ORDER DATED AUG 13, 1993 #1

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15461 of Chatham Lake Associates, as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the percentage of lot occupancy requirements (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirements (Subsection 774.1) for construction of a mixed use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: February 27, 1991, April 24, 1991, May 24, 1991 and June 9, 1993

DECISION DATES: September 4, 1991 and June 9, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

Background

1. The application was the subject of hearings in 1991 and 1993. The plans which were reviewed by the Board in 1991 (hereinafter the "1991 plans") depicted a building of 5.96 floor area ratio (FAR), with a height of 77 feet 9 3/4 inches, and a 14-foot tall penthouse. The plans required four variances and two special exceptions, which were granted by the Board by a vote of 5-0 on September 4, 1991. Pursuant to a Settlement Agreement entered into the record, the applicant filed a revised set of plans which were the subject of a further public hearing on June 9, 1993 (hereinafter the "1993 plans"). The 1993 plans depict a building of 5.26 FAR, with a height of 70 feet, and an eight-foot tall penthouse. The 1993 plans require three variances and one special exception. The evidence of record for each of the two proposed developments is set forth below.

The 1991 Hearings

Procedural Matters

2. At the February 27, 1991 hearing, at the request of counsel for the applicant, and in response to the motion to dismiss filed by counsel for several parties in opposition, the Board rescheduled the hearing for April 24, 1991, so that the case could

BZA Case No. 15461 Exhibit No. 50

Board of Zoning Adjustment
District of Columbia
CASE NO. 15461
EXHIBIT NO. 50A1

be properly advertised to indicate that the northernmost portion of the site is zoned R-5-B. A revised zoning memorandum was filed on March 4, 1991 reflecting the necessary relief because of the split zoning of the subject property. Subsequently, to reflect changes to the project as presented to the Historic Preservation Review Board (HPRB), the applicant revised the plans to:

A. Reduce the total gross floor area of the project from 66,785 square feet to 60,710 square feet;

B. Reduce the building height from 84 feet 9 inches to 77 feet 10 inches;

C. Reduce the number of parking spaces in the project from 52 to 49; and

D. Reduce the number of loading berths from two to one.

A supplemental zoning memorandum, dated April 23, 1991, was submitted to the record reflecting these changes.

3. Prior to the April 24, 1991 public hearing, counsel for the opposition filed another objection indicating that the case had not been properly advertised. He stated that Section 2514.2 does not apply to the 1991 plans because the property has not been subdivided into one record lot, and that the split zoning would necessitate a use variance.

The Application

4. The subject property measures 10,187 square feet in land area, and is situated at the northwest corner of 25th Street and Pennsylvania Avenue, N.W. The subject property is primarily zoned C-2-C, with the northernmost 20 feet of the property (784.4 square feet) zoned R-5-B. The subject site is bounded on the north along 25th Street by a series of five-story rowhouse-type condominium apartments which are zoned R-5-B. To the west along Pennsylvania Avenue, the property is bounded by three five-story townhouse structures at 2517-2525 Pennsylvania Avenue, N.W. which are zoned C-2-C. These structures have been designated as historic landmarks. The entire western portion of the square is developed with the Westbridge office, retail and residential complex, which is built to a 90-foot height and 6.0 FAR. The Westbridge property is zoned CR, with 157 apartment units and 218,330 square feet of commercial space.

5. The subject property is currently occupied at the corner of Pennsylvania Avenue and 25th Street by a five-story building, known as the Luzon Building. The building was designed by Nicholas Haller, and was designated as a historic landmark by the D.C. Historic Preservation Review Board (HPRB) by decision dated

September 19, 1990. The subject property also included a two-story building (originally built as two structures), to the west of the Luzon building along Pennsylvania Avenue, which was demolished after completion of the 1991 BZA hearings. Because of the presence of the landmark Luzon Building, the project is subject to review by the Historic Preservation Review Board (HPRB).

6. The applicant proposes to retain the landmark Luzon Building at the corner as part of a mixed-use project to include residential, retail, and office uses with below grade parking for 49 cars on two (2) levels. The proposed project, as presented at the 1991 public hearing, and as shown in the 1991 plans, included a total of 60,710 square feet of gross floor area, of which 31,617 square feet of gross floor area (3.1 FAR) would be for residential use, 24,401 square feet (2.4 FAR) would be for office use, and 4,692 square feet (.46 FAR) would be for ground floor retail use. The height of the project would be 77 feet, 9 3/4 inches.

7. The Board accepted the applicant's witnesses in the 1991 hearings as experts in the fields of architecture, urban planning, historic preservation, real estate appraisal and real estate economics.

8. In the 1991 hearings, the applicant sought area variance relief from the lot occupancy, rear yard, floor area ratio (FAR) and residential recreation space requirements, and special exception relief for the roof structure and to allow the zoning limitations of the C-2-C district to be applied to the R-5-B portion of the lot, in order to construct the project.

9. The applicant's expert architect witnesses testified that the subject site includes the existing landmark Luzon Building, which was designated by the HPRB as a historic landmark. As part of the extensive discussions and negotiations with the community, the D.C. Preservation League (DCPL), and the Historic Preservation Division of DCRA between 1989 and 1991 and in order to meet the applicable tests under the District's historic preservation law, the applicant proposed in the 1991 plans to save the entire facade and interior structural elements of the Luzon at significant expense, with an addition which mandates a lower height than matter of right, plus substantial setbacks from the Luzon Building in order to respect its architectural and historic integrity.

10. The architect testified that the landmark structure is a regularly shaped rectangular building on an irregularly shaped angular corner lot, creating inefficiencies in the layout of any structure on or addition to the site.

11. The architect stated that the Luzon occupies a significant portion of the subject site, which is a corner lot,

thus leaving limited areas for development. Because the Luzon is not built to the lot line on the corner, approximately five percent of the site at the corner is unusable. The existence of the landmark structure with its particular design and layout creates design constraints which represent an exceptional condition, limiting any new development of the site in terms of architecture, site planning and development.

12. The architect stated that the exceptional condition relates to the presence of the rock conditions so close to the surface compounded by the need to preserve the historic landmark. Studies conducted prior to the 1991 BZA hearings indicated the presence of rock at the bottom of the second basement level. In order to excavate deeper than the second level, blasting would be required. In order to accomplish the necessary excavation of two levels, the Luzon will be stabilized and suspended in air above the excavation area on three sides, and underpinned on the fourth side. This procedure will require exceptional additional costs when compared to construction of a new building on vacant land. The landmark structures to the west and the rowhouse-type condominium apartments to the north of the site must be stabilized as well. The witnesses testified that, regardless of cost, blasting the rock to excavate deeper than two levels for additional below grade space is not practical since it would jeopardize the existence of the historic Luzon Building, and could also affect the abutting buildings.

13. The architect further stated that the particular and exceptional design of the landmark Luzon Building requires special treatment in the design of the proposed addition, particularly the need to keep the building addition lower than matter of right zoning would allow, the need to set back the addition from the landmark building to make the Luzon appear as a separate structure, and the construction of the addition on an irregularly shaped portion of the lot to be compatible with the Luzon.

14. The expert real estate economic consultant for the applicant performed an economic analysis of the subject site focused on the impact of preserving the historic landmark, coupled with the presence of rock conditions at this location. The economic consultant concluded that the additional costs to preserve the landmark, coupled with the rock conditions, constituted an exceptional situation or condition affecting the property.

15. The architect testified that the rear yard of the project on this site would be located entirely in the C-2-C portion of the site. The Zoning Regulations require a 15-foot rear yard in the C-2-C District; none is provided. The provision of a rear yard on the site would result in a 15-foot wide strip running the full depth of the site (100 feet) adjacent to the five-story landmark townhouse to the west of the site. The applicant's witnesses

testified as to the extensive discussions over many months by the applicant with the neighborhood, the DCPL and the Historic Preservation Division staff between 1989 and 1991, which resulted in the 1991 plan. The expert architect witness testified that to accommodate the preservation of the Luzon Building and incorporate the design solution achieved through these discussions requires that the addition be substantially set back above the height of the Luzon Building, creating in effect a "front yard" totalling 2,475 square feet (over 1.5 times the requirement of the rear yard) in the 1991 plan. The witness testified that in order to respect the historic landmark in a manner consistent with the historic preservation law, the building addition that would normally be placed at the front corner of the site (the location of the historic structure) has been shifted into the rear yard.

16. The height of the addition as shown in the 1991 plan was 77 feet 9 3/4 inches; the C-2-C zone permits 90 feet. The expert architect witness testified that the additional building mass that would be located on the eighth floor under a matter-of-right development without the landmark has been spread over the site and into the area of the rear yard in the 1991 plan. To provide the rear yard and include an eighth floor would result in practical difficulties, as it would be inconsistent with the historic preservation goals of the project.

17. The architect testified that the provision of the rear yard would also result in a practical difficulty since the applicant, consistent with community wishes and sound urban architecture principles, has designed the 1991 plan to provide a continuous urban streetscape along Pennsylvania Avenue and to promote a continuous retail presence along that portion of the avenue. The witness stated that providing the 15-foot rear yard would leave a broken span between the building and the adjacent five-story townhouses to the west, which is inappropriate in terms of urban design.

18. The architect testified that the percentage of lot occupancy requirements of the C-2-C zone vary with use. Commercial buildings are permitted to occupy 100 percent of the site. Mixed use buildings which contain residential uses in the C-2-C District are limited to an 80 percent lot occupancy. The lot occupancy for the R-5-B District is 60 percent. The combined lot occupancy limitation given the 60 percent limit in the small R-5-B portion, and the 80 percent limit for the remainder, is 78.4 percent. The project as shown in the 1991 plan had a 97 percent lot occupancy at the ground level.

19. The expert architect witness testified, that to effectively develop the site, strict application of the lot occupancy limitation would require that the additional building mass in the 1991 plan (which was spread throughout the lot) be

placed over the top of the Luzon Building, to a height of 90 feet throughout the vast majority of the site. The volume of building that would otherwise be placed over the top of the Luzon Building in the 1991 plan (including the additional story permitted by zoning that was not included due to the peculiar and exceptional situation imposed by the landmark) was spread out over the site, thereby increasing the lot occupancy. In essence, the important preservation need to set back away from the historic structure and to keep the project low in scale, forced the applicant to occupy more of the site.

20. The expert architect witness testified, that the regulations governing percentage of lot occupancy presume a regularly shaped building on a regularly shaped lot, with a similar footprint from the ground up. Instead, the 1991 plan, because of preservation concerns, had setbacks of 24 - 33 percent of the lot area in the floors above the landmark structure, and a height which was one floor less than matter of right for the vast majority of the site. The architect testified that the average lot occupancy for all seven floors in the 1991 plan yielded 78 percent, as compared to the 80 percent allowed for mixed use projects in the C-2-C District, and the overall combined lot occupancy limitation for the site of 78.4 percent.

21. The expert architect witness testified that alternative development options were explored and there is no practical way to develop the site in accordance with the lot occupancy requirements, while providing proper setbacks to the landmark and ensuring an occupiable building. If the 1991 plan was required to meet the 78 percent combined lot occupancy regulations (C-2-C and R-5-B) on the ground floor level, with a set back in accordance with the preservation objectives and no eighth floor, the top two floors would have dropped to 57 percent and 48 percent lot occupancy, with an average lot occupancy of 61 percent. Such setbacks would have made the upper two floors of residential use impractical and infeasible given the amount of space required for the building core.

22. The expert architect witness testified, that complying with the floor area ratio (FAR) requirements results in practical difficulties. The Zoning Regulations for the C-2-C District allow a maximum of 6.0 FAR, of which not more than 2.0 FAR is permitted for nonresidential uses. The FAR for the R-5-B portion of the site is 1.8 FAR for residential uses. The overall FAR (matter of right) for the site (combined C-2-C and R-5-B) is 5.68, of which 1.85 FAR may be for nonresidential uses. The 1991 plan, as presented at the 1991 public hearings, had 5.96 FAR, with 2.86 FAR for nonresidential uses.

23. The expert architect witness testified that the landmark structure and the small irregular site resulted in an inefficient

layout in the 1991 plan where the core occupied about 1/3 more percentage of the floor space than in an ideal condition. This core averaged over 17 percent of the gross floor area, whereas an allocation for a core of this size would be expected to be less than 13 percent of the gross floor area. This inefficiency resulted in approximately 2,300 square feet of the gross floor area (0.23 FAR) being unnecessarily used for the core in the 1991 plan because of site conditions.

24. The architect testified that rock conditions on the site severely limit the ability to excavate an additional level below grade, for office/retail "back of the house" space. Such space is a typical feature of many mixed-use projects (2311 M Street and 2401 Pennsylvania Avenue are two recent examples in the West End identified by the expert architect witness). The 1991 plan included two garage levels to accommodate parking projections. The evidence of record indicates that the demand for on-site parking in this area is such that the project would not be viable without it.

25. The expert architect witness testified that studies indicate rock at the bottom of the second basement level. To excavate, the adjacent historic townhouse to the west and the southernmost 25th Street rowhouse-type condominium apartment building must be stabilized and the Luzon Building must be suspended on piles and needle beams. He stated that because of fragile conditions on the site, the blasting of additional levels below grade poses a risk too great to undertake, regardless of cost.

26. The expert architect witness testified that the inability to provide one floor below grade for office or retail "back of the house" use equates to an area of approximately 10,000 square feet (approximately 1.0 FAR equivalent). He stated that with 6.0 FAR above grade and one floor of usable area below grade, the matter of right gross construction for residential and commercial uses would total 71,745 square feet, or 11,035 square feet more than proposed in the 1991 plan, but for the rock condition beneath the landmark. Thus, if the rock condition were not present and the landmark structure did not have to be protected from blasting, an additional cellar level could have been included in the 1991 plan and no increase in nonresidential FAR would have been necessary.

27. The Zoning Regulations require that residential recreation space be provided for 15 percent of the residential gross floor area of the project situated within the C-2-C District, or 3,895 square feet. The architect testified that the 1991 plan provides nine percent residential recreation space (2,382 square feet). Because of rock conditions, substantial below grade space could not be allocated to residential recreational space as would be expected in such a project. In addition, with the footprint

that was developed in the 1991 plan, which maximized retail, and included the necessary residential and office lobbies, core, parking and loading areas, and held the building away from the landmark to the greatest extent possible, there was no space at grade for on-site recreation.

28. In order to maximize efficiency and minimize excess bulk in the 1991 plan, the architect testified that the residential recreational space could not be placed in the above grade space. In addition, the main roof level was not feasible for residential recreation use. This roof is not accessible to the handicapped due to the low 14-foot penthouse in the 1991 plan which was the result of negotiations with the community, DCPL and the staff of the Historic Preservation Review Board. This low penthouse height precluded elevator access to this roof. In addition, the location of the rooftop machinery on this main roof made the location of residential recreation space here infeasible.

29. The expert architect witness testified that, in the 1991 plan, the roof of the Luzon Building was devoted to residential recreation space on site, and that there was also a residential common space room in the P.2 level for on-site recreation space. He also testified that although not counting toward the residential recreation space requirement, the 1991 plan included a landscaped passive recreation area (1,533 square feet) in the public space on 25th Street adjacent to the property, between the sidewalk and the building. If this area did count toward the calculation, the residential recreation space requirement would have been met.

30. In reviewing the impacts of the rear yard variance, the architect testified that the rear yard of the proposed building in the 1991 plans abutted the wall of the neighboring five-story commercial property to the west (Lot 27). That property is built with a party wall to its side lot line. The expert architect witness testified that the proposed building in the 1991 plan would have no light and air impacts on the adjacent building to the west or the Westbridge, particularly when compared to the matter of right situation which would include a 90-foot high, 6.0 FAR building with a penthouse of 18 feet 6 inches on the C-2-C portion of the subject site.

31. The expert architect witness stated that in practical terms, this corner lot actually has no "rear". From a technical standpoint, the C-2-C District makes no provision for alternatives to providing a rear yard for corner lots, such as the subject property. In the C-3-B District (which allows less FAR and height, and has a more stringent rear yard requirement than the C-2-C District), a court in lieu of a rear yard is allowed. The proposed project configuration in the 1991 plan and mandated setbacks above the historic structure provided courts which would meet the court in lieu of rear yard provisions.

32. The architect stated that the proposed project in the 1991 plan, without the rear yard, would continue the streetscape rhythm along Pennsylvania Avenue, N.W. Provision of the rear yard in the 1991 plan would make the continuity of the streetscape and the continuity of the retail space along Pennsylvania Avenue impracticable. The architect testified that the applicant designed the 1991 plans, consistent with community concerns, to enhance street life and vitality, maximize safety and retail presence, as well as to respect the landmark. The provision of an unutilized, open gap between the project and the adjacent townhouse to the west would provide none of the above. The architect further noted, in assessing any technical impact from not providing a rear yard, that the Luzon Building is presently nonconforming as to rear yard, as well as lot occupancy and residential recreation space.

33. The expert architect testified that in terms of lot occupancy, a matter of right commercial building in the subject C-2-C District is permitted a 100 percent lot occupancy. The 80 percent limitation is the maximum lot occupancy when residential uses are provided in a building in the C-2-C District. The lot occupancy for the R-5-B District is 60 percent. He testified that the 1991 plan included a mixed use project with retail, office and residential uses, on a relatively small, irregularly shaped site, with a landmark building. An analysis of the 1991 plans indicated that the commercial and residential floors of the building (one through five) were less than 100 percent lot occupancy. The pure *residential floors in the 1991 plan (six and seven) were* substantially less than 80 percent lot occupancy. In terms of the impact of the increase in lot occupancy in the 1991 plan, the architect noted that the shadow studies indicated no adverse light and air impacts upon adjacent properties. Further, the building in the 1991 plan abutted only side yards of adjacent properties, which are built to the property line. No side yard is required in either the C-2-C or the R-5-B zone.

34. The architect testified that, in terms of visual impacts of the 1991 plan, even though the FAR of the project as presented at the 1991 hearing exceeded the 5.68 FAR requirement by 0.28 FAR, the building height was substantially less than matter of right (77 feet 9 3/4 inches versus 90 feet). The architect stated that by limiting the FAR to 6.0 in a zone permitting 90 feet in height, the Zoning Regulations anticipated significant sculpting and modeling of facades. The proposed project's bulk in the 1991 plan would be effectively reduced by such sculpting on the street facades: (1) the setback above the Luzon Building; (2) the seventh floor setbacks on Pennsylvania Avenue and 25th Street; and (3) the lack of an eighth floor which the Zoning Regulations would otherwise permit.

35. In terms of the increase in commercial FAR in the 1991 plan, the architect stated that the building was designed to look "residential". The office uses would be situated along Pennsylvania Avenue, with the residential uses along 25th Street in character with existing conditions. If non-FAR below grade office and retail "back of the house" space could be included in the project (assuming no limiting rock condition below the landmark), the building would actually have had more square footage, and therefore more occupants, than under the 1991 plan.

36. The architect stated that the shadow studies for the 1991 plan did not indicate any adverse impacts from the increase in FAR upon adjacent or nearby properties, as compared to a matter of right project.

37. The architect stated, that there would be no adverse impacts from the reduction in on-site residential recreation space. The 1991 plans indicated 1,858 square feet of recreation space on the roof, plus 524 square feet residential recreation space on Level P-2 and an additional 1,533 square feet in the gardens on 25th Street (in public space) for a total of 3,915 square feet, which would exceed the residential recreation space requirement for the 1991 plan. The garden space on 25th Street technically does not count because it is not within the property lines. In addition, many of the residential units in the 1991 plan had their own balcony. Further, Rock Creek Park abuts Square 14 on the west, and the C & O Canal is also within two blocks, providing almost limitless outdoor recreational opportunities.

38. Special exception relief is required for the 1991 plan related to the zoning boundary line crossing a lot and the penthouse setback requirements.

39. Subsection 2514.2 of the Zoning Regulations provides that the Board may permit the regulations applicable to that portion of a lot located in a lesser restrictive district that control the use, height, and bulk of structures and the use of land to be extended to that portion of the lot in a more restrictive district as long as certain requirements are met. In terms of the specified requirements, such extension to that portion of the lot in the more restrictive district shall not exceed thirty-five feet (35 feet). The applicant's witness testified that the R-5-B portion of the site is 20 feet in width.

40. The architect testified, that the extension will have no adverse effect upon the present character and future development of the neighborhood. Only approximately eight percent of the site is located in the R-5-B zone. The R-5-B portion of the site is adjacent to the nonconforming rowhouse-type condominium apartments along 25th Street. The architect testified at the 1991 hearing that the Zoning Regulations would allow the R-5-B portion of the

subject property lot to be developed with a 60-foot residential building and the C-2-C portion to be developed to 90 feet. He stated that in the 1991 plan, the R-5-B portion of the site would be developed with residential uses, and a small portion of the indoor loading berth which would serve both the residential and nonresidential uses.

41. The regulations allow the Board to impose requirements pertaining to design, appearance, screening, location of structures, lighting or other requirements it deems necessary to protect adjacent or nearby property. As further set forth later in this order, the 1991 plan as revised by the plan set forth in the applicant's July 1, 1991 submission to the Board would adequately protect adjacent and nearby property.

42. The architect testified that the design of the 25th Street facade in the 1991 plan, including that portion located in the R-5-B zone, was residential in nature and would be compatible with the other rowhouses along 25th Street, and had a height of 77 feet 9 3/4 inches. The architect stated that, in the 1991 plan, 87 percent of the 25th Street frontage on the site would be below the permitted zoning height, and only 13 percent would be above such permitted height. The average building height along the 25th Street frontage permitted by zoning at the time of the 1991 hearing was 86 feet. The project was designed in the 1991 plans to a height of less than 78 feet along 25th Street, with a major portion of the building at 56 feet in height (the Luzon portion).

43. Special exception relief under Section 411.11 of the Zoning Regulations was necessary to approve the roof structure shown in the 1991 plans. The architect testified that the regulations would require that the roof structure be set back from all exterior walls a distance equal to its height, which in the 1991 plans was 14 feet. The 1991 plans met the setback requirements of 14 feet, with the exception of an area along 25th Street which was within 10 feet 8 inches of the setback of the edge of the roof related to the preservation of the historic building. The architect testified that the penthouse was set back substantially more than 14 feet from the property line. The penthouse in the 1991 plans was designed to be as small as possible, but the setbacks were constrained due to the preservation-oriented setback for the Luzon.

44. The architect testified that meeting the setback requirement in the 1991 plan would have been unduly restrictive and unreasonable. The proposed mixed use building in the 1991 plan required three elevators and associated mechanical space. For that building to function effectively, the penthouse could not be relocated any further. Even though technically the penthouse did not meet the setback requirements, the penthouse exceeded such setback requirements when measured from the property line.

Therefore, light and air issues were not impacted. The strict application of this requirement would have required a sloped wall for a portion of the roof structure, which would have been architecturally inappropriate. In addition, the portion of the roof structure where the setback was not met contained the stair tower to the roof, which continued up from the lower floors; thus, relocating the stairs would have been unduly restrictive and unreasonable.

45. In response to issues related to fire safety in the 1991 plan, the architect submitted several memoranda in 1991 regarding fire safety and firefighting ability. These memoranda indicate that the Fire Department operating procedure does not include access across privately owned property, and that the block is adequately served by the existing public alley system, which would be left unchanged, and by the Pennsylvania Avenue and 25th Street frontages. The memoranda also indicated that the project was reviewed and the subject site was visited by the local Battalion Fire Chief of the Fire Station at 2225 M Street, N.W. which serves the subject site, and that he concluded that the proposed project would not negatively impact fire fighting abilities within the block.

46. The Office of Planning (OP), by report dated April 23, 1991, recommended approval of the 1991 plans. OP stated that the applicant's project met the burden of proof to be granted the requested variances and special exceptions. OP found that, given the design and site constraints created by the physical irregularities of the site as well as the historic preservation requirements, the proposed project was the most suitable development for the subject site. OP noted that the proposed design was more responsive to the neighborhood residential context by far than other buildings in the area, including the Westbridge. OP recommended that because historic preservation issues were so prevalent, the Board should leave the record open to receive the HPRB report and decision.

47. The transcript of the HPRB decision dated May 1, 1991 was entered into the record, indicating that the HPRB granted conceptual design approval to the project, but requested that the roof structure be further lowered. OP also testified about this matter at the public hearing.

48. The Department of Public Works (DPW) by report dated February 22, 1991, stated that the additional traffic generated by the proposal could be accommodated by the existing street system. The report indicated that because the Luzon is a historic landmark no parking or loading is required, although the 1991 plan included both parking spaces and loading facilities. The report further stated that trucks presently service the site through the existing alley. DPW stated it had no objection to the application.

49. By report dated March 14, 1991, the Fire Department stated it had no objection to the development.

50. By report dated March 21, 1991, the Department of Finance and Revenue stated it had no objection to the application.

51. By letter dated January 28, 1991, the Police Department stated that the proposed addition would not adversely affect the public safety in the vicinity of the subject site and would not create an increase in demand for public services. The Police Department stated it did not oppose the development request.

52. Advisory Neighborhood Commission (ANC) 2A, by testimony and written report presented at the hearing, opposed the 1991 plans for the project. The ANC stated that it was opposed to the degree of deviation of the project from the matter of right development standards. The ANC testimony indicated that the C-2-C zone district regulations require that a certain amount of residential space be built. The ANC stated that these deviations decreased the predominantly residential character of the square. Other issues raised by the ANC included:

A. Access by fire and other emergency vehicles to the inner core of the block would be reduced by the closure of the "alleyway" from 25th Street, NW;

B. Access to the proposed loading dock would create congestion at peak times, increase pedestrian hazards when trucks back up, and substantially increase noise levels;

C. On-street parking would be reduced; and

D. A large number of the residential units would lose privacy, quiet, light, sun, and views to varying degrees, including the windows in a light well of the adjacent rowhouse-type condominium apartment building in the R-5-B district along 25th Street, N.W.

53. The ANC stated there was also "anecdotal" evidence that the public may have a vested right to the "alleyway" along the northern edge of the subject site. The ANC recommended that the Board have the appropriate District office investigate the issue of adverse possession.

54. By report dated February 25, 1991, ANC 2E supported the position of ANC 2A in opposition to the 1991 plans for the project. The ANC report failed to meet the requirements of Section 3307 of the Zoning Regulations.

55. By testimony at the hearing, ANC 2B spoke in opposition to the 1991 plans for the project. The report of the ANC does not meet the requirements of Section 3307 of the Zoning Regulations.

56. Numerous letters of support for the 1991 plans for the project were submitted by adjacent property owners, local businesses and residents of the area, including residents of the Westbridge.

57. A number of neighborhood residents, many living in the Westbridge condominium, several of which were represented by counsel, presented a panel in opposition to the 1991 plans for the project. Reasons for opposition included the project's mass and scale, traffic, impacts upon the 25th Street condominium apartments, fire safety considerations, and opposition to blocking the "alleyway" on former Lot 61. The opponents stated that the split-zoned site required that 72 percent of the project be residential and that the developer was decreasing the amount of residential provided. Concern was expressed that only corporate-sized units were being provided in the 1991 plans. Counsel for the residents raised the issue that the "self-imposed hardship" standard applies to area variance cases, such as the subject application.

58. Several residents of the adjacent townhouse condominium apartment buildings along 25th Street also opposed the 1991 plans for the project. In addition to the above, the primary concern was that the project would block certain windows within a closed court on the adjacent apartment building.

59. By testimony at the 1991 hearing, the Foggy Bottom Association opposed the 1991 plans for the project because of the project's density, the impacts of new construction on adjacent structures, the fact that 25th Street is residential, and that the area is low scale in development.

60. A number of letters of opposition were also submitted to the record.

61. In light of the concern about blocking the windows of the light well in the adjacent 25th Street apartment building, the Board requested information concerning a matter of right development on the northernmost portion of the subject property, formerly known as Lot 61, and how development of the subject property would impact the windows on the property line of the apartment building at 1112 25th Street. The Board asked that the applicant and the Office of Planning consider zoning and building code issues related to the impacts of the development on the light and air provisions concerning this apartment building.

62. By submission dated May 17, 1991, and by testimony at the May 24, 1991 hearing, the applicant's architect provided the requested information regarding the matter of right development of former Lot 61 and the impacts of the project blocking windows of the adjacent rowhouse.

63. Based upon the architect's analysis and review of the existing conditions and the matter of right scheme, the architect presented a revised proposal for the 1991 plan which achieved the same result to the adjacent rowhouse as would occur under a matter of right development. The architect revised the 1991 plan to create a court niche on the subject site adjacent to the nonconforming closed court on 1112 25th Street to ensure light and air to the nonconforming closed court would not be impacted by the new development. To further maximize light within the court area, the architect testified that all faces of the court niche would be painted a light (white) color. In addition, the new court niche would be extended down below grade to align with the existing nonconforming closed court. This would result in an improvement over the existing condition on Lot 72, as it would double the size of the court at that level.

64. In terms of windows, the architect testified that the 1991 plan, as modified by the May 17, 1991 submission, would have the same impact as the matter of right scheme. The windows along the alley and the windows within the nonconforming court would remain unobstructed. The windows on the fourth floor addition would be blocked, just as they would under a matter of right development.

65. By supplemental report dated, May 20, 1991, OP stated that the applicant's modification minimizes possible adverse impact on the light and air flow in the existing closed court. The OP stated, however, that the applicant's modified plans created an open court, and not a court niche.

66. In response to concerns raised at the May 24, 1991 hearing, the Board requested that the Office of Planning schedule a meeting for all parties to discuss all of the issues one more time and to bring all interested parties up to date on the proposal, with an opportunity for compromises. Written submissions regarding the meeting were to be filed with the Board.

67. The Office of Planning conducted the meeting on June 4, 1991. At the meeting, the applicant agreed to a number of actions, including seeking a meeting on-site with representatives of the Police Department, Fire Department and DPW to discuss safety and access issues, and agreeing to explore modifications to the plans.

68. In its posthearing submission of July 1, 1991, the Applicant submitted photographs of the massing model prepared in

response to the request by the Board, as further embellished pursuant to the request of several neighbors. The massing model was prepared showing the building as presented during the public hearing with the court niche, and also showing a setback of 15 feet from the public alley in the R-5-B portion of the property. The model was displayed and discussed at the June 4, 1991 meeting with the community.

69. The applicant indicated in the 1991 posthearing report that after having analyzed the neighborhood concerns and the comments of the Board in more detail, and in order to respond to those concerns to the greatest extent possible, the applicant designed an alternate plan for the portion of the building in the R-5-B zone district adjacent to the closed court of the apartment building to the north of the site, at 1112 25th Street. The alternate plan indicated the western wall of the new construction as being flush with the easternmost portion of the closed court in order to maximize the light and air to the closed court on the neighboring building, and still provide a reasonable interior layout for the residential units on the subject site. The increase in setback at this portion of the building would result in a reduction in the overall FAR of the building to 5.85 (0.17 FAR above matter of right). Any further setback at this point would not have achieved any further opening of the closed court, and would have severely compromised the interior layout of the residential units in this portion of the project.

70. In addition, in order to maximize privacy in this location, the applicant offered in the 1991 posthearing submission not to put balconies along the western wall of the project adjacent to the light well. Under the definition of "gross floor area" in the Zoning Regulations, balconies projecting up to six feet from the face of the new project could be placed at this location without generating any additional FAR in the project.

71. The applicant's posthearing submission indicated that, as requested by the community, the applicant agreed that the leases for the residential units in the project would specify a duration of at least 12 months. In terms of unit size, the applicant stated that he intended to respond to market demand for unit size, at the time the project moved forward.

72. The applicant's posthearing submission indicated that the applicant would work with the engineers as the penthouse machinery is designed, to further lower the penthouse. In its 1991 conceptual design approval, the HPRB requested the applicant to work to lower the height of the penthouse. As a penthouse height is lowered, its footprint spreads out. The architects indicated at the June 4, 1991 meeting that they would be seeking a way to lower the penthouse height and decrease the footprint at the same time.

73. By submission dated July 1, 1991, parties in opposition filed their posthearing submission. The submission indicated that the project was too dense, and that the project would increase congestion in the alley and impede fire safety operations.

74. Based upon the evidence and testimony, on September 4, 1991, the Board voted 5-0: (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill) to approve the 1991 plan, subject to the following conditions:

A. Construction shall be in accordance with the plans marked as Exhibit No. 52 of the record as modified by Sheet SK2 of Exhibit No. 110I of the record.

B. No balconies shall be constructed on the western wall of the project.

C. Leases for residential units in the project shall be for a minimum term of 12 months.

D. The applicant shall have the flexibility to modify the height of the penthouse and to make design modifications as required by the Historic Preservation Review Board or the Mayor's Agent in compliance with D.C. Law 2-144.

Settlement Agreement and 1993 Plans

75. By letter dated November 25, 1992, counsel for the applicant requested the Board to exercise its authority to reopen the record in this case and conduct a further hearing on designated issues. The letter indicated that a settlement agreement was pending, which required a modification of the approved 1991 plans, reflecting interior reconfigurations and a reduced height and FAR.

76. At its public meeting of April 7, 1993, the Board exercised its authority, on its own motion prior to issuing an order, to authorize a further hearing limited to the issue of the revised plans for the project. Notice of the further public hearing was sent on April 29, 1993 to all parties in the case, and to ANCs 2A, 2B, 2E, and to the applicant.

77. At the further hearing, the applicant testified that subsequent to the Board's 1991 vote of approval, litigation was instituted challenging a number of aspects of the project. Subsequently, the applicant and members of the opposition entered into settlement discussions, which culminated in a Settlement Agreement governing a number of different aspects of the project. The Settlement Agreement obligates the applicant to return to the Board with a modified plan to reduce the approved building by one story, with a reconfiguration of uses within the building. The entire sixth floor will be devoted to residential use. In

addition, there will be residential use at three levels accessible from 25th Street at the north end of the project (basement, first and second floors). The applicant is obligated to devote a minimum of approximately 48 linear feet of ground floor street frontage along Pennsylvania Avenue (24 linear feet on each side of the building entrance), to a minimum depth of approximately 16 feet, to retail/service uses. The remainder of the building will be devoted to any nonresidential use permitted in the C-2-C zone district although the applicant will use best efforts to have the ground floor occupied for permitted retail/service uses. The applicant will restore the Luzon Building in accordance with the plans as approved for issuance of a building permit, and the development plan will remain essentially unchanged if the Luzon Building is damaged before or during construction, or prior to occupancy, including but not limited to the construction of the underground garage. The agreement to devote 48 linear feet of retail/service uses, and to restore the Luzon in accordance with the building permit plans, will be subject to covenants to be recorded on the Land Records of the District of Columbia. The Settlement Agreement also addresses a number of issues raised during the course of the public hearing in 1991. The applicant testified that the plan modifications are intended to address, to the greatest extent possible, all the legitimate issues expressed by the community.

78. The applicant's expert architect witness described the revised building design and interior layouts, as reflected in the 1993 plans, and the justifications therefor. The reduction by one floor required a redesign to make the building architecturally proportionate. The redesigned building improves upon the residential character of the architecture, and responds to the architecture of the historic landmark buildings in the block.

79. The architect testified that as a result of the changes reflected in the 1993 plans, the areas of zoning relief have been reduced from six to four as follows:

A. Variances

1) Residential recreation space - variance eliminated.

2) Percentage of lot occupancy - variance already approved by the Board.

3) Rear yard - variance already approved by the Board.

4) Floor Area Ratio.

a. Total FAR - Variance eliminated.

b. Nonresidential FAR - the proposed nonresidential FAR exceeds that approved by the Board, by 12,321 square feet, approximately the area of one floor.

B. Special exceptions

1) Roof structure setback - special exception eliminated.

2) Extend use, height and bulk regulations from C-2-C to R-5-B - The Board has previously approved the same bulk, and a greater height, than that proposed in the 1993 plans. The 1993 plans include a mixture of 53 percent residential and 47 percent nonresidential in the 20-foot section of the building which is zoned R-5-B.

80. The architect testified that in addition to the previous exceptional situations affecting the site, there are four new exceptional situations or conditions unique to the site as follows:

A. Recent studies to assess the full impact of the requirement to retain the full landmark building, including the original wooden interior structure, and provision of remedial noncombustible interior structural redundancy necessary for code compliance indicate that these measures significantly increase the construction cost and extend the construction duration significantly over what was originally anticipated.

B. The HPRB's subsequent denial of a 12-foot tall penthouse on this structure after the Board approval of the 14-foot penthouse in 1991, coupled with the reduction of the building by one floor, results in a need to lower the penthouse even further, so that it is not visible from street level. The reduction of penthouse height has caused a substantial redesign, and has caused the reduction of one elevator from the building.

C. Recent soil borings completed in 1993 after the site clearing indicated rock at a higher elevation than indicated in previous studies. Based on the new borings, approximately 15,000 cubic feet of additional rock excavation is required.

D. The Settlement Agreement achieved with the community is comprehensive, and places additional restrictions on the physical configuration of the building, and includes a number of other features.

81. The architect testified that the necessary reduction in height and footprint of the penthouse caused the elimination of one elevator from the building. With two elevators in the 1993 plan, instead of three, the nature and mix of uses within the building of necessity had to change. Both elevators will be devoted to commercial use, with one of the two elevators also available for residential use. The architects maximized the amount of residential space accessible directly from the street, without elevators, by increasing the number of units along 25th Street from one to four. The reduction of one elevator has eliminated the ability to provide mixed uses on each floor, with separate elevator lobbies. The top two floors of the building are radically different in footprint, and therefore the ability to stack residential units on these two floors is lost. All of these factors resulted in the residential configuration as shown on the 1993 plans.

82. With the limitation on elevator service and the dissimilarity of the top two floors, the requirement for more residential space would be a practical difficulty from a physical perspective. The height reduction in the 1993 plan has resulted in a loss of overall area in the building to a point not only less than previously approved, but also less than that allowed in the regulations. This is combined with the greater cost for preserving the structure and the greater anticipated cost for removal of subsurface rock, to impose severe financial limitations on the project. The 1993 plan, with the building reduced by one floor, with a reduced penthouse, with one less elevator, with four residential units on 25th Street, with the other conditions imposed by the Settlement Agreement, with the additional rock, and with the additional cost for building retention, is a development that is no longer physically achievable or economically viable within the mix and configuration of uses previously approved by the Board in 1991, or within the matter of right regulations.

83. The applicant testified that the extension of 47 percent nonresidential use into the 20-foot wide section of R-5-B property will have no adverse affect on the present character and future development of the neighborhood. The 1993 plan has residential uses on four of the seven floors within the R-5-B zone district. While the 1993 plan has 2,600 square feet of residential within the R-5-B portion, the amount of residential use accessible from 25th Street has quadrupled in the 1993 plan to 4,200 square feet. The residential use is appropriately located at the street level (basement, first and second floors) between the property line to the north, and the logical terminous of the parking garage entrance to the south. The commercial uses in this portion of the building are at the third, fourth and fifth floor levels, which will not interfere with the residential character at the street level.

84. The Office of Planning, by report dated June 2, 1993, recommended approval of the modified application. OP concluded

that the applicant is faced with practical difficulties, and that the proposed project is the most suitable development for the site. OP also believes that the use, height, bulk and design of the project would be in harmony with the use, height, bulk and design of other properties and structures in the surrounding neighborhood. OP concluded that the applicant has met its burden of proof.

85. Councilmember Jack Evans (Ward 2), by letter dated June 3, 1993, indicated his support for the revised development proposal, because it successfully balances several issues of concern to the Foggy Bottom and West End neighborhoods.

86. The testimony of record indicates that on January 14, 1993 ANC 2A voted 3-1, with 2 members absent, to support the revised application. However, under the ANC's internal rules, this does not represent a quorum, the ANC did not take an official position, and did not forward a written report to the Board.

87. Letters of support were received from Commissioner Sara Maddux, ANC 2A06; Commissioner Westy McDermid, ANC 2E04; and Commissioner Dennis Bass, ANC 2B04; in support of the application. Commissioner Chris Lamb, ANC 2A02; testified in support of the application.

88. Four parties to the application, who were previously opposed, testified in support of the revised application. These four individuals were part of the group which negotiated the Settlement Agreement with the applicant. Their testimony indicated that the neighbors at the Westbridge and on 25th Street, adjacent to the development site, strongly support the revised proposal. The revised proposal satisfactorily addresses the issues previously raised by the community in opposition, including neighborhood character, scale and safety. The Settlement Agreement includes various protections related to all of these areas of concern, and reduces the number of areas of zoning relief. The testimony indicated that the revised proposal is a reasonable compromise, given the number of different considerations discussed.

89. Six letters of support from parties, and a number of other letters of support from persons, were submitted into the record. One letter of opposition was submitted by a person, not a party to the application.

FINDINGS OF FACT:

Based upon the evidence of record, the Board makes the following findings of fact:

1991 Plans

1. As to the procedural matters raised at the 1991 hearings, the Board finds that Section 2514.2 applies to a "lot" and that under the Zoning Regulations, a lot is defined more broadly than just a record lot. The Board finds that the advertisement of the case, as amended, is proper.

2. The Board finds that, in the 1991 hearings, the applicant sought area variance relief from the lot occupancy, rear yard, floor area ratio (FAR) and residential recreation space requirements, and special exception relief for the roof structure and to allow the zoning limitations of the C-2-C District to be applied to the R-5-B portion of the lot, in order to construct the project.

3. The testimony and evidence of record indicates, and the Board finds, that the exceptional situations or conditions affecting the site result from a combination of various factors specific to the subject property. These factors are the physical configuration and attributes of this site, the existence of a historic structure on this site and the impact of rock conditions as they relate to the landmark, all of which combine to constitute exceptional conditions affecting the property. Specifically, the Board finds:

A. The landmark structure is a regularly shaped rectangular building on an irregularly shaped angular corner lot, creating inefficiencies in the layout of any structure on or addition to the site.

B. The existence of the landmark structure with its particular design and layout creates design constraints which represent an exceptional condition, limiting any new development of the site in terms of architecture, site planning and development.

C. The site is impacted by subsurface rock conditions that require blasting to construct the two level below grade garage. To excavate deeper than two levels is not practical since it would jeopardize the existence of the historic Luzon Building and could also effect abutting buildings.

D. The particular and exceptional design of the landmark Luzon Building requires special treatment in the design of the proposed addition, particularly the need to keep the building addition lower than matter of right zoning would allow, the need to set back the addition from the landmark building to make the Luzon appear as a separate

structure, and the construction of the addition on an irregularly shaped portion of the lot to be compatible with the Luzon.

The Board also finds that the presence and configuration of the historic landmark, the physical characteristics of the site and the rock conditions present practical difficulties to the owner in developing the project.

4. The Board finds that the provision of a rear yard on the site would result in a 15-foot wide strip running the full depth of the site adjacent to the five-story landmark townhouses to the west of the site. The open strip would be inappropriate and would result in practical difficulties.

5. The Board finds that in order to respect the historic landmark in a manner consistent with the historic preservation law, the building addition that would normally be placed at the front corner of the site (the location of the historic structure) has been shifted into the rear yard.

6. Based upon the evidence and testimony, the Board finds that compliance with the lot occupancy requirement would result in practical difficulties to the applicant due to the presence of the existing historic landmark.

7. The Board finds that additional costs and added inefficiency of preserving a historic structure, with associated set backs and historic preservation-oriented design changes, represent a practical difficulty to the applicant in complying with the requirements for FAR in the 1991 plan.

8. The Board finds that complying with the residential recreation requirements in the 1991 plan imposes a practical difficulty upon the applicant. In order to maximize efficiency and minimize excess bulk in the 1991 plan, the Board finds that the residential recreation space could not be placed in the above grade space including the main roof level. The Board further finds that there would be no adverse impacts from the reduction in on-site recreational space.

9. The Board finds that the proposed project in the 1991 plan, without the rear yard, would be appropriate and would continue the streetscape rhythm along Pennsylvania Avenue, N.W. Provision of the rear yard in the 1991 plan would make the continuity of the streetscape and the continuity of the retail space along Pennsylvania Avenue impracticable. The construction of the addition as shown in the 1991 plan would impose no new conditions over the existing situation since the historic Luzon Building is presently nonconforming as to rear yard.

10. The Board finds that the proposed project in the 1991 plan would have no impact on adjacent yards.

11. The Board finds that through sculpting as described in Summary of Evidence No. 34 the additional FAR would not result in a "bulkier" building.

12. The Board finds that the self-imposed hardship standard is not applicable in this case.

13. The Board finds that the extension of the use, height and bulk requirements of the C-2-C District into portions of the site in the R-5-B District is in compliance with 11 DCMR 2514.2.

14. The Board finds that the proposed roof plan in the 1991 plan was consistent with the intent and purpose of Section 411.11 of the Zoning Regulations. The proposed roof plan was designed so as to provide the maximum setbacks possible from the building and the penthouse setbacks exceed the requirements as measured from the property line. The light and air of adjacent buildings would not be affected.

15. The report of Advisory Neighborhood Commission (ANC) 2A meets the requirements of Section 3307 of the Zoning Regulations. The reports of ANC Commissions 2E and 2B do not meet the requirements of Section 3307.

16. The Board finds that the posthearing alternate plan design for the portion of the building in the R-5-B District adjacent to the nonconforming closed court of 1112 25th Street to be the appropriate solution as set forth in the Summary of Evidence of Record Nos. 69 and 70.

17. The Board finds that the applicant's posthearing submission in 1991 satisfactorily addressed the issues regarding the Police Department, Fire Department and DPW. In addition, the submission satisfactorily addressed the other issues raised at the OP meeting of June 4, 1991 regarding traffic, alley access for emergency vehicles, loading access both to this project and to other properties, trash removal, and access to parking.

18. The Board is required to give "great weight" to the issues and concerns of the ANC. In addressing ANC 2A's concerns, (and those of ANC 2B and 2E) regarding the 1991 plan, and the concerns of members of the community in opposition to that plan, the Board finds the above Findings of Fact to be responsive to the issues and concerns raised in addition to the following:

A. Based upon the evidence of record, the Board finds that the proposed height and density of the 1991 plan are appropriate given the subject site's location. The

project is located in an area of varying heights and the project has been designed to be compatible with its surroundings. Further, the Board finds that the design of the 1991 plan is sensitive to the landmark Luzon Building and to the other buildings in the area. The Board finds that the 1991 plan, which is more than 12 feet below the permitted matter of right height for the majority of the subject property, will not have an adverse impact upon adjacent properties.

B. As to the concerns expressed by the ANC and others regarding fire safety and alley access, the Board finds that those issues have been adequately addressed by the Fire Department and DPW, and concurs with those agencies.

C. The Board finds that the applicant has demonstrated that its parking and loading demand can be met without impacting the adjacent properties.

D. The Board finds that the unimproved portion of the subject property, known as former Lot 61, is private property.

E. The Board finds that the 1991 plan, as conditioned herein, is appropriate and will adequately protect adjacent and nearby property.

19. Based upon the evidence and testimony, on September 4, 1991, the Board voted 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill) to approve the 1991 plan, subject to the following conditions:

A. Construction shall be in accordance with the plans as marked as Exhibit No. 52 of the record as modified by Sheet SK2 of Exhibit No. 1101 of the record.

B. No balconies shall be constructed on the western wall of the project.

C. Leases for residential units in the project shall be for a minimum term of 12 months.

D. The applicant shall have the flexibility to modify the height of the penthouse and to make design modifications as required by the Historic Preservation Review Board or the Mayor's Agent in compliance with D.C. Law 2-144.

Settlement Agreement and 1993 Plans

20. The Board finds that the applicant and members of the opposition entered into a Settlement Agreement. The agreement obligates the applicant to a number of strict controls over developing the site as enumerated in Summary of Evidence of Record No. 77.

21. The Board finds that as a result of the changes reflected in the 1993 plans, the areas of zoning relief have been reduced from six to four as set forth in Summary of Evidence of Record No. 79.

22. In addition to the exceptional situations or conditions affecting the site as stated under Finding of Fact No. 3, the Board finds four new exceptional situations or conditions unique to the site as stated by the applicant's architect in Summary of Evidence of Record No. 80.

23. The Board finds that the previously approved FAR of 5.85 has been reduced to 5.26 in the 1993 plans. The revised plans include 4.07 FAR of nonresidential use, which is 1.2 FAR greater than that approved by the Board. This additional FAR is a direct result of the need to lower the building and shrink the penthouse size.

24. The Board finds that a strict application of the regulations would impose a practical difficulty based on Summary of Evidence of Record Nos. 81 and 82.

25. The Board also finds that relief can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The 1993 plans provide for residential continuity on 25th Street, with a significant residential component at the street level, including the basement, first and second floors. The building has a distinctly residential character through its architectural design. The building height is limited to 70 feet for the building and 78 feet overall, which is less than 75 percent of the allowable height for the building and penthouse together. The execution of the Settlement Agreement is another indication of the revised plan as consistent with the public good.

26. The Board finds that the extension of the nonresidential use into the 20-foot wide section of the R-5-B zoned portion of the site will have no adverse affect on the present character and future development of the neighborhood as stated in Summary of Evidence of Record No. 83.

