

D.C. OFFICE OF ZONING

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January 9, 2008

BOARD OF ZONING ADJUSTMENT
District of Columbia

VIA HAND DELIVERY

CASE NO. 17679

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

EXHIBIT NO. 44

Re Application No 17679 – Discussion of Roof Structure Setback Relief

Honorable Members of the Board:

As part of the public meeting in the above-referenced case held on January 8, 2008, the Board of Zoning Adjustment (the "Board") requested that the parties submit for the Board's consideration written materials regarding the specific legal issue of whether the Applicant's request for relief from the roof structure setback requirements for a stair tower enclosure is properly analyzed as a special exception under §411.11, or whether such relief must be analyzed as a variance from §400.7(b) and /or §411.2. As discussed in more detail below, the requested roof structure relief is properly before the Board as a special exception, and as set-forth more fully in the Applicant's written and oral materials in this case, the Applicant has met its burden of proof with respect to the requested special exception.

A. Overview of Applicable Zoning Regulations

Section 411 of the Zoning Regulations contains the overall provisions regarding roof structures. Of particular importance here are sections 411.2 and 411.11, which provide the following:

411.2 When located below, at the same roof level with, or above the top story of any building or structure, penthouses (as outlined in § 411.1) shall be subject to the provisions of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3 when applicable, and to the conditions and variable floor area ratio specified in this section.

411.11 Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, *the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number and all other aspects of such structure* regulated under §§ 411.3 through 411.6, *even if such structures do not meet the normal setback*

requirements of §§ 400.7, 530.4, 630.4, 700.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely (Emphasis added)

Thus, based upon the emphasized language above, the Board is authorized to approve, as a special exception, the location, design, number and all other aspects of roof structures, including relief from the setback requirements.

The history of the Zoning Regulations makes it clear that the Board's authority to approve relief from the roof structure requirements is as a special exception. Under regulations originally adopted in 1960, penthouses for one elevator bank and one stair were permitted as a matter-of-right under certain design restrictions and were eligible for a credit of up to 0.12 FAR. All penthouses for mechanical equipment as well as stairs and elevators were subject to approval by the Board. Because almost all structures had mechanical equipment on the roof, the effect of this regulation was to require Board approval for most buildings.

In 1976, the Zoning Commission undertook a number of amendments to the Regulations to reduce the workload of the Board by creating regulations which allowed projects to be approved as a matter-of-right. Changes to the rear and side yard requirements were adopted, and revisions to the roof structure regulations (then contained in §3308) were also adopted which made it possible for projects to be approved without Board review. A project would need Board review only if it could not meet the standards set in place. The specific intent of those amendments was to create the opportunity to allow projects to proceed without Board review and to streamline the review before the Board for those cases which still needed to go to the Board.

Immediately after the regulations were adopted (the effective date of Order No. 139 was December 10, 1976), cases that still required relief because they could not meet the explicit standards set forth were filed with the Board. As early as October, 1978, the Board granted relief from the setback provision as a special exception (See Order No. 12759, listed below).

B Consistent Treatment of Roof Structure Relief

As demonstrated in the chart below, as well as the orders attached hereto, the Board has consistently, and over the course of the past thirty years, granted special exception relief to allow roof structures not meeting the set back requirements. Indeed, on December 18, 2007, the Board *with its current membership* approved a special exception from the roof structure setback requirements in Application No. 17696 (Tab A).

Board of Zoning Adjustment Orders

<u>BZA Order No</u>	<u>Roof Structure Relief</u>	<u>Tab</u>
No 17696	Approving special exception from roof structure setback requirements	A

No. 17233	Approving special exception from the roof structure provisions under subsection 400 7	B
No 17032	Approving special exception from the roof structure setback provisions under subsection 400 7 (411 11)	C
No. 16916	Approving special exception to allow a penthouse which does not meet the setback requirements under subsections 400.7(b) and 411.11 (See p 2)	D
No. 16681	Approving special exception from the roof structure requirements of subsection 411.11 for structure not meeting the setback provisions	E
No 16485	Approving special exception from the setback requirements for penthouses	F
No 16223	Approving special exception to allow a stairway penthouse to setback from all exterior walls a distance less than its height above the roof	G
No. 16196	Approving a special exception under Sections 411.11 and 400.7(b) from the setback requirements for elevator and stairwell penthouses	H
No. 16129	Approving special exception under Paragraph 400 7(b) to allow a penthouse which does not met the setback requirements (See p. 2,7)	I
No. 15169	Approving special exception under Subsection 411.11 to allow a mechanical penthouse which does not meet the setback requirements	J
No. 15140	Approving special exception to allow a roof structure that does not meet the setback requirement	K
No. 14261	Approving special exception to permit a separate roof structure not meeting the setback requirements of sections 400.8 and 770 7	L
No. 13990	Approving special exception to construct a roof structure which does not meet the setback requirements	M
No. 13528	Approving special exception to permit construction of a roof structure which does not meet the setback requirements (See p 2)	N
No. 13449	Approving special exception to permit the construction of a roof structure which does not meet the setback requirements (See p 2)	O
No. 13124	Approving special exception to allow construction of a roof structure which does not meet the normal setback requirements	P

No. 13061	Approving special exception to permit a roof structure not meeting the normal setback requirements	Q
No. 12759	Approving a special exception to permit a roof structure which does not meet the setback requirements (See p. 2)	R

Zoning Commission Orders

We note further that the Zoning Commission, which is the body which adopted the regulations concerning roof structures, has also determined on many occasions that relief from the roof structure setback requirements is properly viewed as a special exception. The Zoning Commission has granted flexibility in many planned unit developments to allow roof structures without the normal 1:1 setback. We note specifically the language in Finding of Fact No. 25a in Order No. 831, approving the PUD for the addition to the Kennedy-Warren apartment house at 3133 Connecticut Avenue, N.W.:

Rather than a single penthouse as required under Subsection 411.3 of the Zoning Regulations, the proposed penthouse of the addition would be separated into two masses. Additionally, the corners of the penthouse would not meet the setback requirements of Paragraph 400.7 (b). The relief from the roof structure requirements is necessary to comply with the request of HPRB in granting conceptual approval of the design. *This relief may be granted by special exception under Section 411* and may therefore be approved by the Zoning Commission pursuant to Subsection 2405.7 (Emphasis added)

The Commission has also approved special exceptions for roof structures not meeting the normal setback requirements in other cases over which it has jurisdiction, including campus plan case and review of development in the Capital Gateway (CG) Overlay. A listing of some of those cases follows

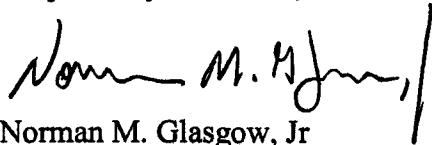
<u>Z C Order No</u>	<u>Roof Structure Flexibility</u>	<u>Tab</u>
06-46	Granting flexibility/special exception from the setback requirements for roof structures (See p. 15)	S
03-04	Granting flexibility/special exception relief for roof structure setbacks (See p. 6).	T
03-24	Granting flexibility/special exception relief for a roof structure not meeting the set back requirements (See p 12).	U
954	Granting flexibility/special exception for a new roof structure not in compliance with the 1:1 zoning set back requirement (See p. 3).	V
831	Granting flexibility/special exception relief for a roof structure not meeting the setback requirements of section 400.7(b) (See p 7).	W

While the Board certainly has the authority to change its interpretations of regulations, the D C. Court of Appeals stated in *Draude v D C Board of Zoning Adjustment*, 527 A.2d 1242, 1253 (D C 1987), that the Board may apply different standards or interpretations if 1) each standard or interpretation is consistent with the regulations and 2) the situations actually are different in a way that makes it reasonable to use a different standard or interpretation. Here, there have not been any changes to the Zoning Regulations or other special circumstances regarding the Applicant's requested roof structure setback relief that would reasonably give the Board a basis to repeal its 30-year interpretation that relief from the roof structure setback requirements is allowed as a special exception. Moreover, as discussed above, § 411.11 clearly provides that the Board is authorized to approve, as a special exception, relief from the setback requirements, and thus the language is not ambiguous. Even if the Board decides now that this section is ambiguous, a new ruling that setback relief can only be granted as a variance would not "ensure ... fair and equal treatment" for the Applicant in this case. See *Draude* at 1253.

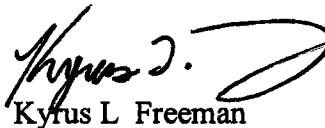
Based on the past rulings of the Board and the Zoning Commission, as well as the Court's instruction in *Draude*, the Applicant's requested relief to permit the project to include a roof structure that is not setback from all exterior walls a distance equal to its height above the roof is properly analyzed as a special exception and not an area variance.

Accordingly, the Applicant respectfully requested that the Board approve the requested roof structure relief


Respectfully submitted,



Norman M. Glasgow, Jr



Kyrus L. Freeman



Steven E. Sher

Director of Zoning and Land Use Services

Attachments

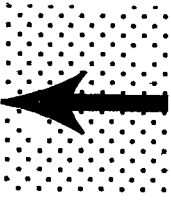
- cc Maxine Brown-Roberts, Office of Planning (Via Hand, with enclosure)
- ANC 4B (Via U.S. Mail, with enclosure)
- Jack Warner (Via U.S. Mail, with enclosure)

A

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



Application No. 17696 of Hines VAFII 2100 M Street LP, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the roof structure setback requirements under subsection 400.7, and the parking space requirements under subsection 2108.2, and a variance from the loading platform height requirements under subsection 2201.7, a variance from the van parking requirements under subsection 2115.8, a variance from the compact parking space requirements under subsection 2115.4, a variance from the 45 degree height setback from neighboring property requirement under subsection 1709.20 and a variance from the loading space height requirements under subsection 2201.6, to allow the expansion of an existing office building with street level retail (through transferable development rights) by adding three new floors in the C-3-C District, at premises 2100 M Street, N.W (Square 72, Lot 75).



SUMMARY ORDER

HEARING DATE: December 18, 2007
DECISION DATE: December 18, 2007 (Bench Decision)

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the DC Register, and by mail to Advisory Neighborhood Commission (ANC) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A did not participate in the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions under sections 400.7, and 2108.2, and variances pursuant to § 3103.2 from the requirements of sections 2201.7, 2115.4, 2115.8, 2201.6, and 1709.20. No parties appeared at the public hearing in opposition to this application.

Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 400 7, and 2108.2, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 1709.20, 2201.7, 2115.4, 2115.8, and 2201.6, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125 3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 11 – Architectural Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, and Shane L. Dettman to Approve. The third mayoral appointee not voting, not having participated in the case).

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

Each concurring member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: December 20, 2007

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



BZA APPLICATION NO. 17696

As Director of the Office of Zoning, I hereby certify and attest that on December 20, 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below.

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Jill Stern, Esq.
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rsn

ATTESTED BY:



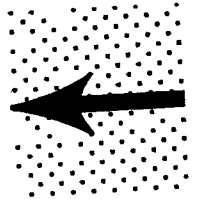
JERRILY R. KRESS, FAIA
Director, Office of Zoning

B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 17233 of York Van Nixon, IV, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, and variance from the nonconforming structure provisions under subsection 2001 3, and pursuant to 11 DCMR § 3104.1 a special exception from the roof structure provisions under subsection 400 7, to allow a third floor addition to a single-family row dwelling in the R-5-B District at premises 2237 10th Street, N.W. (Square 357, Lot 92).



Note: The Board amended the application to require variance relief from section 402 (FAR), and subsection 2001 3 (nonconforming structure) and special exception relief from section 400.7 (roof structure).

HEARING DATE: November 16, 2004
DECISION DATE: November 16, 2004 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 1B, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 1B. ANC 1B submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1 and 400.7, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 402 and 2001 3.

No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a

decision by the Board to grant this application would not be adverse to any party. The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under section 400.7, that the requested relief can be granted as 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.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 402 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be 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 the application is **GRANTED**.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and John A. Mann II to approve, Carol J. Mitten opposed to the motion)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY:



JERRILY R. KRESS, FAIA

FINAL DATE OF ORDER: December 20, 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE

UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D C LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 17233

As Director of the Office of Zoning, I hereby certify and attest that on DEC 20 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Ira and Marlene Jefferson
Jefferson Architects/Planners
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Washington, D C 20012

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Advisory Neighborhood Commission 1B
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Washington, D.C. 20056

Single Member District Commissioner 1B02
Advisory Neighborhood Commission 1B
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Toye Bello, Zoning Administrator
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Washington, D C. 20002

Ellen McCarthy, Deputy Director
Office of Planning

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Alan Bergstem, Esq
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441 4th Street, N.W , 6th Floor
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rsn

ATTESTED BY:

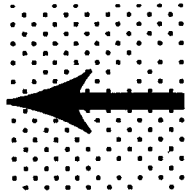

JERRILY R. KRESS, FALA
Director, Office of Zoning

C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 17032 of Embassy Trust, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, to allow the construction of a deck, elevator penthouse and one story rear addition to a single family dwelling, not meeting the lot occupancy requirements (section 403), and a special exception from the roof structure setback provisions under subsection 400.7 (411.11), in the R-3 District at premises 2124 Leroy Place, N.W. (Square 2531, Lot 22).



