GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17063 of Jemal's Liggins LLC, pursuant to 11 DCMR 3103.2, for a variance from the off-street parking requirements under § 2101.1, and a variance from the off-street loading requirements under § 2201.1, in the DD/C-2-C District at premises 450 H Street, NW (Square 518, Lot 103).

HEARING DATES: September 9, 2003 and October 14, 2003
DECISION DATE: October 14, 2003

DECISION AND ORDER

Preliminary Matters

Jemal's Liggins LLC (the applicant), filed an application with the Board of Zoning Adjustment (the Board) on July 28, 2003 for variance relief under 11 DCMR § 3103.2 from the parking schedule requirements under § 2101.1 of the Zoning Regulations and from the off-street loading requirements under § 2201.1 of the Zoning Regulations. Specifically, the applicant seeks complete relief from the requirements to provide on-site parking and loading areas.[1]

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 site, the 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. The hearing was continued to October 14, 2003.

District Government Reports

OP Report OP reviewed the variance application and prepared a written report recommending that the Board grant the variance relief, including one condition that the applicant establish a curbside loading plan to avoid peak hours (Exhibit 25).

[1] Initially, the applicant sought only partial relief from the parking requirements and proposed to provide 8 of the 17 required spaces. However, the applicant was unable to proffer a precise plan for the parking configuration or the dimensions of the 8 spaces and conceded that the spaces would not be non-conforming. As a result, the Board determined to treat this application as a request for complete relief from the parking schedule requirements.

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Department of Transportation The Department of Transportation (DDOT) also reviewed the variance application stating that it had no objection to the relief being granted subject to conditions, including one condition that the applicant coordinate with it regarding a curbside loading area designation.

ANC Report In its report dated September 22, 2003, ANC 6C indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to support the variances requested (Exhibit 23).

Persons in Opposition to the Application No persons requested party status or testified in opposition to the Application.

FINDINGS OF FACT

The Property

1. The property that is the subject of this application (Lot 103 in Square 518) is located on the south side of H Street, NW, between 4th and 5th Streets, NW. It is rectangular in shape, contains a lot area of approximately 3,834 square feet, and has approximately 54 feet of frontage along H Street, NW. There is no access from any other street or alley.

2. The property is improved with a 10-story building that contains a gross floor area of approximately 31,685 square feet, resulting in a FAR of approximately 8.26. The building occupies the entire lot.

3. The property is well-served by public transportation and nearby off-street parking. It is located less than 1,000 feet from both the Gallery Place -- Chinatown and Judiciary Square Metrorail stations. Likewise, multiple Metrobus routes pass along H Street, NW, in front of the property. In addition, there are more than 1,200 public off-street parking spaces in 9 surface lots and below-grade garages within two blocks of the property.

The Surrounding Area

4. To the immediate east of the property stands the headquarters of the U.S. General Accounting Office (GAO), which occupies the bulk of Square 518. Elsewhere within Square 518 is the St. Mary Mother of God Church and accessory buildings located to the west and south of the property. Directly north across H Street, NW, is the Judiciary House apartment building, operated by the District of Columbia Housing Authority. To the northwest of the property, at the northeast

corner of H and 5th Streets, are four small townhouse-type office buildings; and to the northeast of the property, at the northwest corner of 4th and H Streets, is a 13-story apartment building under construction at 400 Massachusetts Avenue, NW.

Construction, Occupancy and Zoning History

5. Although the building was constructed in 1984, its interior finish was incomplete at that time and the building was unoccupied for 15-16 years, until 2002.

6. At the time of the building's construction in 1984, the property was zoned HR/SP-2, a mixed use zone requiring a residential/commercial building. The buildings' construction was subject to HR/SP-2 zoning restrictions and incentives, except to the extent relieved of such requirements by the Board in Order No. 14002, dated October 13, 1983 (the 1983 Order).

7. The HR\SP-2 zone permits a maximum matter of right FAR of 8.5, for hotels and apartment houses, otherwise, the maximum FAR is 6.0.

8. Although the HR/SP-2 zoning required 11 off-street parking spaces, the 1983 Order granted a variance for the number and size of the parking spaces, allowing 8 stacked spaces of less than the minimum required dimensions. The 8 parking spaces currently exist on a level below the first floor of the building. That level is accessed only from a ramp located on the adjacent GAO property.

9. The 1983 Order also approved a special exception to waive the rear yard requirements for the property and a special exception to construct an office building in an SP District. The Board did not approve a requested FAR variance, resulting in approval of a mixed-use building with floors 1 through 4 as office and 5 through 10 as residential apartments.

10. The Board found in its 1983 Order that the property was subject to an exceptional situation or condition in that it was a comparatively small, mid-block site for commercial development in the downtown area, with only one public street frontage, and with no alley access, or room for expansion. It also found that the size and location of the site, along with the existence of water conditions on the site, constituted an exceptional condition precluding the construction of more than one level of parking ramp below grade.

11. At the time of construction in 1984, no loading docks were required under the HR/SP-2 zoning, and none were provided. (Loading docks were required only

where the amount of space contemplated for office use was more than 30,000 square feet or the number of residential units was more than 50.)

12. In 1991 the property was rezoned to its current designation, DD/C-2-C, a commercial zone within the Downtown Development District ("DD") Overlay. Like the HR/SP-2 district, this district is a mixed use district that requires a commercial/residential building. The maximum permitted FAR is 8.0, of which not less than 4.5 FAR of residential use must be provided on-site or accounted for off-site in a combined lot development, 11 DCMR § 1706.4. The 8.0 FAR limit may be exceeded under the circumstances described in § 1706.7, which includes obtaining up to .5 of additional FAR through a transfer of development rights.

13. The applicant purchased the property in 1999.

14. As a result of renovations to the building that occurred after January 18, 1991 (the effective date of the Downtown Development Overlay District), the building became subject to the overlay's "requirements and incentives", 11 DCMR § 1700.4.

15. In 2001 the applicant obtained a certificate of occupancy for office use, even though it had not accounted for the 4.5 FAR of residential uses it was required by law to provide. The applicant then leased the building to the Youth Services Administration of the D. C. Department of Human Services (YSA). To reflect the name of the tenant, different from that stamped on Certificate of Occupancy No. 190235, the Department of Consumer and Regulatory Affairs (DCRA) issued Certificate of Occupancy No. CO28793 on February 15, 2002, authorizing the "Youth Services Agency" to occupy the second through tenth floors of the building for office use.

16. In July 2003, DCRA notified YSA that it intended to revoke the office use certificate of occupancy because of the failure to provide the residential uses required by the Zoning Regulations and the terms of the 1983 Board Order requiring several floors of residential apartments.

The Requested Relief

17. The applicant seeks variance relief from the current zoning requirements for 17 parking spaces and off-street loading.[2] The applicant has not sought variance relief with respect to the use-related zoning violation cited in the notice of revocation, apparently because it intends to account for its residential

[2] The applicant also filed an appeal challenging DCRA's notice of intention to revoke the certificate of occupancy for office space. However, that appeal is not the subject of the proceeding.

requirement through a combined lot development. Nor did the applicant request a variance to the 8.0 FAR limit applicable to DD\C-2 properties, presumably because it intends to increase its maximum FAR to 8.26 through a transfer of development rights, or one of the other means available as a matter of right through 11 DCMR § 1706.7.

18. Assuming the commercial occupancy proposed for the building and the C-2-C zoning designation, 17 off-street parking spaces are required under § 2101.1 of the Zoning Regulations. The applicant is unable to provide any parking spaces that meet the dimensional requirements of the Zoning Regulations; and, therefore requests full relief from the parking schedule requirements.

19. With respect to loading requirements, § 2201.1 provides that office buildings in the C-2-C District with between 20,000 and 50,000 square feet of gross floor area, provide a minimum of one loading berth at 30 feet deep, one loading platform at 100 square feet, and one service/delivery loading space at 20 feet deep. The applicant has no space to locate a loading dock other than H Street, which is obviously an inappropriate location. Therefore, the applicant requests relief from the loading requirements in the Regulations as well.

Application of the Variance Standard

20. The Board agrees with OP that the property is unique in that it includes a completed building that is "boxed in" by its neighbors, namely, the GAO headquarters and the St. Mary's Church complex. There is no space for the applicant to provide additional parking or a loading dock. And, as found in the previous Board order, underground water conditions on the site are an exceptional circumstance that make construction of an underground garage inordinately difficult.

21. The exceptional condition of the property results in a practical difficulty in complying with the parking and loading requirements because, as noted by DDOT, the owner cannot provide required parking and loading facilities within the existing structure.

22. The granting of the variances will not cause substantial detriment to the public good nor impair the intent, purpose and integrity of the zone plan. As noted in finding of fact number 3, the area is well served by public transportation and off street parking facilities. The Board credits DDOT's conclusion that the requested variances would only slightly impact on street parking supply in the immediate area, and would not create dangerous or objectionable traffic conditions.

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 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 17 on-site parking spaces, and from § 2201 of the Regulations that it provide off-street loading areas.

Under the three-prong test for area 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.

Unique conditions at the property necessitate a variance For many of the same reasons cited by the Board in 1983, this Board concludes that the property is subject to unique conditions that necessitate a variance. For example, this Board finds that the property is a comparatively small, mid-block site for commercial development in the downtown area, with only one public street frontage, no alley access, and no room for expansion. The size and location of the site, along with the existence of water conditions at the site, constitute exceptional conditions and the site cannot accommodate loading docks or more than one level of parking ramp. These conditions necessitate zoning relief today just as they did in 1983.

The applicant will encounter practical difficulty if the parking and loading requirements are strictly applied As also decided by the Board in 1983, this Board concludes that the strict application of the Zoning Regulations would result in practical difficulty for the applicant. Perhaps even more than in 1983, denial of the variance would result in practical difficulties. Today there is an existing 10-story building at the site, whereas in 1983 the property was vacant. Because the existing building covers 100% of the lot, the applicant cannot meet the on-site parking or loading requirements without demolishing the building. The Board is persuaded that it would be impossible or, at a minimum, extremely difficult and

costly to construct a below grade garage, in part due to the water conditions at the site.[3]

Neither the parking variance nor the loading dock variance will result in substantial detriment to the public good or the zone plan. Because the applicant requests a complete parking variance –it cannot provide any of the 17 required on-site spaces – 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 variance will not adversely impact neighboring properties or the zone plan. First, the Board is persuaded that there is sufficient off-site parking in the nearby vicinity to provide 17 spaces (Finding of Fact 3). Second, there is also ample public transportation in the nearby vicinity (*Id.*). Likewise, with respect to loading, the Board is cognizant that during the past year during which the property was occupied, the lack of loading facilities has not resulted in any disruption to traffic or other harm to the general public. In addition, the application has been reviewed by DDOT without objection. However, the Board believes that the applicant must coordinate with DDOT to designate a curbside loading area and develop a plan to avoid loading during peak hours, and therefore makes that a condition of this order.

The Board is basing its finding of no substantial detriment to the zone plan, in part, upon the assumption that the applicant will take the remaining steps necessary to achieve compliance with the zoning regulations by completing the combined lot development and transfer of development rights processes, both of which are *pro forma* in nature. Nevertheless, the Board stresses that this order appears to address but one of the zoning violations cited in the DCRA notice of proposed revocation. Thus, it would be incorrect to interpret this order as resolving whatever other zoning compliance issues remain.

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.

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3 The Board notes that additional parking requirements resulting from a change in zoning do not normally apply to buildings constructed prior to the zoning change, unless the building's use subsequently intensifies or changes. This principle also applies to buildings for which a parking variance was granted before the rezoning. This variance was apparently requested as a result of the applicant's desire to resolve any inconsistency between the use requirements of the prior owner and the ability, under the new zoning designation, to have a completely non-residential building, provided that the combined lot development process is completed.

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 finds OP's advice to be persuasive.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow zoning relief from the requirement under § 2101.1 to provide 17 parking spaces and the requirement under § 2204.1 to provide on-site loading docks at the property located at 450 H Street, NW (Square 518, Lot 103) **SUBJECT** to the **CONDITION** that the applicant will coordinate with DDOT to designate a curbside loading area and a plan to avoid loading during peak hours.

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

Vote taken on October 14, 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: JUL 2 6 2004

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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. SAG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17063

As Director of the Office of Zoning, I hereby certify and attest that on JUL 2 6 2004 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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