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June 25, 2002

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Hand Delivery

Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: BZA Application No. 16892

Dear Members of the Board:

Enclosed please find an original and 20 copies of the Applicant's Statement in Support of the above-referenced application, scheduled for public hearing on July 9, 2002.

Please do not hesitate to contact us should you have any questions or require further information.

Very truly yours,
HOLLAND & KNIGHT LLP

Dennis R. Hughes

Enclosures

BZA
Case No. 16892
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO.16892
EXHIBIT NO.32A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

RECEIVED
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Application of
Jemal's Ford LLC et al

BZA Application No. 16892
Public Hearing: July 9, 2002
ANC 2C

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR §3103.2, for a variance from the floor area ratio ("FAR") requirements under §771, for a variance from the Downtown Development District ("DD") parking access restrictions under §1701.4(c), and for a variance from residential recreation space requirements under §773, and pursuant to 11 DCMR §3104, for special exception from the roof structures provisions under §411 and 777, to allow the construction of a 10-story mixed use building (office, retail, residential and arts uses) in the DD/C-4 District at premises 920-942 F Street, NW (Square 377, Lots 35, 819, 820, 821, 852, 853 and a portion of a public alley to be closed)(the "Subject Property").

As a preliminary matter, please note that, with regard to the request for variance from §1701.4(c), the Applicant originally anticipated accessing both parking and loading from 10th Street, NW. However, the Applicant has now determined, in coordination with the Office of Planning, that loading for the building can be accessed from the public alley. As a result of this determination, the Applicant withdraws its request for variance from the loading access aspects of §1701.4(c). The Applicant still

requests variance from §1701.4(c), though, in order to provide parking access from 10th Street, NW. Substitute architectural drawing sheets will be provided to the Board as soon as they can be finalized prior to the public hearing on July 9.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the requested variance and special exception relief pursuant to §§3103.2 and 3104 of the Zoning Regulations.

III.
BACKGROUND OF THE CASE

A. Site and Vicinity Characteristics

1) The Subject Property:

Jemal's Ford LLC, Jemal's Lane Bryant LLC, Atlantic 930 F LLC, et al. ("Applicant") own certain property in Square 377 in downtown Washington, DC, known as Lots 35, 819, 820, 821, 852, and 853, located on the south side of F Street, NW, running from the intersection of 10th and F Streets, NW, to the north-south alley opening to F Street, NW, in the middle of Square 377.(Exhibits A and B). These lots measure approximately 237 feet along F Street, NW and 159 feet at their deepest point, for a total lot area of roughly 34,346 square feet. The Property is bounded to the south by a public alley running through the interior of Square 377. The development site also contemplates the closure of a small part (approximately 942 square feet) of the westernmost portion of the H-shaped public alley system in Square 377. The portion of the alley contemplated for closure is surrounded only by

the Subject Property. The resulting total lot area for the Subject Property is 35,288 square feet. The Property possesses a steep grade change of approximately 13-14 feet from north to south. Zoning for the Subject Property is DD/C-4.

Located within the Pennsylvania Avenue National Historic Site and the Downtown Historic District, a locally-designated historic district which is listed in the National Register of Historic Places, the Subject Property is improved with a number of historic structures, including: (a) the facades of the Atlantic Building, a landmark designated on the D.C. Inventory of Historic Sites, and three smaller scale commercial structures, occupying Lots 852 and 853, at 920 F Street, NW (circa 1911), at 922-924 F Street, NW (circa 1876), and at 926 F Street, NW (circa 1891), respectively; and (b) three smaller-scale commercial structures, at 942 F Street, NW (circa 1878), 940 F Street, NW (circa 1876), and 938 F Street, NW (circa 1884)(Lots 819, 820, 821, respectively)(Exhibits A and B). The existing improvements at 920-930 F Street, NW, are components of a "special merit" project approved by the Mayor's Agent for DC Law 2-144 ("Mayor's Agent") in May 1989, H.P.A. Nos. 88-490, 88-491, 88-492, 88-493 (the "Original Project" or "Atlantic Building Project")(Exhibit J). The Subject Property also includes the non-contributing six-story Lane Bryant Building, constructed in 1969, at 932-936 F Street, NW, which wraps behind the three historic commercial structures at 938-943 F Street, NW, and around to 10th Street, NW, to abut the north portion of the Ford's Theatre National Historic Site.

2) Square 377 and Vicinity:

Square 377:

The Ford's Theatre National Historic Site, a complex of buildings along 10th Street, NW, is located immediately south of the Subject Property in Square 377. Abutting to the south of the South Addition to the theatre is a nine-story office building at 999 E Street, NW, the former PEPCO Building.

As noted above, the Subject Property is bounded to the east by a 15 foot public alley. Immediately across that alley from the Subject Property is the recently renovated seven-story landmark National Union Life Insurance Building, at 918 F Street, NW. Just east of that building is a 14-story apartment house involving rehabilitation of contributing historic buildings. Further east, at 900 F Street, NW, is the landmark nine-story former Riggs Bank Building, now occupied by a Marriott Courtyard hotel.

Vicinity:

Directly north of Square 377, in Square 376, is St. Patrick's Church, on the east side of 10th Street, NW, between F and G Streets, and a number of historic buildings along the north side of 900 block of F Street, NW. These buildings are being incorporated into a mixed use office, retail and arts development.

Northeast of Square 377, on the north side of the 800 block of F Street, NW, are located the National Portrait Gallery and National Museum of American Art. One block further east is the MCI Center.

Under construction immediately east of Square 377 and south of the National Portrait Gallery is another mixed use retail/residential/arts project which includes the International Spy Museum.

South and west of Square 377, respectively, are the FBI Headquarters Building and Lincoln Square, an office and retail development along 11th Street, NW. There are also a variety of smaller commercial buildings along 10th Street, NW.

To the northwest of Square 377, Square 346 contains the landmark Woodward & Lothrop Building, which is being redeveloped for major retail and office use.

3) Ownership and Development History:

In 1989, Clover F Street Associates LP ("Original Applicant") applied for permission from the Mayor's Agent to partially demolish the historic buildings at 920, 922-924, 926 and 930 F Street, NW (Lots 852 and 853). At the same time, the Mayor's Agent was also presented by the Original Applicant with applications for alteration and new construction to incorporate the restored facades of the four historic buildings into a nine-story mixed use building of office, retail and arts/entertainment uses ("Original Project"). It is important to note that the properties included in the Original Project, Lots 852 and 853, contain approximately 17,593 square feet of lot area and occupy essentially the eastern half of the Subject Property, while Lots 35, 819-821, with addresses 932-942 F Street, NW, and occupying the remaining 17,695 square feet, or western half, of the Subject Property, were not included in the Original Project.

The Mayor's Agent approved the applications for partial demolition as necessary in the public interest to construct a project of special merit. The Mayor's Agent determined that the Original Project offered specific features of land planning and social benefits having a high priority for community services, including a number of benefits to the preservation community. The Mayor's Agent found further that the project provided a number of preferred uses and was the most reasonable alternative to abandonment of the buildings.

