GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16387 of Square 456 Associates, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 411.11 for a roof structure and a variance from Subsection 1706.22(g) to permit commercial development to proceed prior to the issuance of a certificate of occupancy for nonresidential development within the DD District until a certificate of occupancy is issued for affordable housing in a DD/C-4 District at premises 625-627 E Street, and 620 and 626 F Street, 501-507 and 511-517 7th Street, NW (Square 456, Lots 37, 39, 868 and 869).

HEARING DATE: September 2, 1998
DECISION DATE: September 2, 1998(Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commissions (ANC) 2C and 6A and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2C. ANC 2C which is automatically a party to this application, did not file a written statement regarding the application. However, three Commission members filed a joint letter in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 411.11 and a variance from the strict application of the requirements of 11 DCMR 1706.22(g). No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met its burden of proof, pursuant to 11 DCMR 3108.1, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map, and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board concludes

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that the applicant has met the requirements of Section 1706.22 pertaining to the provision of off-site housing, that the applicant may meet the preferred use requirements of the DD Regulations and utilize any of its incentives and bonuses in any manner permitted by said DD Regulations so long as the on-site housing is not decreased. It is therefore **ORDERED** that the application be **GRANTED** subject to the following **CONDITIONS:**

1. Within thirty days after the issuance of the Board's order, the applicant shall place $500,000 in an escrow account for the benefit of Golden Rule Plaza, Inc., to be made available to Golden Rule Plaza, Inc., at the time of settlement on the financing for the low and moderate income housing project to be constructed on the west side of New Jersey Avenue between New York Avenue and K Street. After placing the $500,000 in escrow, the applicant may proceed to construct and occupy the development in Square 456. In the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account within two years of the date of the Board's order, the applicant shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the applicant to proceed with the mixed-use development on the subject site.

2. The applicant may modify the design of the building subject to approval under D.C. Law 2-144, provided that those changes do not diminish the roof structure setbacks shown on the plans for which special exception relief is required, and may otherwise comply with the provision of preferred uses so long as all the requirements of the Zoning Regulations are met, provided that the applicant shall not reduce the amount of on-site housing which comprises 56,240 square feet of gross floor area as shown on the plans submitted to the Board.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **3-0** (Sheila Cross Reid, Betty King, and Anthony J. Hood to grant.)

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

ATTESTED BY: Tracey W. Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

FINAL DATE OF ORDER: DEC - 3 1998

PURSUANT TO D.C. CODE § 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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 TWO YEARS 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 CONSUMER AND REGULATORY AFFAIRS.

SO/16387/POH

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO.: 16387

As Interim Director of the Office of Zoning, I hereby certify and attest that on DEC - 3 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Norman M. Glasgow, Jr., Esquire
Wilkes, Artis, Hedrick and Lane, Chartered
1666 K Street, NW, Suite 1100
Washington, DC 20006

Attested by: Tracey W. Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

Date: DEC - 3 1998

Attest/SO 16387/POH