2137-007
BNA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14336, of BNA Washington, Inc., as amended, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the side yard requirements (Sub-section 4506.5), and a variance to allow attendant parking when only sixty-nine spaces are required (Sub-section 7204.4) for the proposed construction of a seven story office building in a CR District at premises 1227 25th Street, N.W. (Square 24, Lot 873).

HEARING DATE: September 25, 1985
DECISION DATE: October 9, 1985

FINDINGS OF FACT:

1. At the public hearing of September 25, 1985, the application was amended to eliminate the request for a variance from the requirement that all required parking spaces shall be accessible at all times directly from improved streets or alleys (Sub-section 7206.4 of the Zoning Regulations). The applicant opted to seek the variance to allow attendant parking.

2. The subject site, known as premises 1227 25th Street, N.W., is located on the east side of 25th Street between M and N Streets. It is in a CR District.

3. The subject lot contains approximately 37,597 square feet in land area and is currently vacant. The lot is generally 223 feet long and 124 feet wide. Due to the closing of a public alley, a 15 foot by 224 foot portion extends northward from the northeast corner of the lot.

4. The subject square is currently undergoing major redevelopment. To the south of the subject site is a large office building now under construction developed by the Oliver T. Carr Company. To the east of the Carr Company building, at the corner of 24th and M Streets, N.W. is the Westin Hotel, also under construction. The B&W Garage office building, recently approved as a Planned Unit Development, is to the north of the Westin Hotel. To the north of the B&W Garage is the U.S. News and World Report building which occupies the northern portion of the square along N

Board of Zoning Adjustment
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EXHIBIT NO.35A2

Street between 24th and 25th. To the south of the U.S. News and World Report building, along 25th Street, is the existing BNA office building, which is immediately to the north of the subject proposal.

5. The CR District extends to the north, south and east of the subject site. Rock Creek Park is located to the west of the site.

6. The applicant proposes to construct a seven-story office building on the site. The structure will have a gross floor area of approximately 112,665 square feet (3.0 FAR). The structure will occupy approximately 57 percent of the lot. A two-story underground parking garage will be provided under the structure and the alley way to the north of the structure.

7. In order to construct the building as proposed, the applicant is seeking two variances pursuant to Paragraph 8207.11 of the Zoning Regulations which empowers the BZA to grant variances where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topograhical conditions of other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to the owner of such property provided such relief can be granted without substantially 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.

8. The applicant is seeking a variance from the side yard requirements of Sub-section 4506.5. In the CR District, no side yard is required, however, if a side yard is provided a minimum width of 3 inches per foot of height of the building or 8 feet is required. In this instance, 21.28 foot side yards are required to the north and south of the proposed building. The applicant proposes to provide a 4.82 foot side on the south building frontage and a 33 foot side yard on the north side.

9. The applicant is also seeking a variance from Sub-section 7204.4 which allows attendant parking when 75 or more parking spaces are required. The applicant is only required to provide 69 parking spaces but intends to maximize the efficiency of the parking garage by utilizing attendant parking. With attendant parking, 175 spaces can be provided while only 108 can be provided without attendant parking.

10. The project architect testified that the subject site is affected by several exceptional conditions including

restrictive covenants, size of lots, open space plan and soil and rock conditions.

11. The subject site is affected by two restrictive covenants. One covenant requires that a minimum 15 foot pedestrian open space be provided to the south of applicant's proposed building. Applicant's proposed building location will provide approximately 34 feet of open space in this area. The second covenant requires a minimum 20 foot vehicular and pedestrian easement area to be located north of the proposed building. These covenants were required by the District to effectuate two alley closings. The proposed building location is in compliance with these covenants. The covenant creating the alley easement prevents movement of the building north to the degree required to provide a conforming side yard to the south.

12. The proposed structure will complement the other developments in the square. The proposed building's siting and design is part of an overall open space and beautification program that was jointly developed by the three property owners of the southern portion of the square. The same architect designed the proposed structure, the hotel and the Carr Building.

13. The Central focus of the square is on the plaza enclosed by the hotel and Carr Building to the south, the hotel to the east and the proposed structure and the hotel to the north.

14. The plaza will will include a brick paved courtyard with a fountain, benches and landscaping. A restaurant will also be located in the plaza.

15. The plaza can be accessed from three exterior walkways: 1) from the north by a walkway with a slight grade and steps located between the proposed structure to the west and the hotel to the east; 2) from the south by a walkway between the Carr Building and the hotel; 3) and from the west by the pedestrian way between the subject structure and the Carr Building. The walkways will be landscaped and/or contain fountains.

16. All pedestrian walkways and the plaza will be open to the public at all times.

17. Due to the configuration of other existing and planned structures, whose placement dictate a uniform width of the open space between buildings, a side yard is required on the southern frontage. While not required under the Zoning Regulations to provide the side yard, the applicant is nevertheless compelled to comply with the open space plan so that the distance between the Carr Company office structure and the subject structure is identical to the distance, 34 feet eleven inches, between the subject structure and the

applicant's other office building to the north. Thus, the proposed structure must be located four feet north of the south property line. This is the optimum design from an urban design perspective.

18. Although the pedestrian pathway to the south of the subject structure is only required to be 15 feet wide, this would result in an unattractively small space. The proposed walkway will have generous, elegant proportions. A portion of the plaza will also be widened by the building's set back.

19. The proposed structure and its location was subject to review by the Fine Arts Commission who approved the plans.

20. The instant case is unique in that the side yard is adjacent to open space which will remain open space. Moving the proposed structure north will enlarge the open space not create a small unusable space as would happen if another building were adjacent to the subject site.

21. The situation is also unique since the three buildings are design elements in an overall plan for the southern portion of the subject square.

22. A geotechnical engineering report prepared by Schnabel Engineering Associates stated that rock conditions affect the subject site and that movement of the building in a northerly direction approximately five feet would lessen the adverse impacts of the rock condition.

23. The request for a variance to allow attendant parking, thereby permitting 175 stacked spaces, instead of the 108 spaces that are permitted as a matter-of-right, is necessary to ensure the most efficient, safe and reasonable parking use of the site and is prompted by exceptional conditions.

24. The site is of sufficient size to accommodate the location of more than 75 parking spaces. However, because of the mix uses within the building, only 69 parking spaces are required. The gross floor area for office use may not be increased to, in turn, increase the parking requirement. If the applicant were to provide a different mix of uses that required 75 parking spaces or more, then no relief from this provision would be required.

25. The subsurface rock conditions would require costly excavations in order to provide a third parking level which could be conducted as a matter-of-right.

26. The parking garage will be accessible from an improved street via the graded and unobstructed private

alley and driveway. To the north of the subject site, the driveway will be paved in accordance with Department of Public Works standards to form an all-weather impervious surface. It will be approximately 30 feet wide. The plans comply with all other aspects of Sub-section 7206.4.

27. On-street parking in the area is limited. Stacked parking in the subject structure will lessen the demand for parking on neighborhood streets resulting in less parking congestion.

28. Spaces in the subject garage will be leased to employees on a monthly basis and visitors on an hourly basis. If there is a demand, the garage will remain open during evening hours.

