GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman

DATE: May 16, 2003

SUBJECT: **OP Supplemental Report** -BZA Case No. 17012
Jemal's Benjo LLC -Variance Request

APPLICATION

The application by Jemal's Benjo LLC requests, pursuant to 11DCMR 3103.2, the following variances;

1. Section 770, Height of Buildings
2. Section 771, Floor Area Ratio
   a) total FAR
   b) total non-residential FAR
3. Section 773, Residential Recreation space
4. Section 774, Rear Yard

The structures that are subject to this application are in the C-2-A District. The subject premises are at 1301-1309 9th Street, N.W., Square 399, Lots 62, 63, 800, 801, 803 and 804.

SUMMARY RECOMMENDATION

The Office of Planning recommends **approval** of the requested variances to the building height, the total FAR, the rear yard and the residential recreation space requirement.

The Office of Planning recommends that the Board approve a reduced variance for the non-residential FAR that limits the **non-residential FAR to the basement, first and second floors only.**

BZA
Case No. 17012
Exhibit No. 30

Board of Zoning Adjustment
District of Columbia
CASE NO. 17012
EXHIBIT NO. 30

APPLICANT'S PROPOSAL

The applicant purposes to stabilize and completely renovate five existing buildings, located at 9th N & Streets, NW. The project will include new storefronts, façade repairs and a new five-story addition behind the rear of the existing buildings. The project proposes retail on the ground level, office uses on the second and third floors, and residential units on the fourth and fifth floors. There will be six apartment units, five of which will be two-story units. The project will also include a significant roof terrace at the southeast corner of the roof of the proposed building. The basement and ground floor will house mechanical and storage space for the entire building, approximately 1500 square feet of which is attributable to building density (FAR). A large trash room, which will be at the rear of the first floor, will be enclosed to enhance vector control on the square. Prior to construction, the applicant must stabilize the existing buildings, salvaging as much historic fabric as possible and clear the site of collapsed construction materials.

HPRB Recommendations/Directions

Because the five existing buildings "contribute" to the Shaw Historic District,the Historic Preservation Review Board ("HPRB") holds review authority over any proposed alteration, demolition, subdivision or new construction. The applicant proposes to construct a new building at the rear of the five existing buildings, which fronts on 9th Street. HPRB has directed the applicant to preserve as much historic fabric as possible given the decayed nature of the buildings and significantly step the new building back from the public street elevations. In response to HPRB's concerns, the applicant's design solution is to set the new building back distances ranging from 32 feet to 64 feet on 9th Street and to also step the building back from N Street above the third floor. The design solution significantly reduced the building envelope available to construct the addition. Consequently, the new building will consume the entire rear portion of the lot, up to the abutting public north south alley.

ZONING ANALYSIS

The subject site is zoned C-2-A, a zoning district that provides facilities for shopping and business needs, housing, and mixed uses. C-2-A base zoning permits a density of up to 2.5, FAR, of which no more that 1.5 may be non-residential, building heights of up to 50 feet, and lot occupancy of 60%. There is also a requirement that the portion of a building devoted to residential use provide a minimum of 20% of the maximum percentage of gross floor area as active or passive residential recreation space. The C-2-A zone further requires a minimum rear yard depth of 15 feet.

The following table shows the zoning requirements and what the applicant proposes.

Area Req.	Existing	Required/Allowed	Proposed	Variance	Code Ref.
Height	36'	50'	53	3%	§770
FAR	1.46	2.5 of which no more than 1.5 may	3.81 (.86 residential,	52.4% total (97% non-	§771

		be non-residential	2.96 non-residential)	residential)	
Lot Occupancy	54%	60	51%	0	§772
Rear yard	33	15'	0	100	§774
Parking	0	0 required (per §2100.5	0	None	§2100
		24 spaces if §2100.6 is deemed applicable			

RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map depicts the subject area as Mixed Use, which are areas where a variety of uses are to be encouraged. Mixed-use areas include existing commercial areas and areas proposed for significant land use changes.

VARIANCES

Is the property unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition?

Yes. The subject property is unique by reason of its extraordinary or exceptional situation or condition. There are five historically significant buildings independently constructed at different times on the subject site. All of the referenced buildings have been determined to "contribute" to the character of the Shaw Historic District.

All five buildings are in varying states of disrepair with distinct historic preservation conditions to be addressed before and during development. These exceptional preservation-related conditions include:

- The required restoration of the façade of the historic buildings;
- Stabilization of the existing five buildings;
- A partial collapse of the rear portion of the historic buildings recently occurred, which reduced the total amount of historic fabric;
- Salvaging as much historic fabric as possible for reincorporating into the restoration portion of the development;
- Designing and connecting new construction with the historic building material;
- Difficulties of floor space resulting from the existing differing floor plates and windows and ceiling heights of the existing buildings from one another and from the proposed new construction;
- Inefficiencies of floor area due to the modern building code requirements for multiple egress, corridors, restrooms, and increased space for mechanical and trash rooms as retro-fitted into the historic buildings;

- The HPRB setback requirement which results in the placement of the addition at the rear of the site, and
- Articulated public elevations on two street fronts.

Additionally, the subject project is on the prominent corner of 9th & N Streets, NW. The presence of the convention center serves to dictate a double street orientation of the subject property toward both 9th and N Streets.

The applicant states that there are exceptional costs to develop the subject project, which normally would not be required, if the site was unimproved and not contributing to a historic district. The application claims that approximately one-third of the budget is dedicated to design, restoration and stabilization of the historic buildings. OP has no comment on the financial responsibility of the site.

Would the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of the property?

Yes. In the subject case, there exists reasons of exceptional situation and conditions that results in a practical difficulties and undue hardship upon the owner of the property to comply with the full zoning requirements.

The applicant has made a case predominantly focused on their proposed construction economics. OP concludes that the economic argument is not sufficient to justify the variance requests. Rather, OP has focused on the standard application of the "variance tests" as setout in Section 3103 of 11 DCMR.

§770 Building Height

The Zoning Regulations limit the height of buildings in the C-2-A District to 50 feet. It is the applicant's position that in order to reconcile the different floor plates of the five historic buildings, and to comply with the set backs recommended by HPRB slight relief from the height restriction is needed. The applicant is requesting a minimal amount of relief from the height restriction in order to accommodate the mixture of use proposed for the new building and the existing buildings' floor plates. The proposed new addition will be approximately 53 feet in height, which is three feet above the maximum permitted height in the C-2-A District.

The existing buildings have an existing ground floor height of 12.5 feet, and 11- and 10-foot floor heights on the second and third floors. In combination with the varying floor plates of the historic buildings, the additional 3 feet in overall building height is needed to create a well-scaled and habitable residential space on the new forth and fifth floor. The proposed nine foot floor-to-floor heights of the two residential floors result in ceiling heights of less than eight feet.

The needed height relief will be located on northeast (inward) corner of the building thus having no visible impact on either 9th or N Street. The height will be located

approximately 60 feet back from the 9th Street frontage and approximately 18 feet back from the N Street frontage. For the portion of the building that fronts on N Street the building will be only four stories to better relate to the corner apartment building.

OP recommends approval of the height variance.

§773 Residential Recreation Space

Section 773 of the Zoning Regulations requires that 20 percent of the gross floor area devoted to residential use be designated as recreation space. The applicant proposes to provide approximately 6,977 square feet of residential use on the fourth and fifth levels. Accordingly, approximately 1,395 square feet should be devoted to use as residential recreation space. The applicant proposes to provide approximately 1,144 square feet of recreation space which is 251 square feet less than the requirement. All of the proposed recreation space will be out doors, on a roof patio. Given the mixture of uses proposed for this site and the compliance with set backs of the new addition from the historic buildings as required by HPRB, the applicant has few options as to where the recreation space could be situated. However, there is adequate entertainment, cultural and recreational opportunities available in the Shaw community.

OP recommends approval of this residential recreation space variance.

Total Floor-Area Ratio (FAR)

Section 771 of the Zoning Regulations limits building density in the C-2-A District to 2.5 FAR, (approximately 20,517 square feet of total construction), no more than 1.5 of which may be devoted to non-residential uses (12,310 square feet). The total proposed FAR for the project is 3.7 (approximately 30,338 square feet gross floor area), of which 2.87 FAR is proposed for non-residential uses (approximately 23,583 square feet).

	Total FAR	Non-residential FAR max	Residential FAR
Matter-of-Right	2.5	1.5	Up to 2.5
Proposed	3.7	2.87	.9

Considering the required FAR limitation and the existing building, the applicant could only capture an additional 328 square feet of non-residential floor area and an additional 8206 square feet of residential floor area, for a total matter-of-right area of 20,516 square feet, of which 12,310 square feet may be non-residential. *In summary there is only 8,534 square feet available for new matter-of-right construction.*

Based on the drawings submitted, 1,566 square feet is required just to accommodate the ground floor needs of the fire sprinkler system, mechanical room, stairwells and exits, janitor room, elevator and lobby. The drawings also indicate that an additional 1,360 square feet is required on both the second and third floor for restrooms, corridor, two stairwells and the elevator; 680 square feet is necessary on the fourth floor; and

approximately 250 square feet on the fifth floor. This totals 5,216 square feet of space required to comply with current building code requirements, emergency access and maintenance - 42% of the available new matter-of-right FAR.

While OP does not as a rule accept the claim that complying with the required building code standards is a practical difficulty, in this case OP recognizes that in combination, the restorative efforts to salvage materials, reconstruct and stabilize the historic facades, the design constraints placed on the project by the HPRB, and the strict application of the zoning regulations would result in practical difficulty to the applicant because of the limited area in which to place a new building core and modern mechanical spaces, outside of the historic footprint. In order to provide access and service to all floors, the constraints of the project push the core and addition to the rear of the site and increase the FAR.

OP recommends approval of the total FAR variance.

Non-residential FAR

OP cannot, however, conclude that there is sufficient evidence to approve the non-residential FAR requested by the applicant. The only case made for the variance to increase the non-residential FAR to such extreme is desired financial return.

If the third floor were to be used for residential use, it would add approximately 7,300 square feet to the residential FAR, doubling the proposed residential component and bringing the total FAR distribution closer to the requirements: approximately 1.74 FAR residential and approximately 2.07 FAR non-residential FAR on the first and second floors. OP recognizes that the foot print may be too small for mixed uses on the same floor and supports the effort to create a retail component along the ground floor, and office on the second floor. But OP has not seen sufficient evidence to conclude that the third floor could not be designed to minimize the variance request for non-residential FAR.

OP recommends the non-residential FAR variance be limited to the first and second floors only.

§774 Rear Yard Requirement

§774 of the Zoning Regulations requires that a 15-foot rear yard be provided in the C-2-A District. The applicant is seeking the total reduction of the rear yard provisions, to respect the HPRB suggestions to provide the greatest setback and minimal demolition to the historic buildings, and accommodate the construction of a modern building mechanical core.

The applicant's response to addressing the set backs suggested by HPRB from the historic buildings and from the public frontage significantly reduced the development area for construction of the addition. The project is being designed to protect the character of the historic structures. If the applicant were to be held to the 15-foot rear yard requirement, the core would move forward significantly, further infringing on the preservation program as well as impacting on the efficiency of the floor plan for the new

construction. The applicant explored options of setting the new building back, first five and then ten feet from the alley. In both cases, the resulting structure would have been too small to attract tenants. The only solution available to the applicant, if the development objectives (retail, office & residential) were to be achieved on this small site, was to build a compacted vertical project.

The unmatched existing floor plates which will be maintained as part of the historic restoration, exists in the center two units, buildings 1305 and 1307, and are also a result of the corner building (1301) being one floor taller than the adjacent (1303). These un-even floors can be accommodated on the interior through small ramps and steps but make the construction and access to a central building core extremely impractical to incorporate. As a result, the building service core must be located to the rear of the historic buildings, in the new proposed addition.

OP recommends approval of the rear yard variance.

Possible Parking and Loading Variance:
If it is determined that §2100.6 or §2200.6 is applicable to *the new addition*, OP believes the applicant could make a case based on the size and construction requirements of the site.

Can the requested relief be granted without substantial detriment to the public good and without substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map?

Yes. The project can be accomplished without substantial detriment to the public good and without substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The applicant requests variance relief from four Sections of the Zoning Regulations: §770 Building Height, § 771 Building Density (FAR), §773 Residential Recreation Space and §774 Rear Yard Requirement.

The granting of the variances as recommended by OP should have no adverse impact on the public good. The project proposes uses that are permitted within the zoning district and anticipated by the Comprehensive Plan. The design respects the approval of the HPRB and will create a superior new building in a resurging neighborhood. The project will devote a significant amount of ground floor space (approximately 240 square feet) to a trash room. The trash room is not required under the Zoning Regulations, but the applicant has experienced in past projects that such rooms serve a vital role in vector control and in keeping trash out of the public alley.

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.

COMMUNITY COMMENTS

Advisory Neighborhood Commission (ANC) 2C, at its regularly scheduled monthly meeting, held on Wednesday, May 7, 2003, voted unanimously to support BZA Application 17012. The ANC cited the project as a model of how developers should work with communities in determining how properties should be redeveloped, as well as how historic can be used to foster economic vibrancy and foot traffic on streets adjacent to destinations facilities.

OP RECOMMENDATION

After having reviewed BZA application 17012 requesting area variances from §770,771,773 and 774 of the Zoning Regulations, in the C-2-A District, the Office of Planning recommends that the **Board approve the following variances:**

§770 Building Height,
§771 Building Density total FAR
§773 Residential Recreation Space and
§774 Rear Yard Requirement

The Office of Planning finds that the applicant does qualify for relief from the requirements of §770, §771(total FAR only), §773 and §774, and has met the burden of proof under §3103.2 of the Zoning Regulations. OP concludes that approval of the application would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Office of Planning recommends that the Board approve a reduced variance for the non-residential FAR that limits the **non-residential FAR to the basement, first and second floors only.**