GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: D.C. Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE: September 21, 2001

SUBJECT: Waiver of Rules for Late Submission of Office of Planning Report
BZA Application 16773
Totten Tower Limited Partnership for 2633 16th Street, NW; Square 2574, Lot

The attached Office of Planning report on Application No. 16773 is being submitted less than 7 days prior to the Board of Zoning Adjustment's consideration of the application at the scheduled public hearing. The application is a request for an FAR variance at 2633 16th Street, NW.

OP requests that the Board waive its rules to receive the report into the record.

Attachment

aa/sc

BZA
Case No. 16773
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO.16773
EXHIBIT NO.32

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE: September 21, 2001

SUBJECT: BZA Application #16773
Application of Totten Tower Limited Partnership
2633 16th Street, NW
Square 2574, Lot 32

I. APPLICATION-IN-BRIEF

Applicant:	Totten Tower Limited Partnership
Relief Sought:	Variance from FAR Requirements
From Section:	11 DCMR §402.4
Zoning:	R-5-D
Regulations Require:	Approximately 3,700 SF fewer than is proposed .18 less FAR than proposed (approximately 5% variance)
Relief Sought Under:	§3103.2

Applicant's Justification: Site is exceptional because of need to restore designated historic structures; applicant has commitments with DHCD to build specific number of market rate and affordable apartments; DCRA reviewed project, issued building permit and then modified its decision on a portion of the project 10 months later, after construction had been started. Hardship would result: 1) because historic Totten Cottage would have to remain unroofed, unoccupied, unrestored and non-income producing in order to reduce FAR; 2) economics of project would be negatively affected by inability to generate market rate rents from an attractive, renovated Totten Cottage. Relief can be granted without negative impacts on public or zoning regulations because: variance is minor, would ensure restoration of a complete historic complex, and would comport with precedent of there being two other non-conforming structures in block.

II. OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning (OP) recommends that the request for an FAR variance be APPROVED.

The remainder of the Square reflects its status as having been the secondary "Embassy Row" between the late 19th and third quarter of the 20th century. Several embassies, chanceries, international organizations and churches line the 2500 block of 16th Street. The formal Meridian Hill Park, a national historic landmark, is one-half block to the south. There are additional churches and diplomatic buildings in the block to the north of the site.

The Square is on the southwestern edge of Columbia Heights, near the joining point of Columbia Heights, Mt. Pleasant and the Reed-Cooke portion of Adams Morgan.

Removed from the special characteristics of 16th Street, the nearby blocks are residential, with a combination of early twentieth century row-houses, and mid to high-rise apartment buildings. Family income, residential and racial characteristics are very diverse. There are shopping areas along Columbia Road to the northwest, and along 14th Street to the east.

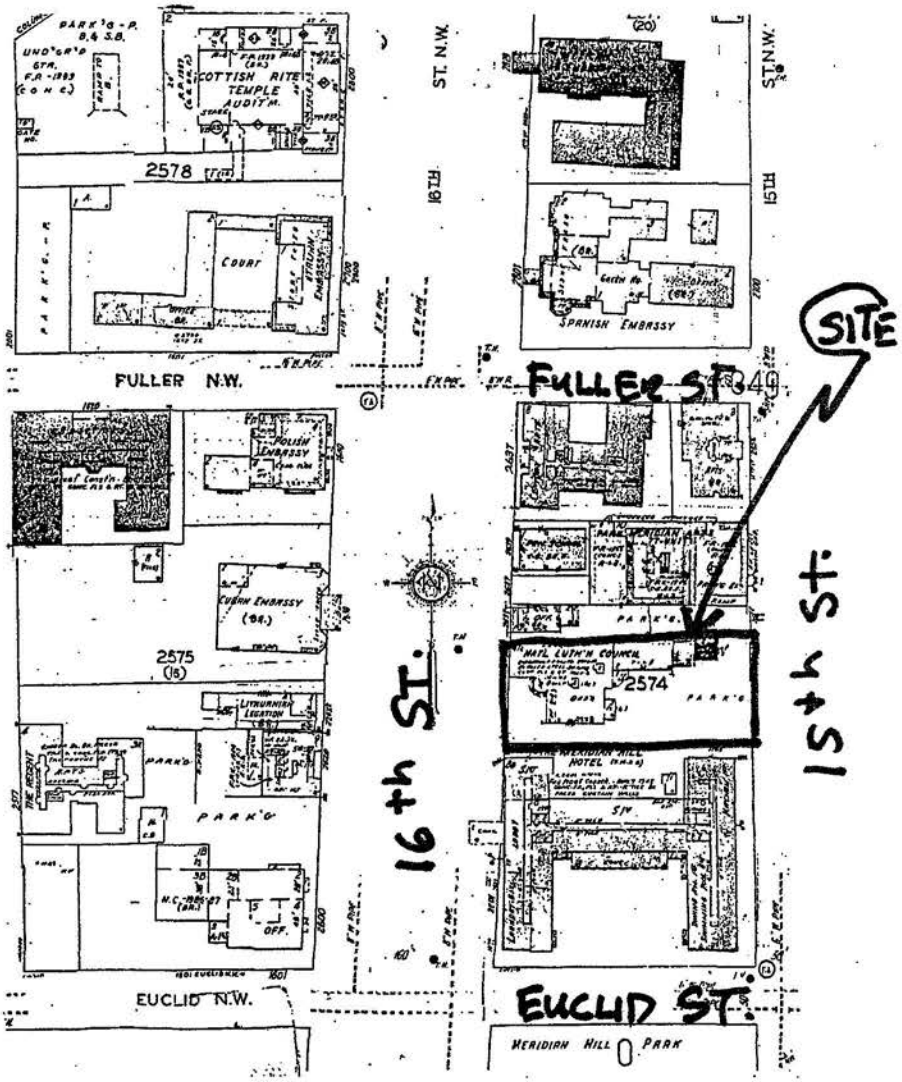


Figure 2: Detailed Location Map

III. SITE AND AREA DESCRIPTION *(See Attachments 1 and 2)*

Square 2574 in northwest Washington is bounded by:

- North: Fulton Street
- East: 15th Street
- South: Euclid Street
- West: 16th Street.

