Application No. 16773 of TOTTEN TOWER LIMITED PARTNERSHIP, pursuant to 11 DCMR § 3103.2 for a variance from the floor area ratio requirement (Section 402), for the construction and subsequent occupancy of apartment units within the Totten Cottage, a historic landmark, and part of the overall improvements of the premises 2633 Sixteenth Street, NW (Square 2574, Lot 32).

HEARING DATE: September 25, 2001
DECISION DATE: September 25, 2001 (Bench Decision)

SELF CERTIFICATION

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

SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application, by publication in the ***D.C. Register***, and by mail to Applicant, Advisory Neighborhood Commission (ANC) 1B, and to owners of all property within 200 feet of the property that is the subject of this application. The application was referred to the Office of Planning (OP) for review and report, which recommended, by report dated September 21, 2001, approval of the application. That report was accompanied by a request, also dated September 21, 2001, to waive the rules to allow the Board to accept the report after the deadline established by the rules; the Board agreed to the waiver and accepted the report.

The subject property is located within the jurisdiction of ANC 1B. ANC 1B filed a written statement supporting the application, which they sent by letter dated September 19, 2001. The ANC's letter was authorized at the ANC's regular monthly meeting September 6th by a unanimous vote of the ANC members, a quorum being present and that meeting duly Noticed. The ANC's letter noted that the overall project would be beneficial, specifically citing the below market rate housing that was being provided as part of the overall project.

The Office of Planning's representative summarized that Office's report and answered questions posed by the Board's members.

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 strict application of the requirements of 11 DCMR § 402. The Applicant appeared and introduced four witnesses, three of whom the Board qualified as experts – two in architecture, one in land use

BZA
Case No. 16773
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16773
EXHIBIT NO.38

planning and zoning. The applicant then moved its application and pre-hearing submissions into evidence, commented briefly on the evidence and the variance being sought, and answered questions posed by the Board's members.

No other persons or parties appeared at the hearing; more particularly, no person or entity appeared at the public hearing opposition to the application. Accordingly, a decision by the Board to grant this application is not adverse to any party.

The Board closed the record at the hearing. Based upon the record before the Board, and having evaluated the Applicant's evidence and testimony and having given great weight to the recommendations of the Advisory Neighborhood Commission 1-B and the Office of Planning's report filed in this case, together with the testimony of that Office's representative, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 under §§ 402, and that –

(a) there exists an exceptional or extraordinary situation or condition related to the property, and
(b) the property's specific attributes and circumstances would result in a peculiar and exceptional practical difficulty or exceptional or undue hardship for the owner to comply with the Zoning Regulations, and
(c) 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 the application is **GRANTED**, subject to the following condition:

> The Applicant will dedicate the gross square footage sought and approved to the renovation and occupancy of the Totten Cottage portion of the overall project at the property as apartment units.

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 and that the waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0-0 (Carol J. Mitten, Geoffrey Griffis, Sheila Cross Reid, Anne Mohnkern Renshaw, and David Levy to grant)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: _____

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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

WAS1 #1011886 v2

~~DRAFT~~

Application No. 16773 of TOTTEN TOWER LIMITED PARTNERSHIP, pursuant to ~~11 DCMR~~ **11 DCMR** § 3103.2 for ~~variances~~ **a variance** from the floor area ratio requirement (Section 402), for the construction and subsequent occupancy of apartment units within the Totten Cottage, a historic landmark, and part of the overall improvements of the premises 2633 Sixteenth Street, NW (Square 2574, Lot 32).

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SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application, by publication in the ***D.C. Register***, and by mail to Applicant, Advisory Neighborhood Commission (ANC) 1B, and to owners of all property within 200 feet of the property that is the subject of this application. The application was referred to the Office of Planning (OP) for review and report, which recommended~~____. The Board also waived the rules to accept the late filing of the OP~~, **by report dated September 21, 2001, approval of the application. That report was accompanied by a request, also dated September 21, 2001, to waive the rules to allow the Board to accept the report after the deadline established by the rules; the Board agreed to the waiver and accepted the** report.

The subject property is located within the jurisdiction of ANC 1B. ANC 1B filed a written statement supporting the application, which they sent ~~following a~~ **by letter dated September 19, 2001. The ANC's letter was authorized at the ANC's** regular monthly meeting ~~following a~~ **September 6th by a unanimous** vote of the ANC members ~~when a quorum was present at a duly Noticed meeting of the ANC. When the Board acts in a manner consistent with the recommendations of an ANC, as here, the summary Order need not detail the reasons why or recite and discuss any specific issues raised~~, **a quorum being present and that meeting duly Noticed. The ANC's letter noted that the overall project would be beneficial, specifically citing the below market rate housing that was being provided as part of the overall project.**

The Office of Planning's representative summarized that Office's report and answered questions posed by the Board's members.

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 strict application of the requirements of 11 DCMR ~~§§ 402. No~~ § 402. **The Applicant appeared and introduced four witnesses, three of whom the Board qualified as experts – two in architecture, one in land use planning and zoning. The applicant then moved its application and pre-hearing submissions into evidence, commented briefly on the evidence and the variance being sought, and answered questions posed by the Board's members.**

No other persons or parties appeared at the hearing; more particularly, no person or entity appeared at the public hearing ~~in~~ opposition to the application. Accordingly, a decision by the Board to grant this application ~~would~~ **is** not ~~be~~ adverse to any party.

~~When cases are eligible for Summary Orders, persons and parties in support need not be included in the Summary. The application was supported at the hearing by several individuals and organizations.~~

The Board closed the record at the hearing. Based upon the record before the Board, and having **evaluated the Applicant's evidence and testimony and having** given great weight to the **recommendations of the Advisory Neighborhood Commission 1-B and the** Office of Planning's report filed in this case, **together with the testimony of that Office's representative,** the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 under ~~§§ 402.~~ §§ **402. and** that –

(a) there exists an exceptional or extraordinary situation or condition related to the property ~~that creates a~~ **, and**

(b) **the property's specific attributes and circumstances would result in a peculiar and exceptional** practical difficulty **or exceptional or undue hardship** for the owner ~~in complying~~ **to comply** with the Zoning Regulations, and

(c) ~~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 the application is **GRANTED**, subject to the following condition:

> The Applicant will dedicate the gross square footage sought and approved to the renovation and occupancy of the Totten Cottage portion of the overall project at the property as apartment units.

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~~ **and that the** waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0-0 (~~(~~**Carol J. Mitten, Geoffrey Griffis,** Sheila Cross Reid, Anne ~~Renshaw, David Levy, Geoffrey Griffis, and Zoning Commission designee~~ **Mohnkern Renshaw, and David Levy** *to grant*)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: _____

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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

WILLIAMS, LINDSLEY (WAS - X71873)

From: WILLIAMS, LINDSLEY (WAS - X71873)
Sent: Thursday, September 27, 2001 11:43 AM
To: Richard Nero (E-mail)
Cc: Timothy Chapman (E-mail); PATTON, DOUGLAS J (WAS - X71893); Michael D. Johnson (E-mail)
Subject: Totten Tower Proposed Summary Order / BZA 16773

Rick Nero:

Please accept this on behalf of Totten Tower Limited Partnership. It reflects the work of this firm and has been approved by Douglas J. Patton, Esq., of this firm. Please forward it to whichever staff member has been charged with preparing the final Order, along with this cover note so that everyone is aware of the acute timing constraints our client is facing (see below).

Attached you will find a WORD document that we have prepared for BZA Case 16773, specifically a form of Summary Order for a Self-Certified Application.

This version comports with the DRAFT submitted at Tab J of the Applicant's prehearing submission. It also adds a limited amount of other information.

We are faxing you a "Compare Write" that vividly depicts each of the changes, some as subtle as substituting a non-breaking space for a regular space so that citations do not straddle a line. Others are more substantive but none depart from the general format and content of the one first filed, which the Board had before them in the record September 25..

Our client must complete the building by the end of this calendar year. Thus, he faces an acute need to have this Order be issued and distributed this week if at all possible. Thereafter, he knows that he will have to wait ten (10) days until it becomes effective. Thank you.

Lindsley Williams

Lindsley Williams
LWilliams@HKLaw.com

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FACSIMILE

TO:		
Richard Nero	Office of Zoning	(202) 727-6072
NAME	COMPANY/FIRM	FAX NUMBER
		(202) 727-2806
CITY	STATE	(TELEPHONE NUMBER)

FROM:		
Lindsley Williams	(202) 828-1873	9
NAME	TELEPHONE	TOTAL PAGES (Including Cover Sheet)

MESSAGE:

FOR THE RECORD:

DATE: September 27, 2001	URGENCY: ☐ SUPER RUSH	☐ RUSH	☐ REGULAR
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CONFIRMED: ☐ YES ☐ NO	NAME:	TIME:	

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WAS1 #1017045 v1