GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16841 of Church Street LLC, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirements under section 773, for the construction of a residential condominium building in the Arts/C-3-A District at premises 1440 Church Street, N.W. (Square 209, Lot 102).

Application No. 16848 of 1425 P Street LLC, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirements under section 773, for the construction of a residential condominium building in the Arts/C-3-A District at premises and 1425 P Street, N.W. (Square 209, Lot 94).

HEARING DATE: March 19, 2002
DECISION DATE: March 19, 2002 (Bench Decision)

CONSOLIDATED DECISION AND ORDER

SELF-CERTIFICATION

The zoning relief requested in these cases was self-certified, pursuant to 11 DCMR § 3113.2.

PRELIMINARY AND PROCEDURAL MATTERS

These Applications were filed separately, but at the hearing, the Applicants requested that the cases be heard on a consolidated basis. The Board determined it was appropriate to proceed with a consolidated hearing based on the immediately adjacent location and interrelationship of the subject properties, similarity of the circumstances and zoning relief requested, common witnesses, ANC 2F and other community support of both Applications, and opportunity to expedite the hearing process.

FINDINGS OF FACT

1. For Application No. 16841, the subject property is located at 1440 Church Street, N.W. (Square 209, Lot 102)("Church Street Property"). The Church Street Property has a lot area of 13,950 square feet, is zoned ARTS/C-3-A and is located within the Greater 14th Street Historic District. The applicable parking and loading requirements were waived based on the Church Street Property's location within the historic district.

BZA
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Exhibit No. 32

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2. The Applicant is currently constructing a seven-story condominium apartment building on the Church Street Property ("Church Street Condominium"). The Church Street Condominium was subject to review and approval by the Historic Preservation Review Board ("HPRB"), including substantial community participation and input, prior to issuance of the required building permit.

3. For Application No. 16848, the subject property is located at 1425 P Street, N.W. (Square 209, Lot 103)("P Street Property"). The P Street Property has a lot area of 18,815 square feet and is zoned ARTS/C-3-A.

4. Currently, the Applicant is constructing a seven-story rental apartment building on the P Street Property ("P Street Apartment Building").

5. As part of the combined development of the two (2) projects, the 10-foot public alley running east-west between the subject properties was closed and the area of the closed public alley incorporated within the P Street Property as Lot 103.

6. As facilitated by the public alley closing, the two (2) buildings share the underground parking facility with access to the underground parking provided from P Street as required under the HPRB approval.

7. Under section 773, construction of a residential building in the C-3-A zone district is required to provide residential recreation space of not less than fifteen percent (15%) of the residential gross floor area. There is no requirement for residential recreation space in any of the Residential zones and residential recreation space is limited to only five percent (5%) within the nearby Downtown Development overlay district. Residential recreation space must be located at ground level, on or above the residential plane, on rooftops or within the building or other structure.

8. While the public alley closing process was pending for more than two (2) years, the Applicants proceeded with obtaining matter-of-right building permits locating most of the required residential recreation space below grade within the underground parking area. Obtaining the matter-of-right building permits before the public alley was officially closed was an interim measure required to initiate and continue the lengthy development process for these significant and desirable residential projects before the public alley closing process was finalized.

9. Shortly after the public alley closing became final, the Applicants filed these Applications requesting a variance from the applicable residential recreation space requirements.

10. For the Church Street Property, the Applicant requested a variance to reduce the residential recreation space from fifteen percent (15%) to five percent (5%). This reduction would allow an increase in the off-street parking provided of eighteen (18) parking spaces for a total of forty-nine (49) parking spaces or more than one space for each unit. In addition to the public or common residential recreation space provided, the Church Street Condominium will provide twelve percent (12%) of private recreation or open space as part of the units, including individual patios, balconies and roof decks.

11. For the P Street Property, the Applicant requested a variance from the residential recreation space requirement to reduce it from fifteen percent (15%) to five percent (5%). This reduction would allow the creation of twenty-seven (27) additional off-street parking spaces for a total of ninety-five (95) parking spaces or more than one space for each apartment and sufficient parking for the ground floor retail uses. In addition to the public or common residential recreation space provided, the P Street Apartment Building will provide two percent (2%) of private or open space, including individual patio, balconies and roof decks. At the hearing, the Applicant proposed to revise the rooftop residential recreation space as shown in Exhibit 28 in response to comments from the Office of Planning.

