property. Second, the report recommended converting the currently uncontrolled public alley into a one-way southbound alley with a right-in, right-out restriction at the alley's intersection with M Street. Third, DDOT requested that deliveries to the proposed project be restricted during peak traffic hours. Fourth, the report suggested the introduction of traffic-calming treatments at the intersection of the public alley and M Street to minimize conflicts between vehicles and pedestrians. Finally, the report recommended that the off-street parking provided in the building be reduced to ninety-seven spaces. In addition to these five recommendations, DDOT expressed concern with the proposed location of utility vaults in public space along New Jersey Avenue. Christopher Delfs, Ward 6 Transportation Planner for DDOT, testified at the public hearing on the application.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11 DCMR §§ 1604.1 and 1610.1 for review and approval by the Commission. The application also requested special exception relief pursuant to 11 DCMR § 1610.7.

2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, the Office of Planning, and owners of property within 200 feet of the site.
3. Pursuant to 11 DCMR §§ 1604.1 and 1610.1, the Commission required the Applicants to satisfy all applicable requirements set forth in 11 DCMR §§ 1604.2 through 1604.9 and 1610.2 through 1610.3. Pursuant to § 1610.7, the Commission also required the Applicants to meet the requirements for special exception relief set forth in 11 DCMR §§ 774.2 through 774.6 and 3104.1. The Commission concludes that the Applicants have met their burden.
4. The proposed development is within the applicable height, bulk, and density standards for the C-3-C District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.
5. The requested relief from the rear yard requirement of Section 774 is in harmony with the general intent and purpose of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property.
6. The proposed office and retail uses are appropriate for this location and are consistent with the subject property's high-density commercial designation on the Future Land Use Map of the Comprehensive Plan. The project is not inconsistent with the Comprehensive Plan.
7. The proposed project will further the objectives of the CG Overlay District as set forth in Section 1600.2 and will promote the desired mix of uses set forth therein.
8. No person or parties appeared at the public hearing in opposition to the application.
9. The off-street parking for the project is in compliance with the requirements of Chapter 21.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A)(2001) to give "great weight" to the issues and concerns of the affected ANC. In other words, the Commission must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice in a particular case. ANC 6D voted 7-0-0 to oppose the proposed project. As reflected in its report to the Commission, ANC 6D's opposition to the application was based on the absence of a community benefits package. The D.C. Court of Appeals has held that the written recommendations of the ANC are entitled to "great weight" only to the extent that they address issues and concerns that are legally relevant. *Bakers Local Union No. 118 v. D.C. Board of Zoning Adjustment*, 437 A.2d 176 (D.C. 1981). Nothing in the CG Overlay District provisions requires the provision of a monetary or in-kind contribution to the community as a condition of approval. Nor is there any such requirement with respect to the Applicants' request for special exception relief. Because the ANC's concerns in this case are not legally relevant, they are not entitled to great weight by the Commission.
11. Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, DDOT, and ANC 6D, and the Applicants' submissions,

the Commission concludes that the Applicants have met the burden of satisfying the applicable standards under 11 DCMR §§ 1604 and 1610, as well as the independent burden for the requested special exception relief under 11 DCMR §§ 1610.7 and 3104.1.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application consistent with this Order. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 48, 52, 53, 74, and 78 in Square 743-N.
2. The project shall be built in accordance with either:
 - (a) the original Architectural Plans and Elevations marked as Exhibit 8 of the record in this case, as modified by the guidelines, conditions, and standards below; or
 - (b) the modified Architectural Plans and Elevations marked as Exhibit 14 of the record in this case, as modified by the guidelines, conditions, and standards below.
3. The project shall include no more than 220,410 square feet of gross floor area. The distribution of uses and densities shall be as shown on Sheet A-0.1 of the Architectural Plans and Elevations.
4. The overall density on the site shall not exceed 10.0 FAR.
5. Except for roof structures, the maximum height of the new building shall not exceed 130 feet. Roof structures shall be constructed in accordance with Sheet A-4 of the Architectural Plans and Elevations.
6. The landscape treatment shall be in accordance with Sheet L-1 of the Architectural Plans and Elevations.
7. A minimum floor-to-ceiling clear height of fourteen feet shall be provided for those areas dedicated to ground-floor retail, service, entertainment, and arts uses.
8. Three thirty-foot loading berths, one 300 square foot loading platform, and one twenty-foot service/delivery space shall be provided for the proposed development.
9. No deliveries to the proposed building will be permitted on weekdays between the hours of 7:00 a.m. and 10:00 a.m. and between 4:00 p.m. and 7:00 p.m.
10. A minimum of thirty-five percent, or 5,726 square feet, of the gross floor area of the ground floor shall be devoted to the preferred uses listed in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of the Zoning Regulations.

11. The Applicants are required to comply full with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action. The failure or refusal of the Applicants to comply with the Act shall furnish grounds for the denial or, if issued, the revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 10, 2008, the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; Curtis Etherly, Jr. not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING