Holland Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
www.hklaw.com

CHRISTOPHER H. COLLINS
202 457 7841
chris.collins@hklaw.com

September 13, 2005

VIA HAND DELIVERY

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

Re: Application No. 17367 for Variance Relief
2129 S Street, N.W. (Square 2532, Lot 13)

Honorable Members of the Board:

On behalf of the applicant in the above-referenced case, enclosed please find an original and twenty copies of the applicant's prehearing submission in support of the application for variance relief. Thank you for your attention to this application.

Sincerely,

Christopher H. Collins

Enclosure

cc: Vincent Hurteau (w/enclosure – via UPS)
Greg Kearley (w/enclosure – via UPS)
Jennifer Steingasser, Office of Planning (w/enclosure – via UPS)
Advisory Neighborhood Commission 2D (w/enclosure – via UPS)

3177210_v1

BZA
Case No. 17367
Exhibit No. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 17367
EXHIBIT NO. 20A1

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF	**BZA APPLICATION NO. 17367**
HURTEAU PROPERTIES, LTD.	**HEARING DATE: SEPTEMBER 27, 2005**
	ANC 2D

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Hurteau Properties, Ltd. (the "Applicant"), the owner of property located at 2129 S Street, N. W., Lot 13 in Square 2532 (the "Site") in support of the application to the Board of Zoning Adjustment (the "Board"), pursuant to 11 DCMR Section 3103.2 for a use variance under Section 320.3 to allow the renovation and conversion of a vacant building, formerly used as a private school, into a 4-unit condominium apartment building, and area variances from Section 2001.3 and Section 403, to allow an elevator to be installed within an existing non-conforming closed court, and to allow a parking pad to be constructed at the rear of a non-conforming structure in an R-3 district.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance relief requested herein pursuant to Section 3103.2 of the Zoning Regulations. 11 DCMR § 3103.2.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Portion of the Sanborn Atlas showing the Site;
Exhibit B:	Surveyor's Plat of the Site;
Exhibit C:	Portion of the Zoning Map showing the Site;
Exhibit D:	BZA Appeal No. 1322;
Exhibit E:	Certificate of Occupancy No. 39567;
Exhibit F:	BZA Order No. 16497;
Exhibit G:	BZA Orders approving other multiple dwelling uses on 2100 block of S Street, N.W.
Exhibit H:	Architectural Plans and Drawings;
Exhibit I:	Outline of Testimony of Vincent Hurteau, Developer; and
Exhibit J:	Outline of Testimony of Greg Kearley, Architect.

IV.
BACKGROUND

A. Description of the Site

The Site is located on the north side of S Street, N.W., between Connecticut Avenue and Phelps Place, N.W. *See* Sanborn Atlas Plat (Exhibit A), and Surveyor's Plat (Exhibit B). The site is zoned R-3. *See* Zoning Map (Exhibit C). The five-story plus cellar building on Lot 13 was originally designed as a single-family residence by Nathan Wyeth and was constructed by John Nolan in 1910. The first occupant was John Biddle, the Vice Consul to Belize City. The building, which measures 55.5 feet in height and approximately 9,024 square feet in size, was converted to private school use pursuant to BZA Appeal No. 1322, dated June 13, 1945 (Exhibit D). The

Holton Arms School was originally located at 2115-2125 S Street, N. W., and BZA Appeal No. 1322 granted approval to extend the school use west to include the subject property.

The building has been used since 1945 as a private school by a number of different organizations. The most recent Certificate of Occupancy, CO 39567, dated August 20, 2002 (Exhibit E), allows International Internship Programs to use the building as a "Proprietary School (student enrollment 200)". The prior Certificate of Occupancy (No. BQ7047, dated March 2, 1976) was for a language school, with the same student enrollment capacity.

The main building of the former Holton Arms School, at 2125 S Street, N. W. (Lot 49 in Square 2532) was converted to an 8-unit condominium pursuant to BZA Order No. 16497, dated October 27, 1999 (Exhibit F). The Applicant in the instant case seeks to do essentially the same thing, to allow the subject property to be converted to a 4-unit condominium. The difference is that the Holton Arms School was originally built as a school, whereas this building was originally built as a very large residence, but has been occupied as a school for the past 60 years.

When the most recent private school vacated the subject property, it was on the market for over 3-1/2 months before a contract was submitted. No interest was expressed for purchase and use of the property for either a school, or a single-family dwelling, or any of the other permitted matter-of-right or special exception uses in the R-3 zone. The only expressions of interest were for renovation of the building into multiple dwellings.

B. Description of the Proposed Development

The Applicant purchased the property earlier this year and intends to redevelop it into a 4-unit condominium. The largest unit, comprising approximately 5,000 square feet, will be his home, and the other three units, measuring between 900 and 1200 square feet, will be sold. An apartment building is not a permitted use in the R-3 zone. Therefore, a use variance is required.

As shown on the Architectural Plans and Drawings attached hereto as Exhibit G, there is an existing non-conforming closed court on the west side of the building, measuring approximately 5.5 feet by 8 feet, which will be used as the elevator shaft, as well as accessory storage space on every floor. This closed court is currently included in the definition of "building area," and is therefore currently included in the lot occupancy calculation for the building.

At the rear of the building, a parking pad will be installed between the rear face of the building and the rear lot line. A garage door will also be installed in the masonry wall separating the rear of the property from the adjacent public alley. The parking pad will be at the same grade level as the alley. The property currently slopes from the alley level down approximately 8 feet to the first floor level, and is similar in nature to an area way. Accordingly, the inclusion of the parking slab over this area will increase the lot occupancy. The building currently exceeds the permitted lot occupancy limitation. Although originally constructed as a row dwelling, which is permitted 60% lot occupancy in the R-3 zone, the most recent use of the building as a private school, and the proposed multiple dwelling

use, would both be considered in the category of "all other structures," thus allowing a maximum lot occupancy of 40%. The current lot occupancy is 75%, and the addition of the parking pad at the rear of the property will increase the lot occupancy to 95.6%. Thus, variances are required from Sections 403.2 and 2001.3.

V.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

The existing building was built well before the establishment of any Zoning Regulations in the District of Columbia. As discussed below, and as will be further explained at the public hearing, the Applicant meets the requirements for use variance relief to allow the conversion of the building to an apartment building, and area variance relief to allow an elevator to be installed within an existing non-conforming closed court, and to allow a parking pad to be constructed at the rear of a non-conforming structure.

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

The building on Lot 13 was designed in 1909 in the English Georgian Revival style by Nathan L. Wyeth, who was a prolific architect in the District during the early twentieth century. The building was constructed in 1910 as a single-family dwelling of five stories plus cellar, and 55 feet, 6 inches in height, as measured from the grade elevation at the middle of the front of the building, to the ceiling of the top story.

Although originally constructed as a single-family dwelling, the subject

property in this case was converted 35 years later, and has been used for over sixty years, or almost two-thirds of its life, as an educational institution. Accordingly, there have been extensive interior renovations to the building, so that it is configured more as an office or institutional use than as a dwelling. The building is very large, containing over 9,000 square feet of useable floor area on six levels, with no on-site parking. The building has a unique interior layout, specifically designed for institutional private school use, and even, if reconfigured, is too large for a modern single-family dwelling use in this immediate location.

The uniqueness of a building on a lot has been held to satisfy the first part of the three-part variance test. Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) involved a use variance in order to convert an existing religious seminary to a convalescent or nursing home. The building in that case was a 12-year old modern religious seminary.

For all of the above reasons, the property is affected by an exceptional situation or condition.

B. The Strict Application of the Use Regulations Would Impose an Undue Hardship.

The property is located in an R-3 zone. Uses permitted as a matter-of-right in the R-3 zone include a single-family detached, semi-detached, or row dwelling, church or other place of worship, parsonage, vicarage, rectory or Sunday school building, embassy, public school, and certain community-based residential facilities. Permitted accessory uses include an office of a physician or dentist residing on the premises, a child development home, a small bed and breakfast, and a home

occupation. Uses permitted by special exception include a child development center, a private school, a utility substation, a private stable, a community center, a college or university, a clerical or religious group residence for more than fifteen persons, a church program building, a non-profit organization, and certain larger community-based residential facilities.

The strict application of the Zoning Regulations would impose an undue hardship. The previous owner of the property, International Internship Programs, extensively marketed the building throughout the Washington Metropolitan area. Given the interior layout and configuration of the property, there are very few permitted uses to which it is currently suited. The property was on the market for over 3-1/2 months. No individual or organization sought to purchase the property for any permitted matter-of-right or special exception use when it was on the market. More than thirty prospective purchasers viewed the property, but only two contracts were presented for purchase of the property, both of which were for multiple dwelling purposes.

The large building is not well suited for conversion to modern single-family dwelling use. Given the lack of interest in the market place for any use of the building other than multiple dwelling use, it would not be economically prudent for an owner to redevelop the building for any matter-of-right or special exception purpose on a speculative basis, and no reasonable investor would support such an endeavor. It is not reasonable to adapt the subject building to a single family home, or a school, or a house of worship, or one of the few other matter of right uses

permitted in the R-3 zone, in the hope that eventually, someone would come along some day and buy the property.

The proposed number of units in the building is a function of the building size and layout, the renovation costs, and the real estate market. Given the housing market in that area, and the absence of on-site parking, and the character of the immediate neighborhood and the surrounding apartment house conversions, the market would support units in the range of 900 and 1,200 square feet. The building has been used as a school for the last 60 years, and contains over 9,000 square feet of floor area on 6 levels. Renovation back to a residential use will not be inexpensive. Given all of the above factors, it would be logical to expect that a building of that size could be converted up to 8 or 9 apartment units. In this instance, the owner has devised a plan for 4 units, keeping a large unit for himself, and creating three other units of 900 to 1,200 square feet in size. The financial infeasibility of creating 2 or 3 units in the building is again a function of the building size and layout., the renovation costs, and the real estate market.

Although this is a use variance application, it is important to note that conversion of an existing building to apartment house use is permitted as a matter of right in the R-4 zone, provided that there is 900 square feet of land area per unit. The site contains 2,125 square feet of land area, but over 9,000 square feet of building area, and thus would have an effective FAR (if FAR was calculated in the R-3 zone) of about 4.0-4.5. The density of this existing non-conforming building in the Sheridan Kalorama Historic District is consistent with R-5-D or R-5-E zoning.

The current lot occupancy of the building exceeds the maximum permitted lot occupancy in those zones. Demolition of the building is not an option, due to its prominence and its location in a historic district. The size and density of the historic building reinforces both the exceptional situation or condition, and the undue hardship if the use variance is not permitted.

In Palmer v. D.C. Board of Zoning Adjustment, 287 A.2d 535 (D.C. 1972), the Court stated that in a use variance case,

> it must be shown that the regulations 'preclude the use of the property in question for any purpose for which it is reasonably adapted, i.e., can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof.' 287 A.2d at 542 (emphasis in original).

It is not reasonable to adapt the subject building to any conforming use, because the market has demonstrated that there is simply no demand for any conforming use of the building. Because there is no such demand, there can no "fair and reasonable return" to the owner. For all of the above, the strict application of the regulations would impose an undue hardship.

C. The Strict Application of the Area Regulations Would Impose a Practical Difficulty.

The building is a non-conforming structure which exceeds the permitted height, number of stories, percentage of lot occupancy, rear yard and width of open court and closed court. Additions and enlargements may be made to a non-conforming structure as a matter-of-right provided that certain requirements are met. In this case, those requirements are not met.

Area variances are required as follows:

- *Section 2001.3(a)*. The structure now exceeds the percentage of lot occupancy requirement.

- *Section 2001.3(b)(1)*. The addition or enlargement of the structure itself does not conform to use and structure requirements. Specifically, the elevator to be installed within the existing closed court will be used for the purpose of serving an apartment house, which is not a permitted use in the R-3 zone. In addition, the construction of the parking pad at the rear will exceed the permitted lot occupancy requirement.

- *Section 2001.3(b)(2)*. The parking pad will increase and extend the existing non-conforming lot occupancy, but will not create any new non-conformity of structure and addition combined.

- *Section 403*. The permitted lot occupancy for "all other structures" in the R-3 zone is 40%. The current lot occupancy is 75%, and the addition of the parking pad in the rear will increase the lot occupancy by 20.6% to 95.6%.

All of the above area variances are required because of the proposed inclusion of a parking pad at the rear of the building. Variances from Subsections 2001.3(a) and (b)(1) are also required because the existing closed court will be filled in by an elevator. The building is five stories tall, plus cellar, and the Building Code requires that there be an elevator in the building. The existing closed court is ideal for use as an elevator shaft, whereas drilling through each floor slab to create an

elevator shaft would pose a practical difficulty. Parking at the rear of the building will be practically difficult, and technically impossible, without a level parking pad built at the grade level of the adjacent alley.

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

The proposed 4-unit condominium apartment use is a residential use in a residential zone in a residential neighborhood. The proposed use will be much less dense than the most recent permitted use of the property as a school for up to 200 students, as well as many of the other uses that are permitted as a matter-of-right or by special exception.

The proposed use will be consistent with prior Board approvals in the immediate area. Many of the properties in the R-3 zone along the north side of S Street, between Florida and Phelps have been approved by the Board for multi-family dwelling uses. See Exhibits F and G.

The proposal will provide a stabilizing effect on the neighborhood, will be consistent with the mix of uses in the area, and will significantly decrease the density of use of the building. The additions to the building are modest, and are intended to enhance building circulation and to provide as much on-site parking as possible, where there is currently none. These building additions will not be readily visible from the public space and will have no impact on light and area of adjacent properties. For the reasons stated herein, relief can be granted without substantial

detriment to the public good and without substantially impairing the intent, purpose or integrity of the zone plan.

VI.
COMMUNITY SUPPORT

The Applicant has worked with the community and has obtained extensive support for the Project. The Applicant met with Advisory Neighborhood Commission ("ANC") 2D, the ANC in which the Project is located, to present its project. ANC2D voted unanimously at its meeting of June 20, 2005 to support the application.

VII.
WITNESSES

A. Vincent Hurteau, Hurteau Properties, Ltd.

B. Greg Kearley, Inscape Studio.

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

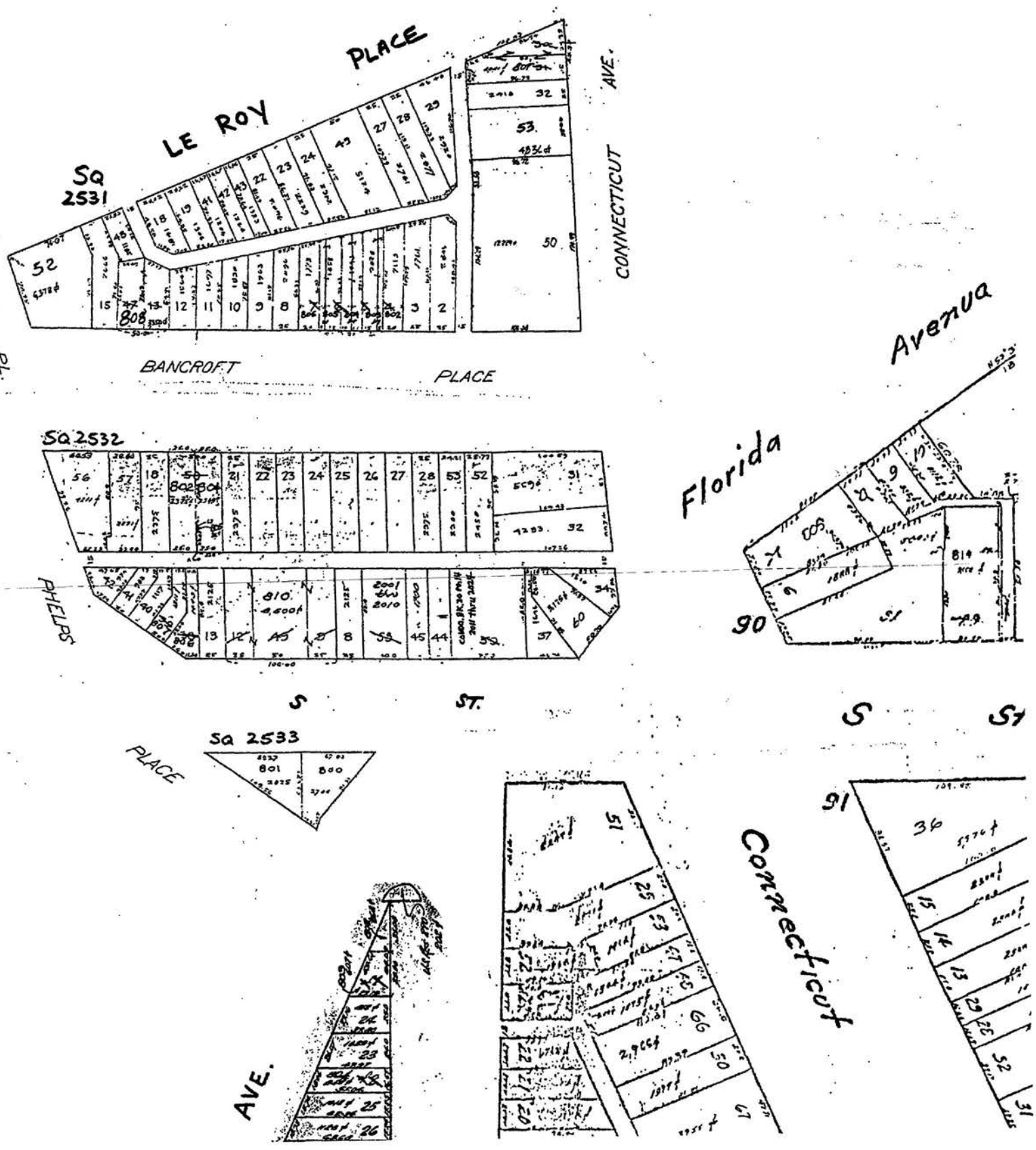
By: _____
Christopher H. Collins, Esq.

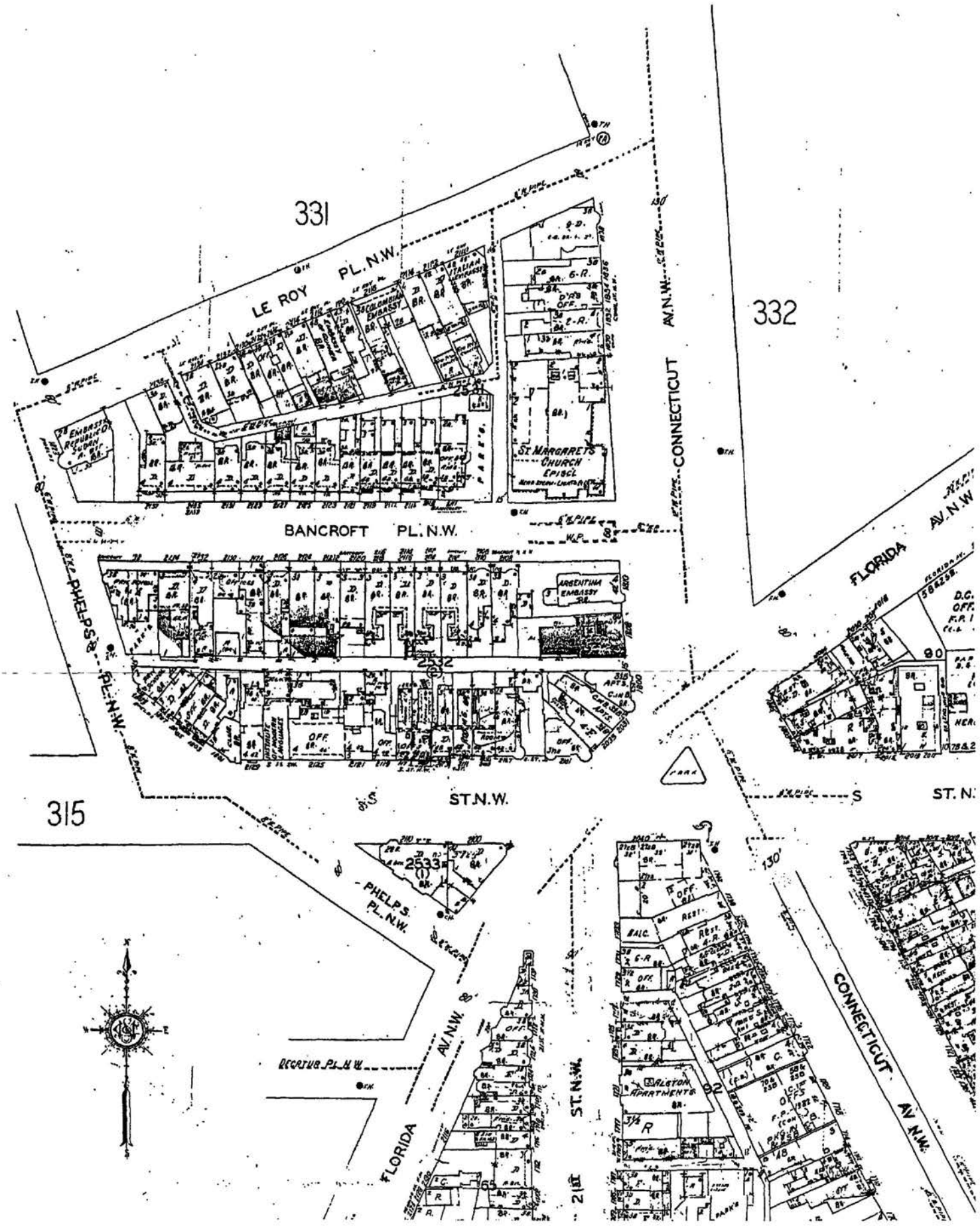
By: _____
Kyrus L. Freeman, Esq.
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