27. Based upon the architect's testimony and the evidence of record, the Board also finds that the conditions previously imposed by the Board on the 1991 approval are adequate to protect adjacent and nearby properties.

28. The Board finds that several individual ANC Commissioner's wrote letters in support representing ANC 2A, 2B and 2E. Four parties to this case who were previously opposed, testified in support of the revised application.

29. The Board finds that notice and an opportunity to participate either in person, or in writing, was given to all parties to the application regarding the 1993 plans, and that no party appeared, either in person or in writing, in opposition to the revised application at the further hearing.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact, and the evidence of record, the Board concludes that the applicant is seeking three variances and one special exception for the project as reflected in the 1993 plans. The variances relate to the rear yard (774.1), lot occupancy (772.1) and floor area ratio (771.2). Granting of the variances requires a showing of practical difficulty upon the owner arising out of some unique exceptional situation or condition affecting the property, and that relief can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose or integrity of the zone plan.

The special exception pertaining to the zone boundary crossing a lot requires a showing that the applicant has complied with the requirements of Subsection 2514.2.

The Board concludes that the applicant has met its burden in respect to the variances. The rear yard, lot occupancy, and FAR variances are necessitated by the exceptional circumstances affecting the site which render it unique as hereinabove found by the Board. Due to the exceptional situations or conditions including the physical characteristics of the site, the presence of the landmark and the retention of the interior wood structure, the rock conditions, the HPRB rejection of the 12 foot penthouse, and the comprehensive Settlement Agreement with the community, the Board concludes that the strict application of the Zoning Regulations would impose a practical difficulty.

The Board concludes that the existence of a historic landmark on the site, and the special considerations for the addition imposed thereby, have been found by the D.C. Court of Appeals to constitute an exceptional situation or condition warranting variance relief. United Unions v. D.C. Board of Zoning

Adjustment, 554 A.2d 313 (D.C. 1989). The Board also concludes that the presence of existing structures on a site was found to be a basis for area variance relief in the case of Clerics of St. Viator v. District of Columbia Board of Zoning Adjustment, 320 A.2d 291, 294, (D.C. 1974).

The Board concludes that the D.C. Court of Appeals has also found that "the approval of a variance [is appropriate] where the uniqueness arises from a confluence of factors." Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1168 (D.C. 1990).

In regard to the issue raised by counsel for the opposition that the "self-imposed hardship" standard applies to area variance cases, the Board notes that the D.C. Court of Appeals again in Gilmartin v. District of Columbia Board of Zoning Adjustment, 579 A.2d 1164, 1169, specifically stated that ".... prior knowledge or constructive knowledge that the difficulty or hardship is self-imposed is not a bar to an area variance ...." Further, the Court stated that the exceptional situation or condition "... need not have preceded the promulgation of the zoning regulation."

The Board concludes that the applicant has met the burden for the granting of the special exception pertaining to the boundary zone crossing the lot. The applicant's modified plans provide light and air to the light well of the adjacent penthouse. The height and design of the project is consistent with the character of the rowhouses along 25th Street. The mix of uses in this portion of the building is such that the residential uses are appropriately located at the street level, thereby contributing to the residential character of the streetscape to the maximum extent possible. The commercial uses in this portion of the building will be located in floors three through five, and will be accessed from the Pennsylvania Avenue lobby, and not from 25th Street.

The Board further concludes that the application can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

Accordingly, it is hereby **ORDERED** that the application is **GRANTED SUBJECT** to the following **CONDITIONS:**

1. Construction shall be in accordance with the revised plans presented at the public hearing, marked as Exhibit No. F-22 of the record, with the following flexibility:

    a) Flexibility to modify the design as required by the Historic Preservation Review Board or the Mayor's Agent in compliance with D.C. Law 2-144.

b) Flexibility to modify the number of residential units, subject to tenant demand, provided that the gross floor area devoted to residential use is as shown on the revised plan.

c) Flexibility to devote a minimum of 48 linear feet of ground floor street frontage (24 linear feet on each side of the building entrance) to a minimum depth of 16 feet (as shown on the revised plan) or any amount greater than that, to permitted retail/service uses.

d) Flexibility to devote the remainder of the building to any permitted use in the C-2-C zone district.

e) Flexibility on any of the above conditions, to comply with applicable code and regulatory requirements.

2. No balconies shall be constructed on the western wall of the project.

3. Leases for residential units in the project shall be for a minimum term of 12 months.

VOTE: 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 13 1993

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord15461/rcl/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15461

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 13 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. ROBINSON
Director

DATE: AUG 13 1993.

1546latt/LJP

ORDER DATED
MARCH 7, 1994
#2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15461 of Chatham Lake Associates, as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the percentage of lot occupancy requirements (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirements (Subsection 774.1) for construction of a mixed use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: February 27, 1991, April 24, 1991, May 24, 1991 and June 9, 1993

DECISION DATES: September 4, 1991 and June 9, 1993

DISPOSITION: On September 4, 1991, the Board **GRANTED** the application, with **CONDITIONS**, by a vote of 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill to grant). On June 9, 1993, the Board **GRANTED** the application, as further amended, with **CONDITIONS**, by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting).

FINAL DATE OF ORDER: August 13, 1993

MODIFICATION ORDER

The Board granted the application by its order dated August 13, 1993 subject to three conditions. By letter dated January 14, 1994, counsel for the applicant filed a timely request for modification of the plans originally approved by the Board.

The proposed modification of plans would result in the modification of the window design and the location of the loading door and fire exits on the north elevation and the removal of the windows along the top floor and vertically down the rear portion of the west elevation. The proposed modification of plans is intended to make the approved plans consistent with the Board's condition requiring the removal of balconies on the north elevation and the revised floor plans contained in the plans marked as

Exhibit No. F22 of the record. In all other respects the plans remain as approved. No further zoning relief is required. There was no opposition to the proposed modification of plans.

The Board waived Subsection 3335.6 of the Board's Rules which provides that no member shall vote on a request for modification of plans unless the member participated in and voted on the original decision. The membership of the Board has changed since the original decision in this application. Those Board members who did not participate in the original decision on this application were provided with copies of the transcript and record of the subject case for review prior to consideration of the request for modification of plans.

Upon review of the request for modification of plans, the record of the case, and its final order, the Board concludes that the proposed modification of plans is generally cosmetic and minor in nature. The proposed modification of plans does not alter the material facts relied upon by the Board in deciding the application. No additional zoning relief is required. It is therefore **ORDERED** that the proposed **MODIFICATION OF PLANS** is hereby **APPROVED, SUBJECT** to the **CONDITION** that the north and west elevations of the building shall be constructed in accordance with the plans marked as Exhibit No. F41A of the record. In all other respects, the order of the Board dated August 13, 1993, shall remain in full force and effect.

DECISION DATE: **February 2, 1994**

VOTE: 4-0 (Angel F. Clarens, Maybelle Taylor Bennett and Craig Ellis to approve; Laura M. Richards to approve by absentee vote; George Evans not voting, not having read the record).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: MAR 7 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15461ord/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15461

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAR 7 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Madeliene H. Robinson

MADELIENE H. ROBINSON
Acting Director

DATE: MAR 7 1994