GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16765 of American Chemical Society, pursuant to 11 DCMR § 3104.1 for a special exception to construct an addition to an office use under section 508, pursuant to subsection 3103.2 a variance from the floor area ratio requirements under section 531, and a variance to allow an addition to a nonconforming structure devoted to a conforming use under section 2001.3 in a SP-2/C-4 District at premises 1155 16th Street, N.W. (Square 197, Lot 85).

HEARING DATE: October 2, 2001
DECISION DATE: November 6, 2001

DECISION AND ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

PRELIMINARY MATTERS:

1) The Board, pursuant to its rules, 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") 2B and to owners of property within 200 feet of the site.

2) The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application, and which submitted a letter in support of the application.

3) As directed by 11 DCMR § 3119.2, 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 § 3104.1 and for variances pursuant to § 3103.2. The only parties to the proceeding were the Applicant and ANC 2B.

4) The Board waived the 14-day deadline for written requests for party status, pursuant to § 3106.2, in order to allow Robie Beatty, a trustee for Metropolitan AME Church, to orally request party status on behalf of the Church. The Board found that Ms. Beatty did not submit written authorization to act on behalf of the Church, nor did she demonstrate either the environmental, economic, social or other impacts likely to affect the Church if the Board approved the application, or how the Church would

Case No. 16765
Exhibit No. 40
BZA
Board of Zoning Adjustment
District of Columbia
CASE NO.16765
EXHIBIT NO.40

likely be more significantly, distinctively or uniquely affected in character or kind by the proposed zoning relief than other persons in the general public. The Board denied the request for party status.

5) Three witnesses testified in support of the application, including the applicant, the architect for the project and an expert in land use and urban planning. One person, Ms. Robie Beatty, testified in opposition to the application.

6) The Board received letters in support of the application from Ward 2 Council Member Jack Evans, from the Acting Director of the Department of Housing and Community Development, from the University of Club of Washington (the abutting neighbor to the south) and from the National Geographic Society (the neighbor immediately across 16th Street, NW, to the west).

7) The Office of Planning ("OP") submitted a report and testified in opposition to the application. The Board accepted the OP report by waiver of its seven-day advance filing rule, pursuant to § 3114.2.

8) The Applicant submitted evidence and testimony in rebuttal to OP's report and testimony in opposition, including a number of prior decisions by the Board and published opinions of the District of Columbia Court of Appeals.

FINDINGS OF FACT:

1) The Applicant is the American Chemical Society, a Congressionally-chartered non-profit professional society founded in 1876 whose primary activity is the gathering and dissemination of chemically-related information to its worldwide membership, which totals more than 160,000. It is the world's largest scientific society. The Applicant's offices have been located at the property since 1941.

2) The property that is the subject of this application consists of Lot 85 in Square 197 ("Subject Property"). The Subject Property is roughly L-shaped and bounded by 16th Street to the west, M Street to the north, the University Club of Washington and a public alley to the south, and the Metropolitan AME Church to the east. The Subject Property has a total lot area of approximately 26,000 square feet and is known as premises 1155 16th Street, NW, and 1550 M Street, NW.

3) Lot 85 is split-zoned. The entire lot frontage along 16th Street, NW, and extending to a depth of 106 feet east, is zoned SP-2. The remainder of the Subject Property, measuring approximately 71 feet along the south side of the 1500 block of M Street, NW, is zoned C-4. The SP-2 portion of the lot occupies approximately 16,600 square feet, or 64 percent, of lot area while the C-4 portion totals approximately 9,336 square feet, or 36 percent, of lot area. The record reflects that this is the only split-zoned lot in Square 197.

4) The portion of the building located within the SP-2 District, with premises address of 1155 16th Street, NW ("Subject Building"), was approved by the Board in 1956 and 1957, and was constructed by the Applicant as its headquarters building prior to 1958, before the current Zoning Regulations took effect. The Subject Building is eight stories tall with two below-grade levels and a gross floor area of approximately 106,500 square feet. The original site area for the Subject Building was approximately 18,040 square feet, approximately 90 percent of which is zoned SP-2 and the remaining 10 percent zoned C-4. The resulting density of the Subject Building on the original site area is a floor-area ratio ("FAR") of roughly 5.9.

5) In the late 1980s, the Applicant constructed a 12-story building in the C-4 portion of Lot 85, with premises address of 1550 M Street, NW ("M Street Building"). The two buildings now share an above-grade connection and are on a single record lot and are considered a single building for zoning purposes. The Applicant renovated the Subject Building in 1995, with no increase in gross floor area. An SP-zoned portion of the Subject Property measuring approximately 360 square feet and constituting a portion of former Lot 848 and a portion of land added to the Subject Property as a result of a closing of a portion of the alley in Square 197 was not included in the lot area calculations at the time of construction of the Subject Building in 1957, or at the time of the M Street Building addition in 1988. The gross floor area attributable to that 360 square feet is approximately 1,260 square feet, which is the same as the building area of the proposed patio enclosure that is the subject of this application.

6) The Subject Property has been rezoned several times since the Subject Building was constructed, including rezoning to SP in 1958, which allowed a maximum 5.5 FAR, and a rezoning to SP-2 in 1978, when the permitted non-residential density was reduced to 3.5 FAR. By the time the Subject Building was completed, it exceeded the permissible FAR under the SP Zoning enacted by the 1958 Zoning Regulations. The 1978 change in the Zoning Regulations served to further increase the extent of the Building's nonconformity.

7) The Applicant proposes to enclose a 1,260 square foot portion of the existing patio on the south side of the Subject Building in order to utilize the patio on a year-round basis as an employee break/lunch area. The patio is currently used for this purpose by employees in good weather and is located adjacent to the first floor meeting rooms of the Society. The enclosure will provide all-weather protection to the patio area, and also will help to reduce noise levels on the patio emanating from the mechanical equipment on the University Club property adjacent to the patio.

8) The need for the enclosure of the patio is directly related to the Applicant's need for increased computer space for its operations. The computer space must be secure because of the vital organization information contained in the systems, and it must be in a climate-controlled atmosphere. The Applicant has explored all possible options for

locating the additional computer systems, including locating the systems within the Subject Building, within the M Street Building, and in leased space off-site. The Applicant has demonstrated that there is no available space within the Subject Building or the M Street Building because all of the space is utilized to full capacity. The Applicant has further demonstrated that security systems and building upgrades have been put in place within the Subject Building to protect the proprietary nature of the computer systems. Thus, the expanded computer space cannot be transferred off-site without undue burden and significant expense. The Applicant has identified the existing employee break room, located immediately above the computer space, as the only viable location for the necessary on-site expansion of the computer space, in that it allows direct connectivity and continued use of the existing security systems. This necessitates the relocation of the employee break area.

9) The Applicant has explored all options for relocating the employee break area elsewhere in the Subject Building and in the M Street Building. Both buildings are utilized to capacity. Likewise, it would be impractical for the Applicant to locate the employee break area in leased space off-site. The Applicant has also demonstrated that it is not practical to operate without an employee break area because it is not practical for the Applicant to require or allow its employees to break and to eat lunch at their individual workstations. The Applicant has demonstrated that the most logical and suitable space for a relocated employee break area is the enclosure of a portion of the patio.

10) The patio enclosure will be constructed primarily of glass and steel elements and will not require any structural alteration or demolition to the building. It will have an arched roofline and will measure no more than 14 feet in height at the peak of the roof.

11) The use, height, bulk and design of the proposed patio enclosure will harmonize with existing uses and structures on neighboring properties. The use of the enclosed patio will be a continuation of the same use as at present. The small enclosure will be largely hidden from public view by a stand of mature evergreen trees that are located in the landscaped public space area between the building line and the sidewalk area. Furthermore, a significant portion of the enclosure will be obscured by the wall enclosing the patio area. The patio area is not readily visible to the east of the property. The Board finds that there is no need for additional screening or other design treatment.

12) There will be no change in the permitted use of the building as a result of approval of this application. Nor will there be any increase in the amount of space devoted to office use in the building. There will be no increase in the number of employees at the building as a result of approval of the application.

13) The addition will not create dangerous or otherwise objectionable traffic conditions. The additional floor space requested does not represent any intensification of the existing use or change in any existing traffic patterns.

14) The SP-2 District is designed to stabilize the areas adjacent to the C-4 District and to act as a buffer between adjoining commercial and residential areas. SP zoning is designed to preserve and protect areas adjacent to commercial districts which contain a mix of medium to high density row houses, apartments, offices and institutions. The SP-2 District provides for a maximum floor area ratio (FAR) of 6.0 for residential uses. Non-residential FAR is limited to 3.5 FAR. There is a height limit of 90 feet. The project complies with all applicable use and height provisions set forth in the Zoning Regulations for the SP-2 District.

15) The C-4 District is designed for the downtown core that comprises the retail and office centers for both the District of Columbia and the Metropolitan area. The C-4 District provides for a maximum FAR of 10.0 and maximum height of 130 feet.

16) ANC 2B, the only other party to this application, stated its support for the application, by letter dated September 24, 2001.

17) The Office of Planning, by memorandum dated September 26, 2001 and by testimony at the hearing, recommended that the application be denied. OP was of the opinion that the Applicant did not satisfy its burden of proof for a variance from the FAR restrictions of the SP District or for additions to nonconforming structures, as set forth in the Zoning Regulations, or for the special exception.

18) OP stated that the Applicant indicated no correlation between the split-zoning of the Subject Property and the Applicant's inability to locate an employee break area in conformity with the Zoning Regulations. OP also stated that the property was not originally split-zoned and that the split-zoning was self-induced by the Applicant in that the Subject Property has expanded since the Subject Building was constructed. OP stated that split zoning is not a unique circumstance within the neighborhood. OP likewise stated that the nonconforming nature of the Subject Building is not unique because nonconforming structures are addressed by the Zoning Regulations, which prohibit their expansion when such expansion increases a particular nonconformity of those structures. OP stated that the nonconforming nature of the building does not constitute a practical difficulty for the Applicant. OP likewise stated that the Applicant had not provided sufficient evidence as to its need for additional computer space or its inability to locate the employee break area elsewhere. OP found these difficulties to be self-induced by the Applicant. OP suggested that practical difficulty satisfying the variance test would exist where an effort was being made to comply with other laws or regulations, such as to install fire stairs or handicap accessibility. OP agreed with the Applicant that the proposed enclosure would not cause substantial detriment to the public good. However, OP stated that the proposal is not within the intent of the zone plan because it involves an expansion of a non-conforming structure.

19) With respect to the request for special exception relief, OP stated that the current office use is in harmony with the neighboring properties, the addition will not impact the existing height of the building and the design will be mostly screened from neighboring properties as a result of its location and landscaping. OP opposed the special exception relief on the basis that any increase in the nonconforming aspect of the building is not consistent with the intent of the zone plan.

20) In rebuttal to the OP report and testimony, the Applicant introduced a written floor-by-floor description of the Subject Building and M Street Building, describing for the Board in detail its attempt to relocate expanded computer space and the employee break area within the Subject Property and the practical difficulty it faced as a result. The Applicant noted that one aspect of its exceptional condition is the unusual history of the property as a result both of numerous zoning changes and reconfigurations of the Subject Property, including the small portion of the property that was excluded from prior zoning calculations. The Applicant stated that the issue of a self-induced hardship is not germane to an application for area variance. The Applicant further stated that the Board has found on numerous occasions that the presence of a nonconforming structure on a property constituted both and exceptional condition and a practical difficulty. Likewise, the Applicant stated that the Board has granted numerous similar applications for additions to nonconforming structures, coupled with variances to increase the permitted FAR, and has found on numerous occasions that the expansion of nonconforming structures is consistent with the zone plan.

