HOLLAND & KNIGHT LLP

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

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

Annapolis
Atlanta
Bethesda
Boston
Bradenton
Chicago
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Miami
New York
Northern Virginia
Orlando
Portland
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

International Offices:
Caracas*
Helsinki
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv*
Tokyo

*Representative Office

July 13, 2004

NORMAN M. GLASGOW, JR.
202-419-2460

Internet Address:
nglasgow@hklaw.com

RECEIVED
D.C. BOARD OF ZONING ADJUSTMENT
2004 JUL 13 PM 1:24

VIA HAND DELIVERY

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

Re: BZA Case No. 17176
Pre-Hearing Submission

Dear Members of the Board:

On behalf of the applicant, International Real Estate and High Tech Investment Group, I enclose an original and twenty (20) copies of the pre-hearing submission for the above-referenced matter.

Please do not hesitate to contact me should you have any questions or comments.

Very truly yours,

HOLLAND & KNIGHT LLP

Norman Glasgow Jr/c

Norman M. Glasgow, Jr.

Enclosures

cc: Travis Parker, Office of Planning (via Hand Delivery, with attachments)

1998314_v1

BZA
Case No. 17176
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17176
EXHIBIT NO. 31

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

INTERNATIONAL REAL ESTATE AND HIGH TECH INVESTMENT GROUP

BZA APPLICATION NO. 17176

PUBLIC HEARING: JULY 27, 2004

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of International Real Estate and High Tech Investment Group

BZA Application No. 17176
Public Hearing: July 27, 2004

ANC 2F

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR §3103 for variance relief from the percentage of lot occupancy requirements under §772, the rear yard requirements under §774, and the requirements limiting alterations to nonconforming structures under §2001.3. It was noted in the Office of Planning report that this application also requires variance relief from the court width requirements under §776, and if the Board of Zoning Adjustment concurs, the Applicant requests that additional relief at this time. This relief is requested in order to permit the construction of a third floor – and thus an additional apartment unit – to an existing two-level, four-unit apartment building with carriage house that includes 992 square feet of ground level retail. The existing building and carriage house, constructed around 1900, has been determined to contribute to the character of the historic district. The Historic Preservation Review Board staff recommended concept approval for the addition as noted in Exhibit G.

II.

JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the requested variance relief pursuant to §3103.2 of the Zoning Regulations. The authority of the Board to grant variances is set forth in §3103 of the Regulations.

III.

EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with the discussion of the merits of this application, the following additional materials are submitted:

Exhibit A: A portion of the Sanborn Atlas showing the Property highlighted in yellow.

Exhibit B: A portion of the Zoning Map showing the Property highlighted in yellow, with zoning designation of C-2-A.

Exhibit C: Outline of testimony of Representative of International Real Estate and High Tech Investment Group, Applicant.

Exhibit D: Outline of testimony of Faramarz Sabouri, Architect.

Exhibit E: Outline of testimony of Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP.

Exhibit F: Letter from ANC 2F stating support of application.

Exhibit G: Historic Preservation Review Board Staff Report and Recommendation.

IV.

BACKGROUND

A. Site and Vicinity Characteristics

1. The Property

The Property consists of Lot 823 in Square 367 and includes approximately 2,862 square feet of land area. The Property is 23.22 feet in width along its frontage on 9th Street and approximately 120 feet in depth. As noted above, the Property is currently improved with a two-level, four-unit apartment building and carriage house that includes 992 square feet of ground level retail. Square 367 is bounded by O Street on the north, 9th Street on the east, N Street on the south, and 10th Street on the west (see Exhibit A). The Subject Property is located along 9th Street and is included in an C-2-A zone district, as shown in Exhibit B.

2. Vicinity

To the north of the Property is a vacant lot and to the south of the Property is a two-story commercial building. To the east of the Property, across 9th Street, are a gasoline service station and a church. To the west of the Property are R-4 zoned residential uses. The Property is approximately one block north of the Convention Center.

B. Description of Proposed Construction

The Applicant proposes to construct a third floor to the existing building and carriage house in order to include an additional apartment unit. The finished building will include five residential units along with the existing 992 square feet of retail space. In order to proceed with the development, the Applicant seeks approval by the Board of Zoning Adjustment (hereinafter "Board") of variance relief from the percentage of lot occupancy requirements under §772, the rear yard requirements under §774, the requirements limiting alterations to nonconforming structures under §2001.3, and, if appropriate, the court width requirements under §776 set forth in the Zoning Regulations.

V.

THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM THE ZONING REGULATIONS

As set forth below, the Applicant satisfies the three-pronged test for variance relief as established in §3103.2. Variance relief is therefore appropriate in the present case.

A. The Property is Affected by an Exceptional Or Extraordinary Situation or Condition

The Property is affected by a number of exceptional situations and conditions relevant to the requested variance relief. The Property is improved with a structure that has been determined to "contribute" to the character of the Blagden Alley Historic District. This determination places significant limitations on the redevelopment potential of the Property. The Property is also exceptionally narrow, only slightly above twenty-two feet in width compared to 120 feet in depth, creating challenges for the configuration of residential units.

B. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

In order to obtain an area variance, an owner must prove peculiar and exceptional practical difficulties caused by compliance with the applicable regulation. Furthermore, these difficulties must be related to a property's exceptional circumstances and not to general conditions in the neighborhood.

1. §772 - Variance from the Percentage of Lot Occupancy Requirement

Section 772 of the Zoning Regulations requires that buildings in the C-2-A District provide a maximum of sixty percent lot occupancy. The existing historic building already is in excess of this percentage, occupying 83.2 percent of the Property, which represents one component of its nonconforming status and makes it impossible to comply with this regulation. The proposed addition will increase the lot occupancy by only fifty square feet because of a two-foot overhang on a portion of the third level that will provide for a more feasible residential layout. The proposed addition will create a total lot occupancy of eighty-five percent - less than two percent over the existing condition - and represents the minimum necessary in order to accommodate an additional level and make full use of the Property.

2. §774 - Variance from the Rear Yard Requirement

Section 774 of the Zoning Regulations requires that buildings in the C-2-A District provide a rear yard of no less than fifteen feet in depth. Utilizing the measurement standard established in §774.7, the existing

building provides no rear yard, contributing to its nonconforming status. The third floor addition will simply continue along the existing building line in order to provide adequate space for a fifth apartment unit.

3. §2001.3 - Variance from the Regulations Limiting Alterations to Nonconforming Structures

Section 2001.3 of the Zoning Regulations allows enlargements or additions to nonconforming structures provided that the structure conforms to lot occupancy and use and structure requirements and not increase any existing, nonconforming aspect of the structure nor create any new nonconformity of structure and addition combined. As discussed above, the proposed addition will slightly increase the already nonconforming lot occupancy and maintain the nonconforming rear yard. As discussed below, the additional will slightly decrease the already nonconforming closed court width. The additional of a fifth unit will, however, maximize the residential use of the Property. The additional unit will follow existing building lines and create an attractive rooftop recreation space.

4. §776.3 - Variance from the Court Width Requirement

Section 776.3 of the Zoning Regulations stipulates that the width of a court shall be a minimum of four inches per foot of height, but in no case less than fifteen feet. Given the proposed building height of thirty-six feet, the court for the existing development would be required to be the minimum fifteen feet in width. The court, currently 10.8 feet in width, is nonconforming and will be reduced to 8.8 feet because of the two-foot overhang of the third floor. Should the Board determine that a variance for court width is necessary, the Applicant requests this

variance relief. Notwithstanding the fact that the court does not currently comply with the width requirement, a fifteen-foot court width would leave only 8.2 feet for much of the third floor – a width that makes residential use impractical.

For these reasons, the Applicant meets its burden of compliance with the practical difficulty prong of the variance test and is deserving of relief from the Board.

C. Variance Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.

The relief requested can be granted by the Board without detriment to the Public Good or impairment to the Zone Plan. With respect to the public good, the renovation of the Property will further enhance the community while providing an additional residential unit. The proposed development also has the unanimous support of Advisory Neighborhood Commission 2F as noted in Exhibit F.

The zone plan will not be compromised, as the development adheres to all other components of the Zoning Regulations including those that will foster compatibility with surrounding development. The proposed third story will also be setback approximately sixteen feet from the 9th Street frontage, creating outdoor rooftop terrace space and minimizing the visual impact of the addition.

For all the above reasons, the requested variance relief can be granted without detriment to the public good or without substantial impairment to the Zone Plan.

VI.

WITNESSES

A. Representative of International Real Estate and High Tech Investment Group, Applicant

B. Faramarz Sabouri, Architect

C. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

VII.

CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The applicant therefore requests that the Board grant the application.

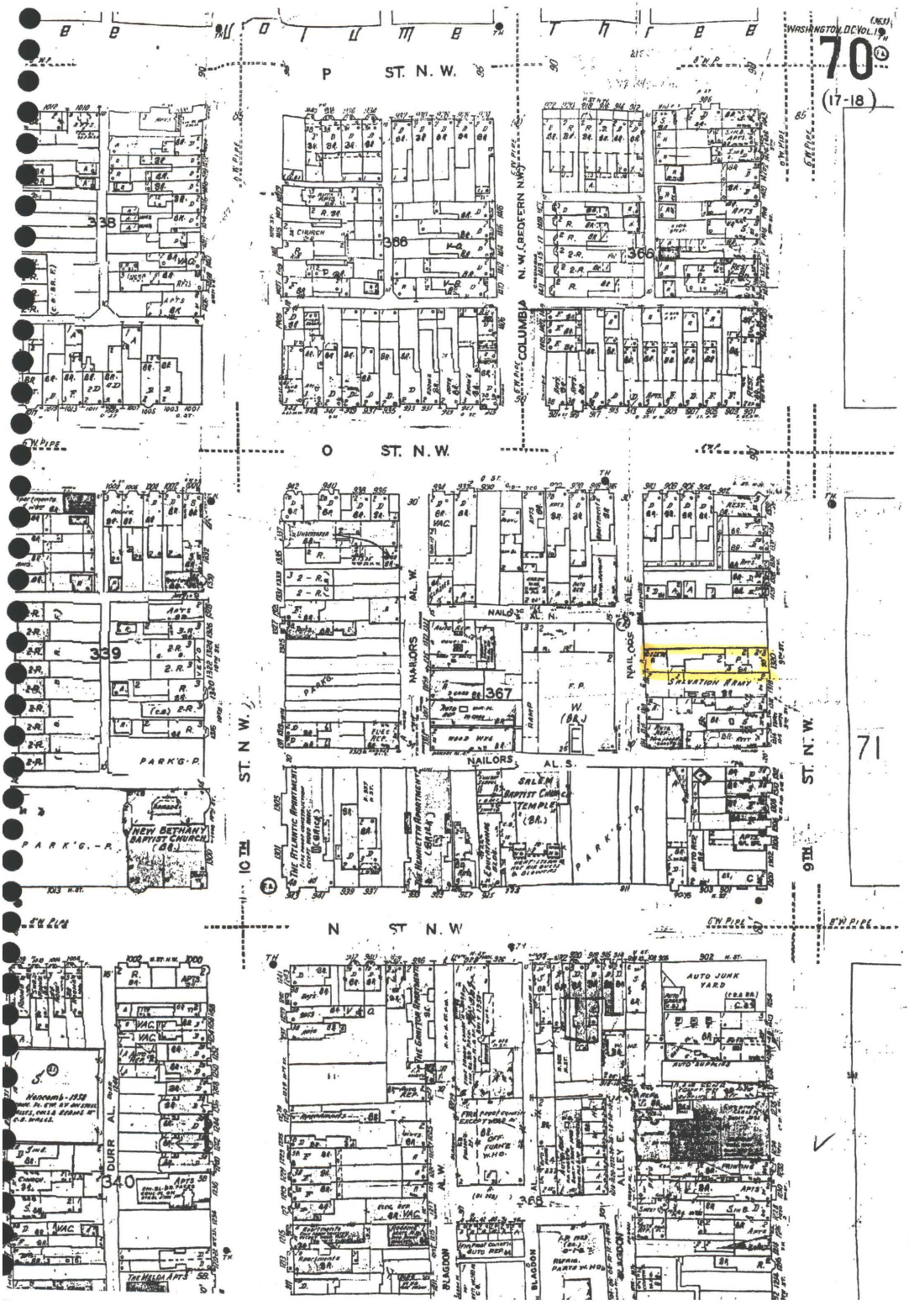
Respectfully submitted,

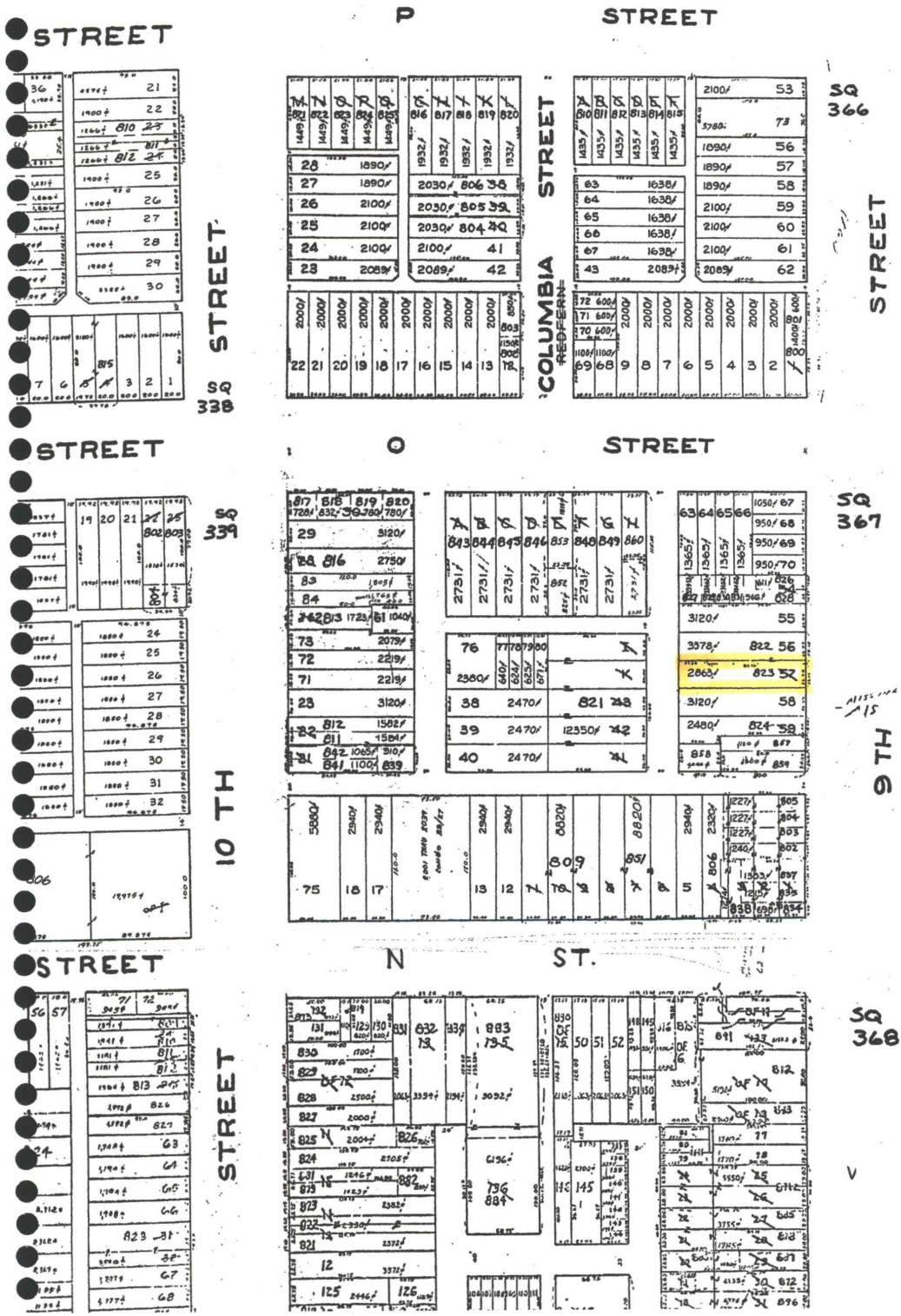
HOLLAND & KNIGHT LLP

By _____
Norman M. Glasgow, Jr.

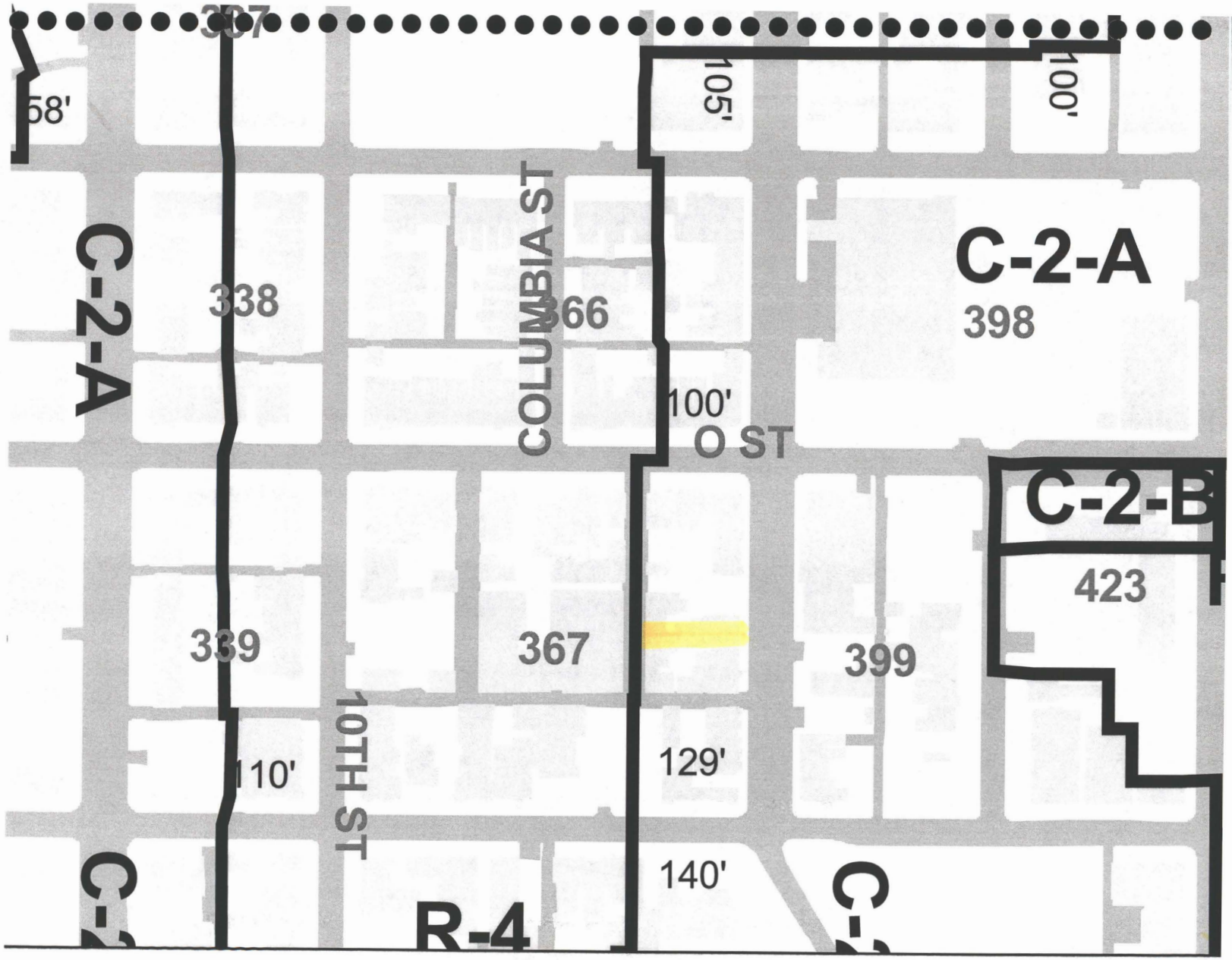
2099 Pennsylvania Avenue, NW
Suite 100
Washington, D.C. 20006
(202) 955-3000

A


WASHINGTON, D.C. VOL. 1
70
(17-18)
P ST. N.W.
O ST. N.W.
N ST. N.W.
10TH ST. N.W.
9TH ST. N.W.
NAILORS AL. N.
NAILORS AL. S.
NAILORS AL. E.
NAILORS AL. W.
N.W. (FREDERN N.W.)
COLUMBIA
338
339
340
366
367
368
71
PARK'G. P.
NEW BETHANY BAPTIST CHURCH (BR.)
SALEM BAPTIST CHURCH TEMPLE (BR.)
SALVATION ARMY
AUTO JUNK YARD
DURR AL.
ALLEY E.
BLAGDON
Nanomb-1958


STREET
P
STREET
STREET
COLUMBIA
REDFERN
STREET
SQ 366
SQ 338
STREET
O
STREET
SQ 339
SQ 367
10 TH
9 TH
STREET
N
ST.
STREET
SQ 368

B


337
58'
C-2-A
338
COLUMBIA ST
366
105'
100'
C-2-A
398
100'
O ST
C-2-B
423
339
367
399
10TH ST
110'
129'
140'
R-4
C-2

C

OUTLINE OF TESTIMONY
REPRESENTATIVE
INTERNATIONAL REAL ESTATE AND HIGH TECH INVESTMENT GROUP

I. INTRODUCTION

II. EXISTING USE OF SITE

III. PROPOSED ADDITION

IV. EXISTING CONDITIONS AND LIMITATIONS

V. REQUIREMENTS FOR GRANTING THE VARIANCE RELIEF HAVE BEEN MET

VI. CONCLUSION

D

OUTLINE OF TESTIMONY
FARAMARZ SABOURI, ARCHITECT

I. INTRODUCTION AND PROFESSIONAL QUALIFICATIONS

II. SITE AND LOCATION DESCRIPTION

A. OVERVIEW OF SITE, VICINITY AND LAND USE/ZONING

B. SITE PLANNING – SIZE, LOT CONFIGURATION

III. PROJECT AND BUILDING DESIGN CONSIDERATIONS

IV. ZONING RELIEF IS NEEDED AND THE APPLICANT MEETS ITS BURDEN OF PROOF

V. CONCLUSION

E

OUTLINE OF TESTIMONY
STEVEN E. SHER
DIRECTOR OF ZONING AND LAND USE SERVICES
HOLLAND & KNIGHT LLP

I. SITE LOCATION AND DESCRIPTION

II. DESCRIPTION OF SURROUNDING AREA

III. EXISTING ZONING – C-2-A

IV. PROPOSED DEVELOPMENT

V. VARIANCE RELIEF REQUIRED

VI. STANDARDS FOR VARIANCE RELIEF (§3103.2)

VII. COMPLIANCE WITH THE VARIANCE STANDARDS

VIII. CONCLUSIONS

2087160_v1

F

ADVISORY NEIGHBORHOOD COMMISSION 2F
Government of the District of Columbia
5 Thomas Circle, NW, Washington, D.C. 20005
Telephone: (202) 667-0052 Fax: (202) 667-0053 www.anc2f.org

Commissioners
2F01 Cary Silverman, *Chair*
2F02 Jim Brandon
2F03 Miriam Trimble
2F04 Helen M. Kramer, *Vice Chair*
2F05 Thomas M. Funk, *Secretary*
2F06 Bob Hinterlong, *Treasurer*

May 18, 2004

The Hon. Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, DC 20001

Re: BZA Application No. 17176, 1320 9th Street, NW

Dear Chairman Griffis and Members of the Board:

At its May 5, 2004 meeting, which was publicly-noticed and with a quorum present, Advisory Neighborhood Commission 2F ("ANC") voted unanimously (5-0-0) to accept the recommendations of its Community Development Committee to support BZA Application No. 17176, which requests three areas of relief from the Board, as set forth below:

1. Variance from the percentage of lot occupancy requirements in Section 772;

2. Variance from the rear yard requirements pursuant to Section 774; and

3. Variance from the provisions of Section 2001.3, which prohibit the enlargement of a building which does not comply with the percentage of lot occupancy requirements.

The subject building is below both the height and FAR limits of the C-2-A Zoning District and this application will provide for the redevelopment of a site that is in a dilapidated condition and could inspire other development in the immediate area. The subject site is unique and affected by an exceptional situation or condition due to the prior mixed-use of the building and its additions over time. The proposed plan will include residential space for five units within the building as well as ground floor commercial space along 9th Street.

The nature and configuration of the exiting building contributing to the historic district results in the necessity of the relief requested in order to maximize residential use of the site. Therefore, ANC 2F supports the granting of the variance relief to redevelop this property.

Thank you for according great weight to our views.

Sincerely,

Cary Silverman
Chair, ANC 2F

BZA
Case No. 17176
Exhibit No. 28

cc: Chip Glasgow (via e-mail: cheryl.jones@hklaw.com)

G

HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION

Property Address:	**1320 9th Street, NW**		Agenda
Landmark/District:	**Shaw Historic District**	X	Consent Calendar
		X	Concept Review
Meeting Date:	**September 26, 2001**	X	Alteration
H.P.A. Number:	**01-434**		New Construction
Staff Reviewer:	**Steve Callcott**		Demolition
			Subdivision

The applicant, Marrel Foushee for International Real Estate & HiTec Group, seeks conceptual design review for construction of a partial third floor on a two-story commercial building in Shaw. The building abuts a similar two-story early 20th century commercial building to the south and a vacant lot to the north. The addition would be partially visible from the street.

The building is somewhat more interesting than is at first apparent. The original, rear section of the structure was constructed as a house; its gable roof and remaining dormer dates it to the Civil War period. The partial third floor, built atop a portion of the gable roof, has an Italianate wood cornice and segmental arched windows; it likely dates from the 1870s. The front, which has six-over-six windows, blond brick and a projecting storefront, is an addition that dates from the 1930s. Sometime in the mid-20th century, the front of the 1930s addition was covered in formstone.

The applicant's proposal seeks to add another layer to this evolutionary polyglot. The proposal calls for the existing Italianate third floor addition to remain, but be expanded across the full width and to the full depth of the building. This addition to the third floor addition would also be executed in brick, but with simplified window surrounds and cornice. While the addition will result in removal of the remainder of the gable roof, this is a feature that has already been partially removed, is now buried well within the footprint of the building, and will no longer be apparent once the vacant lot to the north is developed.

As part of the general rehabilitation of the building, the storefront would be reconstructed, transom lights replaced in-kind, and new wood and glass storefront doors and wood windows installed. The finish treatment of the façade will be decided once an analysis on the stability of the formstone and underlying brick has been undertaken. Options for the façade's finish treatment include leaving and painting the formstone, removing the formstone to expose the underlying brick, and removing the formstone and stuccoing the façade. The missing cornice atop the storefront, indicated by the exposed steel beam and shadow in the formstone, should be replicated as part of the project.

The staff recommends that the Board approve the concept as consistent with the character of the Shaw Historic District, and delegate final approval to staff.