GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 17009 of RWN Development Group, pursuant to 11 DCMR § 3104.1, for a special exception to allow an increase in building height from 40 feet to 50 feet under subsection 1402.1, and pursuant to DCMR § 3103.2, a variance from the residential recreation space requirement under section 773, to allow the conversion and enlargement of an existing commercial building into a 35-36 unit apartment house with ground floor professional and nonprofit arts uses in the RC/C-2-B District at premises 1700 Kalorama Road, N.W. (Square 2567, Lot 81).

HEARING DATE: May 13, 2003
DECISION DATE: June 3, 2003

DECISION AND ORDER

On March 5, 2003, RWN Development Group filed an application with the Board of Zoning Adjustment (BZA) seeking a special exception and a variance in connection with the development of a new apartment building at 1700 Kalorama Road, N.W. The BZA, at its June 3, 2003 public meeting, after discussion and deliberation on the application approved the application by a vote of 5-0.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memorandum dated March 7, 2003, the Office of Zoning provided notice of filing of the application to the District of Columbia Office of Planning, the affected Advisory Neighborhood Commission (ANC 1C) and Single Member District Commissioner, and the Ward 1 Council Member. Exhibit Nos. 12, 13, 14 and 15.

The BZA scheduled a hearing on the application for May 13, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on March 13, 2003, mailed the Applicants, the owners of all property within 200 feet of the subject property, and ANC 1C notice of hearing. Exhibit Nos. 17, 18 and 19. Notice of hearing was also published in the D.C. Register. The Applicants filed an Affidavit of Posting, which indicates that the property was posted properly. Exhibit No. 24.

Request for Party Status. Gloria and Emmark Brown (the "Browns"), the owners of a property at 2316 17th Street, N.W., which abuts Applicant's property on 17th

BZA Case No. 17009 Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 17009
EXHIBIT NO. 34

Street, each separately requested party status. Exhibit Nos. 22 and 23. The Browns requested that the BZA deny the application. The BZA asked whether the Browns were related and living at the same address, and if so, whether these two requests for party status could be consolidated into one request. The Browns answered that they are related but that they preferred that their requests for party status remain separate because they had different reasons for opposing the project. The Applicants had no objection to the granting of the request for party status. The BZA voted unanimously to grant the request for party status to the Browns.

Persons in Opposition to the Application. No other person other than the Browns expressed opposition to the application.

Self-Certified Application. The Applicants filed a Self-Certified BZA Application, Exhibit No. 7, seeking a special exception pursuant to 11 DCMR § 3104.1 and 11 DCMR § 1402.1, and a variance pursuant to §§ 3103.02 and 773.3.

Authorization. Cynthia A. Giordano, Esquire, an attorney and a member of the District of Columbia Bar, represented the Applicants at the public hearing. Richard Naing, a principal with RWN Development Group, was also in attendance at the meeting, as was the Applicants' D.C. licensed architect, Phil Esocoff.

DC Office of Planning (OP) Report. OP filed a report recommending approval of the application. Exhibit No. 26. The report was received in the Office of Zoning on March 11, 2003. OP's report and its testimony at the hearing identified the base zoning of the subject property as C-2-B which permits both residential and mixed-use development. OP stated that the property is subject to the Reed Cooke ("RC") overlay zone which was designed to protect existing housing and encourage affordable housing uses as well as compatible and community serving nonresidential uses. OP's rationale for recommending approval of the application was that approval would: (1) allow residential development that is compatible with existing uses; (2) bring new residences to the area; and (3) meet the intent of the Zoning Regulations. OP recommended that the BZA approve the special exception and variance requested with the condition that the applicant provide a covenant for the provision of low and moderate income housing. More specifically, with respect to the special exception, OP indicated that pursuant to Section 1403.1 of the Zoning Regulations the application would have to meet certain conditions. OP opined that the project met all of the conditions as follows:

> It advances the purposes of the RC Overlay by providing new housing and non-residential uses that serve the local community.

Existing ingress and egress, which will be retained, have functioned efficiently. Pedestrian access will be separated and will not conflict with vehicular access.

The project substantially exceeds the parking requirements provided by the Zoning Regulations and should be more than adequate to meet need.

The proposed project seeks to convert a commercial building to predominately residential use, rendering it more compatible with adjacent residential zones and uses.

The proposed project is not expected to have any adverse noise impacts.

The proposed uses will not include any outdoor storage of materials, nor outdoor processing, fabricating or repair.

Even with the proposed additional height, the overall size and scale of the project will be within that permissible in the underlying zone. The area that exceeds the 40 foot height limit is a small portion of the building to the rear of the project and will not affect neighboring properties. The proposed uses will be more beneficial to the neighborhood than the prior office use which offered limited security and activity on the site in the evening.

With respect to the residential recreation space variance, OP indicated that the subject property is unique due to the shape of the lot and the fact that most of the building is being converted from commercial to residential use. Providing the full requirement of recreation space would reduce the amount of residential space provided. OP was of the opinion that the amount of space provided will adequately serve the residents and is therefore consistent with the intent of the Zoning Regulations. OP also noted that the Reed-Cooke Neighborhood Association voted on April 8, 2003 to support the requested special exception and variance requests.

Advisory Neighborhood Commission (ANC) Report. By correspondence dated May 6, 2003 (Exhibit No. 25), ANC 1C recommended approval of the application stating that the development conforms to the requirement under the Reed-Cooke Overlay of making 50% of additional units affordable and that the Applicant had conducted community outreach and responded to community concerns. ANC 1C's report indicated that proper notice of their meeting was duly given, and that the resolution to support the application was adopted at a public meeting on April 2, 2003 by a vote of 7-0 with 1 abstention.

Closing of the Record. Upon hearing the Applicants' case, reviewing the recommendations of the Office of Planning and the Browns' opposition, the BZA closed the record but for the following additional submissions:

A. From the Applicants:

(1) a proposed covenant regarding the details of the Applicant's commitment for the proposed low-moderate-income units;

(2) exhibits showing the impact of the proposed special exception height increase on the adjacent Brown residence; and

(3) a summary of the facts of the case.

B. From the Browns'

(1) any response to the Applicant's submissions above.

Post Hearing Submissions. The Applicant submitted an outline setting forth standards for regulating the pricing, sale/lease, and resale/release of the affordable housing component. The standards were based upon standards formulated by another developer with input from OP and DHCD for an affordable housing component included in a recent PUD case. The Applicant also submitted photos and site plans demonstrating that the proposed height increase to 50 feet will not impact the Brown residence because the increase will only be applied for a portion of the site which is not adjacent to the Brown property. Exhibit No. 31. However, "Attachment C" of Exhibit No. 31 described mitigating improvements (i.e., treatment of building wall adjacent to the Brown residence and landscaping) which the Applicant stated it is willing to implement to improve the impact of the matter-of-right height increase. No post hearing submission in response to the Applicant was made by the Browns.

Decision. The BZA approved the special exception and variance requests with conditions as described below at its June 3, 2003 meeting.

SUMMARY OF EVIDENCE:
The Applicants' Proposal

The subject application is for special exception pursuant to Sections 1402.1 and 3104 to allow a height of 50 feet for the conversion and enlargement of an existing commercial building into a 35-36 unit apartment house with ground level professional and nonprofit arts uses at 1700 Kalorama Road, N.W. (Square 2567,

Lot 81, the "Property"). A variance to reduce the amount of residential recreation space required from 15% to 5.8% is also requested pursuant to § 3103.

The requested special exception seeks an increase to 50 feet on a portion of the existing improvements. The height increase will result in one or two additional residential units and approximately 1,350 square feet of low-moderate income housing in the project. The requested variance seeks to reduce the residential recreation space requirements from 15% to 5.8%.

OPPOSITION:

The only opposition to the application was presented by Gloria and Emmark Brown. Gloria Brown lives at 2316 17th Street, N.W. which is located adjacent to the subject property on 17th Street. The Browns expressed concern that the proposed height increase would reduce light and air to their property.

Second, the Browns argued at the hearing that the proposed height increase would adversely impact their views to the west.

FINDINGS OF FACT:

1. The property is zoned RC/C-2-B -- a medium-density, mixed-use zone with a maximum height of 65 feet and a maximum density of 3.5 FAR for residential or mixed uses, (1.5 FAR for commercial uses). The Reed-Cooke overlay zone, as set forth in 11 DCMR Chapter 14, modifies the base zoning by enumerating a list of prohibited uses and by establishing a height limit of 40 feet. The permitted height restriction may be increased up to 50 feet as a special exception, provided that one-half of the additional density is devoted to affordable housing units.
2. The subject lot size is irregularly shaped. The existing improvements on subject property consist of a two-story office building with a two-level, open-air parking structure at the rear on a lot having 22,004 square feet of land area. The office building is an industrial-design masonry structure with an irregular shape that follows the extreme acute angle formed by the intersection of 17th Street and Kalorama Road, N.W. The existing improvements already maximize current lot occupancy requirements 80% leaving little opportunity to provide recreation space on the lot.
3. The proposed development consists of a conversion to residential apartments with a two-story matter-of-right addition on top of the main building and a small, oval-shaped, two-story residential addition over the parking garage. Only the addition on the parking garage is proposed to extend to 50 foot height pursuant to the special exception relief requested. The height of the main structure

will not exceed the 40 foot matter-of-right standard. To mitigate any adverse impacts of the matter-of-right height increase on the adjacent Brown residence, the Applicant agreed to make the improvements described in Attachment "C" to Exhibit No. 31.

4. The ground floor space will be occupied by "Sitar," a well-respected nonprofit arts center already located in the neighborhood and Lynne Israel and Associates, a professional service use which provides occupational therapy to children.

5. With the requested height increase, an additional residential gross floor area of approximately 2,936 square feet can be added. A net increase of two units with 1,350 square feet each is obtained with the increase. Pursuant to Section 1402.1, the equivalent of 50% of this additional area (or approximately 1,350 net square feet) must be devoted to low and moderate income housing in the project. The Applicant committed to provide this space in one large unit or two smaller units, hence the 35-36 unit range for the project as a whole. Further, the Applicant proffered that the sale and resale of the unit(s) will be conducted in accordance with the program outlined in the Applicant's post-hearing submission. (Exhibit No. 31)

6. The proposed height increase will not have a negative impact on neighboring properties. The proposed height increase is located on the rear portion of the lot, not adjacent to the Brown residence. As a result, it will not impact the Browns' light and air or their views to the west.

7. The provision of 1,350 square feet of affordable housing in the Reed-Cooke area which is experiencing a ware of redevelopment and gentrification will advance the purposes of the Reed-Cooke overlay zone.

8. The existing building has an unusual configuration and a large footprint which already maximizes current lot occupancy standards. As a result, limited space on the ground level is available for outdoor recreation space. Further, because of the unusual shape of the building, the rooftop cannot accommodate all of the required amount and also meet the minimum width requirements required for rooftop recreation space. Instead, the Applicant is proposing to provide two common area rooftop decks totaling 3,036 square feet (5.8%) and to divide and allocate the remaining, unobstructed rooftop area for private rooftop decks. The standard in the Zoning Regulations is for recreation space equal to fifteen percent (15%) of the residential gross floor area of the building.

9. With the proposed variance, 13 units will have a private rooftop garden. Fifteen units will also have balconies (including some of the units with rooftop gardens). Only eight of the 35-36 total units will have neither a terrace nor a balcony, thereby minimizing the need for additional recreation space beyond the proposed 5.8%. The 5.8% provided will adequately meet the needs of the building residents.

10. It would be an undue hardship to provide additional recreation space inside the project where its benefits to building residents will be limited and the burdens associated with managing and maintaining the space will be a detriment to the building residents. Rather, the Applicant proposed to devote this space to residential use and additional ground floor space for the Sitar School. Such utilization is more in keeping with the purposes of the Reed-Cooke zoning than a function room that will rarely be used. The relatively small size of the project and the benefit of maximizing the amount of the residential and community-serving nonprofit space support the Applicant's proposal to reduce the recreation space component.

11. The number of parking spaces will exceed that required by the Zoning Regulations. By providing adequate parking in this parking-deficient neighborhood, the project helps alleviate a current problem condition in the neighborhood. Further, the intensity of existing use of the site is being substantially reduced because the Applicant is converting the building from office to residential use. The previous office use generated a high level of commuter vehicle trips during peak morning and evening traffic periods. With the proposed conversion, a much smaller number of automobiles will be used in these periods by residents, a higher percentage of whom will walk or take public transit to work.

CONCLUSIONS OF LAW AND OPINION:

The Special Exception

The BZA is authorized under § 8 of the Zoning Act, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§ 6-641.07(g)(2) and (3) (2002)), to grant special exceptions from the Zoning Regulations. The Applicant is seeking a special exception pursuant to § 3104.1 and under 1402.1 to allow a height increase to 50 feet over a small portion of matter-of-sight development. The notice requirements of § 3113 for the public hearing on the application have been met. The Applicant is also seeking variance from the residential recreation space requirements set forth in Section 773.

The Applicants were required to demonstrate that the proposed height increase meets all of the conditions set forth in Section 1403.1 and that it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely, the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps. Based upon the findings of fact, the BZA concludes that the application does meet the requirements for approval of the requested height increase.

The BZA gave "great weight" to the recommendation of the Office of Planning and agrees with OP that upon due consideration to the subject property's zoning, the intensity of use, the character of the neighborhood and the standards for special exception, the proposed height increase meets the required tests and 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. The BZA determined to make as a condition of approval the implementation of the guidelines submitted by the Applicant for the pricing, sale/lease, and long-term disposition of the low-moderate income units. (Exhibit 31).

The BZA further determined that proposed height is unlikely to impair the use and enjoyment of the Browns' property.

The BZA is of the opinion that § 1402.1 of the Zoning Regulations was developed to maintain and expand the existing housing stock and to ensure a greater variety of housing types, opportunities and choices. The BZA determined that the Applicants meet and satisfy each of the requirements of § 1402.2.

In reviewing BZA cases, the BZA is required under D.C. Code § 1-309(d) (2002) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. ANC 1C stated that the application conforms to the requirements of the Reed-Cooke overlay and that the Applicant conducted community outreach and responded to community concerns. The BZA has carefully considered ANC 1C's report and gives great weight to the ANC's recommendation to approve the application.

Based on the findings of fact and having given great weight to the ANC and OP reports, the BZA concludes that the special exception will not materially impair the intent and purpose of the Zoning Regulations, adversely affect the light and air of adjacent buildings or significantly increase traffic or noise. The BZA concludes that the requested special exception relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not affect adversely the use of neighboring properties.

The Variance

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property... or by reason of exceptional topographical conditions or other extraordinary or

exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. Relief can be granted only "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." *Id.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance would not impair the public good or the intent and integrity of the zone plan and regulations.

The Applicant proffered that the site is an irregular shape with a sloping condition and that these conditions together with the existing improvements, which also feature an unusual configuration, make it difficult and impractical for the required amount of residential recreation space to be provided on the roof in accordance with the minimum width requirements for such space. Moreover, the Applicant indicated that the provision of recreation space inside the building was impractical for a project of this size and would burden future condo owners who would be responsible for maintaining and managing it. The Board concurs with the Applicant's assessment of the uniqueness of the property and the resulting difficulty in providing the required amount of recreation space.

OP also recommended that the variance be granted, citing the shape of the lot and the unusual and difficult development objective of converting an older industrial/commercial building to residential use. OP opined that granting the variance will not impair the intent, purpose or integrity of the Zoning Regulations. OP noted that requiring the full 15% requirement would reduce the amount of residential space provided in the project and that the 5.8% being provided will adequately serve the residents, particularly in view of the fact that so many units will have access from their units to private rooftop gardens and balconies. The Board concurs with the OP recommendation.

For the reasons stated above, the BZA concludes that the Applicants have met their burden of proof with respect to both the special exception and variance requests. It is hereby **ORDERED** that the application is **GRANTED** with the following conditions:

(1) The project will be developed substantially in accordance with the plans submitted by the Applicant and reviewed by the Board at the public hearing on the application (Exhibit 28).
(2) The Applicant shall provide 5.8% residential space in two rooftop decks as shown in Exhibit 28.
(3) The Applicant provide a minimum of 1,350 square feet of affordable housing in the project in accordance with the guidelines set forth in the Applicant's post-hearing submission (Exhibit 31).

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, 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 approved the issuance of this order.

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

FINAL DATE OF ORDER: JUL 0 7 2003

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."

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.
PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR

ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 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, FAMILIAL 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 17009

As Director of the Office of Zoning, I hereby certify and attest that on JUL 07 2003 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:

Cynthia A. Giordano, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206

Emmark L. Brown
Gloria W. Brown
2316 17th Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21652
Washington, D.C. 20009

Single Member District Commissioner 1C08
Advisory Neighborhood Commission 1C
P.O. Box 21652
Washington, D.C. 20009

Jim Graham, City Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004

Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.

Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning