GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16827 of The Stuart Building LLC, pursuant to 11 DCMR § 3104.1 for a special exception under section 508 and pursuant to 11 DCMR § 3103.2 for a variance from the floor area ratio provisions under section 531 to allow an addition to and conversion of an existing building for office use in the DCOD/SP-1 District at premises 1750 N Street, N.W. (Square 159, Lot 70).

HEARING DATE: January 29, 2002
DECISION DATE: April 2, 2002

DECISION AND ORDER

The Applicant in this case is The Stuart Building LLC ("Stuart" or "Applicant"), the owner of the property that is the subject of the application. The Zoning Administrator informed the Applicant by letter dated November 19, 2001 that its request for a certificate of occupancy to use the subject property as professional offices was denied because a special exception was required under 11 DCMR § 508.1. On November 26, 2001, Stuart self-certified an application to the Board of Zoning Adjustment ("Board") for a special exception pursuant to 11 DCMR § 3104.1. The application sought permission to convert the premises located at 1750 N Street, N.W. to professional offices as permitted by 11 DCMR § 508 in the Dupont Circle Overlay District/Special Purpose Zone District.

By letter dated December 5, 2001, Stuart amended its application to request additional relief, a variance from the floor area ratio ("FAR") provisions set forth in 11 DCMR § 531, and to change the proposed use to "general office purposes" rather than "professional offices." By letter dated January 8, 2002, Stuart sought to amend the application further to request a variance from the parking requirement of three spaces to allow two parking spaces. Because public notice had already been given for a hearing on the requests for a special exception and a FAR variance, the late request for a parking variance was not considered as part of this application.

Following a hearing on January 29, 2002 and a Special Public Meeting on April 2, 2002, the Board voted as follows: 1) 5-0-0 to grant the application for a special exception; 2) 0-5-0 to grant the application for a variance from the FAR provisions to allow an addition to an existing building for nonresidential use, thus denying the variance to allow the addition; and 3) 5-0-0 to grant a variance allowing the

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Applicant to exceed the FAR limitation in the DCOD/SP-1 District by 0.07, thereby permitting conversion of an existing building to nonresidential use.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. The Office of Zoning mailed the Councilmember for Ward 2, the Office of Planning ("OP"), Advisory Neighborhood Commission ("ANC") 2B, Single Member District/ANC 2B07, and the Department of Public Works ("DPW") memoranda dated December 10, 2001, providing notice of the application.

Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated December 13, 2001, to the Applicant, ANC 2B, and all owners of property within 200 feet of the subject property, providing notice of the hearing.

Requests for Party Status. ANC 2B was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant presented its case. The Applicant stated that the special exception was required for the proposed office use, and the FAR variance was needed to make the building renovation economically feasible. According to the Applicant, the purchase price paid for the subject property and efforts to preserve its interior features created the need for additional FAR so that the project would be economically viable. The Applicant stated that the subject property was affected by an exceptional situation or condition stemming from its location, the shallow shape of the land, and the existing improvements on the property, which directly related to Stuart's inability to comply with the building density requirement of 11 DCMR § 531.1 and also make the building functional and economically viable. The Applicant's expert witness in architecture testified that the building's central staircase and fireplaces, which the applicant desired to retain in order to preserve the historic character of the building, greatly complicated efforts to renovate the building in accordance with zoning and building code requirements.

Government Reports. The initial OP report, dated January 22, 2002, recommended approval of the requested special exception to allow office uses up to 2.5 FAR. However, OP recommended denial of the variance required to increase the allowable nonresidential FAR because the Applicant had offered insufficient justification. In its supplemental report on March 29, 2002, OP revised its recommendation to support the grant of variances to increase the

allowable nonresidential FAR to 3.2. OP stated that the Historic Preservation Office supported the proposal in its conceptual stage.

By report dated March 26, 2002, the Department of Public Works, District Division of Transportation, now the District Department of Transportation ("DDOT"), stated no objection to the application, noting that the subject property was well served by public transportation and that neighboring parking facilities, including two parking garages located within the same block, could adequately serve the parking demand.

ANC Report. By letter dated January 22, 2002, ANC 2B indicated that, at a public meeting with a quorum present, the ANC unanimously passed a resolution in support of Stuart's application for a variance to allow an addition to and conversion of the subject building for office use.

Persons in Opposition to the Application. On February 19, 2002, the Board received a letter from Cynthia A. Giordano with the law firm of Arnold & Porter, written on behalf of the American Society of Microbiology ("ASM"), the owner and occupant of property at 1752 N Street, N.W., immediately adjacent to the subject property. ASM did not object to the use of the existing building for office purposes, but strongly opposed any proposed expansion of the Stuart Building on the ground that the requested variance to construct an addition on the rear of the building would have a substantial adverse impact on ASM's property by significantly reducing light and air to ASM's glass atrium, which overlooks the rear of the subject property.

Hearing. A public hearing on the application was conducted January 29, 2002. Testimony and evidence were provided by the Applicant, the Office of Planning, and a representative of ASM, who described concerns with the proposed expansion of the Stuart Building.

Decision. At a public meeting on April 2, 2002, the Board voted as follows: 1) 5-0-0 to grant the application for a special exception; 2) 0-5-0 to grant the application for a variance from the FAR provisions to allow an addition to an existing building for nonresidential use, thus denying the variance; and 3) 5-0-0 to grant a variance allowing the Applicant to exceed the FAR limitation in the DCOD/SP-1 District by 0.07, thereby permitting conversion of an existing building to nonresidential use.

FINDINGS OF FACT:

1. The subject property is located at 1750 N Street, N.W. (Square 159, Lot 70). The site is improved with a four-story rowhouse constructed of stone and masonry around 1888 on an interior lot with a paved rear yard.

2. The property, now known as the Stuart Building, is currently vacant, and was previously used as the national headquarters of a legal fraternity, although the most recent certificate of occupancy for the property, issued in 1950, specifies "rooming house" use.

3. The Applicant proposes to renovate and upgrade the interior of the building, and to add more than 1,000 square feet of additional space by expanding the upper stories and converting an attic to office space. After the proposed renovation, the Applicant plans to use the building to provide 10 offices with shared kitchen, bathroom, and conference room facilities.

4. The lot size of the subject property is 1,817 square feet. The existing building has a total floor area of 4,677 square feet, equaling a FAR of 2.57. The proposed expansion would increase the total floor area by 1,139 square feet to 5,816 square feet, resulting in a FAR of 3.2.

5. The proposed renovation would not substantially change the building's façade or alter its height, design, or bulk, except for the planned rear addition.

6. The subject property and properties to the north and east are located within the Dupont Circle Overlay District ("DCOD") and are zoned DCOD/SP-1 (Medium-density Special Purpose). Properties to the west are zoned DCOD/C-3-C (Major Business and Commercial Center). The rowhouses across N Street from the subject property are largely vacant, although several are occupied by office uses. Properties to the east along N Street are also developed with similar rowhouses that are vacant or have been converted to office use.

7. The Special Purpose ("SP") District is design to stabilize areas adjacent to C-3-C and C-4 Districts and other appropriate areas that contain existing apartments, offices, and institutions as well as mixed-use buildings. Its major purpose is to act as a buffer between adjoining commercial and residential areas, and to ensure that new development is compatible in use, scale, and design with the transitional function of the SP zone District. 11 DCMR §§ 500.1, 500.2.

8. The Dupont Circle Overlay District is intended in part to preserve and enhance the low scale and predominately residential and historic character

of the overlay area. Its purposes include, among other things, to require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk; to protect the integrity of "contributing buildings" in the historic districts within the overlay zone; and to enhance the residential character of the area by maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development. 11 DCMR §§ 1501.1, 1501.4.

9. The maximum permitted FAR in the SP-1 District is 4.0. Of that, up to 4.0 may be devoted to apartment house or other residential use, and up to 2.5 may be devoted to any other permitted use as a matter of right. 11 DCMR § 531.1.

10. The subject property is located within the Dupont Circle Historic District and has been certified by the State Historic Preservation Officer as contributing to the character of the historic district. The Office of Planning indicated that, according to its Historic Preservation Office, preservation of the interior stairwell, high ceilings, and first-floor entrance lobby and service corridor would enhance the architectural integrity of the building.

