GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16778 of 1108 K Street Associates, pursuant to 11 DCMR § 3103.2 for a variance from the loading berth requirements under section 2201, a variance to allow stacked parking when less than 75 spaces are required under subsection 2115.9, a variance to allow a certificate of occupancy to be issued to a nonresidential (hotel) space in advance of the required residential space in a combined lot development under subsections 1706.13 and 1708.1(f), and pursuant to 11 DCMR § 3104.1 a special exception from the roof structure provisions under subsection 411.11 to allow a hotel as part of a combined lot development with an apartment house (located at 1210 Massachusetts Avenue, N.W) in the DD/C-3-C District at premises 1108 K Street, N.W. (Square 317, Lot 25).

Note: The Applicant withdrew the request for variance relief from subsections 1706.13 and 1708.1 (f).

Hearing Date: October 30, 2001
Decision Date: November 13, 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. Prior to the hearing, the Applicant withdrew its request for a variance from the provisions of §§ 1706.13 and 1708.1 of the Regulations.

3. 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 the condition that a combined lot development covenant is recorded prior to the issuance of building permits for the non-residential portion of the development.

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4. 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 parties to the proceeding were the Applicant, ANC 2F and Asbury United Methodist Church.

5. 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. The report recommended approval of the special exception and the remaining variance requests.

6. 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.

7. Reverend Eugene Matthews of Asbury United Methodist Church testified in support of the application while noting the Church's concerns regarding the impact the construction of the hotel (inn) will have on the structure of the Church as well as the impact the resulting operation of the hotel (inn) will have on parking in the surrounding area.

8. Vernon Johnson testified on behalf of the Hotel & Restaurant Employees Local 25, AFL-CIO in opposition to the application. Mr. Johnson did not request party status for the organization nor was party status accorded.

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

FINDINGS OF FACT:

1. The property that is the subject of this application is located in Lot 25 in Square 317.

2. The property is located in the southeast quadrant of the intersection of 12th and K Streets, N.W between Mt. Vernon Square and Franklin Square, approximately one block from the new Convention Center.

3. The property has approximately 125 linear feet of frontage on K Street and approximately 122 linear feet of frontage on 12th Street.

4. Asbury United Methodist Church abuts the property to the east.

5. The southeast portion of the site abuts a north-south public alley that connects to I Street on the south.

6. The southeast portion of the site abuts a north-south public alley that connects to I Street on the south and which ranges in width from 10 feet on the south where it connects to I Street and 15 feet where it abuts the subject property.

7. The total site area is approximately 14,395 square feet.

8. The property is improved with an approximately four story building currently known as the Kabob House which is owned by another party and will remain on the site.

9. The existing building on the site reduces the developable land area by approximately 2,500 square feet to 11,895 square feet and the width available on K Street by twenty-five feet to approximately 100 feet.

10. The property is located in the DD/C-3-C District and Housing Priority Area B.

11. Under the current DD/C-3-C zoning, new construction may rise to a maximum height of 130 feet and provide a density up to a maximum FAR of 9.5; an additional .5 FAR is available through the purchase of transferable development rights. The DD/C-3-C District requires all new construction to provide a minimum of 3.5 FAR devoted to residential uses either on-site or through combined lot development.

12. A hotel (inn) use is permitted as a matter-of-right in the C-3-C District.

13. The Applicant will fulfill its housing requirements through a combined lot development on another square in Housing Priority Area B.

14. For a hotel use, the Regulations require the provision of a minimum of one parking space for each four rooms usable for sleeping plus one space for 300 square feet of floor area in the largest function room or exhibit space. Based on the Applicant's proposal to construct approximately 270 hotel rooms, the Applicant must provide at least 71 parking spaces.

15. The Regulations also allow attended parking if there is a requirement to provide a minimum of 75 spaces.

16. The Applicant proposes to provide at least 72 spaces—one more than the number required under the Regulations—under an attended parking scheme.

17. The Regulations require a hotel with more than 200 rooms usable for sleeping to provide one thirty foot loading berth, one fifty-five foot loading berth and one service/delivery loading space.

18. The Applicant proposes to provide one 10 x 20 feet service/delivery space and two 12 x 30 feet loading berths, stacking one of the thirty feet loading berths onto the 20 feet service/delivery space.

19. The proposed roof structure does not meet the setback requirements for roof structures from the southern exterior wall.

20. The Applicant satisfies the standards for special exception relief under § 411.11 of the Zoning Regulations regarding the location of roof structures. A special exception is necessary due to the irregular shape of the southern property line and the resulting irregular shape of the footprint of the main portion of the proposed building. Due to those irregular shapes and the most practical placement of the elevator and its penthouse at the juncture of the two wings of the building, the proposed roof structure will be in an upside down L-shape, following the shape of the building. That irregular shape allows for a setback of only 11 feet 8 inches of a small portion of the roof structure from the southern exterior wall. The setback requirements will be met at all other portions of the building. The location of the roof structure will have no adverse effect on any of the surrounding buildings because even at the point where penthouse will be less than the required setback from the southern exterior wall, the penthouse will be setback more than 50 feet from the southern property line where it adjoins an alley. In addition, the penthouse will be setback at least 70 feet from the building to the south. This portion of the penthouse will not be visible from any street.

21. The application satisfies the requirements for variance relief from the loading berth requirements and stacked parking limitations of the Regulations. The property is unique and affected by an exceptional and extraordinary condition; the strict application of the Regulations would create a practical difficulty for the construction of the hotel (inn), and the requested variances will 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.

22. The property is extraordinarily small with a site area of only approximately 14,395 feet and a developable area of fewer than 12,000 square feet due to the existence of an improved four story structure not owned by the Applicant which exists and will remain on the site. The small size of the lot makes it a difficult size for hotel (inn) development.

The site also is landlocked by properties the Applicant is unable to incorporate into its site.

23. The size of the hotel is further impacted by the narrow 10 foot width of the entrance to the alley leading to the site.

24. The Applicant would suffer a peculiar and practical difficulty if the loading berth requirements of the Zoning Regulations are strictly applied. The requirement to provide two loading berths would consume a substantial amount of ground floor space and would require relocation of the required exit stairs which are located to comply with building code requirements.

25. The Applicant also would suffer a peculiar and practical difficulty if it is unable to use the stacked parking requirements of the Regulations. The proposed parking garage already occupies all of the developable footprint. In addition, additional parking would require deeper excavation at a substantial and impracticable extra cost to the Applicant.

26. 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.

27. The Applicant's proposes a flexible loading configuration so that the requirements of the Regulations will be effectively met. The Applicant proposes to provide one 10 x 20 feet service/delivery space and two 12 x 30 feet loading berths. The Applicant proposes to stack the 20 foot loading berth in front of one of the 12 x 30 feet loading berths. The total depth of the resulting loading area will be approximately 55 feet from the property line to the rear wall. The Applicant proposes to construct a limited service hotel (inn) that will not likely generate a need for a larger loading area and the configuration of the loading area is nonetheless flexible so that it could accommodate both smaller service/delivery vehicles and, when combined, could effectively serve as a 12 x 55 feet loading berth that could accommodate large trucks.

28. An attended parking regime will allow the Applicant to park far more than the required 71 spaces within the garage, thereby lessening competition for the on-street parking spaces in the area. In addition, attended valet parking is customary in a hotel operation and is often an expectation of many hotel guests.

Contested Issues

29. Vernon Johnson testified on behalf of Local 25 of the Hotel & Restaurant Employees Union, AFL-CIO as a person in opposition to the application.

30. Mr. Johnson testified that the Union is located at 1003 K Street, N.W.

31. Mr. Johnson testified that the Subject Property is not an appropriate site for a hotel (inn) development. He further testified that the site is too small to accommodate a hotel (inn) as evidenced by the Applicant's need for special exception and variance relief and that the granting of the requested relief would have a chilling effect on hotel development in a more appropriate location.

32. The Board finds that, since a hotel (inn) use is permitted as a matter-of-right in the C-3-C District, an objection to the application based on its proposed use is not relevant to this proceeding. In addition, as set forth above, the Board finds that the Applicant has met its burden of proof regarding the requested special exception and variances by providing sufficient evidence for the Board to find that it is entitled to be granted the relief requested.

Other Issues

33. Reverend Matthews of Asbury United Methodist Church testified in support of the Application but noted the Church's concern regarding the impact the construction of the hotel (inn) will have on the structure of the Church as well as the impact the resulting operation of the hotel (inn) will have on parking in the surrounding area.

34. The Applicant testified that it will work with the Church to develop a construction management plan.

35. The signed construction management agreement between the Applicant and Asbury Methodist Church was submitted to the Office of Zoning and filed in the record on December 19, 2001, pursuant to the instructions of the Board. A copy of the construction management agreement was a permitted post-hearing submission.

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 §§ 2115.9 and 2201.1.

A special exception 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, 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 to adjacent buildings will not be adversely affected by the proposed location of the structure. Based on the findings herein, the Board concludes that the Applicant has met all of the specific criteria for approval of a roof structure that does not meet the setback requirements of the Regulations on a small segment on the south side of the roof.

The Board further concludes based on its findings that the requested variances are all area variances, since each relates to the ability of the Applicant to meet the requirements of the zoning regulations based the physical condition of the Property. The granting of an area variance 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 based on the findings herein 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 the presence of an improved property on the lot which further reduces the developable area of the Lot. The Board further concludes that, as to the variance request from the provisions of the Regulations regarding size of the required loading berths, the Applicant will suffer a practical difficulty if the Regulations are strictly applied because compliance with the requirement would consume a substantial amount of ground floor space and would require reconfiguration of the interior space. Reconfiguration of the interior space would further reduce the amount of developable space. The Board also concludes that, as to the variance request from the stacked parking limitations of the Regulations, the Applicant will suffer a practical difficulty if the Regulations are strictly applied because compliance would require deeper excavation into the ground at considerable and impracticable expense to the Applicant.

The Board also concludes that granting of the Application will not substantially detriment the public good nor will it substantially impair the intent, purpose and integrity of the zone plan. The Applicant will configure the loading area in a manner that will allow it to accommodate larger trucks when necessary. Stacked parking will allow the hotel (inn) to provide far more than the 71 spaces it is required to provide, thereby reducing competition for the limited on-street parking spaces in the area. In addition, stacked parking is an appropriate and customary service for a hotel and one that is expected by many hotel guests.

The Board concludes that it has accorded to Advisory Neighborhood Commission 2F the great weight to which it is entitled. It is hereby **ORDERED** that this application be **GRANTED**.

VOTE: **4-0-1** (Anne M. Renshaw, Geoffrey H. Griffis, James H. Hannaham and David W. Levy to approve; the third mayoral appointee not present, not voting).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC 3 1 2001 .

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.

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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16778

As Director of the Office of Zoning, I hereby certify and attest that on DEC 3 1 2001 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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