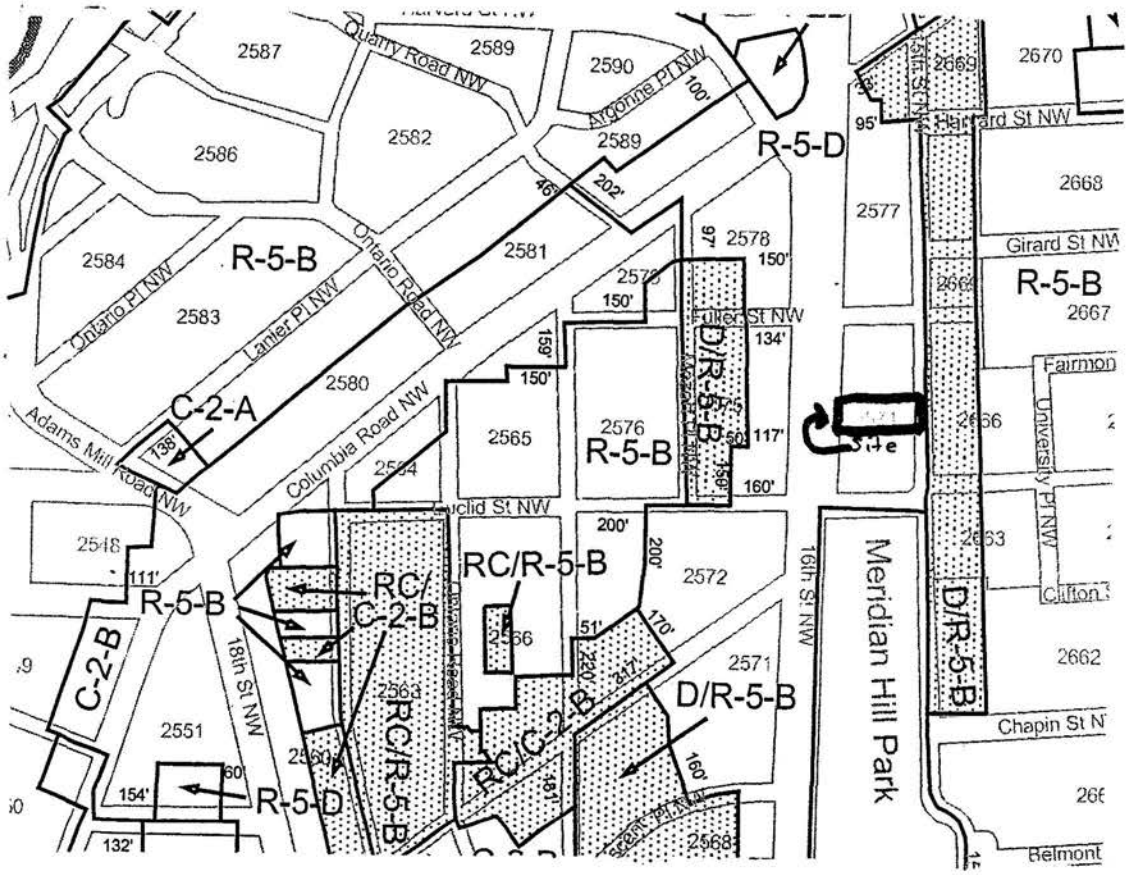


Figure 1: General Location and Zoning Map

The Square is rectangular. There are no alleys. Lot 32 is midway between Euclid Street and Fuller Street, just behind and to the north of the high-rise Meridian Hill Apartments. It has frontage on both 16th Street and 15th Street.

The Totten Cottage is an historic structure that has occupied a portion of Lot 32 since the late 19th century. It was joined in the late 1920's by the Warder Mansion, which was relocated from 16th and I Streets and connected to the Cottage to form a building that operated as one structure. The Warder Mansion is also an historic landmark. Both the Cottage and Mansion have suffered considerable neglect and vandalism and limited acts of arson over the last two decades. Their outer walls and some of their roof structure remain, but their interiors have been gutted.

IV. AREA ZONING AND HISTORIC DISTRICTS *(See Figure 1)*

The site is zoned R-5-D. Most of the nearby zoning is residential, primarily R-5-B and R-5-D. As *Figure 1* indicates, some of the residential areas have overlays. The "D" overlay is Diplomatic, the "RC" overlay imposes use restrictions within the commercial and mixed-use portions of the Reed-Cooke part of Adams Morgan.

Columbia Road, starting about 1½ block west of the site, is zoned C-2-B, as is 18th Street. Some of the interior portions of Adams Morgan have RC/C-2-B zoning. 14th Street is a combination of C-2-A and C-2-B zoning. The zoning reflects the area's history as one with relatively dense neighborhoods with extensive neighborhood center shopping. The Diplomatic overlay is unusual for this part of the city, but reflects the exceptional combination of architecture, public works and cultural history that defined this part of 16th Street almost a century ago. The buildings occupying the subject site are prime examples of that history.

While the buildings on the site have historic status, as do many nearby structures, the Site is not within a historic district. The nearest historic district is Mount Pleasant, 1 ½ block to the north and west.

V. PROJECT DESCRIPTION

There are four parts to the overall project *(See Attachment 1)*.

> The five-story Warder Mansion is on the 16th Street frontage of the Site. Construction is ongoing for its rehabilitation as approximately 35 market-rate apartment units.
>
> The nine-story Totten Tower will be constructed on the 15th Street frontage. It will contain 80 low-income rental units. Construction is underway.
>
> The two and three story Totten Cottage is between the two larger buildings, and appears in section as a hyphen between the two larger structures. It is slated for rehabilitation into 4 market rate apartment units. Work has stopped on this portion of the project.
>
> There will also be a thirty-space garage under the Totten Tower and the southern portion of the remaining site. This will be entered from 15th Street. (The applicant is eligible for a waiver from providing additional parking spaces because the Warder Mansion and Totten Cottage are designated historic properties). Site work is underway.

The applicant has chosen to focus its variance request on the Totten Cottage because:

- The applicant is required by a signed agreement with the Department of Housing and Community Development to construct 80 low-income apartment units. The applicant

states that it has no flexibility on these numbers if it is to receive the tax credits from DHCD and the IRS that will make the project feasible. *(See Attachments 2a – 2c).*

- The restoration and re-use of the Warder Mansion has always been a primary part of the overall project. Because the State Historic Preservation Officer understandably requires that the restoration of this landmark include all of the square footage of the original structure, there is no FAR leeway on this portion of the project. Construction on this portion of the project is ongoing.

- The applicant had originally planned to stabilize and partially restore the Totten Cottage, but not as a roofed, occupiable structure. The architect and developer had drawn up their earlier plans accordingly.

  The Cottage is currently an unroofed shell. Demolition has been completed on a later addition to the Cottage, after approval by the State Historic Preservation Officer. Were the Cottage not to be renovated into roofed, usable space, the project's FAR would meet matter of right FAR limitations. However, according to conversations with the applicant's representatives, the applicant was asked to restore the Cottage as an occupiable structure, by historic preservation officials after initial plans had been approved in concept. Architectural plans were revised accordingly, reviewed by the District government, and approved for construction. However, again according to the applicant's representative, an early 2001 review of the drawings by the applicant indicated that the architects had miscalculated the revised plans' FAR. Six months after the issuance of a building permit for the project, after initial demolition had been completed, and after all financing was in place, the applicant was advised that the plans that had been approved for the Cottage were no longer acceptable.

The error in FAR calculations has caused the applicant the following dilemma:

- It is precluded from developing less FAR in the Warder Mansion by historic preservation considerations;
- It is precluded from developing fewer apartments in the Tower by the Covenant with the Department of Housing and Community Developments;
- Since the State Historic Preservation Officer would prefer the applicant to restore a certain amount of covered, occupiable floor space in what remains of the Totten Cottage, and the Cottage's restoration pushes the development over the FAR limitations by just under 5%, the applicant feels it has no choice but to ask for an FAR variance.

VI. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN *(See Attachment 3)*

The Comprehensive Plan's Generalized Land Use Map designates the area for Medium Density Residential Land Use. The Ward 1 Element of the Comprehensive Plan strongly supports the construction of both new market rate and affordable housing. The overall Plan includes

numerous goals and objective in support of historic preservation. This project preserves two of the District's most threatened landmarked structures after a very long period of deterioration. The project has an exceptionally high ratio of low-income to market rate housing. The project is not only consistent with the Comprehensive Plan; it appears to be an exemplary attempt to meet its objectives.

VII. REQUESTED ZONING RELIEF

Pursuant to Sections 3103.2, the applicant is requesting a variance from Section 402.4 F.A.R

The proposed 80,100 square foot building would exceed by approximately 3,800 square feet what is permitted as a matter of right development in an R-5-D zone. The 3.68 FAR would be just under 5% in excess of the 3.5 FAR permitted in this zone.

