GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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Memorandum

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director
Office of Planning

DATE: October 9, 2001

SUBJECT: BZA Application #16779 (Capitol Hill Investors)
407 8th Street, S.E.

APPLICATION

The application by Capitol Hill Investors requests, pursuant to 11 DCMR 3103.2, a variance from the provision of Section 771.2, floor area ratio (FAR); Section 772.1, lot occupancy; and Section 774.1, rear yard.

PROPOSAL

The application proposes to build a two-story building of approximately 2,706 square feet of space for a retail use on the ground floor and office use on the upper floor. In BZA #16538 Summary Order (Attachment 1), the applicant was granted a variance from the requirement for a 15-foot rear yard. Based on review and recommendations concerning the architectural design of the building by the Historic Preservation Review Board (HPRB) and the Capitol Hill Restoration Society (CHRS) the FAR and lot occupancy have increased above that permitted by-right.

BZA
Case No. 16779
Exhibit No. 26

SUMMARY RECOMMENDATION

The property meets the zoning tests for uniqueness and practical difficulty. Given the small size of the lot, and the reduced developable area, approval of the application will not cause any harm to the public good or the integrity of the zone plan. The development of this lot, in conformance with the design approved by the HPRB, will eliminate the last vacant lot in this section of 8th Street. The Office of Planning therefore recommends that the Board of Zoning Adjustment **APPROVE** the variances requested.

Board of Zoning Adjustment
District of Columbia
CASE NO.16779
EXHIBIT NO.26

SITE AND AREA DESCRIPTION

The subject property (Square 902, Lot 826) is located at 407 8th Street, S.E. south of the intersection of Pennsylvania Avenue and South Carolina Avenue, and the Eastern Market Metro Station. The property has a total area of 1,552 square feet and is currently undeveloped. A 6-foot utility and fire easement runs along the northern portion of the property. The easement contains an underground pipe that provides drainage for the rear of Lots 32 and 33. (Attachment 2)

Immediately surrounding the subject site development to the north are *Payless Shoe and Last Stop for Jeans* stores. To the south is a *Popeye's* restaurant, while to the east, across 8th Street, a combination of retail stores, restaurants, and Fire Station #7. To the west, the subject site abuts a *Radio Shack* store. The development along 8th Street is predominantly two-story buildings with small businesses supplying retail and office services to the surrounding community. The surrounding community beyond the 8th Street Corridor is predominantly row houses with scattered small multiple unit housing and mid-rise apartments.

ZONING REQUIREMENTS

The subject site is in the C-2-A District that permits low density development including office, retail and all kinds of residential use with building height of up to 50 feet, a maximum of 2.5 FAR of which a maximum of 1.5 FAR may be for commercial uses, a lot occupancy of up to 60% if there is residential use on site, and a rear yard of 15 feet.

ANALYSIS

The applicant has submitted a variance request from the lot occupancy requirements. However, the Zoning Regulations do not specify a limitation on lot occupancy for retail and office uses in the C-2-A Zone. Therefore, the variance request for lot occupancy is unnecessary and is therefore not addressed in this report.

The subject site was the subject of BZA #16538 in which the applicant requested and was granted a variance from the 15-foot rear yard. The proposal was in conformance with the FAR requirements. The property is within the Capitol Hill Historic District and following the approval for the BZA the proposal was submitted to the HPRB for Concept Review. During that review it was recommended that in order to be consistent with recent developments close to the subject property and to provide a continuous, uninterrupted street wall, the front of the building should be extended across the easement (Attachment 3). By extending the façade of the building along the entire length of the front property line and enclosing the egress corridor with a cantilever a courtyard is created. The cantilevered area is included in the FAR calculations for the entire site, that has increased it above that allowed by-right.

The subject site has an area of 1,550 square feet, but the developable area is reduced to 1,180 square feet due to the 6-foot easement along the northern boundary of the property. The developable area is further reduced to 895 square feet due to the required 15-foot rear yard. The need for this rear yard lot is further diminished due to the fact that the applicant is also the owner of the two adjacent properties on which rear property yards are provided. The applicant has proposed that storage of trash could be accommodated in containers in this area.

FAR

The standards by which the BZA should approve a variance is set forth in §3103.2 of the Zoning Regulations. The following demonstrates how these standards are met:

> **"The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition."**

The property is unique due to an exceptional situation in that the developable area is reduced in order to provide fire and utility access easement to Lots 21 and 33 that are adjacent to the site. Further, the HPRB has requested that the applicant provide a cantilever over the easement that has led to an increase in the FAR.

> **"By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property."**

The cantilever over the easement has increased the FAR of the proposed building. The application of the Zoning Regulations presents a hardship on the applicant, as the HPRB requirement is not creating usable space. Any additional FAR over the permitted 1.5 for commercial use is required to be dedicated to residential use. In this case, the additional FAR will not be dedicated to either commercial or residential space but addresses an architectural feature of the development.

> **"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."**

The proposed increase in FAR is due to the desire to provide a façade that will be similar and complementary to other building along 8th and D Streets. This design feature is particularly important as the proposal is within a historic district. The increases in FAR will not increase the usable space over that allowed by-right and therefore will not impair the intent, purpose or integrity of the Zoning Regulations and Map. Additionally, granting of the variance will not cause "substantial detriment to the public good" but will enhance the neighborhood as it will

provide an architecturally compatible infill building that will contribute to the rejuvenation of 8th Street.

Rear Yard

The variance request from the 15-foot rear yard requirement was reviewed and approved by the BZA. The request and issues in this application remains the same and has been incorporated into this application.

> **"The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition."**

The subject site is unique due to an exceptional situation in that the property is a small lot, with an area of 1,552 square feet, which is encumbered by a 6-foot easement along the northern boundary of the property that reduces the developable area to approximately 1,180 square feet.

> **"By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property."**

Due to the easement on the property and the required 15-foot rear yard, the developable area is further reduced to approximately 805 square feet that would render the property virtually undevelopable and may make it useful only for parking, which would not be in keeping with the revitalization planned for the 8th Street Corridor.

> **"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."**

The rear yards of the adjacent Lots 32 and 33 abut the subject site and since the lots are in common ownership their rear yards can e utilized by uses on the subject site. Therefore, the need for a rear yard on the subject property is minimized and the rear yard that would usually be required for storage of trash can be accommodated in the rear yard of the adjacent lots. Granting of the variance will not "cause substantial detriment to the public good" nor will it "impair the intent of the Zoning Regulations and Map" as the use to which the rear yard is intended is accommodated on two adjacent lots. Further, the granting of the variance will allow for the development of the property that has been vacant for a very long time, and will contribute to the revitalization of the 8th Street Corridor.

COMMUNITY COMMENTS

The Zoning Committee of ANC 6B has recommended approval of the variances to the full ANC which will make its decision at its October 9, 2001 meeting. The ANC, Capitol Hill Restoration Society, and the Barracks Road Business Alliance (BBA) supported and recommended approval of the original application. CHRS has reviewed and supports the cantilever design over the easement.

SUMMARY & RECOMMENDATION

The property meets the zoning tests for uniqueness and practical difficulty. Given the small size of the lot, and the reduced developable area, approval of the application will not cause any harm to the public good or the integrity of the zone plan. The increase in FAR is due to the desire to make the building architecturally compatible with the surrounding buildings in the historic district and will not increase the size of the building originally proposed.

The U.S. Department of Transportation in conjunction with the Department of Public Works and the Barracks Row Business Alliance, Inc. is currently active in promoting the rejuvenation of 8th Street (Main Street Project). The project includes the improvement of 8th Street and landscaping on the adjacent sidewalks. The development of this lot, in conformance with the design approved by the HPRB, will eliminate the last vacant lot in this section of 8th Street. The Office of Planning therefore recommends that the Board of Zoning Adjustment **APPROVE** the variances requested.

ATTACHMENTS:

1. BZA Application 16538, Summary Order, October 26, 2000
2. Site Location
3. Historic Preservation Review Board, Staff Report and Recommendation, July 26, 2001

AA/mbr

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16538 of Capitol Hill Investors, pursuant to 11 DCMR 3103.2, for a variance under Section 774.1 from the rear yard setback requirements for construction of a one-story structure on the lot which will house neighborhood-serving retail uses in a C-2-A District at premises 407 8th Street, S.E. (Square 908, Lot 826).

NOTE: Two corrections were made to the Public Hearing Notice. The building is to contain two floors, not one. The correct Square is 902, not 908.

HEARING DATE: October 3, 2000
DECISION DATE: October 3, 2000 (Bench)

SUMMARY ORDER

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 6B. ANC 6B, which is automatically a party to this application, submitted a written statement in support of the application. The ANC's support is contingent on the Applicant providing trash collection five days per week, in the event a food establishment occupies the site (Exhibit No. 28 of the record). The Applicant agreed to this provision.

As directed by 11 DCMR 3119.2, the Board required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent,

ATTACHMENT 1

purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED** subject to the provision of this Order.

Pursuant to 11 DCMR 3101.6, the Board waived the requirement of 11 DCMR 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5 – 0 (Robert Sockwell, Anne Renshaw, Rodney Moulden, Sheila Cross Reid and Kwasi Holman to approve.)

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

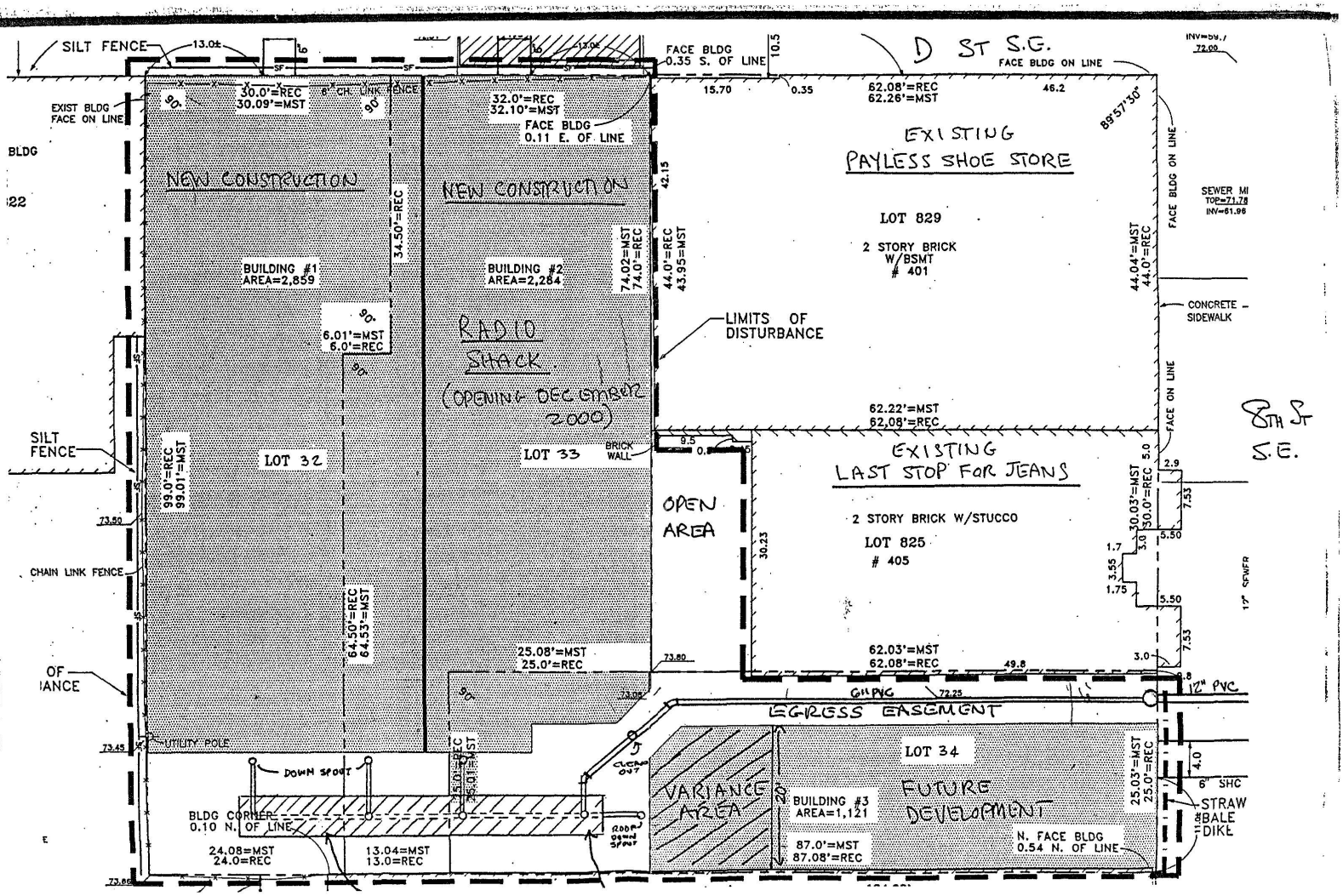
FINAL DATE OF ORDER: OCT 26 2000

PURSUANT TO D.C. CODE SEC. 1-2531 (1999), 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 1, CHAPTER 25 (1987), 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 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO 3125.6."

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.

BAB/10-11-00



ATTACHMENT 2

HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION

Property Address:	**409 8th Street, SE**		Agenda
Landmark/District:	**Capitol Hill Historic District**	X	Consent Calendar
		X	Concept Review
Meeting Date:	**July 26, 2001**		Alteration
H.P.A. Number:	**01-431**	X	New Construction
Staff Reviewer:	**Steve Callcott**		Demolition
			Subdivision

The applicants, architect Allen Neyman (NSA Architects) for developer Maurice Kreindler (Capitol Hill Investors, LLC), seek conceptual design review for the construction of a two-story commercial building on a vacant parcel on Capitol Hill. The building would abut a two-story 19th century commercial building on the south and a six-foot utility and fire easement on the north, which abuts a two-story commercial building.

In 1999, the Board approved a row of three buildings of essentially the same design by the same development team around the corner at 715-721 D Street, SE. The proposed building would house a single storefront. Like the previously approved project, the building would be clad in red brick with a tinted mortar and have a metal, wood and glass storefront with a stone base. To provide some variety, the cornice and upper floor wood windows would be somewhat different from the D Street row.

The development team is investigating the possibility of spanning over the abutting 6 foot easement. The upper floor would be revised to include three or four windows, rather than two, and the treatment of the storefront and gated entrance to the easement would need to be resolved. Conceptually, the staff supports the idea of building over the easement, as it would allow for a more continuous, uninterrupted street wall.

If the rear of the building is to be finished in concrete block, it should be painted to match the color of the façade brick. At the same time that this is being done, the concrete block walls at the rear of 715-721 D Street should be painted as well.

The staff recommends that the Review Board approve the concept as consistent with the character of the Capitol Hill Historic District, and delegate final approval to staff.

ATTACHMENT 3