GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17094 of Lujan Lujan Lujan Columbia Road, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 771, and a variance from the off-street parking requirements under subsection 2101.1, to allow commercial (restaurant/public hall) use of the third floor in the C-2-B District at premises 1834 Columbia Road, N.W. (Square 2551, Lot 27).

HEARING DATE: January 13, 2004
DECISION DATE: February 3, 2004

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1C. ANC 1C submitted a letter in support of the application. The OP submitted a supplemental report recommending approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 771 and 2101.1, 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 relief 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.

BZA
Case No. 17228
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17228
EXHIBIT NO. 31

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED.**

VOTE: **3-1-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr. and Geoffrey H. Griffis to approve; Peter G. May opposed to the motion; David A. Zaidain abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB - 6 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL

COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17094

As Director of the Office of Zoning, I hereby certify and attest that on FEB - 6 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Andrea M. Bagwell, Esq.
Harmon Wilmot & Brown LLP
1010 Vermont Avenue, N.W. Suite 810
Washington, D.C. 20005

Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21652
Washington, D.C. 20009

Single Member District Commissioner 1C03
Advisory Neighborhood Commission 1C
P.O. Box 21652
Washington, D.C. 20009

Jim Graham, City Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004

Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY,

FEBRUARY 3, 2004

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The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
DAVID A. ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY	Commissioner

COMMISSION STAFF PRESENT:

BEVERLY BAILEY	Office of Zoning
CLIFFORD MOY	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

two parking spaces required. It's different if it's 35.

BOARD MEMBER ZAIDAIN: Yes.

COMMISSIONER MAY: I'm sorry. I interrupted what you were saying.

VICE CHAIR MILLER: Okay. Well, okay. I first want to finish with area variance and then go into the parking. I heard a lot of testimony with respect to the uniqueness of this property and the prohibitiveness of converting it to residential use for the third and fourth floors. The testimony I heard was, in particular, with respect to there is one stairwell that connects the first, second, third and fourth floors that is interior to the business and goes all the way to the fourth floor.

And in order for them to create residential space upstairs, they would have to build another stairway, which would encroach to a great extent into the business, I think almost taking up too much room, and it would cost -- the figures that they threw out were $100,000 to create an additional staircase, and that it wouldn't work, because it would take up so much room with respect to the restaurant.

We also heard that the fourth floor is not suited for residential use. It has a weak floor

structure and ceilings below allowable height, and it would cost $100,000 to bring that into compliance for residential use.

In addition, we heard that the building is not suited for tenants due to the noise of the restaurant, and that the third and fourth floors have never been used for residential use. And even if we denied the variance, they still wouldn't be able to use those floors. They would just be going to waste, basically. Certainly, some buildings are built to have residents on top and businesses below, but this is an older building and it would be a prohibitive conversion.

With respect to the adverse impact, this business has been operating there for 10 years and we heard testimony that they are contributing members to the community, that there is no adverse impact that has been brought to our attention.

With respect to the parking variance from the requirements for public hall, this case came right on top of our decision making in another case where we denied the variance for public hall, finding that Palmer controlled that case and, therefore, we could not grant a variance in that case. And so I looked at Palmer again for this case.