GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16857 of HQ Acquisition LLC, pursuant to 11 DCMR § 3103.2, for a variance from the height requirements under Section 770, a variance from the residential recreation space requirements under Section 773, a variance from the parking-aisle width requirement under Subsection 2117.5, and pursuant to 11 DCMR §§ 3104.1 and 2107.1, a special exception from the off-street parking requirements under Section 2101.1, for a mixed-use (residential and retail) development in a C-3-A District at premises 4500 Wisconsin Avenue, N.W. (Square 1730, Lot 15).

Note: After a public hearing, the Board granted the three requested variances and decided to grant a variance in lieu of a special exception with respect to the requirements of subsection 2101.1.

HEARING DATE: April 9, 2002
DECISION DATE: April 9, 2002 (Bench Decision)

DECISION AND ORDER

HQ Acquisition LLC, a Delaware limited liability company and the owner of Lot 15 in Square 1730, with a street address of 4500 Wisconsin Avenue, N.W., filed an application with the Board of Zoning Adjustment on February 1, 2002, requesting zoning relief to permit the development of a mixed-use project, combining retail on the street level in a restored historic building and a four-story residential structure to be added above, in a C-3-A Zone District. The Applicant is represented in these proceedings by Latham & Watkins. After a public hearing, the Board granted the application by a bench decision.

Pursuant to 11 DCMR § 3103.2, the Applicant is seeking three variances: first, from the height requirements under Section 770, which limits maximum allowable height in a C-3-A zone to sixty-five feet; next, from the residential recreational space requirements of sections 773.3 and 773.8, which require that fifteen percent of the gross floor area of the property devoted to residential use must be provided as recreational space, no less than fifty percent of which must be outdoors; and finally, from the parking-aisle-width requirements of section 2117.5, which requires that parking aisles be not less than seventeen feet for angle parking that is sixty degrees or less. In addition, the Applicant seeks a special exception pursuant to 11 DCMR §§ 2107.1 and 3104.1 from the provisions of section 2101.1, with respect to the required number of parking spots for the retail component of the building. The zoning relief requested in the application is self-certified pursuant to § 3113.2. After a public hearing, the Board granted the three requested variances and decided to grant a variance in lieu of a special exception with respect to the requirements of subsection 2101.1.

BZA
Case No. 16857
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16857
EXHIBIT NO.35

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memorandum dated February 25, 2002, the Office of Zoning provided notice of the filing of the application to the District of Columbia Office of Planning; Advisory Neighborhood Commission (ANC) 3E, the ANC for the area within which the property that is the subject of the application is located; ANC 3F, the ANC adjacent to the ANC in which the property is located; and the Ward 3 Councilmember.

The Board scheduled a hearing on the application for April 9, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on February 25, 2002, mailed the Applicant, the owners of all property within 200 feet of the subject property, and both ANC 3E and ANC 3F notice of hearing. The Applicant's affidavit of posting indicates that on March 21, 2002, three zoning posters were placed on the property, one on River Road, one on Wisconsin Avenue, and one of Albemarle Street, all in plain view of the public.

Requests for Party Status. There were no requests for party status in this case.

Applicant's Case. The Applicant presented testimony from Richard Lake and Armond Spikell, both of whom are directly involved in the development of the project for the owner as well as for the developer, Roadside Development, L.L.C., as well as testimony from project architect Robert Sponseller, of the architecture firm Shalom Baranes Associates. In addition, the Applicant submitted a traffic analysis from Gorove/Slade Associates, Inc., a traffic expert.[1]

D.C. Office of Planning ("OP") Report. In its report dated April 2, 2002, OP recommends approval of the requested variances and special exception.[2] OP notes that the density and mix of uses proposed by the Owner for the property, which sits atop the Tenleytown Metrorail Station, is a "strong example" of the type of transit-oriented development ("TOD") called for by the Comprehensive Plan and the Mayor's Task Force on TOD. OP concludes that the "skillful adaptive reuse for significant retail use, and the addition of a significant residential population, as proposed by the Applicant, can be a significant step in adding additional vitality to the center of Tenleytown." Finally, OP advises that the Applicant has been working closely with the staff of the Historic Preservation Review Board ("HPRB") and that the staff has recommended approval of current conceptual plans.

D.C. Division of Transportation (DDOT) Report. In its report dated April 8, 2002, DDOT recommended approval of the variance for parking-aisle width and the reduction in parking spaces as a special exception. DDOT noted that the proposed mixed-use development would generate "far less traffic" than the previous use as a single large-scale retailer (Sears, Roebuck & Company ("Sears") and then Hechinger's) and that the "level of traffic [under the

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[1] Although not formally a part of Applicant's case, it should be noted that the Applicant is seeking permission from the Zoning Commission to rescind a since-superceded covenant entered into in 1940 between the Board of Commissioners for the District of Columbia and Sears Roebuck & Company, the original developer of the current building. On the recommendation of the Zoning Commissioner, on March 26, 2002 the Applicant submitted the details of its proposed rescission as part of the record in this case, but made clear that no action was sought on the part of the Board. Accordingly, we note this submission solely for record purposes.

[2] OP's Report was submitted less than seven days prior to the April 9 hearing and, by memorandum dated April 3, 2002, OP accordingly requested a waiver of the seven-day advance filing requirement of § 3115.1. At the outset of the hearing, the Board voted 5 to 0 to grant the waiver and accept OP's Report.

proposed development] will have no measurable impact on the street system in the area." Ex, 22.

ANC Reports.

ANC 3E. ANC 3E indicates that at a public meeting on March 14, 2002, the ANC passed a unanimous resolution in support of the application. The ANC 3E resolution notes that the Applicant "has involved the community in the process of identifying tenants and planning the future of the property," and that the "current plan has been presented at public meetings of the ANC, [and] reviewed by the commissioners and a committee of interested citizens." ANC 3E's resolution further notes that the Applicant's design, following input from the community and the HPRB, has significant setbacks from both Wisconsin Avenue and Albemarle Street. With respect to parking, the resolution states that the proposed project provides more total parking than currently provided or required under zoning and that the impact on the neighborhood would be less than that of a 186,000-square foot department store, the alternative to the mixed-use proposal under consideration. Finally, the resolution notes that the residential recreational space provided is supported by market conditions and is consistent with recent BZA precedents.

ANC 3F. ANC 3F approved a resolution on the application by a vote of 5-1-0 at a duly noticed public meeting on March 18, 2002, with a quorum present. ANC 3F's resolution indicated that the ANC does not object to the height variance sought provided that the variance includes an agreement that the Applicant not lease or sell air rights above the site without approval from the residential tenants and the ANCs. The resolution next recommended that the Applicant explore using the unused ramps to the roof for recreational space. The resolution then recommended that the aisle-width variance be conditioned on approval from the Fire Marshall to avoid any impediment to access by emergency vehicles. Finally, the resolution recommended that the Applicant prepare a traffic study. ANC 3F Chair Cathy Wiss presented the ANC's resolution at the hearing.

Persons in Support of the Application. The Board received a supporting letter from the Tenleytown Neighbors Association, indicating that the Association had adopted a resolution endorsing Applicant's proposed project.

Persons in Opposition to the Application. No person opposed the Application.

Closing of the Record. The Board closed the record at the conclusion of the public hearing.

Decision Meeting. At its April 9, 2002 public meeting, the Board voting 5 – 0 – 0 approved the Application in all respects save that the Board decided to grant a variance with respect to off-street parking in lieu of the requested special exception.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The property that is the subject of this application is Lot 15 in Square 1730, also known as 4500 Wisconsin Avenue, N.W.

2. The property is zoned C-3-A.

3. The site on which the property sits has an irregular shape, bounded on the east by Wisconsin Avenue, on the northeast by River Road, on the northwest by Murdock Mill Road (an old remnant of a road that is now essentially an alley), on the west by a short alley, and on the south by Albemarle Street.

4. The lot is 95,131 square feet in area.

5. The property sits directly atop the west entrance to the Tenleytown-AU Metrorail Station and the design of the current building incorporates that entrance as a significant feature in the Wisconsin Avenue frontage.

6. To the west of the property, across the alley, is the Isabella Breckinridge Center (Iona Senior Services).

7. Directly northwest of the property is a series of low buildings that house professional offices.

8. Also to the northwest, across the segment of Murdock Mill Road and facing River Road, is the Eldbrook United Methodist Church. Southwest of the church is the old Methodist Cemetery.

9. Across Wisconsin Avenue to the east is a shopping center that includes a Fresh Fields grocery store as well as a variety of retail stores and restaurants.

10. South of the property, across Albemarle Street, sits the Janney Elementary School and the Tenley-Friendship Branch Public Library, which is on the corner of Albemarle Street and Wisconsin Avenue.

11. The property is primarily surrounded by commercial and public facilities, in a neighborhood noted for several civic and community buildings in close proximity. The property, for example, is only a few blocks west and southwest of Wilson High School and Fort Reno Park and reservoir and a few blocks north of the Tenley Campus of American University.

12. The property is also at the center of the Tenleytown commercial zone that runs along Wisconsin Avenue from Grant Road on the south to Chesapeake Street on the north.

13. The Tenleytown commercial cluster is designated as multi-neighborhood commercial center in the District of Columbia Comprehensive Plan and the center of the commercial corridor, including the property site, is designated as a Special Treatment Area in the Comprehensive Plan.

The Existing Building

14. The building that currently occupies the site was constructed in 1940 by Sears to house one of the first "suburban" Sears Department Stores in the country. The building is an important example of art deco architecture, noted for the ramps on three sides that lead up to a signature roof deck. The building was designated an historic landmark in the District of Columbia Inventory of Historic Sites in 1995.

15. The existing building has a basement, a ground floor, a mezzanine level and a roof deck.

16. As most recently used, the basement level combined parking, retail sales and storage. The entire ground floor and mezzanine were devoted to retail sales. The roof was used for parking, retail sales and storage.

The Proposed Project

17. The property was occupied by Sears until 1992 and then housed a Hechinger's home improvement store until Hechinger's declared bankruptcy. The property has been largely unused since 1999 and prior attempts at revitalizing the site have failed. Several factors have made development difficult, including development constraints associated with the historic

designation of the building and concerns raised by the community about the impact of large-scale single-use retail.

18. The Applicant has worked closely with the community to address these concerns and has also worked closely with the HPRB to arrive at a viable development proposal that will bring a mix of uses to the site as called for in the Comprehensive Plan while preserving and enhancing the defining historic characteristics of the existing building.

19. Under the Applicant's proposal, the basement level primarily would be used for retail parking for the project, with 150 parking spaces accessed by two ramps from River Road. The planned parking aisles would have a width of approximately 14 feet, 6 inches. In addition, approximately 11,600 square feet of the basement level is planned for retail uses, possibly subdivided to allow a small portion to connect to the ground floor retail.

20. The ground floor would be used for retail stores, with entrances along Wisconsin Avenue and River Road, and a separate lobby for the proposed residential component, with an entry on Albemarle Street. The lobby would also house uses like the residential manager's office, a club room, a business center and a fitness facility. Also, in addition to the three existing loading berths, up to three additional loading berths are to be added, all of which will allow trucks to pull entirely in off the alley (something that had been a source of concern with the previous occupant).

21. The current roof deck would be returned to its original use as parking, with approximately 170 spots for residential use. The roof deck would be accessed by the ramp leading up from Albemarle Street, keeping the residential traffic flow distinct from the retail traffic flow entering the basement parking from River Road.

22. There are two other existing parking ramps, one dropping down to Wisconsin Avenue from the roof deck and the other at the northwest side of the building. The Applicant is exploring the adaptive reuse of some or all of this ramp space for the residents.

23. On top of the roof deck, the Applicant proposes to construct a four-story residential addition that will house approximately 170 to 200 residential units.

24. In deference to the character and scale of the buildings in the neighborhood, and to allow set-backs requested by the community and the HPRB, the Applicant has significantly set back the proposed residential addition from Wisconsin Avenue.

Building Height

25. The Applicant is seeking an area variance to permit a total height for the proposed project, when the residential component is added, of 70 feet, as measured from the mid-point of Albemarle Street.

