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October 30, 2001

NORMAN M. GLASGOW, JR.
202-419-2460
Internet Address: nglasgow@hklaw.com

Hand Delivery

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

Re: BZA Application No. 16775
National Medical Association
1012 10th Street, N.W.

Dear Members of the Board:

Enclosed is our letter dated October 30, 2001 responding to issues raised at the public hearing on the above matter. Copies of that letter and attachments were hand delivered today to the Office of Planning and ANC 2F.

Very truly yours,

Norman M. Glasgow, Jr.

Enclosure

cc: Office of Planning
ANC 2F

Case No. 16775
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16775
EXHIBIT NO.35A1

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October 30, 2001

NORMAN M. GLASGOW, JR.
202-419-2460
Internet Address: nglasgow@hklaw.com

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

Re: BZA Application No. 16775,
National Medical Association
1012 10th Street, N.W.

Dear Members of the Board:

The applicant appreciates the opportunity to submit information to respond to issues raised at the public hearing and to assist the Board in making its decision in this case. The applicant hopes that, upon review, the Office of Planning will also be in agreement that the granting of the variance is appropriate and does not set any perceived adverse precedent. To that end, the following materials are submitted:

1. Letter from Rudolph Williams, Executive Director of the National Medical Association.

2. Letter from Douglas Jemal committing to provide the 14,666 square feet at no charge to the National Medical Association, with attached draft form Development Lot Covenant.

3. Summary and copies of a series of variance cases granted shortly after the adoption of new regulations.

4. Copy of the Order of the Board of Zoning Adjustment in Application No. 16387 for a variance from the timing requirements involving housing production in the DD Zone for the Golden Rule Plaza project and Square 456 Associates.

5. Draft order of the applicant.

The Granting of Variance Relief is Appropriate in this Unique Situation and Will Not be a Widely Available Precedent

In proceeding with this case, we are unable to readily remember a situation where there has been such expressed support for the redevelopment of a site by an organization of such long-standing within the District of Columbia, but with a caveat that the relief necessary to economically permit the redevelopment to proceed involved such difficulty in reaching a mutually acceptable solution. We understand from the Office of Planning that a deep concern rests with a perception that a precedent will be set that may cause significant future problems concerning the provision of downtown housing. We believe that, through the Board's order and its conditions, but mostly through relying on the existing Zoning Regulations and their consistent interpretation, the precedent issue which the Office of Planning is concerned about may be fully addressed.

As we understand the issue as framed by the Office of Planning, there is a concern that the combined lot development provision would be utilized without the posting of the funds in escrow (in this case, $219,000), and the adverse precedent which that may set for the future. The applicant submits that the existing Zoning Regulations do not require, nor do they permit, the posting of an escrow as a condition to changing the timing requirements for this provision of housing under the existing Regulations. Furthermore, the Regulations will be changed in the near future to allow the posting of an escrow to adjust the timing provisions. This fact pattern and the application of the law at the time of the decision of the Board conclusively addresses the Office of Planning's concern. This fact pattern will be unable to be duplicated by any other applicant, as there is no application of which we are aware that is pending for decision before the Board under the law as it will exist on the date of decision of this application on November 6th. Therefore, there is no precedent for another application upon which to rely, because the Regulations will have changed in a material fashion as it would affect future applications.

Furthermore, in terms of the facts of this application, we are unaware of any other contemplated transaction involving downtown sites where there is no economic consideration being given for entering into a combined lot development. As was noted at the hearing, this is a completely unique situation. The fact that a property owner Downtown is willing to commit for the housing development (1) without charge, (2) on a site in the proper housing priority district, (3) with a covenant already in place assuring the housing and (4) with a written commitment to enter into any future combined lot development agreement necessary to effectuate that transaction, is totally unique situation and highly unlikely to be duplicated in the future. This is not a situation of two property owners getting together and dividing up interests and ownerships in the properties and development sites as a substitute for cash changing hands. Therefore, between both the legal and factual circumstances this case, it is not some major precedent to be feared for how it may affect the future. Rather it is a unique and exceptional situation or condition.

The alternatives suggested to date all require an economic loss to the National Medical Association and diversion of funds from its mission, for no discernable purpose. The Office of Planning report, at page 9 in its recommendation, clearly shows this to be the case:

> "Recommendation: OP recommends approval of the basic agreement between the applicant and the housing developer on Square 517 (Douglas Jemal). However, OP recommends that the National Medical Association pay the required amount into the housing escrow fund to insure that housing will be built. At such time as the housing is built, with the developer having agreed not to charge the applicant, the escrow money could be returned to the applicant."

While we appreciate the Office of Planning's comment here as to a potential way to address the issue, it still requires the setting aside of funds in the escrow, unavailable to fund other purposes, in the amount of $219,000 which would potentially fund 15% to 30% of the applicant's project on an equity basis, for no reason other than to put the money aside so that it can be returned later. Furthermore, we believe that all parties clearly understand that the provision of $219,000 is not going to economically drive a 200,000-300,000 square foot apartment project in Downtown.

A further alternative was suggested that the $219,000 could be rolled into a bond issuance as a pre-development cost and paid over forty years. While we also appreciate this suggestion, it is no different to the Association than if one were permitted to finance an additional $219,000 of mortgage debt on a house and being told "It is not as painful as having the purchase price increased by that amount in cash up front." In any event, that money must be paid back, with interest, even if it is a lower rate of interest than would be otherwise available.

The Board has the Authority to Grant the Requested Variance Relief.

It has been suggested that the Board may not have authority to grant the variance as to the timing provisions of Section 1706. The Board, by unanimous bench decision in Application No. 16387, granted a variance from Subsection 1706.22(g) "to permit commercial development to proceed prior to the issuance of a certificate of occupancy for non-residential development within the DD District until a certificate of occupancy is issued for affordable housing in a DD/C-4 District." This is the same type of relief which is being requested in this case, that the National Medical Association would be able to proceed with the commercial development prior to the residential development in the DD District. Therefore, the Board has already addressed the issue of a granting of a variance relief with respect to the timing of the non-residential and residential components of a combined lot project.

The Board's authority to grant variances is keyed upon the showing of uniqueness or exceptional situation or condition and, in this case, a practical difficulty caused by the application of the Zoning Regulations and that the relief can be granted without substantial detriment to the Zoning Regulations or Zone Plan. That is the legal and statutory criteria

and the applicant submits that it has met all of that criteria in proceeding forward with this application. The existence of the precedent only reaffirms the applicant's position on this issue.

It is the applicant's hope that, with the review of these materials, the Office of Planning will also be supportive of this application, but that in any event, it should be granted by the Board as the applicant has met its burden of proof so that this important redevelopment project may proceed. The applicant is appreciative of all the efforts and encouragement which it has received from all parties in proceeding with this case, but, as Mr. Williams, the Executive Director of the National Medical Association states, the project is now at a point where the actions must support the words which have been offered, and that is through the granting of the application as requested.

Very truly yours,

HOLLAND & KNIGHT LLP

Norman M. Glasgow, Jr.

Enclosure

WAS1 #1026400 v1

National Medical Association

1012 Tenth Street, N.W.
Washington, D.C. 20001-4492
(202) 347-1895 • Fax (202) 898-2510
e-mail: rwilliams@NMAnet.org

Rudolph M. Williams
Executive Director

29 October 2001

Board of Zoning Adjustment
441 4th Street, NW - Suite 210
Washington, DC 20001

Re: NMA Headquarters Building,
1012 10th Street, NW
BZA Application No. 16775

Dear Members of the Board:

I appreciated greatly the opportunity to testify before you last week concerning our plans to continue our 100 year residency within the District of Columbia. The Association has worked hard to be a good neighbor in the community and to provide extremely important services to the city and the nation, which are more important now than ever before with the new challenges with which we are all faced.

We have met with our neighbors and community to garner unanimous support for our project and are hopeful that the Board will grant our application as requested. The only outstanding issue with which we are faced is a very significant one for the Association, and involves an expenditure of $219,000 either in cash up-front or through the posting of a letter of credit which must be fully collateralized. The only other collateral which we have is our existing property and building and that property will need to be encumbered with the financing for the new project.

We are faced with a situation where everyone involved in the process wants us to be able to proceed, stay in the District of Columbia and proceed with our new building. However, there is a question as to granting the relief, which would allow the economic resources to be put in place which would make that redevelopment a reality.

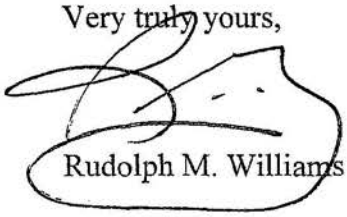
We hope that the Board will fashion a solution to this problem, which does not economically injure the Association. As far as we are able to determine, the only way in which that occurs is the granting of our application as was requested. The other alternatives which have been suggested impose direct economic consequences to the Association. In this regard, we are extremely grateful to Mr. Jemal for offering to accommodate our housing requirement on his site without charge. We understand that a

commercially driven transaction of this nature would involve an expenditure of $350,000-$400,000. We believe that this economic contribution by Mr. Jemal goes far and above anything we could have hoped for from the private sector. He has done his part to keep this Association in the District and to provide us a further incentive to move forward with our project.

In closing, I hope that the Board will see fit to permit us to move forward in a way that compliments the express desire of everyone that this project become a reality. The words of encouragement that we received from all parties at the hearing were most gratifying and we hope that they can be put into action through an approval that meaningfully assists us in proceeding with this important project.

Thank you for your consideration of our application.

Very truly yours,



Rudolph M. Williams

DOUGLAS DEVELOPMENT CORPORATION

October 29, 2001

Board of Zoning Adjustment
441 4th Street, NW
Room 210
Washington, DC 20001

Re: BZA Application No. 16775
National Medical Association

Dear Members of the Board:

Please be advised that I have agreed with the National Medical Association to provide, without charge to the Association, 14,666 square feet of residential floor space which would be developed on the Property owned by Jemal's Golub I, LLC and Jemal's Barton, LLC in Square 517. This would allow the National Medical Association to proceed with its building at 1012 10th Street, NW.

In addition, I am willing to enter into a Combined Lot Development Covenant in a form to be approved by the District government as would be required for this transaction or any other combined lot project that I enter into concerning the property in Square 517.

Sincerely,

Douglas Jemal

702 H STREET, NW, SUITE 400
WASHINGTON, DC 20001 • (202) 638-6300 • FAX (202) 638-0303
www.douglasdevelopment.com

List of BZA Orders Granting Relief
In Cases After the Zoning Regulations Were Amended

- 12783 (1752-1756 N Street, NW), decided by the Board on December 6, 1978, after amendment of the SP regulations, effective October 5, 1978 (see Findings of Fact Nos. 13 – 17)

- 12705 and 14529 (13th and M Streets, NW), the first decided before the SP changes became effective and the latter reinstating the former

- 14289 (300 I Street, NE), parking variance for the Railway Express Building, decided by the Board on May 15, 1985, after amendment of the parking regulations, effective March 1, 1985

- 14327 (3309 16th Street, NW – Family Place), parking variance for a community center decided by the Board on October 2, 1985, after amendment of the parking regulations, effective March 1, 1985

- 14336 (1227 25th Street, NW – BNA), variance for stacked parking decided by the Board on October 9, 1985, after amendment of the parking regulations, effective March 1, 1985

- 14349 (1229 Wisconsin Avenue, NW), parking variance for retail decided by the Board on November 6, 1985, after amendment of the parking regulations, effective March 1, 1985 (caption reflects "for a proposed modification of plans approved prior to March 1, 1985")

- 12914 (4th and C Streets, NE), for an FAR variance in the C-2-A District, approved by the Board on June 6, 1979, after the commercial districts were amended on November 17, 1978

Attachments as indicated

WAS1 #1023961 v1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

WILKES & ARTIS
RECEIVED
JAN 30 1979
WASHINGTON, D. C.

Application No. 12783, of 1754 N Street Associates Limited Partnership, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 4101.44 to permit an addition to an office building and conversion of existing residential buildings into offices and under Sub-section 3308.2 to erect a roof structure and for variances from the rear yard requirements (Sub-section 4303.1) and the regulation regarding the vesting of rights in cases where the Zoning Regulations have been amended (Sub-section 8103.6) in the SP-2 District, at the premises 1752, 1754, 1756 N Street, N.W. (Square 159, Lots 59, 67, 68, 69, 823 and 824).

HEARING DATES: October 25, November 15 and November 29, 1978
DECISION DATE: December 6, 1978

FINDINGS OF FACT:

1. The subject property is located on the south side of N Street, N.W., between 17th and 18th Streets and is known as premises 1752, 1754 and 1756 N Street, N.W. It is in an SP-2 District.

2. The subject site is improved with three rowhouses that face N Street and constitute lots 59, 68 and 69. To the rear of the rowhouses in the interior of the subject square 159 is a parking lot on lots 67, 823 and 824. The site abuts public alleys on the south and the west sides.

3. A request for incorporating the entire subject property as well as the adjoining property at 1750 N Street in an SP office building was made under BZA Application No. 12569. By BZA Order dated February 3, 1978, the application was withdrawn before the public hearing, when it was discovered that the applicant did not have proper authorization and consent from the owners of all the lots involved.

4. By BZA Order No. 12633, dated October 24, 1978, the Board denied the use of the subject lots 67, 823 and 824 as a parking lot.

5. The subject row houses are located in the Dupont Circle Historic District, a Category II Historic District listed in the District of Columbia Inventory of Historic Sites.

6. The applicant originally intended as one alternative for the development of the site, to demolish the existing buildings and thereafter erect a ninety foot apartment building as a matter-of-right with no approvals required from this Board.

7. The applicant, however, stated a desire to preserve the historic structures involved, if practicable, and in a letter of counsel consented to the imposition by the State Historic Preservation Officer of a 180 day delay in demolition pursuant to D.C. Regulation 73-25 in order to negotiate for the preservation of the historic structures involved.

8. As a result of the negotiation sessions with interested parties including the State Historic Preservation Officer, plans were submitted to the Joint Committee on Landmarks which preserved the entire exterior facade of the historic structures located on the site and provided for the erection of a ninety foot office building addition at the rear of the premises.

9. In a recommendation to the State Historic Preservation Officer dated September 21, 1978, the Joint Committee stated that the alternative to demolition embodied in the aforementioned plans would not be contrary to the public interest. This document was submitted as an exhibit and made a part of the record in this case.

10. The State Historic Preservation Officer in a transmittal letter dated September 25, 1978, stated that the proposed alteration embodied in applicant's plans would not be contrary to the public interest.

11. The applicant's plan presently before the Board is identical to the plan reached as a result of negotiations with the State Historic Preservation Officer, pursuant to D.C. Regulation 73-25.

12. The testimony and evidence of record including the summary of the negotiation sessions held pursuant to D.C. Regulation 73-25 discloses that representatives of "Don't Tear It Down," Dupont Circle Citizens Association and Advisory Neighborhood Commission 2B were participants in the negotiation process before the Joint Committee.

13. When the notice for the public hearing of October 25, 1978 was published as of September 22, 1978, the subject application was advertised under the Zoning Regulations in effect on September 5, 1978, the date this application was filed with the BZA. It appeared as follows:

> Application of 1754 N Street Associates Limited Partnership, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 4101.42 to permit an addition to an office building and conversion of existing residential buildings into offices and under Paragraph 4201.22 and Sub-section 3308.2 to erect a roof structure and pursuant to Paragraph 8207.11 for a variance from the rear yard requirements (Sub-section 4303.1) in the SP District at the premises 1752 and 1754 and 1756 N Street, N.W., (Square 159, Lots 59, 67, 68, 69, 823 and 824).

14. At the public hearing of October 25, 1978, the applicant requested permission to amend the application to include a variance from the 3.5 FAR requirement (Sub-section 4301.1) of the aforementioned amended SP Regulations to permit the construction of the proposed SP building addition pursuant to the plans filed with its application on September 5, 1978. At the time of the filing of the application no variance was required from the 5.5 floor area ratio provisions of the SP District.

15. The requested amendment to the application was necessitated by amendments to the Zoning Regulations adopted by the Zoning Commission in Order No. 235, dated September 14, 1978. This Order became effective on October 5, 1978, and among other changes, designated this property SP-2 in lieu of SP and reduced the floor area ratio for office use of the property from 5.5 to 3.5. The amendment adopted by the Commission also changed the paragraph under which the Board could approve a special exception for office use from 4101.42 to 4101.44

16. The opposition requested a continuation of the hearing on this application, on the grounds that the notice as published did not state that a variance from the FAR provisions of the new SP-2 District was being requested and, accordingly, was inadequate notice. The Chairman denied the opposition's request. He found that all parties in opposition to this application had sufficient notice of the applicant's building plans. The opposition had attend the aforementioned negotiations sessions and in the instant hearin it would have an opportunity to testify and cross-examine the applicant on the requested variance and all relevant issues.

17. The applicant in this action, at the public hearing conducted on October 25, 1978, was granted permission by this Board to amend its application for relief so as to request the relief necessary under the amended SP regulations to permit the erection of the proposed building addition, pursuant to the plans filed with the Zoning Regulations Division on September 8, 1978.

18. The applicant proposes to construct an addition to an office building and to permit the conversion of the second, third and fourth floors at premises 1752 N Street, which were formerly used for residential purposes, but which are presently vacant, into SP offices.

19. The 1700 block of N Street contains a mix of office and residential uses, including hotels and private residences. The Board finds the proposed use of the subject premises for office purposes to be in harmony with the existing uses on neighboring property.

20. The Board finds the height of the proposed building addition to be in harmony with the existing uses and structures on neighboring property, as the subject site is bordered by the Longfellow Building on the southwest, which is over ninety feet in height and on the west by an office building fronting on Connecticut Avenue which is ninety feet in height. St. Mathews' Church, located to the south, is over 100 feet in height, and to the north, the National Association of Broadcasters' Building is ninety feet in height. Furthermore, a height of ninety feet is permitted as a matter of right in the SP-2 District.

21. The Board finds the bulk of the proposed building addition to be in harmony with the existing uses and structures on neighborin property since a 6.0 F.A.R. for apartment structures is permitted as a matter of right in the zone. In addition, the Longfellow Building and St. Mathews' Church both have a greater building bulk than the proposed building addition. In addition, the proposed building addition has been carefully located at the rear of the subject site so as to minimize its impact on surrounding properties.

22. The Board finds the design of the proposed building addition to be in harmony with existing uses and structures on neighboring property since applicant's proposal preserves three historic structures located on the building site and integrates them into a total project for the site which includes a ninety foot building addition erected at the rear. The addition is to be constructed of red brick and with fenestration designed to blend with the existing buildings fronting on N Street. Furthermore, the design of the proposed building addition has been reviewed by the Joint Committee on Landmarks and found to be not contrary to the public interest.

23. N Street from curb to curb is thirty-two feet in width with a public right-of-way of fifty-six feet. The subject property is located just east of Connecticut Avenue and is served both by a public alley to its west and to its rear. N Street is one-way in an easterly direction. The loading berth and garage have access from the north-south public alley abutting the west property line. This public alley is eighteen feet in width. The proposed building will have approximately 200 occupants and during the peak hours between 8:00 A.M. and 9:00 A.M. and 5:00 P.M. to 6:00 P.M. will generate approximately fourteen vehicular trips for each peak period. Traffic volumes in peak hours at the intersection of 17th and N Streets, N.W., are 1,237 vehicular trips in the A.M. peak hour and 1,051 in the P.M. peak hour.

24. The Department of Transportation at the public hearing of November 15, 1978, and by memorandum dated November 15, 1978, testified in substance, as follows:

> The applicant indicates that 220 persons will be employed in the proposed building. Assuming a twenty-five percent automibile usage and a 1.5 automobile occupancy rate, the Department anticipates that approximately thirty-three parking spaces will be required for the employees of the building. Zoning Regulations require a minimum of thirty-five spaces. Approximately twenty automobiles belonging to employees in the three existing buildings are now parked on the site.
>
> The thirty-five spaces should be adequate for the necessary long term and short term parking requirements of the development. The building management should assign the spaces to long term and short term users according to priority needs. The excess needs for either user can be adequately served in the commercial parking facilities adjacent to the development.
>
> The site is served well by both Metrorail and Metrobus. The Dupont Circle station portal on 19th Street, N.W. is approximately 1,300 feet from the site. Both local and express bus service is available on Connecticut Avenue and 19th Street, N.W. with connections to downtown routes and crosstown routes on upper Connecticut Avenue. This excellent transit service will reduce the dependency on the automobile by workers and visitors to the site.

N Street on which the development fronts, is a local street with a thirty-two foot roadway. The block between 17th Street and 18th Street is one-way eastbound at all times. No parking is allowed between 6:00 A.M. and 9:30 A.M. Two hour metered parking is allowed on both sides between 9:30 A.M. and 6:30 P.M. All parking spaces are occupied throughout the day.

Site observations between 4:30 P.M. and 5:30 P.M. on November 6, 1978, and between 7:45 A.M. and 8:30 P.M. on November 8, 1978 revealed no traffic problems on any of the adjacent streets or the internal alley system.

The portion of the alley system from Rhode Island Avenue to the alley on the southern boundary of the site is now posted one-way northbound. The Department intends to monitor the system to determine if this portion should be returned to two way operation to reduce the impact from all traffic being required to go northbound to N Street.

The Department reported that it did not expect this office development with thirty-five parking spaces to cause a measurable difference in the traffic operation on the adjacent street and alley system.

25. The Board finds that on the basis of the applicant's expert traffic witness and the testimony of the Department of Transportation representative the vehicular traffic anticipated to be generated by the applicant's proposed development will not create dangerous or other objectionable traffic conditions.

26. The roof structure complies with the maximum permitted height of eighteen feet, six inches with an F.A.R. of .1688 or substantially less than the .375 F.A.R. permitted. The structure is located to the southwest corner of the site well removed from the structure fronting on the 1700 block of N Street, N.W.

27. The Zoning Regulations normally require that roof structures be set back from all lot lines of the lot a distance equal to their height above the roof.

28. The size and shape of the subject site and the constrictions of the site involved in this project and special design factors present in carefully placing and designing the roof structures of the proposed building addition so as to be compatible with the character of the Historic District necessitate their sitting at the western edge of the property near the east frontage of the Longfellow Building. This requires approval of the Board.

29. As testified to by the architect of the project, the location of the historic structures on the site and the size and shape and constructions of the site dictate the design, size and location of the proposed building addition, as that addition must be placed and treated so as to compliment the existing residential building.

30. The subject site as existing is developed with only 12,803 square feet of gross floor area, only a small percentage of its permitted F.A.R. under either residential or office use. Under residential development, such as an apartment use, for which the applicant has already filed plans, the permitted F.A.R. is over 76,000 square feet. Furthermore, the subject site is improved with historic structures which the applicant wishes to preserve through the erection of a building addition.

31. The Board finds the existing conditions and costs to applicant imposed upon the property owner in order to save the existing townhouse type structures require the relief necessary to make the alternative to demolition acceptable when compared to matter of right development of a ninety foot, 6.0 F.A.R. apartment building with demolition of the existing townhouse.

32. The Board finds that in order for the applicant to provide a court area between the existing structures and the proposed building addition that it is not feasible to provide the required rear yard in this project.

33. The architect for the project testified and the Board so finds that premises 1754 and 1756 N Street are currently used for office purposes and that 1752 N Street is precently vacant and that the proposed use of the second, third and fourth floors of premises 1752 N Street, N.W. for office purposes would be in harmony with the existing mixed use character of neighboring properties.

34. The Municipal Planning Office, by report dated October 20, 1978, hoped that the Board's action on the subject application would foster the retention of the three townhouses while allowing for the appropriate development of the site.

35. The Association for the Preservation of the 1700 Block of N Street, N.W., and the Dupont Circle Citizens Association were present at all hearings conducted in this case and objected to the application on the basis that the notice of applicant's request for relief was defective, that the proposed addition was out of character with the area, that the application was illegal under the new SP-2 Regulations, and that negotiations to preserve the structures which are located on a part of the subject site were in process before the State Historic Preservation Officer. The Board finds that it has responded to these objections in the foregoing findings of fact. At the November 15 public hearing the "Don't Tear It Down" organization favored the granting of the application except for the FAR variance and provided that three sub ect

36. Advisory Neighborhood Commission 2B opposed the application on the following grounds:

a. The request for the FAR variance was never advertised to the public. The notice was accordingly defective. It should be readvertised and the application set for a new hearing date so that the public would be aware of the specific relief that was being requested and have sufficient time to prepare their evidence.

b. The Zoning Regulations for the SP-2 District were effective October 5, 1978. To grant the present application would militate against all the work and planning that went into the formation of the new Regulations and have the effect of reversing the Z.C. Order as it applies to this property.

c. The proposed use does not meet the requirements of Sub-paragraphs 4101.441 and 4101.442 of the Zoning Regulations.

d. The subject site was not unique in the neighborhood.

e. The best economic return on the property cannot be the basis to sustain the relief sought.

f. The granting of the application would destabilize the SP-2 District.

g. Negotiations were still underway for the preservation of the historic structures on the subject site.

37. The Board, by statute, is required to give great weight to the issues and concerns of the ANC. In addressing itself to these issues and concerns the Board finds as follows:

a. In Findings of Fact 14, 15 and 16, the Board addressed this issue when it granted the applicant permission to amend its application and proceed with the hearing. The Board emphasizes that the subject matter of this application is not new but well known to the concerned parties and public.

b. The applicant in this case stands in the position of any other applicant. Notwithstanding the recent amendments to the Zoning Regulations of SP Districts, the Zoning Regulations pursuant to Paragraph 8207.11 still provide that variance relief can be requested. The Board has authority to grant such relief, provided that the applicant can meet the requirement of Paragraph 8207.11.

c. The Findings of Fact ant the Conclusions of Law, hereinafter stated, find that the applicant has met its burden of proof and met the requirements of Sub-paragraphs 4101.441 and 4101.442 of the Zoning Regulations.

d. The Board finds the site unique not in the sense as the opposition stated, but as stated hereafter in the conclusions of law. In addition, upon cross-examination the ANC was unable to indicate a similarly situated property in the neighborhood.

e. The Board has never determined, nor does it in the subject application, that the best economic return on a property, is a basis to grant relief.

f. Sub-section 4101.1 of the Zoning Regulations does not preclude office buildings. The major purpose of the SP District is to act as a buffer between adjoining commercial and residential areas, and to ensure that new development is compatible in use, scale and design with the transitional function of this zone district. In the subject application, as hereinafter concluded, the proposed building is compatible with the neighborhood uses and structures. In addition, buildings of architectural merits are being preserved and protected.

g. The Board finds that the proposed development plan does not entail demolition of the subject structures on N Street and therefore, in no manner adversely affects any proceedings before the State Historic Preservation Officer but will in fact implement these negotiations.

CONCLUSIONS OF LAW:

The applicant seeks special exceptions and area variances. Based on the record the Board finds that as to the special exceptions, the proposed building addition in its use, height, bulk and design is in harmony with existing uses and structures on neighboring property; that the use will not create dangerous or other objectionable traffic conditions and that the Board requires no special treatment in this instance by way of design to protect the value of neighboring property since that design of the proposed addition has been reviewed by the Joint Committee on Landmarks and the State Historic Preservation Officer and found not to be contrary to the public interest.

The Board also finds that in view of the mixed use character of the subject neighborhood that the conversion of the second, third and fourth floors of premises 1752 N Street, N.W., will be in harmony with existing uses and structures on neighboring property.

The Board concludes that as to the addition to the building and the conversion of premises 1752 N Street the requirements of Paragraph 4101.44 of the Zoning Regulations have been met.

As to the special exception to erect a roof structure, the Board finds that the constriction of the site involved in this project and the special design factors present in placing and designing the roof structure so as to be compatible with the character of the Historic District necessitate its placement at the western edge of the property near the east frontage of the Longfellow Building. Full compliance with the Zoning Regulations would be unduly restrictive and unreasonable. Under Sub-section 3308.2 the Board approves the location and design of the subject roof structure.

The Board further concludes that the special exceptions requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps.

The applicant also seeks variances from the rear yard and FAR requirements. Both of these are area variances which require a showing of a practical difficulty stemming from the property itself. The Board finds that it is true that the subject site is basically rectangular with a small notch in the northeast corner of the lot providing for the rear of 1750 N Street, N.W., and a slight angle caused by the angle of the alley.

However, the site is unique in that it has extensive lot depths and it is located on two public alleys. There are only two other properties in the square that share the public alleys, a large office building on Connecticut Avenue and the St. Mathews' Cathedral, and three townhouses on the front portion of the site have less than 1.5 FAR with the remainder of the lot unimproved. The street frontage available is small. The remainder is alley frontage and blank walls.

The Board concludes that the subject site is affected by several extraordinary or exceptional situations or conditions. Due to the presence of townhouse type structures on the site which dictate the design, size and location of the proposed building addition, the applicant has had little choice but to design a building addition which necessitates the requested variance relief. Furthermore, the low level of current utilization of the site also constitutes an exceptional situation or condition.

The applicant's practical difficulty in this case stems from the existence of existing structures on the site and the added cost and complexity of development imposed in attempting to preserve such structures and integrate them into a building addition. This fully supports the variance of relief as to the required rear yard. The Board also recognizes that as a practical difficulty that applicant is being requested to save the existing structure on the site and forego building and apartment house with F.A.R. of 6.0 and ninety feet in height.

As a result of the constrictions placed on the development of the site by the presence of the existing structures, the applicant is required to seek the requested relief as an alternative to demolition of the historic properties.

The State Historic Preservation Officer and the Joint Committee on Landmarks have previously determined that the proposed alteration of the historic structures involved and the building addition proposed by the applicant would not be contrary to the public interest. In addition, the applicant's proposal furthers the public interest in that it provides for the preservation of historic structures.

The Board further concludes that the practical difficulty is inherent in the property itself and that the variance requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board in its Findings of Fact 36 and 37 has addressed itself to the issues and concerns of the ANC and has given great weight to such issues and concerns as required by statute.

Accordingly, is is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The exterior facades of the existing buildings shall be maintained.

2. All additions to the building, such as fire escapes, which do not relate to the historic character of the building shall be removed.

VOTE: 3-1 (Walter B. Lewis, Charles R. Norris, Chloethiel Woodard Smith to GRANT, William F. McIntosh opposed; Leonard L. McCants not voting, having recused himself).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 30 JAN 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12783, of 1754 N Street Associates Limited Partnership, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 4101.44 to permit an addition to an office building and conversion of existing residential buildings into offices and under Sub-section 3308.2 to erect a roof structure and for variances from the rear yard requirements (Sub-section 4303.1) and the regulation regarding the vesting of rights in cases where the Zoning Regulations have been amended (Sub-section 8103.6) in the SP-2 District at the premises 1752, 1754, 1756 N Street, N.W., (Square 159, Lots 59, 67, 68, 69, 823, and 824).

HEARING DATES: October 25, November 15 and November 29, 1978
DECISION DATE: December 6, 1978

ORDER

By Order dated January 30, 1979, the Board granted this application by a vote of 3-1 (Walter B. Lewis, Charles R. Norris and Chloethiel Woodard Smith to GRANT, William F. McIntosh opposed, Leonard L. McCants not voting having recused himself). In accordance with Section 5.4 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment, Nicholas Addams, representing various parties in opposition, filed on February 13, 1979, a Motion for Reconsideration or Rehearing and Reargument. At it's public meeting held on March 7, 1979, upon consideration of that motion, and the applicant's opposition to Motion for Reconsideration filed on February 15, 1979, and various other responses, the Board found that the Motion for Reconsideration set forth an acceptable basis of error on the part of the Board; that is, the Board failed to adequately consider and receive public testimony on the four issues raised by the Motion. It is therefore ORDERED that:

(1) The Motion for Reconsideration is hereby GRANTED.

(2) A rehearing be scheduled limited to the four basic issues raised by the opposition in the Motion for Reconsideration as follows:

(a) Authority to grant FAR variance

(b) Absence of variance re: apartment house window

(c) The shape of the lot is not unique in this neighborhood

(d) Proposed building not in architectural and structural harmony

(3) In accordance with Section 5.43 of the Rules, notice for the hearing shall be given as in the case of an original hearing. The hearing shall be held on April 18, 1979, shall be the last case on the agenda, and shall be limited to one and one-half hours in total.

(4) The effect of the previous Order of the Board in this case, dated January 30, 1979, is hereby STAYED, and the Chief of the Zoning Regulations Division, Department of Housing and Community Development is requested to insure that no permit shall be issued under that Order.

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

Final Date of this ORDER: March 7, 1979.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12783 of 1754 N Street Associates Limited Partnership, pursuant to Sub-sect-on 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 4101.44 to permit an addition to an office building and conversion of existing residential buildings into offices and under Sub-section 3308.2 to erect a roof structure and for variances from the rear yard requirements (Sub-section 4303.1) and the regulation regarding the vesting of rights in cases where the Zoning Regulations have been amended (Sub-section 8103.6) in the SP-2 District, at the premises 1752, 1754 and 1756 N Street, N.W. (Square 159, Lots 59, 67, 68, 69, 823 and 824).

HEARING DATE: April 18, 1979
DECISION DATE: June 6, 1979

FINDINGS OF FACT:

1. The Board originally heard this application on October 25 and November 15 and 29, 1978, decided the case by vote taken on December 6, 1978 and approved the above application by Order No. 12783 issued January 30, 1979, herein referred to as the First Order.

2. Opposing parties in the case filed a Motion for Reconsideration or Rehearing and Reargument on February 13, 1979.

3. The Motion for Reconsideration was considered by the Board at its meeting held on March 7, 1979. The Board granted the request as to specific limited issues by Order dated March 7, 1979, herein referred to as the Second Order, at which time the First Order was stayed pending a further hearing on the case.

4. Pursuant to the Board's Second Order a hearing limited to argument on the four issues listed below was conducted on April 18, 1979:

a. Authority to grant F.A.R. variance;

b. Absence of variance re: apartment house window;

c. The shape of the lot is not unique in this neighborhood; and

d. Proposed building not in architectural and structural harmony.

5. Regarding the first issue, as a result of the further hearing the Board finds that the authority to grant the floor area ratio (F.A.R.) variance relief requested herein is encompassed in the grant of authority found in Section 5-420(3) D. C. Code, 1973, as amended and Paragraph 8207.11 of the Zoning Regulations, and that the District of Columbia Court of Appeals has affirmed the Board's general jurisdiction to grant F.A.R. variances.

6. Regarding the second issue, as a result of the further hearing the Board finds that no variance was required for an apartment house window in this case pursuant to Sub-section 4303.4 for the following reasons:

a. Sub-section 4303.4 and Paragraphs 4303.41 and 4303.42 only apply to buildings located in front of other buildings and not located on the side as is the case here. Further, the section applies only to apartment house windows and not offices or single family residences.

b. Variance relief pursuant to Paragraph 8207.11 was requested and granted from the rear yard requirements of Sub-section 4303.1. Therefore, no need exists for the applicant to request a waiver of the rear yard requirements pursuant to Sub-section 4303.4.

7. Regarding the third issue, as a result of the further hearing the Board finds that no new information was submitted nor was any existing information in the record cited to suggest that the Board's finding in the First Order that the subject site is unique is incorrect.

8. Regarding the fourth issue, the Board finds that no new information was submitted nor was any existing information in the record cited to suggest that the Board's finding in the First Order that the proposed building addition is in architectural and structural harmony with existing uses is incorrect.

9. The Board finds that the Findings of Fact and Conclusions of Law of the First Order No. 12783 issued in this case on January 30, 1979 are supported by the substantial evidence in the administrative record and finds that the stay to the First Order should be vacated and said First Order should be fully effective as though no Order of Stay was issued.

10. The Board finds none of the arguments submitted by the opposition at the furhter hearing persuasive and finds that the opposition failed to demonstrate how the Board's original

Findings of Fact and Conclusions of Law as set forth in the First Order were in error.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that none of the issues raised by the opposition on rehearing warrant the reversal of the Board's prior Order issued January 30, 1979 and that the stay of the First Order is hereby vacated and that Order should be reinstated and incorporated as a part of this Order, and that the Second Order of March 7, 1979 be vacated.

The Board concludes that it has authority under the D.C. Code and the Zoning Regulations to grant the F.A.R. variance requested herein by the applicant.

The Board concludes that Section 4303.4 is inapplicable in this case for the reasons stated in Finding of Fact No. 6 herein.

The Board concludes the subject site is unique and that there is no requirement in the Zoning Regulations that the "shape of lot be unique" as a condition to the granting of variance relief in a case where the subject site itself is unique and is effected by several extraordinary or exceptional situations or conditions.

The Board concludes that the use, height, bulk and design of the proposed building addition are in harmony with existing uses and structures on neighboring property as required by Paragraph 4101.44 and that the proposed building addition is in architectural and structural harmony with neighboring uses, as set forth in Finding of Fact No. 8 herein.

The Board concludes that it has completely and throughly studied the issues involved in this case, and believes that for the reasons stated herein, the application should be granted. It is therefore ORDERED that Order No. 12783 issued January 30, 1979 is hereby REINSTATED, that the stay on the effect of such Order is vacated, and that the application is GRANTED based on the Findings and Conclusions of the First Order and this Order, subject to the conditions as contained in the Order dated January 30, 1979.

