BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Jemal's Benjo, LLC
1301-1309 9th Street, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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I. Background:

The Subject Property (Lots 62, 63, 800, 801, 803, and 804 in Square 399), with premises address of 1301-1309 9th Street, NW, is located at the northeast corner of the intersection of 9th and N Streets, NW. The new convention center is under construction immediately south of the Subject Property, across N Street, NW. Abutting the Subject Property to the north is a gasoline service station, and to the west, across 9th Street, NW, are a number of commercial buildings. The Subject Property is bounded to the east by a public alley and a vacant lot at the northwest corner of 8th and N Streets, NW. The Subject Property is located within the Shaw Historic District and the C-2-A Zoning District.

The Subject Property is improved with a series of five row buildings measuring two and three stories in height. The row buildings, dating to the 19th Century, have been determined to contribute to the character of the historic district. The Applicant proposes to construct a five-story addition to the rear of the rowbuildings, to include retail on the ground level, office uses on the second and third levels, and apartments on the fourth and fifth levels (the "Project"). The conceptual massing of the proposed project has been approved by the District of Columbia Historic Preservation Review Board ("HPRB").

The C-2-A District permits development of an approved use to a maximum of 2.5 FAR (1.5 FAR maximum non-residential) and 50 feet in height.

In order to accomplish the Project, the Applicant seeks the following items of variance relief from the Zoning Regulations: (1) variance from the height restriction, §770; (2) variance from the floor area ratio (FAR) requirements, §771; (3) variance from the residential recreation space requirement, §773; and (4) variance from the rear yard requirement, §774.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In said Statement, and at the public hearing, the Applicant will provide testimony and other evidence to meet its burden of proof to obtain the Board's approval of the requested variance relief. Following herein, as

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required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

II. Burden of Proof:

A. Variance Relief

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

(1) Exceptional Condition or Situation:

The Applicant will demonstrate that the Subject Property is impacted by an exceptional condition and situation in that it is improved with five different historically significant structures, which have been determined to "contribute" to the character of the Shaw Historic District, each with distinct historic preservation considerations and presenting numerous design considerations, including maximization of preservation of historic resources and sympathetic new construction. Further, the Subject Property is exceptional situated as a development site owing to its adjacency to the new Washington Convention Center, which promises to revitalize the immediate neighborhood, encouraging new retail and residential uses as well as increasing demand for office space.

(2) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. After a number of design reviews by the HPRB, the building envelope of the Project has been conceptually approved as herein proposed to the Board. This continuing review process has resulted in a promising historic rehabilitation project whose new construction is significantly stepped back from the historic building fabric along both the 9th and N Street elevations. The Project minimizes demolition of original building fabric of the historic structures and preserves the original heights, volume and appearance of the historic buildings. The Applicant is proposing to undertake this important Project on a property whose strategic location adjacent to the new Convention Center provides unique opportunity for mixed use development as proposed by the Applicant.

This creative solution to the historic preservation and rehabilitation issues cannot be achieved without relief from the strict application of certain provisions of the Zoning Regulations, as enumerated above. Based upon the abovementioned 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. Among the difficulties experienced by the Applicant is the inefficient occupation of space by ingress/egress required to be provided for the residential and commercial uses, including a separate office/apartment lobby and extensive corridor space.

The Applicant must seek variance from the height, building density, rear yard and residential recreation space requirements in order to provide the necessary building envelope to provide the impressive mixture of uses and at the same time provide an exceptional amount of protection to the historic buildings on the Subject Property.

(3) No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that the Project can be undertaken without harm to the public good and without threat to the integrity of the Zone Plan. The Application furthers the public interest that will enhance both the historic preservation goals and economic development incentives of the District.

Specifically, §770 of the Zoning Regulations limits the height of buildings in the C-2-A District to 50 feet. The Applicant seeks to comply with this 50 feet requirement, as indicated as part of the concept design approval of the HPRB, wherein it was noted that the proposed height was not inconsistent with the character of the historic district or the row of historic buildings on the Subject Property. The Applicant only requests relief from §770 in the event that field drawings of the historic buildings and efforts to synthesize existing and new construction require some slight adaptation. At a maximum, the Applicant is requesting a variance of one foot six inches over the permitted 50 foot height.

With regard to the building density (FAR) requirement of §771, the Applicant requests relief in order to provide the necessary number and mixture of uses for a marketable historic rehabilitation project on the Subject Property, especially given the Subject Property's immediate proximity to the new convention center. In addition to providing a critical density and mix of preferred uses on this site, the Applicant is ensuring through its extensive preservation program that the building massing is consistent with the character of the historic district. The bulk of the density requested will be focused to the northeast corner of the Subject Property,

away from the public view. Furthermore, the Applicant has worked extensively with HPRB staff to ensure that the massing is sufficiently modulated to further reduce any visual impact on the historic district and neighboring properties.

The Applicant is likewise requesting variance relief from the rear yard provisions of §774 in order to provide the greatest setback and minimal demolition to the row of historic buildings. The Subject Property is bounded to the east by a 10-foot public alley, which, pursuant to §774.7, accounts for a five foot rear yard for the Subject Property. Section 774 requires only a 15-foot rear yard in the C-2-A District. In the nearby Downtown Development District, historic properties faced with similar pressures to set building mass back are relieved from providing a rear yard pursuant to §1707.6. The same rationale as exists for adopting that provision also arises in the instant case.

Finally, the Applicant requests relief from the residential recreation space requirement for the Project, as set forth in §773, which requires that 20 percent of gross floor area devoted to residential use be utilized for recreation space. In the instant application, where the Applicant proposes to provide approximately 6,977 square feet of residential uses on the fourth and fifth levels. Accordingly, §773 requires that 1,395 square feet be devoted to residential recreation space. The Applicant proposes to provide 1,046 square feet of recreation space, all of it outdoors, via a significant roof patio. While the amount of recreation space proposed is slightly below the requirement, the Applicant will demonstrate that it is the maximum possible amount of space that can be devoted to recreational uses given the significant constrictions on the Subject Property. The Applicant will further demonstrate that the amount provided is in keeping with the spirit of the residential recreation space requirement.

For all the above reasons, the Applicant satisfies its burden of proof for area variance approval from §§770, 771, 773, and 774 of the Zoning Regulations.