The new construction proposed by the Original Applicant, incorporating the restored facades, was approved by the Mayor's Agent for nine stories, occupying approximately 149,500 square feet of gross floor area on a building lot of 17,594 square feet, for a building density of 8.5 FAR, with 24,564 square feet of above- and below-grade total building area to be devoted to retail/arts uses and the remainder available for office use. Importantly, at the time the Original Project was approved by the Mayor's Agent in 1989, the DD was not yet in existence.

Similarly, the BZA approved variances to permit construction of the Original Project. In BZA Application No. 14967 (Exhibit L), approved March 8, 1989, the Board approved variance relief from the rear yard requirement of the C-4 Zone as well as relief from the penthouse structure setback provisions. This approval was given prior to the effective date of the Downtown Shopping District (SHOP) in 1989. Thus, the project before the Mayor's Agent in 1989 for the property was permitted a matter-of-right building density of 8.5 FAR (See Exhibits A and B). Furthermore, at that time, there were no preferred uses required to be provided by development on the Subject Property. Thus, the nearly 25,000 square feet of preferred retail and

arts uses proffered by the Original Applicant were not required to be provided under the Zoning Regulations then in effect.

The Original Project involved an extensive preservation and mitigation component, including façade retention and restoration for the Atlantic Building and the three smaller scale buildings. As part of this retention and restoration, a "Preservation Zone"/"Historic Reconstruction Zone" was to be established, measuring approximately 40 feet deep on the first floor (and one room deep on upper floors) behind each of the four buildings' façades. The Zone also involved recreating the eighth floor conference room at 930 F Street, NW, and siting the office partitions to coincide with historical party wall locations. The Mayor's Agent further required that the new lobby for 930 F Street, NW, be designed in the style of the original lobby, using salvage from the Atlantic Building. The Mayor's Agent's preservation requirements also included documentation – photographic, narrative, and graphic– to be provided for the Atlantic Building, and for salvage of architecturally significant elements, to be reused in public areas or in the façade zone of new construction, including the reconstruction of the cage elevators and stairway from the first to second floors of the Atlantic Building. Finally, a permanent museum or exhibit room was to be installed off the main lobby to display artifacts and documentation related to the buildings.

As part of the approval process, the Original Applicant entered into negotiations and a number of agreements with a variety of District agencies. With the Office of Planning, the Original Applicant agreed to attempt to enter a 12-month lease for approximately 10,890 square feet for Cabaret/Dinner Theatre use

following completion of construction, with an additional year extension at the Office of Planning's option. If not successful, the Original Applicant agreed to attempt to lease the space for other arts-related uses, or, with the Office of Planning's approval, for other active retail use.

Pursuant to an agreement with the Office of Business and Economic Development, the Original Applicant agreed to pay the relocation expenses of existing tenants and to give said tenants preferential rights to return at prevailing market rates.

The Original Applicant also proffered a First Source Agreement with the Department of Employment Services regarding construction-related employment, and a Memorandum of Understanding with the Office of Local Business Development regarding contracted development costs.

Demolition of the 920-930 F Street buildings in anticipation of the Original Project was undertaken during the second half of 2000. The stipulated documentation and architectural salvage were completed prior to demolition, and the tenants of the building were relocated pursuant to the agreement entered into with the Office of Business and Economic Development. The facades of the four buildings were retained and secured with scaffolding as the site was cleared in preparation of the new construction component of the Original Project. Unfortunately, the Original Applicant has been unable to develop the Approved Project and agreed to sell Lots 852 and 853 to the Applicant, who is also the owner or contract purchaser for the remaining properties to the west, namely Lots 35, 819-821.

B. Project Description

The Applicant intends to complete the restoration of the building facades that was originally approved by the Mayor's Agent in 1989. To that end, the Applicant seeks to revise and to expand the Original Project in a manner that is consistent with the "special merit" nature of the Original Project. The Applicant has filed an application with the Mayor's Agent for review of its request for revision to an approved project of special merit and related request for record lot subdivision, HPA Nos. 02-261 and 02-266. A public hearing before the Mayor's Agent has been scheduled for July 8, 2002 regarding the Applicant's request. As owner/contract purchaser of Lots 35, 819, 820, and 821, the western half of the Subject Property, the Applicant has the unique opportunity to resuscitate the failed redevelopment effort at 920-930 F Street, NW, and to expand the Original Project in a way that will greatly enhance this important block of F Street, NW.

As part of the revised request to the Mayor's Agent, the Applicant agrees to comply with the preservation-related conditions of the Original Project and to become a party to the agreements entered into in furtherance of the development of the Original Project. The proposed revision also includes the demolition of the six-story noncontributing Lane Bryant Building at 932-936 F Street, NW. At the same time, the Revised Project will involve substantial retention and rehabilitation of the original building fabric of the three historic buildings at 938-942 F Street, NW, including restoration of their respective facades.

The Revised Project proposes a density of approximately 8.27 FAR, with retail uses along the entire F Street frontage of the project and below-grade, and with three levels of parking (for approximately 180 automobiles) accessed from 10th Street, NW. Loading will be accessed from the alley system, as previously stated. The proposed 8.27 FAR project density is the product of significant and continuing efforts by the Applicant to reduce the overall bulk and height of the new construction as much as economically feasible, in furtherance of the recommendations of the Historic Preservation Review Board ("HPRB") and Preservation Staff, and ensure its compatibility with the historic buildings and facades on the Subject Property. At the same time, the Applicant is agreeing to comply with the preservation and preferred use requirements of the Mayor's Agent's Original Approval and expand the project to provide significantly more ground floor retail and residential uses within the expanded development (as well as additional below-grade parking) than was contemplated with the Original Project.

The square footage of preferred uses agreed to as part of the Original Project, approximately 24,564 square feet of retail (including almost 11,000 square feet designated for cabaret/dinner theater use), will be satisfied in the Revised Project. In addition to this very significant amount of retail square footage, the Applicant proposes to provide another 8,848 square feet of ground floor retail space. Furthermore, the Applicant proposes to provide within the project approximately 6,000 square feet of residential space, highly desired by the District in furtherance of its goals for a "living downtown". All told, the Applicant is offering to provide approximately 39,500 square feet of preferred use residential and retail uses in the

Revised Project, with an additional 3,744 square feet devoted to the lobby museum space as determined in the Mayor's Agent's original approval. This proposal is approximately two-and-one-half times the preferred use requirement set forth in the District of Columbia Zoning Regulations.

The Revised Project complies with all applicable height and permitted use provisions set forth in the Zoning Regulations for the DD/C-4 Zone. The building will measure no more than 120 feet in height, in keeping with the height regulations for the C-4 Zone and the Downtown Development overlay as well as the Act of 1910. As proposed and explained herein, this project is wholly consistent with the goals of the city and will be a substantial contribution to the District of Columbia, and especially to the downtown area.

IV.
EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with the discussion of the merits of this application, the following additional materials are submitted:

Exhibit A:	A portion of the Baist Map showing the Subject Property outlined in red ink.
Exhibit B:	A portion of the Sanborn Atlas showing the Subject Property outlined in red ink.
Exhibit C:	A portion of the Zoning Map showing the Subject Square outlined in red ink, with zoning designation of DD/C-4.
Exhibit D:	Outline of testimony of Representative of Applicant
Exhibit E:	Outline of testimony of Representative of Shalom Baranes Associates, Architects.
Exhibit F:	Outline of testimony of Lewis Bolan, Land Economics Expert.

Exhibit G:	Outline of testimony of Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP.
Exhibit H:	Board of Zoning Adjustment Application No. 14967, approved March 8, 1989.
Exhibit I:	Architectural drawings and photographs of the Subject Property.
Exhibit J:	Mayor's Agent Order.
Exhibit K:	Letter of support from Advisory Neighborhood Commission 2C dated April 19, 2002.

V.
THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM THE ZONING REGULATIONS

The burden of proof for variance relief is well established. The Applicant must demonstrate: (a) that the Subject Property is affected by an exceptional or extraordinary situation or condition; (b) that, as a result of said exceptional situation or condition the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (c) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972). As set forth below, the Application meets this three-part test for area variance relief.

A. The Property is Affected by an Exceptional Or Extraordinary Situation or Condition

The Subject Property is confronted with a variety of factors which qualify it for variance relief. These factors include both physical conditions impacting the Subject Property and the development history of the Subject Property.

1. Physical Conditions:

The existing conditions and physical constraints of the Subject Property are exceptional among properties in the DD/C-4 Zone. The Subject Property is located at one of the most prominent and historically significant intersections in the District. F Street, NW, historically formed the core of downtown Washington, as evidenced by the proximate location of the Woodward & Lothrop building and some of the District's earliest "skyscrapers", including the landmark Atlantic building on the Subject Property. In addition, around the corner on 10th Street, NW, the Ford's Theatre National Historic Site welcomes more than 2 million visitors annually.

The Subject Property as a development site is exceptional in that it is improved with seven different historically significant structures, each with distinct historic preservation considerations, which are adjoined and in some cases surrounded by a substantial, undistinguished noncontributing building. Most obvious among these considerations is the fact that four of the seven historic structures, including the nine-story Atlantic Building, currently exist as facades, held in place only by a series of scaffolding, the product of the failed redevelopment effort by the Original Applicant.

Any work on the Subject Property thus must be undertaken pursuant to the recommendations of the HPRB and approval by the Mayor's Agent.

As stated above, the Subject Property is also confronted with an exceptional and dramatic change in grade from north to south, an approximately 13-14 feet drop along the depth of the Subject Property. This grade change effectively exposes a portion of a level contemplated for below-grade use, primarily for parking, to be counted toward building density. In the present case, approximately 5,835 square feet are included in FAR that otherwise would not count toward density on a typical development site. This amount converts to approximately 0.165 FAR.

2. Development and Zoning History:

Analysis of the exceptional condition or situation of the Subject Property cannot be undertaken without acknowledgment of its development history, which precipitated the precarious present condition. Development of the eastern half of the Subject Property, Lots 852 and 853, is subject to the approvals granted by the Mayor's Agent in 1989, including both the physical historic preservation components and the preferred uses components. The Mayor's Agent approval remains in effect, thus indicating that development consistent with that approval could proceed to a building density of 8.5 FAR even though the properties subject to Mayor's Agent's approval are included on the list of properties otherwise restricted to 6.0 FAR (§1707.4(e)) if development were not vested prior to the adoption of the DD. Likewise, the approvals of BZA Application No. 14967 remain effective.

On the western portion of the Subject Property, redevelopment must involve sensitivity to the existing historic structures on the site, including exceptional restriction upon building density in the DD/C-4 Zone, limiting development for Lots 35, 819-821 to 6.0 FAR rather than 8.5 FAR, pursuant to §1707.4 of the Regulations. The Applicant is burdened by this significant reduction in allowable density even though the great bulk of this western half of the subject property is improved with a non-contributing building, the Lane Bryant building, which the Applicant is proposing to demolish as a preservation benefit to the historic districts, and to replace that building with sympathetic new construction designed in coordination with HPRB and Preservation Staff. Thus, throughout the Subject Property, site specific historic preservation constraints require significant and exceptional costs for any redevelopment.

Finally, with respect to the variance request from the DD Area-Wide Design Standards, the Subject Property is exceptional in that under §1701.4, the Regulations prohibit the construction or use of driveway access from both of the public streets abutting the site, namely F Street (under subsection (a)) and 10th Street (under subsection (c)). A curb cut along the 10th Street, NW, frontage of the Subject Property is already in existence, providing access to a major parking facility there.

B. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

1. §771, The Floor Area Ratio Restriction

The Application seeks variance relief from the restriction of §771 of the Zoning Regulations limiting density to 6.0 FAR. The Applicant does, however, have rights to an 8.5 FAR project on the eastern portion of the Subject Property by virtue of the approvals for the Original Project. The Applicant proposes a development of approximately 8.27 FAR. Based upon the abovementioned physical and zoning restraints impacting the Subject Property, the Applicant is experiencing great difficulty in developing a marketable mixed use project on the Subject Property in strict compliance with the Zoning Regulations. As a result, the Applicant requests variance relief from the Board from the FAR limitations for the Property. As set forth herein and through the testimony to be provided at the public hearing, the Application meets the burden of proof for variance relief from §771 of the Zoning Regulations.

No better example of the difficulty facing development on the Subject Property is there than the facades of four historic buildings braced in isolation on the site. Not only are the braced facades at continual risk of decay and collapse, these facades likewise implicitly represent the larger development restrictions placed by the 1989 Mayor's Agent Order on development of Lots 852 and 853. That Order remains in effect today. The Original Applicant obligated these facades and the development of the lots (now the eastern portion of the Subject Property) to

extensive historic restoration and preservation at the same time that it agreed to a very substantial array of preferred uses for the redeveloped property. Indicative of the practical difficulty these exceptional conditions placed on the property, the Original Applicant ultimately was unable to undertake the ambitious Original Project, even with the variance relief given by the Board in Application No. 14967. The costs of that earlier development, especially to undertake the extensive preservation requirements and at the same time to devote more than 1.0 FAR out of a permitted 8.5 FAR to preferred retail and arts uses, were too high to permit the Original Applicant to develop an economically feasible project on Lots 852 and 853. The Applicant is inheriting these complications and difficulties of that site.

At the same time, the DD Regulations and the existence of contributing historic commercial buildings in the western portion of the Subject Property further limit development options for the larger site. In the case of building density, the historic preservation component of the DD overlay, set forth in §1707 of the Regulations, places significant building density restrictions on certain properties in the DD, including all four properties in the western portion of the Subject Property, even though the largest lot of the four, Lot 35, is improved with a non-contributing building dating only to the 1960s. Nonetheless, new construction in place of the non-contributing building is subject to HPRB review.

The combination of the density restrictions and preservation review requirements of the western portion, combined with the established and extensive preservation and preferred use amenities set forth in the Mayor's Agent's order for the eastern portion, creates an exceptional cost for development at the same time

that it precludes an owner's best, and often only, opportunity to reclaim some of that lost revenue, by increasing building density. In other words, development pursuant to the Original Project is an exceptionally costly proposition, so much so that a fiscally responsible and respected developer has been unable to fulfill its obligations under that approval. At the same time, the restrictions on the combined site are such that they effectively prevent any subsequent developer of the site from subsidizing the development with additional density. By way of note, it should be remembered that without the density restriction of §1707.4, the proposed/Revised Project could proceed without need for variance request as building density would total only 8.27, less than the 8.5 FAR generally permitted in the DD/C-4 Zone.

2. §1701.4(C), Downtown Development District – Restrictions on Access to Parking

The Application likewise seeks variance relief from the restriction of §1701.4(c) of the Zoning Regulations prohibiting access to parking from certain designated street frontages, include both streets upon which the Subject Property fronts. As noted above, loading access to the Subject Property will be provided through the alley system in Square 377.

The practical difficulty of the parking access situation is particularly evident, especially given the heavy traffic already faced by the alley system in Square 377, where there is only the single narrow 15 foot entry to the alley, located mid-block along F Street, NW. The traffic implications of daily ingress/egress to this multi-

use project would seriously overtax the alley, especially given its nature of providing delivery/loading access for large-scale buildings in every quadrant of the Square.

Furthermore, the existing non-contributing Lane Bryant building, constructed years before the DD Regulations went into effect, contains at least three levels of parking, all with direct public access from a curb cut on 10th Street, NW. In fact, the Application proposes placing the parking access in the area of this existing curb cut on 10th Street, NW, used by Lane Bryant. If strictly applied, the DD Area-Wide Design Standards would preclude recreating the existing situation, thus encouraging retention of the noncontributing building over historically sympathetic redevelopment of the site pursuant to the review of HPRB and the Mayor's Agent.

3. §773, Residential Recreation Space Requirement

Section 773 of the Zoning Regulations requires in commercial zoning districts that buildings (or portions thereof) devoted to residential use, other than single family dwellings, shall provide recreation space that is "safe, secure, and suitably equipped or landscaped for the active or passive recreation of the residents." Notably, the residential recreation space may be located at ground level, on or above the residential plane, on rooftops, or within a building or structure.(§773.4). No less than 50 percent of the total residential recreation space provided shall be outdoors.(§773.8).

Subsection 773.3 establishes a schedule for the amount of residential recreation space required to be provided, based upon zoning classification.

According to that schedule, five percent of the gross floor area devoted to residential use in the C-4 Zone must be devoted to residential recreation space. For the subject property, where approximately 6,000 square feet is being devoted to residential use, the Applicant would be required by §773.3 to provide 300 square feet of residential recreation space, 150 square feet of which must be located outdoors under §773.8. In response to concerns raised by the Office of Planning, the Applicant continued to study and revise its plans in efforts to locate suitable residential recreation space in the project. As part of these efforts, the Applicant may not be able to comply with all the required elements for the provision of residential recreation space, including minimum dimensional requirements for rooftop space used and percentage of outdoor recreational space provided. For these reasons, the Applicant requests a variance from the provisions of §773.

As set forth above, in its effort to offset the exceptional development costs of the Subject Property, the Applicant is severely constrained by the exceptional conditions of the Subject Property. Nonetheless, the Applicant is proposing to provide some 6,000 square feet of residential use in some location within the building, even though there is no requirement under the Regulations to provide residential space on the Property. While the Applicant recognizes the importance placed by the community upon increasing residential density downtown, especially in a mixed use environment as here proposed, under the present exceptional circumstances impacting the Subject Property, the Applicant is having difficulty locating suitable additional space for residential recreation uses, where the Applicant is already proposing far more preferred use retail than is required under the DD, and where the Applicant has

agreed to provide significant preferred use arts space, and now where the Applicant is proposing to provide important preferred use residential space where none is required by the Regulations, not to again mention the very significant and expensive preservation work.

C. Variance Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.

The Applicant proposes to construct the mixed use building on the Subject Property with no substantial detriment to the public good and with no impairment to the intent, purpose and integrity of the Zone Plan, as set forth below.

1. §771, The Floor Area Ratio Restriction

a. Public Good:

The Applicant has the unique opportunity to revive this failed preservation project of a major District landmark. At the same time, and in a major fashion, the Applicant is furthering the District's goals of resuscitating F Street, NW, the spine of the historic downtown area, and creating a "living downtown". While adding building density in order to make the project economically feasible, the Applicant is continuing to work closely with the HPRB, Mayor's Agent and Preservation Staff to ensure that the additional mass created by the new construction is masked to the extent possible, especially in the context of buffering abutting and neighboring historic properties. As stated above, the Original Project was extremely aggressive, both in terms of its preservation components and its preferred use amenities, costs

which ultimately could not be effectively recouped in the failed Original Project, and can only be made to work now utilizing the increased building site and the FAR relief here requested. With respect to the preferred uses being provided, it should be remembered that on a building site with an area of approximately 35,000 square feet, the Applicant has proposed almost 40,000 square feet of preferred uses, so that more than 1.0 FAR equivalent of the 8.27 FAR building will be devoted to preferred uses.

For all these reasons, variance relief from §771 can be accomplished without harm to the public good.

b. Zone Plan:

Similarly, relief from §771 can be granted in the present case with assurance of no harm to the District's zone plan. While the proposed project slightly exceeds the density limitation set forth for the Subject Property in the Zoning Regulations, the Project nonetheless fulfills the policies and objectives of the District as set forth in the Comprehensive Plan and the DD overlay of the Regulations. The 6.0 FAR density limitation established in §1707.4 of the Regulations is one attempt to further the District's historic preservation policies, especially that objective set forth in §1707.1(c), which:

> Restricts permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a suitable scale of new construction in historic districts, especially in projects combining new development with preservation.

The Applicant's project satisfies this preservation policy through the comprehensive preservation components of the Mayor's Agent's approval for the eastern portion of the Subject Property, combined with the extensive rehabilitation and restoration of the three historic buildings in the western portion of the Property, the demolition of the large non-contributing building, and new construction designed in coordination with the Mayor's Agent, HPRB, and Preservation Staff, to setback sympathetically from the historic buildings and facades on the Subject Property as well as the Ford's Theatre National Historic Site neighboring to the south.

As stated above, matter-of-right development on the eastern portion of this site can achieve 8.5 FAR. The Revised Project contemplates a total of 8.27 FAR, including more than 1.0 FAR equivalent of preferred uses, provided in a sympathetic backdrop of new construction behind the historic structures on the site. As set forth above, the eastern portion of the Subject Property remains subject to the Mayor's Agent's 1989 Approval and to the prior BZA grant of variance relief. Those approvals were given at a time prior to the implementation of either the SHOP or DD Districts, and thus at a time when those properties, now Lots 852 and 853, could be developed to a matter of right density of 8.5 FAR with no requirement to provide any preferred uses. The Applicant is in the process of seeking approval from the Mayor's Agent to revise and expand the Original Project in such a way as to fulfill the ambitious terms of the Original Approval and at the same time to expand both the preservation and preferred use benefits of that Original Approval.

With respect to the four lots comprising the western portion of the Subject Property, three of the lots contain contributing historic buildings which the

Applicant has committed to retain and to rehabilitate. The fourth and largest lot, Lot 35, contains a large non-contributing building. Demolition of this noncontributing building is consistent with the policy stated in the Historic Preservation Element of the Comprehensive Plan and the Preservation Regulations, which encourage routine approval for applications to demolish noncontributing buildings and structures.

For all the above reasons, variance relief from §771 of the Regulations can be granted without detriment to the public good or without substantial impairment to the Zone Plan.

2. §1701.4(C), Downtown Development District – Restrictions on Access to Parking

Similarly, variance relief from §1701.4(c) of the Regulations may be granted without detriment to the public good or without substantial impairment to the Zone Plan, as set forth below.

a. Public Good:

Variance relief may be granted from this provision of the DD Area-Wide Design Standard without harm to the public good for the following reasons: (a) the proposed parking access would be located in the same area as currently utilized by the Lane Bryant building; (b) the proposal has the support of the District's Division of Traffic, which office has reviewed the proposal for pedestrian and vehicular safety; and (c) the proposal alleviates congestion and danger by not adding to traffic along the single egress/ingress point for the alley system in Square 377.

b. Zone Plan:

The variance request likewise creates no impairment for the Zone Plan in that the Applicant is essentially forced by the exceptional location of the Subject Property to request some sort of variance from this section of the Regulations. As the Subject Property is one of only very few properties to be entirely precluded by this section from any public street access for parking and loading, there is little likelihood that grant of variance in the present case will result in some negative precedent.

3. §773, Residential Recreation Space Requirement

In similar course, variance relief from §773 of the Regulations may be granted without detriment to the public good or without substantial impairment to the Zone Plan, as set forth below. Again, it should be noted that the Applicant is continuing its efforts to locate suitable residential recreation space within the project. The nature of the variance request in the present case is to permit the Applicant a certain amount of flexibility to provide a compliant percentage of residential recreation space on the site, with the understanding that said space may not comply with certain other requirements of §773.

a. Public Good:

While the objectives of §773 are laudable, namely to provide active or passive recreation to residents of buildings located in commercial zoning districts, the Subject Property is nonetheless located at the very urban core of the District, where competition for valuable developable space is greatest and non-profitable spaces are scarce. The cultural, entertainment, recreational, retail and service activities and opportunities that are present downtown in the vicinity of the site are substantial. The MCI Center, the National Portrait Gallery/Museum of American Art, the District's main library, the soon to open International Spy Museum and major retail all are located within a two block radius of the Subject Property.

Notably, in support of the recent reduction in the percentage of residential recreation space required in the DD/C-2-C and the DD/C-3-C Districts (Zoning Commission Order No. 943), the District of Columbia Office of Planning, in recommending the reductions, noted the importance to downtown vibrancy and security that downtown residential uses provide and the interesting negative impact that on-site private residential recreation space exerts over the District's unceasing efforts to revitalize the downtown core.

Furthermore, the Applicant is seeking to provide a compliant amount of recreation space and is here requesting relief to provide space that might not otherwise comply with certain provisions of §773, such as minimum rooftop dimensional requirements or minimum outdoor percentage.

b. Zone Plan:

Variance relief may be granted from the provisions of §773 in the present case without detriment to the zone plan for the District. To this end, the Board has granted similar relief in a number of recent applications, including BZA Application No. 16681 for a residential project at 7th and E Streets, NW, and BZA Application No. 16757 for a residential project located immediately east of the Subject Property, at 910-916 F Streets, NW.

For all the above reasons, the Application qualifies for variance relief from §§ 771, 1701.4(c), and 773 of the Zoning Regulations.

VI.
THE APPLICANT MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER §411.11 OF THE ZONING REGULATIONS

In order to proceed with the proposed mixed use project, special exception relief is required from the provision of the Zoning Regulations regarding roof structures. As the Board is aware, a special exception use is predeemed compatible with other uses permitted in a particular zoning classification provided that the specific regulatory requirements are met. In reviewing applications for a special exception, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth in the appropriate section. If an applicant meets its burden, the Board must ordinarily grant the application. *First Baptist Church of Washington*

v. District of Columbia Board of Zoning Adjustment, 432 A.2d 695 (1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (1973).

Special Exception from §411.11, Roof Structures

Under §411.11 of the Zoning Regulations, the Board of Zoning Adjustment may approve the location, design, number, or any other aspect of a roof structure even if it does not comply with the setback requirements of §770.6, where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. Pursuant to §777.1, the provisions of §411 shall apply to roof structures in the Commercial districts. The Board has the power to approve a roof structure under §411.11, provided that the intent and purpose of the chapter and title of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.

The proposed configuration of the roof structure requires relief from the roof structure setback requirements under §411.2 of the Regulations. That section requires roof structures to be set back in accordance with the provisions of the zone district in which the project is located. The C-4 District requires a roof structure to be set back from the building's walls a distance at least equal to the roof structure's height (§ 770.6(b)). The roof structure proposed by the Applicant measures 18. 5 feet at its highest. Other portions of the roof structure measure a lesser height. As a result, the Applicant also requests special exception relief from the requirement of §411.5 that all enclosing walls of roof structures be of equal height.

The proposed building is a collection of setbacks. The building provides multiple setbacks from the Atlantic Building and the other facades at 920-930 F Street. Likewise, the new construction is set back at the corner of 10th and F Streets from the three historically contributing corner buildings and at the upper levels closest to Ford's Theatre. As a result, the area of the tenth floor, the floor from whose exterior walls the roof structure must set back under §770.6, is roughly half the size of the building's footprint. Despite the Applicant's attempts to reduce the bulk of the roof structure, the Applicant cannot further reduce the structure so that it will be compliant with the Regulations and still provide sufficient space for the building's core mechanical functions and required stair egress.

The Applicant thus requests special exception approval to provide less than the required setback along the south, or alley, side of the proposed project, and the small portion located along F Street above the new construction. These are two locations that the Applicant has located which can vary from the required 1:1 setback and yet minimize any negative visual or other impacts upon neighboring properties. The penthouse arrangement, as well as varying wall heights, have been developed by the Applicant in coordination with the HPRB and Preservation Staff in order to arrive at a roof design that is most sympathetic to the numerous historic considerations on the site as well as to the Ford's Theatre site.

For the above stated reasons, special exception relief from the roof setback requirement of §770.6 is appropriate in the instant case.

VII.
WITNESSES

A. Representative of Applicant.

B. Representative of Shalom Baranes Associates, Architects.

C. Lewis Bolan, Land Economics Expert.

D. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight, LLP.

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By Norman M. Glasgow, Jr./DRH
Norman M. Glasgow, Jr.

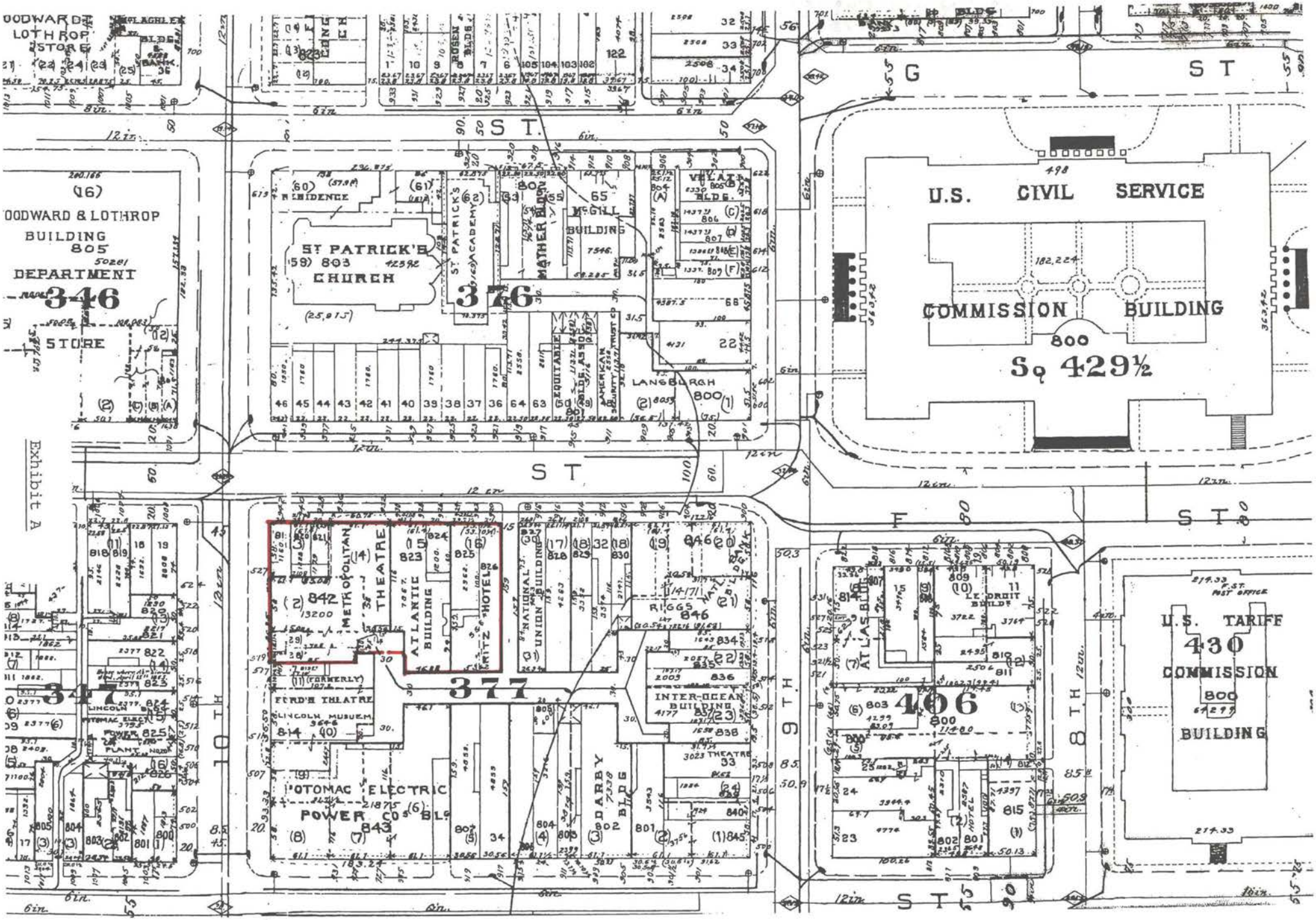
Dennis R. Hughes

2099 Pennsylvania Avenue, NW,
Suite 100
Washington, D.C. 20006
(202) 955-3000

June, 2002

WAS1 #1097248 v5

A


Exhibit A
G ST
F ST
S T.
12 ST
10 TH
9 TH
8 TH
U.S. CIVIL SERVICE COMMISSION BUILDING
800
Sq 429½
U.S. TARIFF COMMISSION BUILDING
800
Sq 429½
346
376
377
406
430
DEPARTMENT STORE
ST PATRICK'S CHURCH
ST. PATRICK'S ACADEMY
MATHER BLDG
McGILL BUILDING
VELAT BLDG.
LANGBURGH
EQUITABLE
AMERICAN SECURITY & TRUST CO
METROPOLITAN THEATRE
ATLANTIC BUILDING
RITZ HOTEL
FORD'S THEATRE
LINCOLN MUSEUM
UNION BUILDING
RIGGS
INTER-OCEAN BUILDING
DARBY BLDG
POTOMAC ELECTRIC POWER CO BLG
ATLAS BLDG
LE DROIT BUILDG
U.S. POST OFFICE



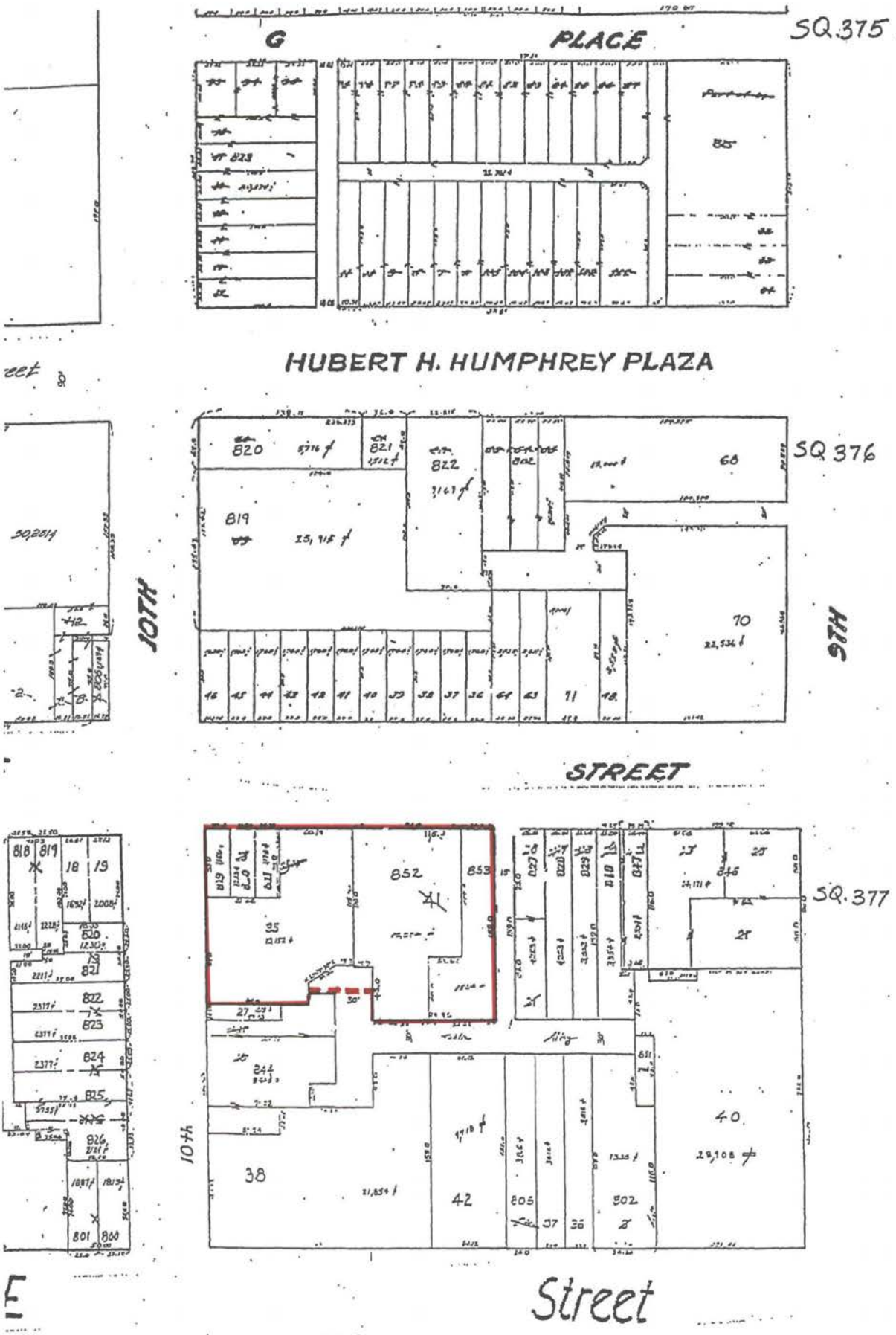
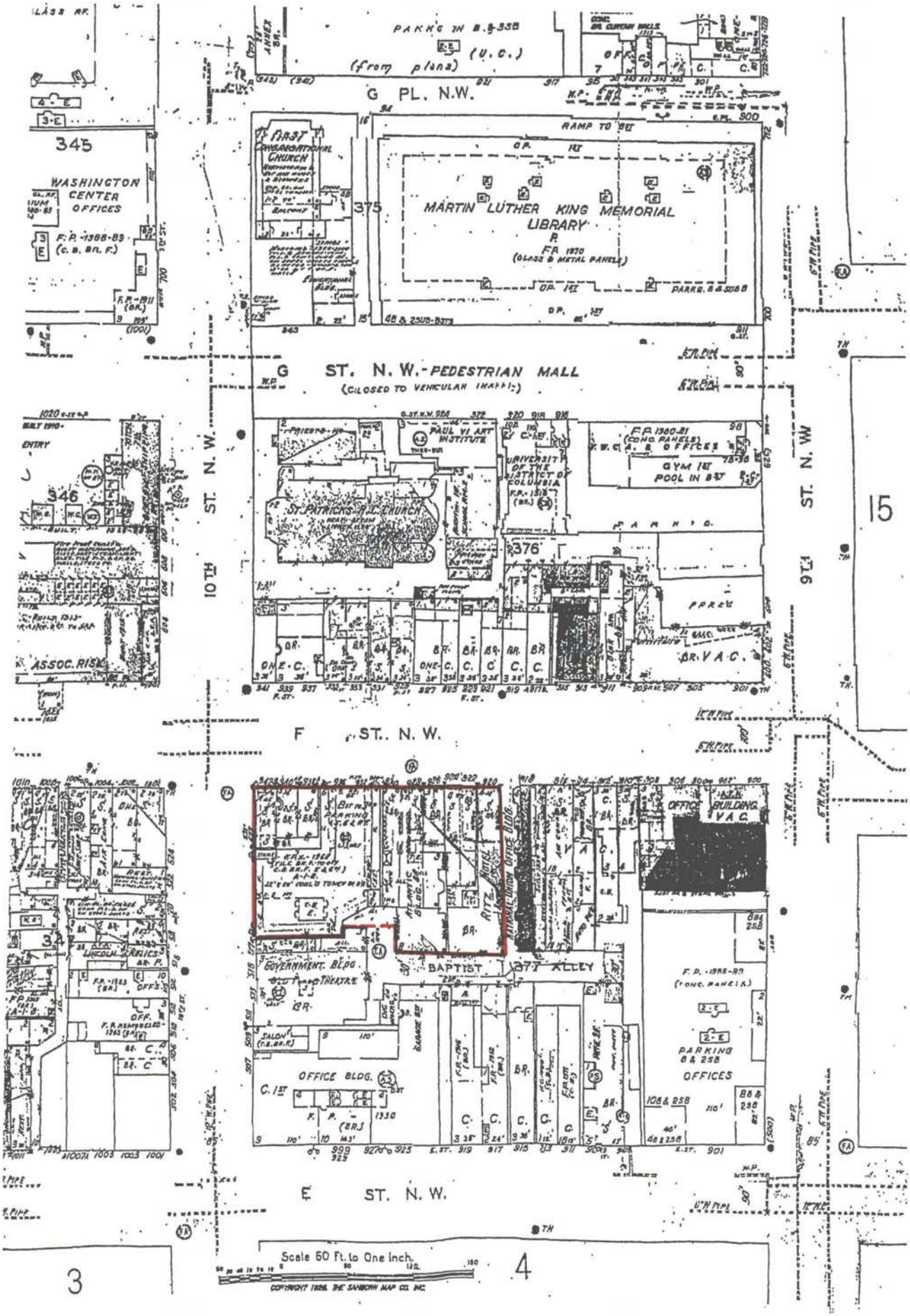
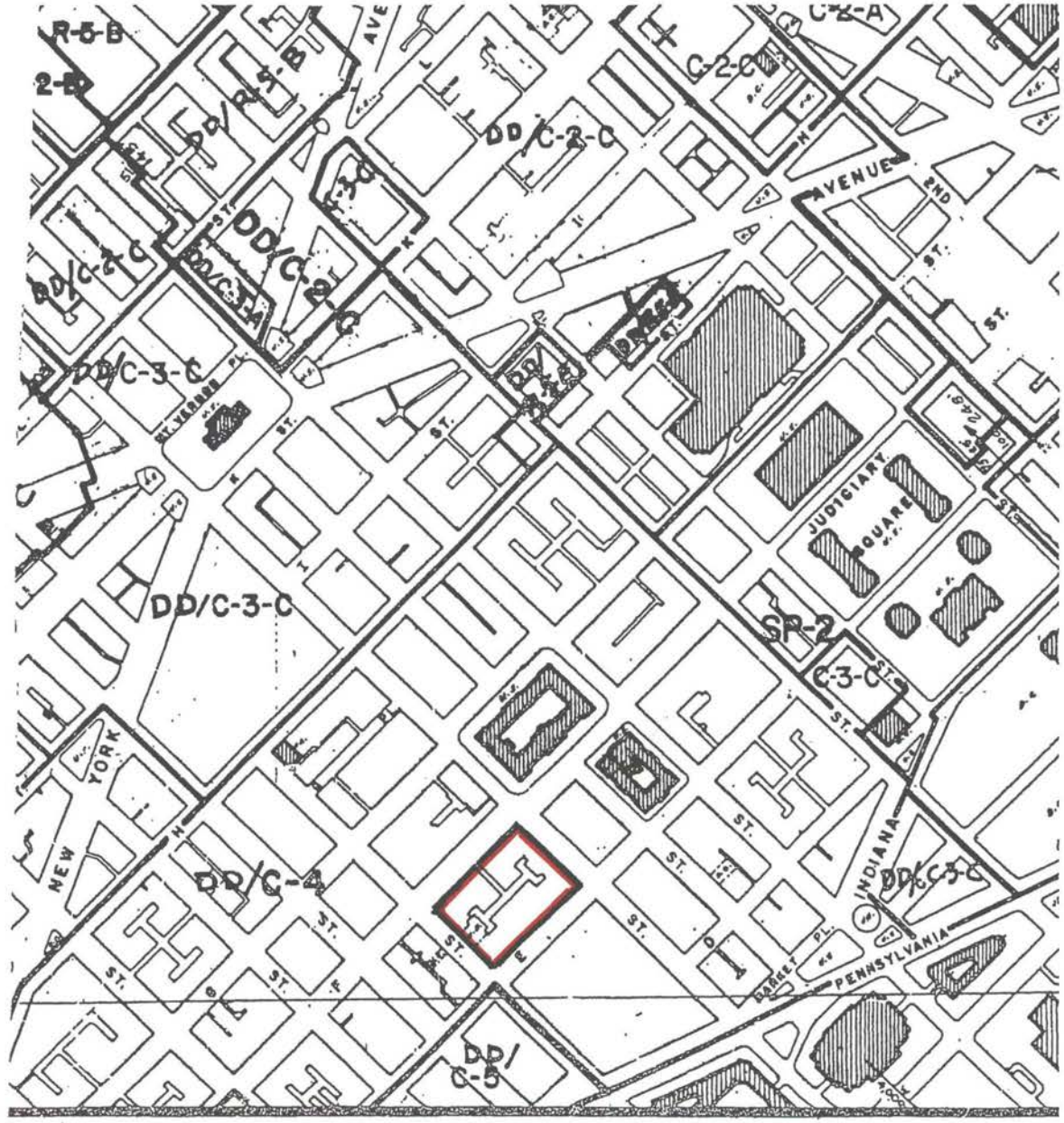

G
PLACE
SQ.375
HUBERT H. HUMPHREY PLAZA
10TH
9TH
SQ 376
STREET
SQ. 377
10th
Street

Exhibit B


G PL. N.W.
PARKG IN B.&S 338
(from plans)
(U.C.)
345
WASHINGTON CENTER OFFICES
F.P.-1988-89
(C.B. BR. F.)
FIRST CONGREGATIONAL CHURCH
375
MARTIN LUTHER KING MEMORIAL LIBRARY
F.P. 1970
(GLASS & METAL PANELS)
RAMP TO B'T
PARKG. B & 325B
G ST. N.W.-PEDESTRIAN MALL
(CLOSED TO VEHICULAR TRAFFIC)
10TH ST. N.W.
9TH ST. N.W.
346
ASSOC. RISK
ST. PATRICKS R.C. CHURCH
PAUL VI ART INSTITUTE
UNIVERSITY OF THE DISTRICT OF COLUMBIA
F.P.-1318
(BR.)
F.P. 1360-81
(CONC. PANELS)
Y.W.C.A. OFFICES
GYM 1E
POOL IN B'T
P A R K I N G
376
PARKG
BR. V.A.C.
15
F ST. N.W.
RITZ HOTEL
ATLANTIC BLDG.
NATIONAL UNION OFFICE BLDG.
OFFICE BUILDING V.A.C.
GOVERNMENT BLDG.
BAPTIST
377 ALLEY
OLD TREASURY
LINCOLN RELICS
OFFICE BLDG.
F.P.-1988-89
(CONC. PANELS)
PARKING
OFFICES
E ST. N.W.
3
4
Scale 50 Ft. to One Inch.
COPYRIGHT 1926 THE SANBORN MAP CO. INC.

C



COLUMBIA

MAP

5

Exhibit C



OUTLINE OF TESTIMONY
REPRESENTATIVE OF APPLICANT

I. INTRODUCTION

II. OWNERSHIP HISTORY OF SITE

III. DESCRIPTION OF SITE

IV. DESCRIPTION OF PROPOSED CONSTRUCTION

V. SPECIAL EXCEPTION AND VARIANCE RELIEF IS NEEDED

VI. CONCLUSION



OUTLINE OF TESTIMONY
REPRESENTATIVE, SHALOM BARANES ARCHITECTS

I. INTRODUCTION AND PROFESSIONAL QUALIFICATIONS

II. SITE AND LOCATION DESCRIPTION

- **A. Overview of Site, Vicinity, Historic Preservation and Land Use/Zoning**
- **B. Site Planning – historic preservation, site location, configuration and grade, and other exceptional situations and conditions**

III. PROJECT DESIGN

- **A. Design Considerations**
  - **- Presence of Multiple Historic Buildings and Facades**
  - **- Mayor's Agent 1989 Approval of Atlantic Building Special Merit Project – preservation and preferred use components**
  - **- Demolition of Substantial Non-Contributing Building**
  - **- Multiple Use Building**
  - **- Relationship to Ford's Theater Landmark**
  - **- Other Practical difficulties affecting site**
- **B. Review of Massing of New Construction**
- **C. Floor Plans**

IV. COMMUNITY SUPPORT

V. CONCLUSION

F

OUTLINE OF TESTIMONY
LAND ECONOMICS EXPERT

I. **INTRODUCTION AND PROFESSIONAL QUALIFICATIONS**

II. **OVERVIEW OF SITE**

III. **DESCRIPTION OF UNIQUE ASPECTS OF PROJECT WHICH RELATE TO ZONING RELIEF REQUESTED**

IV. **CONCLUSION IN SUPPORT OF GRANT OF ZONING RELIEF REQUESTED**



OUTLINE OF TESTIMONY
STEVEN E. SHER
DIRECTOR OF LAND USE SERVICES
HOLLAND & KNIGHT LLP

I. SITE LOCATION AND DESCRIPTION

II. DESCRIPTION OF SURROUNDING AREA

III. EXISTING ZONING: DD/C-4

- A. Uses
- B. Height
- C. Density
- D. Court
- E. Parking
- F. Side and Rear Yard

IV. ZONING HISTORY OF SUBJECT PROPERTY

- A. 1989 Mayor's Agent Order
- B. BZA Application No. 14967
- C. DD/SHOP Districts

V. PROPOSED PROJECT

VI. RELIEF REQUIRED

- A. Variance from §771, Floor Area Ratio
- B. Variance from §1701.4(c), Downtown Development District Parking Access Restrictions
- C. Special Exception from §411.11, Roof Structure Setback and Walls of Varying Heights

VII. COMPLIANCE WITH STANDARDS FOR VARIANCE AND SPECIAL EXCEPTION RELIEF

VIII. CONCLUSION

H

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14967, of the Clover F Street Associates Limited Partnership, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Sub-section 774.1), and a variance from the provision that a mechanical penthouse be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located and shall not exceed 18 feet 6 inches in height above the roof upon which it is located (Sub-section 400.8) for the proposed construction of a retail, office and accessory parking structure in a C-4 District at premises 920-930 F Street, N.W., (Square 377, Lots 823, 824, 825, and 826).

HEARING DATE: March 8, 1989
DECISION DATE: March 8, 1989 (Bench Decision)

SUMMARY ORDER

The Board duly provided timely notice of the public hearing on this application, by publication in the D.C. Register, and by mail to ANC 2C and to owners of property within 200 feet of the site.

The site of the application is located in Advisory Neighborhood Commission ("ANC") 2C. ANC 2C, which is automatically a party to the application, by letter dated February 17, 1989, submitted written issues and concerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 774.1 and 400.8. No person or entity appeared at the hearing or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, and that 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 maps. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. The exterior design details of the project may be adjusted to reflect any design changes that are required by the final approval of the Historic Preservation Review Board.

2. The applicant shall retain the flexibility to increase or decrease the number of parking spaces to be provided in the project no more than fifty percent. In addition, the layout of the spaces and the configuration of the aisles may be adjusted.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 5-0 (Paula L. Jewell, Charles R. Norris, William F. McIntosh, Maybelle Taylor Bennett and Carrie L. Thornhill to grant).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAR 24 1989

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 PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS 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.

14967order/LJP47