BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Jemal's Liggins LLC
450 H Street, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested modification of variance relief. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

I. Background:

The Subject Property, Lot 103 in Square 518, with premises address of 450 H Street, NW, is located on the south side of H Street, NW, between 4th Street and 5th Street, NW. It contains a lot area of approximately 3,834 square feet. The General Accounting Office ("GAO") headquarters is located immediately east of the Subject Property. To the west and south of the Subject Property is the St. Mary Mother of God Church and accessory buildings. 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 Subject Property, at the northeast corner of H and 5th Streets, are two office buildings; and to the northeast of the Subject Property, at the northwest corner of 4th and H Streets, is a 13-story apartment building under construction at 400 Massachusetts Avenue, NW. The Subject Property is located within the boundaries of Advisory Neighborhood Commission 6C. The Subject Property is currently zoned C-2-C and is located within the Downtown Development District ("DD") Overlay.

The Subject Property is improved with a 10-story building and includes one level of below-grade parking, accessible via a ramp across the GAO property to the east. The building contains a gross floor area of approximately 31,685 square feet, giving the building an FAR of approximately 8.26. At the time of the building's construction in the mid-1980s, the Subject Property was zoned HR/SP-2, and the building was constructed pursuant to HR/SP-2 zoning restrictions, along with certain area variances and special exceptions approved by the BZA in Order No.

BZA
Case No. 17063
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17063
EXHIBIT NO. 5

14002, a copy of which is attached. Notably for this application, the Board approved variance from the off-street parking requirements, permitting a fewer number of spaces than required and spaces with non-compliant dimensions, based upon the site constraints of the Subject Property. The Board also approved a rear yard variance for the Subject Property and special exception to construct an office building, but did not approve an FAR variance, the result being a mixed-use building with floors 1 through 4 as office and 5-10 as residential.

It appears that the building has never been occupied since its construction in the 1980s. At the time of the purchase of the building by the Applicant in December of 1999, the interior finish of the structure still had not been completed and no certificate of occupancy had been issued for the building. In March of 2001, the Applicant was issued a certificate of occupancy for office use of the entire building (Certificate of Occupancy No. 190235 issued March 16, 2001) (attached). The Applicant subsequently entered into a lease with the District of Columbia Department of Human Services, Youth Services Administration and completed tenant improvements for that tenant. The "Youth Services Agency" was then issued a certificate of occupancy for the second through tenth floors of the building for office use (Certificate of Occupancy No. CO28793, issued February 15, 2002) (attached).

The Applicant and the Youth Services Administration have recently been advised by the D.C. Building and Land Regulation Administration ("BLRA") of that office's intention to revoke Certificate of Occupancy No. CO28793, "based upon an unauthorized 'use' of the building space." The BLRA asserts that the approved use of the building is not for office use but rather as a mixed development pursuant to BZA Order No. 14002. Based upon the zoning/use-related nature of the controversy, the Applicant has contemporaneously filed herewith an appeal to the BZA of this revocation notice issued by the BLRA. Notwithstanding that appeal, the Applicant here seeks variance relief from the parking requirements (§2101.1) and the loading requirements (§2201.1) of the Zoning Regulations pertaining to the building on the Subject Property. It is the Applicant's intention that through the approval of these variances and through the utilization of the Combined Lot Development process established in Chapter 17 of the Zoning Regulations, the issues underlying the BLRA's revocation notice will be rendered moot (along with the Applicant's appeal of same) and that the use permitted by Certificate of Occupancy No. CO28793 will continue in place.

II. <u>Zoning History</u>:

At the time of the approval of the Board in Order No. 14002 and construction of the building in the mid-1980s, the Subject Property was controlled by the HR/SP-2 zoning, which allowed a floor area ratio ("FAR") of 8.5, of which a maximum of 3.5

Property has been rezoned from HR/SP-2 to DD/C-2-C. This latter zoning category likewise provides a FAR of 8.5 as a matter of right (0.5 FAR of which is by transferable development rights) all of which may be devoted to office use so long as not less than 4.5 FAR of residential use is provided on-site or accounted for off-site in a combined lot development.

The provisions of the DD Overlay apply to the Subject Property pursuant to §1700.5 of the Zoning Regulations, which establishes the applicability of the DD provisions to all new buildings within the Overlay as well as to all other buildings therein where any additions, alterations, or repairs within any 12-month period exceed 100 percent of the assessed value of the building, per the records of the District of Columbia Office of Tax and Revenue. In the present case, the alterations and repairs undertaken by the Applicant far exceed 100% of the assessed value of the building as of the date of the building permit application in 2001. Whereas, at the time of the building permit issuance the improvements were assessed by the District's Office of Tax and Revenue at approximately $31,880, the Applicant has expended more than $750,000, in tenant finishes alone, pursuant to building permits. As a result, the provisions of 11 DCMR Chapter 17, including the combined lot provisions of §1708, are applicable for the Subject Property.

In the present case, the required residential FAR pursuant to the DD/C-2-C zoning shall be transferred by the Applicant to property located immediately northwest of the Subject Property, Lot 51 in Square 517, with premises address of 400 Massachusetts Avenue, NW, where a 13-story apartment building is currently under construction. As a result of the combined lot development, use of the building as an office on the Subject Property, which occupies approximately 8.26 FAR on its own lot, is permitted as a matter of right.

Given that office use of the building on the Subject Property is permissible under this scenario, the building does not provide appropriate parking and loading facilities as required under §§2100 and 2200 of the Zoning Regulations. Pursuant to the approval of the BZA in Order No. 14002, the Applicant was granted a parking variance to provide eight spaces, none of which complied with the dimensional requirement of §2115. At the time of construction, the HR/SP-2 zoning required 11 spaces for the mixed use contemplated. The Subject Property also provides no loading facilities. Because the amount of space in the building that was contemplated for office use was less than 30,000 square feet, no loading was required for the building under the then-applicable HR/SP-2 zoning.

Given the size of the existing building (approximately 31,685 square feet total gross floor area) and the C-2-C zoning for the Subject Property, the building, if devoted to office use, is required to provide 17 parking spaces. With respect to loading, §2201.1 requires for an office building in the C-2-C District, with between 20,000 and 50,000 square feet of gross floor area, 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. As set forth above, no off-street loading is currently provided.

III. Burden of Proof:

A. Variance Relief

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

(1) Exceptional Condition or Situation:

The Subject Property is exceptional in that it is improved with a 10-story building that has been issued numerous permits and two certificates of occupancy by the District of Columbia for office use. The Subject Property is likewise exceptional in that it is a comparatively small site for commercial development in the downtown area, is located mid-block, and has only one public frontage, along H Street, NE. There is no alley access for the Property. The Subject Property is further exceptional in that this Board, in Order No. 14002, has determined that the size of the site, along with the existence of water conditions on the site, constitute an exceptional condition in that the site cannot accommodate more than one level of parking.

(2) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant. As demonstrated and approved by the BZA in Order No. 14002, the strict application of the parking regulations render a practical difficulty upon the Applicant. The practical difficulty imposed upon the current owner of the Subject Property is dramatically even greater than that of the original applicant. Here, the Applicant is dealing with all the site limitations faced by the original applicant, but also with the additional difficulty of complying with the parking and loading regulations on a property that is already improved with a ten-story building. Whereas the site limitations of the Subject Property were of such a magnitude when the BZA considered Application No. 14002, namely, a site too small to provide ramping to multiple levels of parking and a high water table further complicating such an

endeavor, to deserve area variance relief, here, a subsequent owner is faced with these same physical constraints along with the additional difficulty of having to address these concerns in the context of the existing building on the site.

With Order No. 14002, the BZA also approved a variance from the rear yard requirement of the HR/SP-2 District, further indicating the physical limitations of the site upon development. For the same reasons that area variance relief was needed at that time, it continues to be necessary with respect to the off-street parking and loading requirements of §§2101.1 and 2201.1.

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

The Applicant will demonstrate that the Application can be approved without harm to the public good and without threat to the integrity of the zone plan. The building, when devoted entirely to office use, generates a requirement of 17 parking spaces, only six more than generated under the mixed use plan originally approved by the Board. Just as the Board there found that the parking variance could be approved without harm to the public good or the zone plan, in the present case, the Applicant will demonstrate that the parking and loading variances here requested will work no such detriment. With respect to parking, the number of spaces in issue is very slight. As will be demonstrated by the Applicant in its evidence presented, public parking options have only increased in all directions of the Subject Property since the Board's approval in Application No. 14002.

Likewise, with respect to loading, the Applicant notes that the schedule set forth in §2201.1 provides a threshold of 20,000 square feet before establishing any off-street loading requirement for office use in the C-2-C District. Below that number, no loading accommodation is required to be provided. In the present case, the building on the Subject Property under the mixed use scenario originally approved had no loading requirement. However, when the very same building is devoted exclusively to office use, it exceeds the 20,000 square foot threshold, and therefore now requires a loading berth and service delivery space. As will be demonstrated by the Applicant, the office use of the Subject Property may be undertaken without disruption of traffic or other harm to the general public.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14002 of Judiciary Tower Associates, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 4101.44 to construct a special purpose office building and under Sub-section 4303.4 to waive the rear yard requirements and for variances from the floor area ratio requirements (Sub-section 4301.1), and the parking requirements (Sub-section 7202.1) or in the alternative variances from three parking spaces (Sub-section 7202.1) and from the prohibition against required parking spaces measuring less than nine feet by nineteen feet for two spaces (Sub-section 7204.1) to permit the proposed construction of a new special purpose office building and an apartment house of eight units in an HR/SP-2 District at premises 450 H Street, N.W., (Square 518, Lots 5,6 and 7).

HEARING DATE: August 3, 1983
DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. The opposition, as a preliminary matter at the public hearing, requested that the hearing on the subject application be continued. The opposition argued that the property was not posted for the full fifteen days as required under the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment. On several days during the fifteen day period there was no sign on the property. Secondly, the Office of Planning report was not in the file and available to the opposition's careful review. Thirdly, there was no evidence in the file that the General Accounting Office (GAO) had given permission to the applicant to use its ramp. Upon review of the file and questioning of the witnesses, the Chairman ruled that the property had been sufficiently posted and that the Office of Planning report had been filed properly. As to the issue of the easement from the GAO, the Chairman ruled that this was a substantive issue that would be addressed as the merits of the case were heard.

2. The subject site is located on the south side of H Street between 4th and 5th Streets, N.W., approximately 122 feet east of the intersection of 5th and H Streets. The site is known as premises 450 H Street, N.W. It is in an HR/SP-2 District.

3. The site is rectangular in shape, containing 3,834 square feet of land with fifty-four feet of frontage on H Street. The site is improved with a one-story structure located on Lot 7 which is occupied by a dry cleaning establishment, a nonconforming use.

4. To the east of the site is the General Accounting Office, a 110 foot high structure with a garage ramp entrance abutting the site to the east. The GAO building visually dominates the area, and occupies all of the subject square other than the subject site and the adjacent religious institution.

5. Immediately to the west and south of the site is the St. Mary Mother of God Church, its parking lot, its rectory, an orphanage and the parish house. A portion of the parish house continues in church use. A second portion was approved by the Board for SP office use in Application No. 13911, by order dated June 28, 1983. Built in 1891, the St. Mary's Church is a Category III Landmark. Further south of the Church is the GAO building occupying the remainder of the square.

6. To the north across H Street from the site is the ten-story Judiciary House apartment complex as well as three and four-story row dwellings occupied with office uses permitted in the SP District.

7. The site is located on the eastern edge of Chinatown which contains a mix of retail, housing and office uses. The site is also on the northern edge of the Judiciary Square area, a governmental center around which new privately owned office buildings are being developed.

8. The zoning pattern is generally C-3-C and C-4 to the east, west and south, outside of the three block wide Judiciary Square area zoned SP-2. Within the SP-2 area, there have been three approved planned unit developments and map changes to C-3-C.

9. The applicant proposes to demolish the existing building, terminate the nonconforming use and build a new mixed-use office and apartment structure. The mixed-use structure will be 110 feet in height and is proposed to contain six floors of office use and four floors of residential use.

10. The ground through sixth floors of the proposed structure are proposed to be leased to professional office firms. The seventh through tenth floors are proposed to be developed as eight apartment units, with two units per floor. Eight parking spaces are proposed to be located on the first sub-grade level with access from the GAO Building

garage ramp. There will be two additional levels below the parking level with leasable space.

11. The Commission of Fine Arts has architectural review authority over the proposed development under the Shipstead-Luce Act. On February 3, 1983, the Commission of Fine Arts approved preliminary design of the proposed project including a finishing material of limestone and glass.

12. The architect for the applicant testified that the Commission of Fine Arts found that the project was an urban design asset in that a building of the proposed height prevented the massive GAO Building from visually over-powering both the site in question and the St. Mary's Church. The Board concurs.

13. No windows for the proposed apartment units are located within forty feet directly in front of another building. The GAO Building steps back twenty-five feet from the H Street building face at a point just below the lowest residential level of the proposed project. Thus, while residents on the east side of the proposed structure would see the nearby western face of the GAO Building, the space directly in front of them would be clear. The closest adjacent buildings opposite the residential windows on the north, south and west sides of the proposed project are substantially more than forty feet away. The project's upper residential floors will be approximately fifty feet on a diagonal from the louvers of the GAO Building's mechanical floor. However, the 8.67 feet of the rear yard for which relief is requested will not make an appreciable difference.

14. The office windows along approximately forty-four feet of the ground floor and approximately twenty-nine feet of floors two through six, on the east side of the proposed structure, face on windows of the GAO Building twenty-six feet away across its parking ramp. While this separation is less than the required thirty feet, it is not critical and is not a direct result of the reduced size of the rear yard. There is also a very minor six foot overlap of the Church on the southwest side of the subject structure, resulting in a twelve foot separation between office windows at the ground floor and the blank wall of the church at that point.

15. Service activities will be provided to the proposed structure through the GAO ramp. Trash would be loaded from the GAO ramp. Major deliveries to the apartment units would occur on H Street.

16. The applicant testified that the provision of residential as well as commercial use on the site, in accordance with the HR overlay zone results in the necessity of devoting further area in the building to a double

elevator service core. Problems with security and the desire of the residents of the building to maintain their privacy and be out of the flow of visitors and occasional deliveries to office functions on the SP office floors necessitate a separate elevator for their use. This results in an unusually high core factor for the building. The Board concurs with the applicant. The Board finds however, that due to the smallness of the site, the core area to accommodate the mixed use is of minimal size and would in any case consume a high percentage of the floor area.

17. No new residential housing has been provided in the general area of the site that has not received a government subsidy.

18. The subject site is surrounded by existing office and institutional uses, none of which front directly upon it. The site fronts on the ninety foot wide right-of-way of H Street to the north and is separated from the GAO Building by the twenty-two foot wide ramp on the GAO property on the east and a 14.25 rear yard is provided. Therefore, there is sufficient area to protect the light, air, and privacy of users of the proposed structure as well as neighboring uses.

19. The General Services Administration has agreed to grant the applicant an easement for the use of the GAO Building's ramp, as set forth in Exhibit No. 30 of the record.

20. The applicant proposes to provide a total of eight parking spaces to serve the building. Six spaces measure 8.5 feet by 18.5 feet and two spaces for compact cars measure seven feet by 18.5 feet.

21. Within a two block radius of the site, there are sixty-one curbside metered parking spaces and 418 off-street spaces available in three parking lots and one garage. There is adequate and convenient off-street parking available to the site.

22. The applicant's traffic expert determined that the proposed office space would contain approximately fifty-four employees. It is expected that approximately eighty percent of the employees would use public transportation, approximately five percent would walk to work or be dropped off by others and approximately fifteen percent would arrive at work by private car. An average car occupancy is expected to be 1.8 persons. It is anticipated that the ownership among the residents of the eight apartment units will be one car per four units or two cars. The total peak hour traffic that would be generated by the proposed development would be six trips. The expert was of the opinion that there would be no effect on current traffic operating conditions. The Board concurs.

23. H Street is a minor arterial street, seventy feet wide in front of the site, which provides six lanes of traffic. The curb lane is restricted to buses and right-turning vehicles in the peak direction during the peak periods. During the rest of the day, one-hour metered parking is allowed on both sides of the street. Fifth Street is a local street, forty-four feet wide in the immediate vicinity of the site. Two-hour metered parking is allowed between 7:00 A.M. and 6:30 P.M. on both sides of the street.

24. The site is approximately 1500 feet from both the Gallery Place and Judiciary Square Stations on Metrorail's Red Line. Five Metrobus lines pass through the intersection of 5th and H Streets. The 80 and 81 Metrobus routes pass in front of the site every five minutes.

25. The applicant testified that the subject site is a relatively narrow one for undertaking development such as is allowed at the height and bulk permitted under the Zoning Regulations. The applicant testified that with a lot width of fifty-four feet and area of approximately 3,800 square feet, parking can only be provided on one subgrade level since additional below grade level parking use would be impractical given the amount of area required for ramping down to additional below grade areas. The applicant further testified that a geotechnical report of the site revealed the existence of a relatively high water table which precluded further excavation.

26. The HR/SP-2 District allows a maximum floor area ratio of 8.5. Of the 8.5 FAR or 32,589 square feet of gross floor area, a maximum of 3.5 FAR or 13,419 square feet is permitted for office use. The remaining 5.0 FAR or 19,170 square feet, is available for residential use. The subject building contains 19,079 square feet of floor area proposed for office use, requiring a variance of 5,660 square feet. As proposed, 12,335.5 square feet of floor area would be for residential use.

27. The applicant testified that the small site area dictates that at least the minimum SP office floor area needed is the 3.5 FAR maximum. In order to accomplish the residential component of the project, a form of subsidy is needed to generate sufficient income from rental of office space on the site and is the basis for the FAR variance. The Board does not concur with the applicant's basis for the FAR variance. The economic considerations as stated are not an acceptable basis for a variance.

28. A rear yard of 22.92 feet is required and 14.25 feet is provided. The applicant is requesting a waiver of 8.67 feet or thirty-seven percent.

29. Nine off-street parking spaces are required for the proposed office use and two spaces are required for the apartments, totaling eleven spaces. Eight spaces are provided requiring a variance of three spaces or thirty-seven percent. None of these spaces are nine feet by nineteen feet.

30. The Office of Planning, by report dated July 27, 1983, recommended that the application be approved. The Office of Planning reported that the granting of the special exception for both SP office use and a partial rear yard waiver coupled with variances for office FAR and parking would not impair the intent or purpose of the Zoning Regulations. Existing plans and policies support the mix of uses in the area, particularly encouraging residential and hotel uses.

31. The Office of Planning was of the opinion that the size and location of the site are major contributors to the substantial practical difficulty the applicant faces in developing the subject site. The site is so small that the elevator core is twenty-five percent of a typical floor, resulting in a tremendously inefficient building. The site cannot be expanded because it is hemmed in by the GAO building and historic St. Mary's Church. Adding to this is the high cost of land Downtown and the free standing nature of the structure yielding expensive exterior materials in order to gain the necessary Fine Arts approval. The combination of mixed use policies and unique site, with no opportunity for a PUD (Planned Unit Development) results in a structure for which the proposed office and residential uses are permitted, the overall height and mass are permitted and the mix or relative proportion of uses, while not permitted without a variance, is essential to the viability of the project. The Board, for reasons discussed below, does not concur with the Office of Planning recommendations as to the FAR variance.

32. The D.C. Department of Transportation, by report dated July 26, 1983, indicated that it reviewed the application and found that, in recognition of the limited site, the proposed parking layout be revised to provide three to four spaces for full-sized cars and four to five spaces for compact cars. The eight spaces provided should be allocated to provide six spaces for office use and two spaces for residential use. The office parking spaces should be made available to residents in the evenings and on weekends. The applicant has agreed to the recommendations of the D.C. D.O.T. The D.C. Department of Transportation concluded that from a traffic capacity standpoint, the application will have a negligible impact on the surrounding streets. The Board concurs with the D.O.T. recommendations as to impact, but find that the parking layout as submitted by the applicant is reasonable.

33. The D.C. Department of Environmental Services by report dated July 8, 1983, stated it had no objections to the application.

34. Letters supporting the development were filed into the record from the D.C. Office of Business and Economic Development and the Department of Housing and Community Development.

35. A representative of St. Mary Mother of God Church, the property immediately to the west of the subject site, testified to the applicant's sensitivity to Church needs in terms of parking access, location and building materials for the proposed project. The Church concluded that, after careful study, it believed that no adverse impact on the Church will result and that granting the application will result in a good mix of uses for the neighborhood.

36. City Councilman John A. Wilson by letter dated July 26, 1983 stated his support of the application. He stated that it will provide needed jobs, housing and other services to the downtown without adverse impact on existing structures in the surrounding area.

37. There was opposition from the owner of property on the north side of H Street, across from the subject site. The opposition stated that a primary concern was the size of the proposed structure, which he realized was permitted as a matter of right. He testified that seven years experience in occupying office properties led him to believe that parking was difficult in the area and that curbside parking was always occupied. It was his opinion that the FAR variance requested would, if granted, exacerbate what is already a bad parking situation. He argued that the question of egress on GAO property was unresolved and that the applicant's use was likely to result in objection from GAO and have an adverse traffic impact on the neighborhood. He further testified that the parking layout was awkward at best. He further testified that three to four story commercial use is economic as his own use of property across the street from the subject site indicates.

38. The current occupant of the nonconforming dry cleaning establishment on a portion of the subject site also appeared in opposition. He testified that frequently his customers have to double park in front of the store because the parking demand on the street is so heavy.

39. A third opposing witness, an architect, testified that he saw no way to supply the three standard nine foot by nineteen foot spaces in the subject garage. He stated that the goal of SP zoning is to encourage mixed-uses so that granting the FAR variance here would be undesirable. A building would be "designable" on the subject site with five

floors devoted to apartment use and five floors to commercial use within the limits of the Zoning Regulations. There was a potential for the windows on the west elevation being completely blanked out if the building were sited face on the property line on the abutting property now occupied by St. Mary's Church. He offered no specific observations as to how, in his opinion, the applicant failed to meet any of the conditions to entitle it to the relief requested as set forth in the Zoning Regulations.

40. In response to the opposition, the Board finds that the assessment of the impact on parking and traffic in the neighborhood and the viability of the parking layout proposed are addressed by both the Department of Transportation and the applicant's expert traffic consultant and were found to be adequate on the basis of confirmed specific numerical surveys, which were not undertaken by opposing witnesses. The Board further finds that the applicant's proposal for new construction on the site is distinguishable from the opposing witness' experience in that he stated his property was a rehabilitation project rather than new construction and provided no residential use. There was no opposing economic analysis proffered to contradict the assessment made by applicant.

41. The applicant submitted a letter from the General Services Administration whereby the appropriate contracting officer agreed to enter an easement to permit use of the GAO ramp by the applicant. The Board finds that in light of the discussions the applicant had with GSA officials and GSA's agreement to use by the applicant of the ramp, the concerns raised by opposing witnesses are not well founded.

42. As a result of the analysis undertaken by the applicant's traffic engineer and by the D.C. Department of Transportation, the Board finds that there will be no adverse traffic impact resulting from traffic related to the proposed building.

43. As to the opposition architect's first observation, the Board notes that if the application is approved, any standard size parking spaces required by this Board must be provided or appropriate permits will not be issued. The Board, however, agrees that the FAR variance can not be granted but not solely for reasons stated by the opposition. The applicant has not substantiated the FAR variance. The Board further notes that Paragraph 8207.11 of the Zoning Regulations specifically give this Board authority to moderate the strict application of the Zoning Regulations, provided the applicant has met its burden of proof thereon. The Board notes, as to the third point, that no side yard is required.

44. Advisory Neighborhood 2C filed no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking special exceptions to use part of the subject premises for SP office use, and for waiver of the rear yard requirements. The record further shows that the applicant is seeking area variances from the floor area ratio requirements of Sub-section 4301.1 and the parking requirements of Article 72. The granting of the special exception relief requires that the applicant must demonstrate compliance with Paragraph 4101.44 and, as to rear yard waiver with the conditions of Sub-section 4303.4, and with the requirements of Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied. The Board concludes that the use, height, bulk and design of the structure are in harmony with the existing uses and structures on neighboring properties. The use of the structure will not create any dangerous or other objectionable traffic conditions. The Board further concludes that the approval of the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said regulations and map.

The Board further concludes that all the requirements of Sub-section 4303.3 et seq. have been met so that the applicant is entitled to a partial waiver of the rear yard requirements. The Board concludes that this action will not tend to affect adversely the use of neighboring property in accordance with said regulations and said map in that substantial areas of open space in the form of rights-of-way and loading ramps will maintain the light, air, ventilation and privacy of surrounding uses.

As to the parking variances, the Board concludes that the variances requested are area variances, the granting of which requires a showing of practical difficulty in the land itself. The Board concludes that the existence of water conditions on the site and the size of the site constitutes an exceptional condition in that from a practical standpoint, the site cannot accommodate more than one level of parking. The applicant has demonstrated that strict application of the parking requirement would result in peculiar and exceptional practical difficulties. The Board further concludes that the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and integrity of the Zoning Regulations.

As to the floor area ratio variance, the Board concludes that that variance is also an area variance, the granting of which requires the showing of a practical difficulty inherent in the land itself. The Board concludes that the applicant has not demonstrated that such a practical difficulty exists that would substantiate exceeding the maximum FAR for office use in the SP-2 District. The additional economic burden imposed on the applicant by the Commission of Fine Arts is not a basis for variance relief before the Board. The size of the lot, the high water table and the high core factor are conditions of the property which do not support an increase in the rentable office floor area to subsidize the residential units. There was no persuasive evidence put forth by the applicant which clearly demonstrated a condition of the property which would substantiate an increase in the maximum office FAR. The mixed use development as proposed is inconsistent with the SP-2 District and the intent and purposes of the HR overlay provisions of the Regulations.

In view of the above the Board need not address the alternative relief of providing no parking, as eight spaces can be and are being provided. Accordingly, it is ORDERED that the floor area ratio variance is hereby DENIED and the special exceptions and parking variances from three spaces and the size requirements are GRANTED subject to the following CONDITIONS:

1. The fifth and sixth floors of the building shall be used for apartments in the same configuration as provided for on the seventh through tenth floors of the subject building.

2. Construction shall be in accordance with the plans marked as Exhibit No. 22A of the record except that modifications necessary to provide for residential use on the fifth and sixth floors, including changes in window treatment or the facade of the building, shall be permitted.

VOTE: 5-0 (Lindsley Williams, Douglas J. Patton, Carrie Thornhill, William F. McIntosh and Charles R. Norris to grant in part and deny in part).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: OCT 13 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14002order/KATE10

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street N.E. room 2100
Washington D.C. 20002
Tel. (202) 442 - 4470 Fax (202) 442 - 4862

Government of the District of Columbia
BLRA 94A

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 28793

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 2/15/02

ADDRESS:	FLOOR(S):	PRCLID : 0518 (square) -0000- 0103 (lot)
450 H ST NW	SECOND, THURTHENTH FL.	WARD: 6 ZONE: HRDDC

PERMISSION IS HEREBY GRANTED TO :
SOLE PROPRIETOR : YOUTH SERVICES AGENCY

TRADING AS:
YOUTH SERVICES AGENCY

APPROVED USES :
OFFICE SPACE

PREVIOUS USES :
OFFICE SPACE

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
CHANGE OF OWNERSHIP		24,700		NONE

DESCRIPTION OF USE
OFFICE SPACE

FEE :
$136.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used thereof, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark	PERMIT CLERK:
DIRECTOR	ADEMOLA SHITTU

DISTRICT OF COLUMBIA GOVERNMENT

OFFICE COPY

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District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
P.O. Box 37200 — Washington, D.C. 20002-7200

BLRA-17
(Rev 7/00)

3/16/01
(date)

CERTIFICATE OF OCCUPANCY

Permission is hereby granted to DOUGLAS DEVELOPMENT BASEMENT floor(s)
to use suite(s) 403 square 518
of the building located on lot(s)
known as premises 430 H ST NW for the following
purpose(s) OFFICE [stu]
NOT SEXUALLY ORIENTED

BZA # EXPIRATION DATE:

ZONE DEPUTY FEE $ 162.00
C. FULLER
Director

By Designee

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be