GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17047 of 33 P St LLC, pursuant to 11 DCMR § 3103.2 for a variance from the off-street parking requirements under § 2101.1 (parking schedule), to allow the conversion of a warehouse to an entertainment night club in the C-3-C District at 33 Patterson St, N.E. (Square 672, Lot 255).

HEARING DATE: September 9, 2003
DECISION DATE: October 7, 2003

DECISION AND ORDER

Preliminary Matters

The owner of the subject property, 33 P St. LLC, through its agent, filed an application with the Board of Zoning Adjustment (the Board) on June 17, 2003 for variance relief under 11 DCMR § 3103.2 from the parking schedule requirements under § 2101.1 of the Zoning Regulations. Specifically, the applicant seeks to reduce the required number of on-site parking spaces from 106 to 6, stipulating that an additional 100 spaces will be provided off-site. For the reasons stated below, the application is granted, subject to certain conditions.

Notice of Public Hearing The Board scheduled a public hearing for September 9, 2003. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, owners of all property within 200 feet of the subject premises, Advisory Neighborhood commission (ANC) 6C, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 26).

Government Reports

OP Report OP reviewed the variance application and prepared a written report recommending that the Board deny the variance relief (Exhibit 46). At the time the report was written, on September 2, 2003, the applicant had not provided a detailed parking management plan for the Board's consideration. Steve Morgan, the OP Planner who reviewed the application, nevertheless stated at the conclusion of the hearing that OP could support the variance if the applicant submitted a "binding agreement" to provide parking. By the time of the Board's decision meeting on October 7, 2003, the applicant had submitted evidence of a parking lease with a neighboring property owner.

17047
75
Board of Zoning Adjustment
District of Columbia
CASE NO. 17047
EXHIBIT NO. 75

Department of Transportation The District of Columbia Department of Transportation also reviewed the variance application and prepared a report stating that it had no objection to the relief being granted (Exhibit 34).

ANC Report In its report dated August 7, 2003, ANC 6C indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to support the variance (Exhibit 35). Daniel Pernell, one of the ANC Commissioners, testified in support of the application. Other ANC Commissioners and neighboring property owners also submitted letters in support of the application (Exhibits 8, 22, 23, 24, 30, 31 and 33) The general consensus was that: (1) the proposed night club would have a positive impact in an area that needs development; and, (2) there would be no adverse effects on the neighborhood resulting from the reduction of on-site parking spaces.

Requests for party status

Capital Square Management LLC property Because this property is located directly across the street (on Patterson Street) from the subject property and would be uniquely effected by the variance, party status was granted. This property owner opposed the application and was represented by Stephen Gell, Esq.

30/60 M St. Limited Partnership Because this property abuts the subject property to the immediate east at 1615 M Street and would be uniquely affected by the variance, party status was granted. This property owner opposed the application and was represented by the law firm of Holland & Knight, Norman Glasgow, Jr., Esq. A witness for the owner testified that, if granted, the variance should be conditioned upon a written parking lease, a specific term for the variance, and specific hours of operation for the proposed night club.

Persons in Opposition to the Application Other surrounding property owners submitted letters in opposition to the application, but they did not request party status nor did they testify (Exhibits 48, 49, 50).

Closing of the Record The record was closed at the conclusion of the public hearing on September 9, 2003. However, the Board re-opened the record on October 7, 2003 to accept additional materials from the applicant's newly retained counsel, Cole, Raywid & Braverman, LLP, Edward Donohue, Esq. (Exhibit 70). These materials consisted of a letter and attached statement acknowledging a parking lease agreement.

FINDINGS OF FACT

1. The subject property is located on the south side of Patterson Street, NE, between North Capitol Street and First Street, in a C-3-C high bulk commercial zone. The building, which covers over 87% of the lot, is a factory warehouse that was previously

used to store and repair furs. There is no current economic demand to use the building as a warehouse.

2. The surrounding area, primarily a mixture of office and industrial uses and vacant lots and buildings, is an area in transition. A metrorail station approximately 900 feet from the property is scheduled for completion in December, 2004. Most of the streets surrounding the subject property have restricted off-street parking during the weekday. However, nearby off-street parking spaces become available in the evening, as do spaces within nearby garages.

3. The applicant proposes to convert the existing warehouse building to an entertainment night club that would operate from 4:00 pm to 2:00 am during the week, with additional daytime hours on Saturdays and Sundays. As a warehouse, only 6 parking spaces are required at the site[1], but as an entertainment nightclub, 106 on-site parking spaces are required.[2] Since the existing parking provides only 6 of the 106 required spaces, and it would be very costly to build a below-grade garage, the applicant seeks variance relief for 100 on-site spaces.

4. While the applicant seeks variance relief for on-site parking spaces, he has proffered that he will provide additional off-site spaces. During the 1 year period beginning October 1, 2003, the applicant represents that he will provide 105 parking spaces on lots located at 1133 North Capitol St, NE, immediately adjacent to the proposed night club. The applicant has submitted a written acknowledgement to this effect from the parking lot lessor.

5. The Board credits the assessment prepared by the applicant's traffic consultant and finds that the parking variance will not adversely impact the neighborhood in terms of traffic generation. Because the proposed establishment with off-site parking will primarily be used during the evening hours, the parking variance (resulting in increased parking in the neighborhood) will be compatible with daytime office uses.

6. The evidence of record indicates that between 5:00 and 6:00 pm on weekdays, 340 off-street parking spaces become available in the nearby vicinity of the property. In addition, there are several surface parking lots in the nearby vicinity (See, Exhibit 52, the "Parking Management Plan" submitted by the applicant).

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant

[1] The parking schedule within the Zoning Regulations states that warehouses must provide 1 space for every 3,000 square feet of floor area.
[2] See the Self-Certification (Exhibit 3) submitted by the applicant.

variances from the strict application of the Zoning Regulations. The applicant here seeks relief from the requirement under § 2101.1 of the Regulations that it provide 106 on-site parking spaces.

Under the three-prong test for variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

The property is unique because of an exceptional situation. This property is unique in that it was improved with a warehouse, but is in an area that no longer has a market for warehouse space. Therefore, the ability to reuse this property depends upon the adaptive reuse of the building.

The applicant will encounter practical difficulty if the parking requirements are strictly applied Because the building covers 87% of the lot, the applicant cannot meet the on-site parking requirements without demolishing the building or constructing an underground garage at great cost.

The parking variance will not result in substantial detriment to the public good or the zone plan.
Because the applicant requests a significant variance – reducing the required on-site spaces from 106 to 6 – the Board has carefully considered whether the applicant has met this prong of the variance test. Based upon the evidence, the Board concludes that the parking reduction will not adversely impact neighboring properties or the zone plan. First, the applicant has represented that it has entered into a one-year lease for 105 parking spaces at the lot adjacent to the proposed night club (Finding of Fact 4). Second, because the off-site spaces will primarily be used during the evening hours, the parking variance will be compatible with the surrounding daytime office parking (Finding of Fact 5). Third, the Board is persuaded that there is sufficient off-site parking in the nearby vicinity to allow the applicant to enter into subsequent parking leases when the current lease expires (Finding of Fact 6). As noted at the outset, this property is located in a neighborhood in transition. The Board concludes that, at least for the foreseeable future, the daytime parking spaces (both off-street and in garages) will be available during the evening hours when they are needed by the applicant. In addition, once built, the new metrorail station will provide an alternative means of transportation to and from the night club. Provided the applicant complies with the conditions contained in this Decision and

Order, the Board concludes there will be no adverse effects on neighboring properties or on the zone plan.

The Board is required under D.C. Official Code § 1-309(d)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The Board has carefully considered the issues and concerns raised in the ANC's report and testimony, which mirror those of the applicant. For the reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

In reviewing a variance application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board does not find OP's advice to be persuasive, except that the Board agrees with OP that the variance, if granted, must be conditioned upon a binding parking lease to provide the off-site parking.

The Board's finding of no substantial detriment to the public good is based, in large part, upon a projection of the availability of daytime parking spaces, the impact of a future Metro Station, and the applicant's promise to maintain parking spaces off-site. Because this is an area in transition, the Board is limiting the time in which the variance will remain in effect to five years. The applicant may, of course, apply for another variance at the expiration of this period, at which point the Board can access the actual impact of this decision and the extent to which the neighborhood has changed.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow a reduction in parking spaces from 106 to 6 at the property located at 33 Patterson Street, N.W. (Square 672, Lot 255) **SUBJECT** to the following **CONDITIONS**:

1. The variance shall be in effect for **FIVE (5)** years from the final date of this order.

2. The reduction in on-site parking shall be permitted so long as a minimum of 100 off-site parking spaces are provided within 800 feet of the entertainment night club whenever the club is operating.

3. A certificate of occupancy shall not be issued for the entertainment night club unless the application for the certificate is accompanied by a copy of a binding written lease agreement(s) for a minimum of 100 off-site parking spaces within 800 feet of the property. The certificate of occupancy shall be revoked in the event the parking spaces are not provided as stated in this Decision and Order.

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, David A. Zaidain and John G. Parsons voting to approve the application)

Vote taken on October 7, 2003

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

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

FINAL DATE OF ORDER: DEC 2 3 2003

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF

ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. SG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 17047

As Director of the Office of Zoning, I hereby certify and attest that on DEC 2 3 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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