11. The rear of the subject property is accessed using a T-shaped public alley that stubs out at the eastern line of the site, aligned with an existing building located south of the subject property. The unusual shape of the alley requires vehicles accessing the subject property to drive over a portion of a neighboring lot to the east. The Applicant has been unsuccessful in reaching an agreement with the owner of the neighboring lot to use a portion of that property for vehicle use. The unusual shape and location of the subject property restricts the Applicant from providing access from an existing alley or street to the existing parking spaces. The Board credits DDOT's conclusion that the alley entry point off St. Matthews Court has a locked gate, apparently installed illegally by a neighboring property owner, although all property owners located off the public alley have access to their sites.

12. Garbage collection would be performed at the rear of the subject property.

13. The record contains no evidence indicating that the subject property, without the planned expansion, could not be used in a manner consistent with the Zoning Regulations.

14. The Board credits OP's testimony that the subject property, at 17 feet wide, is the narrowest parcel on the square, and that, because of its configuration, the building is not well suited for a mix of office and residential uses.

CONCLUSIONS OF LAW:

The Applicant seeks both a special exception under section 508 pursuant to 11 DCMR § 3104.1 and, pursuant to 11 DCMR § 3103.2, a use variance from the floor area ratio provisions of section 531 to allow conversion of an existing building for office use and an expansion of the building and its proposed office use.

Special exception. The Board is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07(g)(2) (2001); 11 DCMR § 3104. In the SP Zone District, office uses may be permitted with Board approval, provided that the use, height, bulk, and design are in harmony with existing uses and structures on neighboring properties, and provided that the office use would not create dangerous or other objectionable traffic conditions. 11 DCMR § 508.

The Board concludes that the Applicant has met its burden of proof with respect to the application for a special exception to devote the existing building entirely to office uses. The predominant land use in the vicinity of the subject property is office use, and many of the existing buildings not used for offices are currently vacant. The subject property is close to an area zoned DCOD/C-3-C, a relatively high-density commercial zone. Conversion of the subject property to office use would be consistent with the purpose of the SP District to serve as a buffer between adjoining commercial and residential areas by providing office use at a more moderate density, in keeping with the transitional function of the SP zone.

Office use of the subject property would be in harmony with existing uses and structures on neighboring property in terms of its use, height, bulk, and design. The Applicant plans renovations to the existing building that would not change its façade, and, absent the planned expansion, the renovations would not alter the height, bulk, or design of the structure. Use of the subject property as offices would be in harmony with existing uses and structures on neighboring property, because those existing uses are predominately office uses, located primarily in buildings similar in size and design to the subject property. Accordingly, no special treatment in the way of design, screening of buildings, accessory uses, signs, or other facilities is necessary to protect the value of neighboring property as a result of office uses in the subject property.

Office use of the subject property would not create dangerous or other objectionable traffic conditions. The Board credits the testimony of DDOT that the Applicant has access to the parking area at the rear of the property, despite an apparently illegal gate installed in the alley. The property is well-served by public transportation, and several parking garages in the vicinity supplement the available on-street parking. Garbage collection would also be handled at the rear of the property and therefore would not likely create dangerous or objectionable traffic conditions.

In the SP District, office use is generally required to provide one parking space for each additional 1,800 square feet of gross floor area in excess of 2,000 square feet of gross floor area. 11 DCMR § 2101.1. Generally, no additional parking spaces are required for a building located in a historic district that is certified as contributing to the character of the historic district. However, the Board considers parking in the context of a request for a special exception for office uses in the SP District, because the office use must not create dangerous or other objectionable traffic conditions. See 11 DCMR § 508.4.

The Stuart Building has a total floor area of 4,677 square feet, and therefore use of the building for office purposes would require the provision of one parking space. The area at the rear of the subject property is currently configured as three parking spaces, although the Applicant did not demonstrate convincingly that each of the three spaces is of the minimum size required under the zoning regulations or that these spaces are accessible without trespassing on a neighboring property. Moreover, one space may be lost to accommodate the Applicant's plans to install a rear fire stair needed to bring the subject property in compliance with building code requirements. However, the Board concludes that use of the subject property for offices would not create objectionable parking impacts because the property [currently complies with parking requirements and] is located in an area convenient to public transportation as well as to several parking garages.

The requested special exception is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property. As previously discussed, use of the existing building as offices would be in harmony with existing uses and structures on neighboring property, and would be consistent with the purposes of the SP-1 zone. The requested special exception is also consistent with purposes of the Dupont Circle Overlay District, because renovation and reuse of the subject property – a contributing building to the Dupont Circle Historic District – would help preserve and enhance the low-scale historic character of the overlay area. Renovation and reuse of the existing building for offices would not alter the scale and density of development in the area.

Use variance. The Board is authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition 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, provided that 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. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

The Applicant's request for a variance from the floor area ratio provisions of § 531 entails a use variance, because the maximum permitted FAR in the DCOD/SP-1 District is 4.0, of which only 2.5 may be used for nonresidential purposes as a matter of right. The FAR of the subject property is 2.57, and would increase to 3.2 with the planned addition. Thus the Applicant does not seek an area variance to increase the 4.0 FAR permitted as a matter of right for residential use of the property. Rather, the Applicant seeks to use the entire building, with a planned expansion, for nonresidential use. That is, the Applicant seeks a use variance so that the subject property may be devoted to nonresidential office uses in excess of the 2.5 FAR permitted as a matter of right in the SP-1 District.

A use variance cannot be granted absent a showing that the strict application of the Zoning Regulations would result in "exceptional and undue hardship upon the owner of the property," because a use variance "seeks a use ordinarily prohibited in the particular district" and thus would "alter the character" of that zone district. Palmer v. Board of Zoning Adjustment for the District of Columbia, 287 A.2d 535, 541 (D.C. 1972). "The Board generally cannot grant a variance just because the property makes it difficult for the owner to construct a particular building or to pursue a particular use without a variance if the owner could use or improve the land in other ways compatible with zoning restrictions." Draude v. District of Columbia Board of Zoning Adjustment, 527 A.2d 1242, 1255 (D.C. 1987), citing Palmer, 287 A.2d at 540 (use variance cannot be granted unless reasonable use cannot be made of the property in manner consistent with the Zoning Regulations; an inability to put property to more profitable use or loss of economic advantage is not sufficient to constitute hardship). To be granted a variance, the Applicant must show that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may reasonably be adapted. Bernstein v. District of Columbia Board of Zoning Adjustment, 376 A.2d 816, 819 (D.C. 1979). A mere desire to use property in a given manner, or in a manner designed to return a greater profit, does not constitute a showing of an undue hardship that will support the granting of a use variance. Bernstein, 376 A.2d 816, 820. See also

Taylor v. District of Columbia Board of Zoning Adjustment, 308 A.2d 230, 236; Silverstone v. District of Columbia Board of Zoning Adjustment, 396 A.2d 992 (D.C. 1979); and Capitol Hill Restoration Society, Inc. v. D.C. Board of Zoning Adjustment, 398 A.2d 13 (D.C. 1979) (unique circumstances of property, not owner's personal circumstances, provide basis for granting variance).

In support of the requested variance needed to increase the nonresidential FAR to 3.2, the Applicant has claimed hardship resulting from the purchase price of the subject property and from the desire to retain certain interior elements of the existing building that create inefficient space. Both elements underlying the alleged hardship are self-created and do not result from the strict application of the Zoning Regulations or Maps. The Board concludes that the Applicant failed to demonstrate that undue hardship would result from the strict application of the Zoning Regulations to the subject property with respect to the proposed rear addition, or that no reasonable use could be made of the property in a manner consistent with the Zoning Regulations.

OP recommended approval of the variance requested by the Applicant, citing uniqueness arising from the narrow shape of the property and preservation of interior features, and undue hardship resulting from the building characteristics and the benefits of the added usable space in the proposed expansion. The Board credits OP's testimony in concluding that the subject property is unique due to its exceptional situation or condition as the most narrow parcel on the square, improved with a building the configuration of which is not well suited for a mix of office and residential uses. However, the Board does not concur with OP that the Applicant would suffer undue hardship arising from the strict application of the zoning regulations that would warrant the grant of a use variance to allow the proposed expansion.

