GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16907 of U.S. Property Development Corporation, pursuant to 11 DCMR § 3104.1, for a special exception from the ground floor retail requirements under section 1901, and pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, and a variance from the residential recreation space requirements under section 773, to allow a mixed use (residential and retail) development in the Arts/C-3-A District at premises 1522-1526 14th Street, N.W. (Square 209, Lot 98).

HEARING DATE: July 23, 2002
DECISION DATES: July 23, 2002 and August 6, 2002

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F, and to the owners of property within 200 feet of the site. The application was also referred to the Office of Planning for review and report.

The site of this application is located within the jurisdiction of ANC 2F. ANC 2F, which is automatically a party to the application submitted a letter in support of the application. The Office of Planning submitted a report in conditional support of the application.

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 a special exception from the strict application of the requirements of 11 DCMR §§ 3104.1 and 1901, and for a variance under 11 DCMR §§ 3103.2, 772 and 773. No person or entity appeared at the public hearing in opposition to this application 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.

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Based upon the record before the Board, including giving great weight to the OP and ANC, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1 for a special exception under section 1901, which will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The applicant has also met the burden of proving under 11 DCMR §§ 3103.2, 772, and 773, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS:**

1. The Applicant shall have the flexibility to reduce the requirement for retail and service floor area on the first floor from 50% to 47.7%.

2. The Applicant shall have the flexibility to further reduce the requirement for retail and service floor area on the first floor between 40% and 47.7%, if the difference between the retail and service floor area percentage is designated for residential recreation space, and/or occupied by another allowable nonresidential use as listed in sections 1907 and 1908 in the Uptown Arts-Mixed Use (Arts) Overlay District.

Pursuant to 11 DCMR 3101.6, the Board has determined to waive the requirement of 11 DCMR 3125.3 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 appropriate in this case.

On July 23, 2002, the Board approved the variances from the lot occupancy (section 772) and residential recreation space requirements (section 773).

VOTE: **4-0-1** (Carol J. Mitten, Anne M. Renshaw, Geoffrey H. Griffis, and David A. Zaidain to Approve, the third mayoral appointee not present, not voting).

On August 6, 2002, the Board approved the special exception from the ground floor retail requirements (section 1901).

VOTE: **5-0-0** (Geoffrey H. Griffis, David A. Zaidain, Carol J. Mitten, Anne M. Renshaw, and Curtis L. Etherly, Jr., to Approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

Final Date of Order: OCT 11 2002

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE SECTION 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAR STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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As Director of the Office of Zoning, I hereby certify and attest that on OCT 11 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning