GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: D.C. Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: November 1, 2001

SUBJECT: Waiver of Rules for Late Submittal of Supplemental Report on Board of Zoning Adjustment Application No. 16775, New Office Building at 1012 10th Street, N.W. for the National Medical Association

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The attached supplemental report concerning Board of Zoning Adjustment Application No. 16775, New Office Building at 1012 10th Street, N.W. for the National Medical Association, is being submitted less than seven days prior to the Board of Zoning Adjustment meeting on November 6, 2001 In this case, the Office of Planning wanted to review the additional material filed by the applicant on October 30. The Office of Planning respectfully requests that the Board waive its rule and accept the report into the record.

Attachment

AA/jf

BZA
Case No. 16775
Exhibit No. 36

Board of Zoning Adjustment
District of Columbia
CASE NO.16775
EXHIBIT NO.36

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: D.C. Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: November 5, 2001

SUBJECT: Supplemental Recommendation on BZA Application No. 16775, New Office Building at 1012 10th Street, N.W. for the National Medical Association

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APPLICATION

Application of the National Medical Association, pursuant to 11 DCMR Sections 3103 and 3104, for a variance to allow a certificate of occupancy to be issued to the nonresidential space of the project in advance of completion of the required residential space in a combined lot development, variances from the rear yard, parking and loading berth requirements, and a special exception for the roof structure.

PREVIOUS RECOMMENDATION

The Office of Planning previously submitted a report on BZA Application No. 16775, dated October 16 (checked in at the Office of Zoning on October 22). The summary recommendation in that report said:

The Office of Planning (OP) recommends that the requested special exception for the roof structure and the requested variances from the rear yard, parking and loading berth requirements be granted. With respect to the housing timing variance, the Office of Planning supports the arrangement that the National Medical Association has made with a developer for the development of future housing. However, in order to avoid the timing issue, the applicant should establish a housing escrow account, as allowed under new rules which have been approved by the Zoning Commission and which will soon be effective.

OCTOBER 23 HEARING DISCUSSION AND FOLLOW-UP

The Board of Zoning Adjustment held a hearing on this application on Tuesday, October 23, 2001. The Office of Planning also presented its report. The issues raised in the case were discussed in some detail, with most attention focusing on the issues raised by the request for the timing variance. The Board of Zoning Adjustment requested that the applicant respond to the issues discussed at the hearing, primarily relating to the requested variance to the timing requirements for combined lot development. During the remainder of the week, the applicant's counsel and the Office of Planning discussed various approaches to the timing issue. On October 30, the applicant submitted additional information and the applicant's proposed order.

SUMMARY SUPPLENTAL RECOMMENDATION

The Office of Planning October 16 report provided considerable information on the proposed new office building for the National Medical Association, the background of the Association, the character and prospects for Square 342 on which the new building will be located and the future development of the surrounding area. The special exception for the location of the roof structure and three variances: 1) rear year variance, 2) parking variance and 3) loading space variance were described and supported by the Office of Planning report. The Office of Planning also supported the concept of the National Medical Association building their new building on the proposed site (the site now occupied by their smaller office building) and the importance of retaining the Association in the city.

This supplemental report therefore deals only with the issue of the variance request for relief from the timing requirements with combined lot development. Background information in the October 16 is not repeated here.

The Office of Planning has received and reviewed the applicant's supplemental filing, dated October 30, 2001. In the cover letter, the applicant's counsel expresses the hope that "the Office of Planning will also be in agreement that the granting of the variance is appropriate and does not set any perceived adverse precedent."

The Office of Planning indicated in the October 16 report that retaining the National Medical Association in the city was important and that the proposed new development, though small, could help spur other nearby development. However, despite the clarifying information provided, the Office of Planning still has a concern that this case, even considering Mr. Jemal's apparent willingness to provide the required housing at no cost to the Association, could provide an undesirable precedent for other applicants to seek to avoid timing regulations in the future. **Therefore, the Office of Planning continues to suggest that, in order to avoid the timing precedent issue, the applicant should establish a housing escrow account, as allowed under new rules which have been approved by the Zoning Commission and which will soon be effective.**

ADDITIONAL INFORMATION FROM THE APPLICANT

The applicant provided the following additional information in its October 30 submission:

1) Letter from Rudolph Williams, Executive Director of the National Medical Association. Mr. Williams noted the problem involved with the Association's having to escrow funds or obtain a letter of credit. He noted that the Association is grateful to Mr. Jemal for offering to provide for the Association's housing requirement at no cost to the Association. He estimates that Mr. Jemal's action is, in effect, saving the Association from making a payment of $350,000-$400,000 to a developer to provide the housing. However, as the Office of Planning noted at the public hearing and its prior report, the regulations would only require an escrow payment of $219,000, which could be refunded to the Association when the housing is built.

2) Letter signed by Douglas Jemal indicating that he has agreed with the National Medical Association to provide, without charge to the Association, 14,666 square feet of residential floor space in Jemal's future development in Square 517. Jemal also indicates that he will enter into a Combined Lot Development Covenant in a form to be approved by the District government. He notes that such a covenant would be required for this transaction or for any other combined lot project that he enters into concerning his property in Square 517.

The Office of Planning notes that, if the National Medical Association application in this case is approved or resolved in some form, the Corporation Counsel will undertake a legal review of the covenant and work with Jemal and the applicant to make sure the covenant is satisfactory and in a form to be approved by the District government.

3) Summary and copies of various variance cases granted shortly after the adoption of new regulations.

4) Copy of the order of the BZA in Application No. 16387 that allowed a timing variance for linkage housing production for the Golden Rule Plaza project and Square 456 Associates.

The Office of Planning notes that, in that case, the Board's order called for Square 456 Associates to place $500,000 in an escrow account for the benefit of Golden Rule Plaza.

5) Draft order of the applicant.

ANALYSIS

Essentially, the applicant is trying to thread between the current timing requirement and the new requirements, which allow a covenant, secured by an escrow deposit, as a way of guaranteeing that housing will be built. The applicant wishes to avoid both paying any

housing development cost (which is possible because Douglas Jemal is willing to build the housing without cost to the Association) and to also avoid paying an escrow fund cost, or some similar arrangement, to guarantee that housing will be built.

However, there certainly is a possibility that some other business or association will seek to use this case as a precedent for evading compliance with housing timing requirements. The Office of Planning does not want to see such a potential loophole created as a precedent.

RECOMMENDATION

With respect to the housing timing variance, the Office of Planning indicated in its first report that there is no connection between the "uniqueness" of the property and the timing variance. The fact that the site is too small to accommodate both office and residential is a situation anticipated and provided for in the DDD combined lot regulations. In order to avoid the creation of a precedent which could undermine the newly-adopted combined lot revisions, the variance for timing of the housing should be denied. The applicant should execute a covenant with a receiving site, secured by an escrow contribution, as provided under the new rules which have been approved by the Zoning Commission and which will soon be effective.

AA/jf