The "self-created hardship" rule precludes the grant of a variance when "the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the [zoning regulations] have themselves been caused or created by the property owner, [because] the essential basis of a variance – that is, that the hardship be caused solely through the manner of operation of the [zoning regulations] upon the particular property – is lacking." Foxhall Community Citizens Ass'n v. District of Columbia Board of Zoning Adjustment, 524 A.2d 759, 761, citing 3 A. Rathkopf and D. Rathkopf, THE LAW OF ZONING AND PLANNING, § 39-01 (4th ed. 1986); (citations in accord omitted). The self-created hardship rule applies to owners who purchase property with actual or constructive knowledge of zoning restrictions from which they intend to seek administrative relief. Foxhall, 524 A.2d at 761, citing 3 R. Anderson, AMERICAN LAW OF ZONING § 20.44, -45. See also Dwyer v. District of Columbia Board of Zoning Adjustment, 320 A.2d 306 (D.C. 1974),

citing Clouser v. David, 114 U.S.App.D.C. 12, 13, 309 F.2d 233, 234 (1962) (hardship must result from location, situation, or condition of property, and not solely from owner's appropriation of it for commercial purposes without first having obtained necessary change in zoning).

The Applicant has not demonstrated that the strict application of the zoning regulations has caused any undue hardship. Rather, the Applicant seeks a variance from the applicable FAR provisions to help recoup the purchase price of the property and to improve the economic feasibility of the project to renovate the building for office use. The Board concludes that any "hardship" suffered by the Applicant with respect to the proposed expansion of the building is self-created and does not support the grant of a variance from the FAR limits of the DCOD/SP-1 Zone District.

However, the Board concludes that the strict application of the zoning regulations would create an undue hardship with respect to the Applicant's use of the existing building absent a variance allowing use of the entire existing building for nonresidential purposes. The subject property has a developable FAR of 2.57, and is located in a zone district where 2.5 FAR may be devoted to nonresidential uses as a matter of right. The Board concludes that undue hardship would result to the owner of the property from the strict application of the zoning regulations to the property, because 2.5 FAR may be used as a matter of right for nonresidential purposes but the strict application of the zoning regulations would require the Applicant to devote the remaining 0.07 FAR to residential uses. The Board credits OP's testimony that the configuration of the building is not well-suited to a mix of uses, and concludes that 0.07 FAR would otherwise be rendered unusable. Accordingly, the Board grants a variance allowing the Applicant to exceed the FAR limitation on nonresidential use in the DCOD/SP-1 District by 0.07, so that the entire existing building may be devoted to office use. As with the grant of the requested special exception, discussed above, a variance to increase FAR by 0.07 can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board has accorded ANC 2B the "great weight" to which it is entitled under D.C. Official Code § 1-309.10(d)(3). The record reflects that the affected ANC voted unanimously to support the application to allow an addition to and conversion of the Stuart Building for office use. The Board credited the unique vantage point held by the ANC with respect to the effect of the requested special exception and variance on its constituents. However, the Board concludes that the ANC report did not offer persuasive advice that would cause the Board to find that the application to exceed the permitted nonresidential FAR, beyond the scope of the existing building, would be consistent with the statutory requirements for a use variance.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception and for a variance to exceed the FAR limitations by 0.07 for nonresidential uses in the DCOD/SP-1 District, but not with respect to a FAR variance to allow an addition to an existing building for nonresidential use in the DCOD/SP-1 District. Accordingly, it is therefore **ORDERED** that the application is **GRANTED IN PART** and **DENIED IN PART.**

VOTE: **5-0-0** (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr.,
Carol J. Mitten, and David W. Levy to grant a special exception under section 508);

0-5-0 (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr.,
Carol J. Mitten, and David W. Levy to grant a variance from floor area ratio provisions under section 531 to allow an addition to an existing building for nonresidential use in the DCOD/SP-1 District, thus denying the variance);

5-0-0 (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., Carol J. Mitten, and David W. Levy to grant a variance allowing Applicant to exceed the floor area ratio provisions under section 531 by 0.07, thereby allowing conversion of an existing building to nonresidential use in the DCOD/SP-1 zone).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: JUN 26 2002

PURSUANT TO 11 DCMR § 3125.6, THIS 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.

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 25 IN TITLE 1 of the D.C. CODE. SEE D.C. CODE § 1-2531 (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. MN/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16827

As Director of the Office of Zoning, I hereby certify and attest that on JUN 2 6 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:

Pamela B. Stuart, Esq.
1101 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Vince Micone, Chairman
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Irwin D. Morgan, Commissioner 2B07
Advisory Neighborhood Commission 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

Denzil Noble, Acting, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning