

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**Application of Jemal's East 451 L.L.C.
601 K Street, NW**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background:

The property that is the subject of this application totals approximately 10,000 square feet of land area and is comprised of Lots 23, 24, 25, 822 and 823 in Square 451 (the "Property"). The Property is located in the southeastern corner of Square 451, which is a triangle-shaped square bounded by New York Avenue, NW, to the north, K Street, NW, to the south, 6th Street, NW, to the east, and 7th Street, NW, to the west, in Washington's downtown area. Immediately to the west of the Square 451, across 7th Street, NW, is Mount Vernon Square. An eleven-story headquarters building for the Association of American Medical Colleges is located to the immediate west of the Property, separated by a north-south public alley running through Square 451. The property to the immediate north of the Property is currently unimproved. A two-story commercial building and surface parking uses occupy the northeastern corner of the Square.

Located on the Property are two structures dating to the early twentieth century that are to be relocated within the Property and rehabilitated as part of the redevelopment as a 13-story hotel building with frontage along K Street and 6th Street, NW. While these structures are not formally included within the DC Inventory of Historic Sites, the Applicant is coordinating with the DC Preservation League regarding the rehabilitation of the structures and context within the hotel building.

The Property is zoned D-4-R. The proposed hotel building will contain approximately 102,600 square feet of gross floor area, with a total floor area ratio of 10.25 FAR. The height of the building will reach a maximum height of 130 feet. Loading facilities will be accessed from the public alley running along the Property's western border. No vehicle parking is required or provided. Bicycle parking will be provided in compliance with applicable regulations.

In the present application, the Applicant seeks the following review and relief from the Board of Zoning Adjustment; (a) special exception, pursuant to 11-I DCMR §205.5, regarding the required rear yard; (b) area variance relief, pursuant to 11-I DCMR §207, to provide a court not meeting the minimum dimensional requirements; (c) special exception, pursuant to 11-I DCMR §203.3, relating to the front build-to requirement; (d) area variance, pursuant to 11-C DCMR §901.1, from the loading requirements; and (e) special exception, pursuant to 11-C DCMR §1500.3(c), to allow use of the penthouse level for bar and lounge uses.

Pursuant to 11-Y DCMR §300.15, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the application. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested variance relief. Following herein, as

required by the Board's application process, is a summary statement indicating how the Applicant expects to meet said burden of proof.

II. Burden of Proof:

A. Special Exception - Rear Yard, 11-I DCMR §205.5

Pursuant to Subtitle I, Section 205.3(c), a rear yard need not be provided for a corner lot, as provided in Section 205.4. Section 205.4 in turn provides that for a corner lot in any D zone except for D-1-R, a court may be provided in lieu of a rear yard, subject to certain conditions, including the requirement that the court shall comply with the width requirements for a closed court as specified in Section 207.1. Because the court provided does not comply with the applicable width requirements (as discussed below), special exception is requested pursuant to Section 205.5.

In Section 205.5, the Board is authorized to waive the rear yard requirements as a special exception pursuant to Subtitle X and certain listed conditions, as follows:

(a) no window to a residence use shall be located within 40 feet of another facing building – this provision is not applicable to the present application as no residential use is involved;

(b) no window to an office use shall be located within 30 feet of another facing office window, nor 18 feet in front of a facing blank wall – this provision is not applicable as no office use is involved;

(c) a greater distance may be required between windows in a facing building than the minimum prescribed in (a) or (b) if necessary to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines into such habitable rooms – Applicant will demonstrate at hearing adequate light and privacy provided to hotel guest rooms as a result of court design and orientation;

(d) the building shall provide for adequate off-street service functions, including parking and loading areas and access points – the building is not required to provide parking, and no parking is provided on-site. Two loading berths will be provided in the building. Guest arrivals and departures will be handled through a dedicated loading/drop-off zone along 6th Street, NW.

For all these reasons, special exception approval relating to the rear yard requirement is appropriate, as the Applicant will demonstrate in further detail as part of its prehearing submission and through testimony at the public hearing.

B. Area Variance – Closed Court, 11-I DCMR §207.1

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

(1) Exceptional Condition or Situation:

The Property is exceptional in that it is a comparatively small site for hotel development in the downtown area, subject to the design and use requirements of the Mount Vernon Triangle Sub-Area of Subtitle I, Section 611, and is improved/contains two existing structures that are required to be incorporated into the redevelopment pursuant to agreement with the D.C. Preservation League.

(2) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. The court provided for the proposed building is located along the northern lot line, abutting property that is currently unimproved. As a result, the court is deemed a closed court under the Zoning Regulations, generating a court width requirement of approximately 24 feet and a court area of approximately 1,150 square feet. While the Applicant's proposed court is generously sized, at approximately 43 feet by 12 feet, the Applicant cannot comply with the dimensional requirements without significant impact to the floor layout and core location of the building. Building configuration is further constrained from the south and east given the identification of K Street and 6th Street as "primary" and "secondary" street segments, respectively, under the Mount Vernon Triangle Sub-Area, both of which carry specified design and use requirements. Further, the Applicant's attempts to incorporate the existing gas station and car wash structures into the K Street elevation of the building, and to provide appropriate setbacks therefrom, further impact the Applicant's ability to increase the size of the court without significant detriment to the layout of the hotel.

(3) No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that the Application can be approved without harm to the public good and without threat to the integrity of the zone plan. Adequate light and air will be accessible from the court to the few units whose windows open thereon.

For all these reasons, area variance relief relating to the closed court requirements is appropriate, as the Applicant will demonstrate in further detail as part of its prehearing submission and through testimony at the public hearing.

C. Special Exception – Front Build-To, 11-I DCMR §203.3

Pursuant to Subtitle I, Section 203.1, in the D-4-R zone, at least 75% percent of each newly constructed building wall fronting a street shall be constructed to or within 4 feet of the property line between the subject property and the abutting street right of way, to a height of at least 15 feet, provided the building wall faces a primary street segment as identified in Subtitle I, Chapter 6. The Board is authorized to grant relief from this requirement as a special exception provided:

(a) the integrity of the blockface’s build-to line shall not be eroded when the property is viewed from either end of the blockface; and

(b) the area in excess of 25 percent that is removed from the lot line shall be open to the public during daylight hours.

Given the need to incorporate the historical structures into the K Street elevation for the hotel, and to provide appropriate setbacks from those elements, the Applicant is unable to fully comply with the 75 percent build-to requirement. As shown on Sheet A0008 of the Architectural Drawings, the building design provides approximately 51 percent of building wall along K Street, which is the applicable primary street segment pursuant to Section 611.

As the Applicant will demonstrate in further detail as part of its prehearing submission and through testimony at the public hearing, the Applicant’s design satisfies the criteria for special exception approval established in Section 203.3. While the location of the gas filling station at the southeast corner of the building, at the intersection of K and 6th Streets, requires a step back and step down at the very corner, the overall massing of the building and strong vertical design elements of both the proposed building and the adjacent Association of American Medical Colleges building which occupies the remainder of the K Street blockface ensure that the overall integrity of the blockface is not eroded by the stepback from the historical element. Further, as demonstrated in the drawings, the open areas along K Street created by the stepbacks from the filling station and car wash will be actively used and animated and available for public access during daylight hours.

D. Area Variance – Loading, 11-C DCMR §901.1

As noted above, the test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

Given that the hotel is proposed to occupy approximately 102,600 square feet of gross floor area, the table of minimum loading requires 3 loading berths be provided. Because the Applicant can only locate 2 berths within the building, area variance relief is required.

As noted above the Property is exceptional given its comparatively small size, its location within the Mount Vernon Triangle Sub-Area with frontage on two important design and use axes, and the requirement to incorporate to existing structures, with setbacks, into the design.

The Applicant experiences a significant difficulty in satisfying the 3-berth requirement on the Property given that all three must be accessed directly from the public alley to the west of the Property and occupy a significant amount of the overall 10,011 square foot site area of the Property. Providing all 3 berths cannot practically be accomplished without significant detrimental impacts to the building core and multiple ground level uses that must be provided in order for the hotel to operate.

Variance relief can be provided without harm to the public good or detriment to the Zone Plan. As will be demonstrated in more detail as part of the prehearing statement and through testimony at the public hearing, the Applicant will work with DDOT to generate a loading management plan for the hotel to minimize and loading impacts in the immediate vicinity. The Applicant will also demonstrate that the 2 loading berths to be provide adequately service the needs for the proposed hotel use. The Applicant notes that the table of loading requirements require only 2 berths for a project that is less than 100,000 square feet of gross floor area For all these reasons, area variance relief is appropriate.

E. Special Exception – Penthouse Bar, 11-C DCMR §1500.3(c)

Pursuant to Subtitle C, Section 1500.3(c), a nightclub, bar, cocktail lounge, or restaurant use shall only be permitted in a penthouse if approved as a special exception by the Board pursuant to Subtitle X Chapter 9. The Applicant is continuing to study options for the use of the roof and penthouse area, which may include uses such as a bar, cocktail lounge or restaurant. These are uses that are permitted as a matter of right in the underlying D-4-R zone. The Applicant intends to provide additional detail as part of its prehearing statement and through testimony at the public hearing. As such, the Applicant requests special exception approval under Subtitle 1500.3(c) as appropriate pursuant to the special exception standards of Subtitle X, Chapter 9.