VIII. AUTHORITY TO GRANT VARIANCES

11 DCMR, Sec. 3103.2 cites the D.C. code provision that authorizes the BZA to grant the requested variance *"where, by reason of*

- *exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations,*
- *or by reason of exceptional topographical conditions*
- *or other extraordinary or exceptional situation or condition of a specific piece of property,*

the strict application of any regulation … would result in

- *peculiar and exceptional practical difficulties to*
- *or exceptional and undue hardship upon the owner of the property…;*

Provided, that the 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".* (Emphasis added)

IX. DOES THE APPLICATION MEET THE VARIANCE TESTS?

1. **UNIQUENESS:** ***With respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions of the specific piece of property:***

   It does meet this test.

   a. The property is exceptional by virtue of its physical characteristics. These physical characteristics are not the land, per se. They are the physical improvements on the land, and their history. The Warder Mansion and Totten

Cottage are individually listed landmark structures. The Mansion is thought by several preservation experts to have been designed by H.H. Richardson, one of the most important American architects of the 19th century. If so, it is the only remaining building by this architect in Washington. If not, it remains – even in its deteriorated state -- one of the most outstanding examples of Richardsonian architecture in Washington. The Totten Cottage was designed by one of Washington's most prominent local architects of the 19th and early twentieth centuries – George Oakely Totten. The preservation of both of these structures has been an objective of historic preservation efforts over the last twenty years. During this time the buildings' conditions have deteriorated so severely that it was questionable whether it remained feasible to save them.

In Clerics of St. Viator Inc v. D.C. Board of Zoning Adjustment (320 A. 2d 291; 1974 D.C. App.) the D.C. Court of Appeals concluded that it was permissible for the BZA to take into consideration not just a piece of land's difficult topography, etc., but also the difficult condition of its improvements, when determining uniqueness and hardship. OP finds the condition of the buildings and their historical worthiness to meet the standards for uniqueness.

2. ***With respect to the* "Practical Difficulties"*** ***that would be "unnecessarily burdensome" and impose* Undue Hardship *to the Applicant should the application for an FAR variance not be approved:***

It does meet the tests.

The historic properties have been deemed worthy by the government of preservation and restoration. The applicant chose to buy these properties in order to restore them. The applicant then put together a creative preservation, housing and financing package that allowed not only the restoration of these properties, but also the provision of 80 units of low income housing in a rapidly gentrifying area. The project appeared to meet two public policy objectives that are often seen as being in conflict with each other.

Should the application for an FAR variance not be granted, the applicant would be subject to the practical difficulty of redesigning a significant element of a project that has already been approved by the Historic Preservation Review Board (HPRB) and that is already under construction. The project that was approved by HPRB and DCRA appears to exceed the matter of right FAR by less than 5%. The redesigning of the entire Cottage element, the re-visiting of the historic preservation agreement, and the possible reduction of the income stream that is helping to ensure the restoration of both the Warder Mansion and the Totten Cottage would, at this point, present a practical difficulty that would be unnecessarily burdensome and impose an undue hardship on the applicant.

3. ***Can The Relief 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 can.

   The renovation of the Totten Cottage and the Warder Mansion would restore to use a residential structure that has long been abandoned. The construction of 80 units of low-income housing would make a significant contribution to public policy objectives in a neighborhood experience that has experienced a rapid loss of such housing.

   The proposed project is consistent with the Generalized Land Use Map, and the Housing, Historic Preservation, and Ward 1 Elements of the Comprehensive Plan.

   The specific element of the total project to which the applicant is assigning the requested variance (the Totten Cottage) is in the center of the site, is barely visible from surrounding streets, and is lower-lying than all of the other properties in the block. Its use for housing at a slightly greater FAR would not have any negative physical impacts on neighboring properties.

   There are also at least two other properties in the Square that exceed the 3.5 FAR permitted as a matter of right in the R-5-D District. The building on Lot 829 has an FAR of at least 5.5. The improvements on Lot 831 have an FAR of approximately 3.8

   The project has exceptional historical value and its completion would contribute to the preservation and housing objectives of the Comprehensive Plan.

X. COMMUNITY COMMENTS *(Attachment 4)*

At its duly noticed meeting on September 6, 2001, ANC 1B voted to support the project.

XII. OTHER AGENCY COMMENTS *(Attachment 5)*

The Department of Housing and Community Development supports the overall project, but has not commented directly on the request for a zoning variance.

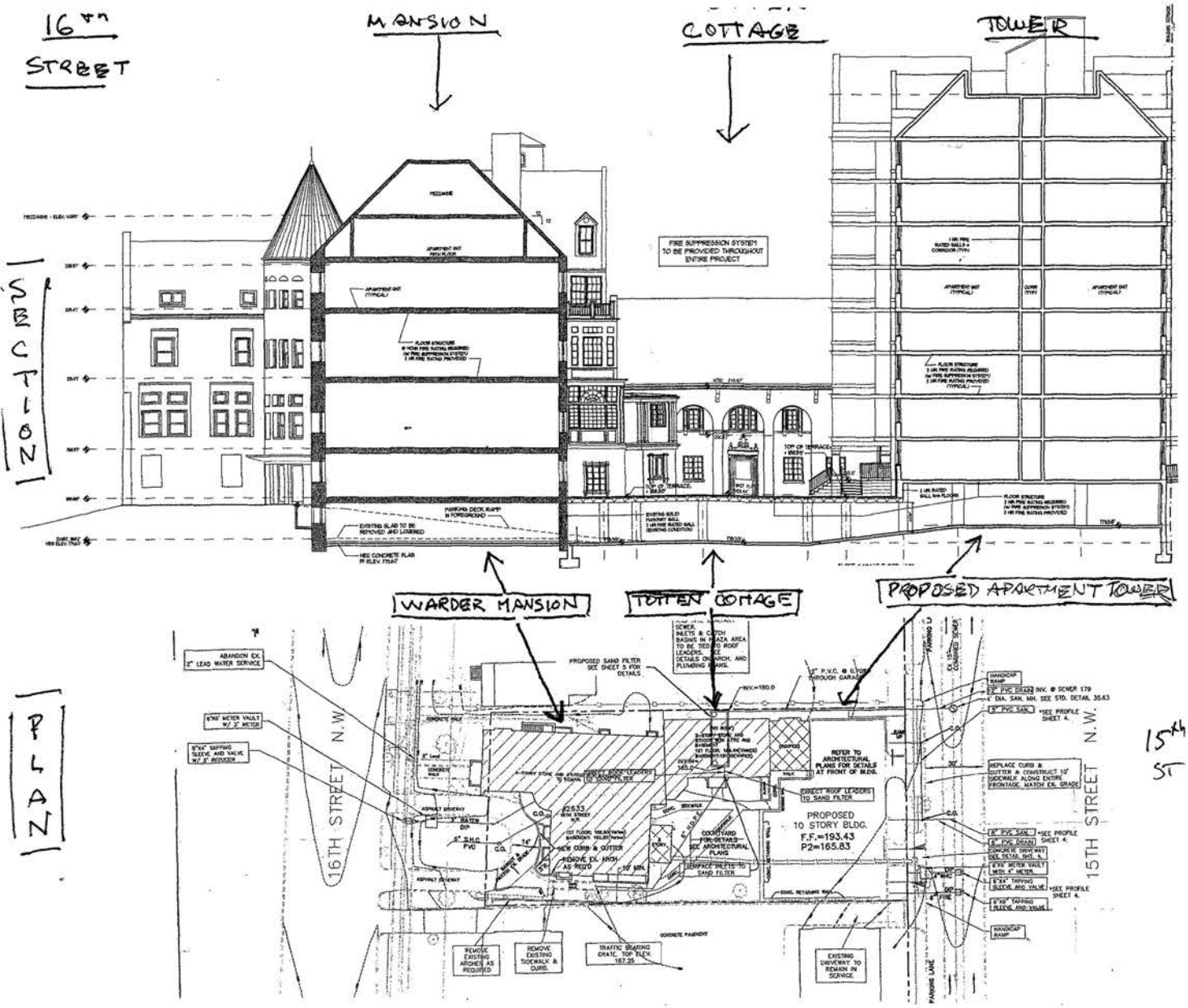
While the D.C. Historic Preservation Office is currently a part of the Office of Planning, at the time the applicant's project was reviewed the Historic Preservation Office was part of DCRA. OP therefore has included the Historic Preservation Office's comments in support of the project. The Historic Preservation Office has not commented directly on the request for a zoning variance.

XIII. OP SUMMARY RECOMMENDATION

OP RECOMMENDS THE BZA APPROVE THE VARIANCE REQUEST. Completion of this project would significantly advance the District's objectives to preserve historically significant structures, to increase the supply of market rate housing, and to increase the supply of low income housing.

Approval of this application would be consistent with the Comprehensive Plan and Generalized Land Use Map, and would not undermine the integrity of the zoning regulations.

Aa/slc
Attachments (6)



ATTACHMENT 1

Mr. Timothy M. Chapman
Member
Totten Tower Limited Partnership
1610 West Abingdon – Suite 101
Alexandria, VA 223143219

Re: Binding Forward Commitment to Allocate $1,300,000 of Low Income Housing Tax Credits for the Rehabilitation of Warder-Totten House

Dear Mr. Chapman:

The District of Columbia's (District) Department of Housing and Community Development (DHCD) hereby advises you that your proposal on the above captioned project has been approved for the binding forward commitment, under Internal Revenue Code Section 42(h)(1)(c), Low Income Housing Tax Credits (LIHTC) to be allocated from the District's year 2000, 2001, and 2002 per-capita allocations. The amount of the binding commitment for Totten-House (the "Project") in year 2000 shall be Four Hundred Thirty-Three Thousand Three Hundred Thirty-Four Dollars ($433,334.00), which shall be in addition to the Four Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars ($433,333.00) of LIHTC to be allocated in year 2001, and Four Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars ($433,333.00) to be allocated in year 2002; however, in no event shall the sum of the Project's LIHTC allocations exceed one hundred and thirty percent (130%) of the Eligible Basis multiplied by the Applicable Percentage.

Upon receipt of satisfactory evidence of fulfilling all applicable requirements of the District's LIHTC Program and of Section 42 of the Internal Revenue Code, DHCD agrees that the aggregate amount of One Million Three Hundred Thousand Dollars ($1,300,000.00) of LIHTC shall be allocated to the Project in the following manner:

1. In 2000, the Project shall receive, subject to the limits of this Agreement, the District's per capita LIHTC allocation in the amount of $433,334.00.

2. In 2001, the Project shall receive, subject to the limits of this Agreement, the District's per capita LIHTC allocation in the amount of $433,333.00.

3. In 2002, the Project shall receive, subject to the limits of this Agreement, the District's per capita LIHTC allocation in the amount of $433,333.00.

The issuance of Binding Commitment agreements for years 2001 and 2002 shall be contingent only upon: (1) Totten Tower L.P.'s compliance with the year 2000 Binding Commitment and Allocation Agreements (attached hereto as Exhibit A); (2) Totten Tower L.P.'s compliance with the year 2001 Binding Commitment and Allocation Agreements and (3) the availability, to the District of Columbia, of LIHTC in amounts sufficient to honor the above agreement.

It is further understood and agreed that, to the extent necessary to comply with this agreement, Totten Tower, L.P. shall have first priority access to the District's 2000, 2001 and 2002 per capita LIHTC allocations.

The per-capita credit amount is determined by multiplying the Internal Revenue Service's estimation of the District's population by 1.25. Therefore, it is reasonable to anticipate that the District will have sufficient LIHTC to honor this agreement.

Any and all requirements under the 2000 Binding Commitment and Allocation agreements shall remain in force and, to the extent allowable by law and this agreement, the 2001 and 2002 Binding Commitment and Allocation agreements shall substantively replicate the 2000 agreement.

We understand that the First Union Capital Markets Group will rely on this letter in determining the amount and timing of its equity contributions to the Project.

If you have any questions regarding this matter, please address them to Ms. Barbara Chism, of my staff. Ms. Chism can be reached on (202) 442-7280. Thank you for your participation in the DHCD's mission to improve and preserve affordable housing for District of Columbia citizens.

Sincerely,

Othello Mahone
Interim Director

cc: David S. White

Mr. Timothy M. Chapman
Member
Totten Tower Limited Partnership
1610 West Abingdon – Suite 101
Alexandria, VA 22314

Re: Binding Commitment of Year 2000 Low Income Housing Tax Credits for the Warder-Totten House (Square 2574 Lot 32)

Dear Mr. Chapman:

The District of Columbia's Department of Housing and Community Development (DHCD), in its capacity as the District's housing tax credit agency, hereby advises you that your proposal on the aboye captioned project has been approved under Internal Revenue Code Section 42(h)(1)(c) for the Binding Commitment of Low Income Housing Tax Credits (LIHTC) from the year 2000 allocation of same. Through the review of your LIHTC application and proforma exhibits, DHCD has estimated your project's reasonably anticipated basis to be $15,054,836.00. Based upon our feasibility analysis, this project will need $1,300,000.00. This Binding Commitment shall be in the amount of $433,334.00, with the balance of the LIHTC ($866,666.00) to be reserved and allocated, contingent upon the availability, to the District of Columbia, of LIHTC in amounts sufficient to honor the above agreements, from the year 2001 and 2002 per capita allocations. The aggregate reservation and allocation shall not exceed $1,300,000.00.

Upon receipt of a written opinion, from a tax accountant of your choice, that the above referenced anticipated basis conforms with the requirements of Section 42 of the U.S. Internal Revenue Service Code, DHCD will allocate LIHTC in an amount not to exceed the lesser of: (1) one hundred and thirty percent (130%) of the anticipated basis multiplied by the Applicable percentage; or (2) $433,334.00.

This offer to make a binding commitment of the aforementioned LIHTC will expire if you have not accepted the offer by 4:45 p.m. of the tenth (10th) working day after the date of this letter.

You should indicate your acceptance or rejection of the Binding Commitment of Year 2000 Low Income Housing Tax Credits and return the annotated and signed original copy of the Binding Commitment along with the above referenced letter of opinion to the Development Finance Division (DFD).

In accepting this Binding Commitment, the applicant acknowledges that it has consulted its own tax advisor as to any and all requirements of Section 42 of the Internal Revenue Code as it relates to the Tax Credit Certificate, including the requirement that a minimum of ten percent (10%) of the reasonably anticipated basis (costs) be incurred prior to December 31st of the calendar year in which the tax credit is to be allocated.

DHCD reserves the right to revoke reservations of tax credits, if a Housing Provider fails to demonstrate the ability to meet the 10% requirement or otherwise comply with all terms of the enclosed Binding Commitment of Low Income Housing Tax Credits.

Please note that the issuance of this Binding Commitment of Low Income Housing Tax Credits in no way commits DHCD to fund or approve other DHCD financing subsidies contained in your application. The terms and conditions, which are outlined in the enclosure to this letter, are not negotiable.

If you have the need for further clarification of Section 42 of the IRS Code, or in the event that you need specific rulings, then we encourage you to consult with your tax accountant or call the Internal Revenue Service directly. DHCD accepts no responsibility for the Housing provider's compliance under Section 42 of the Internal Revenue Code.

Ms. Barbara Chism of the Development Finance Division will be your primary point of contact on this matter. She can be reached at telephone number (202) 442-7280.

We look forward to working with you on this project which, as proposed, will increase the availability of safe, sanitary, and affordable housing to residents of the District of Columbia.

Sincerely,

Othello Mahone
Interim Director

cc: David S. White

Enclosure: Binding Commitment of Low Income Housing Tax Credit

Re: Warder-Totten House

BINDING COMMITMENT OF LOW INCOME HOUSING TAX CREDIT

Definitions:

A. Affordable is defined as a household whose total housing expenditure (rent plus tenant paid utility allowance) is at or below 30% of its income.

B. Applicable Percentage (AP) is the monthly interest statistic issued by the Treasury Department. The AP, used to calculate the project's tax credit, is the AP in effect for the month in which the project is placed in service or upon execution of a binding allocation agreement.

C. Housing Provider is the person or entity which owns the property that is the subject of this Binding Commitment of Low Income Housing Tax Credit (LIHTC), and which person or entity has the sole responsibility for complying with all Internal Revenue Regulations with respect to LIHTC;

D. LIHTC Application refers to that completed form, dated October 12, 1999 and the completed attachments which were submitted in request of, and formed the basis for, approval of the Project;

E. Project refers to the housing accommodation, which is identified below as the subject of this agreement and which accommodations shall be required to be operated in compliance with Section 42 of the Internal Revenue Code and any subsequent regulations promulgated thereunder;

F. Project Completion Schedule is that form which reflects the construction/rehabilitation completed on the project during the period ending with the 30th day of the previous month;

G. 40-60 Unit is a housing accommodation, of appropriate size, that is Affordable (as defined above) to a household whose income is at or below 60% of the median income, in the Washington D.C. Metropolitan Statistical Area and which units shall comprise not less than 40% of the total units, within the Project; and

H. 20-50 Unit is a housing accommodation, of appropriate size, that is Affordable (as defined above) to a household whose income is at or below 50% of the median income, in the Washington D.C. Metropolitan Statistical Area and which units shall comprise not less than 20% of the total units, within the Project.

The D.C. Department of Housing and Community Development, on behalf of the District of Columbia, hereby conditionally reserves **Four Hundred Thirty-Three Thousand Three Hundred Thirty-Four ($433,334.00)** of year 2000 Low-Income Housing Tax Credits for allocation to the Tower Totten Limited Partnership, hereinafter "Housing Provider", for the rehabilitation of the Warder-Totten House, located at **2633 16th Street, N.W.** and identified for D.C. tax assessment purposes as **Square 2574 and lot 32**, further described in the attached Exhibit A.

The award and retention of a Tax Credit Certificate is conditioned by the Housing Provider's agreement to:

1. expend a minimum of 10% of eligible project costs prior to the end of the calendar year in which the tax credits were awarded;

2. rehabilitate the project in substantial conformity with DHCD approved construction schedules, architectural drawings, plans and specifications;

3. maintain 78% of the project's total units as 40-60 Units;

4. initially rent the 40-60 Units at or below these rent levels (excluding utility allowances);

for one bedroom units	**$700 per month**
for two bedroom units	**$880 per month**

5. reserve tenancy, of the **40-60** Units, to households whose gross annual income does not exceed **sixty percent** (60%) of the Washington D.C. Metropolitan Statistical Area median income level for the entire thirty (30) year compliance period, in accordance with Section 42 of the Internal Revenue Code;

6. fully comply with Section 42 and other applicable sections of the Internal Revenue Code and regulations promulgated thereunder;

7. certify, in a format acceptable to DHCD, that the Housing Provider has caused the project to be in full compliance with Section 42 and other applicable sections of the Internal Revenue Code and regulations promulgated thereunder and will continue to comply with same for such time as required by the Internal Revenue Code;

8. certify that there has not been, nor will there be, a change in the project's ownership (other than admission of an equity investor) or the general partner's structure or the structure of the proposal without the prior written approval of DHCD;

9. provide DHCD, not later than the fifth (5th) day of each and every month, with an updated Project Completion Schedule which delineates time frames for architectural preparation, financing commitments, construction contracts, zoning approvals, etc.;

10. notify DHCD, in writing, forty-five (45) calendar days prior to placing the project into service, of its intent to place the project into service;

11. provide DHCD with a written opinion, from its attorney, that the project is eligible to receive Low Income Housing Tax Credit thirty (30) calendar days prior to placing the project into service;

12. certify to DHCD, within three (3) business days of the project's placement into service, in a format acceptable to DHCD, that the Housing Provider has caused the project to be in full compliance with Section 42 and other applicable sections of the Internal Revenue Code and regulations promulgated thereunder.

A failure on the part of the Housing Provider to fully comply with, or uphold, any of the above agreements, as listed herein, may be cause for the cancellation of this Binding Commitment of Low Income Housing Tax Credit and/or the recapture of any allocated Low Income Housing Tax Credit.

This Binding Commitment, which shall survive any subsequent LIHTC Allocation or Carryover Allocation agreements between DHCD and the Housing provider, is issued in reliance on the Borrower's statements contained in the LIHTC Application. Any material deviation from that proposal, without the prior approval of DHCD, could be cause for the withdrawal of this binding commitment of Tax Credit.

By accepting this Binding Commitment of Low Income Housing Tax Credit, the Housing Provider acknowledges that its own tax advisor has been consulted, with respect to the requirements of Section 42 of the Internal Revenue Code.

Acceptance or Rejection of the Binding Commitment of Low Income Housing Tax Credits:

1. [ ] The conditions and terms in this Binding Commitment of Low Income Housing Tax Credit are acceptable to the undersigned Housing Provider who intends to comply with all the conditions and submission requirements and to proceed with the project as outlined in its application for low income housing tax credits.

2. [ ] The conditions and terms are not acceptable and for that reason the undersigned will not accept the Binding Commitment of Low Income Housing Tax Credit.

3. [ ] The conditions and terms of this Binding Commitment of Low Income Housing Tax Credit are acceptable, but for other reasons the undersigned will not accept the Binding Commitment of Low Income Housing Tax Credit.

_____
(Signature of Housing Provider and Date)

Totten Tower Limited Partnership
(Name of Housing Provider)

_____
(Tax Identification Number of Project)

ATTEST:_____
My Commission expires on:

DATE:_____

Mr. Timothy M. Chapman
Member
Totten Tower Limited Partnership
1610 West Abingdon – Suite 101
Alexandria, VA 22314

Re: A $433,334 Carryover Allocation of Low Income Housing Tax Credits for the Warder-Totten House (Square 2574 Lot 32)

Dear Mr. Chapman:

The District of Columbia's Department of Housing and Community Development (DHCD), in its capacity as the District's housing credit agency, has reviewed your application for a Carryover of the 2000 allocation of Low Income Housing Tax Credits (LIHTC). Your LIHTC application projects that a reasonably anticipated basis of $12,741,211 will be incurred prior to December 30, 2002, which is the date by which the "Project", as described below, will be placed in service.