3144550_v4

A

316


PLACE
LE ROY
SQ 2531
CONNECTICUT AVE.
BANCROFT PLACE
PHELPS PL.
SQ 2532
Florida Avenue
PHELPS
S ST.
SQ 2533
PLACE
AVE.
Connecticut


331
LE ROY PL. N.W.
332
CONNECTICUT AV. N.W.
BANCROFT PL. N.W.
PHELPS PL. N.W.
FLORIDA AV. N.W.
315
ST. N.W.
PHELPS PL. N.W.
FLORIDA AV. N.W.
ST. N.W.
CONNECTICUT AV. N.W.
RECTOR PL. N.W.
ARGENTINA EMBASSY
ITALIAN EMBASSY
COLOMBIAN EMBASSY
ST. MARGARET'S CHURCH EPISC.
ALTON APARTMENTS
2532
2533
PARK

B

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., April 28, 2005

Plat for Building Permit of SQUARE 2532 LOT 13

Scale: 1 inch = 20 feet Recorded in Book Co. 9 Page 90

Receipt No. 19010

Furnished to: HOLLAND & KNIGHT / FREDA HOBAR

Surveyor, D.C.

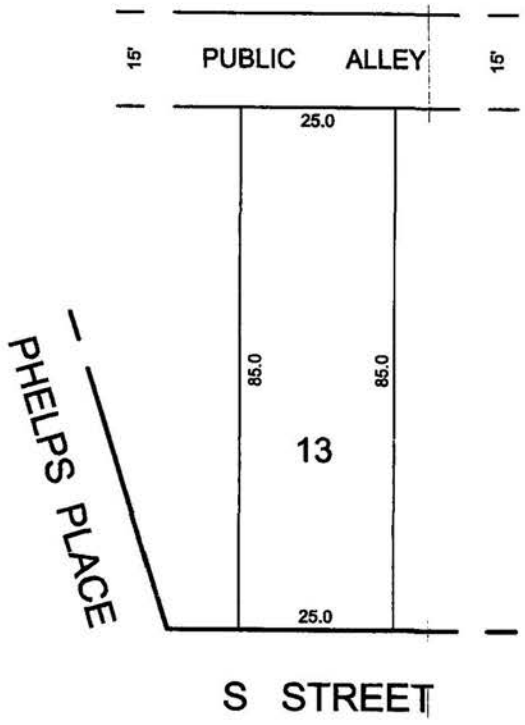
By: L.E.S.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

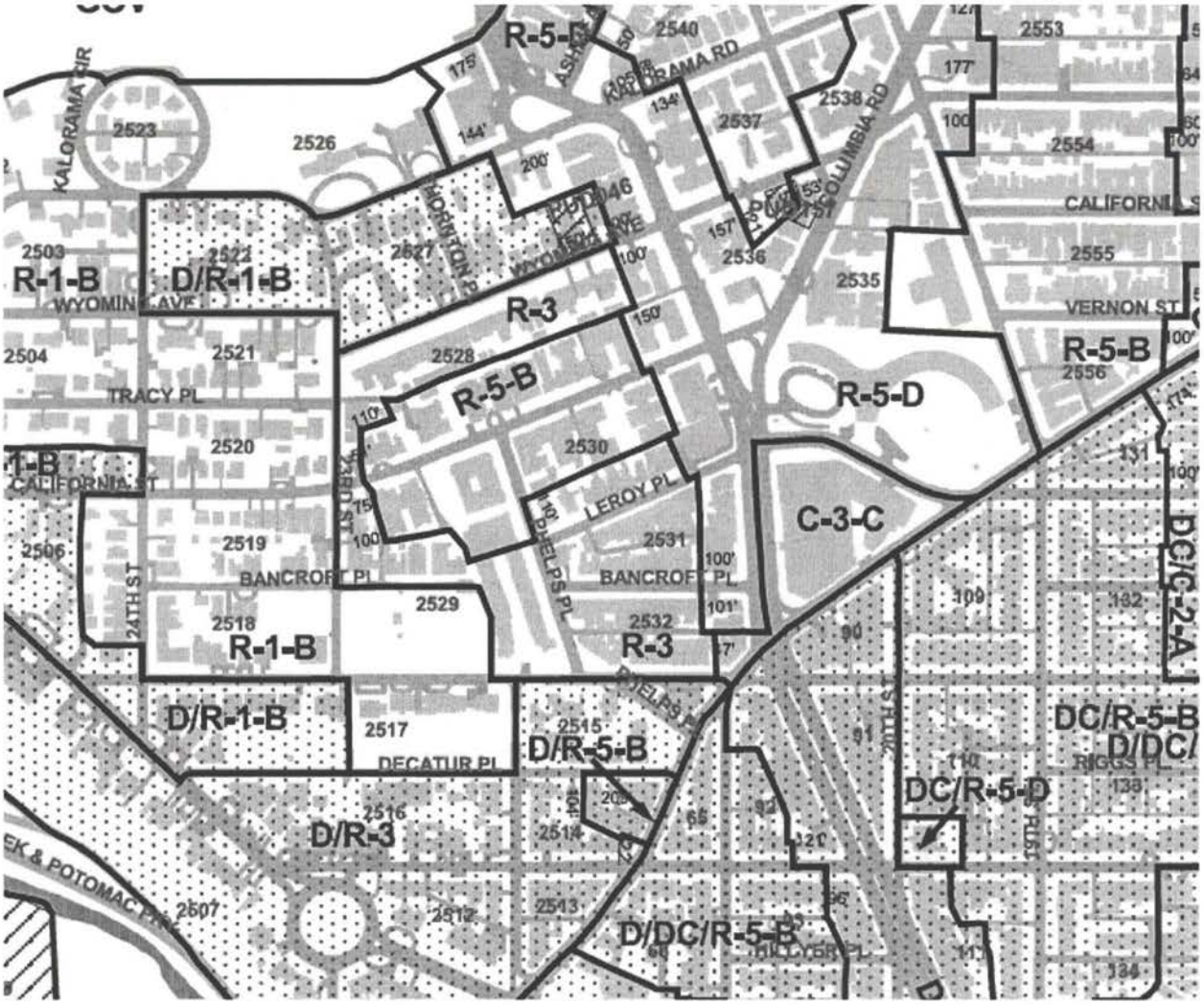
_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



SO-19010(2005)

C


R-5-B
KALORAMA RD
2540
2553
2523
2526
2538
2537
2554
COLUMBIA RD
CALIFORNIA ST
2503
R-1-B
D/R-1-B
WYOMING AVE
2522
2527
NORTON PL
R-3
2536
2535
2555
VERNON ST
2504
2521
2528
R-5-B
R-5-D
2556
TRACY PL
2520
2530
LEROY PL
C-3-C
CALIFORNIA ST
2506
2519
BANCROFT PL
2529
2531
24TH ST
2518
R-1-B
R-3
DC/C-2-A
D/R-1-B
2517
DECATUR PL
2515
D/R-5-B
DC/R-5-B
D/DC/
DC/R-5-D
RIGGS PL
2516
D/R-3
2514
2507
2512
2513
D/DC/R-5-B
HILLYER PL

D

Mr. Clouser:

I move that the following Order be entered: 1322

ORDERED:

That the appeal of W. Wadsworth Wood, owner, for The Holton-Arms School, Inc., contract purchaser, for permission to extend the existing school at 2115 - 2125 S Street, N. W., to include premises 2129 S Street, N. W., lot 13, square 2532, be granted.

As the result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) Appellant's proposed school is a four-story brick building which is connected by a garden wall with its present school property at 2115 - 2125 S Street, N. W., and is to be used for the same type of educational program as conducted in its present quarters. The Board further found that its space and equipment will not be readily convertible to business use; that it has no articles of commerce for sale; that its operation would be impaired by location on a business street, and that it is not likely to become objectionable in this residential area because of noise, traffic, and number of students. The Board therefore finds that the granting of this exception will be in harmony with the general purpose and intent of the Zoning Regulations and map, and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and map.

(2) There was no objection to the granting of this appeal registered at the public hearing.

Mr. Blake: I second the motion. Motion carried unanimsouly.

E

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
[redacted] Center Street NE, room 2100
Washington DC 20002
[redacted] Fax (202) 442-4867

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 39567

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 8/20/02

ADDRESS :	FLOOR(S):	PRCLID : 2532 (square) -0000- 0013 (lot)
2129 S ST NW	BASEMENT FIRST, THRU FIFTH, FL.	WARD : 1 ZONE : R3

PERMISSION IS HEREBY GRANTED TO :	TRADING AS:
CORPORATION : INTERNATIONAL INTERSHIP PROGRAMS ID No.: 934043	INTERNATIONAL INTERSHIP PROGRAMS

APPROVED USES :	PREVIOUS USES :
OTHER - SEE DESCRIPTION	OTHER - SEE DESCRIPTION

TYPE :	BZA NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
CHANGE OF OWNERSHIP		10,000	200	NONE

DESCRIPTION OF USE	FEE :
PROPRIETARY SCHOOL (STUDENT ENROLMENT 200)	$77.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark DIRECTOR	PERMIT CLERK: ADEMOLA SHITU

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
Government of the District of Columbia

F

Corrected Order

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16497 2125 S Street LLC pursuant to 11 DCMR 3107.2 **(new 3103.2)** for a use variance from Section 320.3 to allow the renovation and conversion of a vacant private school and church into an eight (8) unit condominium which exceeds the lot occupancy requirements; an area variance from Section 2001.3(a)(b)(c) to allow an enlargement and addition to a nonconforming structure in an R-3 District at premises 2125 S Street, N.W. (Square 2532, Lot 49).

HEARING DATE: **October 13, 1999**
DECISION DATE: **October 13, 1999**

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1D and ANC –1C, and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC-1D. ANC-1D, which is automatically a party to this application, submitted a written statement in support of the application based on an agreement between ANC 1-D and the Developer. The Board determined that the agreement could be part of the public record however is not a condition of this order.

As directed by 11 DCMR 3324.2, **(new 3119.2)** the board required the applicant to satisfy the burden of proving the elements, which are necessary to establish the case for a use variance pursuant to 11 D CMR Section 320.3 and an area variance pursuant to 11 DCMR Section 2001.3(a)(b)(c). No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107.2 **(new 3103.2)**, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED**.

Pursuant to 11 DCMR 3301.1, **(new 3101.6)** the Board has determined to waive the requirement of 11 DCMR 3331.3 **(new 3125.3)** that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3 – 0 (Robert Sockwell, Sheila Cross Reid and Jerry Gilreath.)

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: FEB - 8 2000

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 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER HAVING BECOME FINAL PURSUANT SECTION 3125.6.

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

SMP/10/17/99

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO.: 16497

As Director of the Office of Zoning, I certify and attest that on FEB - 8 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Christopher H. Collins, Esquire
Wilkes, Artis, Hedrick & Lane
16666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Linda K. Bumbalo, Chairperson
Advisory Neighborhood Commission 1D
P.O. Box 53342
Washington, D.C. 20009

Attested by: _____
JERRILY R. KRESS, FAIA
Director

Date: FEB - 8 2000

Attest/16497/1-18-00/POH

G

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12762, of C.H.R. Associates, Inc., pursuant to Sub-section 8707.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a school, all floors and basement, to an apartment house consisting of ten units, in the R-3 District at the premises 2115 and 2117 S Street, N.W., (Square 2532, Lots 808 and 809).

HEARING DATE: September 27, 1978
DECISION DATE: October 4, 1978

FINDINGS OF FACT:

1. The subject site is located on the north side of S Street, N.W., just west of Connecticut Avenue in the R-3 District.

2. The property is improved with two five story row-type structures, containing approximately 11,000 square feet, which are one building within the meaning of the Zoning Regulations.

3. The applicant herein proposes to change the use of the premises from a private school to a condominium apartment containing ten units having an approximate area of 1,100 square feet each. The property has been used for non-residential purposes since approximately 1925.

4. The most recent Certificate of Occupancy for the structure located at 2115 S Street, N.W. is No. B51207, issued April 13, 1965 and permits use as a school of the subject premises by the United States National Student Association. The most recent Certificate of Occupancy for the premises at 2117 S Street, N.W. is No. B53455, issued September 24, 1965, and permits use of the subject premises as a school by the United States National Student Association.

5. Private school use permitted at premises 2115-17 S Street, N.W., is a non-conforming use in an R-3 zone. A private school is first permitted as a matter-of-right in the SP Zoning District.

6. The applicant's proposed use as condominium apartments of the site is first permitted as a matter-of-right in the R-5-B District.

7. The proposed development is a neighborhood facility, since the apartment users, as residents of the neighborhood, become a part of that neighborhood.

8. The proposed use is much less intense in nature than the previous use of the site as a school. The school facility operated by the United States National Students Association had a core staff of sixty persons, and it is estimated that 200 persons could have entered the premises on any given day. The Holton Arms School had a peak enrollment of 450 students. The proposed use, on the other hand, of ten apartment units is anticipated to house approximately twenty-two to twenty-four persons and, therefore, will significantly reduce the impact of the use on this site and on surrounding properties.

9. The subject square as well as surrounding squares are mixed in use containing many institutional uses as well as multi-family dwellings. The subject site is within one block of an area designated for high density residential development on the Zoning Maps and converts a prior S-P type use to a residential use. The proposed use would be consistent with the Comprehensive Plan for the District of Columbia as expressed in the Zoning Regulations, and would be a change more in conformity with the Zoning Regulations than the present use.

10. The character of the area within 300 feet of the subject site is a mixture of uses containing many institutional and multi-family uses. Immediately east of the subject site is a private residence and further east, commercial development along Connecticut Avenue. West of the site is a Montesori School, the Founding Church of Scientology, the English-Speaking Union and the Kingsbury Lab School, which was approved by the Board. South of the subject premises, across S Street is the Quaker Friends Meeting House. To the north of the site across the alley are private residences. The proposed apartment use is in keeping with the character of this neighborhood.

11. There are no planned external architectural changes to the subject structure. The applicant intends to perform maintenance work such as cleaning and repainting the exterior facade and installing new windows.

12. The applicant does not intend to display any signs at this site.

13. Since the proposed use does not involve use outside the existing building, there will be no need for special screening or protective measures in this case.

14. The lot occupancy of the structures located on the subject site and the lack of rear yard area make it impossible for the applicant to provide on-site parking or loading facilities for this project. No parking or loading berths are required for the proposed use. However, the applicant has arranged for owners of units in the proposed project to lease up to ten spaces from the nearby Universal Building located on Connecticut Avenue and thereby provide parking of one space per dwelling unit beginning in June, 1979. With ten residential units, the number of vehicular trips will be substantially reduced. Additionally, the parking permit program in effect assists in the availibility of spaces on public streets.

15. The Municipal Planning Office, by report dated September 20, 1978 and by testimony at the hearing, recommended that the application be approved, on the grounds that the proposed change of use and conversion to condominium apartments would not be likely to adversely affect the present character or future development of the neighborhood. The Board so finds.

16. Advisory Neighborhood Commission 1D, by letter dated September 25, 1978 and by testimony at the hearing, supported the application on the grounds that it preferred residential use of the site to institutional use.

17. The abutting property owners submitted a petition in favor of the application.

18. The Sheridan-Kalorama Neighborhood Council and one individual resident of the area did not oppose converting the building from institutional to residential use, but suggested that the number of units be limited to four, on the grounds that ten units would exacerbate a congested on-street parking situation. The Board finds that such a restriction would be unreasonable in view of the size, nature of construction of the building and market conditions. The Board further finds such a restriction to be unnecessary in that the intensity of use of the building is being greatly reduced from previous uses, and that ten units would not have a significant impact on the overall parking demand.

CONCLUSIONS OF LAW AND OPINION:

Pursuant to Sub-section 7104.2, a Class II non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted. The use of premises 2115-17 as a private school is a non-conforming use in an R-3 District. A private school is first permitted as a matter-of-right in the SP District. The proposed use of condominium apartments is first permitted as a matter-of-right in the R-5-B District, which is a more restrictive use than the SP use. Accordingly, the Board concludes that the proposed use is permitted, in the most restrictive district in which the previous use is permitted, and that the application thus meets the requirements of Subsection 7104.2.

The Board further concludes that applicant meets the provisions of Section 7109. The proposed use will be essentially a neighborhood facility, and will not adversely affect the present character of the neighborhood, is a less intensive use than the prior use as a private school and is compatible with the mixed nature of other uses in the area. The relief can be granted as in harmony with the Zoning Regulations and Maps and will not tend to adversely affect neighboring properties. Accordingly, it is ORDERED that the application be GRANTED.

VOTE: 4-1(Walter B. Lewis, Chloethiel Woodard Smith, William F. McIntosh and Charles R. Norris to GRANT, Leonard L. McCants to DENY).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 NOV 1978

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13348 of Michael J. Heller, Trustee, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a rooming and boarding house consisting of thirty-three units, all floors and basement, to an apartment house of fourteen units and for a variance to allow structural alterations to a non-conforming building devoted to a non-conforming use (Sub-paragraph 7106.121) in an R-3 District at the premises 2107-09 S Street, N.W., (Square 2532, Lots 43 and 48).

HEARING DATE: September 24, 1980
DECISION DATE: September 24, 1980 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the north side of S Street between Phelps Place and Connecticut Avenue and is known as 2107-09 S Street, N.W. It is in an R-3 District.

2. The total area of the subject lot is 5,950 square feet. The subject site is presently improved with two townhouse structures and an annex thereto constituting a single building.

3. The former townhouses were constructed in 1896 and the two story annex was built in 1901.

4. The most recent recorded certificate of occupancy, No. B-12049, issued June 12, 1958, is for a thirty-three room rooming and boarding house. The subject site was in such use until July, 1980. The structure is now vacant.

5. The District of Columbia Department of Housing and Community Development has given a certificate of eligibility for the conversion of this combined townhouse-type structure and annex devoted to transient use to fourteen condominium apartments.

6. The existing combined structure is non-conforming as to the maximum lot occupancy of forty percent for the R-3 zoning district. The existing structure occupies in excess of fifty-five percent of the lot. The subject structure is also non-conforming as to the rear yard requirements in that it has an open court rather than a rear yard due to the existing building configuration.

7. The existing structure contains a total of approximately 15,700 square feet of actual floor area.

8. The applicant proposes to change the existing interior configuration of the building, which contains many small cubicles of space averaging ninety feet in area into fourteen apartments consisting of five one-bedroom and nine two-bedroom units, ranging in area from 700 to 1,400 square feet.

9. The structural alterations proposed by the applicant consist of cutting through floor joists to put in new staircases to meet modern fire code requirements and adding several skylights at the roof level in order to meet the current light requirements of the Building Code.

10. The subject property, while located in an R-3 zone, lies neat the intersection of Florida and Connecticut Avenues, N.W., in an area with a diversity of uses including embassy, institutional and commercial as well as residential uses.

11. The applicant's proposed residential use is consistent with existing neighborhood uses within a 300 foot radius.

12. The applicant testified that adequate parking is available for the subject site. Two existing nine feet by nineteen feet spaces will be retained on the subject site. Residential permit parking is in effect on the block of S Street, N.W. in which the property is located. Commercial lots are available within a two block radius and the applicant's survey of parking availability on-street indicated that sufficient parking was available for a fourteen unit apartment house use as proposed. The subject site is within two blocks of Dupont Circle Metro stop and is adequately served by bus lines on Connecticut Avenue.

13. The proposed apartment house use is permitted in the most restrictive district in which the existing non-conforming rooming and boarding house use is permitted, namely R-4 district.

14. The applicant's proposal will provide the neighborhood of the subject site with a stable residential use of far less intensity than the previous transient boarding and rooming house use.

15. The applicant's proposal will preserve virtually intact the original exterior configuration of the townhouse structures designed by the prominent local architect, F.T. Schneider. The applicant's proposal will remove unsightly exterior metal fire escapes from the structure. The masonry will be repointed and roof tiles replaced as necessary. The court yard area to the east of the original structure and to the north of the two story

annex will be landscaped into a garden.

16. The applicant testified that the deteriorated conditions of the building in regard to rotting plaster and lath work and insufficient plumbing, wiring and fire egress as well as current market conditions prevent, as a practical matter, the continued non-conforming use of the subject structure as a boarding or rooming house or the return of the structure to single family use due to its substantial size of 15,700 square feet in floor area.

17. Due to the deteriorated conditions of the ceilings and the lack of stairways in the western portion of the structure from the main to the upper floors, virtually nothing could be done to the existing building, even to return it to a conforming use, without substantial structural alterations. The past utilization of the combined structures as a rooming or boarding house has resulted in the creation of many interior partitions, the blocking up of certain windows and other openings in the interior and the side walls and the removal of the stairway which previously served the westernmost townhouse. The size of the structure renders a return of the various portions of the combined structure to the single family use impractical from an economic and marketability standpoint in so far as the cost of rewiring, replacing plumbing and otherwise bringing the structure up to code along is estimated to be $600,000.

18. The existing interior configuration of the structure consists of small cubicles of space on the upper floors, some measuring only about seven feet by ten feet with an average size of ninety square feet in area. The applicant testified that even continued utilization of the boarding house would probably require some structure alteration in order to make the building acceptable by today's living standards and renovation costs and other such costs preclude the continuation of the boarding house use in this area, from a practical viewpoint.

19. Advisory Neighborhood Commission 1D recommended that the application be approved. The ANC submitted a written statement to the Board noting that on January 24, 1980, representatives of the applicant appeared before the Town Hall and Commission Meeting of ANC 1D and presented plans for the development of the subject site as presented to the Board. The ANC's written comments noted that "the proposed changes will reduce the density, restore the appearance of the structure and uphold the position of the neighborhood in favor of residential use as opposed to institutional or commercial use." The ANC's report further stated that the proposed use is viewed as "the best possible use of the structure" and that adequate parking will probably exist in that there is a good chance that many of the future tenants will not have cars due to the location of the site so close to reasonably good mass transportation. ANC noted that the citizens present at this presen-

tation unanimously agreed that ANC 1D should support the application. The Board concurs in the ANC recommendation.

20. There was no opposition to the proposal at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception and a variance. The Board concludes that the applicant complies with the provisions of Subsections 8207.2 and 7104.2 of the Zoning Regulations so as to be entitled to special exception relief to permit a change in a non-conforming use from a rooming and boarding house to a condominium apartment house of fourteen units. The requirements of Section 7109 of the Zoning Regulations are met in that the proposed new residential use is completely consistent with the neighborhood uses in the surrounding area; no advertising sign whatsoever is proposed; there will be no adverse external affects as to noise, traffic or pollution or the like which will require screening from the rest of the neighborhood. Further, two existing on-site parking spaces, the existence of adequate public transportation, the availability of commercial parking spaces, and the availability of on-street parking within a two block radius in the residential permit parking zones evidence that adequate parking is available for occupants of the proposed new use. The provisions of Section 7104.2 are met in that conversion to an apartment house is permitted in the R-4 district, the most restrictive zone in which the previous non-conforming boarding and rooming house use was permitted. The applicant complies with the provisions of Sub-section 8207.2 in that the proposal consists of restoring a noteworthy example of turn-of-the-century architecture by one of the City's most prominent designers to a less intense residential use. Existing fire hazards and unsightly fire egress means will be eliminated.

As to the variance, the Board further concludes that by virtue of the existence and nature of the monumental townhouse-type masonry structures on the site, the subject site is affected by an exceptional situation or condition. Because of the size of the structure and the costs involved in either removing the existing compartmentalization of the interior space into small boarding house cubicles and of bringing the structure up to modern Code standards, strict compliance with the requirements of Sub-paragraph 7106.121 prohibiting structural alterations of buildings devoted to non-conforming use would result in practical difficulty to the applicant. Structural alterations in the nature of replacing a removed staircase from the westernmost portion of the structure from the main floor to the upper floors are required under the modern Fire Code and structural alterations in regard to placing

skylights on the upper levels of the structure are required under the Building Code to provide adequate light.

The Board concludes that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and without substantial detriment to the public good. Accordingly, it is ORDERED that the application is GRANTED in its entirety.

VOTE: 4-0 (Theodore F. Mariani, Connie Fortune, William F. McIntosh and Leonard L. McCants to grant, Charles R. Norris not present, not voting).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 1 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "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 AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15161 of Shamsher Singh, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that exceeds the allowable lot occupancy requirements [Paragraph 2001.3(a) and (c)], and a variance from the use provisions (Sub-section 320.3) to allow conversion of a single-family row dwelling into a 5-unit apartment house in an R-3 District at premises 2111 S Street, N.W., (Square 2532, Lot 44).

HEARING DATE: October 25, 1989 and November 14, 1990
DEDCISION DATE: December 6, 1989 and January 3, 1990

ORDER IN REHEARING

INTRODUCTION

The Board denied the application by its Order dated June 18, 1990. The Board concluded that the applicant had not met the burden of proof by establishing that the property was affected by an exceptional condition inherent in the property itself which would create an undue hardship upon the owner if the Zoning Regulations were strictly enforced.

Counsel for the applicant filed a timely motion for reconsideration or rehearing on June 26, 1990. In support of the motion, counsel argued that the applicant was unable to present evidence of the unique physical aspects of the property because he was unavoidably out of the country at the time of the public hearing. In addition, the applicant failed to submit the plans for the project with the original submission. A set of plans which were reviewed and stamped by the Zoning Administrator in conjunction with the memorandum and computations dated April 11, 1988 was offered into evidence by the applicant. In addition the applicant offered evidence of the availability of financing to ensure adequate and timely renovation of the structure if the application were granted. There was no opposition to the motion for reconsideration or rehearing.

Upon review of the motion and the record in the case, the Board concluded that the applicant's submission indicated the existence of evidence which was not available at the time of the public hearing. At its public meeting of July 11, 1990, the Board reconsidered its decision and set the application for rehearing.

On August 14, 1990, the applicant submitted revised plans. The revised plans were referred to the Office of the Zoning Administrator for review prior to the scheduling of the rehearing. By memorandum dated September 10, 1990, the Zoning Administrator

indicated that additional variance relief from the provisions of Section 2001.3(a) and (b) was required. The notice of public hearing was appropriately amended to reflect the zoning relief required for the proposed project and the case was scheduled for public hearing on November 14, 1990.

FINDINGS OF FACT:

1. The property is located on the north side of S Street between Connecticut Avenue and Phelps Place and is known as premises 2111 S Street, N.W. It is zoned R-3.

2. The property is rectangular in shape with a frontage of twenty feet along S Street and a depth of 85 feet for a total lot area of 1,700 square feet.

3. The site is currently improved with a four-story plus basement single-family row dwelling.

4. The area surrounding the subject site contains a mixture of uses including row dwellings, office buildings, embassies, apartment buildings and various small commercial establishments. There is one single-family dwelling located in this block on the north side of S Street.

5. The applicant proposes to renovate the existing building and convert it for use as a five-unit apartment building. The facade of the structure will be maintained with minimal cosmetic treatment. The interior of the building will be gutted and new floors, ceilings, plumbing and electrical systems, individual kitchens and bathrooms will be installed. In addition, an elevator permitting handicapped access to the upper levels is proposed to be installed with access via the street level entrance to the basement of the structure.

6. The applicant testified that the proposed apartments will be sold in the open market as condominium units.

7. There is one parking space at the rear of the site. The property is located approximately one-half block from the intersection of Connecticut and Florida Avenues and approximately two blocks from the Dupont Circle Metro Station. Residential permit parking is in effect on the subject block.

8. The applicant also proposes to extend the partial fourth floor to the rear of the building. The rear wall of the addition would be set back eight feet from the rear wall of the lower three floors and would provide space for a small rear deck for the fourth floor apartment. The proposed addition would result in the addition of approximately 224 square feet of floor area to the existing building.

9. The property is located in the R-3 District which permits residential use as a matter of right including single-family semi-detached dwellings with a minimum lot width of 30 feet, a minimum lot area of 3,000 square feet, and a maximum lot occupancy of forty percent; single-family row dwellings with a minimum lot width of 20 feet, a minimum lot area of 2,000 square feet, and a maximum lot occupancy of sixty percent. A minimum lot width of forty feet, a minimum lot area of 4,000 square feet, and a maximum lot occupancy of forty percent is required for all other structures. The maximum height permitted in the R-3 District is forty feet and three stories. The minimum rear yard requirement is twenty feet.

10. The subject property was constructed circa 1900 and is currently nonconforming as to lot width, lot area, lot occupancy, height, number of stories, rear yard and open court requirements. The property abuts a public street to the south, a public alley to the rear and currently improved properties to the east and west. The applicant is therefore unable to acquire additional property to lessen the degree of the existing nonconformities. The proposed fourth story addition will not increase the existing nonconformities inherent in the site.

11. The property was originally constructed as a single-family row dwelling. The applicant testified that the premises was converted to use as a rooming house during the 1940's, however, no Certificate of Occupancy for that use could be located. As presently configured the structure contains eighteen rooms, six commonly located bathrooms, two kitchens, ten fireplaces, individual locks on bedroom doors, and an exterior metal fire escape consistent with its previous use as a rooming house.

12. The property is located in the Sheridan-Kalorama Histroic District. The facade of the structure will remain unchanged except for minor cosmetic repairs; the low shed at the rear of the site will be demolished; the brickwork at the back of the structure will be refurbished; and the proposed fourth story addition will be offset eight feet from the rear wall of the structure as recommended by the Historic Preservation Division. The roof and gutters of the building will be replaced.

13. The existing structure is currently vacant and in a deteriorated condition. The applicant testified that the proposed renovation and conversion would be beneficial to the neighborhood in that an existing delapidated building will be restored in keeping with the surrounding area and would be upgraded to meet current Building Code requirements.

14. The applicant testified that the property was affected by an exceptional condition in terms of the physical size and configuration of the existing structure; the existing lot constraints; and the economic constraints of the massive renovation

necessary to re-convert the structure into a single-family use.

15. The applicant further testified that the proposed restoration and conversion would not adversely impact the neighborhood. The intensity of use of the proposed five-unit apartment building would be less than the previously existing, although possibly illegal, eighteen-room rooming house. The proposed fourth story addition would not be visible from the street. The demand for on-street parking would not impact existing conditions by virtue of the proximity of the site to public transportation and the existing residential parking permit program in the area.

16. The Office of Planning (OP), by memorandum dated November 7, 1990, recommended approval of the application. The OP was of the opinion that the applicant has met the burden of proof. The existing lot constraints inherent in the site create a practical difficulty in that the applicant is unable to reasonably add to the structure. The interior configuration of the structure lends itself for use as a multi-unit dwelling and requiring the applicant to reconfigure the interior for single-family use would cause an undue hardship upon the owner. The OP was further of the opinion that the proposed use would be compatible with existing development in the immediate area and restoring a vacant structure for residential use would have a stabilizing impact on the neighborhood.

17. By letters dated April 16, November 9 and November 13, 1990, Advisory Neighborhood Commission (ANC) 1D indicated that the applicant made a presentation of his case and that a straw vote of attendees at the ANC meeting of April 3, 1990 resulted in a vote of 45 persons in favor, ten persons opposed, and eleven persons abstaining, with the caveat that the applicant invest sufficient funds in the renovation of the structure and that such renovation proceed within a reasonable period of time. ANC 1D is made up of only two Single Member District Commissioners. One of the SMD members voted in support of the application. The other SMD member voted to oppose the application.

18. Several nearby property owners testified at the public hearing and the record contains a petition of thirty-six signatures in opposition to the application. The opposition was generally based on the following:

a. The applicant has failed to properly maintain the structure; allowed the accumulation of trash and debris; and allowed pest infestation including roaches, rats and pigeons.

b. The property has been used as a rooming or boarding house in the past without the issuance of a valid Certificate

of Occupancy.

c. The provision of five units and only one on-site parking space at the subject premises will result in an increase in the demand for on-street parking in the area thereby exacerbating the existing problems experienced by area residents seeking parking on the street.

d. The number of single family homes available will be diminished and the entire character of the block will be changed if the existing single-family residences are not safeguarded.

19. In addressing the issues and concerns expressed by the opposition, the Board finds as follows:

a. The concerns relative to the failure of the applicant to maintain the property in a safe and sanitary manner and the alleged illegal use of the premises without the proper approvals are beyond the scope of the Board's jurisdiction and should be addressed to the proper enforcement authorities for appropriate reviews and action. The Board, however, wishes to remind the applicant of his responsibility to comply with all appropriate D.C. Codes and Regulations.

b. The plans for the proposed project have been reviewed by the Zoning Administrator on two occasions. The Zoning Administrator has determined that parking for the project is adequate based on a parking credit and the provision of one parking space at the rear of the premises. No relief from the parking requirements is being sought in this application.

c. The Board notes that the standards for the granting of a use and or area variance have been addressed by the Court in several instances including Palmer vs. The Board of Zoning Adjustment, 287 A.2d 535 (DC app. 1982) and the Clerics of St. Viator vs. the Board of Zoning Adjustment 320 A.2d 291, 294 (DC app. 1974). The Court has held that a use variance is proper when it has been shown that a property meets the criteria set forth in 11 DCMR 3107.2 and also when it has been shown that a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. The Board must apply those standards as appropriate given the circumstances relative to each specific case. The Board further notes that the applicant bears the burden of proof.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a use variance and an area variance. In order to be granted such variances, the applicant must demonstrate an undue hardship upon the owner caused by an exceptional or extraordinary condition inherent in the property itself and further that such exceptional condition of the property would create a practical difficulty upon the owner in complying with the strict application of the Zoning Regulations.

The Board concludes that the applicant has met the requisite burden of proof. The property was developed prior to the adoption of the Zoning Regulations on May 12, 1958 and is currently nonconforming as to lot size, height, number of stories and rear yard. The interior configuration of the structure was modified at some time in the past to accommodate a multi-unit rooming house and is not easily reconfigured for single-family use. The structure is large and exceeds the zoning standards for single-family residential use in the R-3 District in terms of height, number of stories, and lot occupancy. Because the structure currently exceeds the maximum permitted lot occupancy, no addition to the structure may be made without variance relief. The physical constraints of the site, as set forth in Finding of Fact Nos. 9 and 10, prevent the applicant from complying with the current Zoning Regulations.

The Board further concludes that the project is similar in character with the majority of development on the subject block, it is consistent with the intent and purpose of the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good. Accordingly, it is ORDERED that the decision of the Board dated June 18, 1990 is REVERSED and the application is hereby GRANTED.

DECISION DATE: December 5, 1990

VOTE: 4-1 (Charles R. Norris, Sheri M. Pruitt, and Carrie L. Thornhill to grant; John G. Parsons to grant by proxy; Paula L. Jewell opposed to the motion).

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

ATTESTED BY: Edward L. Curry by
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 22 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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 ODER 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 AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15161Order/SS/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION NO. 15161

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 22 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

Samsher Singh
4452 Springdale Street, N.W.
Washington, D.C. 20016

Laurence Singer
3050 K Street, N.W.
Suite 310
Washington, D.C. 20007

Linda W. Frame
2115 S Street, N.W., #3D
Washington, D.C. 20008

Lorraine G. Mills
2115 S Street, N.W.
Washington, D.C. 20008

Howard W. Gordon
1701 - 16th Street, N.W., #429
Washington, D.C. 20009

Alan Savada
2101 S Street, N.W.
Washington, D.C. 20008

Jean Lindley, Chairperson
Advisory Neighborhood
Commission 1D
1900 Connecticut Avenue, N.W.
Washington, D.C. 20009

EDWARD L. CURRY
Executive Director

DATE: FEB 22 1991

ATT.3/BHS