VOTE:

3-2 (Chloethiel Woodard Smith and Leonard L. McCants to grant; Walter B. Lewis to grant by proxy; William F. McIntosh and Charles R. Norris opposed).

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

ATTESTED By: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 9 JUL 1979

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12705, of the 13th and M Streets Joint Venture, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Paragraph 4101.42 and Sub-section 7203.1 for permission to construct a new office building and for a reduction in the number of required parking spaces for non-residential uses with such reduction not exceeding twenty-five per cent of the required parking in the SP District at premises 1301-1309 "M" Street, N.W. (Square 245, Lots 800, 801 and 802).

HEARING DATES: July 26 and August 16, 1978
DECISION DATE: September 6, 1978

FINDINGS OF FACT:

1. The subject site is located on the northeast corner of the intersection of 13th and M Streets, N.W., and is known as 1301-1309 M Street, N.W. It is located in the SP District.

2. The site is 7,335 square feet in area. Part of the site is unimproved and is currently used as a parking lot. The remainder is occupied with a vacant two story building which formerly housed a supermarket.

3. Adjoining the subject site to the west are a group of three story rowhouse type units, followed by the International Inn, which is a ninety foot high hotel use. Across M Street to the south are two ninety foot buildings, an apartment house on the southeast corner of 13th and M and an office building for the American Federation of Government Employees on Massachusetts Avenue and M Street at Thomas Circle. To the southeast on the diagonally opposite corner of 13th and M Streets is a ninety foot apartment house, which is adjoined by a ninety foot apartment building fronting on Massachusetts Avenue and by another fronting on 12th Street, N.W. To the east, across 13th Street is a ninety foot apartment building at the northwest corner of 13th and M Streets, adjoined to the north by a supermarket, one parking lot and another high rise apartment building. To the south, along the west side of 13th Street are some two-story commercial facilities and a high-rise apartment building. All of the commercial uses are non-conforming uses in the SP District.

4. The Board finds that the subject area is developed predominantly with high-rise ninety foot buildings, and that there is a mix of residential, office and non-conforming retail uses.

5. The entire square is zoned SP as are all of the surrounding frontagesof M and 13th Streets. There is C-4 zoning south of Thomas Circle and L Street, and R-5-C zoning north of N Street.

6. The applicant proposes to build on the site an eighty foot, seven story brick and glass office building. The prospective tenants of the building will be architectural, engineering and consultant firms and other professional and SP qualifying office tenants with space accommodations for approximately 250 employees. Sixteen underground parking spaces are provided in the cellar of the building with access from 13th Street by way of a nineteen foot rampway.

7. At the second public hearing on this case, the applicant submitted for the record drawings showing the proposed building. The building has been designed with bay windows on both the 13th and M Street frontages, to resemble a residential building. The building has been designed so that it would be feasible to use it as an apartment building, though the applicantdoes not intend to use it in that manner.

8. Under Article 72 of the Regulations, twenty-one parking spaces are required and sixteen are provided. This represents a twenty-four per cent reduction within the authority of the Board as set out in Sub-section 7203.1.

9. The general area is serviced very well by public transportation, including the McPherson Square Metro Station four blocks south at 14th and I Streets, N.W., and bus service along 13th Street and other dpwntown arterials.

10. The majority of the employees of the prospective occupants of the building presently use public transportation to go to their present places of employment. It is anticipated that the same will hold true for this site.

11. The Municipal Planning Office, by report dated July 21, 1978, and by testimony at the hearing recommended that the application be approved. The MPO suggested that definitive findings be made regarding the color of the building, the type of exterior glass that will be used and the exact location of the rear loading area. The Board finds that the plans submitted by the applicant do provide the detail that the MPO suggests is required.

12. The Department of Transportation, by memorandum dated July 31, 1978, reported to the Board that traffic generated by this development is not expected to reasonably affect the existing levels of service in the surrounding street system. The Board so finds. The Department also reported no objection to the proposed reduction in parking, on the grounds that commercial parking in the area is plentiful and that there is adequate Metrorail and subway service in the area. The Board so finds.

13. Advisory Neighborhood Commission 2C, by letter dated August 7, 1978, and by testimony at the hearing, opposed the application on the following grounds:

A. The Regulations allow in an SP District, the office of "a chancery, non-profit organization, labor union, an architect, dentist, doctor, engineer, lawyer or similar professional person,"and that rental of a building to more than one professional person or use by more than one professional person is not permitted.

B. The proposed building as a large commercial office structure is not in harmony with uses on neighboring or adjacent property and would represent an envasion into a residential neighborhood of the central business district.

C. The building would have an adverse effect on parking in the area.

D. The building would not provide neighborhood service needs.

E. The SP zone should create a buffer between residential areas and commercial high-rise structures.

14. The Logan Circle Community Association voted to oppose the application. The Logan Circle Community Association agreed with the ANC that the SP zoning should create as much as possible a buffer between residential areas and commercial high rise structures.

15. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. As to those issues and concerns, the Board finds the following:

A. Sub-section 1201.2 of the Zoning Regulations provides "words in the singular number include the plural number." The Regulations do not intend to restrict use of SP office buildings to a single tenant or user.

B. As previously stated, notwithstanding the fact that abutting buildings to the west are three stories in height, the surrounding area is a high rise mixed use area. The height of the proposed building is less than the maximum permitted, and the design is similar to a residential building. The building contains no retail commercial uses, and could be occupied only by permitted SP office uses. Those uses, by the inherent limitations of the SP District, are transitional in nature.

C. The building will contain sixteen parking spaces. The Board notes the report of the Department of Transportation and finds that such spaces will be sufficient for the building. The ANC has presented no specific information to the contrary.

D. Neighborhood serving retail services are not permitted in the SP District. Rezoning of the property would be required to permit such uses.

E. The entire immediate area is zoned SP, with the closest residential zoning more than one block to the north. The subject site is surrounded by residential and office and commercial uses. An office building at this location will not adversely affect the overall character of the SP District as a buffer zone.

16. After this case was heard and decided by the Board, the Zoning Commission adopted Order No. 235, amending the text of the SP District. These amendments reduced the maximum floor area ratio for office development from 5.5 to 3.5 and amended other portions of the SP regulations as well.

CONCLUSIONS OF LAW AND OPINION:

The relief requested from the Board includes two special exceptions. As to the request for permission to erect the office building, the Board concludes that the building will be in harmony with the predominant height and use of the area, that no objectionable traffic conditions will be created and that the use will not adversely effect the adjoining and neighboring properties.

As to the reduction in parking requested, based primarily on the report of the Department of Transportation, the Board concludes that the use will not reasonably add to existing traffic congestion, that sufficient parking will be available in the building and in surrounding facilities, and that adequate public transit is available.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled, and for the reasons stated, finds that the application must be granted and that the recommendations of the ANC not be accepted.

The Board notes that the regulations regarding the SP District have been amended, and that this application is not in accordance with the new regulations. The Board takes note of the opinion of the Corporation Counsel, dated October 16, 1978, and concludes that the applicant is entitled to a decision of the Board based on the regulations in effect on the date the case was decided; i.e., the former SP regulations.

The Board concludes that the granting of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Regulations and Maps. It is therefore ORDERED that the application be GRANTED.

VOTE: 4-0 (Chloethiel Woodard Smith, Charles R. Norris, William F. McIntosh and Leonard L. McCants to GRANT).

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

ATTESTED BY: _____
STEVEN. E. SHER
Executive Director

FINAL DATE OF ORDER: 24 OCT 1978

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

District of Columbia Register

AUG 17 1979

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12705, of the 13th and M Streets Joint Venture, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Paragraph 4101.42 and Sub-section 7203.1 for permission to construct a new office building and for a reduction in the number of required parking spaces for non-residential uses with such reduction not exceeding twenty-five per cent of the required parking in the SP District at premises 1301-1309 "M" Street, N.W. (Square 245, Lots 800, 801 and 802).

HEARING DATES: July 26, and August 16, 1978
DECISION DATE: September 6, 1978

DISPOSITION: Application GRANTED by a vote of 4-0 (Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants and Charles R. Norris to GRANT).

FINAL DATE OF ORDER: October 24, 1978

FINDINGS OF FACT:

1. Since the issuance of an Order approving the application, the architect for the applicant, by letter dated May 29, 1979, requested the Board to approve revised plans for the new office building. The plans for which the applicant now seeks approval are marked as Exhibit 49 of the record.

2. The revisions requested by the applicant are as follows:

1. Increase the number of vertical exterior projecting Bays from two in number, to three on both the "M" Street and "13th" Street elevations.

2. Reduce the total area of glass fenestration at the top floor by introducing a "Brick Horizontal Band."

3. Substitute Masonry in lieu of glass at the vertical stairwell on the "M" Street elevations.

AUG 17 1979

4. Lower the first floor grade elevation from 87.3 feet to 85.3 feet - eliminating the exterior stairs and making the building accessible by the handicapped.

5. Increase the penthouse height to eighteen feet six inches from fourteen feet two inches. This does not increase the overall building height, but reduces it from ninety three feet eight inches to ninety three feet six inches.

6. Reduce the building entrance set-back from twelve feet six inches to ten feet.

7. Increase the cellar level below grade to two levels, with storage on level C-1 and parking on level C-2.

3. All of the revisions were made as a result of the architect's careful analysis of the proposed building to increase it's aesthetic architectural character, the need to make the project accessible to the handicapped and the concerns of the community to make it compatible with its residential surroundings.

4. The modifications requested are all minor in nature and do not change the relief requested from the Board.

5. All of the material facts which the Board relied upon in granting the application initially remain unchanged and are still relevant.

CONCLUSIONS OF LAW:

The Board concludes that the proposed modifications are minor in nature, and that they represent normal deviations in the development of final drawings, and that they are necessary for building aesthetics and for accessibility to the handicapped. The Board concludes that the relief requested of the Board is unchanged, and that all material facts relied upon in granting the application are still relevant.

It is therefore ORDERED that the modification of plans be APPROVED, and that the plans marked as Exhibit 49 of the record are hereby APPROVED and shall be substituted for those originally submitted to and approved by the Board. In all other respects, the Order dated October 24, 1978, shall remain in full force and effect.

DECISION DATE: June 6, 1979.

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Leonard L. McCants to APPROVE, Chloethiel Woodard Smith not voting).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 7 AUG 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14529, of GLM Properties, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4104.44 to establish SP office uses on the subject site and Sub-section 3308.2 to erect a roof structure which does not meet the set back requirements, and for variances from the floor area ratio requirements (Sub-section 4301.1) and the service berth requirements (Sub-section 7302.1) for a proposed construction of an office building in a SP-2 District at premises 1301 M Street, N.W., (Square 245, Lot 28).

HEARING DATE: January 14, 1987
DECISION DATE: January 14, 1987 (Bench Decision)

DISPOSITION: The Board GRANTED the application by a vote of 5-0 (William F. McIntosh, Paula L. Jewell, Charles R. Norris, Patricia N. Mathews and Carrie L. Thornhill to grant).

FINAL DATE OF ORDER: April 3, 1987

ORDER

The Board granted the application by its Order dated April 3, 1987, subject to the condition that construction be in accordance with the plans marked as Exhibit No. 9 of the record. By letter dated October 2, 1987, counsel for the applicant filed a timely request for Board approval of a modification of the approved plans. The proposed modification will result in an increase of the ceiling height of the top floor of the proposed building of 7.25 inches, the lowering of the first floor windows, and a reduction in the height of the penthouse.

The overall height of the building will be 74.75 feet, well within the ninety foot height limit for the SP-2 District. The penthouse structure will be in compliance with Section 411 of the Zoning Regulations.

Upon consideration of the proposed modified plans and its final order, the Board concludes that the proposed modification of plans is minor in nature and does not substantially alter the size, shape or configuration of the project as initially approved. The applicant requires no additional zoning relief from the Board. The material facts

relied upon by the Board in approving the application are still relevant. There was no opposition to the application. It is therefore ORDERED that the proposed modification of plans is APPROVED subject to the condition that the construction shall be in accordance with the plans marked as Exhibit No. 35A of the record. In all other respects the Order of the Board, dated April 3, 1987, shall remain in full force and effect.

DECISION DATE: November 4, 1987

VOTE: 4-0 (Charles R. Norris, Carrie L. Thornhill, Paula L. Jewell and William F. McIntosh to approve; Patricia N. Mathews not present, not voting).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: DEC 4 1987

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

order14529/DEE5

GLM Properties
05107/002

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14529,of GLM Properties, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exceptions under Paragraph 4101.44 to establish SP office uses on the subject site and Sub-section 3308.2 to erect a roof structure which does not meet the set back requirements, and for variances from the floor area ratio requirements (Sub-section 4301.1) and the service berth requirements (Sub-section 7302.1) for a proposed construction of an office building in a SP-2 District at premises 1301 M Street, N.W., (Square 245, Lot 28).

HEARING DATE: January 14, 1987
DECISION DATE: January 14, 1987 (Bench Decision)

FINDINGS OF FACT:

1. The application was amended to include the applicant's seeking special exception relief under Sub-section 3308.2 as the effective date of the amended regulations affecting roof structures was September 2, 1986.

2. The site is located on the northeast corner of the intersection of 13th and M Streets, N.W., and is known as 1301-1309 M Street, N.W. It is located in the SP District.

3. The site is 7,335 square feet in area. It is approximately 90 feet long and 81 feet wide. Part of the site is unimproved and is currently used as a parking lot. The remainder is occupied with a vacant two story building which formerly housed a supermarket.

4. Adjoining the subject site to the west are a group of three story rowhouse type units, followed by the International Inn, which is a 90 foot high hotel use. Across M Street to the south are two 90 foot buildings, and apartment house on the southeast corner of 13th and M and an office building on Massachusetts Avenue and M Street at Thomas Circle. To the southeast on the diagonally opposite corner of 13th and M Streets is a 90 foot apartment house, which is adjoined by a 90 foot apartment building fronting on Massachusetts Avenue and by another fronting on 12th Street, N.W. To the east, across 13th and M Streets is a ninety feet apartment building adjoined to the north by a supermarket, one parking lot and another high rise apartment building. To the south, along the west side of 13th Street

are some two-story commercial facilities and a high-rise apartment building. All of the commercial uses are non-conforming uses in the SP District.

5. The entire square is zoned SP as are all of the surrounding frontages of M and 13th Streets. There is C-4 zoning south of Thomas Circle and L Street, and R-5-C zoning north of N Street.

6. Pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations. The applicant is seeking a special exception under Paragraph 4101.44 to establish SP office uses on the site and for variances from the floor area ratio requirements (Sub-section 4301.1) and the service berth requirements (Sub-section 7302.1) to construct an office building at the site.

7. The application was previously approved by BZA Order No. 12705, dated October 24, 1978. Events beyond the control of GLM, after initial commencement of construction activities on the project, prevented GLM from proceeding with the project to completion on the original approval.

8. The building proposed in the subject application is the same as that of the original application, except that a second level of parking has been added.

9. The subject application does not require the special exception relief to reduce the number of required parking spaces that the previous application did. Due to changes in the Zoning Regulations, the applicant is now required to seek variance relief as listed above. In the precious application no variance relief was sought.

10. The proposed building will be eighty feet high, with seven stories and constructed of brick and glass.

11. The design of the structure is prosaic and intended to harmonize with those of other buildings in the area.

12. The prospective tenants of the building will be architectural, engineering and consultant firms and other professional and SP qualifying office tenants with space accommodations for approximately 250 employees.

13. The planned development of the site will provide 38,768 square feet of office space with parking for 26 cars and a 30 foot loading berth. There is a public parking lot one block to the north of the site at 13th and N Streets which can accommodate 80 vehicles on a daily basis and which has space available on a monthly basis. There is also a Metropark parking garage available for the public two blocks to the south, on the east side of 13th Street north of K Street.

14. There are 15 Metrobus routes within two blocks of the subject site. The McPherson Square Metrorail station is a 10 minute walk from the site.

15. The applicant proposes to erect a roof structure on the west side of the building containing elevator, fans, pumps, engineer's office and related equipment. In addition, there will be stairwell access to the structure. The material of the roof structure will blend harmoniously with the facades of the building. The height of the roof structure will be 18 feet, 5 inches.

16. The location of the roof structure on the west side of the building reflects the need to locate the stairwell and elevator core toward one side of the building in order to create an efficient floor configuration. The proposed location of the structure achieves this goal by minimizing the impact of the structure in relation to the building as a whole.

17. The applicant will comply with the penthouse setback regulations on the east (13th Street frontage), the south (M Street frontage), and north. The applicant proposes a zero setback from the west lot line. Due to the extremely small size of the lot, there is no realistic alternative solution and strict compliance with the setback requirements is impossible. There is no alternative placement of the roof structure which will totally comply with the roof structure setback provisions of the regulations. Placement of the elevator core in the center of the building would result in a totally inefficient layout in terms of use and circulation, and still would not comply with the setback regulations. The subject site will not have a roof structure on a property line abutting a street or alley.

18. In BZA Application No. 12705, the Board has previously found that the proposed FAR of 5.5 was appropriate for the proposed project because the proposed project was in harmony with the predominant use and height of the area. The current proposal would retain the identical 5.5 FAR.

19. It is not possible to construct a quality professional office building on a lot the size of the subject lot with the allowed FAR of 3.5. Such an FAR would eliminate many of the practical necessities for SP office use. The amount of office space provided would be inadequate for professional or other SP office use.

20. Because there is no alley through the square, there is no rear access to the building. Entrance for service/ delivery purpose can only be provided on either M or 13th Streets. The relatively small size of the site and proposed building dictates a combined use of space for both service

delivery and loading berth spaces. There is no other practical solution for the particular land configuration.

21. There is insufficient headroom in the garage to accommodate the required 10 foot clearance necessary for a service/delivery loading space. Subsurface conditions also make it more difficult and prohibitively costly to lower the garage to accommodate this space. Moreover, because the number of spaces provided is limited, the addition of the service/delivery space in the garage (assuming it could be done) would only result in the reduction of parking spaces.

22. There is no alley abutting the building and the applicant would be unable to assure a free and clear passage when such a space was being used. Without an alley to provide access, service users would be forced to use the parking entrance on 13th Street. This is not the ideal situation for traffic circulation.

23. As an alternative, applicant proposes to use the 30 foot loading berth provided for the building to accommodate service vehicles. In the event that two trucks arrive at the same time, curb loading is permitted on both M and 13th Streets.

24. Witnesses for the applicant testified that the building abuts a minor arterial and a local street and will not create any adverse traffic conditions. The development of the site for SP office purposes removes an eyesore and increases the general safety of the immediate neighborhood. The site will be appropriately landscaped. In addition, the retail business generated by the office workers will benefit the neighborhood. The Board concurs.

25. By letter dated January 7, 1987, Advisory Neighborhood Commission (ANC) 2C reported its support is of the opinion that the application meets the standards for the special exception and variance relief. The Board concurs with the reasoning and recommendation of the ANC.

26. Numerous letters and a petition were submitted to the record in support of the application.

27. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking special exceptions, the granting of which requires substantial evidence that the applicant has complied with the

requirements of Paragraph 3302.2 and 4101.44 and Sub-section 8207.2 of the Zoning Regulations.

Paragraph 4101.44 allows for the establishment of an office for an international organization, nonprofit organization, labor union, architect, dentist, doctors, engineer, lawyer or similar professional person, provided that:

4101.441 The use, height, bulk and design are in harmony with existing uses and structures on neighboring property;

4101.442 The use will not create dangerous or other objectionable traffic conditions;

4101.443 The Board may require such special treatment in the way of design, screening of buildings, accessory uses, signs and other facilities as it shall deem necessary to protect the value of neighboring property.

Sub-section 3308.2 provides that a special exception may be granted to allow a penthouse which does not meet the setback requirements of the SP-2 District.

The Board concludes that the applicant has met its burden of proof. The proposed building will meet all the requirements of Paragraph 4101.44. The roof structure setback requirements of the Zoning Regulations state that a roof structure must be setback from all exterior walls a distance at least equal to its height above the roof upon which it is located. In this case, full compliance with that provision would be unduly restrictively, prohibitively expensive and unreasonable due to the relatively small size and shape of the lot, and the need to locate the building core to produce an efficient building configuration. The site is approximately 90 feet long and 81 feet wide. The extremely small size and square shape of the lot make it impossible to properly set back the roof structure from all sides of the building, and at the same time to achieve an efficient building. A center core would make it impossible to achieve an efficient floor configuration for a first class professional office building.

The requested relief will allow for a roof structure of reasonable dimensions, with minimal impact on surrounding properties, while at the same time complying with the Zoning Regulations to the greatest extent possible.

The Board further concludes that the applicants are seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional

narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent of the zone plan. Sub-section 4301.1 allows a FAR for the SP-2 District of 3.5, or 25,672.50 square feet for the site. The proposed building will have a FAR of 5.5 percent or 38,768.50 square feet necessitating a variance of 13,095.79 square feet, or 51.01 percent. Sub-section 7302.1 requires a service berth 20 feet deep be provided at the site. The applicant is providing a loading berth and loading platform but no service berth.

The Board concludes that the applicant has met its burden of proof. The Board found that the subject area is developed predominantly with highrise 90 foot buildings, and that there was a mix of residential, office and nonconforming retail uses. Since the last Board decision, two 90 foot high density residential buildings were built on the block between 12th and 13th Streets on M Street. The current proposal retains the same harmony as that previously approved by the Board. The proposed 5.5 FAR is reasonable for the area. Additionally, the site's configuration limits the applicants ability to provide a service/delivery loading space as required by the regulations. Application of this requirement would present a practical design problem for the applicant because of the limited size of the building and the lack of an access alley behind the building. As a practical matter, the only place a service/delivery loading space would be provided on site would be on the ramp leading from the street to the parking area. However, the required loading berth is already located in this area. As an alternative, the applicant proposes to use the 30 foot loading berth provided for the building to accommodate service vehicles in the event that two trucks arrive at the same time, curb loading is permitted on both M and 13th Streets. Thus the need for service/loading spaces can easily be satisfied under the existing proposals.

The Board further concludes that granting the proposed relief will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that it has accorded to Advisory Neighborhood Commission (ANC) 2C the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the CONDITION that construction shall be in accordance with the plans marked as Exhibit No. 9 of the record.

VOTE: 5-0 (William F. McIntosh, Paula L. Jewell, Charles R. Norris, Patricia N. Mathews and Carrie L. Thornhill to grant).

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

ATTESTED BY: _____
EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: APR 3 1987 4/3/87

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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