Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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September 26, 2003

DENNIS R. HUGHES
202-419-2448
dennis.hughes@hklaw.com

Hand Delivery

Board of Zoning Adjustment
4410 4th Street, NW
Room 210S
Washington, DC 20001

Re: BZA Application No. 17012
Application of Jemal's Benjo LLC

Dear Members of the Board:

The applicant in the above-referenced case submits the following materials for the Board's review in anticipation of the Board's consideration of this application at its October 7, 2003 public meeting:

(1) letter to the Board addressing issues raised at the Board's June 3, 2003 public meeting; and

(2) letter to the Board in response to issues raised by the District of Columbia Office of Planning in its supplemental report filed with the Board on June 2, 2003.

The Board requested supplemental materials from the applicant be submitted to the Zoning Office by September 23, 2003. As a result the office closures occasioned by Hurricane Isabel, the applicant has been delayed in its response and submission of these materials to the Board and appreciates the Board's acceptance of these materials.

Sincerely,

Dennis R. Hughes

cc: Jennifer Steingasser
John Moore
ANC 2C
Paul Millstein

1146631_v9

BZA
Case No. 17012
Exhibit No. 53

Board of Zoning Adjustment
District of Columbia
CASE NO. 17012
EXHIBIT NO. 53

Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

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FAX 202-955-5564
www.hklaw.com

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*Representative Office

September 26, 2003

NORMAN M. GLASGOW, JR.
202-419-2460
nglasgow@hklaw.com

VIA HAND DELIVERY

Board of Zoning Adjustment
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: BZA Application No. 17012 - Applicant's Response to Issues Raised by Board of Zoning Adjustment at its June 3, 2003 Public Meeting

Dear Members of the Board:

At its June 3, 2003 public meeting, the Board began deliberations over the above-referenced application, which includes request for relief from the building height, floor area ratio, residential recreation space and rear yard requirements applicable to the C-2-A District. Prior to the meeting, on June 2, the Board received a supplemental report from the District of Columbia Office of Planning ("OP") offering conditional support for the application. Owing to the late filing of the OP supplemental report, the Applicant requested that the Board either refuse to accept the OP supplemental report into the record or give the Applicant sufficient opportunity to review and respond to the OP supplemental report.

The Board accepted the OP supplemental report into the record and determined to leave the record open liberally to the Applicant to submit materials responsive to those issues raised in the OP supplemental report as well as to questions raised by the Board at the June 3 public meeting. This letter serves as the Applicant's

response to those questions posed by the Board, particularly regarding (1) the propriety of accepting actions taken by another District agency as part of the existing condition of a particular property and (2) the ability of the Board to approve relief to the extent requested by the Applicant. By separate letter, the Applicant responds to the issues raised in the OP supplemental report.

In offering the Applicant wide latitude to respond to the questions raised by the Board and to supplement the record accordingly, the Board indicated some hesitation to accept the determinations of another District regulatory authority, in this case the District of Columbia Historic Preservation Review Board ("HPRB"), as part of the existing condition of the Subject Property, and offered the Applicant the option of submitting to the Board an alternative design which might require less extensive variance relief from the Board than the current design. Of course, the Board understands that it would then be approving a design that has been rejected by the HPRB. This scenario would leave the Applicant in an untenable position of having approvals for different projects from disparate reviewing bodies, and render the Applicant unable to reconcile the approvals and to move forward with any meaningful renovation project for the site. For this reason, the Applicant respectfully declines the Board's offer to submit alternative massing drawings than those which have already been approved by the HPRB.

The Applicant does not decline the Board's offer without measured consideration. Nonetheless, given the significant investment of time, effort and expense that the Applicant has undertaken over the course of approximately two years in order to bring this rehabilitation project to fruition, and given the unprecedented state of limbo into which the project would be thrust were the Applicant to pursue the course offered by the Board, the Applicant wishes instead to move forward with the project as presented to the Board, and to utilize this opportunity to reinforce for the Board how the application fully satisfies the three-prong test for variance relief. In the process, the Applicant offers justification for the Board's acknowledgment that historic preservation aspects of this project form a unique condition on the Subject Property deserving of relief from this Board.

Exceptional Condition of the Subject Property:

As the District of Columbia Court of Appeals noted in *Taylor v. D.C. Board of Zoning Adjustment,* 308 A.2d 230, at 234 (D.C. 1973), "the granting of a variance where the circumstances do not uniquely affect the petitioner's property could lead to similar requests by other property owners, which, as a matter of due process, would have to be granted. Approval of such requests would be tantamount to an amendment of the zoning map or regulations, and the Board is without power to do

this directly or indirectly."[1] For these reasons, it is paramount that an applicant for variance relief first demonstrate the exceptional nature of that applicant's property.

In its pleadings and at the public hearing, the Applicant demonstrated that the Subject Property is impacted by a number of exceptional conditions deserving of the variance relief requested, including: (1) the site's comparatively small size for mixed use office, retail and residential development purposes; (2) its location on a prominent corner site immediately across from the newly-opened Convention Center, dictating a dual street orientation for the site; and (3) the site's improvement with five independently-constructed row buildings in differing states of disrepair, all of which have been determined to "contribute" to the character of the Shaw Historic District, bringing the Subject Property within the ambit of the Historic Landmark and Historic District Protection Act of 1978, D.C. Law 2-144 (the "Preservation Law"); and In addition to all these exceptional characteristics of the Subject Property, the Applicant contends that the development restrictions/limitations placed upon the rehabilitation project in the course of review and approval by the HPRB pursuant to the Preservation Law likewise constitutes an exceptional condition deserving of variance relief.

The Applicant finds support in case law for the position that development restrictions or impositions placed upon a property pursuant to the Preservation Law should also be considered exceptional conditions or situations impacting a particular property for zoning relief purposes. Admittedly, case law has generally limited consideration of the historic qualities of a particular property only to designated individual landmarks, rather than to all properties located within a historic district when establishing uniqueness (the first part of the three-part variance test). As the Court of Appeals determined in *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987) the location of a property in a historic district is not of itself sufficient to justify a finding of uniqueness; otherwise, every property so classified would be entitled to a variance. Importantly, however, the Court in *Capitol Hill* and its progeny focused on the particular location of a property within a historic district. See also *United Unions, Inc. v. District of Columbia Board of Zoning Adjustment*, 554 A.2d 313 (D.C. 1989). While location within a historic district alone is not enough for a property to qualify as unique for purposes of the variance test, the specific requirements and limitations, the development program, placed upon redevelopment of such a historic property by the HPRB through its review of the proposed rehabilitation project does create just the sort of "special conditions simply

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[1] See also *Russell v. D.C. Board of Zoning Adjustment* (402 A.2d, 1231, at 1235) – "the applicant for an area variance must demonstrate that the "practical difficulties" of compliance are caused by the uniqueness of the property, not merely that his plight is unique... This requirement insures relief for problems peculiarly related to the applicant's land or structure, and not shared by other property in the neighborhood, thus avoiding a de facto amendment of zoning laws."

not shared by the other buildings in the area," to qualify the property as unique. *United Unions, Inc.*, 554 A.2d 313, at 318.

Owing to the Subject Property's inclusion within the Shaw Historic District, and the buildings on the site being deemed to contribute to the character of the historic district, any demolition, alteration, new construction or subdivision proposed for the site is subject to design review by the HPRB. Thus, under the Preservation Law, essentially anything that the Applicant might want to do to improve the dilapidated and decaying structures on the Subject Property first requires the review and approval of the HPRB. Furthermore, in cases involving an extensive amount of historic resources and rehabilitation, as here, the HPRB generally requires initial conceptual, or massing, review and approval, followed by periodic architectural design/finish review, ultimately leading to permit-level review and approval.

In the course of multiple public meetings, the HPRB has given very specific parameters for its conceptual design approval of the Applicant's project.[2] Among others, these parameters have limited the permitted location of new construction on the site and have resulted in very significantly–increased development costs, as detailed below in the Applicant's discussion of practical difficulty experienced. These specific and particular parameters placed by the HPRB on the redevelopment of the Subject Property establish an exceptional character for the site, as the Applicant is unaware of any similar application of the Preservation Law to other properties in the historic district. Thus, over and above the numerous other exceptional qualities of this important site, the HPRB's application of the Preservation Law to the Subject Property establishes an exceptional condition.

Strict Application of the Zoning Regulations Would Work a Practical Difficulty:

The Applicant also has demonstrated, through testimony and other evidence to the Board, that, as a result of these exceptional conditions of the Subject Property, particularly those conditions relating to the existing improvements on the site, the strict application of the building height, building density, residential recreation space and rear yard requirements would work a practical difficulty upon the Applicant deserving of relief. As determined by the Court of Appeals in *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974), for purposes of the test for variance relief, it makes no difference whether the

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[2] The Application was reviewed at the public meetings of the HPRB in December, 2001, February, 2002, and finally December, 2002, at which last meeting the HPRB approved the general massing and height of the project as consistent with the Preservation Law, and directed the Applicant to return for architectural design review upon obtaining the zoning relief necessary to undertake the massing envelope approved by the HPRB.

inability to use property in accordance with the Zoning Regulations stems from topographical conditions of the land itself or from the existence of a structure on the land.

With its multiple historic buildings, of differing sizes and states of disrepair, its prominent corner location opposite the Convention Center, and its comparatively small size for mixed use development, the Subject Property suffers from just the sort of practical difficulty generated by a confluence of conditions to justify variance relief from the Board. See also *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164 (D.C., 1990). And these exceptional conditions almost all relate to the existing improvements located on the site. For instance, the varying heights and floor plates of the existing buildings necessitate a slight variance from the height restrictions in order for the project to contain a viable floor-to-floor dimension and habitable residential space. Likewise, given the constraints of the site and the exceptional amount of residential use proposed, the Applicant simply has no additional room available to devote to recreation space for residents. Further, the Applicant is unable to comply with the rear yard requirement because it has been directed by the HPRB to keep, to the extent possible, all new construction off the existing historic buildings, leaving no room for construction other than in the rear yard area. Finally, with respect to the FAR variance, the Applicant is faced with the practical difficulty of redeveloping this dilapidated assemblage of historic buildings into a viable mixture of uses, consistent with the zoning for the Subject Property, all in accordance with the costly design limitations placed by the HPRB.

The key aspects of the Applicant's practical difficulty in complying with the above-mentioned provisions of the Zoning Regulations are: (1) the physical limitations placed on redevelopment of the Site by the Preservation Law with respect to demolition, alteration, and new construction; and (2) the extreme economic costs resulting from redeveloping the Subject Property in a manner that is consistent with these obligations. The Board and OP appear to acknowledge that the physical difficulties posed to the Applicant in relation to site redevelopment are deserving of variance relief, for example from the building height, residential recreation space, even the rear yard requirements. However, as evidenced by the Board's comments on June 3 and the OP supplemental report, the Board and the OP remain more reserved in accepting the Applicant's economic hardship argument. Nonetheless, as the Applicant pointed out to the Board in its evidence and testimony, economic hardship of a property owner caused by extraordinary condition(s) of a particular property has been held by the courts to be a valid consideration for variance approval. As the Court of Appeals reinforced in *Tyler v. D.C. Board of Zoning Adjustment*, 606 A.2d. 1362 (D.C. 1992), increased expense and inconvenience to applicants are among the proper factors for consideration by the Board. See also *Wolf v. D.C. Board of Zoning Adjustment*, 397 A.2d 936 (D.C. 1979).

Given the extensive amount of preservation demanded at the site and the design limitations placed by the HPRB on any redevelopment, there can be no question that the Applicant is experiencing significant economic difficulty in complying with the strict application of the Zoning Regulations, particularly the building density limitation. This difficulty has been well documented in the testimony and other evidence presented to the Board, including the supplemental materials from the Applicant's experts in construction costs and land use economics, filed herewith at Exhibits A and B.

In the present case, the HPRB-approved preservation program, along with the interior finishes required for the residential portions of the project, will generate a development cost of approximately $271 per square foot. Please see materials submitted by Davis Construction and attached hereto at Exhibit A, Table 1. While it is apparent that commercial and mixed use development of this diminutive site would be comparatively very expensive even were there no historic buildings on the Subject Property, costing the Applicant approximately $179 per square foot according Davis Construction's calculations, the additional approximate $100 cost per square foot to accommodate the historic rehabilitation per the direction of the HPRB creates an undeniable practical difficulty.

Per the Board's and the OP's request, the Applicant has undertaken further study of the construction costs involved in the project, as well as market comparables. This further study is reflected in the materials submitted with Exhibit A.[3] Also there, the Applicant has attempted to better isolate for the Board the aspects of its construction program that are most directly attributable to the preservation work required. From this further study, the Applicant has determined that the costs resulting from treatment of the historic buildings on the site in accordance with the Preservation Law will reach an even greater amount than the $2.8 Million represented at the public hearing, to a premium of approximately $3.5 Million.

In addition to the exceptional costs of the project identified in Exhibit A, Bolan Smart Associates, the Applicant's recognized expert in land economics, maintains its insistence that redevelopment of the site cannot occur utilizing a matter of right envelope without generating an operating loss for the Applicant of more than $3 Million. See Exhibit B. Without relief from the building density restrictions, the project is patently infeasible for this or any property owner and the Applicant is deserving of relief. Even granted the relief requested, the Applicant's project is only marginally feasible according to the Bolan Smart analysis.[4]

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[3] The findings of the Applicant's expert in construction costs are detailed in the Applicant's response to issues raised by the Office of Planning, submitted separately.

[4] The analysis of the Applicant's expert in land economics is discussed in greater detail in the Applicant's response to issues raised by the Office of Planning, submitted separately.

In its preliminary deliberations, the Board inquired whether the Applicant might be able to avail itself of relief from these extraordinary costs under the Preservation Law, namely from the Mayor's Agent designated under the Preservation Law (the "Mayor's Agent") as opposed to obtaining variance relief from the Board. In response, the Applicant submits to the Board that the notion of the Mayor's Agent as an equivalent "safety valve" under the Preservation Law to the Board's role under the Zoning Act is somewhat misleading. Under the Preservation Law, the primary "safety valve" offered by the Mayor's Agent in such cases is to sanction demolition of historic properties in order to allow projects to go forward "in the public interest" or upon a showing of "undue economic hardship". Given the extensive amount of consideration given to the site and the project by the HPRB as well as the HPRB's consistent position in opposition to demolition of historic properties, the Applicant believes it highly unlikely that the Mayor's Agent would approve "in the public interest" any project involving less preservation and protection of historic resources than that which was finally approved by the HPRB after earlier proposals were rejected. Likewise, there is little reason to believe that an undue economic hardship argument by the Applicant would succeed. In the long history of appeals made to the Mayor's Agent on the basis of undue economic hardship, the Applicant is aware of no more than two such appeals out of many that were successful on such grounds. Both of those cases involved only minor modifications to historic buildings, one an entry porch removal (11927 Kenyon Street, NW) and one a temporary patio enclosure (4866 Massachusetts Avenue, NW). Otherwise, such arguments have been consistently unsuccessful.

In any event, the Applicant has no desire to demolish the buildings on the Subject Property, despite their deteriorated condition and the dramatic costs involved with their preservation. In fact, as demonstrated by its background with a number of preservation-focused redevelopment efforts downtown, the Applicant is very interested in furthering the historic preservation objectives of the District, which objectives obviously would not be furthered by the demolition of historic building fabric.

No Substantial Detriment to the Public Good or to the Zone Plan:

The Applicant appreciates that the Board's authority to grant variance relief is not without limits. While no bright-line test does or should exist by which the amount of relief granted is automatically and arbitrarily capped, nonetheless, the Zoning Act does provide a final check on the Board's authority in that the relief granted may not work a substantial detriment to the public good or to the Zone Plan.

As the Board noted in its preliminary deliberations and as is well supported in the record, approval of this application threatens no harm to the public good. In fact, the project is embraced by all facets of the community, from Ward 2 Councilmember Jack Evans, to Advisory Neighborhood Commission 2C, to the HPRB and the historic

preservation community, to the local main streets program, and also to the OP. This support is well founded as the project promises to transform what is currently a dilapidated eyesore into a vibrant mixed use project, marking one of the first of such endeavors north of the new Convention Center.

While the merits of the project to the public good are obvious and uncontested, the Board may remain concerned that the integrity of the Zone Plan could be threatened by this application, especially, if not exclusively, by the Applicant's request for significant building density over that which is generally permitted in the C-2-A District. The Applicant submits that its request poses no threat of substantial harm to the integrity of the Zone Plan. In support, the Applicant notes that the project will contain a mix of uses, namely retail, residential, and office, that is generally consistent with both the applicable zoning as well as the Comprehensive Plan. Furthermore, the Applicant and the OP are in agreement that the Applicant's variance requests, including its request for total FAR, are appropriate for the Site and for the surrounding area. Furthermore, the Board has previously approved similarly significant amounts of relief where the Board has found it necessary and appropriate to alleviate the hardship of property owners in the administration of the Regulations.

The integrity of the Zone Plan is further protected by the extensive amount of documentation the Board has requested of the Applicant and that the Applicant has provided in support of its economic hardship position. Unlike the situations in *Tyler* and *Gilmartin*, where the Court of Appeals remanded the cases to the Board because of the paucity of economic hardship documentation in the record, here the Board is armed with sufficient materials to document and to verify the Applicant's claims, both as to construction costs and as to the state of the commercial and residential leasing markets.

Board's Jurisdiction to Grant Relief in the Amount Requested

Finally, in response to the question raised at the Board's June 3 public meeting, asking whether the Board has jurisdiction under the Zoning Act to grant area variance relief to the extent requested by the Applicant, it is well settled that the Board is authorized to grant appropriate variance relief from the Zoning Regulations so long as a property owner satisfies the three-prong various test. Furthermore, as exemplified below, these criteria are the only guidance that the Zoning Act provides to the Board in performing its role as a "safety valve" for such an inherently rigid and imperfect framework as created by the Zoning Regulations.

Any additional limitation placed upon the Board's authority, such as that postulated by the Board to limit the amount of area variance relief available to an applicant to no more than that which is available to properties located within the next

less restrictive zoning classification (i.e. C-2-A to C-2-B), contravenes the intent of the Zoning Act and compromises the very unique constitutional protection that the BZA is intended to insure. Furthermore, any such hard and fast rule imposed by the Board would usurp the rulemaking authority of the Zoning Commission and would constitute rulemaking by the Board, which is prohibited by the Zoning Act, §6-641.07(e) of the District of Columbia Official Code.

Demonstrative of the inequity and impropriety of placing such a limitation on the Board's authority, the Applicant refers the Board to the area restrictions applicable to the residential zoning districts (see 11 DCMR Chapter 4). Were a property located in the R-2 District to need a variance from the height restrictions limiting it to 40 feet, it would be without recourse given that the next few lesser restrictive zoning districts, namely R-3, R-4, and R-5-A, are also all subject to the 40-foot limitation. Similarly, were a property in the R-5-C District to require an FAR variance above the 3.0 limitation, it would be limited to no more than the 3.5 FAR limitation of the R-5-D District, whereas were an R-5-D-zoned property to require an FAR variance above 3.5 FAR, the rule postulated by the Board would allow that property a variance up to 6.0 FAR (or 5.0 FAR for other than apartment house or hotel use), per the Regulations.

Such an arbitrary and bright line rule would also contravene past decisions of this Board, where variance relief has been granted upon demonstrated need and tempered in consideration of the public good and the Zone Plan, rather than according to any sort of schedule. By way of example, the Applicant refers the Board to Application No. 16754 of 1615 LLL LP, wherein the Board granted building density variance relief to permit development in a DC/SP-1 District to 7.7 FAR, where the maximum density permitted in the SP-1 District is generally 4.0 FAR and the maximum density permitted in the next less restrictive zoning district, the SP-2 District, is 6.0 FAR. The Applicant likewise refers the Board to Application No. 16933, of the Washington Drama Society, Inc. d/b/a Arena Stage, wherein the Board granted height variance relief up to 75 feet in the W-1 District, when height in the W-1 District is limited to 40 feet and the maximum permitted height in the next less restrictive zoning district, the W-2 District, is 60 feet. Furthermore, in case No. 17033, the Board approved a revised plan for Arena Stage which permitted a maximum height of 89.5 feet, virtually the maximum height permitted in the W-3 District.

The Applicant submits that the application fully satisfies the three-prong test for variance relief and should be granted. The Subject Property is confronted with a number of exceptional conditions, including a very restrictive development envelope established by the HPRB pursuant to the Preservation Law, among others, which separates the Subject Property from other properties in the Shaw Historic District and elsewhere. As a result of this confluence of conditions, the Applicant is faced

with very significant practical difficulties in complying with the Zoning Regulations. These difficulties include physical constraints on the property and extraordinary financial costs to the property owner. Finally, the Board is within its authority to grant the requested relief. Such approval will not work a detriment to the public good or the Zone Plan. Nor would such demolition be consistent with the Comprehensive Plan. Likewise, as the Court of Appeals determined when reviewing an appeal regarding the Heurich Mansion planned unit development process, zoning is an appropriate mechanism for accomplishing historic preservation, pursuant to the Zoning Act's authorization that zoning be conducted so as to promote the general welfare of the District and its planning and orderly development as the national capital. See *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 355 A.2d 550 (D.C. 1976).

For all these reasons, Application No. 17012 should be granted.

Respectfully submitted,
HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Dennis R. Hughes

1209611_v2

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

Supplemental Report addressing the variance to Section 771, Floor Area Ratio, for the total non-residential FAR.

SUMMARY RECOMMENDATION

The Office of Planning maintains its recommendation 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.** This represents a variance of approximately 8,200 square feet or 1.00 additional FAR, a 100% increase above the matter-of-right limits.

OP considered the economic feasibility claim from the pre-hearing statement but did not consider it to be a valid justification for the change in residential to non-residential use on the third floor for the following reasons:

- The statements made to support this claim were anecdotal; the attempt to suggest comparables included only broad statements regarding other projects by the same developer
- No market comparables have been provided
- Exhibit K does not break out in any detail what costs are standard construction costs from the preservation related contingencies, what costs are per square foot for residential versus non-residential or how the costs were calculated
- No detailed square footage figures by floor, by use, or by cost have been provided.

The pre-hearing statement, on page 6 states that "[F]or the Project, these exceptional preservation-related contingencies add more than $1,650,000 to the Applicant's development cost."

OP has recommended variances that increase the FAR by 48% (9,850 sq. ft. based on the pre-hearing statement) or 55% based on the figures provided by the expert witness.

Based on the additional FAR supported by OP, and the value figures supplied by the expert witness in the tables submitted at the May 20, 2003 hearing, OP estimates that the variances supported create an increased annual value of over $300,000.

	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
OP Supported	3.7	2.07	1.63
Estimated OP Supported VALUE per year	301,992*	$248,778	$53,214

*Retail= 1/3 of non-residential FAR increase x $35/sf = [(2.07-1)/3](8206)(35)= $102,438
Office= 2/3 of non-residential FAR increase x $25/sf = 146,340
Residential ($1.75/month= $21 per year) = 5th floor (now usable due to height variance) and reduced recreation space = (2,283 + 251)($21) = 53,214

Additional Information

OP has attempted to consider the economic feasibility issues claimed by the applicant including the supplemental testimony at the hearing. No written testimony was provided by the expert witness so OP has tried to work with the tables submitted by the expert witness in combination with the pre-hearing statement. OP found the information inconclusive and inconsistent with the submitted pre-hearing statement.

Supplemental Report Focus

The focus of this supplemental report is only the *USE* of the 3,090 square feet on the third floor. OP has previously recommended the variance for total FAR.

Based on the data provided there is a $4 per square foot difference between the residential ($1.75/month x 12 months= $21) and office value ($25).

Based on OP's experience with the Mt Vernon area, OP believes the residential figure is low and may be closer to 2.00 per square foot. Also, based on our knowledge of the market, the office rent may be high. However, no real market data has been provided for the Board or OP to analyze.

OP notes the following lack of documented evidence in the record:

- No documentation regarding the comparable construction claimed as 140-180 per square foot (page 14 of the pre-hearing)

- no real market comparables have been provided; the statements continue to appear anecdotal
- No detailed cost figures have been provided to document the construction costs per square foot of residential and commercial portions of this project to substantiate the statement that one costs more than the other or to assess the costs against the $4 value difference
- No detailed square footage figures by floor and by use have been provided
- Exhibit K does not break out in any detail what costs are standard construction costs from the preservation related premiums, what costs are per square foot residential versus non-residential; how the costs were calculated.

Inconsistencies:

OP also could not assess the feasibility claims due to the following inconsistencies:

- Residential square foot area suggested by the applicant as 3950 in the Alternate Plan includes the entire service core and lobby, the commercial office restrooms, both stair wells and the elevator core; Based on the square footage of the actual residential units as shown on the Alternate page A 1.3, there is only 3,106 square feet of apartment uses. Even allowing for the sharing of the lobby (but not including the office restrooms), the residential figure could only be estimated at 3,598 square feet.
- Pre- hearing Statement, page 6 states "For the Project, these exceptional preservation-related contingencies add more than $1,650,000 to the Applicant's development cost."
- Expert Witness stated a "$2.8M premium" over normal historic preservation expense..." but has provided no documentation
- BSA Table 1 specifies a general $20/sf NNN figure for matter-right commercial but BSA Tables 2 and Alternate D specify a $ 35/sf for retail and $25/sf for office
- BSA Table 2 and Alternate D work with a total square footage of 31,842 (3.88 FAR) but the pre-hearing statement cites only 30,400 square feet (3.7 FAR) (page 12); the 1,400 square feet difference is important because the economic claim is being calculated per square foot and OP cannot track the extent of the variances.
- The financial summary tables presented at the hearing compare the applicant's split-floor alternative to by-right figures and the applicant's original proposal, but not to the OP recommendation

OP cannot conclude that use of the third floor as residential (as anticipated by the Comprehensive Plan Generalized Land Use map and the zoning district) presents an exceptional practical difficulty.

OP RECOMMENDATION

The Office of Planning continues to recommend approval of area variances for this project that will the total FAR to increase to 3.7, the height to increase to 53', the reduction in recreation space and the full encroachment into the rear yard.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

FACSIMILE TRANSMITTAL SHEET

TO: Dennis R. Hughes

FROM: John Moore

COMPANY/AGENCY: Holland + Knight LLP

DATE: 6-1-03 (Sunday)

FAX NUMBER: 202-955-5564

TOTAL # OF PAGES INCLUDING COVER: 5

PHONE NUMBER: 202-955-3000

PHONE NUMBER:

RE: BZA Supplemental Report Case No. 17012

☐ URGENT ☐ FOR REVIEW ☐ FOR ACTION ☐ PLEASE REPLY

NOTES/COMMENTS:

different from other supplemental report dated 5/16

801 N. CAPITOL STREET, NE SUITE 4000 WASHINGTON, DC 20002
TEL (202) 442-7600 FAX (202) 442-7638 WEB http://planning.dc.gov

JAMES G. DAVIS CONSTRUCTION CORPORATION

DAVIS

12530 Parklawn Drive
Rockville, MD 20852
301/881-2990
301/468-3918 FAX
www.davisconstruction.com

25 September 2003

VIA TELEFAX AND MAIL
(202) 638-0303

Mr. Paul Millstein
Douglas Development Corp.
702 H Street, N.W.
Suite 400
Washington, DC 20001

REFERENCE: 9th/N Street, N.W., Washington

SUBJECT: Supplemental Construction Costs Information and Response to Office of Planning Supplemental Report

Dear Mr. Millstein:

In response to discussions concerning the project at 9th & N Street, N.W., we have evaluated the following requests for information:

a) What would be the construction cost for this project on a vacant lot(?)
b) What is the experienced cost of other historical renovations(?)
c) Uniqueness factors of the N Street site and corresponding cost to addressing these factors.

We have included the following:

a) Table 1 which indicates the reconstruction of the existing structure as opposed to a new building on a lot requiring minimal preparation.
b) Table 2 comparing 9th & N Street to 800 F Street and The Woodward & Lothrop building.
c) Uniqueness factors include:
    1. The apparent near collapse condition of several walls of the 9th & N project.
    2. The large roof area that has failed allowing water into the structure.
    3. The deterioration of the interior structure and finishes (most are not apparent as floor and wall sheathing is in place but severely damaged).
    4. The deterioration of the structure supporting the skin as there are cracks and breaks visible throughout indicating potential failure, again most foundation work is concealed from view.
    5. The site is very small and located on high traffic corner, opposite prominent public facilities.

Exhibit B

While our estimate of the historical recovery vs. new construction estimate, done at the BZA hearing, was around $2.8M difference, a more thorough review of the plans and estimate reveal the difference to be nearly $3.5M.

We point out that the $2.8M presented at the hearing was done without the drawings and observation notes and the current estimate was done with benefit of documents, notes, and site reviews.

Please call if additional information is required.

Sincerely,

JAMES G. DAVIS
CONSTRUCTION CORPORATION

George Robinson

George Robinson
Vice President

w/attachments

cc: Dennis R. Hughes/Holland & Knight LLP
File

9th and N Street, NW Washington, DC

Table 1: Existing building renovation vs new construction cost.

	Current Construction Cost (1) 9/N St. 15 Months	New Construction Cost (2) 12 Months	
General Conditions	$ 750,000.00	$ 600,000.00	
Site work	$ 250,000.00	$ 80,000.00	
Demolition	$ 200,000.00	$ 25,000.00	
Excavation	$ 125,000.00	$ 60,000.00	
Foundations	$ 250,000.00	$ 65,000.00	(3)
Façade shoring	$ 250,000.00	$ -	(3)
Façade repair	$ 500,000.00	$ -	(3)
Structure	$ 450,000.00	$ 770,000.00	
Waterproofing	$ 100,000.00	$ 65,000.00	
Skin	$ 1,200,000.00	$ 840,000.00	(3)
Finishes (to include apartments)	$ 1,250,000.00	$ 1,250,000.00	
Specialties, loading equip, etc...	$ 125,000.00	$ 125,000.00	
Elevator	$ 125,000.00	$ 125,000.00	
Sprinkler with fire pump	$ 175,000.00	$ 175,000.00	
Plumbing	$ 160,000.00	$ 135,000.00	(3)
HVAC	$ 800,000.00	$ 700,000.00	(3)
Electrical	$ 525,000.00	$ 475,000.00	(3)
Permits	$ 100,000.00	$ 100,000.00	
Fees	$ 366,750.00	$ 279,500.00	
Const / Design contingency on historic	$ 1,651,255.00	$ -	(3)
TOTAL COST	$ 9,353,005.00	$ 5,869,500.00	
TOTAL Square Feet	38,400	38,400	
Cost per square foot	$ 243.57	$ 152.85	
Design cost	$ 1,062,841.00	$ 1,000,000.00	
Total design and construction	$ 10,415,846.00	$ 6,869,500.00	
Cost per square foot	$ 271.25	$ 178.89	

(1) The current construciton cost assumes the building as is and requires shoring, structural reapairs, façade recovery and bracing and a contingency for unforeseen conditions that would be unknown until the bujilding is partially demolished prepared for reconstruction.

(2) This cost assumes an empty lot ready for utility and foundation construction with a minimum of earthwork and little demolition required.

(3) These items reflect a cost that is directly related to historic preservation or impacted by historic preservation requirements

Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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*Representative Office

September 26, 2003

NORMAN M. GLASGOW, JR.
202-419-2460
nglasgow@hklaw.com

VIA HAND DELIVERY

Board of Zoning Adjustment
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: BZA Application No. 17012 - Applicant's Response to Issues Raised by the Office of Planning in its Supplemental Report to the Board of Zoning Adjustment

Dear Members of the Board:

On June 2, 2003, the Board received a supplemental report from the District of Columbia Office of Planning ("OP") offering conditional support for the above-referenced application.[1] Owing to the late filing of the OP supplemental report (Exhibit A), one day before the Board's June 3, 2003 public meeting, the Applicant requested that the Board either refuse to accept the OP supplemental report into the record or give the Applicant sufficient opportunity to review and respond to the OP supplemental report. The Board, after determining to accept the OP supplemental report into the record, gave the Applicant opportunity to address the points raised therein. This letter serves as the Applicant's response to the OP supplemental report.

[1] The Applicant notes that OP submitted an original report, dated May 20, 2003 but received into record on May 13, 2003 at 5:01 pm, deferring consideration of the application, and two supplemental reports, both offering conditional support for the Application. Both supplemental reports are dated May 16, 2003. The second supplemental report, and the one to which the Applicant's comments are here addressed, was received by the Board on June 2, 2003 at 4:44 pm, per the receipt stamp of the Office of Zoning, and filed as Exhibit 48. The first supplemental report was receipt-stamped by the Office of Zoning on May 16, 2003 at 3:28 pm, and filed as Exhibit 30. For sake of clarity, unless otherwise stated, the "OP supplemental report" referenced herein by the Applicant refers to the second OP supplemental report filed with the Board.

OP Supplemental Report

At the outset, the Applicant notes that the OP supplemental report received by the Board on June 2 reinforces the previously-submitted OP supplemental report in supporting the Applicant's requests for area variance relief from the building height, total FAR, residential recreation space, and rear yard requirements. The focus of this second OP supplemental report is to recommend that the BZA approve a different mix of uses for the project than that proposed by the Applicant, with a lesser non-residential building density than that requested by the Applicant.

As was originally proposed by the Applicant, the five-story building would be devoted to retail space on the ground floor, general office space on the second and third floors, and residential space on the fourth and fifth floors. OP recommends that the third floor be devoted to residential, rather than office use. At the public hearing on May 20, 2003, the Applicant offered to accommodate the OP position to the extent feasible, by splitting the third floor into an equivalent mix of residential and office space.

The OP supplemental report requests clarifications regarding representations made by the Applicant as to the economic feasibility of the project, according to the different options discussed for the use mix. Nonetheless, OP makes clear at Page 3 of its supplemental report that it "continues to recommend approval of area variances for this project that will (sic) [raise] the total FAR to increase to 3.7, the height to increase to 53', the reduction in recreation space and the full encroachment into the rear yard."

In response to the requests made by OP for clarification, the Applicant submits supplemental materials from George Robinson of Davis Construction, the Applicant's expert in construction and construction costs (Exhibit B), and from Lew Bolan of Bolan Smart Associates, the Applicant's expert in land economics (Exhibit C). The Applicant notes that Messrs. Robinson and Bolan were accepted by the Board as experts in their respective fields and that their opinions are entitled to deference in the areas for which they are testifying as experts. The Davis Construction submittal responds to OP's request for additional documentation regarding construction costs, including market comparables and detailed cost figures, and provides a thorough comparison of the proposed project both to a project of similar size built on a vacant site and to other, historic rehabilitation projects in the District with which Davis Construction recently has been involved. The Bolan Smart submittal responds to certain perceived inconsistencies by OP in the Applicant's prehearing materials.

The Applicant directs the Board's attention first to Table 1 of the Davis Construction submittal, which takes the same detailed cost estimates for the project that were provided at the May 20 public hearing and compares them line-by-line with a hypothetical project of the same square footage and presumed use mix that could be constructed on the lot were it completely vacant. While certain costs would remain constant, numerous others would be either eliminated or reduced for development of a vacant site, including almost $1 Million for foundation and façade shoring and repair work alone. This number is over and above the approximately

$1,651,256 attributable to general contingency for the numerous historic preservation aspects of the redevelopment. According to this itemization, the incorporation and treatment of the existing improvements on the Subject Property increases the costs of redevelopment by approximately $3,483,505.[2] As testified by Mr. Robinson at the public hearing, the resulting cost per square foot for the Applicant's proposal is more than $271. This number represents a significant premium over the approximately $179 per square foot cost for new construction on the Site were it vacant.

With respect to market comparables requested by OP, and in support of the testimony provided by Mr. Robinson, Table 2 of the Davis Construction submittal provides an extensive comparison of the construction costs among the Applicant's project and other preservation-focused projects in the downtown area with which Davis has been recently, or is currently, involved. While the table provides a line-by-line comparison of the items of expense for each of these projects, most telling is the relationship between the costs and the overall size of the project involved. For instance, the rehabilitation of the Woodward & Lothrop building, with its rehabilitation costs able to be spread across approximately 552,000 square feet, has a development cost estimate of only $61 per square foot, as opposed to more typically-scaled mixed use rehabilitation projects at 8th and F, measuring 100,000 square feet, with an estimated per-square-foot cost of $188 and the 107,000 square foot retail redevelopment project planned for 910-916 F Street, NW, with a rehabilitation project cost of $163 per square foot. By contrast, redevelopment of the Subject Property is estimated to cost more than $271, primarily based upon the extensive historic preservation work involved as well as the small site's limited development options and the interior build out for residential.

After reevaluation and further study of the project plans as well as current construction and market conditions, Davis Construction has refined the overall historic preservation treatment premium for the Project from $2.8 Million to nearly $3.5 Million. This sum may be located on Table 1 of Exhibit B by subtracting the total cost for new construction on a vacant site (column 2) from the total projected cost of the Project. While the market numbers the Applicant has provided offer something of a measure of the comparative extent and cost of the historic preservation effort planned for this small Site, it is this actual premium which best demonstrates just how much of an economic cost the Applicant is undertaking with its project as a result of the exceptional condition of the Subject Property.

The Davis Construction materials, at Table 3, also respond to OP's request for information related to costs attributable to construction according to use. Particularly, Table 3 provides a general allocation of construction costs between the commercial and residential components of the Project. As is evident from these materials, the most significant additional costs created by residential construction are the interior finishes, the HVAC and the electrical, all of which are not required for delivery of general office space.

---

[2] As discussed herein, this number represents a greater premium than that testified to by the construction cost expert at the May 20 public hearing and is derived from even greater scrutiny of the historic rehabilitation work and related costs.

In addition to the Davis Construction materials, the Applicant has provided the Board with a supplemental statement from Bolan Smart Associates, clarifying for the Board and OP certain perceived inconsistencies listed in the OP supplemental report regarding the current leasing market. Therein, Bolan Smart differentiates between the $20/sf number it assigns commercial rents were the Project to be redeveloped as a matter-of-right envelope from those commanded ($25/sf) for a larger, more efficient building. Bolan Smart likewise defends its estimates for the commercial and residential rental marketplace, taking issue with OP's claim that office rent estimates utilized by the Applicant for the Subject Property have been priced too high, whereas residential prices have been priced too low.

The project architect has also reviewed the OP supplemental report, particularly the first alleged inconsistency on page 3 of that report, wherein OP takes issue with the residential figure provided. It appears that the 3,950 residential square foot figure for portion of the third floor devoted to residential use is actually somewhat low. The more accurate number is 4,084 square feet. This last number includes all gross floor area on the third floor devoted to residential use, as well as 51 percent of the building core for both the third floor and the lobby. However, this number does not include the restrooms on the third floor, which are allocated to office use. It appears that the 3,106 square foot number utilized by OP is not a GFA number but rather a net leasable figure.

The Applicant trusts that the above items and attachments are responsive to the issues raised in the OP supplemental statement, and hopes that the materials will assist the Board in appreciating both the significant practical difficulty the Applicant is encountering and the extensive efforts the Applicant is making to clearly, and as accurately as possible, identify the exceptional nature and costs of this Project. The Applicant reiterates that the only area of where it previously had difference with OP regards the permitted use of the third floor of the building. The OP already supports the Applicant's request for variance relief from the total building density restriction. With this submission, the Applicant is hopeful that OP now appreciates Applicant's compliance with its burden of proof in obtaining a variance also from the non-residential building density restriction.

Respectfully submitted,
HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Dennis R. Hughes

Enclosures
cc: Jennifer Steingasser
John Moore
ANC 2C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

Office of the Director

RECEIVED
D.C. OFFICE OF ZONING
2003 JUN -2 PM 4:45

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

Supplemental Report addressing the variance to Section 771, Floor Area Ratio, for the total non-residential FAR.

SUMMARY RECOMMENDATION

The Office of Planning maintains its recommendation 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.** This represents a variance of approximately 8,200 square feet or 1.00 additional FAR, a 100% increase above the matter-of-right limits.

OP considered the economic feasibility claim from the pre-hearing statement but did not consider it to be a valid justification for the change in residential to non-residential use on the third floor for the following reasons:

- The statements made to support this claim were anecdotal; the attempt to suggest comparables included only broad statements regarding other projects by the same developer
- No market comparables have been provided
- Exhibit K does not break out in any detail what costs are standard construction costs from the preservation related contingencies, what costs are per square foot for residential versus non-residential or how the costs were calculated
- No detailed square footage figures by floor, by use, or by cost have been provided.

The pre-hearing statement, on page 6 states that "[F]or the Project, these exceptional preservation-related contingencies add more than $1,650,000 to the Applicant's development cost."

OP has recommended variances that increase the FAR by 48% (9,850 sq. ft. based on the pre-hearing statement) or 55% based on the figures provided by the expert witness.

Based on the additional FAR supported by OP, and the value figures supplied by the expert witness in the tables submitted at the May 20, 2003 hearing, OP estimates that the variances supported create an increased annual value of over $300,000.

	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
OP Supported	3.7	2.07	1.63
Estimated OP Supported VALUE per year	301,992*	$248,778	$53,214

*Retail= 1/3 of non-residential FAR increase x $35/sf = [(2.07-1)/3](8206)(35)= $102,438
Office= 2/3 of non-residential FAR increase x $25/sf = 146,340
Residential ($1.75/month= $21 per year) = 5th floor (now usable due to height variance) and reduced recreation space = (2,283 + 251)($21) = 53,214

Additional Information

OP has attempted to consider the economic feasibility issues claimed by the applicant including the supplemental testimony at the hearing. No written testimony was provided by the expert witness so OP has tried to work with the tables submitted by the expert witness in combination with the pre-hearing statement. OP found the information inconclusive and inconsistent with the submitted pre-hearing statement.

Supplemental Report Focus

The focus of this supplemental report is only the *USE* of the 3,090 square feet on the third floor. OP has previously recommended the variance for total FAR.

Based on the data provided there is a $4 per square foot difference between the residential ($1.75/month x 12 months= $21) and office value ($25).

Based on OP's experience with the Mt Vernon area, OP believes the residential figure is low and may be closer to 2.00 per square foot. Also, based on our knowledge of the market, the office rent may be high. However, no real market data has been provided for the Board or OP to analyze.

OP notes the following lack of documented evidence in the record:

- No documentation regarding the comparable construction claimed as 140-180 per square foot (page 14 of the pre-hearing)

- no real market comparables have been provided; the statements continue to appear anecdotal
- No detailed cost figures have been provided to document the construction costs per square foot of residential and commercial portions of this project to substantiate the statement that one costs more than the other or to assess the costs against the $4 value difference
- No detailed square footage figures by floor and by use have been provided
- Exhibit K does not break out in any detail what costs are standard construction costs from the preservation related premiums, what costs are per square foot residential versus non-residential; how the costs were calculated.

Inconsistencies:
OP also could not assess the feasibility claims due to the following inconsistencies:

- Residential square foot area suggested by the applicant as 3950 in the Alternate Plan includes the entire service core and lobby, the commercial office restrooms, both stair wells and the elevator core; Based on the square footage of the actual residential units as shown on the Alternate page A 1.3, there is only 3,106 square feet of apartment uses. Even allowing for the sharing of the lobby (but not including the office restrooms), the residential figure could only be estimated at 3,598 square feet.
- Pre- hearing Statement, page 6 states "For the Project, these exceptional preservation-related contingencies add more than $1,650,000 to the Applicant's development cost."
- Expert Witness stated a "$2.8M premium" over normal historic preservation expense..." but has provided no documentation
- BSA Table 1 specifies a general $20/sf NNN figure for matter-right commercial but BSA Tables 2 and Alternate D specify a $ 35/sf for retail and $25/sf for office
- BSA Table 2 and Alternate D work with a total square footage of 31,842 (3.88 FAR) but the pre-hearing statement cites only 30,400 square feet (3.7 FAR) (page 12); the 1,400 square feet difference is important because the economic claim is being calculated per square foot and OP cannot track the extent of the variances.
- The financial summary tables presented at the hearing compare the applicant's split-floor alternative to by-right figures and the applicant's original proposal, but not to the OP recommendation

OP cannot conclude that use of the third floor as residential (as anticipated by the Comprehensive Plan Generalized Land Use map and the zoning district) presents an exceptional practical difficulty.

OP RECOMMENDATION

The Office of Planning continues to recommend approval of area variances for this project that will the total FAR to increase to 3.7, the height to increase to 53', the reduction in recreation space and the full encroachment into the rear yard.

The Office of Planning however is very concerned about the precedent of recommending a variance on the basis of economic feasibility when there is no detailed and consistent information, no market-based comparables been provided to accurately determine the situation and no documentation is provided as to how the applicant concludes that the preservation expenses are extraordinary, and whether they are $1.6M as stated in the prehearing statement or $2.8M as stated by Mr. Bolan.

OP recommends that the Board approve a variance for the non-residential FAR that limits the **non-residential FAR to the basement, first and second floors only.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

FACSIMILE TRANSMITTAL SHEET

TO: Dennis R. Hughes
FROM: John Moore
COMPANY/AGENCY: Holland + Knight LLP
DATE: 6-1-03 (Sunday)
FAX NUMBER: 202-955-5564
TOTAL # OF PAGES INCLUDING COVER: 5
PHONE NUMBER: 202-955-3000
PHONE NUMBER:
RE: BZA Supplemental Report Case No. 17012

☐ URGENT ☐ FOR REVIEW ☐ FOR ACTION ☐ PLEASE REPLY

NOTES/COMMENTS:

different from other supplemental report dated 5/16

801 N. CAPITOL STREET, NE SUITE 4000 WASHINGTON, DC 20002
TEL (202) 442-7600 FAX (202) 442-7638 WEB http://planning.dc.gov

JAMES G. DAVIS CONSTRUCTION CORPORATION

DAVIS

12530 Parklawn Drive
Rockville, MD 20852
301/881-2990
301/468-3918 FAX
www.davisconstruction.com

25 September 2003

VIA TELEFAX AND MAIL
(202) 638-0303

Mr. Paul Millstein
Douglas Development Corp.
702 H Street, N.W.
Suite 400
Washington, DC 20001

REFERENCE: 9th/N Street, N.W., Washington

SUBJECT: Supplemental Construction Costs Information and Response to Office of Planning Supplemental Report

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We have included the following:

a) Table 1 which indicates the reconstruction of the existing structure as opposed to a new building on a lot requiring minimal preparation.
b) Table 2 comparing 9th & N Street to 800 F Street and The Woodward & Lothrop building.
c) Uniqueness factors include:
    1. The apparent near collapse condition of several walls of the 9th & N project.
    2. The large roof area that has failed allowing water into the structure.
    3. The deterioration of the interior structure and finishes (most are not apparent as floor and wall sheathing is in place but severely damaged).
    4. The deterioration of the structure supporting the skin as there are cracks and breaks visible throughout indicating potential failure, again most foundation work is concealed from view.
    5. The site is very small and located on high traffic corner, opposite prominent public facilities.

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We point out that the $2.8M presented at the hearing was done without the drawings and observation notes and the current estimate was done with benefit of documents, notes, and site reviews.

Please call if additional information is required.

Sincerely,

JAMES G. DAVIS
CONSTRUCTION CORPORATION

George Robinson

George Robinson
Vice President

w/attachments

cc: Dennis R. Hughes/Holland & Knight LLP
File

9th and N Street, NW Washington, DC

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Excavation	$ 125,000.00	$ 60,000.00	
Foundations	$ 250,000.00	$ 65,000.00	(3)
Façade shoring	$ 250,000.00	$ -	(3)
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Structure	$ 450,000.00	$ 770,000.00	
Waterproofing	$ 100,000.00	$ 65,000.00	
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Sprinkler with fire pump	$ 175,000.00	$ 175,000.00	
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HVAC	$ 800,000.00	$ 700,000.00	(3)
Electrical	$ 525,000.00	$ 475,000.00	(3)
Permits	$ 100,000.00	$ 100,000.00	
Fees	$ 366,750.00	$ 279,500.00	
Const / Design contingency on historic	$ 1,651,255.00	$ -	(3)
TOTAL COST	$ 9,353,005.00	$ 5,869,500.00	
TOTAL Square Feet	38,400	38,400	
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Cost per square foot	$ 271.25	$ 178.89	

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(3) These items reflect a cost that is directly related to historic preservation or impacted by historic preservation requirements

9th and N Street, NW Washington, DC

Table 2: 9th and N street vs. 800 F St and Woodies

	Current Construction Cost (1) 15 Months		Actual cost for 800 F St. (2) & (4) 17 Months		Actual cost for Woodies (2) & (3) 20 Months	
General Conditions	$ 750,000.00		$ 1,282,728.00		$ 2,063,014.00	
Site work	$ 250,000.00		$ 412,508.00		$ 264,000.00	
Demolition	$ 200,000.00		$ 470,654.00		$ 1,454,903.00	
Excavation	$ 125,000.00		$ 233,783.00	**	$ 306,375.00	
Foundations	$ 250,000.00		$ 187,609.00		$ 235,600.00	
Façade shoring	$ 250,000.00		$ 168,900.00	**	$ 527,000.00	**
Façade repair	$ 500,000.00		$ 739,870.00	**	$ 2,452,694.00	**
Structure	$ 450,000.00		$ 2,861,424.00	**	$ 4,532,540.00	**
Waterproofing	$ 100,000.00		$ 195,412.00		$ 641,000.00	
Skin	$ 1,200,000.00		$ 3,458,592.00	**	$ 1,365,000.00	**
Finishes (to include apartments)	$ 1,250,000.00		$ 2,238,980.00		$ 3,074,172.00	
Specialties, loading equip, etc...	$ 125,000.00		$ 147,090.00		$ 392,000.00	
Elevator	$ 125,000.00		$ 535,670.00		$ 2,004,515.00	
Sprinkler with fire pump	$ 175,000.00		$ 302,383.00		$ 505,000.00	
Plumbing	$ 160,000.00		$ 721,228.00		$ 1,400,000.00	
HVAC	$ 800,000.00		$ 1,104,430.00	**	$ 3,418,000.00	**
Electrical	$ 525,000.00		$ 1,438,902.00	**	$ 3,180,000.00	**
Permits	$ 100,000.00		$ 150,000.00		$ 175,121.00	
Fees	$ 366,750.00		$ 759,090.00		$ 1,520,000.00	
Const/ Design contingency on historic	$ 1,651,255.20		$ 148,817.00		$ 1,836,287.00	
TOTAL COST	$ 9,353,005.20		$ 17,558,070.00		$ 31,347,221.00	
TOTAL Square Feet	38,400		100,000		552,000	
Cost per square foot	$ 243.57		$ 175.58		$ 56.79	
Design cost	$ 1,122,360.62		$ 1,300,000.00		$ 2,300,000.00	
Total design and construction	$ 10,475,365.82		$ 18,858,070.00		$ 33,647,221.00	
Cost per square foot	$ 272.80		$ 188.58		$ 60.96	

(1) The current construciton cost assumes the building as is and requires shoring, structural reapairs, façade recovery and bracing and a contingency for unforeseen conditions that would be unknown until the bujilding is partially demolished prepared for reconstruction.

(2) These costs reflect the actual final costs or the final bid costs related to the identified projects

(3) No interior finishes except at elevator cores

** Items reflecting costs directly related to historic preservation or impacted by historic preservation requirements

(4) Construction contingency for 800 F Street was significantly less due to pre construction investigations over a 1 year period that identified areas included on the final bid documents resulting in a more thorough bid process.

9th and N Street, NW Washington, DC

Table 2: 9th and N street vs. 800 F St and Woodies

Continuation of Table 2 for 912 F St.	Current Construction Cost (1) 15 Months	Actual cost for 912 F St 15 Months	
General Conditions	$ 750,000.00	$ 967,000.00	
Site work	$ 250,000.00	$ 756,477.00	**
Demolition	$ 200,000.00	$ 77,863.00	
Excavation	$ 125,000.00	$ 40,910.00	
Foundations	$ 250,000.00	$ 206,000.00	**
Façade shoring	$ 250,000.00	$ 150,000.00	**
Façade repair	$ 500,000.00	$ 206,450.00	**
Structure	$ 450,000.00	$ 3,205,044.00	**
Waterproofing	$ 100,000.00	$ 188,978.00	
Skin	$ 1,200,000.00	$ 1,810,433.00	**
Finishes (to include apartments)	$ 1,250,000.00	$ 2,986,066.00	
Specialties, loading equip, etc...	$ 125,000.00	$ 398,500.00	
Elevator	$ 125,000.00	$ 440,000.00	
Sprinkler with fire pump	$ 175,000.00	$ 192,000.00	
Plumbing	$ 160,000.00	$ 850,000.00	
HVAC	$ 800,000.00	$ 1,065,000.00	
Electrical	$ 525,000.00	$ 1,227,000.00	
Permits	$ 100,000.00	$ 150,000.00	
Fees	$ 366,750.00	$ 584,717.00	
Const/Design contingency on historic	$ 1,651,255.00	$ 500,000.00	**
TOTAL COST	$ 9,353,005.00	$ 16,002,438.00	
TOTAL Square Feet	38,400	107,339	
Cost per square foot	$ 243.57	$ 149.08	
Design cost	$ 1,062,841.00	$ 1,500,000.00	**
Total design and construction	$ 10,415,846.00	$ 17,502,438.00	
Cost per square foot	$ 271.25	$ 163.06	

(1) The current construciton cost assumes the building as is and requires shoring, structural reapairs, façade recovery and bracing and a contingency for unforeseen conditions that would be unknown until the bujilding is partially demolished prepared for reconstruction.

(2) These costs reflect the actual final costs or the final bid costs related to the identified projects

(3) No interior finishes except at elevator cores

9th and N Street, NW Washington, DC

Table 3: Breakdown of Residential vs Commercial cost of 9 and N Street.

		Commercial		Residential
General Conditions	$	332,000.00	$	418,000.00
Site work	$	125,000.00	$	125,000.00
Demolition	$	70,000.00	$	130,000.00
Excavation	$	75,000.00	$	50,000.00
Foundations	$	65,000.00	$	185,000.00
Façade shoring	$	150,000.00	$	100,000.00
Façade repair	$	300,000.00	$	200,000.00
Structure	$	250,000.00	$	200,000.00
Waterproofing	$	50,000.00	$	50,000.00
Skin	$	700,000.00	$	500,000.00
Finishes (to include apartments)	$	100,000.00	$	1,150,000.00
Specialties, loading equip, etc...	$	25,000.00	$	100,000.00
Elevator	$	62,500.00	$	62,500.00
Sprinkler with fire pump	$	75,000.00	$	100,000.00
Plumbing	$	20,000.00	$	140,000.00
HVAC	$	300,000.00	$	500,000.00
Electrical	$	200,000.00	$	325,000.00
Permits	$	50,000.00	$	50,000.00
Fees	$	147,475.00	$	219,275.00
Construction contingency on historic	$	825,627.50	$	825,627.50
TOTAL COST	$	3,922,602.50	$	5,430,402.50
TOTAL Square Feet		38,400		38,400
Cost per square foot	$	102.15	$	141.42
Design cost	$	380,000.00	$	682,841.00
Design contingency	$	-	$	-
Total design and construction	$	4,302,602.50	$	6,113,243.50
Cost per square foot	$	112.05	$	159.20

These breakdowns are based on the location of the residential and commercial space and a subject to what parts of the buildings required remedial work to house commercial and residential space. The interior finishes and the increased plumbing, HVAC, and electrical are based on normal loads required to support residential space. The fees and general conditions are broken apart by the percentage cost of each category.

BOLAN SMART ASSOCIATES, INC.
900 NINETEENTH STREET, NW, SUITE 600, WASHINGTON, DC 20006 • (202) 371-1333 • FAX (202) 371-1334

July 29, 2003

Board of Zoning Adjustment
441 4th Street, NW
Room 210 S
Washington, DC 20001

Re: BZA Case Number 17012, 9th and N Streets, NW
Explanation of Project Income Related Testimony

Dear Members of the Board:

A DC Office of Planning Supplemental Report dated May 16, 2003 suggests that there may be inconsistencies in our pre-hearing statement and my actual hearing testimony. I have reviewed both OP's queries and the pre-hearing statement. I believe what may have happened is that OP has overlooked that my written submission differentiated rents and resulting income implications based on "by-right" development and four alternate proposed development comparisons. The commercial net revenue is projected at $20.00 per rsf with a "by-right" development and $25.00 per rsf office rent under the proposed scenarios. The reason for this difference is that the expanded proposed redevelopment creates a better quality, more efficient and more flexible commercial building compared with the more constrained "by-right" development conditions. There are a range of income loss projections indicated in my pre-hearing statement based on the development characteristics presented in the four alternative development scenarios presented.

The OP Supplemental Report also questions whether our projected office incomes are a little high and residential rental rates a little low. As outlined above, the newly redeveloped and expanded commercial space is intended to serve a convention center / downtown office related marketplace. The suggested $25.00 per RSF net rent for office space equivalent in quality to space at the south end of the convention center already represents a 20% discount off the price of new commercial space at $30.00+ per RSF for space at the south end of the center.

Similarly to commercial space, we do not believe the subject property can command residential rents similar to those that may materialize at other locations in the Mount Vernon area submarket. Not only is the property peripheral to the emerging Massachusetts Avenue related housing to the south, the site faces serious compromises from the standpoint of achieving premium rents. First, the property is bordered on the south by the back of the convention center and to the immediate north by an operating gas station. Second, the property under any redevelopment scenario can never reach a critical mass of units to provide cost and marketing economies, resident services, parking or residential characteristics comparable to a larger dedicated apartment building. Third, there are inherent conflicts between including a small number of residential units over commercial uses, which while not critical, nonetheless can have minor detrimental impact on potential net income.

We hope these clarifications assist you in understanding the numbers.

Sincerely,

Lewis Bolan

Exhibit C

The Office of Planning however is very concerned about the precedent of recommending a variance on the basis of economic feasibility when there is no detailed and consistent information, no market-based comparables been provided to accurately determine the situation and no documentation is provided as to how the applicant concludes that the preservation expenses are extraordinary, and whether they are $1.6M as stated in the prehearing statement or $2.8M as stated by Mr. Bolan.

OP recommends that the Board approve a variance for the non-residential FAR that limits the **non-residential FAR to the basement, first and second floors only.**

9th and N Street, NW Washington, DC

Table 2: 9th and N street vs. 800 F St and Woodies

	Current Construction Cost (1) 15 Months		Actual cost for 800 F St. (2) & (4) 17 Months		Actual cost for Woodies (2) & (3) 20 Months	
General Conditions	$ 750,000.00		$ 1,282,728.00		$ 2,063,014.00	
Site work	$ 250,000.00		$ 412,508.00		$ 264,000.00	
Demolition	$ 200,000.00		$ 470,654.00		$ 1,454,903.00	
Excavation	$ 125,000.00		$ 233,783.00	**	$ 306,375.00	
Foundations	$ 250,000.00		$ 187,609.00		$ 235,600.00	
Façade shoring	$ 250,000.00		$ 168,900.00	**	$ 527,000.00	**
Façade repair	$ 500,000.00		$ 739,870.00	**	$ 2,452,694.00	**
Structure	$ 450,000.00		$ 2,861,424.00	**	$ 4,532,540.00	**
Waterproofing	$ 100,000.00		$ 195,412.00		$ 641,000.00	
Skin	$ 1,200,000.00		$ 3,458,592.00	**	$ 1,365,000.00	**
Finishes (to include apartments)	$ 1,250,000.00		$ 2,238,980.00		$ 3,074,172.00	
Specialties, loading equip, etc...	$ 125,000.00		$ 147,090.00		$ 392,000.00	
Elevator	$ 125,000.00		$ 535,670.00		$ 2,004,515.00	
Sprinkler with fire pump	$ 175,000.00		$ 302,383.00		$ 505,000.00	
Plumbing	$ 160,000.00		$ 721,228.00		$ 1,400,000.00	
HVAC	$ 800,000.00		$ 1,104,430.00	**	$ 3,418,000.00	**
Electrical	$ 525,000.00		$ 1,438,902.00	**	$ 3,180,000.00	**
Permits	$ 100,000.00		$ 150,000.00		$ 175,121.00	
Fees	$ 366,750.00		$ 759,090.00		$ 1,520,000.00	
Const/ Design contingency on historic	$ 1,651,255.20		$ 148,817.00		$ 1,836,287.00	
TOTAL COST	$ 9,353,005.20		$ 17,558,070.00		$ 31,347,221.00	
TOTAL Square Feet	38,400		100,000		552,000	
Cost per square foot	$ 243.57		$ 175.58		$ 56.79	
Design cost	$ 1,122,360.62		$ 1,300,000.00		$ 2,300,000.00	
Total design and construction	$ 10,475,365.82		$ 18,858,070.00		$ 33,647,221.00	
Cost per square foot	$ 272.80		$ 188.58		$ 60.96	

(1) The current construciton cost assumes the building as is and requires shoring, structural reapairs, façade recovery and bracing and a contingency for unforeseen conditions that would be unknown until the bujilding is partially demolished prepared for reconstruction.

(2) These costs reflect the actual final costs or the final bid costs related to the identified projects

(3) No interior finishes except at elevator cores

** Items reflecting costs directly related to historic preservation or impacted by historic preservation requirements

(4) Construction contingency for 800 F Street was significantly less due to pre construction investigations over a 1 year period that identified areas included on the final bid documents resulting in a more thorough bid process.

9th and N Street, NW Washington, DC

Table 2: 9th and N street vs. 800 F St and Woodies

Continuation of Table 2 for 912 F St.	Current Construction Cost (1) 15 Months	Actual cost for 912 F St 15 Months	
General Conditions	$ 750,000.00	$ 967,000.00	
Site work	$ 250,000.00	$ 756,477.00	**
Demolition	$ 200,000.00	$ 77,863.00	
Excavation	$ 125,000.00	$ 40,910.00	
Foundations	$ 250,000.00	$ 206,000.00	**
Façade shoring	$ 250,000.00	$ 150,000.00	**
Façade repair	$ 500,000.00	$ 206,450.00	**
Structure	$ 450,000.00	$ 3,205,044.00	**
Waterproofing	$ 100,000.00	$ 188,978.00	
Skin	$ 1,200,000.00	$ 1,810,433.00	**
Finishes (to include apartments)	$ 1,250,000.00	$ 2,986,066.00	
Specialties, loading equip, etc...	$ 125,000.00	$ 398,500.00	
Elevator	$ 125,000.00	$ 440,000.00	
Sprinkler with fire pump	$ 175,000.00	$ 192,000.00	
Plumbing	$ 160,000.00	$ 850,000.00	
HVAC	$ 800,000.00	$ 1,065,000.00	
Electrical	$ 525,000.00	$ 1,227,000.00	
Permits	$ 100,000.00	$ 150,000.00	
Fees	$ 366,750.00	$ 584,717.00	
Const/Design contingency on historic	$ 1,651,255.00	$ 500,000.00	**
TOTAL COST	$ 9,353,005.00	$ 16,002,438.00	
TOTAL Square Feet	38,400	107,339	
Cost per square foot	$ 243.57	$ 149.08	
Design cost	$ 1,062,841.00	$ 1,500,000.00	**
Total design and construction	$ 10,415,846.00	$ 17,502,438.00	
Cost per square foot	$ 271.25	$ 163.06	

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(3) No interior finishes except at elevator cores

9th and N Street, NW Washington, DC

Table 3: Breakdown of Residential vs Commercial cost of 9 and N Street.

	Commercial	Residential
General Conditions	$ 332,000.00	$ 418,000.00
Site work	$ 125,000.00	$ 125,000.00
Demolition	$ 70,000.00	$ 130,000.00
Excavation	$ 75,000.00	$ 50,000.00
Foundations	$ 65,000.00	$ 185,000.00
Façade shoring	$ 150,000.00	$ 100,000.00
Façade repair	$ 300,000.00	$ 200,000.00
Structure	$ 250,000.00	$ 200,000.00
Waterproofing	$ 50,000.00	$ 50,000.00
Skin	$ 700,000.00	$ 500,000.00
Finishes (to include apartments)	$ 100,000.00	$ 1,150,000.00
Specialties, loading equip, etc...	$ 25,000.00	$ 100,000.00
Elevator	$ 62,500.00	$ 62,500.00
Sprinkler with fire pump	$ 75,000.00	$ 100,000.00
Plumbing	$ 20,000.00	$ 140,000.00
HVAC	$ 300,000.00	$ 500,000.00
Electrical	$ 200,000.00	$ 325,000.00
Permits	$ 50,000.00	$ 50,000.00
Fees	$ 147,475.00	$ 219,275.00
Construction contingency on historic	$ 825,627.50	$ 825,627.50
TOTAL COST	$ 3,922,602.50	$ 5,430,402.50
TOTAL Square Feet	38,400	38,400
Cost per square foot	$ 102.15	$ 141.42
Design cost	$ 380,000.00	$ 682,841.00
Design contingency	$ -	$ -
Total design and construction	$ 4,302,602.50	$ 6,113,243.50
Cost per square foot	$ 112.05	$ 159.20

These breakdowns are based on the location of the residential and commercial space and a subject to what parts of the buildings required remedial work to house commercial and residential space. The interior finishes and the increased plumbing, HVAC, and electrical are based on normal loads required to support residential space. The fees and general conditions are broken apart by the percentage cost of each category.