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July 19, 2002

**DENNIS R. HUGHES**
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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 Proposed Findings of Fact and Conclusions of Law and Opinion. Please note that we submitted this document to you by fax yesterday afternoon.

If you have any questions, please do not hesitate to call.

Very truly yours,
HOLLAND & KNIGHT LLP

Dennis R. Hughes

Enclosures
cc: Steve Cochran, Office of Planning
Alexander Padro

**BZA**
**Case No.** 16892
**Exhibit No.** 48

Board of Zoning Adjustment
District of Columbia
CASE NO.16892
EXHIBIT NO.48

# APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND OPINION

Application No. 16892 of Jemal's Ford LLC, et al, pursuant to 11 DCMR §1303.2, for a variance from the floor area ratio requirements under §771, a variance from the Downtown Development District parking and loading access restrictions under §1701.4(c), and a variance from the residential recreation space requirement under §773, and pursuant to 11 DCMR §3104.1, for a special exception from the roof structure provisions under §§411 and 777, to allow the construction of a ten (10) story mixed use building (office, residential, retail 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).

**HEARING DATE:** **July 9, 2002**
**DECISION DATE:** **July 9, 2002[1], July 23, 2002**

## DECISION AND ORDER

**SELF CERTIFICATION**

**PRELIMINARY MATTERS:**

1) The Board, pursuant to its rules, provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission ("ANC") 2C and to owners of property within 200 feet of the site.

2) The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application, and which submitted a letter and in support of the application. ANC 2C-01 Single Member District Representative Alexander Padro testified in support of the application at the public hearing.

3) As directed by 11 DCMR §3119.2, the Board has required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case for variances pursuant to §3103.2 and special exception pursuant to §3104.1. The only parties to the proceeding were the Applicant and ANC 2C.

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[1] At the conclusion of the public hearing on July 9, 2002, the Board voted to approve the Applicant's request for variance relief from floor area ratio limitation, §771, and the request for roof structure special exception under §§411.11 and 777. The Board determined to hold a Special Meeting on July 23, 2002 to resolve the remaining outstanding requests for variance relief, namely from the parking and loading access restrictions of the Downtown Development District, §1701.4(c), and from the residential recreation space requirements, §773.

4) Six witnesses testified in support of the application, including the applicant, the architect for the project, an expert in architectural history, an expert in land economics, an expert in land use and urban planning, and an expert in transportation engineering and traffic planning. One person, Ms. Sally Blumenthal of the National Park Service, testified in opposition to the Applicant's request for variance relief from §1701.4(c), to allow parking and loading access from 10th Street, NW.

5) The Board received letters in support of the application from the Downtown Housing Now Committee, the Downtown Cluster of Congregations and the DC Heritage Tourism Coalition.

6) The DC Office of Planning ("OP") submitted a report and testified at the public hearing. OP recommended that the Board approve the Applicant's requested FAR variance. OP also recommended that the Board approve the Applicant's request for parking access variance unless otherwise recommended by the DC Division of Transportation ("DOT"). OP recommended that the Board approve the requested roof structure special exception, with conditions. Finally OP recommended that the Board not approve the Applicant's request for variance from the residential recreation space requirement, but, in coordination with the Applicant, OP did recommend that the Board approve an alternate provision, which would allow the Applicant to meet its residential recreation space requirements utilizing indoor space located either at the Subject Property or at the adjacent apartment building to be constructed at 910-916 F Street, NW.

7) DOT submitted a report recommending that the BZA approve Applicant's request for variance from §1701.4(c) to allow parking and loading access from 10th Street, NW.

8) In its Prehearing Statement in Support, filed 14 days prior to the public hearing, the Applicant noted its intent to withdraw its variance request from the loading aspects of §1701.4(c) as a result of discussions with OP. At the public hearing, the Applicant rescinded its request for withdrawal and maintained its variance request under §1701.4(c) to include both parking and loading. The Applicant noted its change of approach was the result of the comments given by the Mayor's Agent for Historic Preservation that the public hearing held on July 8, 2002, and from other comments received in support of minimizing traffic in the public alley.

9) At the conclusion of the public hearing, the record was left open for post-hearing submissions from the Applicant and from OP and any other government agencies. The Board requested the Applicant to provide drawings showing studies of the parking and loading access relocated away from Ford's Theatre and to provide more explicit reference to proposed location of residential space and residential recreation space off-site from the Subject Property. The Applicant submitted this information to the Board on July 16, 2002.

10)At the request of the Board, the Applicant also submitted a memorandum analyzing whether the Subject Property is required to provide parking and loading under the Zoning Regulations.

**FINDINGS OF FACT:**

1) The property that is the subject of this application consists of 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 (the "Subject Property"). 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 Subject 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 resulting total lot area of the proposed development site is 35,288 square feet. The Subject Property possesses a steep grade change of approximately 13-14 feet from north to south.

2) The Subject Property is 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). 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 (the "Original Project"). 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 938-942 F Street, NW, and around to 10th Street, NW, to abut the north portion of the Ford's Theatre National Historic Site.

3) The Original Project involved the partial demolition of the historic buildings at 920, 922-924, 926 and 930 F Street, NW (Lots 852 and 853, containing approximately 17,593 square feet of lot area and occupying essentially the eastern half of the Subject Property). 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. In approving

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.

4) The construction proposed by the Original Project, incorporating the restored facades, was approved by the Mayor's Agent for a nine-story mixed use building of office, retail and arts/entertainment uses, 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. The Board notes that the DD was not yet in existence at the time the Original Project was approved by the Mayor's Agent in 1989.

5) Similarly, the BZA approved variances to permit construction of the Original Project. In BZA Application No. 14967, 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. 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 Project were not required to be provided under the Zoning Regulations then in effect.

6) Demolition of the 920-930 F Street buildings in anticipation of the Original Project was undertaken during the second half of 2000. 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 Owner was unable to develop the Original 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.

7) 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 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 (the "Revised Project"). The Revised Project also includes the demolition of the six-story noncontributing Lane Bryant Building at 932-936 F Street, NW, and 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. A public hearing before the Mayor's Agent was held on July 8, 2002 regarding the Applicant's request and a decision is pending.

8) The Revised Project proposes a 10-story mixed use office building with a building density of approximately 8.20 FAR, with retail uses along the entire F Street frontage of the project and below-grade, and with parking for approximately 200 automobiles accessed from 10th Street, NW. The Applicant likewise proposes that loading for the building be accessed from 10th Street, NW. The proposed 8.20 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. The resulting design of the new construction is a series of setbacks from both F and 10th Streets, NW.

9) The Board finds that the design of the Revised Project continues to evolve as the Applicant returns for design review by the HPRB and Preservation Staff. The Applicant has identified certain areas that continue to be studied, including the height of new construction along the streetwall of 10th Street, NW, and the roof structure. With regard to the 10th Street, NW, streetwall, the HPRB is in the process of determining the appropriate height of that new construction, between five and nine floors in height. The Applicant has presented its designs to the Board based upon an approval of nine floors by the HPRB. In the event the HPRB determines a lower height to be appropriate, the Board recognizes that a lesser amount of FAR relief will be requested by the Applicant, as reflected in revised drawings to be submitted.

10) In total, the Revised Project provides approximately 43,156 square feet of preferred use retail, residential and arts uses. 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, the Applicant proposes to provide another 8,848 square feet of ground floor retail space. Furthermore, the Applicant will provide approximately 6,000 square feet of residential space, either on the Subject Property or, as set forth in its post-hearing submission filed July 16, 2002, at the Applicant's property at 919 F Street, NW, or within a two-block radius North, South or East of the Subject Property. In addition, 3,744 square feet devoted to the lobby/museum space will be provided. This preferred use offering is more than twice the minimum number of square feet required for retail and arts uses, as set forth in the Zoning Regulations.

11)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.

12)The C-4 District is designed for the downtown core that comprises the retail and office centers for both the District of Columbia and the Metropolitan area. The C-4 District provides for a maximum FAR of 10.0 and maximum height of 130 feet.

13)Through its expert in land use and urban planning, the Applicant testified that it had satisfied the requirements for area variance relief from the floor area ratio requirements of §771, and from the residential recreation space requirements of §773, and from the Downtown Development District parking and loading access restrictions of §1701.4(c), in that the Subject Property is affected by exceptional conditions, strict application of the Regulations would create practical difficulty for the development of the Subject Property, and the variances can be granted without substantial detriment to the public good.

14)Through its expert in land use and urban planning and its architect, the Applicant demonstrated that the Subject Property is affected by a number of exceptional conditions that qualify it for variance relief, including the existing physical conditions of the Subject Property and its development and zoning history. With respect to physical conditions, 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. 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 previous owner. Furthermore, any work on the Subject Property must be undertaken pursuant to the recommendations of the HPRB and approval by the Mayor's Agent. Another exceptional physical condition impacting the Subject Property is the 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. The development and zoning history of the Subject Property also establishes an exceptional 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 1989 Mayor's Agent approval remains in effect, 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. 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.

15) Through its expert in land use and urban planning, its expert in land economics, and its architect, the Applicant demonstrated that the strict application of the Zoning Regulations would result in a practical difficulty to the Applicant. 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. The combination of the established and extensive preservation and preferred use amenities set forth in the Mayor's Agent's order for the eastern portion, and the density restrictions and preservation review requirements of the western portion, creates an exceptional cost for development of the Subject Property. The total cost to the project as a result of land use/development constraints and historic preservation efforts is estimated by the Applicant at approximately $9,670,000.

16) Through its expert in land use and urban planning, its expert in land economics and through its own testimony, the Applicant testified that under the 1989 Mayor's Agent Order, the previous owner agreed to a very substantial array of historic preservation efforts as well as preferred uses for the redeveloped property. Indicative of the practical difficulty these exceptional conditions placed on the property, that owner ultimately was unable to complete the 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 that owner 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.

17)The Applicant testified that, 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 allow the currently abandoned rehabilitation effort to proceed forward.

18)Through its expert in land use and urban planning and its architect, the Applicant demonstrated that the residential recreation space requirement for the residential use portion of the building cannot physically be met. For the Subject Property, where approximately 6,000 square feet is being devoted to residential use, the Applicant would be required by §773.3 of the Regulations 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 has agreed to provide the required 300 feet of residential recreation space but cannot 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. The recreational space must be located at some low level in the building so as not to require additional elevator access and further limit the developable area of the building. This precludes the Applicant from providing access for residents to any terraces that might be created at the upper levels of the building.

19) Through its expert in land use and urban planning and its expert in transportation engineering and traffic planning and its expert in architectural history, the Applicant demonstrated that the DD Overlay parking access prohibitions cause a practical difficulty for the applicant in that the prohibitions make the Subject Property inaccessible from any public street. At the same time, access to the building through the public alley system in Square 377, accessed mid-block along F Street, NW, a two-way trafficked street, via a 15-wide alley stem, is impractical for parking and loading access. Furthermore, the 15-foot wide alley cannot be widened as it is bounded to the east by the historic National Union Life Insurance Building at 918 F Street, NW, and to the West by the braced facades which cannot be relocated further away from the alley.

20)Through its expert in land use and urban planning, the Applicant demonstrated that 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's project marks a unique opportunity to revive and rescue the failed preservation effort of a major District landmark. At the same time, the project furthers the District's goals of resuscitating F Street, NW. Furthermore, the Applicant continues to work closely with the HPRB, Mayor's Agent and Preservation Staff to ensure that the visual impact of the new construction is masked to the greatest extent possible, especially in the context of buffering

abutting and neighboring historic properties, including the neighboring Ford's Theatre. With respect to the FAR variance request, the Board finds that on a building site with an area of approximately 35,000 square feet, the Applicant has proposed more than 43,000 square feet of preferred uses, so that more than 1.0 FAR equivalent of the 8.20 FAR building will be devoted to preferred uses. Furthermore, with regard to the Zone Plan, the project fulfills the policies and objectives of the District as set forth in the historic preservation element of the Comprehensive Plan and the DD overlay of the Regulations.

21) Regarding the residential recreation space variance request, the Applicant provided information to the Board following the close of the public hearing setting forth that the minimum required square footage of residential recreation space would be provided by the Applicant either on site or within a two-block radius to the North, South, or East of the Subject Property where the critical mass needed to fulfill the District's goals of a "living downtown" is focused. OP supported the Applicant's efforts and agreed that the additional requirements upon the residential recreation space to be provided, namely that a minimum of 50 percent be located outdoors, and the 25 foot rooftop minimum dimension requirement are not critical to this project in the heart of downtown, where sidewalk foot traffic is especially encouraged.

22) With regard to the variance from the DD parking and loading access prohibitions, the Board finds that the Applicant, in coordination with OP and the DOT, studied alternative locations for accessing parking and loading along the perimeter of the Subject Property in an effort to minimize impacts. To that end, the Applicant submitted studies of alternative parking and loading access further north along 10th Street, NW, abutting the rear of the historic building to be preserved at 942 F Street, NW. This approach increases the distance of both the parking and loading access from the entrance to Ford's Theatre, in an effort to address the comments raised by the National Park Service. The Applicant proposes to separate the parking and loading access from Ford's Theatre with a sizeable retail presence. Furthermore, the parking and loading access will be provided separate openings and curb cuts. The Board finds that efforts to locate the parking and loading access from F Street, NW, would be problematic, in that there are historic buildings along the West portion and historic facades along the East portion of the Subject Property's F Street frontage, leaving only approximately 60 feet in the middle of the F Street frontage to locate parking and loading access, at the site of the current Lane Bryant building. The location of parking and loading access at this location would require the Applicant to relocate its entire mechanical core as well as its ground floor retail uses as a result of both the location of the access and the steep grade change. Various District agencies also noted opposition to any proposed access location along F Street, NW.

23) Based upon the traffic studies undertaken by the Applicant, the Board likewise finds the location of parking and loading access to the proposed building from

the public alley system to be problematic. The Board finds the Applicant's proposal to relocate both the parking and loading access North along 10th Street, NW, from its originally proposed location to be the preferred location for the parking and loading access. This determination is consistent with the report of the DOT. Furthermore, this relocation away from Ford's Theatre accommodates the concerns of the National Park Service and is an appropriate balancing of all relevant concerns.

24) Through its expert in land use and urban planning, the Applicant testified that it had satisfied the standards for special exception relief under §§ 411.11 and 777 of the Regulations, regarding the location and varying height of roof structures. 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 Board finds that 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 for certain portions of the roof structure, primarily along the alley side of the building but also a small portion along F Street, NW. 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.

**CONCLUSIONS OF LAW AND OPINION:**

Based upon the foregoing findings of fact, the Board concludes that the Applicant is seeking variances from §§771, 773, and 1701.4(c) of the Zoning Regulations, and special exception under §§411.11 and 777.

With respect to the requests for variance relief, the Applicant must prove that it has complied with the requirements of §3103 of the Zoning Regulations. The Board concludes that the requested relief is for area variance, the granting of which requires proof of a practical difficulty upon the Applicant arising out of some exceptional condition or situation of the property. The Board further must find that

the relief requested can be granted without substantial detriment to the public good and without substantial impairment to the zone plan.

The Board concludes that the Applicant has met the requisite burden of proof. The Board further concludes that the site is subject to extraordinary or exceptional conditions by virtue of both physical conditions impacting the Subject Property and the development and zoning history of the Subject Property. The Board further concludes that the strict application of the Zoning Regulations would create a practical difficulty upon the Applicant in that it will preclude the Applicant from redeveloping the Subject Property into a viable mixed use office, retail, residential and arts building incorporating significant historic preservation efforts at a critically important downtown location. Finally, the Board concludes that the relief requested will not cause substantial detriment to the public good or harm to the Zone Plan. The project will allow the Applicant to revive this failed preservation project and further the District's goals of resuscitating F Street, NW, the spine of the historic downtown area, and creating a "living downtown". With respect to the Zone Plan, the Board concludes that the Project fulfills the policies and objectives of the District as set forth in the Comprehensive Plan and the DD overlay of the Regulations. 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.

For purposes of the special exception request, the Applicant must prove that it has complied with the requirements of §§ 411, 777 and 3104 of the Zoning Regulations. Based on the evidence and testimony, the Board concludes that special exception relief can be granted in the present case in harmony with the general purpose and intent of the Zoning Regulations and Maps and without adverse effect upon the use of neighboring property in accordance with the Zoning Regulations and Maps. The Board is satisfied by the Applicant's testimony that the proposed roof structure is being designed in consultation with HPRB and Preservation Staff to ensure its compatibility. The Board further recognizes that the grant of special exception relief is not inconsistent with the general purpose and intent of the Zoning Regulations where, as here, the Applicant demonstrates its compliance with relevant special exception provisions of the Regulations.

The Board further concludes that it has given to Advisory Neighborhood Commission 2C the "great weight" to which it is entitled.

It is therefore ORDERED that this application be **GRANTED** with the following provisions in order to provide the Applicant with certain design flexibility in its continuing review by the HPRB:

1) The parking and loading access to the building shall be provided from 10th Street, NW, in accordance with Scheme 6B of the revised plans submitted by the Applicant as part of its post-hearing submission on July 16, 2002, found at Exhibit ___ of the record.

2) The Applicant may modify the design of the building subject to approval under D.C. Law 2-144, provided that those changes do not increase any of the areas of relief granted by the Board of Zoning Adjustment;

3) The Applicant may reduce the height of all or part of the roof structure, where possible, and with the approval of the Historic Preservation Review Board.

**VOTE taken on July 9, 2002 re: variance relief from §771, Floor Area Ratio, and special exception, §§411.11 and 777: (4-0-1)** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John Parsons and David A. Zaidain to grant. Anne M. Renshaw, not present, not voting.)

**VOTE taken on July 23, 2002 re: variance relief from §773, Residential Recreation Space , and from §1710.4(c), DD Parking and Loading Access: (0-0-0)** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John Parsons and David A. Zaidain, Anne M. Renshaw)

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

**ATTESTED BY:** _____
**Jerrily R. Kress, FAIA**
**Director**

**FINAL DATE OF ORDER:** _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.