EXHIBIT 'E' - APPLICANT'S PRIOR VARIANCE APPLICATION.

LINOWES AND BLOCHER...

BZA Application No. 16538

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

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STATEMENT OF REASONS IN SUPPORT OF APPLICATION FOR A VARIANCE RELIEF FOR 407 8TH STREET, S.E. (Lot 826, Square 902)

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INTRODUCTION

This application, filed pursuant to Section 3103.2 of the Zoning Regulations, requests a variance under Section 774.1 from the rear yard setback requirements for the development of a two-story commercial structure at 407 8th Street, S.E. (Lot 826, Square 902). The subject property is located in the C-2-A District.

THE SUBJECT PROPERTY

407 8th Street, S.E. is located on 8th Street, S.E. in the block between D Street and E Streets, S.E., in the Eastern Market area of Capitol Hill. The subject property was Lot 826 in Square 902 at the time of the filing of this BZA application. It has since been subdivided to form a record lot and is now known as Lot 34. (See copy of subdivision plat attached hereto as Exhibit "A".)

The subject property is a mid-block parcel. It is a small rectangular-shaped lot with 25 feet of frontage on 8th Street, a depth of approximately 62 feet, and an area of only 1,552 square feet. The subject property is located on a predominately commercial street and is surrounded by existing commercial uses. It is located approximately one block to the south of the Eastern Market Metrorail Station.

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Board of Zoning Adjustment
District of Columbia
CASE NO.16779
EXHIBIT NO.9

The subject property is also located in the Capitol Hill Historic District. Therefore, development of the property will be subject to the approval of the Historic Preservation Review Board based upon architectural compatibility with nearby structures.

ZONING OF SUBJECT PROPERTY

The subject property is zoned C-2-A which is a medium density commercial zone district (See Zoning Map of Area attached hereto as Exhibit "B".) The C-2-A district is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside the central core. C-2-A districts are located in low and medium density residential areas with access to main highways or rapid transit stops, they include office employment centers, shopping centers, and medium-bulk mixed use centers. The C-2-A districts were also mapped to accommodate a major portion of existing commercial strip developments.

Under the applicable C-2-A zoning, the subject property can be developed to a maximum FAR of 2.5 with non-residential uses limited to 1.5 FAR. A maximum height of 50 feet is permitted. The development of the subject property is also subject to the following development standards: lot occupancy (60%); rear yard setback (15 feet); and parking (1 space per 300 feet in excess of 3,000 feet of gross floor area and cellar floor area.) The rear yard setback is the subject of this variance request.

THE PROPOSED PROJECT

The applicant is proposing to develop the subject property in conjunction with two adjacent lots (i.e., lots 32 and 33 in Square 902) which are under common ownership. Lots 32 and 33 front on D Street S.E. and adjoin the subject property, to the rear (See Site Plan attached hereto as Exhibit "C.") The D Street lots are currently being developed with 5,000 square feet of

new retail space and approximately one-half of the building has been pre-leased to Radio Shack. The Applicant has been trying to develop these properties for approximately 8 years and just recently was able to secure this national retail tenant making it feasible to start construction of the 5,000 square foot project. The Applicant applied to the BZA in 199_ for a special exception to develop the property for a Papa Johns carry-out restaurant. ANC-6A and the Capitol Hill Restoration Society opposed the use, citing an overabundance of carry-outs and fast food establishments in the area. The application was subsequently withdrawn by the Applicant.

The development of the D Street properties has a substantial impact on the development feasibility of the subject property, Fire safety considerations dictate the need for a second means of ingress/egress for the D Street project. As a result, the Applicant has dedicated a 6 x60 foot ingress/egress easement over the subject property for this purpose. Unfortunately, the easement substantially reduces the portion of the subject property that the owner can develop on as a matter of right. The 15 foot rear setback requirement further limits development reducing the maximum building footprint to a 19x45 foot pad, or a total of 855 square feet. The variance is being requested to expand this footprint to 1,100 square feet so that the Applicant can build a two-story building containing approximately 2,000 square feet with retail on the ground floor and office space above.

The proposed 2,000 square foot building is at the very low end of the minimum density which must be achieved to develop an economically feasible project. The proposed development will fill in the existing gap along 8th Street with an architecturally compatible building which will provide a neighbor-serving retail use and a second-floor office space suitable for a small entrepreneur or professional.

PLANNING CONTEXT

The proposed project is consistent with the Comprehensive Plan goals and policies for the area. The Plan seeks to encourage economic development and revitalization along the 8th Street corridor. (10 DCMR 1701.1). In fact, the Plan calls for the designation of 8th Street, S.E., from Pennsylvania Avenue to the Navy Yard as a new special treatment area (10 DCMR 1703.1(r) and 1735.1(m)). Special treatment areas are defined in the Plan as areas that exhibit unique physical social and functional characteristics and features that require case-specific planning actions. Such areas may include neighborhoods or areas that exhibit unique cultural design or architectural and ethnic characteristics (10 DCMR 1118.2).

The Plan further recommends that appropriate sites along 8th Street from Pennsylvania Avenue to M Street should be selected for increased FAR (up to 3.0) to attract economic development (10 DCMR 1703(b)). The Ward 6 Urban Design objectives recommends that the streetscape along Pennsylvania Avenue should be extended along 8th Street, S.E. (10 DCMR 1720.2).

The 8th Street S.E. corridor is also the subject of a major revitalization initiative known as the Barracks Row Main Street Project. (Historically, 8th Street, S.E. has been known as Barracks Row for the Marine Barracks which are located at the end of 8th Street.) Spearheaded by a non-profit organization made up of business owners and proprietors, the model for the project is the National Trust for Historic Preservation's successful Main Street program which has helped to revitalize thousands of main streets nationwide. The objective is to create an exciting and viable urban commercial corridor that celebrates the rich past of the 8th Street corridor while providing an eclectic mix of retail, arts, entertainment and service uses for the surrounding residents. The project has received a number of grant commitments including:

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- A $2 million commitment from the DC Dept. of Housing and Community Development,
- A $4 million commitment from the DC Dept. of Public Works.
- A $4 million commitment in low interest loans to qualified borrowers from National Capital Bank.
- A $22,500 grant from the D.C. State Historical Preservation Office to research the history of 8th St. and prepare the southern two blocks for nomination to the Capitol Hill Historic District,
- A $5,000 contribution from National Capitol Bank,
- A $30,000 commitment from Arcana Foundation,
- A $25,000 commitment from the Fannie Mae Foundation,
- A $,500 seed grant from the CHAMPS Foundation,
- Over $15,000 in community and 8th St. business donations, and
- Over $200,000 in professional "in kind" services, including a complete public relations and community outreach plan prepared by graduate school students in public relations from the University of Maryland's business school.

The funds will be used for the following activities and initiatives:

- Develop a master plan for a new streetscape design for 8th Street which will include new brick sidewalks, Washington globe lighting, new curbs and resurfaced streets, landscaping and street furniture. In addition, the project will undertake transportation, traffic and parking studies. Future plans call for developing resources for special historical interpretive artwork, an historical trail and signage. A consultant will

prepare the master plan which will include community input in the form of workshops.

- Research and development for a plan for the economic development of the corridor. It will include creating a pipeline to jobs for the underskilled. Towards this end, Main Street is working with Capitol Townhomes CDC (formerly Ellen Wilson), Bridges to Friendship, the South Washington CDC.
- Rehabilitation of the approximately 119 buildings on 8th Street/ The first step in the process is to develop building facade guidelines and then a low interest loan program for owners. These guidelines will also be used by the DC Office of Historic Preservation in the approval process for exterior building construction on 8th St.
- Development of a variety of promotional materials for the corridor and ways, such as an office on 8th Street, and a Website, and workshops to ensure community and 8th Street business owner and merchant participation.
- Ensuring the development of the subject property with a two-story, architecturally compatible building which will house new commercial uses is consistent with both the Comprehensive Plan and Main Street Project objectives.

VARIANCE RELIEF REQUESTED

The Applicant is requesting of variance relief from the rear yard setback requirement of 15 feet (Section 774.1). Since the Applicant owns the lot to the rear of the subject property, the rear yard of this lot will in effect provide the necessary light and air requirements for the subject property.

PROPOSED PROJECT MEETS LEGAL TEST FOR AN AREA VARIANCE

A variance from the rear yard setback requirements of a particular zone district is an area variance. Palmer v. BZA, 287 A.2d 535, 541 (D.C. 1972); Association for the Preservation of 1700 Block of N Street, N. W. v. BZA, 382 A.2d 674, 677 (D.C. 1978). The legal test which justifies the granting of an area variance is quite specific and should not be confused with the test for a use variance, which imposes a greater burden of proof.

The standard by which the BZA can, and should, approve an area variance is set forth in Section 3103 of the Zoning Regulations and has been clearly defined by the District of Columbia courts, Carliner v. BZA, 412 A.2d 52, 53 (D.C. 1980). The burden of proof for an area variance is met when the following conditions are shown to exist:

(a) the property is "unique because of its size, shape, topography or other extraordinary or exceptional situation or condition";

(b) by reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in "exceptional practical difficulties"; and

(c) the variance will not cause "substantial detriment to the public good" and will not impair the "intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map".

A. The Subject Property is Unique and Exceptional

407 8th Street, S.E. meets the "unique and exceptional" requirement. The property is unique and exceptional in that it is an exceptionally small, commercial lot which has no alley access to the rear and is burdened with the need to provide fire access to two adjacent lots located on D Streets, N.W. (i.e., lots 32 and 33).

B. A Strict Application of the Rear Yard Setback Requirements Will Result in "Exceptional Practical Difficulties"

The District of Columbia Court of Appeals has found that "exceptional practical difficulties" are established by demonstrating that strict compliance with the Zoning Regulations would be "unnecessarily burdensome" on the applicant. Russell v. D.C. BZA, 402 A.2d 1231 (D.C. 1979).

The District of Columbia Court of Appeals has also upheld BZA findings of "exceptional practical difficulties" which are based on economic considerations. Monaco v. District of Columbia Board of Zoning Adjustment, 409 A.2d 1067 (D.C. 1979) and Association of the Preservation of 1700 Block of N Street, N.W. v. District of Columbia Board of Zoning Adjustment, 384 A2d 674 (D.C. 1977).

In the instant case, the strict application of the rear yard setback requirement would be unnecessarily burdensome on the Applicant, would render the development of the subject property infeasible, and would therefore preclude development of the subject property.

C. A Variance Will Not Cause "Substantial Detriment to the Public Good" nor Impair the "Intent, Purpose or Integrity" of the Zoning Regulations

The variance requested will not cause "substantial detriment to the public good." To the contrary, the development of the subject site with an architecturally compatible infill building is a preferrable to leaving the site undeveloped and perpetuating the existing hole in the streetscape along 8th Street. As noted above, the Comprehensive Plan calls for the revitalization of this commercial corridor and the City and Federal governments are currently subsidizing the revitalization of the existing storefronts and streetscape and encouraging additional economic development.

The proposed variance also furthers the purpose and intent of the Zoning Regulations and Map. The purpose of the C-2-A District is to provide facilities for shopping needs of the surrounding residential and commercial areas. The proposed variance will achieve this result. Without the variance, the site will remain undeveloped and will be used for parking for the tenants of the D Street project being developed by the Applicant.

COMMUNITY INPUT

Advisory Neighborhood Commission 6A and the Capitol Hill Restoration Society are in support of the variance request. The Barracks Row Business Alliance and Barracks Row Main Street, Inc. have also submitted letters in support of the variance.

CONCLUSION

At the upcoming public hearing on this application scheduled for October 3, 2000, the Applicant will submit additional evidence in support of the Application. The following witness will also testify on behalf of the Applicant:

Maurice Kreindler, Capitol Hill Investors

For all of the reasons set forth above, the Applicant requests approval of the requested variance relief.

Respectfully submitted,

LINOWES AND BLOCHER LLP

Cynthia A. Giordano/asg

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Enclosures

cc: Maxine Brown Roberts, Office of Planning
Gotlieb Simon, ANC-6A
Lyle Schauer, Capitol Hill Restoration Society