26. In order to accommodate the significant set-backs required by the HPRB and the community, and to restore the current roof deck to its original uses, it is necessary to add verticality to the design.

27. The additional height is also necessary to accommodate the complex and challenging mix of uses within the constraints of adaptive reuse. As a practical matter, there is almost no flexibility to alter significantly the base on which the residential component is proposed to be added and a variety of building systems that would ordinarily be situated directly below such a residential structure will have to be routed across what will become the ceiling of the roof parking, a task that will not be feasible (and would sacrifice the roof-level parking,

which is an integral part of the building's history) without additional transitional height between the current roof level and the proposed first floor of the residential component.

28. Additional height would also provide essential flexibility in construction methods, which is necessitated by the engineering challenges posed by adding a four-story addition atop an existing historic building.

29. Based on the above, the Board finds that the proposal's commitment to preserving the current historic structure places significant constraints on the Applicant's ability to create the mix and density of uses the community and the Comprehensive Plan designate as optimal for the site, making full compliance with the height requirements of the Zoning Regulations impracticable, unduly restrictive, and unreasonable.

Residential Recreation Space

30. The Applicant is requesting an area variance to permit the reduction in the required residential recreation space from the required 30,560 square feet (of which 15,280 square feet must be outdoor recreational space) to 9,900 square feet (of which 9,100 square feet will be outdoor recreational space). Ex. 31.

31. The recreation space to be provided would consist primarily of a large central courtyard around which the residential addition would be built. In addition, the Applicant is proposing as recreation space several components of the ground-level residential lobby area, including a fitness facility and a club room.

32. The size of the interior courtyard maximizes the light and air available to the apartment units, and provides significant common open space. Since the setbacks required by HPRB and the unusual shape of the lot place significant constraints on the design of the new residential component, the Applicant cannot expand the size of the courtyard without reducing the size of the surrounding apartment units, substantially reducing their utility.

33. The Applicant, in response to concerns raised by ANC 3F, is actively exploring landscaping and using as common space for the residents of the new addition the ramp area on Wisconsin Avenue.

34. The property is in close proximity to a variety of open space, most notably Fort Reno Park to the northwest.

35. The Board finds that the Applicant would confront practical difficulties in complying with the residential recreation space requirements due to unique and exceptional conditions of the property: the irregular shape of the lot, the need to preserve the existing historic structure, and need to set the new addition back from the Wisconsin Avenue frontage. These conditions limit the size and shape of the addition that can be constructed, which in turn limit the amount and location of the residential recreation space that can be provided.

36. In addition, the Board finds that the community surrounding the project provides sufficient alternative recreational opportunities to mitigate the impact of any variance on the residents of the new addition.

Parking-Aisle Width

37. The unusual shape of the current building, the location of the building supports, and the constraints imposed by the building's historic designation as a practical matter severely limit the configuration of parking.

38. In order to maximize parking, the Applicant is proposing 60-degree angled parking, which leaves the east-west parking aisles in both the basement and on the current roof deck with aisles of approximately 14 feet, 6 inches, instead of the required 17 feet.

39. The Board finds that the Applicant would confront practical difficulties in complying with the parking-aisle width requirements due to unique and exceptional conditions of the property: namely, the irregular shape of the lot and the need to preserve the existing historic structure.

Off-Street Parking

40. The current building provides 211 off-street parking spaces, all of which have been used for retail parking.

41. Under the proposal before the Board, the Applicant would provide a total of 320 spaces, with approximately 150 spaces in the basement for the retail component and approximately 170 spaces on the roof deck for the residential component.

42. As so designated, the traffic flow to and from the building will be separated and the limitation of retail parking to the basement level will enable the Applicant to ensure that control is maintain sufficient to prevent improper use of the parking spots by riders of the Metrorail system.

43. The site, as noted, connects directly to the Tenleytown Metrorail Station, significantly mitigating the impact of the retail uses, especially considering the type of retail proposed (as opposed to the larger, single-retail store previously in the building), but it will be important to keep residential and retail parking separate in order to maximize the benefits that such direct Metrorail access provides.

44. Directly across the street from the project site is a parking structure that serves the entire Wisconsin Avenue commercial strip of which the project is a part, and the Board anticipates that the addition of retail uses across the street will encourage shoppers to park at one destination or the other and shop at both, reducing the parking impact on the neighborhood as a whole.

45. Given the shape and historical nature of the building and the desire of the owners to be responsive to the community's desire for maximizing the parking available to the residential tenants, it would be impractical under the constraints of the site to accommodate additional parking and it would undermine fundamentally the benefits of the proposal to alter the proposed division of retail and residential parking facilities.

46. The Board finds that the Applicant would confront practical difficulties in complying with the retail parking requirements due to unique and exceptional conditions of the property; namely, the irregular shape of the lot, the need to preserve the existing historic structure, the importance of ensuring separation of traffic flow and adequate control over the retail parking.

Impacts on the Zone Plan and the Public Good

47. The Comprehensive Plan Generalized Land Use map designates the Tenleytown Metrorail Station Special Treatment Area for residential and commercial development that maximizes Metrorail access and provides for substantial new housing. See Section 1129.2, attached as an exhibit to the OP Report.

48. As described in the Zoning Regulations at 11 DCMR §§ 740.1 – 740.9, the C-3-A district is designed to accommodate important sub-centers supplementary to the Central Business district. Such community business districts should provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside of the central core. Areas zoned C-3-A are targeted for medium density development, with a density incentive for residential development within a general pattern of mixed-use development. Finally, C-3-A districts must be compact in area and located on arterial streets, in uptown centers, and at rapid transit stops.

49. OP states that the Applicant's proposal is an important project at a key location in the central business district of the Tenleytown neighborhood. According to OP, the project is critical to revitalizing the commercial heart of the neighborhood while bringing additional housing to a Metrorail connection.

50. The applicant has engaged in extensive public outreach and modified its plans in an effort to incorporate as many community concerns as possible, meeting over the course of several years with an informal "Hechinger's Task Force" that included representatives from ANC 3E and ANC 3F and other community groups. In response to community input, for example, the Applicant set the proposed residential component back from Wisconsin Avenue to create distinction between that component and the current building. As a result of the Applicant's efforts, the proposal enjoys broad community support.

51. ANC 3F, which is located less than two blocks from the property, identified four concerns relating to this project.

52. First, ANC 3F indicated that some members of the community expressed concern that air rights on the roof may be leased or sold for commercial structures like antennas not related to the onsite use of residential and retail tenants. ANC 3F seeks a condition to the grant of the variance that the Applicant not lease or sell air rights above the site without first obtaining approval from the residential tenants and the ANCs.

53. There is no need to condition the variance, however, because to the extent that the Applicant chooses to seek additional height for its building beyond that granted by the variance requested in this proceeding, the Applicant would have to return to the Board for further approval.

54. Second, ANC 3F recommended that the Applicant explore using the unused ramps to the roof for recreational purposes.

55. The Applicant provided testimony indicating that it is exploring such use.

56. Third, ANC 3F recommends that the variance for the width of parking aisles be conditioned on approval from the Fire Marshal.

57. The Applicant will be under a continuing obligation to comply with all code requirements relating to safety regardless of parking-aisle width and the Board notes that under the current proposal, emergency vehicles would not access either the residential or the retail structure through the parking areas.

58. Finally, ANC 3F recommends that the Applicant prepare a traffic study to assess the impact of traffic from the proposal and to determine whether adjustments should be made to traffic signals and patterns to mitigate any adverse impacts.

59. No traffic study is needed, however, because the DDOT report indicates that the proposal would have no measurable impact on the street system in the area and that trip generation under the current proposal will be less than that under previous uses.

60. In addition, the Applicant has indicated its intent to work closely with the DDOT (now the Department of Transportation).

61. Based on the above findings of fact, the Board finds that granting the requested variances, and granting a variance for parking, will be in harmony with, and will not materially impair, the general purpose and intent of the Zoning Regulations, and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

62. The Board also find that the variances 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.

CONCLUSIONS OF LAW AND OPINION

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)(2) and (3) (2001)), to grant special exception and variance relief from the Zoning Regulations. The Applicant is seeking area variances from the height requirements under § 770, from the residential recreation space requirements under § 773, and from the parking-aisle width requirement under § 2117.5. In addition, the Applicant is seeking a special exception from the off-street parking requirements under Section 2101.1. The public notice requirements of § 3113 for the public hearing on the application have been met.

In reviewing special exception and variance applications, 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 both ANC 3E and ANC 3F). The Board is also required under D.C. Code § 6-623.04 (2001) to give "great weight" to OP's recommendations. The Board has carefully considered both the ANCs' and OP's reports and recommendations and has accorded them the appropriate "great weight."

Height Variance

Under the three-prong test for an area variance set out in D.C. Code § 6-641.07(g)(3) (2001), and quoted in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, or topography, or other extraordinary or exceptional situation or condition connected with the property; (2) the applicant would encounter practical difficulty as a result of the unique characteristics of the property if the Zoning Regulations were strictly applied; and (3) granting the variance will not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map. See, e.g., Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990); Draude v. District of Columbia Bd. of Zoning Adjustment, 527 A.2d 1242, 1254 (D.C. 1987). To show practical difficulty, an applicant must prove that compliance with an area restriction would be unnecessarily burdensome and that the practical difficulty is unique to the particular property. The nature and extent of the burden are determined on a case-by-case basis, and the Board may consider a wide range of factors in determining whether there is an unnecessary burden or practical difficulty. Gilmartin, 579 A.2d at 1170.

Section 770.1, which governs height limitations in Commercial Districts, requires a maximum height of 65 feet for the project. The Applicant is seeking an additional five feet in

order to facilitate a complex project that combines a historical retail building with a new residential component added on top with a design that for historic preservation reasons seeks to retain the current roof-top parking.

Based upon the findings of fact and having given great weight to the ANC and OP reports, the Board concludes that the proposed project meets the three-prong test for a variance. First, the Board concludes that the subject property is unique due to the need to preserve the historic retail base structure on which an entirely new residential structure will be built, on a site that due to its shape and configuration leaves no option for horizontal accommodations to design necessities. These exceptional characteristics of the property significantly limit the configuration of any building that could be built and the options for the transition for building mechanical systems that vary by use. The Board thus concludes that as a result of the unique characteristics of the property, the strict application of the height requirements of § 770.1 would be unduly burdensome and result in peculiar and exceptional practical difficulties to the owner.

The Board also concludes that the requested variance would not result in substantial detriment to the public good, nor substantial impairment of the zone plan. The proposed residential addition and revitalized retail base enjoys broad support from adjacent property owners, the Tenleytown neighborhood, and the affected ANCs. At five feet, the variance is relatively small, and OP indicates that the property is a priority redevelopment site.

Residential Recreation Space Variance

Section 773 requires that the owner of a building in a C-3-A District devoted to apartment house use provide residential recreation space in an amount equal to at least 15 percent of the gross floor area of the building devoted to residential use. Residential recreation space must be safe, secure, and suitably equipped or landscaped for the active or passive recreation use of the residents. It may be located at ground level, on or above the residential plane, on rooftops, or within a building or other structure. At least 50 percent of the total residential recreation space must be located outdoors. However, the area of a balcony may not be counted to satisfy the residential recreation space requirement if the balcony, or a portion of it, adjoins an individual residential unit and is accessible only from that unit.

As with the height restriction, the need to preserve the historic retail building on which a residential component will be added and the unusual shape of the site severely limit the amount and configuration of recreational space that may be provided. HPRB and the community have sought design changes that require significant setbacks from Wisconsin Avenue, in order to maximize the distinction between the two components of the project. The courtyard, which would provide most of the recreation space, cannot be made any larger without significantly impairing the utility of the apartment units. And, apart from the unused ramp area that the Applicant is actively exploring as recreational space, there does not appear to be any other feasible location for providing additional, meaningful recreation space.

The Board thus concludes that as a result of the unique characteristics of the property, the the proposed project meets the three-prong test for an area variance set forth above, and the strict application of the minimum residential recreation space requirements of § 773 would be unduly burdensome and result in peculiar and exceptional practical difficulties to the owner.

The Board also concludes that the requested variance would not result in substantial detriment to the public good, nor substantial impairment of the zone plan. The new central courtyard will provide a safe, secure, and landscaped area for the active and passive recreation

use of the residents, and will provide significant light and air to the apartment units. While the balconies are not counted toward the residential recreation space requirement, the residents of the units with balconies will be able to enjoy the view of the courtyard year round. The residents will also have access to significant nearby public green space, and as an apartment house with street level retail, the project is in keeping with the C-3-A zoning.

Parking-Aisle Width Variance

Subsection 2117.5 provides that "when required parking spaces are so arranged that an aisle is required for accessibility or maneuvering space between rows of two (2) or more parking spaces, or between a row of two (2) or more parking spaces and the perimeter of the area devoted to parking spaces, the aisle shall have a clear width of not less than . . . seventeen feet (17 ft.) for angle parking which is sixty degrees (60) or less as measured from the centerline of the aisle." The Applicant seeks a variance from this requirement to allow some sixty-degree parking aisles to be fourteen feet, six inches.

The current building, as noted, is irregularly shaped and, for the basement-level parking, has a number of structural columns that would extremely difficult to rearrange. In order to restore the current roof top to its original parking uses within the constraints of historic preservation, the amount of aisle space available is necessarily limited. The variance is minimal and the proposed aisle width meets generally recognized national standards employed outside the District.

Applying the standard for area variances set forth above, the Board concludes that the irregular shape of the lot and the need to preserve the existing historic structure warrant the variance for parking-aisle width the Applicant seeks. The subject property is unique and the Applicant faces significant practical difficulties in configuring the parking areas to maximize use and minimize the need for variances. The Board also concludes that the requested variance would not result in substantial detriment to the public good, nor substantial impairment of the zone plan. The slight reduction in parking-aisle width will facilitate maximizing parking on the site, advance OP's goals for the density desired for this transit-connected project, and not impact emergency vehicles or other safety personnel.

Off-Street Parking

Finally, as noted at the outset, the Applicant was seeking a special exception to allow retail parking below the 211 parking spots arguably required by Section 2101.1 of the Zoning Regulations which the Board changed to a variance.[3] Although the Applicant proposes a total of 320 spaces for both components, the Applicant proposes to divide the residential and retail parking, facilitating control of access to each and minimizing the impact on traffic from the mix of uses by directing traffic flow for different uses to different entrances and exits.

[3] The Zoning Regulations are not entirely clear on the subject of the number of parking spaces required for a historic property that has functioned as a retail facility and is making the transition to mixed-use. The Board therefore decided to grant a variance in lieu of a special exception with respect to the requirements of subsection 2101.1.

Applying the standard for variances set forth above, the Board concludes that the irregular shape of the lot and the need to preserve the existing historic structure warrant not only a special exception, but, for the sake of clarity, a variance. For the reasons discussed above, the subject property is unique and the Applicant faces significant practical difficulties in configuring the parking areas. It is critical for the design and to accommodate the concerns raised by the community that the retail and residential parking areas be kept separate and distinct and the best way to accommodate the concern raised by ANC 3F about ensuring maximum residential parking is to allow the configuration proposed by the Applicant. The Board also concludes that the requested variance would not result in substantial detriment to the public good, nor substantial impairment of the zone plan. The total amount of parking proposed is a significant increase from current parking, there is an underutilized parking facility directly across the street that will support cross-parking, and the variance for the number of retail parking spots supports the community's preference for residential spots.

For all of the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**, to permit the construction of the proposed mixed-use project as shown in the applicant's plans dated March 26, 2002 (Ex. 31).

VOTE: 5–0–0 (Geoffrey H. Griffis, David W. Levy, Anne M. Renshaw, Curtis L. Etherly, Jr., and James H. Hannaham to approve).

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 24 2002

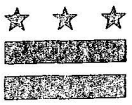
PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 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.

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. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16857

As Director of the Office of Zoning, I hereby certify and attest that on JUN 24 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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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning