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March 19, 2002

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RECEIVED
D.C. OFFICE OF ZONING
2002 MAR 19 PM 4:00

HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: BZA Application No. 16843 (800 8th Street, N.W.)
Applicant's Post-Hearing Submission

Dear Members of the Board:

At the conclusion of the public hearing on the above-referenced matter on March 12, 2002, the Board left the record open to receive a post-hearing submission from the Applicant which was to include: (1) Further Analysis from the Applicant as to how the application meets the burden of proof required for the granting of the parking and access variances; and (2) Proposed Findings of Fact and Conclusions of Law. Both items are enclosed herewith.

The Applicant appreciates the opportunity to submit information to respond to the issues raised at the public hearing and to assist the Board in making its decision in this case. The Applicant hopes that, based upon the testimony at the hearing and the information provided herein, the Board will be in agreement that the granting of the requested variances is warranted in this case.

Very Truly Yours

Norman M. Glasgow Jr.

Lisa L. Jackson

BZA
Case No. 16843
Exhibit No. 37

Enclosures

Board of Zoning Adjustment
District of Columbia
CASE NO.16843
EXHIBIT NO.37

Applicant's Proposed Findings of Fact and Conclusions of Law

Application No. 16843 of Hillel: The Foundation for Jewish Campus Life, pursuant to 11 DCMR §§ 3103.2 for variances from the requirements of §§ 2101 and 2117 of the Zoning Regulations. The requested relief is requested to permit the Applicant to provide 14 spaces in stacked configuration on the upper below grade level of the building in the DD/C-3-C District at 800 8th Street, N.W. in Square 404, Lot 31.

Hearing Date: March 12, 2002
Decision Date: March 26, 2002

SELF CERTIFICATION

The zoning relief in this case was self-certified, pursuant to 11 DCMR § 3113.2

DECISION AND ORDER

Preliminary Matters:

1. The Board, pursuant to its rules, provided proper and timely notice of the public hearing on this application by publication in the District of Columbia Register and by mail to ANC 2C and to owners of property within 200 feet of the site. The application was also referred to the Office of Planning for review and report.

2. Prior to the hearing, the Applicant, Hillel: The Foundation for Jewish Campus Life, completed its purchase of the subject property, and substituted itself as the Applicant in the matter in place of 800 8th Street, N.W., L.L.C.

3. The current application is a request for a modification of a variance granted by the Board in BZA Application No. 16498 on October 13, 1999, in which the Board granted special exception relief from the rear yard and roof structure setback requirements of the Regulations and variance relief from the parking, access and loading berth requirements of the Regulations.

4. The Applicant proposes to provide a total of 14 parking spaces, three fewer than the 17 required under the Zoning Regulations, in a stacked configuration on the lower below grade level of the building.

5. The subject property is located within the jurisdiction of ANC 2C, which is automatically a party to this application, and which submitted a letter dated February 11, 2002, in support of the application.

6. As directed by 11 DCMR §3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variance relief pursuant to §3103.2. The parties to the proceeding were the Applicant and ANC 2C.

7. Three witnesses testified in full support of the Application, including two representatives of the Applicant, and a qualified expert in land use and urban planning.

8. The Office of Planning testified in opposition to the Application, citing its concern that the Applicant had not proven that the denial of the application would result in a practical difficulty for the Applicant and that the three parking space loss that would result if the application was granted by the Board would be detrimental to the parking environment in the Downtown area.

9. At the conclusion of the hearing, the record was left open until Tuesday March 19, 2002 for a post-hearing submission by the Applicant to provide: 1) further analysis of how it meets the burden of demonstrating a practical difficulty would result if the zoning regulations are strictly applied and that granting of the Application would not cause substantial detriment to the public good nor would it substantially impair the intent, purpose of integrity of the zone plan; and 2) proposed findings of fact and conclusion of law.

10. The Applicant's post-hearing submission was timely filed.

FINDINGS OF FACT:

1. The property that is the subject of this application is located in Lot 31 in Square 404.

2. The total site area is approximately 4,023 square feet.

3. The property has approximately 47 linear feet of frontage on H Street and 85 linear feet of frontage on H Street.

4. The property is located on the northwest quadrant of the intersection of 8th and H Streets, N.W., in the Gallery Place area of Downtown, one block west of the Gallery Place Metrorail Station and one block north of the National Portrait Gallery/Museum of American Art.

5. The property is located in the DD/C-3-C District but is not designated within any particular DD subarea.

6. The property is abutted by Greater New Hope Baptist Church on the north, the offices of the United States Mint on the West, H Street on the South and 8th Street on the east.

7. The Techworld offices and the Renaissance Hotel are located to the north of the site. Various commercial uses fronting on H Street are located to the east. Office buildings and the Calvary Baptist Church are located to the south. The offices of the U.S. Mint and the Washington Convention Center are located to the west.

8. The property is improved with a substantially completed nine-story building.

9. The Applicant will occupy the majority of the building and will temporarily lease a small amount of space on the second and third floors to related affiliated Jewish organizations until the space is needed for the Applicant's own activities.

10. The property includes a car elevator that provides access to the below grade parking spaces.

11. The mix of office and arts uses the Applicant proposes to locate in the building produce a requirement for 17 parking spaces.

12. The Applicant proposes to provide on the lower below grade level of the building eight parking spaces within the lot lines of the private property and six additional spaces in vault space rented from the District of Columbia government, in a stacked configuration.

13. Due to extraordinary security concerns, the Applicant will prohibit the public from parking in the building. The Applicant's survey of the transportation patterns of its employees established that the number of employees who currently drive to work is very limited. That number is not expected to increase due to the high transit accessibility of the subject property.

14. The Applicant proposes instead to adapt the space that it is unable to use for parking on the upper below grade level to provide for a kosher kitchen, storage room, mail room, a separate ventilation system, a community room and fitness center.

15. The Applicant further testified that based on internal surveys of the parking pattern of employees both at its current location and estimated patterns for the new location, most employees will commute via public transportation and that no more than six to 10 employees drive to work on an average daily basis.

16. Due to the nature of the building as an international organization, visitors to the site will likely be from out-of-town.

17. The Applicant further testified that based on a survey of parking in the area , there are currently more than 480 spaces within 400 feet of the subject property available for daily users in the area.

18. The Office of Planning testified that the Applicant had not shown that strict application would result in a practical difficulty to the Applicant since the building has been substantially constructed with the required number of parking spaces under the Regulations.

19. The Office of Planning further testified that once planned development is completed on a number of the lots cited in the Applicant's parking availability study, there will be fewer spaces available for daily users.

20. The Office of Planning further testified that the Applicant knew or should have known the zoning requirements when purchasing the building.

21. The Office of Planning further testified that the loss of the three spaces that would result if the Application is granted will be detrimental to the parking environment in the Downtown area.

22. The Board finds that the application meets the requirements for variance relief from the parking and access requirements of the Regulations. The property is affected by an exceptional situation, the strict application of the Regulations would create a practical difficulty to the Applicant such that compliance would be unnecessarily burdensome to the Applicant, and the requested variances will not cause substantial detriment to the public good and may be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

23. The property is small and narrow with a site area of only approximately 4,023 square feet and only approximately 47 feet of frontage on H Street, N.W. The small and narrow condition of the property makes it impossible to provide the required amount of parking in the required configuration.

24. The subject site is not wide enough to allow all of the required parking within the lot lines of the subject property or to accommodate ramps within a feasible configuration and the needs of the Applicant cannot be met in a smaller building.

25. Based on the Applicant's extraordinary security concerns and the resulting need to limit both public and employee access to the parking garage, the space on the upper below grade level would not be adapted for parking use in any event.

26. The 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.

27. Based on an internal survey of the current and future parking patterns of the Building's occupants, the Applicant has demonstrated that no more than 10 of the employees will drive to the site on an average daily basis and the proposed parking plan can sufficiently accommodate those employees. Even if commuting patterns change, there are four excess parking spaces available in the building.

28. Other visitors to the international organization will likely be out-of-town guests and likely will arrive to the site via public transportation.

29. Based on a survey of available daily parking in the area, there currently are more than 1,097 parking spaces available for daily users, at least 600 of which will remain when anticipated development of current parking facilities is completed in future years.

30. The ANC 2C, the District of Columbia Division of Transportation, Councilmember Jack Evans, the Greater New Hope Baptist Church and several other adjoining property owners submitted letters indicating that the minor request for a reduction of three parking spaces would not have any adverse effect on the surrounding neighborhood.

31. When compared to other uses in the area that generate substantially higher demand for parking, such as the MCI Center and the Washington Convention Center, the loss of three parking spaces that would result if the subject application is granted would not cause substantial detriment to the public good nor would the loss of such a small number of spaces impair the integrity, intent or purpose of the zone plan.

32. In order to ameliorate any adverse effect, the Applicant would support the return of three to four metered parking spaces in front of the building.

33. The Applicant also agrees to a condition limiting the variance to Hillel and other similarly situated organizations in the future.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact, the Board concludes that the Applicant is seeking a variance relief under sections §§2101 and 2117 of the Zoning Regulations.

The Board concludes based on its findings that the requested variances are area variances, since both relate to the ability of the Applicant to meet the requirements of the Zoning Regulations based on the physical condition of the Property. The granting of an area variance requires proof of a practical difficulty upon the owner arising out of some unique and exceptional or extraordinary condition of the property. The Board must further find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent of the zone plan.

As distinguished from the burden required to be met for a use variance, an application for an area variance requires the application to demonstrate that: 1) the property is affected with an extraordinary or exceptional situation or condition; 2) strict application of the Zoning Regulations would impose a peculiar and exceptional practical difficulty upon the owner; and 3) the application can be granted without substantial detriment to the public good and without impairing the intent, purpose or integrity of the zone plan as embodied in the Regulations and Map. While a use variance generally requires a showing that the failure to grant the variance would impose an undue hardship upon the Owner, an area variance requires a lesser showing that the failure to grant the variance would impose a "practical difficulty" upon the Owner. See The Law of Zoning and Planning, Rathkopf, §38-18.

The District of Columbia has consistently adopted the "practical difficulty" standard of proof for area variance cases. In the seminal case of Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. App. 1972), the Court of Appeals in adopting the practical difficulty standard for area variance applications, interpreted the standard as requiring a showing that compliance with the regulation would be "unnecessarily burdensome" to the Owner. See also, A.L.W., Inc. v. District of

Columbia Board of Zoning Adjustment, 338 A.2d 428 (D.C. App. 1975); Association for the Preservation of 1700 N Street, N.W. v. District of Columbia Board of Zoning Adjustment, 384 A.2d 674 (D.C. App. 1978).

Recognizing the added development pressures for non-profit groups, the Court has further relaxed the standard for approving a variance in Monaco v. Board of Zoning Adjustment, 407 A.2d 1091 (D.C. App. 1979); and National Black Child Development Institute v. Board of Zoning Adjustment, 483 A.2d 687 (D.C. App. 1984). The Court stated in Monaco that the Zoning Board "may establish a more flexible standard in assessing the variance application of a non-profit organization...".

Consistent with the current trend in most states, the Court of Appeals also has held on numerous occasions that a self-created hardship is not a bar to the granting of an area variance. See A.L.W., 383 A.2d at 431; see also DeAzcarte v. District of Columbia Board of Zoning Adjustment, 388 A.2d 1233 (D.C. App. 1978).

Following consideration of whether a variance application involves an exceptional situation or condition, compliance with which would be unnecessarily burdensome to the owner of the property, the Board also must consider whether the variance can be granted without substantial detriment to the public good and without impairing the integrity, intent and purpose of the zoning plan. See National Black Child Development Institute, 483 A.2d at 691; see also Monaco, 407 A.2d at 1101. Where the Board finds that an application could cause substantial detriment or would impair the integrity, intent or purpose of the zoning plan, it may impose conditions to mitigate that effect. See National Black Child Development Institute, 483 A.2d at 691, 692 (holding only that conditions that are imposed may not be personal to the Applicant).

The Board concludes that, based on the findings and recitations of applicable law herein, and agreeing with the Applicant and the ANC, the Applicant has met the respective burdens of proof for the requested variances. The Board further concludes that the site is unique and affected by the exceptional condition of its small and narrow size, which would present a practical difficulty to the Applicant if the Regulations are strictly applied because it would be physically impossible to provide the required number of spaces within the building's lot lines, and it would be unnecessarily burdensome to require the Applicant to use space for parking when it has convincingly demonstrated that it will not need or use the space for parking in any event and the space can be put to much more beneficial use to meet the requirements of the owner. The Board also concludes that granting of the Application will not substantially detriment the public good nor will it substantially

impair the intent, purpose and integrity of the zone plan. The Applicant will provide a total of 14 spaces, which will more than meet the needs of employees of the building. The Property is located within one block of the Gallery Place Metrorail Station and most of the building's employees and visitors will arrive at the site by Metrorail or other modes of public transportation. To ameliorate any possible adverse effect tht might result from the granting of this application, the Applicant will support the return of three to four metered parking spaces in front of the building along 8th Street and will agree to a condition limiting the variance to the Applicant and similarly situated organizations

The Board concludes that it has accorded to Advisory Neighborhood Commission 2C and the Office of Planning the great weight to which each is entitled. It is therefore hereby ORDERED that this application be GRANTED subject to the following conditions:

a. The Applicant shall support the return of three to four metered parking spaces in front of the building; and

b. The approval of this Application is limited to Hillel and similarly situated organizations.

VOTE:

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

ATTESTED BY:_____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER:_____

PURSUANT TO D.C. CODE SEC. 2-1402.67 (2001), 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 2, CHAPTER 14 (2001), 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 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURES FOR THE BOARD OF ZONING ADJUSTMENT."

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.

WAS1 #1068130 v1

SUPPLEMENTAL STATEMENT OF THE APPLICANT
BZA Application No. 16843
800 8th Street, N.W. (Square 404, Lot 31)

Procedural Background

The Applicant in this case, Hillel: The Foundation for Jewish Campus Life, is requesting a minor modification of the variance that was granted in BZA Application No. 16498 from the parking and access requirements of the Zoning Regulations so that it may provide a total of 14 parking spaces, three fewer spaces than the 17 that are required under the Zoning Regulations. Following testimony in opposition by the Office of Planning at the public hearing on March 12, 2002, the Board left the record open until March 19, 2002, to receive a post-hearing submission from the Applicant explaining how the Applicant meets the burden of proof required for the granting of an area variance, particularly as relating to the requirement that the Applicant demonstrate that a practical difficulty would result if the Application is not granted, and that granting of the application would not cause substantial detriment to the public good or impair the intent, purpose and integrity of the zone plan. All parties agreed that the subject property was unique and affected by an exceptional situation or condition. Initially, Applicant is addressing this matter, recognizing as the Board observed at the hearing, that this is an application concerning three parking spaces in the downtown area.

The Applicant will discuss below: (1) the standards the Board must apply in determining whether an applicant has meet the burden of proving that a practical difficulty exists in an area variance case in the District of Columbia; and (2) an analysis of the manner in which the subject application complies with applicable requirements of the District of Columbia Zoning Regulations.

I. Standards the Board Must Apply in an Area Variance Case

1. Application of "Practical Difficulty" Standard in Area Variance Cases

A. Practical Difficulty Has Been Defined as "Unnecessarily Burdensome"

As distinguished from the burden required to be met for a use variance, an application for an area variance requires the application to demonstrate that: 1) the property is affected with an extraordinary or exceptional situation or condition; 2) strict application of the Zoning Regulations would impose a peculiar and exceptional practical difficulty upon the owner; and 3) the application can be granted without substantial detriment to the public good and without impairing the intent, purpose or integrity of the zone plan as embodied in the Regulations and Map. While a use variance generally requires a showing that the failure to grant

the variance would impose an undue hardship upon the Owner, an area variance requires a lesser showing that the failure to grant the variance would impose a "practical difficulty" upon the Owner. See The Law of Zoning and Planning, Rathkopf, §38-18.

The District of Columbia has consistently adopted the lesser standard of proof for area variance cases. In the seminal case of Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. App. 1972), the Court of Appeals in adopting the practical difficulty standard for area variance applications, interpreted the standard as requiring a showing that compliance with the regulation would be "unnecessarily burdensome" to the Owner. See also, A.L.W., Inc. v. District of Columbia Board of Zoning Adjustment, 338 A.2d 428 (D.C. App. 1975); Association for the Preservation of 1700 N Street, N.W. v. District of Columbia Board of Zoning Adjustment, 384 A.2d 674 (D.C. App. 1978).

B. Relaxation of Standard for Non-Profit Entities

Recognizing the added development pressures for non-profit groups, the Court has further relaxed the standard for approving a variance even further in Monaco v. Board of Zoning Adjustment, 407 A.2d 1091 (D.C. App. 1979); and National Black Child Development Institute v. Board of Zoning Adjustment, 483 A.2d 687 (D.C. App. 1984). The Court stated in Monaco that the Zoning Board "may establish a more flexible standard in assessing the variance application of a non-profit organization...".

C. Self-Created Hardship Not a Bar to An Area Variance

Consistent with the current trend in most states, the Court of Appeals also has held on numerous occasions that a self-created hardship is not a bar to the granting of an area variance. See A.L.W., 383 A.2d at 431; see also DeAzcarte v. District of Columbia Board of Zoning Adjustment, 388 A.2d 1233 (D.C. App. 1978).

D. Board May Place Conditions on a Variance to Mitigate an Adverse Effect

Following consideration of whether a variance application involves an exceptional situation or condition, compliance with which would be unnecessarily burdensome to the owner of the property, the Board also must consider whether the variance can be granted without substantial detriment to the public good and without impairing the integrity, intent and purpose of the zoning plan. See National Black Child Development Institute, 483 A.2d at 691; see also Monaco, 407 A.2d at 1101. Where the Board finds that an application could cause substantial detriment or would impair the integrity, intent or purpose of the zoning plan, it may impose conditions to mitigate that effect. See National Black Child Development

Institute, 483 A.2d at 691, 692 (holding only that conditions that are imposed may not be personal to the Applicant).

2. Summary of Applicable Standards for Area Variance Requests

The requests for variances from the parking and access requirements of the regulations are area variance requests. In addition, the Applicant is a non-profit organization. Therefore, in accordance with the above-listed precedents, the Board must evaluate the request for variances (1) in terms of whether denial would be unnecessarily burdensome to the Applicant; (2) without consideration of the fact that Hillel knew or should have known that it would need to request variance relief when it purchased the property; and (3) applying greater flexibility in determining whether the Application meets the required burden of proof in light of the Applicant's status as a non-profit organization. In addition, in order to mitigate the effect of a variance on surrounding properties, the Board may impose conditions that would limit the variance to users in the future that are similarly situated. See National Black Child Development Institute at 692.

II. Further Analysis of the Manner in Which the Burden of Proof is Met in the Subject Case

1. Denial of Relief Would Be Unnecessarily Burdensome to the Applicant

In accordance with the above-referenced caselaw, it would be unnecessarily burdensome to require the Applicant to use the upper below grade level for parking when its demand for the spaces and its unique security concerns demonstrate that the space will not now or ever be used for that purpose. Denial of the application would effectively leave useless approximately 10% of the space in a building that already is substantially smaller than other office buildings in the area due to the extremely small size of the lot on which it is located. As indicated during the hearing, the security implications of a building occupied by an international Jewish organization dictate that the general public will *never* be allowed to park in the building. On a regular basis, only approximately six employees will drive to work and park in the building. On an average day, only four other people will also drive to work, all of whom could be accommodated on the one lower level in the building, still leaving four additional spaces available to accommodate unusual situations or changes in commuter patterns.

In addition, it would be unnecessarily burdensome for Hillel to re-allocate the uses it proposes to provide on the upper below grade level to the expansion space it intends to temporarily lease to affiliated organizations. The total amount of space proposed to be leased on levels two and three of the building is only approximately 3,700 square feet, less than the total square footage of the upper below grade level. Therefore, if the uses proposed for the lower below grade level were reallocated,

they could not all fit on levels two and three and would have to be accommodated by further reducing the already limited office space on floors four through nine, and thereby further unnecessarily burdening the Applicant.

The fact that the Applicant was aware that zoning relief was necessary when it purchased the building should not bar it from being granted the requested relief, since such knowledge is not a bar to relief under District of Columbia caselaw. In addition, denial of the requested relief based on such awareness would be unnecessarily burdensome to the Applicant, given the absence of any adverse affect on surrounding properties.

2. The Application Would Not Cause Substantial Detriment to the Public Good Nor Impair the Integrity, Purpose of Intent of the Zone Plan

As indicated in the Applicant's previous submissions and during the public hearing on this case, the requested relief will not have any adverse effect on the surrounding properties. The close proximity to Metro, the Applicant's own internal survey of its employees' transportation patterns and available parking in the area, the letters of support from neighboring property owners, Advisory Neighborhood Commission 2-C, Councilman Jack Evans, and the D.C. Division of Transportation, and the Applicant's intent both to prohibit public parking and to limit employee parking at the building due to security concerns, all provide strong evidence in support of the application's lack of an adverse impact. Even taking into account the Office of Planning's survey of the number of parking spaces in the area that will be available after planned development in the area is completed, there would still be in excess of 600 parking spaces available for daily users, a number substantially in excess of the three parking spaces that would be eliminated if this application is granted.

In addition, the Applicant anticipates that no more than six of its employees will drive to the site on a regular basis and that the maximum number that would drive to the site in one day would not exceed 10 employees. With the requested relief from the access requirements, the Applicant will be able to amply accommodate on-site all of the parking needs that its own surveys indicate could be conceivably be required. Even if the commuting patterns of future employees is different from current employees, the number of parking spaces available on-site and in the area can easily accommodate <u>any</u> additional demand.

In order to further ameliorate any impact from the granting of this application, the Applicant would be willing to agree to a condition limiting the variance to the Applicant and similarly situated Applicants. The Applicant would also support the return of three to four parking meters adjacent to the property. The H Street frontage would be requested to be a designated loading zone.

III. Conclusion

For the foregoing reasons, the Applicant again respectfully requests that the Board grant this application.

Respectfully Submitted

HOLLAND & KNIGHT LLP

Norman M. Glasgow, Jr.

Lisa L. Jackson

WAS1 #1067910 v1