GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16603 of Fidelity Limited Liability Co. and CG Investments, Inc. (Contract Purchaser), pursuant to 11 DCMR § 3103, for variances from the residential recreation space, rear yard setback, and floor area ratio requirements of 11 DCMR §§ 773.3, 774.1, and 1706, to construct an apartment house with possible ground floor retail in the DD/C-2-C District at premises 466-480 Massachusetts Avenue, N.W. and 809-817 5th Street, N.W. (Square 517, Lot 50).

HEARING DATE: October 3, 2000

DECISION DATE: October 3, 2000 (Bench Decision)

SUMMARY ORDER

The applicant, Fidelity Limited Liability Company and CG Investments, Inc., seeks variances from 11 DCMR §§ 773.3, 774.1, 1706.4, and 1706.7 to construct a 130-foot tall, 14-story apartment house, with possible ground floor retail on the subject property. The zoning relief requested in this case is self-certified pursuant to 11 DCMR 3113.2.

The Board of Zoning Adjustment 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 Commission (ANC) 2C, the ANC for the area within which the subject property is located, and to the owners of property within 200 feet of the site. The applicant's affidavit of posting indicates that zoning posters were timely placed in front of the property, in plain view of the public.

The requested variances would permit the applicant to construct an apartment building providing (1) residential recreation space of not less than 3.9 percent of the building's gross square footage, (2) no rear yard setback, and (3) a floor area ratio (FAR) no greater than 10.36.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance from the requirements of 11 DCMR §§ 773.3, 774.1, and 1706. The applicant has shown that the site is a large lot, triangular in shape, decreasing in depth from 175 feet, five inches, at the western edge to only 55 feet, eight inches, at the eastern edge. It is currently used as a parking lot. The applicant demonstrated that as a result of the size, shape, soil characteristics, location, and zoning history of the site, strict compliance with the Zoning Regulations would threaten the economic viability of the project. Due to its siting and design, the requested variance from the rear yard setback would not result in substantial impairment to the public good. The applicant has further shown that the proposed project would provide a substantial amount of residential recreation space and that it would be in close proximity to substantial public entertainment, cultural, and recreational amenities. Finally, the requested zoning relief would encourage downtown housing

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in accordance with the intent, purpose, and integrity of the zone plan embodied in the Zoning Regulations and Map.

The D.C. Office of Planning evaluated the application and recommended that the Board grant the requested variances, provided the building's gross square footage not exceed 467,470 square feet, the building's FAR not exceed 10.36, and the applicant provide at least 3.9 percent of the building's gross square footage as residential recreation space.

ANC 2C, which is automatically a party to this application, submitted a letter in support of the application. The ANC states that the proposed project is in the best interests of the community and the future development of the area.

The Downtown Cluster of Congregations submitted two letters in support of the application, stating that the proposed 400 housing units would make a tremendous contribution to the residential goals set out in the Mayor's Downtown Task Force Report. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any person.

Based upon the record before the Board and having given great weight to the recommendations of the Office of Planning and the ANC as required by D.C. Code § 412.4 and Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000)), the Board concludes that the applicant has met its burden of proof under 11 DCMR § 3103.2. The Board further concludes 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. It is therefore **ORDERED** that this application be **GRANTED.**

Pursuant to 11 DCMR § 3101.6 and at the request of the applicant, the Board waived the requirement of Subsection 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0 (Kwasi Holman, Anne M. Renshaw, Sheila Cross Reid, and Rodney L. Moulden, to approve; Robert Sockwell, abstaining, having recused himself)

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

Each concurring member has approved the issuance of this Summary Order and has authorized the undersigned to execute this Summary Order on his or her behalf.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: NOV 22 2000

PURSUANT TO D.C. CODE § 1-2531 (1999), 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 2038, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

PURSUANT TO 11 DCMR § 3130, THIS ORDER OF THE BOARD SHALL NOT BE VALID FOR A PERIOD IN EXCESS OF TWO YEARS UNLESS WITHIN SUCH TIME THE PLANS FOR THE ERECTION OF THE STRUCTURE ARE FILED FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

BZA APPEAL NO. 16603:

As Director of the Office of Zoning, I hereby certify and attest that on NOV 22 2000, a copy of foregoing Decision and Order in BZA Appeal No. 16610 was mailed first class, postage prepaid, or via D.C. Government interoffice mail, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Lawrence L. Thomas
Advisory Neighborhood Commission 2C
First and Pierce Streets, N.W.
Washington, D.C. 20001

Councilmember Jack Evans
441 4th Street N.W.
Suite 703
Washington, D.C. 20001

Michael Johnson
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning