ARNOLD & PORTER

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February 19, 2002

RECEIVED
D.C. OFFICE OF ZONING
2002 FEB 19 PM 3:55

BY HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 Fourth Street, N.W.
Washington, DC 20001

Re: BZA Application No. 16827 of The Stuart Building, LLC for Special Exceptions and Variances for the property located at 1750 N Street, N.W. ("Subject Property")

Dear Members of the Board:

We are writing on behalf of The American Society of Microbiology ("ASM"), owner and occupant of the property located at 1752 N Street, N.W. ("ASM Property"). The ASM Property is immediately adjacent to the west of the property, which is the subject of the above-referenced special exception and variance applications ("Subject Property").

ASM has no problem with the use of the existing structure on the Subject Property for offices. However, it is strongly opposed to any proposed expansion of the existing structure. The requested variance to construct an addition on the rear of the Subject Property would have a substantial adverse impact on ASM's Property which is improved with an office structure – a key feature of which is a glass atrium which overlooks the rear of the Subject Property. The proposed addition would significantly reduce the light and air to ASM's atrium and would decrease the amenity value of this building feature which was designed in reliance on existing zoning laws.

BZA
Case No. 16827
Exhibit No. 36

As a legal matter, the Applicant has not provided an adequate basis for the requested variance to construct additional office space on the Subject Property. The Applicant's case for the requested FAR variance appears to be based entirely on an argument that the additional income to be derived from the space is needed to make the economics of the project work. As the Board is aware, the legal standard for a variance requires a showing of:

(1) uniqueness as a result of the size, shape, topography or other extraordinary or exceptional situation or condition of the property;

Board of Zoning Adjustment
District of Columbia
CASE NO.16827
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(2) exceptional practical difficulties which are experienced by the owner, as a result of the strict application of the Zoning Regulations to its property;

(3) no substantial detriment to the public good nor impairment of the intent, purpose of integrity of the zone plan.

The Courts have determined that the third prong of the variance test, often referred to as the "public good" test, requires a showing that the proposed relief will not impair the use of adjoining properties, detrimentally affect the neighborhood value, alter the character of the neighborhood, endanger the nature and purpose of the local zoning plan and that the variance will serve the interests of justice. Carliner v. BZA, supra, at 55 (D.C. 1980); Silverstone v. BZA, 372 A.2d 1286, 1291 (D.C. 1977).

The Applicant has not made a convincing showing on any of the required elements. First, no showing of uniqueness has been made. Second, the economic difficulties asserted by the Applicant are, by the Applicant's own admission, a result of the high purchase price of the property and project delays. They are not a result of strict application of the Zoning Regulations.

With respect to the third prong of the variance test, as indicated above, the proposed addition will have an adverse impact on ASM. Attached hereto for the Board's review is a plat showing the location of ASM's atrium relative to the Subject Property. Also attached are the Applicant's plans which have been highlighted to show the proposed new construction. These new elements will be located within direct view of ASM's atrium which was designed to bring natural light into ASM's space.

Further, the proposed addition will not serve the interests of justice. It appears that the Applicant purchased the Subject Property, zoned SP-1, on the assumption that it could exceed the allowable FAR for office use. This despite the fact that the appraisal obtained by the Applicant clearly indicates the zoning and permissible nonresidential FAR. The Board should not grant a variance on the theory of economic hardship merely because the Applicant assumed that it could obtain a variance when she purchased the property. The requested variance to increase the size of the Subject Property would merely serve to increase profits in a speculative real estate purchase, not relieve an economic hardship.

In conclusion, ASM does not oppose use of the entire existing building for offices, although such use does require an FAR variance because the size of the existing

building exceeds the 2.5 FAR limit for nonresidential uses. The proposed use of the additional existing space over and above the 2.5 FAR is reasonable and has no adverse impact on ASM. The BZA routinely grants such variances for small, older existing buildings where it is impractical to utilize the excess space for residential purposes and there is no adverse impact on adjacent properties. The public interest is served by making productive use of the excess space which would otherwise be vacant.

In this case, however, the Applicant is seeking to expand the existing building at the expense of its neighbor's light and air. Further, the public interest will not be served by encouraging speculative real estate purchases which seek to gamble on zoning variances to increase profits.

Sincerely,

Cynthia A. Giordano

cc: Kim Shankle, ASM
Office of Planning

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 12-7, 2001

Plat for Building Permit of SQ-154 LOT 70

Scale: 1 inch = 20 feet Recorded in Book 15 Page 42

Receipt No. 6465

Furnished to: STUART BUILDING

Surveyor, D.C.

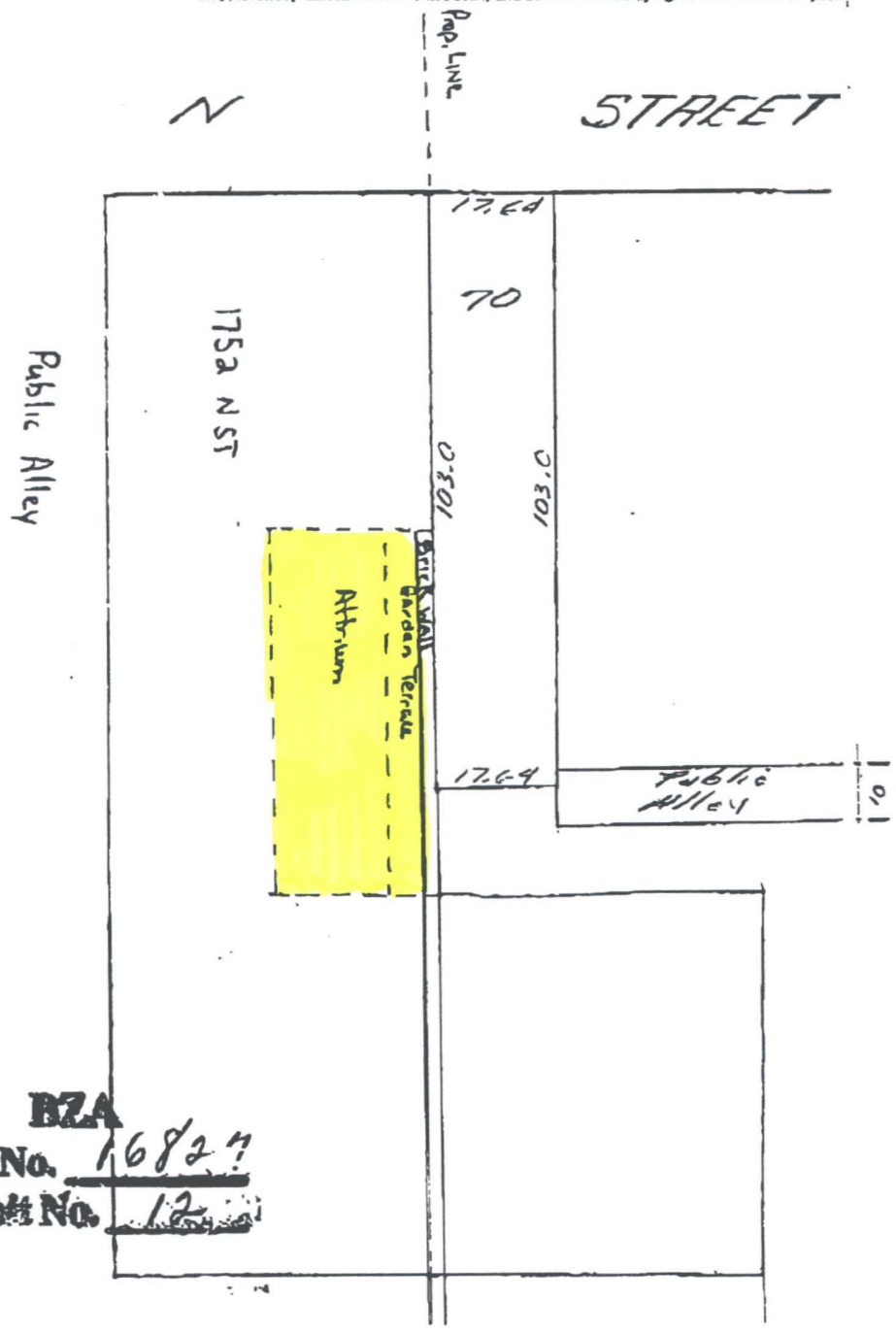
By: DH NM

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plan as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 15% across the public parking and the private restricted property.)

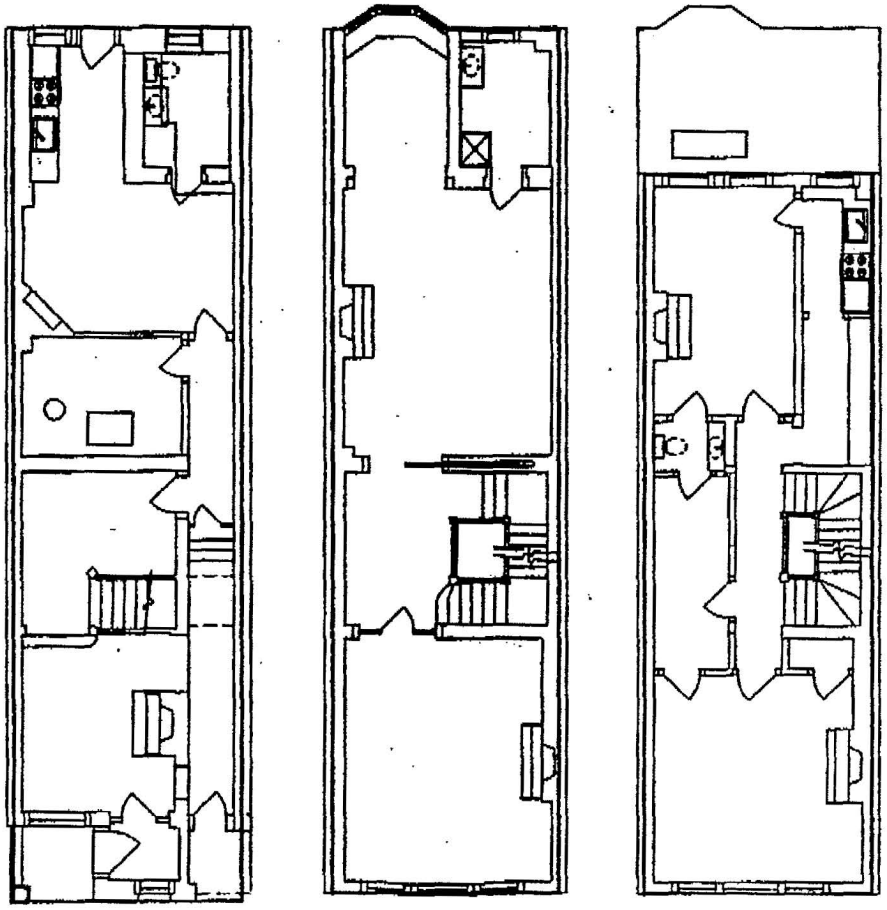
Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



BZA
Case No. 16827
Exhibit No. 12



1ST FL.
1200 SQ. FT.

2ND FL.
1212 SQ. FT.

3RD FL.
1045 SQ. FT.

GROSS FLOOR AREA - EXISTING

(existsect-k/aaa/Sheet-1750 N St NW.dgn)

0 8 16 32

STOIBER & ASSOCIATES, PC
architecture and interiors

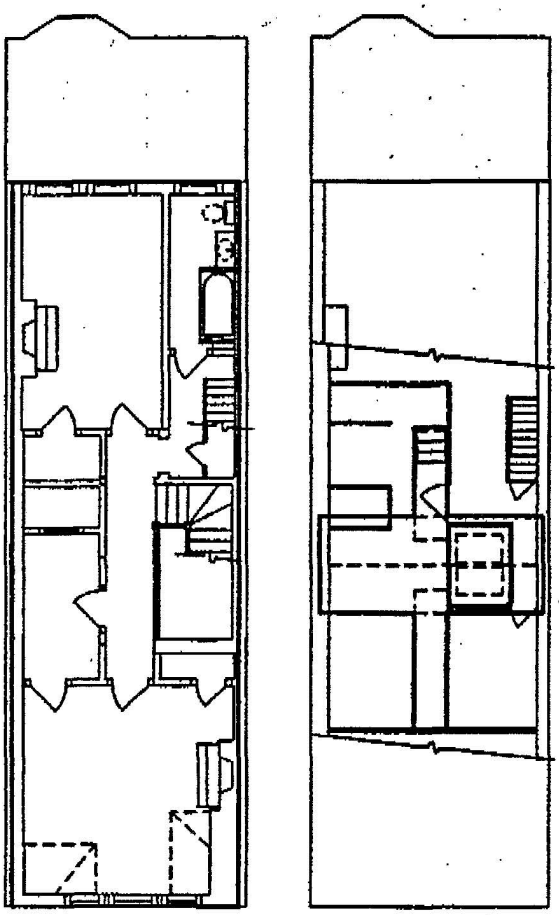
1621 connecticut avenue, nw # 300
washington, dc 20009
202.986.4100 fax: 202.986.7606

PROJECT: 1750 N ST. NW
WASHINGTON, DC

TITLE: RENOVATION AND ADDITION

DATE: 2-15-02 SHEET 1 OF 5

JS.GA



4TH FL.
1045 SQ. FT.

5TH FL.
175 SQ. FT.

TOTAL EXIST. GROSS FLOOR AREA:

4677 SQ. FT.

4677/1816.92=

F.A.R. 2.57

GROSS FLOOR AREA - EXISTING

(existsecti-k/boza/Stuart-1750 N St NW01.DU)

0 8 16 32

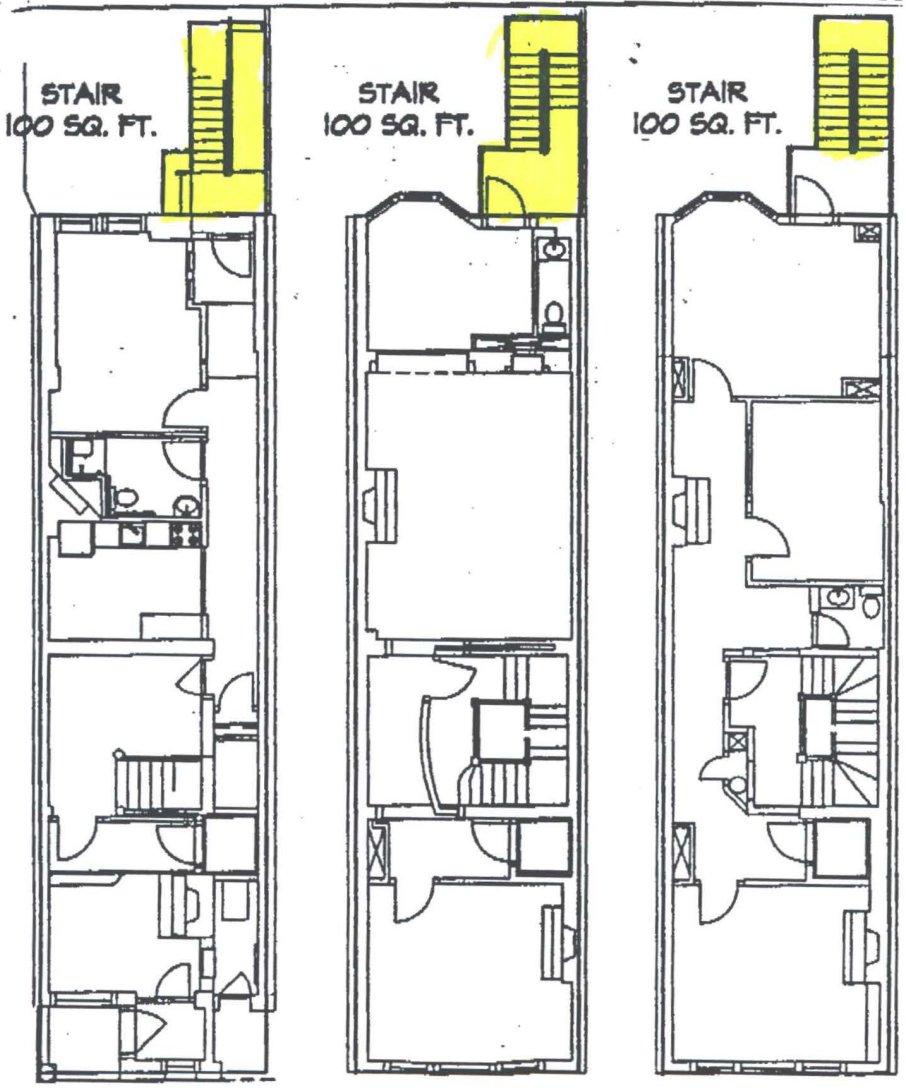
STOIBER & ASSOCIATES, PC
architecture and interiors

1621 connecticut avenue, nw • 200
washington, dc 20009
202.986.4100 fax: 202.986.1606

PROJECT: 1750 N ST. NW
WASHINGTON, DC

TITLE: RENOVATION AND ADDITION

DATE: 2-15-02



GROSS FLOOR AREA - PROPOSED

(existsect-k/liza/Stuart-1750 N St NW/01.DU)

0 8 16 32

STOIBER & ASSOCIATES, PC
architecture and interiors

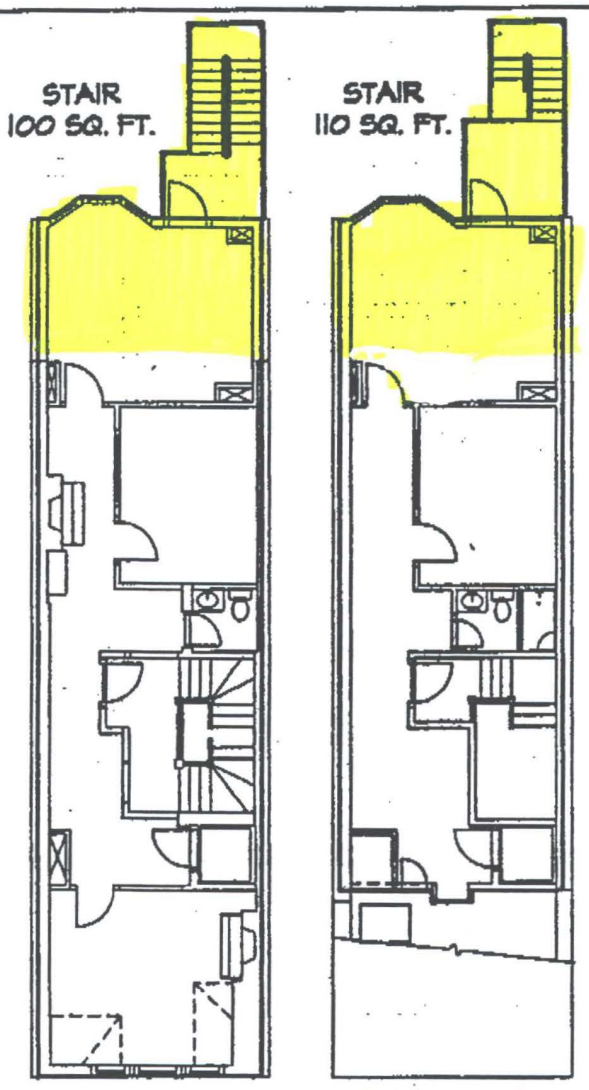
1621 connecticut avenue, nw • 200
washington, dc 20009
202.986.4100 fax: 202.986.7606

PROJECT: 1750 N ST. NW
WASHINGTON, DC

TITLE: RENOVATION AND ADDITION

DATE: 2-15-02

SHEET 3OF 5



TOTAL PROP. GROSS FLOOR AREA W/O REAR STAIRS

5816 SQ. FT.

5816/1816.92=

F.A.R. 3.20

TOTAL PROP. GROSS FLOOR AREA W/ REAR STAIRS

6326 SQ. FT.

6326/1816.92=

F.A.R. 3.48

GROSS FLOOR AREA - PROPOSED

(existing)-k/bza/Stuart-1150 N St NW(01.01)

0 8 16 32

STOIBER & ASSOCIATES, PC
architecture and interiors

1621 connecticut avenue, nw # 200
washington, dc 20009
202.986.4100 fax: 202.986.1606

PROJECT: 1150 N ST. NW
WASHINGTON, DC

TITLE: RENOVATION AND ADDITION

DATE: 2-15-02

SHEET 4 OF 5