BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE
DISTRICT OF COLUMBIA

APPLICATION OF
THE CAFRITZ COMPANY

BZA Application No. 17265
ANC 1C01

STATEMENT OF THE APPLICANT

This is an application of The Cafritz Company ("**Applicant**" or "**Cafritz**") for minor area variance relief pursuant to § 3103 to allow the construction of an additional level to an existing elevated pedestrian walkway. The subject site is Lot 831 in Square 2535 and has an address of 1825 Connecticut Avenue, N.W. (the "**Property**").

I.

Nature of Relief Sought

The Property is located in the C-3-C Zone District and is improved with a ten-story office building. Lot 830 immediately abuts the Property and is improved with a twelve-story office building. At this time, the two office buildings are connected by a two-story pedestrian bridge, which was constructed after 1989. This application requests area variance relief from the Board of Zoning Adjustment ("**BZA**" or "**Board**") to permit the construction of an additional level to the existing pedestrian bridge. The necessary zoning relief has been self-certified as shown on the attached Exhibit B. The Applicant requests relief from the requirements of § 771.2 regarding the maximum permitted floor area ratio ("**FAR**") and § 2001.3 regarding enlargement of a nonconforming structure devoted to a conforming use. The Applicant's satisfaction of the standards for granting area variance relief is discussed in detail in Section IV of this statement.

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District of Columbia
CASE NO. 17265
EXHIBIT NO. 26

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to §3103 of the Zoning Regulations.

III.

Background

A. Description of the Property and Surrounding Area

The Property is a triangular lot comprising 53,590 square feet of land area. It is located at the intersection of Connecticut and Florida Avenues, just north of Dupont Circle. The Property is bounded by Florida Avenue to the southeast and Connecticut Avenue to the west. The remainder of the Property abuts Universal North, a twelve story office building which is located on Lot 830. Universal North has frontage on T Street, and is across the street from the Washington Hilton Hotel. As shown in the photographs attached as Exhibit C, the Property abuts Visions, a small movie theatre, which is part of Universal North. Universal South includes retail and restaurant uses such as the Buca di Beppo and Universal Gourmet restaurants and the Newsroom, which sells a variety of local and international newspapers and magazines. The basement of Universal South features a Rite Aid Pharmacy.

The surrounding area is characterized by hotel, restaurant, and residential uses. The Property is across Connecticut Avenue from Russia House, an organization which promotes business relations between the United States and Russia, the Ukraine, and other New Independent States. The Royal Palace club is located across Florida Avenue from the Property, at the intersection with Connecticut Avenue. Many hotels are situated nearby, including the Washington Hilton, located across T Street from Universal North and the Courtyard-Washington Northwest and the Churchill hotels, located across Connecticut Avenue from Universal South.

The Property is located in the C-3-C Zone District. Generally, the C-3 Zone is designed to accommodate major business and employment centers. The C-3-C Zone permits medium-high density development that is compact in area, including office, retail, housing, and mixed-use development.

The Property is improved with a ten-story office and retail building known as Universal South. Although Universal South is a ten-story building, the building is only eight stories for zoning purposes because it is located on an incline. Universal South was constructed in 1957, and Universal North was constructed in 1962. In 1998, the Universal North and Universal South buildings were renovated and a pedestrian bridge was added to connect to two buildings. The Universal South renovations included the construction of a conference center on the eighth and ninth floors of the building.

B. Description of the Project

Cafritz is requesting permission to construct an additional level to its existing two-story pedestrian bridge in order to connect the tenth floor of Universal South to the eleventh floor of Universal North ("**Project**"). Plans for the Project are attached as Exhibit D ("**Plans**"). As shown on the plans, the entire pedestrian bridge is located on the Property.

C. Areas of Necessary Relief

The Project requires minor area variance relief from the maximum permitted FAR. Because there were no FAR limitations in effect in 1957, the FAR was not calculated when Universal South was constructed. A survey of the Property conducted in 1989 concluded that the gross floor area of Universal South was 386,711 square feet. The FAR calculated using the gross floor area from that 1989 survey is 7.2. The pedestrian bridge was constructed after 1989. Although it added approximately 528 square feet of gross floor area to the building, the other

renovation work that was performed at that time resulted in a net reduction of approximately 14,988 square feet. Accordingly, since the 1989 survey, the gross floor area of Universal South was reduced by approximately 14,460 square feet, resulting in a current gross floor area of approximately 372,779 square feet. The current lot area is 53,590 square feet. The Applicant estimates that the current FAR of Universal South is 6.946.

The Project will add an additional 264 square feet of gross floor area to Universal South. This will increase the FAR of the building to 6.951. Under § 771.2 of the Zoning Regulations, the C-3-C Zone District permits an FAR of 6.5. Accordingly, the Project requires minor area variance relief from that section of the Zoning Regulations.

The Project requires additional variance relief because Universal South is a nonconforming building with regard to FAR. The owner of a nonconforming building may construct an enlargement or addition to the building provided the addition or enlargement itself does not increase or extend any existing, nonconforming aspect of the structure. (11 DCMR § 2001.3.) The addition of 264 square feet of gross floor area to a building that is already nonconforming as to FAR will extend the nonconforming aspect of the building.

IV.

The Application Meets the Requirements for Area Variance Relief under § 3103.2 of the Zoning Regulations

The burden of proof for an area variance is well established. The Applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone

plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested area variances.

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

The first part of an applicant's proof in establishing its entitlement to an area variance is demonstrating "that the property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property." *Id.* (internal quotations omitted). The D.C. Court of Appeals has held that to support a variance, "it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant's property and not to the general conditions of the neighborhood." *Id.* at 1168 (internal quotations omitted). Even so, an applicant is not required to demonstrate the unique circumstances are not commonly found to exist with regard all types of properties, in all different zoning districts. Instead, "the rationale behind the uniqueness test is that difficulties that are common to or affect an entire neighborhood, or a substantial portion thereof, are properly addressed by seeking amendment of the regulations themselves from the Zoning Commission." *Id.* at 1167. The uniqueness may arise from a confluence of factors, but must affect a single property. *Id.* at 1168.

Moreover, the exceptional situation or condition standard applies to the "property", not just the "land," and the "property generally includes the permanent structures existing on the land." *Clerics of St. Viator v. D.C. Board of Zoning Adjustment Id.* 320 A.2d at 293-294 (D.C. 1974). The Court repeatedly has rejected the idea that the exceptional situation and undue hardship justifying a use variance must arise from the physical aspects of the land. *See National*

Black Child Development, 483 A.2d at 690. Further, the extraordinary or exceptional condition may be caused by subsequent events extraneous to the land itself. *Monaco*, 407 A.2d at 1097.

Here, the Property is affected by several factors, which, when considered together, create a unique and exceptional situation. First, the existing building is nonconforming and was constructed prior to 1958, when the Zoning Regulations became effective. Accordingly, any project resulting in an increase in FAR for the Property would require an area variance. Universal South also is unique in that renovations to the building performed in 1998 reduced the gross floor area of the original building by approximately 14,460 square feet, bringing the building closer to conformity.

Further, Universal South is architecturally unique in several respects. The interior of Universal South originally featured an internal parking facility that allowed tenants to drive to the floor on which their office was located. This unusual condition was removed in connection with the 1998 renovation. In addition, Universal South features a sister building, Universal North. Universal South and Universal North create an unique complex in which some tenants lease space in both buildings. Two of the floors in Universal South and Universal North are currently connected by a two-story pedestrian bridge, which enables the tenants to access both buildings without exiting them. Although both Universal South and Universal North contribute to the architectural uniqueness of the complex, the exceptional condition is unique to Universal South. The Universal South building is set back from its northern property line, while Universal North was constructed to the property line. As a result, the entire gross floor area of the bridge is attributed to Universal South. If the buildings were not separated from one another, the connection could be accomplished without any change in FAR.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty to Cafritz

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin,* 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

Here, it would be unduly burdensome for the Applicant to comply with the Zoning Regulations. In designing the Project, the architects faced significant difficulty in satisfying the FAR requirements of the Zoning Regulations. There was no FAR requirement in 1957 and, although subsequent renovations decreased the gross floor area of the building, the FAR of Universal South remains nonconforming. Given this nonconformity, even the most minor addition to FAR requires an area variance.

As the D.C. Court of Appeals held in *Gilmartin*, the Board may consider the extent of the variances requested in determining whether the applicant meets the burden of proving practical difficulty. Here, Cafritz is requesting only very minor variance relief. The Project will add only 264 square feet of gross floor area to Universal South. This will not significantly increase the

density on the site. The resulting FAR will be 6.951, only .005 FAR over the existing FAR of 6.946.

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

The requested variances can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zone Plan. As mentioned above, the requested variance is minor and will have little affect on the density of Universal South. Further, as shown in the photographs attached as Exhibit C the proposed addition to the pedestrian bridge is located in a space that is not easily visible from the Connecticut and Florida Avenues. Thus, it will have little aesthetic impact on the Property or the surrounding area. Furthermore, it will not change the scope or character of the uses currently located on the Property.

V.

Exhibits in Support of Application

A. BZA Form 120, Application
B. BZA Form 135, Self Certification
C. Photographs of the Property
D. Plans for Project
E. Zoning Map & Sanborn Atlas excerpts
F. Building Plat
G. Authorization Letter from Property Owner
H. Property Owners' List

VI.

Conclusion

For all of the above reasons, Cafritz respectfully requests approval of the subject application.

Respectfully submitted,



Allison C. Prince



Ashleigh Horne

January 11, 2005

Document #: 1433207 v.2