GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16916 of Friends Committee on National Legislation, pursuant to 11 DCMR § 3103.2, for a variance to allow the enlargement of existing non-profit office space under subsection 2002.5, and pursuant to 11 DCMR § 3104.1, a special exception to allow an elevator penthouse which does not meet the setback requirements under subsections 400.7(b), and 411.11, in the CAP/R-4 District at premises 245 2nd Street, N.E. (Square 757, Lot 844).

Note: The Board amended the application at the time of the public hearing to include special exception relief under subsections 400.7(b), and 411.11.

HEARING DATE: September 24, 2002
DECISION DATE: September 24, 2002 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

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) 6A, and to the owners of property within 200 feet of the site. The application was referred to the Office of Planning (OP) for review and report.

The site of this application is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to this case, made no submission with regard to this application. The OP submitted a report recommending approval of the application. The Architect of the Capitol submitted a report stating that the approval of the application would create no adverse effect on the Capitol Complex or the Master Plan referred to in 11 DCMR § 1201.1, or the other special objectives for which the Capitol Interest District was enacted.

As directed by 11 DCMR § 3103.2, the Board has required the applicant to satisfy the burden of proving the elements necessary to establish a case for a use variance. 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.

BZA
Case No. 16916
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO.16916
EXHIBIT NO.40

To be entitled to a use variance under 11 DCMR § 3103.2, the Applicant must demonstrate: (i) an exceptional or extraordinary situation or condition; (ii) undue hardship; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. In *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979), the District of Columbia Court of Appeals held that previously granted variance relief and immediate proximity to the Capitol are circumstances creating an exceptional situation. In *Monaco*, the Court also held that reliance on previously granted variance relief may demonstrate undue hardship. Further, pursuant to *National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984), the Board may apply a more flexible standard for determining hardship because the applicant is a nonprofit entity devoted to public service. Finally, the Board finds the requested variance can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zone Plan. Based on the record before the Board, the Board concludes that the Applicant has met the burden of proof for a use variance under 11 DCMR § 3103.2.

Based upon the record before the Board and having given great weight to the OP, the Board concludes that the Applicant has also met the burden of proof, pursuant to 11 DCMR § 3104.1 for a special exception under subsections 400.7(b), and 411.11, 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 plans submitted to the Board by the Applicant show that the elevator penthouse is located so as to be flush with the party wall with the immediately adjoining property. Thus, the penthouse is not set back from all exterior walls a distance at least equal to its height above the roof upon which it is located, as required by subsection 400.7(b). Compliance with the requirements of subsection 400.7(b) would be impracticable because of operating difficulties, the size of the building lot, and other conditions relating to the surrounding area. Accordingly, the Board finds the Applicant is entitled to relief from the requirements of subsections 400.7(b) and 411.11. It is therefore **ORDERED** that this application be **GRANTED**.

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.

VOTE: **5-0-0** (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., Carol J. Mitten, and David A. Zaidain 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 15 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.

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
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BZA APPLICATION NO. 16916

As Director of the Office of Zoning, I hereby certify and attest that on DEC. 15 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 Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning