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August 31, 2004

VIA HAND DELIVERY

Board of Zoning Adjustment
Government of the District of Columbia
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, D.C. 20001

Re: BZA Case No. 17197: Submission of Applicant's Proposed Findings of Fact and Conclusions of Law

Honorable Members of the Board:

Enclosed please find an original and twenty (20) copies of Applicant's Proposed Findings of Fact and Conclusions of Law for the above-captioned case.

During the hearing, the Board's Chair indicated that the Board had heard many cases seeking relief from residential recreation space in the months prior to its hearing on July 20 in the instant case. The enclosed Proposed Findings and Conclusions include, as an Appendix, a one-page summary comparison of seven other such cases advertised and heard April through July 2004 as well as six other cases of like nature from 2002 to the present within the same overlay/base zone (Arts/C-3-A), the same ANC (2F), and the same historic district (the "Greater Fourteenth Street" historic district). All elements of this Appendix were derived from the record in the instant case or public documents in the respective case files.

If you have any questions, please contact me directly at the above postal or email address or the above telephone number. You may also contact my colleague Lindsley Williams, at the above address, via email (Lindsley.Williams@hklaw.com) or telephone ((202) 828-1873). Thank you.

HOLLAND & KNIGHT LLP

Douglas J. Patton, Esq.

Enclosures

cc: Parties to the Case

BZA
Case No. 17197
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO. 17197
EXHIBIT NO. 38

CERTIFICATE OF SERVICE:

I hereby certify and attest that on August 31, 2004, a copy of this letter and its enclosure was mailed first class postage prepaid or delivered by courier or other means to each party or public agency who or which appeared or participated in the public hearing of July 20, 2004 concerning BZA Case No. 17197 as listed below:

Chairperson
Advisory Neighborhood Commission 2F
P. O. Box 9348
Washington, D.C. 20009

Ms. Andrea Doughty
1417 Q Street NW
Washington, D.C. 20009

Ms. Ellen McCarthy or Mr. Travis Parker
Office of Planning
801 North Capitol Street, NE
Washington, D.C. 20001

ATTESTED BY: _____
Douglas J. Patton, Esq.
Holland & Knight LLP

2207706_v1

PROPOSED CAPTION *(Suggested Modifications Italicized, and in (a), underlined)*

Application No. 17197 of 1600 Fourteenth Street Limited Partnership, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for:

(a) a variance to reduce the *requirement* to provide residential recreation space *from 15 % to 6 %* under § 773;

(b) a special exception to reduce the requirement to dedicate at least 50 % of the ground floor to arts, retail, and service uses under §§ 1901.1; and

(c) a special exception from the restrictions allowing more than 25 % of the retail frontage along Fourteenth Street to be eating or drinking establishments under § 1901.6; and,

(d) as an alternative if the full degree of relief sought under § 773 is not forthcoming, relief to allow an elevator shaft that would otherwise have been accommodated in full accordance with the Zoning Regulations below the level of the main roof to extend through that roof enlarging the footprint of the mechanical penthouse and transforming it to (i) a roof structure whose then expanded walls would no longer be of equal height and no longer be removed from the edge of the building's exterior walls a distance at least as great as the height of the wall of the resulting roof structure, each deviation necessitating a special exceptions under §§ 777 and 411 and (ii) a roof structure whose total height would exceed, but solely for the area then enclosing the elevator shaft, that allowed, necessitating either a variance or a third special exception under § 1902.1(a);

at premises to be known as 1401 Q Street, N.W. (Square 208, record lot 139 *(former record lot 111 and former Assessment and Taxation lots 800 and 801)*).

Hearing Date: July 20, 2004
Decision Date: ***[Scheduled by the Board for]*** September 14, 2004

DECISION AND ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

PRELIMINARY AND PROCEDURAL MATTERS

1. Within Applicant's filed its pre-hearing submission filed July 6, Applicant indicated it had withdrawn all portions of the case seeking relief from or clarification of restrictions on eating and drinking establishments under § 1901.6, namely the relief set out in paragraph (c) above. Since an Applicant is allowed to withdraw its Application or parts thereof at any time under § 3113.20 of the Zoning Regulations, this Order does not discuss that issue further. (See: Exhibit 23, page 1.)

2. The same pre-hearing submission also alerted the Board of Zoning Adjustment ("Board" or "BZA") that in the BZA's Order for Application No. 16914 it had determined that relief from height restrictions applicable to roof structures in the Uptown Arts-Mixed Use Overlay District as specified in 11 DCMR § 1906 was to be considered as a special exception, not a variance, although the original application then, as here, was for variance relief. Since the BZA's decision in this Order for Application No. 17197 provides sufficient the full degree of relief sought to reduce residential recreation space, the elevator that could otherwise have been required to serve the level of the roof, which would have resulted in greater height of the roof structure than is allowed, will not arise. Consequently, the Board does not need to rule specifically on the question of the nature of the relief to be sought in such situations.

3. Both prior to and at the hearing, Applicant advised the BZA that the official Notice, the Notice published in the D.C. Register and mailed to persons or entities owning property within 200 feet of the Applicant's site, omitted words conveying the "alternative" nature of the further, additional relief requested under paragraph (d) as captioned above. At the hearing, Applicant also advised the BZA that its own materials mistakenly declared the proposed address of the property as 1601 Q Street NW when it should have read 1401 Q Street NW. The Board ruled both to be non-consequential (Tr., page 247, line 17).

4. This Order contains the Board's Findings of Fact and Conclusions of Law. Within the Findings of Fact, there are three distinct parts. Part I summarizes issues in the case, locates the property, establishes its zoning, clarifies the relief sought and establishes the parties, experts, and others participating in the case. Part II is in the nature of a Summary Order and relates to relief sought that was supported all parties, persons, and the Office of Planning; Part III sets out Findings of Fact relevant to the area of relief that was supported by all but a single party in opposition. The Conclusions of Law and Order follows. Finally, Cases cited in this Order are summarized in a single Appendix.

5. The Record in this case relevant to the zoning relief sought consists of thirty four exhibits numbered 1-34 and the portion of the transcript ("Tr.") of the hearing of July 20, 2004 relating to this case, particularly pages 226 through 384. Evidence in this case consists of all of those Exhibits other than Exhibit 21, which is Opponent's Request for Party Status. Opponent's witnesses introduced facts that are fully identified and discussed below. While the Board's accepted the various declarations and assertions in its request to qualify those requesting party status, those facts and declarations are not established simply by that filing. To become "evidence" within the record of the case itself, the facts and conclusions musts be presented to the Board and be subject to cross-examination.

6. At the close of the hearing, the BZA left the record open to receive a commentary from the Applicant interpreting the Federal Fair Housing Act concerning accessibility to common outdoor areas of the property, about which the Board concluded it had an interest but no jurisdiction. (See: Tr., pages 275 through 282, and 379 through 385.) While the Applicant supplied the interpretation as allowed, the Board did not consider that submission in reaching its decision on this case.

FINDINGS OF FACT

PART I – THE APPLICATION, THE RELIEF SOUGHT, THE PARTIES, GOVERNMENT AGENCIES, AND OTHERS PARTICIPATING IN PERSON OR BY LETTER

1. The subject property is located at the northwestern corner of the intersections of Fourteenth and Q Streets Northwest (Square 208, Lot 139). Record Lot 139 was established March 28, 2004. (See: Exhibit 23, Tab C, Sheet ASK-21.) As clarified at the hearing, the Applicant will seek to have the address of the property be known as 1401 Q Street, NW. (See, for example, Tr., pages 246 and 247.) Lot 139 replaces three lots that previously existed, lots 111, 800, and 801, previously known as 1602, 1604, and 1606 Fourteenth Street. (See: Exhibit 23, Tab C, Sheet ASK-20; Tr., page 248, lines 10 and 11 [the latter correctly identifying the lower numbered addresses but incorrectly declaring the range of addresses as ending in "05" instead of "06"].)

2. The property is located within the area served by Advisory Neighborhood Commission 2-F ("ANC 2-F") and, within that ANC, the area represented by Single Member District ("SMD") 2F-01. (See: Exhibits 2, 13, and 14.)

3. By correspondence dated May 17, the Office of Zoning provided Notice of the filing of the application to the Applicant (Exhibit 11), the Office of Planning (Exhibit 12), ANC 2F (Exhibit 13), ANC SMD 2F-01 (Exhibit 14), the Ward 2 member of the Council of the District of Columbia (Exhibit 15), and the Department of Transportation (Exhibit 16).

4. By correspondence dated May 24, the Office of Zoning sent a copy of the Notice of Hearing to persons or entities owning property located within 200 feet of the Applicant's site (Exhibit 17), ANC 2F (Exhibit 18), the Applicant's agent (Exhibit 19) and arranged for publication in the D. C. Register, within which it appeared as part of the cases to be heard July 20, 2004, the Notice appearing in the D. C. Register's June 4, 2004 issue on pages 5768 through 5970.

5. Facing two public streets, the lot is a "corner lot" within the meaning of the Zoning Regulations. Among other things, this means the Applicant may select either street as the front for purposes of measurement of height; this selected "frontage" thereby determines where the rear yard must be established and measured. (See: 11 DCMR 199.1)

6. Applicant posted both the Fourteenth and Q Street frontages of the property July 2, supplying an affidavit to that effect with the required photographs on that date. The posted Notices were maintained as required by the Applicant. (See: Exhibit 22).

7. No person or entity raised any issue about not having received proper Notice of the Hearing. (See: Exhibits and Transcript collectively, which include no such issue.)

8. The property is located within the Greater Fourteenth Street Historic District. Months prior to the filing of the request for zoning relief, Applicant sought approval from the Historic Preservation Review Board ("HPRB"), which heard the case over four hearings during the period December 2003 through May 2004, during which HPRB received input from the Applicant, HPRB staff, the ANC and members of the public. Applicant revised its initial conceptual plans significantly responding to comments made by the HPRB, its staff, the public, and Applicant's own further study. HPRB approved the resulting conceptual plans at its meeting of May 27, 2004, shortly after the Application was filed with the Office of Zoning, May 13, 2004. The ANC participated in HPRB's hearings, as did the Logan Circle Community Association, both being supportive. Several area residents, including one individual representing the Opponent party in this BZA proceeding, Ms. Andrea Doughty, also participated in HPRB's hearings where they expressed views and conclusions differing from those of the Applicant. Other area residents commented favorably. (See: Exhibit 23, Tab E.)

9. Applicant's lot is rectangular in shape, with a frontage of seventy-nine feet (79.0 ft.) along Fourteenth Street and a frontage of one hundred twenty feet (120.0 ft.) along Q Street, resulting in an overall area of some nine thousand four hundred eighty square feet (9,480.0 sq. ft.). The lot is currently unimproved with any structure and is used as a parking lot that is operated by the Applicant. The lot's western property line runs along a public alley whose width is twenty feet (20.0 ft.). The property to the north, lot 812, is developed and contains a building that runs from its frontage along Fourteenth Street to the public alley. (See: Exhibits 4 and 5, and Exhibit 23, Tab C, Sheet ASK-20).

10. The site is zoned "Arts/C-3-A." (See: Exhibit 33, Tab B) This specific zoning applies to an area along nearly all of the west side of and all but one short segment of the east side of Fourteenth Street NW from a point midway between N and O Streets NW to Wallach Place NW (located on the east side of Fourteenth Street midway between T and U Streets), a total distance of about 3,000 feet. (See: Zoning Map, Sheet 6.)

11. An "Arts/C-3-A" designation means that development of the site is guided by the applicable provisions of both the underlying C-3-A zone district and the additional provisions of the "Uptown Arts-Mixed Use (Arts) Overlay District." The provisions relating to development in the C-3-A zone are generally found within Chapter 7 of the Zoning Regulations; however, portions of Chapters 1, 4, 21, and 22 also apply. As to the "Arts" overlay, its requirements are set forth in Chapter 19 of the Zoning Regulations.

12. The Applicant proposes to construct a seven story apartment building containing up to 30 apartment units (26 shown in plans). As required, a of the ground floor facing Fourteenth Street would contain arts-, retail-, and/or service-related uses called for by the "Arts" overlay's rules, although the total area set aside for this falls short of the square footage required leading to the request for special exception relief from this requirement. (See: Exhibit 23 for Applicant's proposal and 11 DCMR 1901.1 for "Arts" rules.)

13. As a result of the issues raised and changes made to the overall conceptual plan through the HPRB process, the plans and overall massing changed. One change extended the building further along the P Street frontage. The plans initially filed with the BZA May 13, 2004 were identical in overall massing, height, and footprint to those conceptually approved by HPRB May 27. As Applicant noted in its initial filing with BZA, it determined that the increase in the P Street frontage had not been offset by a sufficient reduction in the depth of that portion of the building. This resulted in the plans have an overall gross floor area slightly more than allowed. In the application's accompanying narrative, Applicant declared that it would modify the plans to eliminate this overage in its pre-hearing submission. The pre-hearing submission did so by slightly enlarging the width of the courtyard in the northwest portion of the lot without changing any other elements considered by the HPRB when it approved the overall design (e.g., height of building, extent of frontages, and setbacks of upper floors and penthouse from the adjacent public streets).

14. Having resolved the issue of slight excess gross square footage contained within the plans filed at the time of the initial application, Applicant determined and demonstrated conclusively to the BZA that it's plans complied with all but two zoning issues, one relating to the amount and location of "residential recreation space" and the other to the overall square footage of the ground floor level to be set aside for arts, retail, and/or service-related uses. The first of these seeks relief in the nature of a variance, the second as a special exception. Applicant further concluded that it did not need the BZA to consider issues of "eating and drinking" establishments, having withdrawn that question from the BZA's consideration at the time it filed its pre-hearing submission. (See: Exhibit 23, pages 1, and 4-9.). The Applicant also identified additional relief that would be needed if the BZA did not conclude that the full degree of relief from residential recreation space requirements should be granted, these being additional special exceptions and a possible variance to requirements relating to roof structures. (See: Exhibit 23, pages 8 and 9).

15. By correspondence dated July 4, received within the Office of Zoning July 6, Mr. James Lemly and nineteen other persons declared themselves as owning properties within 200 feet of the Applicant opposing all relief Applicant sought in its initial application and requested party status. (See: Exhibit 21). Those materials identified Andrea C. Ferster, Esq., as legal counsel. Within the accompanying document two other persons were identified as also representing these twenty individuals, namely Ms. Andrea Doughty and Mr. Bonn Macy.

16. Over question and some objection from Applicant's counsel, the BZA allowed these twenty persons to become a single party in opposition, identifying them as the "Q Street Group," adopting this name at the recommendation of the Office of the Attorney General in part to distinguish it from an informal, unchartered organization sometimes known as the "Q Street Association" that has some members in the area. As there is but one party in opposition, this Order refers to them collectively as the "Opponent." Ms. Ferster did not appear as legal counsel. Rather, the twenty were represented exclusively by

Ms. Doughty. (See: Tr., pages 228 through 243.) Ms. Doughty called Mr. Macy as a witness as part of her case presentation. Neither Ms. Doughty nor Mr. Macy established themselves individually as being specifically aggrieved. The request for party status described Ms. Doughty as residing at a premises within 200 feet of the Applicant's site, but not as an owner; Mr. Macy was identified as owning and residing in a property somewhat more than 200 feet from the Applicant's site. (See: Exhibit 21, page 2).

17. The Applicant was represented by Douglas J. Patton of the law firm of Holland & Knight LLP, as authorized by the Partnership. (See: Exhibit 26.)

18. Applicant introduced three witnesses: Fred Bahrami, Principal for the 1600 Fourteenth Street Limited Partnership; Bill Bonstra, of Bonstra and Associates, Architects; and Lindsley Williams, a land use, planning and zoning consultant affiliated for this case with the law firm of Holland & Knight LLP. The BZA qualified Messrs. Bonstra and Williams as experts in their respective fields. The BZA also qualified Ms. Emily Eig, a potential rebuttal witness for the Applicant, as an expert in the field of historic preservation and architectural history. (See: Tr., pages 250 through 252.)

19. The Office of Planning was represented by Mr. Travis Parker. Mr. Parker presented that Office's report dated July 13, 2004 and its recommendations in favor of granting the two areas of relief sought, with sufficient relief as to residential recreation space so as to not require additional relief for roof structure issues that are more fully set out below in Part III of these Findings. (See: Exhibit 25 and Tr., pages 296 through 302.)

20. The Reverend Vernon Shannon, pastor of the church located across Fourteenth Street from the Applicant's site, spoke briefly in favor of the project and, in so doing, also indicated that institution's interest within the Applicant's partnership. He was not asked any questions by the BZA or the parties. (See: Tr., pages 292 through 295.)

21. The ANC submitted a letter of support dated July 12, 2004, for the relief sought as modified by Applicant's pre-hearing submission. (See: Exhibit 24 and Tr. at Page 303, lines 8-10.)

22. The record contains two letters of support for, and no letters of opposition to, the application. (See: Exhibits 27, this a letter dated July 19, 2004 from Ms. Monica Bussolati, and Exhibit 28, this a letter of the same date from Mr. Charles Reed.)

23. No other person appeared in favor of or in opposition to the Applicant's proposal. (See: Tr. in its entirety wherein no such other persons appear.)

24. The hearing conducted on July 20, 2004 constitutes the entire hearing on the case as embodied in the transcript thereof.

PART II – FACTS PERTAINING TO THE REQUESTED SPECIAL EXCEPTION TO ALLOW LESS THAN FIFTY PERCENT OF THE BUILDING'S GROUND FLOOR AREA TO BE USED FOR ARTS, RETAIL, SERVICE OR RELATED USES REQUIRED UNDER § 1901.1 (UNCONTESTED)

25. As set forth in its pre-hearing statement, Applicant proposes to set aside nearly forty-seven percent (46.9 %) of the building's gross floor area on its ground level to the uses required by § 1901.1 of the Zoning Regulations. This is about twenty-five percent more, and about ten percentage points more than set out in Applicant's initial filing. The specific areas to be set aside are those shown within the limits of the Applicant's lot. (See: Exhibit 23, Tab C, Sheet ASK-3 and annotated as "Commercial #1" and "Commercial #2.) The total area of the spaces extends into bays that project into public space adjacent to the limits of the Applicant's lot, subject to the approval of the Public Space Committee.

26. Specific factors exist in the circumstances of the proposed design that were forth in sufficient detail to the BZA during the Applicant's presentation of its case as well as in the pre-hearing statement and other materials explaining the reasons for the request and showing that all applicable standards are met, including that the relief, if granted, would not cause any adverse impact. (See: Tr., pages 252 through 295, and 367 through 379.)

27. As noted in Finding 25, the plans increased the percentage significantly. This change contributed to the Opponent's explicitly withdrawing their objections to this aspect of the relief sought. (See: Tr., Page 303, lines 13-25.)

28. Based on its analysis, the Office of Planning concluded that the application meets the standards of §1906 for approval of a special exception from the requirements of Chapter 19. That Office also concluded that the application also meets the standards of §3104 in that it will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties. (See: Exhibit 25, page 6.) The Board so finds.

29. By letter of July 12, the Advisory Neighborhood Commission 2F conveyed its unqualified support for this special exception, noting that there had been some in the community who were not supportive of the originally requested reduction to thirty-seven percent. (See: Exhibit 24, page 2.)

30. The record on this relief, thus, is complete, sufficient to grant, and, given Opponent's withdrawal of its opposition, entirely positive.

PART III – FACTS PERTAINING TO THE REQUESTED VARIANCE TO REDUCE THE PERCENTAGE OF RESIDENTIAL RECREATION SPACE FROM THE FIFTEEN PERCENT REQUIRED BY THE ZONING REGULATIONS TO SIX PERCENT (CONTESTED)

31. Applicant's plans call for a total of 39,950 gross square feet of residential use in the proposed apartment building. In the Arts/C-3-A zone district, the Zoning Regulations require that residential recreation space amount to at least fifteen percent of that total area, of which at least half is to be "outdoors." Thus, the total area ordinarily required would be 5,992.5 square feet, with at least 2,996.25 square feet of this being outdoors. Applicant proposes to set provide nearly six percent (5.99 %) of the building's gross floor area in residential use for active and passive recreation by the residents of the building and their guests, corresponding to a total of 2,373 square feet. Of that, 1,234 square feet, slightly more than half, would be outdoors. (See: for Applicant's proposal, Exhibit 23, pages 8 and 9 and Tab C, Sheets ASK 1, and ASK-17 through 19; for Zoning requirements, § 773, particularly §§ 773.3 and 773.7 through 773.9)

32. The BZA heard seven and granted six requests for relief from the residential recreation space requirements during April, May, June, and July 2004, the one not being granted simply because the BZA determined that the relief that applicant had requested was not needed. Each of these seven cases is summarized within Appendix A to this Order. (See: Tr., page 254, lines 16 through 21) and the resulting Summary Orders). Three of these seven cases are for properties within the same Arts/C-3-A zone district, same historic district, and same ANC; two of these three involve properties that are unimproved or whose improvements have been/are to be/will be razed creating the equivalent situation, thus paralleling the "unimproved lot" condition of the Applicant's lot in the instant case. (See, also: Fact 11, above.)

33. Applicant and Opponent both noted that the BZA had considered six other cases involving relief from the identical residential recreation space requirements within the same Arts/C-3-A zone district between January 2002 and March 2004, each of which cases had been approved, with explicit recommendations for approval from both the Office of Planning and the Advisory Neighborhood Commission 2F. These cases are also summarized within Appendix A to this Order. Of these six, at least one involved land that was unimproved prior to the start of construction. Two of these cases were granted with conditions. (See, also: Fact 11, above.)

34. Since 2002, the Board has heard and decided eight cases where at least one issue was a reduction in required residential recreation space for properties in the same Arts/C-3-A zone district and same ANC. Each such case was granted; none faced any opposing person, party, ANC or government agency (as to relief from the residential recreation requirements). While five cases involved property with contributing historic buildings that would remain part of the subsequent projects, three involving land vacant or had buildings to be razed. Most of the areas being developed were either rectangular or L shaped.

35. The granting of an area variance requires the Applicant to demonstrate that there the facts support three tests or "prongs" – uniqueness, practical difficulty, and absence of adverse affect. Each of the above cited cases demonstrated that they satisfied these criteria to the satisfaction of the BZA.

36. The BZA finds "uniqueness" and "exceptional circumstance or situation" in the Application as follows:

    a. The lot is relatively narrow at seventy-nine feet (79.0 ft.).

    b. The lot is "exceptional in that ... it is a clean [vacant] site." (See: Tr., page 317, lines 8 through 14, quoting Opponent's witness at the start of short exchange with the Chairman.)

    c. The Arts overlay's purposes include fostering significant amounts of new housing along with developing a lively entertainment district with safe, but active, streets for much of the day, evening, and night. To this end, the overlay grants additional development rights to residential uses, with the intent that these be as fully utilized as feasible.

    d. The principal use sought, namely an apartment house, is consistent with the objectives of the Arts overlay and the uses allowed therein within the underlying C-3-A zone district.

    e. An apartment house of the density specifically encouraged by the overlay requires high-rise design with a central elevator core and two fire stairs with adequate separation of each stair from the other but having a common lobby area.

    f. Roof structures, which are the uppermost reaches of fire stairs and elevator cores, must be set back from the adjacent walls of the building.

    g. Added to this, in the course of review by the HPRB, Applicant was directed to make sure the uppermost occupied floor (the seventh) would be set back from the Fourteenth and Q Street frontages as well as from the western and northern sides of the building's mass.

    h. Parking must be provided at a rate of one parking space for each two apartment units, and parking must be accessible from driveways and aisles that meet certain minimum standards. On a lot of the size and shape of this one, the garage entrance can only reasonably be made from the public alley ramping down on one side of the central elevator/stairwell core and then wrapping around it as it proceeds to lower levels. Driveway aisles cannot co-exist with an element of the buildings elevator and fire-stair core.

i. As a consequence of the factors in paragraphs (f) and (g), the roof structure and its enclosed central core must be set back twice, not just once but continue to serve their critical function. The garage levels and functions introduce other critical factors as set forth in paragraph (h).

j. At the level of the ground floor, the Applicant is further constrained in that the rules require that at least half of that area, specifically area fronting along Fourteenth Street, be set aside for those uses "preferred" by the Arts overlay, namely a range of retail, service, and arts-related uses. The Office of Planning specifically noted this in their brief testimony on the case. (See: Tr., page 297 starting at line 15.

k. Thus, the overall area of the building within which the core can be located is vastly less flexible than might first seem.

l. Applicant's preferred residential recreation space program allows a roof structure that meet all zoning requirements including setback, having walls of equal height, and falling within the overall height limit of such roof structures.

m. Apartment units here, following the marketing and engineering practices of these times, will have individual heating and air-conditioning equipment. These require individual fan-coil units that must be located outdoors, with the rooftop being the only logical place to put them.

n. Rooftops are also the place where various plumbing stacks must vent as well as the place though which various kitchen and bathroom exhausts discharge.

o. The combination of a roof surface that is much less than the overall building footprint and the demands for placing fan coils and vents across the available roof greatly decrease the amount of total area that could be set aside there for use as "residential recreation area."

p. By letter of July 12, ANC 2F provided a report on the application. While a portion of that report addresses the variance sought for residential recreation space, recommending conditional approval, the letter does not address the issue of uniqueness. (See: Exhibit 24, page 1.)

q. By report dated July 6 and in testimony, the Office of Planning addressed each element of the variance test, concluding that an exceptional circumstance exists. (See: Exhibit 25, page 3). The Board so finds.

r. Opponent asserted that the Applicant fails the test of uniqueness. Opponent reasoned that since the land is vacant and rectangular, it is inherently commonplace, neither unique nor exceptional. (See: Tr., page 317, lines 15 through 17.) Opponent also noted that the land consisted of an amalgam of three

former vacant lots, a fact not in dispute as noted in Finding 1, above. The Board finds the land to be both rectangular, vacant and essentially flat based on topographic information but does not agree that these facts immediately disqualify the property from meeting the "uniqueness" test.

s. Rather, the uniqueness of the site derives not just from its overall narrowness but from the confluence of a host of accompanying requirements for roof structure and core functions, setbacks required by zoning for roof structures and intermediate setbacks required by the HPRB for the uppermost occupied level from all sides of the building. This includes the proposed building's northern wall facing an adjacent property as well as at the rear of the new building (the western edge, facing the public alley). These factors converge to create a "unique" set of circumstances arising from the land and the rules and standards applied to it.

(Except as noted above, see: Applicant's Pre-hearing statement, Exhibit 23, pp. 11-12, and diagrams within Exhibit C thereof as well as the testimony of the Applicant and his architect, Tr., pp. 256 through 296.)

37. The BZA finds that "practical difficulties" and "undue hardship" exist in this case as follows:

a. The total area meeting the requirements for residential recreation space amounts to nearly six percent (5.99 %) of the gross floor area of the building in residential use. The corresponding total square footage is 2,373 square feet.

b. Just under half this total area is in three enclosed areas, the largest being a fully accessible "party room." Two other areas within the ground floor also provide additional residential recreation space. These areas total 1,139 square feet. In addition to meeting requirements to provide area along Fourteenth Street satisfying the Arts overlays requirements for retail, service and arts-related uses, the ground floor necessarily and appropriately contains the lobby entrance to the building, the mail receiving area, the fire control room, the central core of elevators and stairs, and utilitarian functions. The remaining areas of the ground floor are not fully accessible from within the building, being levels of apartment units that are reached from outside or from a different floor. Accordingly, there is no other interior space within the building's first floor for residential recreation space, short of converting space required for Arts overlay rules from those uses to that of residential recreation space. Substitution of residential recreation space for residential space within the lower level reduces the attractiveness of residential space that will be in continuous use for uses that are inherently intermittent. Extending the space on the lower level into the area of ramps and garages conflicts with the geometric requirements of ramps and sloping garage floors.

c. Additional areas totaling 1,234 square feet are located "outdoors" in two areas, the first being an "areaway" adjacent to the "party room" and the second being an elevated courtyard that is located over and screens the driveway to the parking garage, both being fully accessible. Apart from two small areaways that serve and abut planned apartments, the balance of the building's land area is dedicated to the access driveway or the footprint building itself. Thus, there is no more land available at or near ground level to provide additional "outdoor" residential recreation space.

d. Applicant will provide an exterior common outdoor plaza area on the roof, equivalent to the other outdoor areas in many respects, but on a higher plane. However, the Zoning Regulations provide that all areas of "residential recreation space" must be fully accessible and, if located on a roof, they must also have minimum dimensions of twenty-five feet (25.0 ft.). The area available on the roof deck fails that dimensional standard along one axis. Applicant contemplates allowing residents to access this area by means of either of two stairways (thus fully satisfying the building and fire codes), but not by an elevator since arranging for the elevator to reach that level would result in additional areas of roof structure. While the original roof structure meets all applicable zoning requirements, the expanded roof structure would be in conflict with three governing standards: setback, evenness of height, and total height. Applicant demonstrated that the 675 square feet the roof plaza would add no more than the equivalent of one percent (1.0 %) to the total area and that full accessibility by elevator would demand relief that would be more detrimental than having the small area being fully accessible.

e. Applicant's plans provide a number of "private" outdoor areas effectively diminish the demand for residential recreation space needed for the overall building and its residential population. Applicants demonstrated that of the total of twenty-six apartments, only ten would have no such private outdoor area. However, as a practical matter, these private areas are not situated in a way that could be open to other residents. These private areas include balconies, areaways, and terraces. The total amount of these areas is 3,664 square feet, which is equivalent to over nine percent of the total gross residential floor area (9.25 %).

f. When the "private" areas described in paragraph (e) are combined with the areas meeting strict zoning standards for residential recreation space described in paragraphs (c) and (d), the latter amounting to nearly six percent (5.99 %), the total area in meeting those standards or the private counterpart exceed fifteen percent (15.24 %). (See: Exhibit 23, Tab C, Sheets ASK-1 and 17 through 19, "Option 1" only on sheets ASK-18 and 19.)

g. By letter of July 12, ANC 2F provided a report on the variance sought for residential recreation space, recommending conditional approval. The letter does not address the issue of practical difficulty. (See: Exhibit 24, page 1.)

h. By report dated July 6 and in testimony, the Office of Planning addressed each element of the variance test, concluding that practical difficulties exist along the lines described above. (See: Exhibit 25, page 3). The Board so finds.

i. Opponent asserted that the land and plan present no "practical difficulties," relying in part on their conclusion that the circumstances fail the first test of "uniqueness" and collectively dismissing the difficulties cited by the Applicant as factors that are normal, none constituting a "practical difficulty" as such. (See: Tr., page 318, starting at line 8 to page 320.)

j. At various points in Opponent's presentation, mostly in the context of a *quid pro quo* or "countervailing benefit," they posited alternatives whereby either areas proposed for apartment units or parking could have been set aside for residential recreation space in the first place, reducing or eliminating the need for a variance. However, in so doing, Opponent did not assert that these alternatives in and of themselves were sufficient do establish absence of a practical difficulty. (Except as noted above, see: Applicant's Pre-hearing statement, Exhibit 23, pages. 11 and 12, and diagrams within Exhibit C thereof as well as the testimony of the Applicant and his architect, Tr., pp. 256 through 296.)

38. Facts relevant to determining that the variance relief can be provided without causing "substantial detriment to the public good and would not substantially impair the intent, purpose, and integrity of the zone plan" include the following:

a. More than half the planned apartment units have some degree of private outdoor area that serves to diminish the demand for communal residential recreation space. The total square footage in these private areas represents 3,664 square feet, this being over nine percent (9.25 %) of the gross residential floor area of the proposed building.

b. The residential recreation space to be provided amounts to 2,373 square feet. Combined with the 3,664 square feet "private" areas, the total then rises to 6,037 square feet. The latter total slightly exceeds the zoning standard of fifteen percent (15.1 %).

c. Applicant proposed to landscape and configure an additional area along the Q Street frontage, an area of public space lying between the sidewalks edge closest to the private property limits and that property limit technically referred to as "the parking" in applicable District of Columbia Municipal Regulations. This area, net of walkways, amounts to over 1,300 square feet, which is equivalent to about three percent of the total gross residential floor area of the proposed building. (See: Title 24 DCMR and Exhibit 23, Tab C, Sheets ASK 17-19.)

d. Applicant's plans propose two levels of parking, yielding more parking spaces than the number of apartment units.

e. The existing lot is used as a parking lot. It accessed by three curb cuts, two along Q Street and one along Fourteenth Street. The curbed portion of Q Street along the site allows parking, controlled by meters. The portion of Fourteenth Street along the site does not allow parking, being a Metrobus stop. (See: Exhibit 5 and Exhibit 23, Tab C, Sheet ASK-20). Applicant's proposed project would close all of these, allowing additional on-street parking along Q Street at the option of the District of Columbia's Department of Transportation ("D-Dot"). Likewise, with the closuring of the Fourteenth Street driveway, D-Dot could shift the bus stop south, closer to the intersection and possibly add either a parking space or a loading zone immediately north thereof.

f. By letter of July 12, ANC 2F provided a report on the variance sought for residential recreation space, recommending conditional approval. The letter recommends that the variance for residential recreation space be provided to the extent sought with the requirement that the Applicant actually provide two levels of parking as shown "barring extraordinary unforeseen circumstances in the ground." The ANC went on to declare its preference for relief from residential recreation space to the extent sought, six percent instead of fifteen percent, so that the project would not have to have an elevator reach the roof level triggering additional areas of relief (See: Exhibit 24, page 1.) The Board so finds, addressing the issue of "unforeseen circumstances" in its conditions below.

g. By report dated July 6 and in testimony, the Office of Planning addressed each element of the variance test, concluding that the relief could be granted without causing substantial detriment or substantially impairing the intent, purpose or integrity of the zone plan. In its testimony, the Office of Planning's representative indicated that the square footage of the roof deck was so small as to not warrant bringing an elevator to serve that level for such a small amount of outdoor area. (See: Exhibit 25, page 3 and Tr., page 302.) The Board so finds.

h. Applicant's plans also depict the strip of public space located along the Q Street frontage with both walkways as well as landscaping other areas with tables and benches, characterizing the latter as a possible means of further offsetting the loss of measurable residential recreation space on or within the property itself. Opponent noted that the plans to devote the "public parking" to such a design could induce vagrants or others to loiter in the area, concluding that this would affect residents of the building a neighborhood adversely. Applicant indicated its willingness to change the design or forego this element altogether. (See: Tr., pages 320 and 321.) The Board has taken this into account in the Conditions of Approval set forth below.

i. Opponent characterized the 1400 block of Q Street as a "quiet residential" street. (Tr., page 349.) On cross-examination, neither Opponent witness was able to answer the question of its status in the District of Columbia Highway Plan, but noted it operated one way with parking along both sides. (See: Tr., page 365.)

While the segment of Q Street west of the Applicant's site is zoned R-5-B and appears to be lined with row houses and is certainly residential by the nature of its uses, the Board takes note of information from the official District of Columbia Government website that reports average daily traffic flows with information about this segment of Q Street. Reduced to plain terms, traffic volume along Q Street is about half that of the daily traffic along the adjacent segment of Fourteenth Street. Further, information from the District of Columbia's adopted highway plan, classifies Q Street as a "minor arterial."[1] Based on these factors, the Board concludes the street's character as one with significant daily traffic and that the Applicant's program would not result in any discernable reduction in the quality of life for those living along it from the presence of the Project as planned or from the relief in residential recreation space herein sought and approved. On the contrary, as discussed below, the Project could bring benefits to those living in the area in the form of added public on-street parking and most certainly will eliminate two curb cuts, and perhaps the only two leading to a private driveway, along that segment of Q Street.

j. Opponent's principal fact witness, Mr. Macy, introduced a series of photographs of area residential facilities cited by the Applicant in its pre-hearing statement, both public and private. Both Opponent witnesses asserted that these facilities were likely unusable by the prospective residents of the proposed apartment building and conjectured that the unmet demands of the building's residents for residential recreation space could and would severely tax or overwhelm the already limited supply of such areas and spaces. Neither witness established that this had actually happened or that it was a direct adverse consequence of any other approved application for variance relief from § 773 of the Zoning Regulations. (See: Tr., pages 324 through 329.)

k. Opponent asserted that a project such as that sought would create a demand for more parking and loading for both residential and commercial ("Arts") uses. The BZA notes that while this may be the case, the change will eliminate traffic to and from the commercial parking lot and the Applicant's plans meet zoning standards for parking and loading. Moreover, reducing the number of apartments or its already small commercial areas simply to reduce overall parking demands are

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[1] As a legal matter, Applicant notes that a public document within the D.C. Department of Transportation's website, http://www.ddot.dc.gov/ddot/cwp/view,a,1250,q,580996.asp, namely volmap_inset_2001.pdf, specifies daily traffic along Q Street as "7.6" (thousand vehicles/weekday), whereas that along Fourteenth Street where it intersects Q carries "15.6" thousand vehicles/weekday. The District of Columbia's official Highway Plan classifies the 1400 block of Q Street as a "minor arterial" and Fourteenth Street as a "major arterial" in that Plan's five-tiered functional classification ("local," "collector," "minor arterial," "major arterial," and "interstate") scheme.

factors outside of the variance being sought. As to on-street parking and problems additional delivery trucks might pose, the exiting parking lot's three entrances (two along Q Street, one along Fourteenth Street) collectively span more than 100 linear feet measured along the curb. Public on-street parking is not allowed within 5 feet of a curb cut. (18 DCMR § 2405.2.) Existing the curb cuts and related requirements serve to prevent legal parking along more than half the Applicant's Q Street frontage and much of its frontage along Fourteenth Street. These curb cuts will be eliminated when the proposed apartment building is erected, allowing the District Government to add at least two and as many as six on-street public parking spaces along Q Street, depending on whether the curb in front of the apartment's main entrance is restricted or not as to parking. Moreover, parking or loading areas could be established along Fourteenth Street as well. Thus, the building's impact on on-street parking and loading is readily made favorable, not negative.

l. Opponent also noted that in the Combined Order for BZA Case Nos. 16841 and 16848, the BZA approved similar variance relief from residential recreation space requirements. The BZA's approval allowed the developer there to provide additional, desired parking spaces; the Order also conditioned approval to specific plans in this regard. (See: Tr., pages 341 through 343.)

m. Cross examination of the Opponent's witnesses by the BZA established, to the BZA's satisfaction, that reducing the area Applicant's plans set aside for retail, service and arts-related uses solely to establish additional areas of residential recreation space would work against supporting the integrity of the intent, purpose and integrity of the zone plan. The ensuing discussion touched on possible means to secure resources to improve public parks in the area and the meaning of "active" and "passive recreation" with the BZA concluding these sorts of questions would be more properly and fruitfully taken up by the Zoning Commission. (See: Tr., pages 351 through 360.)

(Except as noted above, see: Applicant's Pre-hearing statement, Exhibit 23, pp. 11-12, and diagrams within Exhibit C thereof as well as the testimony of the Applicant and his architect, Tr., pp. 256 through 296.)

39. The record contains no letters or other expressions of opposition to the variance sought.

CONCLUSIONS OF LAW AND DECISION

1. The issues presented for decision in this case include a variance and a special exception.

2. The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, as amended, and by the Zoning Regulations to grant variances from the strict application of the Zoning Regulations. (D.C. Code Ann. § 6-641.07(g)(3)(2001 ed.); 11 DCMR § 3103 (Feb. 2003).

3. The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, as amended, and by the Zoning Regulations to grant special exceptions provided both the general conditions and the specific provisions pertaining to each special exception under review are satisfied. (D.C. Code Ann. § 6-641.07(g)(2)(2001 ed.); 11 DCMR § 3104 (Feb. 2003).

4. All notice requirements under the Zoning Regulations and D.C. Administrative Procedures Act were satisfied. Words mistakenly omitted from the notice distributed or published by the Office of Zoning did not affect nature of the relief being sought or impair the ability of the public or persons to whom it was conveyed to have an adequate understanding of the issues at hand.

5. The Board conducted a proper hearing.

6. While witnesses are permitted to introduce both fact and opinion; the Board is authorized to give greater weight to opinions provided by those it has recognized as experts on matters within their respective areas of special competence. In this regard, the expert opinions of Applicant to the effect that the site is unique owing to a confluence of factors, that practical difficulties exist, and that the relief sought would not bring about adverse impact are given the added weight those expert opinions are allowed and warrant.

7. No person or entity appeared that the public hearing in opposition to the relief sought to allow less than fifty percent of the ground floor area of the proposed building to be used for arts-, retail-, or service-related uses as ordinarily required by the terms of § 1901.1 of the Zoning Regulations for buildings facing, as this one would, Fourteenth Street. Accordingly, a decision by the BZA to grant this portion of the application would not be adverse to any party.

8. As to the Special Exception sought under § 1901.1, based upon the record before the BZA and having given great weight to the ANC's statement and the Office of Planning's report filed in the case, the BZA concludes the Applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1, 1901.1 and 1906, that the relief in the Applicant's pre-hearing statement and accompanying plans and materials can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning

Regulations and Map. The BZA also concludes that the specific requirements set forth at §§ 1906.1(a) through (e) have been met.

9. As to the variance sought from § 773, the BZA concludes that the Applicant has met the standards that apply for the granting of that relief as to uniqueness or extraordinary condition, as to practical difficulty, and as to not bringing about any substantial detriment to the public good nor impairing the intent, purpose or integrity of the zone plan.

10. The Applicant has met its burden of proof in establishing that multiple and diverse factors co-exist and come together on and within the subject property, that confluence creating a unique and extraordinary condition. *Gilmartin v. District of Columbia Board of Zoning Adjustment, 579 A.2d 1164; 1990 (D.C. App.)* ("a confluence of factors can establish uniqueness..." for purposes of approving a variance). These unique and extraordinary conditions create practical difficulties for the Applicant in meeting the strict application of the requirements for residential recreation space. The Arts Overlay District specifically encourages residential, retail, service and arts-related development. This specific goal is controlling over the more general requirement for residential recreation space.

11. The amount of residential, retail, service and arts-related space should not be sacrificed where no harm will be suffered by a reduction in the residential recreation space. Here, the evidence of record demonstrates that granting the variance will not harm the intent or purpose of the Zoning Regulations. The Board does not accept the issues listed by the Opponent as neither witness demonstrated any actual harm or actual likelihood of harm. The BZA concludes that the Opponent failed to establish any actual or imminent concrete, particularized harm or injury it would suffer. Rather, the Opponent only articulated conjectural and hypothetical adverse efforts, none of which rises to a level of actual aggrievement. As the Court held in *Friends of Tilden Park v. District of Columbia, 806 A.2d 1201, 1206 (D.C. 2002):*

> The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court. The plaintiff, or those whom the plaintiff represents, must have suffered an injury in fact – an invasion of legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. A mere interest in a problem, not matter how long standing the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient in itself to render the organization adversely affected or aggrieved for standing purposes.

Friends of Tilden Park v. District of Columbia, 806 A.2d 1201, 1206 (D.C. 2002).

Based on this holding, the Board concludes there is no harm for the Board to redress.

12. As to the question of uniqueness or extraordinary condition, the BZA takes note of the principles set forth in *William Gilmartin, et. al. v. District of Columbia Board o Zoning Adjustment)* acknowledging that a

> ... confluence of factors can establish uniqueness. The statute [Zoning Regulations] does not preclude the approval of a variance where the uniqueness arises from a confluence of factors ... affecting a single property ...

in a particular way. The BZA concludes that the Applicant in this case has such a confluence that works uniquely to create the very circumstances leading the Applicant to seek the relief sought in its application.

13. The Arts overlay's broad goals, set forth at § 1900.2 of the Zoning Regulations, include expanding the supply of housing and development, fostering development of residential buildings, both under standards of design that are more fully spelled out at § 1903.2 that ban driveways, i.e. curb cuts, as a means of fostering "pedestrian" streets, further noting that the goals do not reinforce the idea that residential recreation space was of particular concern when the Arts overlay was adopted. The Board concludes that the proposed development would contribute less to this goal if apartment units or areas for retail, service, or arts-related purposes were reduced in number or area solely to provide more or all of the residential recreation space required by the underlying C-3-A zone's rules. Moreover, the Applicant's project will eliminate three driveways that cut across public sidewalks, one of these on Fourteenth Street, a "pedestrian street" under the terms of that overlay along which new driveways are expressly banned. (11 DCMR §§ 1903.1(a) and 1903.2.) From this, the Board further concludes that eliminating the existing non-conforming driveway on Fourteenth Street is itself in the public good and that eliminating those along Q Street is also beneficial.

14. The BZA has considered the two letters of support of granting the relief the Applicant seeks.

15. The BZA has given "great weight" to the report from ANC 2F and has incorporated portions of the ANC's recommendation into this Order as set forth in the conditions that follow. The Board establishes these conditions in accordance with its authority under the Zoning Act and Zoning Regulations and in accordance with the precedent set in the Board's consolidated Order for Case Nos. 16841 and 16848, cases seeking similar relief from residential recreation space within the same overlay and base zone district (Arts/C-3-A) and overall community (within the area served by the same Advisory Neighborhood Commission). The Order for Case No. 16914, also arising from an Arts/C-3-A zoned property within ANC 2F, established conditions requiring a roof deck to be shared and had additional specifications relating to parking spaces. Conditions were likewise attached within the Order for BZA Case. No. 17009 directing the Applicant to follow the plans approved by the BZA.

16. Based upon the record before the Board of Zoning Adjustment, and having given great weight to the ANC 2F and the Office of Planning reports and testimony in this case, the Board concludes the Applicant has met the burden of proof under 11 DCMR § 3103.2 and that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be provided without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map be **GRANTED**, provided that –

    a. the residential recreation space is provided for the proposed project as set forth in Exhibit 23, Tab C, Sheets ASK 17-19, specifically Option 1 on Sheets ASK 18 and 19;

    b. the overall portion of the ground floor facing Fourteenth Street to be used for those uses set forth in the Arts overlay for retail, service, and arts-related purposes be as set forth in the same exhibit, Sheet ASK-3; and

    c. parking be provided as set forth on sheet ASK-2 providing on that level at least the minimum number of spaces required by the Zoning Regulations and Building Code;

    d. additional parking be provided as shown on sheet ASK-1 as well, unless the Applicant determines that this is not feasible as the plans and construction proceeds due to "unforeseen conditions in the ground" or other factors;

    e. the layout of apartments may vary within the overall areas shown for apartment units and their number may vary as long as corresponding requirements for parking spaces remain satisfied;

    f. the layout of the area set aside for retail, service and arts-related purposes along the Fourteenth Street frontage of the property on the ground floor may vary within its outer perimeter from that shown in sheet ASK-3;

    g. the number of parking spaces and their layout may vary from that shown in the plans as long as the number of spaces required for zoning meet applicable zoning standards including size, access, and egress and that the area not be used for purposes other than parking, utilities, storage and access to and egress from same through elevators and related lobbies, stairwells, and drive aisles;

    h. the area of public space along the Q Street frontage between the edge of the sidewalk closest to the property line and that property line, officially known as the "public parking" need not be developed by the Applicant to provides additional outdoor areas that would be equivalent to outdoor residential recreation space, such as depicted on Sheets ASK-3 and 17 (and tallied on Sheet ASK 19), to further mitigate the reduction in the total area of residential recreation space

allowed by this Order but shall seek needed approval for the use of this area from the Public Space Committee, which considers and decides requests and plans for its use from the abutting owner and recommendations it receives about such requests from the ANC, community and general public.

i. the Applicant may make modifications to the exterior façade of the building as required to secure final approval of the design as delegated to the staff of the Historic Preservation Review Board by that body provided these modifications do not result in any change in zoning relief herein sought and hereby granted; and

j. if circumstances, such as but not limited to possible "unforeseen conditions in the ground" referenced by the ANC in its report on this application that the Applicant cannot reasonably overcome, then Applicant may, at its sole discretion, seek approval from the Board for minor modifications in the plans, without prejudice, as allowed under § 3129 of the Zoning Regulations.

VOTE: ***[To be determined by the BZA after its deliberations.]***

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this Order:

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: _____

A

APPENDIX A

BZA 17197: Summary of Cases Heard by the Board of Zoning Adjustment Seeking Relief from Residential Recreation Space Requirements (§ 773), Including – All Such Cases Heard April through July 2004 (City Wide) and All Cases Comparable to BZA 17197 Heard January 2002 through March 2004 (Arts/ANC 2F/14th St)

	All § 773 Cases Heard (April through July 2004)							§ 773 in Arts/C-3-A, Greater 14th Street Historic District and ANC 2F (01/02-03/04)					
BZA Case / Aspect	**17198**	**17191**	**17183**	**17175**	**17168**	**17156**	**17137**	**17115**	**16999**	**16914**	**16907**	**16848**	**16841**
Summary Order	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	**NO** (Full / Consolidated)	
Month / Year	07/04	07/04	07/04	06/04	06/04	05/04	04/04	02/04	03/03	09/02	07/02	03/02	
Zone Mapped	C-2-A	Arts / C-3-A	Arts / C-3-A	RC / C-2-B	C-2-A	DD / C-2-A	Arts / C-3-A	Arts / C-3-A	Arts / C-3-A	Arts / C-3-A	Arts / C-3-A	Arts / C-3-A	
ANC	1A	2F	2F	1C	2C	2B	2F	2F	2F	2F	2F	2F	
In / *Abut* Historic District	None noted	Greater 14th Street	Greater 14th Street	None noted	None noted	None noted	Greater 14th Street	Greater 14th Street	Greater 14th Street	Greater 14th Street	Greater 14th Street	*Greater 14th Street abuts*	Greater 14th Street
Site Is / Will Be Vacant	Not stated in Order	**YES**	(No, Exist Contrib Bldg)	Not stated in Order	Not stated in Order	Not stated in Order	**YES**	(No, Exist Contrib Bldg)	(No, Exist Contrib Bldg)	(No, Exist Contrib Bldg)	(No, Exist Contrib Bldg)	**YES**	(No, Exist Contrib Bldg)
§ 773 Case Granted	Yes	Yes	Yes	Yes	Not needed (§ 773)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Condi-tions?	No	No	No	**YES** (roof deck limits)	Moot	No	No (but inform buyers)	No	No	**YES /** (share roof & parking)	Yes / (Not to § 773)	**YES** (follow plans, allow roof deck sharing)	
Support for § 773 Relief (Universal from OP and ANCs); When Participating, Others Support Case as a Whole													
OP	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
ANC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Others in Favor	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	Yes	
Opposition to § 773 Relief (Never to that Provision); When Participating, Opponents Have Some Other Issue													
Parties Against	No	No	No	No	No	No	No	No	No	No	No	No	
Persons Against	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	None noted	