

THE JBG COMPANIES

September 23, 2008

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

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D.C. OFFICE OF ZONING
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Re: Amendments to the Zoning Regulations regarding Height
Zoning Commission Case No. 08-06-1
Adverse Impact on Capitol Square Project

Dear Members of the Commission:

I am writing to you on behalf of The JBG Companies, and its affiliates JBG/33 N Street, L.L.C., JBG/51 N Street, L.L.C., JBG/1300 1st Street, L.L.C., JBG/1250 1st Street, L.L.C. and JBG/50 Patterson Street, L.L.C. ("JBG"), all of which are the owners of property located in Squares 671 and 672 regarding our concerns about the proposed Amendments to the Zoning Regulations regarding Height. JBG purchased all of these properties – totaling more than 160,000 square feet in land area (and up to 1.6 million square feet of new development) – with the intent of creating a major mixed-use development including office, hotel, residential and retail uses to be known as Capitol Square in the heart of NoMa, one of the District's more rapidly developing areas. However, if the proposed Amendments to the existing Zoning Regulations were to be approved, it would greatly impact the existing value of our properties and significantly diminish the financial viability of Capitol Square. We believe that these modifications will cause additional financial distress for many local developers and depress land prices in the District at a particularly vulnerable time in the marketplace. We believe that such an action will slow development and revitalization of this area for years to come.

As a founding member of the NoMa Business Improvement District, and like many others who have invested in NoMa over the years, we originally investigated and underwrote our investments based on well-known and established regulations that the District has been using for decades without significant changes. Now, proposed Amendments to the Zoning Regulations regarding Height would alter our ability to construct our planned improvements, significantly reducing the value of our investment and further complicating the value proposition associated with a new redevelopment.

All of our parcels are located in a receiving zone for transferable development rights (TDRs), which we have already purchased. The purchase of these TDR's allows development to a density and height that is otherwise not permitted as a matter-of-right. The District agreed to our TDR transfer which, per the C-3-C zoning, allows a maximum density of 10.0 FAR and a maximum height of 130 feet, based on frontages on New York Avenue and First Street. The Comprehensive Plan's designation for the site as High Density Commercial is consistent with

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this permitted height and density. The proposed Amendments would make it almost impossible to achieve this height and density across the site thus negating the benefit of the TDR transfer approved by the District.

The existing Zoning Regulations established the basis upon which we proceeded in acquiring various portions of the site and moved forward with potential development plans. These Regulations are well known and recognized within the development and architectural communities and have been used by us and others in assembling land and developing large, multi-phased projects in the central area of the city for years. By changing these regulations now, without “grand-fathering” existing developments, like Capitol Square, the District will stymie countless development projects and will lose the economic, social and tax benefits that would otherwise be accrue to the District through these redevelopments.

JBG has reviewed the proposals which OP has submitted to the Zoning Commission as part of the Zoning Revision Project and we are particularly concerned about a number of items contained in the proposed height amendments. A number of these concepts, if adopted, could have a significant adverse affect on our ability to build out the mixed-use project as we have planned. The proposed regulations will limit all landowners’ ability to build multi-phased, mixed-use projects because of the contiguous floor plate requirement and will encourage large floor plated single user buildings. This is antithetical to the vibrant mixed-use environment that we are trying to create in NOMA and that, we believe, the District wants to see developed.

While we have a number of concerns regarding the proposed Amendments, our most serious concerns with the height proposals are as follows:

- The new regulations propose to require that the actual height of a building be measured from the same street used to determine the maximum height (based on the width of the street). This proposal is inconsistent with the plain language of the Act of 1910, which has two different provisions, one addressing the height based on the width of the street and a second specifying where the height is to be measured. This proposal is further inconsistent with decades of interpretations, including a definitive opinion of the Corporation Counsel, the District's chief legal officer, issued in 1950 and binding on all District agencies and employees which confirmed that the height could be measured from a different street than the one used for the width. In our situation, 1st Street is 110 feet wide and is the widest of the three streets which abut our property, thereby permitting a height of 130 feet. We are measuring our height from the middle of the front of the building on N Street, which is the highest point and most advantageous for us. We have used this method for proceeding in other projects which we have planned and/or built and being able to gain the greatest advance for the height of the building is critical to our design.
- The proposed definition of a building, requiring parts of a building to share mechanical systems and to share open access on at least half of the floors, would impose substantial restrictions on what we could do. These requirements do not promote true mixed-use development on the same block. Furthermore, if the portions of our development which do not front on 1st Street are deemed to be separate buildings, then we would lose a

significant amount of height for any portion of the mixed-use project not fronting on First Street or New York Avenue. Sharing floors makes little sense in a mixed use project, where the floor-to-floor heights for office, residential and hotel are different and the floor levels would not line up on the upper floors. We believe that the revisions to the definition of a building attempt to fix a situation which is not broken and the consequences of that fix are extremely problematic for us.

The proposed amendments noted above place serious impediments to our completing this project as contemplated, and we hope that you will consider these adverse impacts in your deliberations. To the extent that such changes are made, safeguards must be put in place to preserve the rights of those who have relied on these regulations in preparing major development plans in the District. Moreover, the Zoning Commission must consider the impact of such changes on the real estate valuation of these properties and others. For instance, property that was once considered to be developable to a maximum density of 10.0 FAR based on a 130 foot height may no longer be in such category based on the changes to these regulations.

We are a significant stakeholder in NoMa and we believe that its success is a critical part of the District's long term plans to create a new vibrant mixed use neighborhood. When we pursued our goals for our site, we consulted with the Office of Planning (OP), particularly as it was going through its NoMA planning studies. We believe the proposed Amendments regarding Height will significantly impair one's ability to be successful in creating mixed use blocks in existing TDR Receiving Zones, such as NoMa. NoMa represents a substantial opportunity for the District to redevelop a critical part of its urban fabric, but these new Amendments will depress land prices by burdening projects which were underwritten many years ago, causing many redevelopment plans to stall or potentially not occur at all. In addition, we have already expended significant funds advancing our plans for Capitol Square based on the long standing precedent established by the District Zoning Regulations.

We believe that the District will benefit dramatically - socially, politically and economically - from what we are doing at Capitol Square. For the District to change these principles at this time would be most problematic for us and others who have assembled land relying on decades of planning precedent and are already moving forward with developing large projects in areas where the city favors development.

Please feel free to let me know if we can clarify or amplify any parts of our concerns or provide additional information that you need or might find helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Elliott", written in a cursive, slightly slanted style.

Robert J. Elliott Jr.

cc: Neil Albert, Deputy Mayor for Planning and Economic Development
Harriet Tregoning, Director, Office of Planning