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February 24, 2004

Geoffrey Griffis, Chair
D.C. Board of Zoning Adustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Application No. 17111
2412 17th Street, N.W.

Dear Mr. Griffis and Members of the Board:

As requested by the Board at the conclusion of the public hearing on Feburary 10, 2004, enclosed are 20 copies of proposed Findings of Fact and Conclusions of Law. We are serving this document on Advisory Neighborhood Commission 1C, the only party in the case.

Respectfully submitted,
ARNOLD & PORTER

Cynthia A. Giordano

Nathan W. Gross, AICP

Enclosure

BZA
Case No. 17111
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
CASE NO. 17111
EXHIBIT NO. 42

APPLICATION NO. 17111
AREA VARIANCES – 2412 17TH STREET, N.W.
APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The subject property is located on the west frontage of 17th Street, N.W., between Kalorama Road on the south and Euclid Street on the north. The property is identified as 2412 17th Street, N.W. (Square 2566, Lot 819) and is located in an R-5-B District.

2. The subject property has a land area of 7,113 square feet and is rectangular in shape, with 50 feet of frontage on 17th Street and a depth of 137 feet.

3. The existing use is a 22-unit condominium apartment house having two stories and a basement level. The building has been vacant for a number of years with the exception that the owner currently resides on the premises for insurance reasons.

4. The R-5-B District permits development apartment houses up to a maximum height of 50 feet, a maximum density of 1.8 FAR and a maximum lot occupancy of sixty percent (60%).

5. The immediately surrounding area includes buildings of widely varying uses, building densities and building heights. These include vacant warehouses, a vacant roller rink, two to four story apartment houses, 90-foot apartment houses, industrial buildings converted to office and retail uses, a large surface parking lot and townhouses in the more residential areas removed from the commercial corridor, Kalorama Road.

6. The applicant proposes to renovate the building and add two stories on top, while enlarging the existing undersized apartment units and adding one unit so that the total number of apartments is 23 instead of the existing 22 units. Five surface parking spaces will be provided at the rear of the building, while no parking exists at present. The front yard setback of 22 feet will be maintained. Obsolete and nonconforming light wells will be closed and balconies will be added to the upper levels at the front and rear. The building will be enlarged vertically on its existing footprint up to the allowed matter-of-right building height of 50 feet. The building will be enlarged from its existing 12,726 square feet of gross floor area ("g.f.a.") to 21,108 g.f.a.

7. The Applicant has agreed, in consultation with representatives of neighborhood groups and Advisory Neighborhood Commission ("ANC") 1C, to limit parking to

only five spaces and to sell the condominium apartments in the upper-middle price range rather than the luxury price range.

8. The building was constructed as an apartment house in 1914, prior to the existence of any zoning regulations in the District of Columbia. When the 1958 Zoning Regulations and Map were adopted, the site was zoned R-5-B with C-M-2 abutting it on three sides -- west, south and east.

9. In 1993 the Board approved a proposed renovation and enlargement plan by the same owner, with four variances including a FAR of 3.62 (vs. 2.97 currently) and a building height of 55 feet (vs. 50 feet currently). Market conditions for residential development in the mid-1990s did not allow the project to be actualized, and the BZA order lapsed.

10. The Office of Planning, by report dated January 27, 2004, indicated that it did not object to the requested variances from the lot occupancy provisions and the provision related to enlargement of a nonconforming structure, but that it could not recommend approval of the requested FAR variance.

11. Advisory Neighborhood Commission 1C and the Reed-Cooke Neighborhood Association both unanimously supported approval of the three requested variances. The Board notes that the position of the ANC is entitled to "great weight."

12. Councilmember Jim Graham of Ward One submitted a statement in support of the Application, and a petition with the signatures of 36 neighborhood residents in favor of the Application was also submitted to the record.

13. The Application requests variances from the lot occupancy requirements, from the provision related to enlargement of a nonconforming structure and from the maximum FAR allowance.

Variance from § 403

14. Sub-section 403.2 allows a maximum lot occupancy of 60% for buildings in the R-5-B District.

15. The existing building has a lot occupancy of 65% and is therefore nonconforming as to lot occupancy.

16. The proposed renovation and addition will increase the lot occupancy to 79%, which occurs because nonconforming courts will be filled in and balconies will be added. A variance from the lot occupancy requirements of § 403.2 is therefore required.

Variance from § 2100.3

17. Sub-section 2100.3 provides that an addition to a nonconforming structure may be made provided the structure is conforming as to lot occupancy, will accommodate a conforming use and will not extend or create anew any nonconforming aspect of the structure.

18. The existing nonconforming lot occupancy of the building is increased, and the Application requests an FAR beyond the normal maximum allowed, so that a variance from § 2100.3 is required.

Variance from § 402.402.4

19. The R-5-B District allows a maximum density of 1.8 FAR, pursuant to § 402.4.

20. The existing building is conforming as to FAR, having an existing floor area ratio of 1.79 FAR.

21. The proposed addition and renovation would create an FAR of 2.97, thereby requiring a variance from the FAR limitations of § 402.3.

Exceptional Property Conditions and Practical Difficulty

22. The subject property is exceptional in several respects, which give rise to practical difficulties and which have caused it to remain mostly vacant for a number of years.

23. Severe Structural Deficiencies. The original construction of the building was extremely deficient as to structural quality and integrity, thereby requiring exceptional efforts to bring it up to code.

(a) The existing building was built as a tenement under a CP building permit in 1914 and has structural failures, the most significant of which is that it is sinking. After significant investigation, it was determined that the existing building has inadequate foundations and no footings. The existing walls, especially the north wall (and the abutting wall of the adjacent building), must be underpinned to stop movement.

(b) The courtyards have inadequate and non-functioning drainage. New drain lines must be installed to keep water from filtering down into the soil near the bearing walls and causing further structural damage. The existing walls have enormous amounts of deteriorated mortar, so that extensive repointing must be done to reestablish the structural integrity of the walls. Moisture is penetrating cracks in the masonry, and the building is sinking. Many of the floor joists are rotted and damaged and need to be replaced.

24. Human Occupancy Standards. The Applicant's plan eliminates numerous, severe conditions relating to safety and modern occupancy standards:

(a) The building's courts are nonconforming. The Zoning Regulations require closed courts to be at least 15 feet wide. They are currently only 12 feet wide. The total area of the court must be 350 square feet. The existing courts are about 144 square feet in area, less than half of the requirement. The Applicant's plan provides for filling in these courts, thereby eliminating a major non-conforming aspect of the existing building. The existing windows from habitable rooms into the existing narrow courtyards (shafts) is a condition that does not permit adequate light and ventilation. These windows have no privacy and no views.

(b) The existing interconnecting courts are a fire hazard. If the building to the north (which is not sprinklered) catches fire, then the fire could easily spread into our building through these interconnecting courts. A fire wall, which would protect the subject building, must be installed. There is no fire wall between apartments; this must be provided. A new fire alarm system must be installed.

(c) A fire sprinkler system must be installed, and two enclosed interior stairways must be provided. Currently there is one unenclosed interior stairway, and fire escapes are used as the second means of egress. This existing stairway is open, and it also does not comply with the dimensional requirements for a fire stair.

(d) The existing unit sizes are far too small: efficiency – 257-335 square feet; one bedroom – 347-420 square feet; and two bedroom – 508-594 square feet. These very small sizes are completely unacceptable today. The Applicant's plan will only increase the number of apartments from 22 existing to 23, but will make the units larger in size and acceptable to today's households. The existing extremely narrow corridors will be replaced with more generous, wider corridors that comply with the building code and accessibility requirements.

(e) The building currently has no wheelchair accessible units. The proposed improvements will allow a wheelchair-bound person to enter the building. A new elevator will be provided, making all floors compliant with the Americans With Disabilities Act and the Fair Housing Act.

(f) The proposed project will rectify all structural problems, bring the building into compliance with all current codes and regulations, and enlarge the units to the size necessary to meet the needs of today's lifestyles, with an average unit size of approximately 850 square feet.

25. Small Lot Size. The lot is only 7,133 square feet in area and only 50 feet wide. The existing, 22-foot front yard setback and the rear yard setback are both maintained. The front setback should be maintained for continuity of the street wall in this block. The rear setback is needed to provide parking. The resultant limited building footprint severely limits options for the building, resulting in the Applicant's proposal to add two stories on top of the existing exterior building walls.

26. Adverse Immediate Environment. The building is adversely affected by several conditions in its immediate vicinity.

(a) The adjacent buildings to the south and west, across narrow alleys, are large industrial structures built under the industrial zoning of this area that prevailed until the late 1980s. The massive warehouse structure at 1701 Kalorama Road, N.W. is taller than the Applicant's property and will likely remain in commercial use for many years. The industrial structure to the west will be converted to mixed use occupancy. Directly across 17th Street is a large structure designed as a roller skating rink that has been vacant for most of the past 10 years, and to the north of it is a large surface parking lot.

(b) The presence of a public alley on two sides of the building makes the units on the lower levels less desirable due to noise and poor views. This is exacerbated by the height and bulk of the adjacent buildings. The Applicant testified that units on the upper levels will sell for higher prices in order to counterbalance the reduced prices for lower levels units due to their adjacency to the alleys and proximity to intense commercial uses. The alley to the south of the property is the boundary with the commercial C-2-B District, which allows a density of 3.5 FAR and a height of 65 feet.

(c) This city block has a high crime rate, especially near the intersection of 17th and Monroe Streets, with criminal activity spilling into the alley system and thereby affecting the subject property.

(d) Because of the factors cited above, the subject city block does not share the luxury condominium market that prevails a few blocks to the west in Adams-Morgan. These factors plus the highly commercial environment and especially the empty buildings and land mean that renovation of the existing structure without additional density cannot generate sufficient financial return to justify such a project.

27. All of the exceptional conditions cited in Findings 22 through 26 combine to create exceptional practical difficulties, so that an extremely high financial expense per square foot will be necessary to make the building habitable. The construction challenges are complex. The building lacks the critical mass necessary to be a usable, marketable property. It is financially unfeasible to complete the required corrective construction and revitalization without adding the additional FAR requested. The Applicant submitted documentation of these costs and projected revenue to the record of this case.

28. The variances from the lot occupancy requirement and from the provision regarding enlargement of a nonconforming structure, occur solely due to filling in the nonconforming light wells and adding balconies. The addition will simply extend the existing perimeter walls of the building up to the matter-of-right height limit of 50 feet. The property will accordingly be perceived by neighbors and the public as occupying the same amount of space on the lot. Because of the conforming height proposed, approval of these variances will create no detriment to the public good and will not impair the intent and integrity of the zone plan.

29. The variance from the floor area ratio limitations is necessitated by the combination of exceptional conditions and resultant practical difficulties set forth in Findings Nos. 23 to 27.

No Substantial Detriment to the Public Good

30. A long-vacant building will be replaced by a building occupied by new residents, bringing new human activity and improved public safety in the evening hours especially. The latter is significant given the high crime rate on this block, compounded by the adjacent vacant warehouse and the vacant former roller rink across the street.

31. The renovation and addition display a much more attractive façade, including balconies, than the existing façade. The building will accordingly enhance the immediate neighborhood. The existing 22-foot front yard setback will be maintained and this space will be attractively landscaped adjacent to public space to the benefit of the public.

32. The project will fit its urban design context very well. The proposed 50-foot building height complies with the R-5-B matter-of-right height limit, and the vicinity includes a variety of taller and shorter building heights, so that the proposed height will have no adverse effect on the urban design.

33. The proposed project can act as a transition between the other residential properties on 17th Street to the north and the commercial uses to the south and east. Unless this variance is granted, the building will remain in the shadow of surrounding commercial uses and will likely remain vacant and unrenovated for many additional years.

34. The community benefits of the project also include increased security and public safety resulting from increased population and "eyes on the street" from the front and rear balconies.

35. In general, the project will make the area a more desirable residential neighborhood and will create more opportunities for home ownership.

No Substantial Detriment to the Integrity or Purpose of the Zone Plan

36. As to the intent and purpose of the zone plan, specifically the R-5-B District, the primary use encouraged in this zone classification is midrise apartment buildings. Thus, the proposed four-story apartment house, which complies with the 50-foot matter-of-right height limit, carries out the purposes of the R-5-B District.

37. The *Comprehensive Plan for the National Capital* reinforces this policy in several ways:

(a) Section 1127 of the Plan designates Reed-Cooke as a Special Treatment Area, in which two of the stated policies are to conserve existing housing and encourage

the development of new housing. The project conserves existing housing and enlarges the building, and is consistent with this policy.

(b) Section 1104.1(g) of the Land Use Element states, "Encourage the retention and expansion of residential uses in mixed use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary." The proposed apartment house, being at the boundary between commercial and residential zoning and bordered on three sides by large commercial or vacant buildings, is at a critical location for maintaining residential uses in a highly mixed-use neighborhood. The project will make the area a more desirable residential neighborhood by adding residents and apartments for occupancy.

(c) The Generalized Land Use Map of the Land Use Element includes the subject site within a larger area designated for "Moderate Density Residential" use and development. In this designation, row dwellings and garden apartments are defined as the predominant uses. The Office of Planning testified that R-5-B is a zone district that is considered "not inconsistent" with the Moderate Density Residential classification, but expressed concerns about the extent of the requested FAR increase. Several factors are relevant:

(1) The Generalized Land Use Map does not assign specific densities, as in floor area ratio, to the areas so designated. It is designed to be "generalized" and soft-edged. As the Comprehensive Plan states in Section 1100.11, ". . . The text and map [of the Land Use Element] construct a guiding framework within which public and private land use and [public] zoning decisions are to be made." The subject property of 11,133 square feet is quite small to apply a density or FAR determination from the Generalized Land Use Map. The proposed building of four stories is one story taller than a three-story garden apartment building, a minor degree of flexibility from the definition of Moderate Density Residential in the Land Use Element.

(2) Section 112.1 of the Comprehensive Plan indicates that the District elements of the Plan are intentionally overlapping and must be interpreted in concert with each other and interpreted broadly. In the subject variance application the Comprehensive Plan policies specific to encouraging residential development in Reed-Cooke and especially encouraging residential development in mixed-use neighborhoods provide explicit policy guidance necessary to support the degree of FAR increase requested, which is within the range between R-5-B and R-5-C matter-of-right standards.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the requested variances are area variances, the granting of which requires the showing of a practical difficulty. The Board concludes that a combination of practical difficulties constrain the use and development of the subject property under the

existing R-5-B zoning and that without the variance relief the property will likely remain vacant for an additional extended period of years. The Board further concludes that, based on the specific set of facts presented and the specific plans, this proposed residential enlargement bounded on three sides by commercial uses, can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. Accordingly, it is hereby ORDERED that this application be GRANTED.