Board of Zoning Adjustment
District of Columbia
CASE NO.16775
EXHIBIT NO.35A3

Applicants Proposed Findings of Fact and Conclusions of Law

Application No. 16775 of National Medical Association, pursuant to 11 DCMR §§ 3103.2 and 3104.1 for a special exception under §411.11 of the Zoning Regulations to allow for a roof structure not meeting the normal setback requirements; and for variances from the requirements of §§774.1, 1706.13, 1708.1, 2101.1 and 2201.1 of the Regulations. The requested relief is necessary to permit the construction of an office building for the Applicant's national headquarters in the DD/C-2-C in square 342 located at 1012 10th Street, N.W.

Hearing Date: October 23, 2001
Decision Date: November 6, 2001

DECISION AND ORDER

Preliminary Matters:

1. The Board, pursuant to its rules, provided proper and timely notice of the public hearing on this application by publication in the District of Columbia Register and by mail to ANC 2F and to owners of property within 200 feet of the site. The application was also referred to the Office of Planning for review and report.

2. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application, and which submitted a letter dated October 19, 2001 in support of the application with one condition, which is discussed in more detail further herein.

3. As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exception relief pursuant to 11 DCMR § 3104.1 and the case for variance relief pursuant to § 3103.2. The only parties to the proceeding were the Applicant and ANC 2F. No other person or entity requested to participate as a party or was granted party status in this proceeding.

4. At the hearing, the Board waived the requirement of § 3114.2 of the Regulations and accepted the late filing of the Office of Planning report.

5. Three witnesses testified in full support of the Application, including the Applicant, a qualified expert in architecture and a qualified expert in land use and urban planning.

6. Through its report filed in the record on October 21, 2001 and its testimony at the public hearing, the Office of Planning testified in support of the special exception pursuant to §411.11 and the variances pursuant to §§774.1, 2101.1 and 2201.1, and in opposition to the variances requested pursuant to §§1706.13 and 1708.1(f). Regarding §§1706.13 and 1708.1(f), representatives of the Office stated at the hearing that it has worked over the past several months on revisions to the Zoning Regulations that would de-link the requirements for the provision of housing in advance of the issuance of a certificate of occupancy for proposed commercial use by allowing a commercial developer to proceed in advance of the provision of the required residential housing by posting a certain escrow amount and recording a covenant committing the required amount of housing in the same priority area to residential use. The Office testified that, at a hearing on September 17, 2001, the Zoning Commission approved amendments to the Regulations and that, following incorporation of the changes made at that hearing and publication in the District of Columbia Register, those amendments will take effect. The Office of Planning testified that the amendments are targeted for publication in the Register and subsequent effect in mid-November 2001. The Office stated that, although it generally support the application of the NMA and the retention of the organization in the District of Columbia, it nonetheless felt that the pending changes to the Regulations prohibit the Office from supporting NMA's request for a variance from the timing requirements of §§1706.13 and 1708.1(f).

7. At the hearing, the Board accepted into the record a letter from the Cato Institute indicating its lack of objection to the present Application and reserving the right to comment on future applications.

8. No other persons testified in opposition to the Application.

9. At the conclusion of the hearing, the record was left open until October 30, 2001 for a post-hearing submission by the Applicant, which was timely filed.

10. The Application was decided on the Regulations in effect as of the date of the decision; said Regulations do not provide for nor permit the posting of escrow funds in lieu of following the timing requirements set forth in Chapter 17 of the Regulations when a project has a combined lot residential component.

FINDINGS OF FACT:

1. The property that is the subject of this Application is located in Lot 57 in Square 342

2. The property is located on the west side of 10th Street between K Street and Massachusetts Avenue, one block west of Mount Vernon Square.

3. The total site area is approximately 3,259 square feet.

4. As of the date of the hearing, the site is improved with a four story, approximately 13,000 square foot building, constructed in 1983 for the National Medical Association pursuant to its then SP-2/Hotel-Residential Overlay District Zoning.

5. The current zoning of the site is DD/C-2-C.

6. Under the current DD/C-2-C zoning, new construction may rise to a height of a maximum of 105 feet and provide a density of up to a maximum FAR of 8.0. The DD/C-2-C District requires all new construction to provide a minimum of 4.5 FAR devoted to residential uses either on-site or through combined lot development. Uses permitted as matter-of-right in the C-2-C District include commercial and residential uses.

7. The Application proposes the demolition of the current office building on the site-and the construction of a new eleven story, 25,275 square foot office building with an FAR of approximately 7.75 and a height of approximately 105 feet.

8. The National Medical Association ("NMA"), a 105 year old organization, is the oldest and largest organization devoted to representing the interests of the nation's African-American physicians. The offices of the NMA have been located in the District of Columbia for at least 100 of those years.

9. The NMA wants to continue to remain in the District of Columbia but, because of the high cost of land in the city, it will be unable to do so unless the Application in this case is granted.

10. The NMA is currently involved in a number of urgent projects—including projects relating to training its membership in bioterrorism identification and treatment techniques and immunization programs—that have increased its continuing demand for additional office space.

11. Developer Douglas Jemal has offered to fulfill the NMA's required housing without charge through a combined lot development on Square 517. Testimony to

that effect was substantiated by two letters received from Mr. Jemal into the record and a commitment by Mr. Jemal to execute a covenant in a form satisfactory to the District.

12. The Application satisfies the standards for special exception relief under §411.11 of the Zoning Regulations regarding the location of roof structures. The narrow approximately thirty-four foot width of the lot prohibits compliance with the setback requirement regarding roof structures. With a one-to-one setback required from the north and south walls of the building, compliance with the requirement would not leave room for any roof structure. Locating the elevator core and roof structure along one of the side walls of the building is the only practical place for these facilities. The size of the building lot therefore make compliance with the Regulations unduly burdensome. Because of the setback of the Cato Institute building to the north, the roof structure does not materially impair the Zoning Regulations nor does it adversely impact the light and air of adjacent buildings.

13. The Application satisfies the requirements for variance relief from the rear yard setback, parking and loading requirements. as the property is unique and affected by exceptional and extraordinary conditions; the strict application of the Regulations would create practical difficulties for the construction of the office building on the property; and the variances would not cause substantial detriment to the public good and may be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

14. The property is unique and affected by an exceptional or extraordinary condition in that the lot area is only approximately 3,259 square feet, which is smaller than the size of a lot that might be found in most single-family detached residential development. At only approximately thirty-four feet wide, the lot is one of the narrower lots in the area, is landlocked and cannot be expanded.

15. Strict application of the Zoning Regulations would result in a practical difficulty to the Applicant in that: (1) even as proposed, the development cannot use the full zoning envelope and the Applicant proposes to provide only 7.75 FAR; (2) the space needs of the Applicant cannot be met with a smaller building; (3) without the rear yard variance, the interior footprint of the building would be significantly impacted, causing the loss of a significant amount of office space on all floors; (3) the site is not wide enough to allow parking or loading in the building, because the size of the spaces and the required access and maneuvering room would not fit on the site.

16. The adjoining building to the north is set back at least twenty feet from the subject site. The site is bordered on the west and south by alleys which provide an effective width of more than fifteen feet at the rear, the parking and loading demands for the building and the NMA are small and can be handled solely with the proposed service/delivery space. Service can be provided from the rear and loading through the front of the building. Sufficient off-street parking facilities are available in the area and the Applicant has agreed to a condition that it be required to provide the required twelve parking spaces it is not providing on-site in nearby parking facilities. The variances for rear yard, parking and loading can therefore be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the zone plan as embodied in the Regulations and Map.

17. With respect to the variance regarding the timing of construction of the residential development required on the subject property, the Applicant argued that because of the small size of the site, it generates a requirement for only approximately 14,666 square feet of housing. That housing cannot be provided on-site due to the small size of the lot and the need to have separate entrances and lobby areas. Therefore the only practical method for providing the housing is through the combined lot development process.

18. The applicant further argued that the required residential floor area will be provided on another site in Square 517, which is also within Housing Priority Area B. The owner of that property has agreed to include the required housing at no cost to the Association. That site must be devoted to housing by virtue of approval by the Zoning Commission of a planned unit development for the former Woodward and Lothrop Department Store building.

19. The Zoning Commission understood in approving the PUD that the development of the Square 517 site would proceed at such time as market conditions would allow. The amount of residential required for the subject property is not large enough by itself to make any linked residential project proceed. The Applicant is ready to move forward with its office building but, under the existing regulations, cannot obtain a certificate of occupancy for its new space until a certificate of occupancy has been issued for the residential space. The Applicant therefore would suffer a significant delay and difficulty in proceeding.

20. The Applicant proposed a condition for approval of the application that, before a building permit is issued, the Applicant be required to enter into a

combined lot development covenant on the subject property and on the Square 517 property allocating the required amount of residential uses.

21. The Office of Planing (OP) recommended that the applicant be required to establish a housing escrow account as to be allowed under amendments to the Zoning Regulations which have been approved by the Zoning Commission but which are not yet effective. The amount of that escrow was determined to be approximately $219,000. The OP advised that the escrow could be returned to the Applicant at such time as the housing is built.

22. With respect to the variance from sections 1706.13 and 1708.1(f), the Board finds that the site is affected by an exceptional situation in a number of respects. It is too small to provide the required housing on-site, either by itself or in a mixed use development. The amount of housing required is also such a small amount that it is not large enough to leverage the construction of a larger apartment building on another site. The current regulations, which require the occupancy of the residential space to precede the occupancy of the office space, have been found to be unworkable and are in the process of being amended by the Zoning Commission.

23. The Board finds that the Applicant would suffer a practical difficulty if the variance is not granted. The Applicant would be unable to proceed with its development in any fashion until the residential development proceeded elsewhere. This would allow the Association to proceed only if and when another party determined to proceed and would effectively preclude the Association from building its new building on this site..

24. The Board finds that the granting of the relief subject to the condition proffered by the Applicant will not set a precedent for other developments since amendments to the current provisions are scheduled to take effect within the near future and there are no other pending cases that would be affected by the decision in this case. The Board further finds that it is highly unlikely that the specific set of circumstances which have come together in this application (the very small site, the inability to construct the residential on-site and the willingness of an outside party to construct the required residential without payment from or other commitment from the Applicant) will be present in any other case. The Board further finds that relief from the timing requirements of §§1706.13 and 1708.1(f) of the Regulations for the provision of the required housing would not substantially impair the intent, purpose or integrity of the zone plan as embodied in the Regulations and Map in that development on the Square 517 site will be required to

provide the specified minimum amount of housing whenever that development proceeds.

25. By letter dated October 19, 2001, Advisory Neighborhood Commission 2F advised the Board that it voted unanimously to support the Applicant's requests for variance and special exception relief with the proviso that the Association lease twelve parking spaces off-site.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact, the Board concludes that the Applicant is seeking a special exception under §411.11, and variances under §§774.1, 2101.1 and 2201.1 of the Zoning Regulations.

A special exception use is a use deemed compatible with other uses permitted in that particular zoning classification provided that the specific regulatory requirements are met. In reviewing Applications for a special exception, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth in the appropriate section. If the applicant meets its burden, the Board must ordinarily grant the Application. Under §411.11 of the Zoning Regulations, the Board may approve the location, design, number, or any other aspect of a roof structure even if it does not comply with the setback requirements of §770.6, where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board has the power to approve a roof structure under §411.11, provided that the intent and purpose of the chapter and title of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not adversely affected.

The Board concurs with the Applicant, the ANC and the Office of Planning that the proposed location of the roof structure will not adversely affect the intent and purpose of the zone plan and that light and air will not be adversely affected by the proposed location of the structure. The Board concludes that the application has met all of the specific criteria for approval of a roof structure which does not meet the setback requirements on the north side of the roof.

The Board concludes that the requested variances are all area variances, since the office use is permitted as a matter-of-right on the subject property. The granting of area variance relief requires proof of a practical difficulty upon the

owner arising out of some unique and exceptional or extraordinary condition of the property. The Board must further 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.

The Board concludes and agrees with the Applicant and the ANC that the Applicant has met the respective burdens of proof for the requested variances. The Board further concludes that the site is unique and affected by the exceptional condition of its small size and narrow width. The combination of the size and width and the requirements of the Regulations to provide a minimum of 4.5 FAR of housing, either on-site or by combined lot development, cause a practical difficulty for the Applicant if the Regulations are strictly applied. The site is too small to be developed with both office and the required residential. Due to the Applicant's agreement with Douglas Jemal to provide the required residential uses on Square 517 at no cost to the Applicant, strict application of the regulations would prevent the Applicant from proceeding until the residential requirement is met and would unduly burden the NMA's ability to meet its current and pressing space needs. The board further concludes that granting of the requested relief would not cause substantial detriment to the public good nor substantially impair the intent, purpose and integrity of the zone plan. As to the rear yard setback and parking and loading variances, the site is set back at least twenty feet from the adjoining Cato Institute to the north, which has indicated it has no objection to the current application, and the site is further separated from the uses to the south and west by public alleys. The Applicant has further agreed to provide the twelve required parking spaces it cannot provide on-site through leases in nearby parking facilities. Deliveries can be accommodated through the service/delivery space the Applicant will provide on-site and through a "loading area" in front of the building that the Applicant will request from the District of Columbia.

Regarding the request for relief from the timing requirements for the provision of the required housing, the Board further concludes that granting of the requested relief will not substantially detriment the public good nor substantially impair the intent, purpose or integrity of the zone plan in that the Applicant has agreed to enter into a combined lot development agreement establishing a covenant to provide the required residential uses on Square 517. In addition, this situation is unique to this site and this Applicant, as the Regulations do not provide for nor require the provision of an escrow concerning the provision of the required housing. These Regulations are about to change and the Board is unaware of any potential Applicant or any pending cases, as of the date of this decision, that can duplicate this situation.

The Board further concludes that no reasonable purpose will be achieved by requiring the Applicant to post $219,000 in escrow. As stated by OP in its report and as discussed at the public hearing, that money will not be used for housing but will be returned to the Applicant once the housing is completed. Requiring the funds to be put into escrow will divert funds that the Applicant could otherwise use for the building and will not achieve any purpose related to the Zoning Regulations.

The Board concludes that it has accorded to Advisory Neighborhood Commission 2F the great weight to which it is entitled. It is therefore hereby ORDERED that this application be GRANTED, subject to the following conditions:

1. Prior to the issuance of a building permit for the subject building, the Applicant shall enter into a Combined Lot Development covenant with Douglas Jemal to provide that the residential floor area of 14,666 square feet otherwise required on this property shall instead be provided in Square 517.

2. The Applicant shall lease at least twelve off-street parking spaces in nearby parking facilities.

VOTE:

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

ATTESTED BY:_____
Jerrily R. Kress, FAIA
Director

Final Date of Order:_____

PURSUANT TO D.C. CODE SEC. 2-1402.67 (2001), 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 2, CHAPTER 14 (2001), 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 PROCEDURES FOR 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.

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