In accordance with that review, DHCD, whose employer identification number is 53-6001131, hereby agrees to allocate low income housing tax credits in the amount of Four Hundred Thirty-Three Thousand Three Hundred Thirty Four Dollars ($433,334), pursuant to Section 42(h)(1)(E) of the Internal Revenue Code of 1986 as amended (the "Code").

Totten Tower Limited Partnership (the "Owner") has certified that each of the following buildings (the "Project"), for which this allocation is being made, will be a qualified building as defined in Section 42(h)(l)(E)(ii) of the Code:

Square/Lot	Address	Building ID#
2574/32	**2633 16th Street, NW (floors 1 through 3 Totten Towers)**	**BIN #DC-2000-00033;**
2574/32	**2633 16th Street, NW (floors 4 through 9 Totten Towers)**	**BIN #DC-2000-00034;**

It is projected that the above referenced building, will be placed in service by December 31, 2002.

In issuing this Carryover Allocation, DHCD has relied upon the information submitted to it by the Owner. DHCD makes no warranty that the Owner will be eligible to receive the credit allocated herein, such determination rests solely with the Internal Revenue Service.

The parties agree that in accordance with Section 42(b)(2)(A)(ii)(I) of the Code, the Applicable Federal Rate (AFR) shall be the rate prescribed by the Secretary of the Treasury for the month in which this allocation agreement is executed.

DHCD and the Owner acknowledge and agree that:

1. by accepting this Carryover Allocation, the Owner shall comply with all requirements of DHCD and those of Section 42 of the Code;

2. if accepted, this constitutes an agreement binding upon DHCD, the Owner and its successors, with respect to the allocation of 2000 low income housing tax credits as may be applied to the buildings in the project; and

3. by accepting the terms and conditions of this Carryover Allocation, the Owner certifies that as of November 28,2000, $1,781,890.00, which is 14.0% of the reasonably anticipated basis (costs) has been incurred by the "Project".

Your signature constitutes acceptance of this Carryover Allocation of Low Income Housing Tax Credits. Return the notarized original of the enclosed Carryover Allocation to the District of Columbia Department of Housing and Community Development, Development Finance Division, at 801 North Capitol Street, N.E., 2nd Floor, Washington, D.C. 20002.

Sincerely,

Milton J. Bailey
Director

Enclosure

CARRYOVER ALLOCATION

Owner's Acceptance of the Carryover Allocation of Low Income Housing Tax Credits:

[ ] The undersigned accepts the conditions and terms of this Carryover Allocation of Low Income Housing Tax Credits.

By: _____
(Signature of Project Owner and Date)

For: _____
(Name of Project Owner)

_____
(Tax Identification Number of Owner)

ATTEST:

My Commission expires on: _____

Notary Public in and for the: _____

Notary Public

DISTRICT OF COLUMBIA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

INDENTURE OF RESTRICTIVE COVENANTS

FOR LOW-INCOME HOUSING TAX CREDITS

THIS INDENTURE, dated this ,15th day of December 2000, by and between Totten Tower Limited Partnership ("Owner"), a District of Columbia Limited Partnership, with a principal place of business at 1610 West Abington – Suite 101, Alexandria, VA 22314,

AND

District of Columbia by and through its Department of Housing and Community Development (DHCD), with principal offices at 801 North Capitol Street, N.E., Washington, DC 20002,

WITNESSETH:

WHEREAS, DHCD has been designated by the Mayor of the District of Columbia as its agency for the allocation of Low-Income Housing Tax Credit ("LIHTC") dollars, pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"): and

WHEREAS, Owner holds title to property consisting of one (1) building with 80 residential rental units, as more fully described in Exhibit A attached hereto and made a part hereof, known as Warder-Totten House (the "Project"); and

WHEREAS, based upon Owner's representations, Owner has received from DHCD, pursuant to the Code, an allocation of low-income housing tax credits (the "Tax Credits") in an amount not to exceed Four Hundred Thirty-Three Thousand Three Hundred Thirty Four Dollars ($433,334) which allocation is subject to Owner executing, delivering and recording, in the official land deed records of the District, this Indenture that creates certain covenants running with the land for the purpose of enforcing the requirements of the Code by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, Owner under this Indenture, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the land and the Project for the term stated herein and binding upon all successors and assigns of the Owner with respect to the Project for such term.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
DEFINITIONS

All words and phrases defined in Section 42 of the Code and in the Regulations pertaining thereto, as promulgated by the U.S. Department of Treasury or the U.S. Department of Housing and Urban Development, shall have the same meanings in this Indenture.

A. Code refers to Section 42 of the Internal Revenue Code of 1986, as amended, and any successor provision and all applicable regulations, rulings, pronouncements or other official communications issued from time to time with respect thereto by the Internal Revenue Service, the U.S. Department of the Treasury or the U.S. Department of Housing and Urban Development.

B. Low-Income Unit is each residential unit, within the Property, which is occupied or to be occupied by tenants meeting the income restrictions set forth under subsection (g) (2) of the Code and as are more specifically identified in Exhibit B which is the DHCD Conditional Reservation of Low Income Housing Tax Credits agreement.

C. Project or Property refers to the land and the improvements thereon, (as formally described in Exhibit A) which are the subject of this Indenture.

D. Owner is the individual or entity (and/or its successors and/or assigns) that holds title to the Property and which individual or entity is responsible for compliance with the Code and all agreements that serve to assure compliance with the Code.

E. Qualified Low-Income Tenants are present, future and former residents of the Project that meet the income restrictions imposed by Section 42 of the Internal Revenue Code.

F. Reservation refers to the binding commitment issued by DHCD, to the Owner, which specifies the conditions to be met by the Owner in order to obtain an allocation of LIHTC from DHCD.

G. Regulation refers to, but is not limited to, compliance monitoring regulations, public rulings, notices, procedures, announcements and bulletins issued by the Internal Revenue Service (collectively, the "Regulations").

H. Termination date refers to that date which is fifteen years after the close of the Compliance Period.

ARTICLE II
OWNER'S REPRESENTATIONS AND WARRANTIES

A. Owner is and shall continue to be duly organized and existing under the laws of the District of Columbia as the type of entity it represents itself to be and authorized to perform the activities contemplated by the Project financing.

B. All statements and representations made by Owner to DHCD in connection with the low-income housing tax credits or relating to the Project were true and correct in all material respects when made by Owner.

C. Owner has and shall continue to have good and marketable title to the Project.

D. Owner acknowledges that the Project is and shall remain a low-income residential rental property, in accordance with the Code and the Regulations and Owner will not knowingly take or permit to be taken any action which would, either directly or indirectly cause the Project to be in non-compliance with the Code or the Regulations for the term of this Indenture.

E. During the term of this Indenture, Owner agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy.

F. Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Indenture are paramount and controlling as to the rights and obligations set forth, and supersede any other requirements in conflict herewith.

G. Owner covenants that it will take, or cause to be taken, all reasonably necessary lawful actions in order to ensure compliance with all of the requirements, terms, provisions, covenants and restrictions of the Code or this Agreement and that it will not take, nor permit to be taken, any action that would result in a violation of any such requirements, terms, provisions, covenants or restrictions.

H. It is expressly understood and agreed that in no event shall the requirements or imposition of any restrictions under this Agreement supersede or preclude compliance with the Code should they be in conflict.

ARTICLE III
RENTAL RESTRICTIONS

A. Owner represents, warrants and covenants throughout the term of this Indenture that the Applicable Fraction (as defined in Section 42(c)(1) of the Code) shall be 100%.

B. Owner represents, warrants and covenants that, throughout the Compliance Period, not less than 40% of the residential units at the Property shall be rent restricted as Low-Income Units and occupied by households whose income is 60% or less of Area Median Gross Income, as described in the Code.

ARTICLE IV
TERM OF INDENTURE

A. Pursuant to the Code, The Extended Use Period shall, with respect to each and every building in the Project, commence on the first day in the Compliance Period and, except for those provisions set forth below, shall end on the Termination Date of this Agreement.

B. Notwithstanding paragraph A above, the Compliance Period and/or Extended Use Period for any building(s), within the Project, shall terminate (a) on the date the building(s) is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure, unless the Secretary of the Treasury determines that such acquisition is soley arranged so as to allow the Owner to avoid the restrictions imposed under the Compliance and/or Extended Use Period; or (b) on the last day of the one year period following the delivery of a request, to DHCD, and the subsequent failure of DHCD to secure a Qualified Contract as defined in Section 42(h)(6)(F) of the Code.

C. In the event that this Agreement is terminated pursuant to Section B. above, during the 3-year period following such termination, the Owner shall not: (a) evict or terminate the tenancy, other than for good cause, of an existing tenant in a Low-Income Unit within the Project; or (b) increase the gross rent with respect to any such unit, in an amount exceeding the maximum rent for such units permitted under the Code.

ARTICLE V
OWNER'S COVENANTS

A. Owner further acknowledges and agrees that this Indenture shall inure to the benefit of all Qualified Low-Income Tenants who, either individually or collectively, shall have the right to enforce Article III and Paragraph C of Article IV of this Indenture in any tribunal in the District of Columbia.

B. Owner shall not discriminate on the basis of race, creed, color, gender, age, handicap, marital status, national origin, family status or religion in the lease or use or occupancy of the Project; nor shall Owner discriminate in the employment of persons for the improvement, operation and management of the Project.

C. If Owner becomes aware of any situation, event or condition that would result in non-compliance with the Code or the Regulations, Owner shall promptly submit written notice thereof to DHCD.

D. Owner agrees that the terms, conditions and restrictions of this Indenture shall be covenants running with the land, and that any deed of conveyance of the Project or any part thereof, shall incorporate said terms, conditions and restrictions by reference, to this Indenture, for the Compliance Period as defined herein.

E. Prior to the expiration or termination of the Compliance Period, in accordance with Article IV hereof, any sale or transfer or exchange of the Project will be subject to the requirements of the Code and this Indenture and Owner shall obtain a written agreement from any prospective new owner as to the foregoing requirements of this Agreement and the Code. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any Low-income portion of the Project.

F. Owner agrees to notify DHCD in writing thirty (30) days prior to any sale, transfer or exchange of the Project.

ARTICLE VI
OWNER INTEGRITY

A. Definitions for this article are as follows:

(1) Confidential information means information that is not public knowledge, or information generally made available to the public on request, which disclosure could give an unfair, unethical, or illegal advantage to another desiring to contract with the District of Columbia and/or DHCD.

(2) Consent means written permission signed by a duly authorized office or employee of the District of Columbia and/or DHCD, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the District of Columbia and/or DHCD shall be deemed to have consented by virtue of execution of this Indenture.

(3) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind for the sole purpose of conducting commerce in a non-competitive manner.

B. Owner shall maintain the highest standards of integrity in the performance of this Indenture and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the District of Columbia and/or DHCD.

C. Owner shall not disclose to others any confidential information gained by virtue of this Indenture.

D. Owner shall not directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, exercise of discretion in connection with this or any other Indenture with the District of Columbia and/or DHCD; nor shall the Owner induce any District of Columbia officer or employee to violate any known legal duties.

E. Owner shall not, in connection with this or any other Indenture with the District of Columbia and/or DHCD, directly or indirectly offer, give, agree or promise to give a gratuity for the benefit of any officer or employee of the District of Columbia and/or DHCD as an inducement for favorable dispensation.

F. Owner nor anyone in privity with the Owner shall accept or agree to accept from, or give or agree to give to any person, a gratuity for the provision of goods and services required under this Indenture except as provided herein.

G. Owner shall disclose, to DHCD, any financial interest in any contractor, subcontractor or supplier providing services, labor or material on this Project.

H. Owner, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify DHCD in writing.

I. Owner, by execution of this Indenture and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions.

J. Owner shall, upon request of any office or agency of the District of Columbia or federal government, reasonably and promptly make all business and financial records, which are relevant to this Indenture, available to that office and/or its representatives for inspection and copying.

ARTICLE VII
OWNER RESPONSIBILITY

A. Owner certifies that it is not currently under suspension or disbarment by the District of Columbia, any state or federal government.

B. If, in connection with this Indenture or any extensions or renewals thereof, Owner enters into any contract or subcontracts with contractors or subcontractors who are currently suspended or debarred by the District of Columbia, DHCD shall have the right to require Owner to terminate such contracts or subcontracts.

C. With respect to the Project, all of the Owner's books, contracts, records, computerized data, documents and other papers (collectively the "Records and Documents"), relating to the following, shall at all times be maintained at the Project in reasonable condition for a proper audit:

1. compliance with the Code and this Agreement;

2. eligibility of the Owner to claim Credits; and

3. transference of any part of the Property or any change in ownership interest of the Property.

Owner agrees that it shall be responsible for reimbursing the District of Columbia for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General or any federal agency or authority relating to an investigation of Owner's compliance with the terms of this Indenture or any other agreement between Owner and the District of Columbia which results in the suspension or debarment of Owner.

ARTICLE VIII
ENFORCEMENT OF PROVISIONS

Owner acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Indenture are to assure the Owner's compliance with the Code and its Regulations. Owner in consideration for receiving Tax Credits for the Project, hereby agrees and consents that (i) in addition to all other remedies provided by law or in equity, DHCD, the District of Columbia and/or the United States of America shall be entitled to enforce specific Owner performance obligations under this Indenture in any tribunal in the District of Columbia should there occur any breach of the conditions and restrictions contained herein, and (ii) in addition to all other remedies provided by law or in equity, the tenants either individually or collectively, shall be entitled to enforce, upon Owner, specific performance requirements of Article III of this Indenture.

ARTICLE IX
MISCELLANEOUS

A. This Indenture shall not be amended without the prior written agreement of the parties hereto.

B. DHCD or its agents or assigns shall have the right of entry to, and inspection of, the Project and shall have the right to inspect and reproduce any and all records, books and ledgers for the Project during regular business hours.

C. The invalidity of any clause, part or provision of this Indenture shall not affect the validity of the remaining portions thereof.

D. This Indenture and all matters relating thereto shall be governed by, construed and interpreted in accordance with the laws of the District of Columbia and the laws of the United States of America.

E. The obligations of the Owner, as set forth herein, shall survive the Allocation and shall not be deemed to merge with or be terminated by the making of such Allocation.

F. All notices to be given, pursuant to this Agreement, shall be in writing and shall be deemed given when mailed by first class mail, return receipt requested, to the parties hereto at the addresses set for below or to such other place as a party may from time to time, in writing, designate.

To DHCD:	801 North Capitol Street, N.E. 2nd Floor Washington, D.C. 20002 ATTN: Chief, Development Finance Division
To Owner:	1610 West Abington – Suite 101 Alexandria, VA 22314

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be signed on the date first written above.