12. At the public hearing, Mr. Lamont ("Monty") Hoffman, President, PN Hoffman Company, testified on behalf of the Applicants. His testimony included the need and timetable for proceeding with permitting and construction of the projects while the public alley closing was completed, community participation in the planning process, Historic Preservation design requirements, customer demographics and diversity, demand for additional off-street parking from both community and customers, limited customer demand for residential recreation space, unique property conditions and practical difficulties of providing the required fifteen percent (15%) residential recreation space, substantial private recreation space provided and contribution of these projects to the redevelopment of the neighborhood.

13. At the public hearing, Mr. Eric Colbert, AIA, testified as the project architect for both buildings, regarding the public and private residential space provided, limited demand for residential space in all urban apartment buildings, unique property conditions and historic preservation requirements, and lack of available space to provide usable and quality residential recreation space.

14. At the public hearing, Mr. David Mayhood testified as an expert in residential real estate development projects in the District. His testimony pertained to the urban lifestyle and neighborhood amenities sought by customers rather than the more suburban-concept of providing self-contained and bundled amenities within the building and the limited demand for residential recreation space.

15. At the public hearing, the Applicants introduced a revised rooftop plan for the 1425 P Street building residential recreation space in response to the Office of Planning's report submitted to the Board. Additionally, the Applicants offered to allow the residents/owners of the condominiums at 1440 Church Street to "share" the rooftop residential recreation space at 1425 P Street. The Applicants proposed that residents/owners at 1440 Church Street would be provided with key cards allowing access from the 1440 Church Street building across the closed alley and into the 1425 P Street rear lobby entrance and to the lobby elevator to the rooftop residential recreation space at 1425 P Street.

16. At the public hearing, the Office of Planning testified that it could support the Applications based on the revised rooftop residential recreation space plans for 1425 P Street and other information provided at the hearing, which responded to and addressed the issues raised in its written report and that the Applicants had satisfied the variance test. Although authorized by the Board, the Office of Planning has not submitted any post-hearing comments.

17. The Honorable Councilmember Jack Evans from Ward 2, where both the subject properties are located, submitted a letter of support to the Board.

18. Advisory Neighborhood Commission 2F, which is automatically a party to these Applications, testified in support of these Applications and submitted a letter in support dated March 17, 2002. The Board has given ANC 2F the "great weight" to which it is entitled by law.

19. The Logan Circle Community Association testified at the public hearing in support of the Applications, including the extraordinary efforts of the Applicants and the PN Hoffman Company to meet the goals, objectives and concerns of the community in the design of the buildings, providing retail space and much needed additional off-street parking.

Extraordinary or Exceptional Conditions of the Properties

20. For the Church Street Property, the Historic Preservation Review Board approval required that the Church Street Condominium incorporate the existing Church Street garage into the new structure as an addition, and incorporate substantial setbacks and design of the massing to reduce the scale and height of the building and enhance the compatibility of the new construction with the existing architecture and scale of the adjoining buildings in the Historic District. Additionally, the Historic Preservation Review Board required that access to the underground parking be provided from the wider P Street, rather than the narrower Church Street thoroughfare. The Church Street Condominium was also designed with a ground floor courtyard/atrium with a fountain accessed from the lobby and each hallway on the upper floors to provide substantial public and private recreation space for the residents.

21. As a result of the Historic Preservation Review Board's approved design, little or no ground level space was available for providing residential recreation space. Height limitations imposed upon the design also limited the ADA accessibility and the amount of rooftop residential recreation space that could be provided in the Church Street Condominium. For both buildings, below grade space with low ceiling heights and no windows was not well suited for use as residential recreation space and was better suited and more desirable as additional off-street parking. Also, rooftop space was limited for residential recreation space by ADA accessibility restrictions and the requirement to provide individual HVAC equipment for each unit to be housed on the roof in order to limit noise.

22. For 1425 P Street, the ground floor retail to be provided, required off-street loading facilities and access to the underground garage limited the amount of ground level space available for residential recreation space. At the hearing, the Applicant provided a revised rooftop plan for 1425 P Street for the residential recreation space to be provided. However, additional recreation space on the rooftop could not be provided given the need to locate the individual HVAC compressors for each unit on the roof and the noise created by that mechanical equipment which would have diminished the quality of the additional residential recreation space.

23. Both the 1440 Church Street and 1425 P Street Properties have a high water table which made excavation of additional underground parking practically impossible and economically unaffordable.

Practical Difficulties

24. It is impractical for a variety of reasons for the Applicants to provide the required residential recreation space. First, the residential recreation space can only be provided at the expense of more important and desirable amenities and factors to the customers and community, including design, retail space and off-street parking. Thirty-one (31) of the thirty-two (32) contract purchasers at the Church Street Condominium have opted for at least one off-street parking space with their unit.

25. Providing the required level of residential recreation space will needlessly increase costs to the customers without providing a valued or desired amenity. Although the Applicants have demonstrated the ability to nominally comply with these requirements, the recreation space initially offered will not be quality, usable or reasonably utilized by the residents.

26. Compliance with this restriction puts the Applicants at a tremendous competitive and economic disadvantage compared to similar residential projects where little or no residential space is required by the applicable Zoning Regulations or demanded by the customers.

Public Benefit and Integrity of Zone Plan

27. ANC 2F and the Logan Circle Community Association established that the variance requested will substantially benefit the neighborhood and not create any adverse impacts. Taken together, these projects provide significant new residential construction, compatible design and historic preservation, neighborhood retail and substantial additional off-street parking.

28. The Applicants, despite the unique conditions and practical difficulties created, have met the intent of the Zoning Regulations by providing a combination public and private residential recreation space that equals the twelve percent (12%). Furthermore, such combined space is quality space that will actually be used. Additionally, the immediate neighborhood provides a wide variety of publicly available recreational space, including parks and at least a half a dozen gyms within walking distance.

CONCLUSIONS OF LAW

The Board is authorized under ' 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended, D.C. Code ' 6-641.07(g)(3) (2002)), to grant

variances from the strict application of the Zoning Regulations. The notice requirements of 11 DCMR ' 3113 for the public hearing on the application have been met.

Under the three-prong test for area variances set out in 11 DCMR ' 3103.2, an applicant must demonstrate that (1) the subject property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 379 A.2d 1164, 1167 (D.C. 1990).

In reviewing a proposed variance to determine whether it meets the three-prong test, the Board is required under D.C. Code ' 1-309(d) (2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, the ANC's written report and testimony support the Applications and specifically that the two (2) residential buildings, including the HPRB approved design of 1440 Church Street, the ground floor retail space at 1425 P Street, and that the requested variances will create substantial additional off-street parking which will meet important community objectives.

With respect to the variance test, the Board concludes the two (2) properties are subject to unique and extraordinary conditions, including the location of 1440 Church Street within the Greater 14th Street Historic District which has resulted in specific design setbacks, massing and height restrictions and a P Street entrance to the underground parking (all as required by HPRB), the limited ground level space available for usable and quality residential recreation space, the limited rooftop space available for usable and quality residential recreational space, the provision of ground floor retail space and required loading facilities at 1425 P Street, and the high water table which prevents excavation of additional lower level parking. The Board also concludes that strict application of the residential recreation space requirement will create numerous practical difficulties, including the fact that it is impractical to provide quality and usable recreation space that will actually be used by the residents, that the Applicants will be at a substantial economic and competitive disadvantage with other residential projects, and that the Applicants will be unable to provide more desirable amenities (e.g., off-street parking, retail and creative design) to residents and the community. Finally, the Board concludes that these projects provide a substantial benefit to the community and granting the requested variances will have no adverse impact and will meet the intent of the residential recreation space requirement.

Based upon the record before the Board and having given great weight to the ANC and Office of Planning reports and testimony in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that 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. Therefore, it is hereby **ORDERED** that Application Nos. 16841 and 16848 be **GRANTED**, with the **CONDITION** that the residential recreation space is provided for:

a. 1440 Church Street as shown in the Plans marked as Exhibit 31;

b. 1425 P Street as shown on the Revised Plans submitted at the hearing and marked as Exhibit 28; and

c. The Applicants may, but are not required, to allow the residents/owners at 1440 Church Street to share the rooftop residential recreation space provided at 1425 P Street.

VOTE: **4 - 0 - 1** (Geoffrey H. Griffis, David W. Levy, Curtis L Etherly, Jr. and Carol J. Mitten to Approve, Anne M. Renshaw, 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
DIRECTOR

FINAL DATE OF ORDER: MAY 16 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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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 (1999). 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.
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NOS. 16841 & 16848

As Director of the Office of Zoning, I hereby certify and attest that on MAY 16 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:

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