29. The applicant's traffic expert estimated that of the proposed building's 400 employees, 133 will need spaces. There is no public transit which directly serves the site.

30. By memorandum dated September 17, 1985, the Office of Planning (OP) recommended conditional approval of the subject application. The OP reported that there are restrictive covenants affecting the subject site that were required by the District to effectuate two alley closings that specify that certain portions of the subject lot shall be maintained as open space and as an alley easement area on the north frontage of the applicant's site. The applicant and the two property owners to the south and east developed an overall open space plan for the southern portion of the square that dictates the provision of open areas to provide light, air and other amenities. The OP further reported to the configuration of existing structures and those under construction, whose placement dictates a uniform width of the open space between buildings, a side yard is required on the southern frontage. Also the applicant has stated that existent subsurface rock formations prevent the movement of the building in a northernly direction so as to provide the required side yard on the south side. The increase of the number of parking spaces from 108 to a 175 seems to be beneficial to the area which is not well served by mass transit. This area with the on-going building boom is rapidly losing the existing surface parking lots. Also in Zoning Commission Case No. 82-5, in a report from the Department of Public Works to the Zoning Commission, the Department favored attendant parking and stated that:

> Devoting a substantial area to parking in high density, high cost areas can be an inefficient and uneconomical burden for developers looking to maximize already limited building space, while at the same time meeting other design and access requirements.

In addition, parking garages in these zones, which are designed for commercial buildings nearly always utilize attendant parking arrangements. The increased efficiency of attendant parking reduces to a large degree the need for inflexible design standards, which are essential for self parking facilities where public safety considerations must be paramount.

31. In the opinion of the Office of Planning the requested relief can be granted without detriment to the public good because the use of the building conforms to uses permitted in the CR District and to the other uses in the square. Also, the building's height, bulk, design and scale seem to be compatible with neighboring properties. The project implements the previously mentioned open space plan for the southern portion of the block. The Office of Planning was of the opinion that the property qualifies under Paragraph 8207.11 of the Zoning Regulations for the area variance. Based on the previously stated facts and analysis of this report, OP recommended approval of this application with the condition that the stacked parking be provided through attendants as required in Sub-section 7204.4. The Board concurs with the reasoning and recommendation of the OP.

32. By memorandum dated September 12, 1985, Advisory Neighborhood Commission 2A reported its support for the subject application for the reasons that the building to the north of 1227 25th Street is owned by the same party that owns 1227 25th Street and the two sites are separated by an alley and will be so separated after the construction of the office building at 1227 25th Street. The purpose of the shift is to improve the open space provided as part of the Westin hotel and office development; and the applicant is seeking to provide greater than the minimum parking required by a building of the size and use proposed for 1227 25th Street and will maximize the use of this space by having the parking managed by an attendant. The Board concurs with the reasoning and recommendation of the ANC.

33. Letters of support for the subject application were submitted to the record by the Oliver T. Carr Company, the Kaempfer Company and the Westin Hotel.

34. At the public hearing, a member of the Residential Action Coalition (RAC) testified to their opposition to the subject application. RAC argued that a practical difficulty or basis for hardship had not been demonstrated. RAC reported that it had examined the square to see the rock formation and determined that there is no more practical difficulty attached to that land than to other sites. Also, the closing of the alley and the restrictive covenants were self imposed and do not represent a hardship. Further, the parking variance should not be granted since it would increase traffic on 25th Street beyond its capacity. RAC

further argued that the north side of the site was required by the City Council to be landscaped as a condition of the alley closing. Finally, the application requires additional relief from the Zoning Regulation's to have trailer truck entrances in the C-R zone and it should not be next to an entrance to a parking garage.

35. The Board in addressing the concerns of RAC finds that the applicant has established that the subject site is affected by unique characteristics and that a practical difficulty has been demonstrated. The Board in other similar applications has concluded that rock formations constituted a practical difficulty. Also, the Board notes that the test herein is a practical difficulty not a hardship. The Board also finds that the parking variance requested will benefit the neighborhood by lessening the demand for off-street parking in the neighborhood. The issue of landscaping the area north of the subject structure is not within the jurisdiction of the Board if the covenant has been violated then another tribunal should address it. As to additional relief needed, the Board finds that this is the province of the Zoning Administrator. If RAC is of the opinion that the Zoning Administrator has omitted an area of relief, RAC may appeal the decision of the Zoning Administrator.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a variance from the side yard requirements (Sub-section 4506.5) and a variance to allow attendant parking when only 69 spaces are required (Sub-section 7204.4). The granting of an area variance 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 application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met its burden of proof.

The Board concludes that the site is affected by several extraordinary or exceptional conditions including sub-surface soil and rock conditions, size of lot, open space plan and restrictive covenants affecting the subject site. These restrictive covenants were requires by the District to effectuate two alley closings that specify that certain portions of the subject lot shall be maintained as open space and as an alley easement area on the north frontage of the site.

The Board further concludes that the requested variances can be granted without detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED SUBJECT to the following CONDITIONS:

1. The pedestrian promenade providing access from 25th Street on M Street shall be constructed in accordance with the plans marked as Exhibit No. 12 in the record.

2. All public spaces shall be illuminated from sunset to sunrise.

VOTE: 3-0 (William F. McIntosh and Charles R. Norris to grant; Patricia N. Mathews to grant by proxy; Carrie L. Thornhill not voting, not having heard the case; Douglas J. Patton not present, not voting).

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

ATTESTED BY: _____
CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 12 FEB 1996

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.

14336order/LJPL

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14289, as amended, of 300 I Street, N.E. Associates Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the parking requirements (Sub-section 7202.1) to convert an existing warehouse structure to office use in a C-M-1 District at premises 300 I Street, N.E., (Square 775, Lots 3 and 4).

HEARING DATE: May 15, 1985
DECISION DATE: May 15, 1985 (Bench Decision)

FINDINGS OF FACT:

1. The applicant had modified the architectural plans to provide the required bicycle parking spaces in compliance with Sub-section 7208.1. At the public hearing, the applicant withdrew its request for the second area of relief that was originally advertised.

2. The subject site is located at the northeast corner of the intersection of 3rd and I Streets, N.E., and is known as premises 300 I Street. It is zoned C-M-1. The site is improved with a two and four story masonry structure with cellar that has been vacant approximately fifteen to twenty years.

3. The building was constructed in 1927, prior to the adoption of the parking requirements. No parking spaces are provided. The subject site has a lot area of 16,630 square feet and the structure covers 100 percent of the lot area.

4. The permitted floor area ratio (FAR) in the C-M-1 District is 3.0. An FAR of 2.36 is provided in the existing structure. No new structure is proposed.

5. The most recent certificate of occupancy reveals that the structure was last used for office and warehouse use. The applicant proposes to renovate the structure and devote it to office use.

6. Sub-section 7202.1 of the Zoning Regulations requires one parking space for every 800 square feet of gross floor area and cellar area in excess of the first 2,000 square feet for an office structure in a C-M-1 District. Accordingly, forty-seven parking spaces are required. The subject site has a sixteen space credit from

the previous use. The applicant must now provide thirty-one spaces on-site. The applicant seeks variance relief from the parking requirements.

7. Adverse ownership of adjacent properties prevents the applicant from increasing the lot size. The applicant is not physically able to provide parking unless a substantial portion of the structure is demolished.

8. Since only portions of the building have been excavated to provide cellar space, major excavation work and underpinning would be required in order to provide any parking in the cellar area.

9. The neighborhood surrounding the subject site is characterized as a mixed commercial, industrial and residential use area but has numerous vacant structures. The C-M-1 District extends north, south, east and west of the subject site. An R-4 District extends to the northeast.

10. The proposed project is designed to provide an adaptive reuse of a long vacant structure and generate additional economic development and growth in the neighborhood.

11. The applicant had renovated an adjacent building at 220 I Street, N.E., in a manner similar to that of the proposed project. The proposed office building will house between 100 and 120 office workers.

12. The office hours will be from 8:00 A.M. trough 5:00 P.M., Monday through Friday.

13. Parking for bicycles will be provided inside of the building.

14. The requested variance relief will have no adverse impact since the required parking will be met by the availability of parking in the immediate neighborhood. A parking survey made of the neighborhood by the applicant's traffic and transportation consultant evidences that there are three parking lots available to the public providing approximately 400 off-street parking spaces. All of the lots have monthly spaces available. On-street spaces are also available. Both I Street and 3rd Street have unrestricted curb parking.

15. The traffic consultant further testified that an analysis was conducted for the applicant which concluded that the additional traffic generated by the site will not affect peak hour operating conditions for adjacent streets. These streets currently operate at A and B service levels and will continue to operate at those levels even with the proposed renovation project.

16. Metrobus service is available in all directions within one block of the subject site. Metrorail service is available at Union Station which is a ten minute walk from the subject site.

17. Advisory Neighborhood Commission 2C, by letter dated May 7, 1985, supported the application for a parking variance. The ANC reported that it voted to support the adapted reuse of the building because of the positive benefits that will result for the community and the city. These benefits include a greatly improved appearance for the neighborhood, increased jobs and tax revenues, and a major step in the continued economic development of the neighborhood and the H Street corridor. Since there is ample off street parking available in the surrounding area, the ANC was of the opinion that the requested variance would have no negative impact on the community. The Board concurs with the findings and recommendation of ANC 2C.

18. The Office of Business and Economic Development, by memorandum dated May 8, 1985, supported the requested variance. The memorandum stated that the office supported the variance because the area is of critical importance to the District's economic development plans. Projects such as the proposal provide a source of stability in a community and provide a major impetus for further development in the H Street corridor. The addition of up to 120 office workers and the associated increase in property, income and other taxes provide a major change to the District and the value of this presently vacant warehouse.

19. A petition in support of the application signed by over sixty residents of the surrounding neighborhood was filed in the record of the case. No grounds for the support were given.

20. Councilmembers John A. Wilson, Nadine P. Winter and Betty Ann Kane and the Capital Children's Museum, located at 800 3rd Street, N.E., all submitted to the record letters in support of this variance request. The letters noted the availability of off-street parking spaces in the area and the accessibility of public transportation to the site. The letters also stated that the proposed office use would continue the revitalization process of the H Street, N.E., corridor and stabilize the neighborhood.

21. No one appeared at the public hearing in opposition to the application. There was also no opposition of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance, 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 application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met its burden of proof. The practical difficulty is inherent in the site because of the existing structure's one hundred percent occupancy of the site which makes provisions for off-street parking infeasible. The Board notes the approval of the ANC and the lack of opposition.

The Board further concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 3-0 (William F. McIntosh, Maybelle T. Bennett and Carrie L. Thornhill to grant; Charles R. Norris and Douglas J. Patton not present, 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: 29 JUL 1985

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.

14289order/LJPF

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14327 of Michael Salzberg, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.45 to use the subject structure as a community center building and for a variance from the parking requirements (Sub-section 7202.1) in an R-5-B District at premises 3309 - 16th Street, N.W., (Square 2676, Lot 469).

HEARING DATE: September 18, 1985
DECISION DATE: October 2, 1985

FINDING OF FACT:

1. The subject premises, known as 3309 16th Street, N.W., is located on the east side of 16th Street between Park Road, N.W. and Monroe Street, N.W. The site is located within an R-5-B District.

2. The subject lot is rectangular in shape with a frontage of 20 feet along 16th street and a depth of 100 feet. It has an area of approximately 2,000 square feet. To the rear of the lot (east) is a 15 foot wide public alley accessible by way of Monroe Street. This alley intersects with a 20 foot public alley which bisects the Square. The alley system provides access to two parking spaces located on the subject premises.

3. The subject site is improved with a three story, row dwelling unit. The structure was constructed prior to May 12, 1958, the effective date of the current Zoning Regulations.

4. The surrounding area along 16th Street is characterized by a variety of residential uses and structure types including churches, medical clinics, and several institutional uses. East of 16th Street residential uses predominate before ultimately giving way to the 14th Street commercial corridor. West of 16th Street the area is likewise characterized by a variety of residential uses and structure types.

5. The Family Place is the contract purchaser of the subject site.

6. The Family Place is seeking a special exception under Paragraph 3101.45 of the Zoning Regulations to use the

subject structure as a community center building. A community center may be located in the R-5-B District if approved by the BZA as a special exception meeting the requirements of Paragraph 3101.45. That Paragraph provides as follows:

a. It is not organized for profit, but exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located;

b. It offers no articles of commerce for sale therein;

c. It is not likely to become objectionable in a Residence District because of noise or traffic; and,

d. The use will be reasonably necessary or convenient to the neighborhood in which it is proposed to be located.

7. The Family Place is a private non-profit organization which provides family counseling, guidance and social services to residents of the surrounding Adams Morgan Community.

8. Primary goals of the Family Places are to help pregnant women, bring down the infant mortality rate and stop the handicapping conditions that are found in children not born at healthy birth weights.

9. The proposed community center will provide a broad range of social services including information referal to medical services and direct counseling and guidance. Drop-in services will be available where clients can meet with each other for discussions. Groups will be organized to discuss parenting, pregnancy and other relevant issues. First friends, a community volunteer program, will provide support and information to women who would otherwise be facing pregnancy alone.

10. The clientele of the Family Place would predominately be expectant and new mothers of hispanic origins.

11. The Family Place is currently located in the basement of 1848 columbia Road where it has been operating as a community center since 1981. The need for additional space necessitates the move from the Columbia Road facility to the subject premises.

12. The Family Place was originally intended to serve 50 families. It is currently serving 185 families. Staff members are sharing offices which is undesirable since privacy is required for counseling sessions with clients.

13. At its current location, the Family Place community center operates between the approximately hours of 9:00 A.M. to 5:30 P.M. Monday through Friday. Evening and weekend use of the Center is limited to rare or special occasions e.g.

Mother's Day activities (Sunday) and the installation of officers (evening). On the average, the center services approximately 20 to 30 people per day. The center is staffed by seven individuals, five of whom are full time and two of whom are part time.

14. There will be no increase in staff or extension of hours of operation at the proposed location. A rest area for pregnant women will be added to the center's facilities.

15. The center has received numerous awards and recognition from the community and the District of Columbia government for its programs and staff.

16. The proposed 16th Street location for the subject community center is reasonably convenient to the center's neighboring hispanic clientele.

17. No articles of commerce are offered for sale nor are any articles intended to be offered for sale by the Family Place.

18. The Family Place intends to restore the building facade and renovate the interior. No additions or changes to the exterior configuration of the building are contemplated. The structure's residential appearance will be maintained.

19. The activities of the Family Place will be confined to the interior of the structure. There will be no outside play space.

20. All children at the center will be under the age of three and will be accompanied by a parent.

21. In the past four years that the Family Place has been located in the basement of a residential building, it has not received complaints about its activities or noise generated and it has received the support of residential neighbors.

22. Trash will be collected from the proposed center twice a week.

23. The subject structure was vacant at the time the application was filed. Staff members of the Family Place and members of a church affiliated with the center have since occupied the structure to begin its renovation and for security reasons.

24. The applicant is also seeking a variance from subsection 7202.1 of the Zoning Regulations which requires six on-site parking spaces. The applicant is providing two spaces at the rear of the subject site. The extend of the

occupancy of the structure on the site precludes providing four more spaces.

25. Almost all of the proposed center's clients will walk or take public transportation to the subject site. The Family Place conducted a survey at its current location from August 22, 1985 to September 5, 1985. Of its 266 visitors, with an average of 26 visitors per day, only three of the total 266 needed a parking space. Seventy-six percent of the visitors walked to the center. The proposed location will be closer to the center's clients and will be well served by public transportation.

26. By memorandum dated September 11, 1985 the Office of Planning (OP) recommended conditional approval of the subject application. The OP reported that in terms of the major issues associated with this application, namely the location of the proposed center within the neighborhood of the clientele it serves and the lack of objectionable impacts, the subject application complies with both. The proposed community service center provides counseling, guidance, and social services to primarily hispanic clients residing in the Adams Morgan area. The proposed 16th Street location of the Family Place is reasonably necessary and convenient to this specialized neighborhood clientele.

27. The OP further reported that the possibility of objectionable noise is minimized by two factors. First, the activities of the Family Place are confined to the interior of the structure. Second, with only an occasional exception, he Family Place operates during normal business hours. During these hours many nearby residents are either at work themselves or engaged in activities for which routine noise presents few problems. However, the Office of Planning recommended the imposition of conditions limiting the Family Place's hours of operation from 9:00 to 5:30 Monday through Friday except for one evening and weekend day per month. The OP further reported that the traffic impacts are also likely to be minimal. The neighborhood orientation and economic status of the proposed center's clients results in use of mass transit by most if not all of the visitors to the Family Place. Moreover, of the seven staff members, only one commutes to work by car. Because there are two on-site parking spaces to the rear of the structure, this one car can be accommodated on-site.

28. The OP further reported that the applicant is seeking variance relief from the parking regulations because the structure occupies the greater portion of the lot. Given this condition, strict application of the regulations would result in peculiar and exceptional practical difficulties to the owner. Further, the demand for parking indicates two on-site parking spaces are sufficient thus precluding detrimental impacts upon the public good. The

Board concurs with the reasoning and recommendations of the OP.

29. The commissioner from Advisory Neighborhood Commission Single Member District (ANC-SMD 1A03) testified in favor of the subject application at the public hearing and by letter dated September 18, 1985. She stated that the program was meeting a known vital need in the city. She reported that at the SMD meeting there was no opposition to the application. The SMD-ANC reported that the absence of a letter of support from the ANC was not a reflection of disapproval but rather resulted from administrative difficulties. The Board finds that it cannot give "great weight" to the ANC's opinion without a report of the full Commission with a recommendation.

30. A letter dated September 10, 1985, was submitted to the record by Marion S. Barry Jr., Mayor of the District of Columbia, in support of the subject application. He stated that the Family Place provides an important community service in the city which is fighting to bring down the infant mortality rate. The Family Place has been honored by the city for their outstanding record of service. He further noted that many of the program's participants live in the area of the proposed site and that the move to the new location will enable the program to be of even more benefit to the surrounding neighborhood. The Family Place will strengthen the quality of family life in the area and will be a very good neighbor.

31. By letter dated September 18, 1985, Frank Smith Jr., Council member for the subject Ward 1, expressed his support for the subject application. He reported that the Family Place has been a well-respected, key agency in his ward providing services to his constituents as well as a good neighbor which has improved the quality of life in the Adams Morgan area.

32. By letters September 17, 1985 and September 18, 1985, David A. Clarke, council chairperson, and Hilda M. Mason and Betty Ann Kane, councilwomen at large, expressed their support of the subject application for reasons expressed above. They further stated that the center would not unreasonably impinge on the neighborhood residential character. It was their opinion that the center has been a good neighbor at its present location and will have just as positive and constructive of a relationship with the community at the new site.

33. By letter date September 3, 1985, the Pastor of the Shrine of the Sacred Heart church located near the subject site, expressed his support for the application. He stated that he believed that the Family Place would be of substantial benefit to the neighborhood.

34. The owner of the row house adjacent to the subject site testified in opposition to the application at the Public Hearing and by a letter submitted to the record on the grounds that the proposed center would detract from the residential character of the neighborhood. He was concerned that the location of the center will deprive him of a neighbor who could watch his house in case of fire or burglaries; the center will probably put up a large sign and that the operators of the proposed center may not be able to maintain the property. He paid 150,000 dollars for his home and he and his neighbors don't need the services of the center. This property owner further testified that the windows of his home are 12 feet from the windows of the subject structure. He will be disturbed by babies crying one Saturday a month if the center is allowed to operate on that schedule. His wife plans to become pregnant and will be staying home days so she will be disturbed by the noise generated by the center. He further testified that despite the residential character of the area, the subject site is a dangerous and unhealthy location for pregnant women and children because of the heavy traffic on 16th Street and the proximity of a halfway house for convicts.

35. The neighboring property owner further testified that he does not believe that a staff of seven will only need two parking spaces or that clients will generally walk to the subject site. Parking spaces accessed by the alley are often blocked. He already has conflicts with his neighbors over parking.

36. The property owner also stated that the applicant tried to misrepresent the site by stating on the application that it was vacant. In a visit to the Family Place at the current site, he saw 25 pre-schoolers playing. The noise was intolerable. The environment was one of a poorly managed day care facility. He saw no counseling activities.

37. The Board finds that no evidence has been submitted to indicate that the proposed center will not be a good neighbor or that it will not maintain its property. The center will not erect an obtrusive sign. The Board further finds that the center does fill a vital neighborhood need. The Board also finds that since all activities are confined to the interior of the structure, the center will not generate unreasonable noise. The Board does concur that 16th street is a heavily travelled major thoroughfare but it does not find that the center will contribute significantly to the area's noise level. The Board also does not find that the area is too dangerous or unhealthy for the center's clients who not only visit the center but also live in the area.