21) The Applicant referred the Board to past decisions made by the Board that support the approval of this application. The Applicant specifically referred to the Board's Order in Application #14675, of the National Education Association, where the Board ordered identical special exception and variance relief to that requested in the present application. The property that was the subject of Application #14675 is located immediately north of the Subject Property, at 1201 16th Street, NW. The applicant in that case requested permission to add 9,397 square feet for an atrium enclosure and fire stair. The atrium enclosure was to be used "to provide an attractive dining and meeting area for the building's employees that can be used on a year-round basis, to provide greater climate control, and to enhance efficient internal circulation." The Board in that case found that the existing nonconforming structure constituted an exceptional condition resulting in a practical difficulty in that there was no alternative space on site to provide the proposed atrium and stair. In that case, the Board likewise found that the relief could be granted without substantial detriment to the public good or impairment to the zone plan because the proposed additions are minor and are positioned in such a way as to be hidden from public view.

22) The Applicant cited numerous decisions of the Court of Appeals in support of its application. The Applicant referenced De Azcarate v. D.C. Board of Zoning Adjustment, 388 A.2d 1233, for the Court's determination the term "extraordinary or exceptional condition" was designed to allow the Board of Zoning Adjustment to temper the strict

application of the Zoning Regulations in appropriate cases. Such conditions need not be inherent in the land and can be caused by subsequent events extraneous to the land. The Applicant also referenced Monaco v. D.C. Board of Zoning Adjustment, 407 A.2d 1091, for the Court's determination that when a public service organization has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site, the Board does not err in considering the needs of the organization as possible "other extraordinary and exceptional situation or condition of a particular piece of property." The Applicant also referenced the Court's decision in Monaco in support of the fact that a building which has already been constructed on the adjoining property is another factor which may be considered in finding uniqueness. The Applicant referenced Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, for the Court's determination that the Board may approve a variance where the uniqueness of a particular property arises from a confluence of factors. The Applicant referenced Palmer v. D.C. Board of Zoning Adjustment, 287 A.2d 535, for the Court's finding that, with respect to an area variance, the test for practical difficulty requires a showing that compliance with the area restriction would be unnecessarily burdensome, the nature and extent of said burden to be determined by the facts and circumstances of each individual case. Finally, the Applicant referenced Association for Preservation of 1700 Block of N Street, NW, and Vicinity v. D.C. Board of Zoning Adjustment, 384 A.2d 674, for the holding that the rule of self-created hardship does not apply to requests for area variance but rather to requests for use variance only. However, subsequent decisions by the Court of Appeals recognize that the affirmative actions of an applicant in making its property nonconforming can justify the denial of area variance relief. See Murray v. District of Columbia Bd. of Zoning Adjustment, 572 A.2d 1055, 1058 (D.C. 1990); Carliner v. District of Columbia Bd. of Zoning Adjustment, 412 A.2d 52, 54 (D.C. 1980).

23)Ms. Robie Beatty testified as a person in opposition to the application. Ms. Beatty voiced concern over the potential impact that construction of the enclosure might have upon Metropolitan AME Church, located to the east of the Subject Property.

24)The Applicant stated that there would be no demolition or heavy equipment involved in the construction of the proposed enclosure, which was virtually a prefabricated structure. The Applicant noted that the proposed enclosure would be located along the 16th Street, NW, portion of the Subject Property, more than 100 feet from the Church at its closest point, and would not be readily visible from the east of the Subject Property.

CONCLUSIONS OF LAW AND OPINION:

Based upon the foregoing findings of fact, the Board concludes that the Applicant is seeking a special exception under § 508, an area variance from § 531, and an area variance from § 2001.3 of the Zoning Regulations.

For purposes of the special exception request, the Applicant must prove that it has complied with the requirements of §§ 508 and 3104 of the Zoning Regulations. Based on the evidence and testimony, the Board concludes that with the proposed addition, the use, height, bulk and design will be in harmony with the existing uses and structures on neighboring properties. The proposed use represents a minor expansion of the existing use of the Subject Building. The use is consistent with other uses of surrounding property. The height of the proposed enclosure is far less than existing building heights on surrounding property. The proposed addition will represent less than a one percent increase in the bulk of the Subject Building. The Board further concludes that the use will not create dangerous or other objectionable traffic conditions as there will be no increase in the number of employees or visitors to the site. The increase in space will be utilized for a relocated employee break area. There will be no intensification of office use in the building and no need for screening or other design treatment.

