

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13328, of McGregor Properties, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing a penthouse to be erected exceeding 18.5 feet in height (Paragraph 5201.24) and from the prohibition against allowing the walls of a penthouse to be of unequal height (Paragraph 3308.12) to construct a new office-retail building in a C-3-B District at the premises 2121 K Street, N.W., (Square 73, Lots 33-38, 43, 852 and 853, and public alley proposed to be closed).

HEARING DATES: September 17 and 24, 1980
DECISION DATE: October 1, 1980

FINDINGS OF FACT:

1. The application as filed, and the memorandum from the Chief of the Zoning Review Branch indicate that the property is located in a C-3-B District. The application was so advertised. By Order No. 308, dated May 8, 1980, the Zoning Commission created a new C-3-B District, and designated all that property then zoned C-3-B to be in the C-3-C District. The subject property is thus in a C-3-C District. There is no substantive difference between the provisions of the former C-3-B District and the present C-3-C District. The provisions of the regulations from which a variance is requested are not effected by the zone district at issue.
2. The subject property is located on the north side of K Street between 21st and 22nd Streets, N.W.
3. The applicant proposes to construct on the subject site an eight story office building, approximately ninety feet in height, containing recreational amenities. Among the proposed recreational amenities are a rooftop garden area with seating and tables and a rooftop platform tennis court.
4. These proposed rooftop uses are permitted as a matter of right and require no approval from the Board.
5. In conjunction with establishing these rooftop uses, the applicant desires to provide direct elevator access to the roof. The applicant testified that among its reasons for providing direct elevator service to the roof are to allow for suitable access to the rooftop facilities for handicapped persons, and to

prevent disruption and security risks to top floor tenants resulting from the provision of a stairway from the top floor to the roof.

6. The elevation of the main portion of the roof is 148.38 feet. The elevation of the roof of the main portion of the penthouse is 166.88 feet. The penthouse is thus 18.5 feet in height above the level of the roof upon which it is located. The main portion of the roof structures is ninety feet long parallel to K Street and 61.5 feet wide perpendicular to K Street.

7. In order to provide elevator service to the roof, the applicant proposes to increase the height of a portion of the roof structure above the 18.5 feet level. This portion of the roof structure would contain the machine room for the elevators, and would measure twenty-seven feet wide by eighteen feet deep. It would be located toward the northeast corner of the roof structure set back over forty-six feet from the front of the building on K Street. The roof of the elevator machine room would be at 175.04 feet, or a distance of 26.66 feet above the main roof. A variance of 8.16 feet is thus requested.

8. In addition, the walls of the structure housing the elevator are of greater height than the other walls located on the roof. Although these other walls which surround the recreational rooftop area are conforming, the applicant is seeking a variance from the requirements of Paragraph 3308.12 for rooftop walls of unequal heights.

9. The Stevens Public School, which faces 21st Street, adjoins this property to the rear and east. A new eight story office building is under construction immediately west of this site. Square 73, with the exception of the Stevens School, is devoted primarily to office, retail and service use. An existing two story building is adjacent to the proposed structure on the east. The neighborhood is one of substantial office and retail development. The C-3-C District in which this property is located extends generally from 19th Street on the east, New Hampshire Avenue on the west, Pennsylvania Avenue to the south and Dupont Circle to the north.

10. Due to an agreement entered into benefitting the adjoining Stevens School, the applicant is prevented from fully developing the subject site. The applicant has entered into a restrictive covenant with the District and granted an easement over a portion of the subject site.

11. The site area in which applicant's building must be located restricts the applicant's ability to efficiently utilize space in the garage area for parking purposes and precludes the location of any of the rooftop amenities in said garage.

12. The purpose of the Architectural Barriers Act is to provide barrier free design and encourage free access within buildings for handicapped persons. Section 5 of the Act requires elevator service to all interior portions of new buildings. While applicant is requesting relief to provide full access to an exterior portion of the building, it is clear that the proposed elevator service to the rooftop area is consistent with the purposes of the Architectural Barriers Act. If the requested relief were not approved, there would be no practical access for the handicapped to the roof and handicapped tenants would be unable to utilize the proposed amenities.

13. A representative of the applicant testified that soil boring samples had demonstrated a rock condition on the site. In order to place the proposed platform tennis court in the garage area, the applicant would be required to construct an additional garage level. This additional excavation and construction of the tennis court in the garage area is unfeasible due to the aforementioned rock formation on the site. It was also testified that an adjacent property owner abandoned plans for additional parking when a similar rock problem was encountered.

14. The unusual amount of area needed for a platform tennis court also precludes its placement within the main building area. Because a platform tennis court requires more than ten feet of overhead clearance, while the floor-to-floor clearance in standard buildings of this type is only eight feet six inches, significant design problems are imposed that prevent the use from being incorporated within the main floors. Construction of the tennis facility within the main floors would require substantial architectural changes and loss of floor area.

15. The applicant explored the option of installing an under-slung elevator but found this approach impracticable due to extraordinary cost. The initial cost of this type of elevator would be \$100,000 with an additional cost of \$50,000 over the life of the equipment.

16. The deviation from the Regulations' requirements has been minimized by the applicant. Only the small area necessary to enclose the elevator apparatus will exceed the 18.5 foot height limit. This structure will be set back approximately forty feet from the building's K Street frontage and approximately seventy-six feet from the building's eastern lot line. In addition, because of the width of K Street the roof structure is well below the height permitted by the 1910 Height Act.

17. The Office of Planning and Development, by memorandum dated August 29, 1980, recommended that the application be approved. The OPD believed that the provision of roof top recreational activities in conjunction with the proposed health club is an appropriate use. In analyzing this application OPD notes that the area of the roof structure proposed in excess of 18.5 foot is small in proportion to the total area of the main roof structure and the roof of the building. In addition, the OPD stated that it is unlikely that the higher elevator machine room will be visible from the surrounding streets. The facing materials of both the main roof structure and the elevator machine room will be indential pre-cast concrete panels. It was OPD's opinion that the approval of this application will not cause any adverse impacts on nearby and adjoining properties, will be in keeping with the intent and purpose of the Zoning Regulations and may serve to encourage implementation of desirable public policy regarding the use of roof top space in downtown.

18. As originally proposed, in the drawings marked as Exhibit No. 14 of the record, the facing materials of all walls of the roof structures would have been pre-cast concrete panels to match the panels of the main wall of the building. At the hearing held on September 10, 1980, the Board requested the architect for the project to redesign the facade of the elevator machine room walls so as to make them less visually obtrusive.

19. At the public hearing held on September 17, 1980, the applicant submitted revised plans, marked as Exhibit No. 20 of the record. The walls of the machine room have been surrounded by sloped reflecting bronze glass panels, to match the bronze glass used in the main facade of the building.

20. There was no opposition to the approval of the requested relief.

21. Advisory Neighborhood Commission - 2A submitted no report on the proposed project.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the two requested variances are area variances, the granting of which requires the showing of a practical difficulty upon the owner arising out of some exceptional condition or situation of the subject site. The Board concludes that the shape of the subject structure is unusual and adversely affects full utilization of the garage area. Rock structure below the site prevents an additional garage level for the recreational facilities. The applicant's covenant with the Stevens School also prevents full development of the subject site. Because of the unusual area needed for a platform tennis court,

it cannot be incorporated within the main floors of the building. The Board concludes that the subject site is affected by exceptional situations and conditions which warrant variance relief.

The Board further concludes that strict compliance with the Zoning Regulations would result in unreasonable practical difficulties. Therefore, variance relief is appropriate. The only practical method for rooftop elevator service is to permit a rooftop structure housing the elevator equipment which exceeds 18.5 foot. Cost and design problems prevent any alternative method of rooftop access. Eliminating elevator access is not viable. Users of amenities would than be required to take the elevator to the top floor and walk to the roof. This would disrupt tenants on the top floor, impede use of the amenities and prevent access to the handicapped.

The Board further concludes that the requested relief can be granted without detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The intent of the applicant is to provide the public with a downtown amenity. The rooftop structure has been designed in a way to make it unintrusive and aesthetically compatoble with the rest of the building. The portion of the roof structure is well set back from the lot lines and will not interfere with the light, air or ventilation of surrounding users.

If is therefore ORDERED that the application is GRANTED SUBJECT to the CONDITION that the roof structure be constructed in accordance with the revised plans marked as Exhibit No. 20 of the record.

VOTE: 3-2 (Theodore F. Mariani, William F. McIntosh and Charles R. Norris to GRANT; Leonard L. McCants and Connie Fortune OPPOSED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

1 DEC 1980

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UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.