38. The Board does not concur with the neighboring property owner's assessment of parking needs for the center

since they were not based on a survey or observation but rather are pure speculation. The Family Place has, under oath and based on their four year of operation, defined their parking needs. The Board also notes that the OP reported to the satisfaction of the Board that traffic impacts would be minimal. The Board further finds that the neighboring property owner's conflicts with his neighbors over parking are not any more likely to intensify with the location of the center than they would if the site were occupied for normal residential use. The record shows that the site was vacant at the time of application. The applicant has stated the nature of its current occupancy in Finding No. 23 above. The Board does not find that the Family Place is a child development center but rather is a well established and recognized community center.

39. An additional neighboring property owner submitted a letter to the record in opposition to the proposed center for reasons which have been stated and addressed in Finding No. 37 and 38 above. She also stated that the establishment of the proposed center would encourage nonresidential uses to locate in the neighborhood at sites that are currently occupied by residential uses. She further stated that if the site is zoned as a community center and if The Family Place Center failed financially, the use which would replace it could be an even more undesirable use.

40. The Board finds that each application for a special exception is judged on its own merits and that the grant of this application would not set a precedent in the neighborhood. The Board further finds that the grant does not amend the zoning map. The operation of a community center at the site is limited to the subject application. An additional community center proposed for the site would have to apply for a separate special exception.

41. By petition dated September 17, 1985, numerous neighbors of the subject site expressed their opposition to the proposed center on the grounds that the immediate area in which the subject site is located contains two halfway houses and housing for the elderly and handicapped. They further stated that the center would destroy the residential character of the neighborhood. The Board finds that the location of a community center is predeemed compatible with residential uses if the center meets the criteria listed in finding NO. 6 above.

42. The applicant submitted on October 30, 1985 a motion to waive Rule 503.1 of the Supplemental Rules of Practice and Procedure which requires that a motion for a reconsideration be filed by a party within ten days of the filing and service of the written order of the Board. The applicant requested the waiver so that it could submit a motion for reconsideration of the subject application. The motion to waive the Rules was denied at the Public Meeting

of the Board on November 6, 1985 as premature since the final order for the application had not been issued. Accordingly, the motion for reconsideration could not be entertained. On November 26, 1985, the applicant submitted motions identical to those originally submitted and denied. The Board finds this second motion an idle gesture.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception the granting of which requires that the proposal meet the requirements of Paragraph 3101.45 and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and the relief will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has met its burden of proof. The proposed center will be operated by a nonprofit organization promoting the social welfare of the neighborhood in which it will be located. The center is reasonably necessary and will be convenient to the neighborhood. It offers no articles of commerce for sale. The proposed use, as conditioned below in the grant of the application is not likely to become objectionable in a Residential District because of noise or traffic.

The Board further concludes that the applicant is seeking an area variance, 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 application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met its burden of proof. The practical difficulty is inherent in the land because of its physical conditions. Because of the subject site's narrow width, 20 feet, and the structure's occupancy of a large portion of the lot, the site will not accommodate more than two parking spaces. Further, the applicant demonstrated that the required spaces are not needed by the center. The Board further concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose to the zone plan.

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

1. Two parking spaces shall be provided in the rear yard of the subject site.

2. Hours of operation shall be from 9:00 A.M. to 5:30 P.M. Monday through Friday and either one evening or one Saturday per month until 10:00 P.M.

3. The number of employees shall not exceed eight.

4. There shall be no more than thirty participants at the center at any one time.

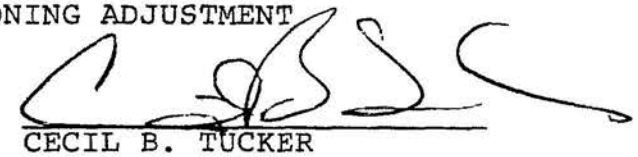
5. Trash shall be collected at least twice a week.

6. Approval shall be for a period of TWO YEARS.

7. Approval shall be limited to operation of the center by the applicant.

VOTE: 3-0 (Maybelle T. Bennett, Charles R. Norris, William F. McIntosh to grant; Carrie L. Thornhill not voting having recused herself; Douglas J. Patton not present, not voting).

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

ATTESTED BY: 
CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 17 JAN 1986

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.

14327order/DON17B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14327 of Michael Salzberg, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.45 to use the subject structure as a community center building and for a variance from the parking requirements (Sub-section 7202.1) in an R-5-B District at premises 3309 16th Street, N.W., (Square 2676, Lot 469).

HEARING DATE: September 18, 1985

DECISION DATE: October 2, 1985

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 3-0 (Maybelle T. Bennett, Charles R. Norris, and William F. McIntosh to grant; Douglas J. Patton not present, not voting; Carrie L. Thornhill not voting, having recused herself).

FINAL DATE OF ORDER: January 17, 1986

ORDER

The subject application was granted by the Board subject to seven conditions. Condition No. 6 of the Board's Order, dated January 17, 1986, limited approval of the use of the building as a community center to a period of two years. On October 30, 1985, counsel for the applicant submitted a motion requesting the Board to waive Section 503.1 of the Supplemental Rules of Practice and Procedure before the BZA to permit consideration of a motion for reconsideration of one of the conditions outlined in the Board's oral decision made at its public meeting of October 2, 1985 prior to the issuance of a written decision. There was opposition to the motion to waive the Rules to accept the motion for reconsideration. The Board denied the motion to waive the rules at its public meeting of November 6, 1985.

The Board issued its written decision on the application on January 17, 1986. Counsel for the applicant filed a timely motion for reconsideration of Condition No. 6 of that order on January 29, 1986.

The applicant entered into a sales contract with the Family Place in February 1985 which required that settlement on the property take place upon receipt of the required special exception approval or in January 1986, whichever occurred first. To satisfy this contingency, the Family Place filed the subject application. The subject application was heard on September 18, 1985 and approved by the Board on October 2, 1985, subject to seven conditions. The Family Place is able to comply with all of the conditions except Condition No. 6 which limits the occupancy of the building by the Family Place to a period of two years. The applicant requests the Board to modify condition No. 6 to allow the Family Place to occupy the subject property indefinitely or, in the alternative, for a minimum of seven years.

The Family Place is a non-profit organization that has been located in the community for a substantial period of time and the majority of the center's clients live in the area. Because of the non-profit status of the organization and difficulties in obtaining resources and funding, the Family Place is of the opinion that it is unreasonable to require this type of organization to invest the substantial amount of money necessary to purchase the subject building if its use is restricted to only two years. In addition, because the Family Place provides a service to residents of the neighborhood it desires to provide a long-term, "known" location in the neighborhood in order to provide effective community services. The Family Place is willing and able to comply with all the other conditions of the Board's order regarding parking, hours of operation, and the number of staff or clients on the premises at any one time. The Family Place is therefore of the opinion that an extended period of approval will not have an adverse impact on the neighborhood.

A party in opposition to the application opposed the requested modification of Condition No. 6 on the basis that the two year limitation on the occupancy of the subject premises by the Family Place is necessary in order to insure that the facility will not be objectionable to the surrounding residents due to potentially disruptive effects caused by noise or traffic.

Upon consideration of the request for modification, the opposition thereto, and the final order, the Board concludes that the situation described by the applicant, combined with the circumstances which supported the original granting of the subject application, results in a situation in which an extension of the time period for which the proposed use was approved would not result in substantial adverse impacts on the surrounding neighborhood. However, the Board concludes that approval for an indefinite period of time or for a period of seven years would be excessive given the desire of

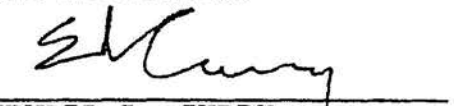
the Board and the neighborhood to monitor the proposed facility in order to evaluate any potential adverse effects which may result. Accordingly, it is hereby ORDERED that Condition No. 6 of the Board's order dated January 17, 1986 shall read as follows:

6. Approval shall be for a period of FIVE YEARS.

In all other respects, the order of the Board dated January 17, 1986 shall remain in full force and effect.

VOTE: 3-0 (William F. McIntosh, Maybelle T. Bennett and Charles R. Norris to approve modification; Paula Jewell not voting, not having heard the case; Carrie L. Thornhill not voting, having recused herself).

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

ATTESTED BY: 

EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: 30 MAY 1986

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.

14327order/DON20

Josephs + Cohen
5165-003

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14349, of 1229 Wisconsin Avenue Associates, as ANC 2E amended, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the off-street parking requirements (Sub-section 7202.1) for a proposed modification of plans approved prior to March 1, 1985, for the construction of a retail purposes structure in a C-2-A District at premises 1229 Wisconsin Avenue, N.W., (Square 1208, Lot 59.

HEARING DATE: October 23, 1985
DECISION DATE: November 6, 1985

FINDINGS OF FACT:

1. The application had been advertised originally for a special exception under Sub-section 7205.4 to allow required parking spaces to be located elsewhere than on the same lot where the principal use is located and for a variance from the prohibition against required parking spaces being accessible at all times directly from streets or alleys (stacked parking) (Sub-section 7206.4) or in the alternative for a variance from the off-street parking requirements (Sub-section 7202.1) for a proposed modification of plans approved prior to March 1, 1985, for the construction of a retail purposes structure in a C-2-A District at premises 1229 Wisconsin Avenue, N.W., (Square 1208, Lot 59. Under the first alternative, accessory parking will be provided at 3220 Prospect Street, N.W., (Square 1207, Lots 104, 838-841, 843 and 906).

2. The application was subsequently advertised for the alternative relief only.

3. The subject site contains approximately 8,107 square feet of land area, and is located on the east side of Wisconsin Avenue, N.W., midway between M Street and N Street. The property is zoned C-2-A, and is located in the Georgetown Historic District.

4. The subject structure will be a two-story plus cellar retail structure containing approximately 15,867 square feet of total gross floor area and cellar floor area (of which 14,675 is net leasable area). It is currently under construction. The building under construction was originally designed and approved as to zoning as a retail/ service spaces ranging generally between 2,700 square feet

and 4,600 square feet. Three separate entrances were designed into the facade, and the structure was otherwise designed to accommodate multiple tenants.

5. The applicant is providing 11 parking spaces on two levels in the building, which will allow occupancy by at least four separate retail/service tenants. The Board finds that the parking requirements that were in effect prior to the recent revisions required a maximum of 11 parking spaces for four or more retail or service tenants. The Board further finds that occupancy by four or more retail or service tenants may occur as a matter-of-right at the completion of construction.

6. The applicant has been engaged in leasing activities for the building for the past year. There have been many expressions of interest from small "boutigue" retail/service uses desiring less than 1,500 square feet. There have also been several expressions of interest from large retail/service uses seeking to use either half or all of the new building.

7. The applicant in assessing these expressions of interest, has determined to target high quality retailers of national stature or other similar high quality service-type uses in the building, similar to the high quality tenants generally found in Georgetown Park, a short walking distance of one block to the south. Potential tenants under consideration include high quality retailers already in Georgetown or elsewhere in the city who are seeking to obtain more floor space. The applicant testified, and the Board finds, that one or two large tenants in the building would have less impact on the neighborhood in terms of traffic, signage, trash, and other factors than would the establishment of a "boutigue mini-mall" in the building. The applicant also testified, and the Board finds, that a reduced number of separate tenants would also allow for a more efficient use of the building.

8. The Zoning Administrator has determined that a reduction in the overall number of tenants in the building will require a recomputation of the number of parking spaces required under the Zoning Regulations. The recently revised parking regulations require 43 parking spaces in conjunction with the retail or service occupancy, regardless of the number of separate tenants. Thus, the Board finds that the applicant is confronted with a situation where a reduction of even one tenant in the building, from four to three, will require a fourfold increase in the number of parking spaces under the Zoning Regulations, from 11 spaces to 43 spaces.

9. The property is located in the Georgetown Historic District, and is of a narrow elongated configuration, with a depth of over 200 feet, and a width of approximately 38 feet. The lots on both sides of the subject site are

improved with existing three-story retail structures. The applicant has unsuccessfully attempted to purchase the unimproved portions of these lots for the purpose of making a larger parking garage. These lots are therefore not available to the applicant in order to increase the width of the subject site. The applicant after diligent search, has been unable to locate any other accessory parking spaces off-site which can be used to meet the parking requirements in this case, i.e. that there be 32 parking spaces, measuring nine feet by 19 feet, set aside on a lot exclusively for the use of the retail building at 1229 Wisconsin Avenue, N.W.

10. The strict application of the regulations would require the provision of 43 parking spaces for less than four tenants on this site. The architect testified, and the Board finds, that the provision of this number of parking spaces on-site would theoretically require excavation of 14 parking levels on a continuous ramp, assuming that aisle width and turning radius on the ramp were not an issue. This large number of parking levels would be required because of the inordinately large percentage of the floor area of each parking level that would be taken up by ramp space. Also, based upon the testimony of the architect, the Board finds that the presence of rock approximately 20 feet below the surface would virtually preclude further excavation for additional parking levels.

11. The architect testified, and the Board find that in reality, however, a circular ramp simply cannot be used on this lot, because of the extreme narrowness of the site. The site is too narrow to accommodate a circular ramp that would provide the proper turning radius. In addition, based on the evidence and testimony, the Board finds that the extensive engineering work that would be required to support the existing building while excavating below would be financially infeasible and virtually impossible. The present configuration, with one ramp up to the first floor, and one ramp down to the basement level, is the only means of access to parking that will work on this site. The architect further testified, and the Board finds, that considerations for the location of the required means of egress under the Building Code and other structural limitations for the basement and first floor, including columns and structural supports, also limit the location of additional parking spaces in the building. For these reasons, the Board finds, that more parking spaces cannot be added on the site.

12. The applicant's expert traffic and parking consultant testified, and the Board finds, that the proposed variance relief will have less impact on the neighborhood than the alternative special exception to locate parking spaces on the parking lot on Prospect Street, which is no longer being requested. These parking spaces will not be held out exclusively for the use of the building at 1229

Wisconsin Avenue, but instead will remain open for use by the general public, including patrons of 1229 Wisconsin Avenue and any other visitors to Georgetown. The spaces would then be available to serve the general parking demand, instead of remaining vacant if they were not being used by patrons of 1229 Wisconsin Avenue. The applicant's expert traffic and parking consultant also testified that such an arrangement, under special exception relief, would be counter productive in terms of the overall parking supply in Georgetown. The applicant testified that, with one or two tenants occupying the building, parking in the garage could be controlled to the extent that parking could be stacked, thereby accommodating more than 11 cars in the garage. The Board so finds.

13. The applicant's expert traffic and parking consultant testified, and the Board finds, that the incremental increase in traffic generated by this retail building in Georgetown will be minimal. This is because visitors to Georgetown normally do not seek out one particular destination, visit that destination, and then leave. Rather, the Board finds that visitors to Georgetown typically visit the many shops and other facilities along the streets of Georgetown. Therefore, the large majority of persons who would visit the building are likely to be in Georgetown already, and would not be making a special trip to stop at this location, not would they be moving their vehicle from another location in Georgetown to this location when they visit this site. Moreover, the Board finds that visitors to Georgetown typically do not move their cars from one parking garage to the next each time they visit a different store.

14. The applicant's expert traffic and parking consultant testified that there are two lots and two garages within one block of the site, which provide over 600 parking spaces. He testified that because of the high rate of turnover of curb spaces, these were not included in his calculations, nor did he include other lots and garages in the vicinity, but outside of the one block area. His survey found that at various different times, there were substantial spaces available in excess of the required 32 spaces. The Board so finds.

15. The applicant's expert traffic and parking consultant also testified, and the Board finds, that whereas 43 spaces may be appropriate for an isolated retail store of approximately 14,650 square feet, the fact is that in Georgetown, with its great number and variety of retail facilities, the application of one more store adds almost no new trips to the area, i.e. it is close to a zero trip producer. He concluded that the 11 spaces provided on-site would be adequate to serve the needs of the structure. The Board so finds.

16. The D.C. Department of Public Works (DPW) by memorandum dated October 16, 1985, reported that it had no objection to the proposal. The DPW reported that the site is bounded on the north by N Street, on the west by Wisconsin Avenue and on the east by 31st Street, N.W. N Street is a 30 foot wide local street with minimal traffic. Residential permit parking is in effect. M Street is a 60 foot wide principal arterial with an average daily traffic volume (ADT) of 30,100 vehicles near the site. Parking is prohibited between 7:00 A.M. and 9:30 A.M. and from 4:00 P.M. to 6:30 P.M. Wisconsin Avenue is a 56 foot wide minor arterial with an ADT of 20,100 vehicles near the site. Parking is prohibited between 7:00 A.M. and 9:30 A.M. and from 4:00 P.M. to 6:30 P.M. and 31st Street is a 30 foot wide local street with minimal daily traffic. Residential permit parking is in effect.

17. The DPW further reported that the site is served directly by nine Metrobus routes which provide in-bound and out-bound connections between the downtown Central Business District and the upper northwest area of Washington known as Friendship Heights. Within two blocks of the site are four additional bus routes on K Street which provide direct service from downtown Washington to the Foxhall Road/MacArthur Boulevard area and into suburban Maryland. The Metropolitan Washington Area Council of Governments designates this area as a 52.3 percent transit zone for metropolitan area home based work trips.

18. The DPW further reported that because the building permit was granted prior to the change in zoning regulations which requires this revised project to have 43 parking spaces, approving this request has virtually no impact. Under terms of the building permit 14,675 square feet of retail space is provided with 11 parking spaces. If the variance is granted, then approximately the same amount of retail space would be provided with the same 11 parking spaces. The only change which would occur is that there may be less than four retail establishments in the building. This is not allowed under the current zoning regulations with the same 11 parking spaces. The DPW was of the opinion that a change in the number of retailers would not have an appreciable impact on the parking demand created by this development.

19. The DPW recommended that the 11 on-site parking spaces be adequately signed so as to direct patrons to the rear of the building. The DPW also recommended that no more than 3 of these spaces be designated for employees, and that the remaining 8 parking spaces be adequately signed for the exclusive use of customers of the project. The Board concurs with the reasoning and recommendation of the DPW.

20. Advisory Neighborhood Commission by report, dated October 8, 1985, reported that the applicant's premises are located in the heart of the retail area of Georgetown and was formerly the site of a public parking facility that was used by customers of the neighboring businesses. The applicant processed its building permits prior to the revision in the parking requirements in March, 1985. Applicant stated that there would be four separate tenants which resulted in a requirement for only 11 on-site parking spaces under the old regulations. Had the applicant stated at that time that there was to be only one tenant, it would have resulted in a requirement for 47 on-site parking spaces. In the opinion of the ANC the reality of the situation in Georgetown today is that there is no reservoir of off-street parking spaces to accommodate the 32 automobiles, a fact that is substantiated by the applicant's withdrawal of their original application for a special exception. The forced over-reliance of merchants on the pedestrian trade has led to the emergence of a disproportionate number of small "junk" merchandise stores and carry-out establishments to the detriment of the Georgetown retail sector.

21. Advisory Neighborhood Commission 2E recommended that the requested relief from the requirement for 32 additional parking spaces be denied on the grounds that the relief cannot be granted without undermining the intent, purpose and integrity of the zone plan. In the alternative, if the Board decided over the strong wishes on the surrounding community, to grant the relief, ANC requested that relief be predicated on a condition that the premises would not be used by allowable uses that generate a high number of vehicle trips on a regular basis. Specifically, the order should include a prohibition against the use of premises as a medical clinic, restaurant, fast food establishment or movie theater.

22. The Board is required by statute to give "great weight" to the issues AND CONCERNS OF AN ANC reduced to writing and on which a recommendation is based. For the reasons set forth below the Board does not concur with the reasoning of the ANC:

a. The record indicates the availability of sufficient parking spaces in the vicinity to accommodate any potential increased demand. As the applicant's expert testimony indicates, the Board finds that the provision of 32 parking spaces by special exception in this case would be counter-productive to the overall parking supply in Georgetown.

b. As the applicant's expert testimony indicates, the addition of this retail/service facility in Georgetown will be in effect a zero trip producer.

c. The applicant testified that the relief is being sought so that the building can be leased to a major tenant, rather than to the sort of small "junk" merchandisers that the ANC finds objectionable. The Board notes that at least four separate tenants could occupy the building as a matter-of-right.

d. For these reasons, and with the conditions set forth below, the Board disagrees with the ANC conclusion that the requested variance relief will undermine the intent, purpose and integrity of the zone plan. The Board, however, is most amenable to the alternative recommendation of the ANC.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance, 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 will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met its burden of proof. The Board concludes that based on Finding Nos. 9, 10 and 11 the practical difficulty is inherent in the land.

The Board further concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The property shall not be occupied as a theater, medical clinic or fast food establishment, without prior approval of the Board.

2. The parking garage and driveways shall be kept will lit, free of refuse and debris and shall be policed on a regular basis at the expense of the tenant.

3. There shall be appropriate signage for the public indicating the location and availability of parking in the garage and the applicant shall work with the parking lot operators in the same square in order to coordinate that signage.

VOTE: 4-0 (Patricia N. Mathews, Charles R. Norris,

William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton not present, not voting).

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

ATTESTED BY:

CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 04 MAR 1986

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.

14349order/LJPM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12914, of Vallee, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Section 3104) allowing accessory parking in the R-4 District which serves the proposed office building located in the C-2-A District and from the FAR requirements (Sub-section 5301.1) in the C-2-A District for an addition to and conversion of a retail building to an office building in both the R-4 and C-2-A Districts at the premises 301 - 4th and 400-04-08-12 C Street, N.E. (Square 813, Lots 810-18-19).

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

FINDINGS OF FACT:

1. The subject site is located on the northeast corner of the intersection of C and 4th Streets and is made up of three lots. Lot 810 fronts on both C and 4th Streets, is known as 400-04-08-12 C Street, N.E. and is in the C-2-A District. Lots 18 and 19 are both alley lots, are known as 301 - 4th Street and are in the R-4 District.

2. The subject site is L-shaped and has an area of 7343.38 square feet. Lots 18 and 19 are vacant and unimproved. Lot 810 is improved with a two story retail building which is now vacant.

3. The subject property was purchased by the applicant on March 5, 1976, at a price based upon the floor area ratio of 2.0 for commercial use. The property is part of a larger project consisting of five houses on C Street, one house on 5th Street and one house on 4th Street. The seven town houses have been fully renovated and are used as commercial office space.

4. While the application was being processed, the Zoning Commission adopted Order No. 242, reducing the permitted commercial density from a floor area ratio of 2.0 to 1.5 in the C-2-A zone.

5. In September, 1977, the applicant negotiated with several banks in the area concerning use of the subject property for a branch office. The banks were unable to get the necessary approval for a branch office due to the close proximity of other bank locations. These negotiations ended unsuccessfully. In July, 1978, after a thorough analysis of the site for commercial, retail and residential development, the applicant decided that a commercial office development would be the most appropriate and feasible use of the premises.

6. The applicant requests a variance from the use provisions under Section 3104 to permit the use of Lots 18 and 19 for accessory parking to the proposed office building. The lots are zoned R-4. Even though parking is usually permitted as a special exception in R-4, a variance from the R-4 zone is needed, because the parking would serve a commercial use in the C-2-A District.

7. The applicant also requests a variance for lot 810 from the FAR requirements in the C-2-A District for an addition to and conversion of a retail building to an office building.

8. The C-2-A zone permits an F.A.R. of 1.5 for commercial use out of a total of 2.5 F.A.R. The applicant is allowed 7311.48 square feet of commercial space and is providing 11324.37 square feet. A variance of 4,012.89 square feet is needed.

9. The old gas station on lot 810 which is a solid, reinforced concrete structure, will be retained.

10. Lots 18 and 19 have no street frontage and even when combined, they are too small for residential development. Given the configuration of the lot and the location of adjoining improvements, it is impractical to renovate the gas station for residential use, and thus create a total residential project.

11. The Land Use Committee of the Stanton Park Neighborhood Association testified that the committee favored the proposed development on the grounds that the plans would complete the renovation of the 400 block of C Street and would be an asset to the neighborhood. The Committee stated that it would prefer to see the two rear lots rezoned to C-2-A, thus eliminating the need for any variance. The Committee did support the use of the rear lots for parking.

12. Advisory Neighborhood Commission - 6A made no recommendation on the application.

13. There was one letter of support submitted to the file.

14. There was no opposition.

CONCLUSION OF LAW:

Based on the Findings of Fact, the Board concludes that the applicant is requesting both a use variance and an area variance. The granting of a use variance requires the showing of an undue hardship upon the owner arising out of the property. The Board concludes that the size and location of Lots 18 and 19 effectively prohibit their use for residential purposes. The Board concludes that the use of the two rear lots for accessory parking will be in harmony with the existing character of the neighborhood.

As to the area variance, the applicant must show proof of a practical difficulty inherent in the property itself. The Board concludes the studies submitted by the applicant show that the development of lot 810 under the recently amended FAR requirement would not be feasible. The Board notes that the proposed project is the final part of a larger project undertaken by the applicant in the subject square, and that it is favored by the neighborhood.

The Board further concludes that the proposed project will not be of substantial detriment to the public good, nor will it substantially impair the intent, purpose and integrity of the Zoning Regulations.

Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 3-2 (William F. McIntosh, Charles R. Norris, Chloethiel Woodard Smith to GRANT, Leonard L. McCants OPPOSED, Walter B. Lewis OPPOSED by PROXY).

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 JUL 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."

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 LICENSES, INVESTIGATIONS, AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16387 of Square 456 Associates, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 411.11 for a roof structure and a variance from Subsection 1706.22(g) to permit commercial development to proceed prior to the issuance of a certificate of occupancy for nonresidential development within the DD District until a certificate of occupancy is issued for affordable housing in a DD/C-4 District at premises 625-627 E Street, and 620 and 626 F Street, 501-507 and 511-517 7th Street, NW (Square 456, Lots 37, 39, 868 and 869).

HEARING DATE: September 2, 1998
DECISION DATE: September 2, 1998(Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commissions (ANC) 2C and 6A and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2C. ANC 2C which is automatically a party to this application, did not file a written statement regarding the application. However, three Commission members filed a joint letter in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 411.11 and a variance from the strict application of the requirements of 11 DCMR 1706.22(g). No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met its burden of proof, pursuant to 11 DCMR 3108.1, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map, and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board concludes

that the applicant has met the requirements of Section 1706.22 pertaining to the provision of off-site housing, that the applicant may meet the preferred use requirements of the DD Regulations and utilize any of its incentives and bonuses in any manner permitted by said DD Regulations so long as the on-site housing is not decreased. It is therefore **ORDERED** that the application be **GRANTED** subject to the following **CONDITIONS:**

1. Within thirty days after the issuance of the Board's order, the applicant shall place $500,000 in an escrow account for the benefit of Golden Rule Plaza, Inc., to be made available to Golden Rule Plaza, Inc., at the time of settlement on the financing for the low and moderate income housing project to be constructed on the west side of New Jersey Avenue between New York Avenue and K Street. After placing the $500,000 in escrow, the applicant may proceed to construct and occupy the development in Square 456. In the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account within two years of the date of the Board's order, the applicant shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the applicant to proceed with the mixed-use development on the subject site.

2. The applicant may modify the design of the building subject to approval under D.C. Law 2-144, provided that those changes do not diminish the roof structure setbacks shown on the plans for which special exception relief is required, and may otherwise comply with the provision of preferred uses so long as all the requirements of the Zoning Regulations are met, provided that the applicant shall not reduce the amount of on-site housing which comprises 56,240 square feet of gross floor area as shown on the plans submitted to the Board.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **3-0** (Sheila Cross Reid, Betty King, and Anthony J. Hood to grant.)

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

ATTESTED BY: Tracey W. Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

FINAL DATE OF ORDER: DEC - 3 1998

PURSUANT TO D.C. CODE § 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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 TWO YEARS 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.

SO/16387/POH