The Board concludes that special exception relief can be granted in the present case in harmony with the general purpose and intent of the Zoning Regulations and Maps and without adverse effect upon the use of neighboring property in accordance with the Zoning Regulations and Maps. The Board is satisfied by the Applicant's testimony and the letters of support from neighboring property owners that the proposed enclosure will have no adverse impact upon neighboring properties. The Board further recognizes that the grant of special exception relief is not inconsistent with the general purpose and intent of the Zoning Regulations where the extent of nonconformity of a nonconforming building is increased in those cases where, as here, the Applicant demonstrates its compliance with relevant special exception provisions of the Regulations.

With respect to the requests for variance relief, the Applicant must prove that it has complied with the requirements of § 3103 of the Zoning Regulations. The Board concludes that the requested relief is for area variance, the granting of which requires proof of a practical difficulty upon the Applicant arising out of some exceptional condition or situation of the property. The Board further must find that the relief requested can be granted without substantial detriment to the public good and without substantial impairment to the zone plan.

The Board concludes that the Applicant has met the requisite burden of proof. The Board further concludes that the site is subject to extraordinary or exceptional conditions by virtue of the zoning and development history of the Subject Property, the existing nonconforming structure on the site, the split zoning of the Subject Property and the existence of a portion of the Subject Property that appears to have been excluded from any previous development calculations for the site. The Board concludes that this confluence of factors results in an exceptional condition or situation impacting the

Subject Property. The Board also recognizes that the Applicant is a public service organization, chartered by Congress, and that under the Monaco holding, its inadequate facilities and its organizational needs are appropriate for consideration as an extraordinary or exceptional situation or condition of the Subject Property.

The Board concludes that that the extraordinary or exceptional situation or condition of the Subject Property results in a practical difficulty upon the Applicant. The Applicant has demonstrated through testimony and evidence that its current facilities are inadequate for its organizational needs and that no reasonable alternative exists within the Subject Property or elsewhere for the Applicant to create the necessary expansion of computer space and the relocation of the employee break room area without undue burden upon the Applicant. The Board recognizes from its prior decision in Application #14675 that the inability to create an atrium in order provide a pleasant dining and gathering area qualifies as a practical difficulty upon a property owner.

The Board concludes that the relief requested will not cause substantial detriment to the public good. The project will allow the Applicant to provide the much needed expansion space for computer operations. The project will also allow the Applicant to offer its employees a vastly improved break area. The Board concludes that the proposed addition, which will add 1,260 square feet to the gross floor area for the Subject Building, for a total square footage in the Subject Building of 107,760 square feet and necessitate a variance of only 1.1 percent, is minor and is positioned in such a way as not to be readily seen from public view on 16th Street, NW, or from its abutting neighbors. There will be no increase in office space nor in intensity of use.

The Board further concludes that it has given to Advisory Neighborhood Commission 2B the "great weight" to which it is entitled.

The Board appreciates the informed contributions of the Office of Planning in the present case. Nonetheless, with respect to the issues raised by the OP report and testimony at the hearing, the Board finds that the Applicant has satisfied its burdens for relief under §§ 3103 and 3104, respectively. The Board concludes that the Applicant has demonstrated, through evidence and testimony, and rebuttal testimony, the existence of extraordinary or exceptional situations or conditions impacting the Subject Property, including the inadequate facilities for the use of a public service organization. The Board further concludes that the Applicant has demonstrated a connection between its exceptional condition and its practical difficulty in complying with the Regulations, namely, the undue burden demonstrated by the Applicant in providing space to accommodate the expansion of its computer space and to relocate the employee break area. The Board likewise finds that area variance relief can be granted without substantial detriment to the public good or substantial impairment to the Zone Plan. The Board also concludes that the Applicant has met the tests for special exception relief. Pursuant to 11 DCMR § 3121.5, the Board left the record open until October 23, 2001 for submission of a

statement from Metropolitan AME Church regarding the progress of discussions with the applicant.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 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 appropriate in this case. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: **4-0-1** (Carol J. Mitten, Geoffrey H. Griffis, David W. Levy and Anne M. Renshaw to Approve, the third mayoral appointee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: NOV 2 8 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16765

As Director of the Office of Zoning, I hereby certify and attest that on NOV 2 8 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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