GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16775, National Medical Association, pursuant to §§ 3103.2, 3104.1, for variance relief from § 774, rear yard setback, § 2101.1, parking requirements, § 2201.1, loading space requirements, §§ 1706.13, timing of combined lot development, and a special exception pursuant to § 411.11, roof structure requirements, in a DD/C-2-C District, to allow the construction of an office building at premises 1012 10th Street, N.W. (Square 342, Lot 57).

HEARING DATE: October 23, 2001
DECISION DATE: November 6, 2001

DECISION AND ORDER

The applicant in this case is National Medical Association, the owner of the lot that is the subject of the application. The application was filed with the Board of Zoning Adjustment on July 31, 2001, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variance relief from § 774, rear yard setback, § 2101.1, parking requirements, § 2201.1 loading space requirements, § 1706.13, timing of combined lot development, and a special exception pursuant to § 411.11, roof structure requirements, in a DD/C-2-C District, to allow the construction of an office building at premises 1012 10th Street, N.W. (Square 342, Lot 57). The applicant initially applied for a variance from § 1708(f) but withdrew the request because a variance from § 1706.13 would provide greater relief and supercede the requirements of § 1708.1(f). After a public hearing, the Board 4-0 to approve the special exception and variance relief with the exception of the variance from the timing requirements of § 1706.13.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated August 8, 2001, the Office of Zoning advised the applicant, the Zoning Administrator (Department of Consumer and Regulatory Affairs), the Office of Planning, the Department of Public Works, the ANC 2F (the ANC for the area within which the subject property is located), the affected single member district ANC Commissioner, and the Councilmember for Ward 2, of the application.

The Board scheduled a public hearing for October 23, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed the applicant, the owners of all property within 200

BZA
Board of Zoning Adjustment
District of Columbia
CASE NO.16775
EXHIBIT NO.37
Case No. 16775
Exhibit No. 37

feet of the subject property, the Department of Public Works, the Office of Planning, and ANC 2F a letter dated September 13, 2001, providing notice of hearing.

The applicant's affidavit of posting indicates that one zoning poster was placed at the subject property on October 8, 2001, in plain view of the public, and were maintained and in tact on October 12, 17, and 22, 2001.

Applicant's Case. The applicant's case was presented by the law firm of Holland & Knight. The applicant wishes to demolish an existing office building and replace it with a new, larger building. The applicant stated that, due to the small size of its lot, it is not capable of putting the lot to economic use under matter of right zoning without the area variances requested. The applicant also argued that if it was required to develop the required residential property before it could proceed with building the office building, it would have to wait years for its project to begin.

Self-certification. The applicant self-certified on July 10, 2001, that it needed variances from §§ 774, 2101.1, 2201.1, 1706.13 and 1708.1, and a special exception, pursuant to § 411.11.

Requests for Party Status. The Board received no requests for party status.

Government Reports. The Office of Planning report was received on October 22, 2001, less than 7 days before the Board's hearing on this application. The Board waived its rules to accept this report into the record. The report recommended approval of the application, provided that the applicant deposit into an escrow account an amount sufficient to ensure that the required housing component would eventually be built.

The Office of Planning's supplemental report was received on November 6, 2001. The supplemental report stated that, unless a housing escrow account was set up consistent with a proposed amendment to the Zoning Regulations, adding § 1706.13, the variance from § 1706.13 should be denied.

ANC report. A report from ANC 2F was received on October 22, 2001. The report stated that the ANC, at its regularly scheduled meeting of October 3, 2001, with a quorum present, voted 5-0 to support the application, with the proviso that the 12 off-site parking spaces be leased by the applicant.

Parties or Persons in Opposition to the Application. There were no parties or persons in opposition to the application.

Hearing. A hearing was held on the application on October 23, 2001. Board members present were: Geoffrey Griffis, Anne M. Renshaw, David W. Levy, and John J. Parsons. Speaking on behalf of the applicant was Steven Sher, and Rudolph M. Williams. Also

testifying was Marshall Purnell, a recognized architecture expert. Andrew Altman, the Office of Planning Director, as well as Jennifer Steingasser and Ellen McCarthy spoke on behalf of the Office of Planning.

At the close of the hearing, the record was left open until November 6, 2001, for additional information.

In a submission dated October 30, 2001, the applicant responded to the Board's request for additional information.

Decision. At its November 6, 2001, decision meeting, the Board voted 4-0-1 to grant the area variances and the special exception, with the condition that the applicant provide 12 off-site parking spaces, and voted 4-0-1 to deny the variance from the timing requirements of § 1706.13.

FINDINGS OF FACT

1. The subject property is Lot 57 in Square 342.

2. The subject property is in the DD/C-2-C district.

3. The subject property is a narrow, rectangular lot, 3, 258 square feet in size.

4. The subject property is the smallest of the four office lots in the square.

5. The subject property is currently improved with a 13,00 square foot office building.

6. The applicant is a national organization of African American doctors and other medical professionals. The organization has been located in the District since approximately 1901, and has been housed in its current building since 1983.

7. The current building is too small to meet the needs of the applicant, which continues to grow as an organization.

8. The area surrounding the applicant's lot is comprised primarily of office buildings.

9. The applicant is proposing to demolish the existing building and erect a nine-story, approximately 25,275 square foot building.

10. The applicant seeks a special exception, pursuant to § 411.11. That section allows the Board to approve the location, design, or any other aspect of a roof structure even if it does not comply with the setback requirements of § 770.6.

11. The roof structure would be 15 feet high, 41 feet long (less than half the length of the building), would occupy less than 16% of the roof, and will house elevator machinery.

12. The physical features of the roof structure, including its architectural design and unobtrusiveness, will minimize its visual impact on the surrounding area.

13. The building is setback from the adjacent Cato Institute building at least 20 feet, and is adjacent to a private alley in the rear. The alley cannot be built upon as it serves as a below ground parking garage entrance.

14. Because the property is located within Housing Priority Area B, the applicant is required to account for a certain amount of residential uses on or off site.

15. The applicant entered into a combined lot development agreement, with the required residential use to be provided on a location other than the subject property, in order to satisfy the residential requirement for the applicant's property. Mr. Douglas Jemal submitted a letter to the Board evidencing his commitment to account for the residential requirement for the applicant. The residential uses will be accepted at no cost to the applicant.

16. The applicant submitted an unrecorded covenant stating the Mr. Jemal will satisfy the applicant's residential requirement on Square 517 in the event that he obtains the Zoning Commission approvals to develop Square 517 as a Planned Unit Development.

17. The applicant states that it does not know when the development of Square 517 will occur.

18. The applicant seeks a variance from § 1706.13, which stated at the time the applicant was filed: "If a development project includes both required residential uses and nonresidential uses, whether on the same lot or in a combined lot development, no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space. . . ".

19. The applicant seeks to develop the nonresidential use on site before the residential use in provided off-site.

20. The applicant claimed, and the Office of Planning agreed, that, because of the size of the subject lot, it would be very difficult to accommodate both the commercial use and the required residential use on-site.

21. Section 1706.13 was amended after this application was heard, but prior to the Board's decision meeting. The amendment became effective February 1, 2002 (49 DCR 881). The rule now in effect provides that the owner of a lot may proceed with developing the commercial component of a combined lot development even if the residential component of the "receiving lot" is not yet constructed provided that they deposit funds in an escrow account to help ensure that the required housing would be built off-site.

22. Since the Commission had taken final action to approve the amendment prior to the Board's decision meeting in this proceeding, such that only the publication of the final rule was required in order for the amendment to take effect, the Board assumed that the rule would soon take effect when reaching a decision on this case.

23. The applicant is requesting the three other variances due to the exceptionally small size of the lot.

24. Section 774 requires that the proposed building have a rear yard 15-foot setback. The building will instead have an approximately 10-foot setback on the fourth through the eighth floors.

25. Section 2101.1 requires offices in the C-2-C District to provide one parking space for each 1,800 square feet of gross floor area in excess of 2,000 square feet. Thus, the applicant is required under the Zoning Regulations to provide 13 parking spaces. The applicant instead proposes to provide one space on-site for persons with disabilities and lease 12 spaces in nearby parking lots and garages.

26. Construction of parking spaces underground is not feasible because there is no space for the provision of an access ramp.

27. The property is located relatively near four Metrorail stations and to nearby bus lines.

28. Section 2201.1 requires the applicant to provide one loading berth. The applicant instead is providing a 10 foot by 20 foot service/delivery space.

29. The applicant does not have a need for frequent deliveries and services and will be requesting a loading zone in front of the building.

30. If the applicant constructs the required parking and loading spaces, and obtains no other variances, it could only construct 5,600 square feet of office space.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 30, 1938, as amended (52 Stat. 797, 799; D.C. Official Code § 6-641.07 (2001 Ed.)), to grant special exception requests. Pursuant to § 411.11, the Board may approve, as a special exception, the location, design, or any other aspect of a roof structure even if the structure does not comply with the setback requirements of § 770.6. The special exception must be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tent to affect adversely the use of neighboring property. . .". 11 DCMR § 3104.1.

The Board finds that the physical and architectural features of the roof structure will minimize its visual impact on the surrounding area and on the Cato Institute building, in particular. Therefore, the Board approves the applicant's request for a special exception, pursuant to § 411.11.

The Board is authorized to grant variances where "by reason of exceptional narrowness, shallowness, or shape of a specific property. . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or conditions" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . ." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Where an applicant seeks an area variance, as here, the above standard of "practical difficulties" applies, with the "undue hardship" standard applying only to use variances. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. App. 1972). Additionally, variance relief can be granted only "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". *Id.*

The Board finds that the property is physically unique in that it is exceptionally small for its location, consisting of only 3,258 square feet. This creates practical difficulties for the applicant in that the applicant has outgrown its own building and may have a difficult time finding other occupants for the size building allowed as a matter of right. Moreover, the site cannot include underground parking because there is no room to include the necessary access ramp. Parking spaces above ground are also impracticable for the site as the inclusion of such spaces would eliminate too much office space for development to be economically feasible.

The Board further finds that variances from §§ 774, 2101.1, and 2201.1 would not cause substantial detriment to the public good or substantially impair the intent, purpose and integrity of the zone plane where the setback variance is minimal, the alley to the rear of the property acts as a buffer between the adjacent lots, and parking concerns are satisfied where the applicant will be providing parking in other locations. Moreover, the

service/delivery space appears sufficient to serve the needs of the applicant and a loading space is not necessary.

The Board finds that the applicant has not met its burden of proof with respect to the variance from § 1706.13. The applicant asserted that it will encounter practical difficulties in waiting for the off-site residential component to be built before it can use the additional non-residential FAR made available through the proposed combined lot development. However, such difficulties were eliminated as a result of the amendment to § 1706.13. The amendment provides that if "an escrow account has been established and funded in a combined lot development pursuant to § 1708.2", the lot allocating residential FAR may receive a certificate of occupancy for the increased non-residential FAR, even though no certificate of occupancy has been issued for the residential uses allocated to the receiving lot. Thus, the applicant now has the means by which it may proceed with construction without delay.

Even without the amendment, the applicant would have failed to meet its burden. First, the applicant failed to demonstrate how the delay in receiving its certificate of occupancy would affect it differently from any other owner of a lot in a housing priority area who chooses to satisfy the residential requirement through a combined lot development. Second, even if such a showing had been made, it would not constitute an exceptional condition peculiar to the property. Rather, such an impact would relate solely to owner of the property, and therefore would not be a circumstance under which a variance could be granted.

> The concept of an "exceptional condition" in the variance context refers to unusual conditions *of the property*, not merely to unusual circumstances personal to the owner and related to the property only in the sense that the owner's personal situation makes it difficult to develop the land consistently with the zoning regulations.

Draude v. District of Columbia Board of Zoning Adjustment, 527 A.2d 1242, 1255 (D.C. 1986) (emphasis in original).

For the reasons stated above, the Board concludes that the applicant has met its burden of proof with the respect to the area variances and special exception but not with respect to the variance from the timing requirements of § 1706.13. It is hereby **ORDERED** that the application is **APPROVED**, in part, and **DENIED**, in part. The variance from the parking requirements of §2201.1 is **CONDITIONED** upon the owner of the subject property providing 12 off-site parking spaces in parking lots or garages located in the immediate vicinity of the subject property.

DECISION MEETING, November 6, 2001

VOTE: 4-0-1 (Anne M. Renshaw, John G. Parsons, Geoffrey H. Griffis, David Levy to approve the area variances and special exception, the third mayoral appointee not present, not voting).

VOTE: 4-0-1 (John G. Parsons, Anne M. Renshaw, Geoffrey H. Griffis, David Levy to deny the variance from the timing requirements of § 1706.13, the third mayoral appointee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: OCT 24 2002

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C.LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67

(2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT. THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITY, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. CB/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16775

As Director of the Office of Zoning, I hereby certify and attest that on OCT 24 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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