WITNESS

OWNER: _____

_____

BY: _____

Title: _____

_____

BY: _____

Title: _____

ATTEST

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

_____

BY: _____
Milton J. Bailey
Title: Director

DISTRICT OF COLUMBIA :

On this, the ___ day of _____ 2000, before me, the undersigned officer, personally appeared _____, who being sworn according to law, deposes and states that he/she/they is/are the _____ of _____, a District of Columbia _____ known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged the he/she/they, being authorized to do so, executed the same for the purpose therein contained, and desires the same to be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

DISTRICT OF COLUMBIA: ss

On this, the ___ day of _____ 2000, before me, the undersigned officer, personally appeared Milton J. Bailey who acknowledged himself to be the Interim Director of the Department of Housing and Community Development, a public agency created by the District of Columbia, and acknowledged that he/she as such Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and desires the same to be recorded as such.

_____
Notary Public

After recordation this Indenture should be returned to:

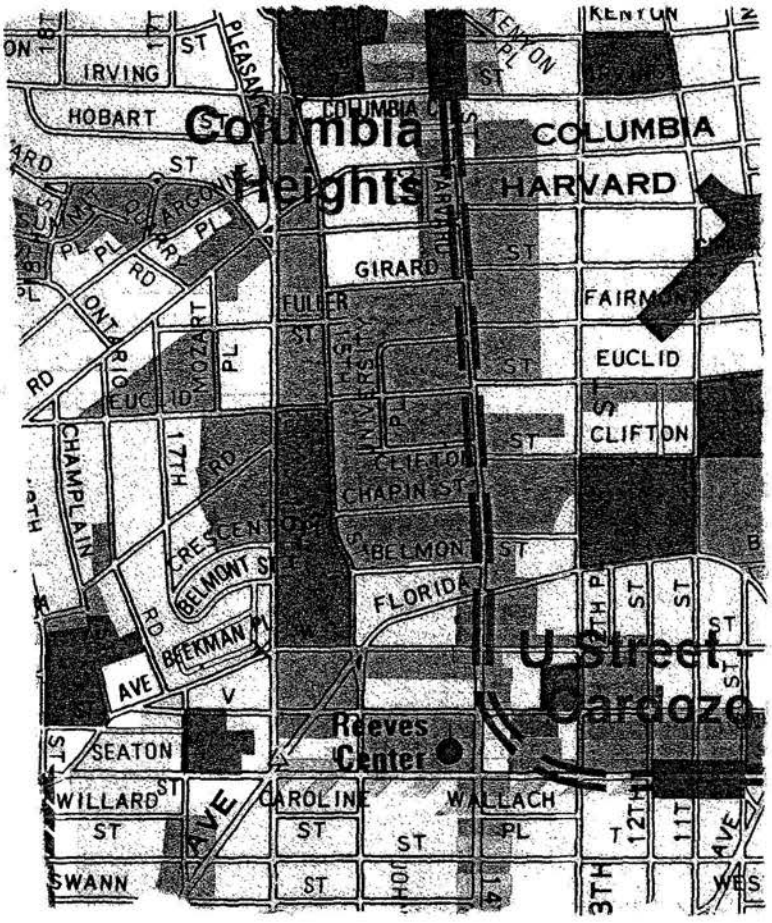
Department of Housing and Community Development
Attention: Development Finance Division
801 North Capitol Street, N.E., 2nd Floor
Washington, DC 20002

Please mail this Indenture to the above post office address.

DISTRICT OF COLUMBIA: ss

RECORDED on this ___ day of _____, 2000, in the office of the District of Columbia Office of the Recorder of Deeds in Libre ____, Folio _____.

_____
Recorder of Deeds



residential land use categories

low density

Single-family detached and semi-detached housing are the predc

moderate density

Row houses and garden apartments are the predominant uses; may also include low density housing.

medium density

Multiple-unit housing and mid-rise apartment buildings are the pr may also include low and moderate density housing.

high density

High-rise apartment buildings are the predominant uses; may als moderate, and medium density housing.

commercial land use categories

low density

Shopping and service areas that are generally low in scale, chara that provide a limited range of retail goods and services are the p

moderate density

Shopping and service areas that generally provide a much broad services are the predominant uses. Chain drug stores and grocer

ADVISORY NEIGHBORHOOD COMMISSION 1B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
COLUMBIA HEIGHTS / LEDROIT PARK / SHAW / UNIVERSITY HEIGHTS

September 19, 2001

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

RECEIVED
D.C. OFFICE OF ZONING
2001 SEP 21 A 11:43

Re: BZA Application No. 16773,
2533 16th Street, NW (Square 2574, Lot 32)

Dear Members of the Board:

Please be advised that, at the regularly scheduled meeting of Advisory Neighborhood Commission 1B on September 6, 2001, at which a quorum of eight members were present, the members of the ANC voted unanimously to support the application of Totten Tower Limited Partnership for an area variance to allow them to complete and occupy the "Totten Cottage" portion of the project, as detailed in BZA Application No. 16773. As the position of the ANC is entitled to "great weight," we ask that you approve the application for this property within the boundaries of our ANC.

As we are sure the Members of the Board are aware, the property at 2533 16th Street suffered from neglect by the prior owners and became an eyesore in our community. As our community is revitalized, our ANC is particularly concerned that many long-time residents are being forced out. Because of this problem, the members of our community believe the Warder-Totten project is particularly beneficial because of the large number of below market rate housing units that it will provide. Allowing the variance will not adversely impact the community and will allow the project to move forward.

ANC 1B urges immediate approval of the zoning variance to make this new housing available as soon as possible. If you should have any questions regarding this matter, I may be contacted on (202) 307-1099.

Sincerely,

Glenn J. Melcher
Chairman

BZA
Case No. 16773
Exhibit No. 30

GOVERNMENT OF THE DISTRICT OF COLUMBIA
HISTORIC PRESERVATION OFFICE



September 13, 2001

Board of Zoning Adjustment
441 4th Street, NW
Washington, DC 20001

Dear Members of the Board:

It is not customary for our office to comment upon cases before you. We are unable, and would consider it improper, to argue the grounds of an applicant's claim to a variance. With your permission, however, we would take this opportunity to point out the historic significance of the Warder-Totten property and what we perceive to be the public interest in its rehabilitation.

The Warder-Totten House was listed as a landmark in the *District of Columbia Inventory of Historic Sites* in 1964, less than forty years after the complex's construction from a relocated 1885 residence designed by Henry Hobson Richardson plus new additions. The house was entered into the National Register of Historic Places in 1972, in recognition of its architectural significance. The history of the buildings since that time is too well known. For much of this period, the property has been vacant. Gutted on the interior and otherwise damaged by accidents and vandalism on the exterior, it had become a neighborhood blight. It has been considered one of the most endangered historic properties in the city, a cause of particular concern to our office and to the DC Preservation League. Attempts to rehabilitate the property thus far have failed. We are gratified that a party has chosen finally to reclaim the structures. The applicant has made commitments to stabilize and restore them. In our experience, however, the best long-term preservation of historic resources lays in their ability to accommodate compatible and economically viable uses. If practical and permissible under zoning regulations, we would prefer to see all of the historic components of the landmark, including the "Warder Cottage," no longer vacant, but occupied appropriately.

We do not presume to ask special consideration for this property, only whatever consideration these circumstances might merit under the rules of the Board.

Sincerely,

Timothy J. Dennee,
Architectural Historian