HEARING DATE: July 8, 2003
DECISION DATE: July 8, 2003 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

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) 2D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2D, which is automatically a party to this application. ANC 2D submitted a letter in support of the application. The ANC letter did not meet the filing requirements under subsection 3115.1. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, and 400.7 (411.11). No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223 and 400.7 (411.11), that the requested relief can be

BOARD OF ZONING ADJUSTMENT

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granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 5-0-0 (Geoffrey H. Griffis, David A. Zaidain, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John G. Parsons to grant).

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

Each concurring member approved the issuance of this order.

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

FINAL DATE OF ORDER: JUL 10 2003

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 FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16916 of Friends Committee on National Legislation, pursuant to 11 DCMR § 3103.2, for a variance to allow the enlargement of existing non-profit office space under subsection 2002 5, and pursuant to 11 DCMR § 3104.1, a special exception to allow an elevator penthouse which does not meet the setback requirements under subsections 400.7(b), and 411.11, in the CAP/R-4 District at premises 245 2nd Street, N.E. (Square 757, Lot 844).

Note. The Board amended the application at the time of the public hearing to include special exception relief under subsections 400.7(b), and 411.11.

HEARING DATE: September 24, 2002
DECISION DATE: September 24, 2002 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of public hearing on this application by publication in the D C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A, and to the owners of property within 200 feet of the site. The application was referred to the Office of Planning (OP) for review and report.

The site of this application is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to this case, made no submission with regard to this application. The OP submitted a report recommending approval of the application. The Architect of the Capitol submitted a report stating that the approval of the application would create no adverse effect on the Capitol Complex or the Master Plan referred to in 11 DCMR § 1201 1, or the other special objectives for which the Capitol Interest District was enacted

As directed by 11 DCMR § 3103 2, the Board has required the applicant to satisfy the burden of proving the elements necessary to establish a case for a use variance. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

To be entitled to a use variance under 11 DCMR § 3103.2, the Applicant must demonstrate (i) an exceptional or extraordinary situation or condition; (ii) undue hardship; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. In *Monaco v D.C. Board of Zoning Adjustment*, 407 A 2d 1091, 1097 (D.C. 1979), the District of Columbia Court of Appeals held that previously granted variance relief and immediate proximity to the Capitol are circumstances creating an exceptional situation. In *Monaco*, the Court also held that reliance on previously granted variance relief may demonstrate undue hardship. Further, pursuant to *National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984), the Board may apply a more flexible standard for determining hardship because the applicant is a nonprofit entity devoted to public service. Finally, the Board finds the requested variance can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zone Plan. Based on the record before the Board, the Board concludes that the Applicant has met the burden of proof for a use variance under 11 DCMR § 3103.2

Based upon the record before the Board and having given great weight to the ~~OF~~ the Board concludes that the Applicant has also met the burden of proof, pursuant to 11 DCMR § 3104.1 for a special exception under subsections 400.7(b), and 411.11, which will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The plans submitted to the Board by the Applicant show that the elevator penthouse is located so as to be flush with the party wall with the immediately adjoining property. Thus, the penthouse is not set back from all exterior walls a distance at least equal to its height above the roof upon which it is located, as required by subsection 400.7(b). Compliance with the requirements of subsection 400.7(b) would be impracticable because of operating difficulties, the size of the building lot, and other conditions relating to the surrounding area. Accordingly, the Board finds the Applicant is entitled to relief from the requirements of subsections 400.7(b) and 411.11. It is therefore **ORDERED** that this application be **GRANTED**.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0-0

(Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., Carol J. Mitten, and David A. Zaidain to approve)

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

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

Final date of Order: OCT 15 2002

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE SECTION 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAR STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION, WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. *rsn*

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16916

As Director of the Office of Zoning, I hereby certify and attest that on Oct. 15 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Paul A. Tummonds, Jr., Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Ivette Basterrechea, Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 76680
Washington, D.C. 20002

Joe Amon, Commissioner 6A04
Advisory Neighborhood Commission 6A
P.O. Box 76680
Washington, D.C. 20002

Sharon Ambrose, City Councilmember
Ward Six
1350 Pennsylvania Avenue, N W.Suite 102
Washington, D.C. 20004

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

BZA APPLICATION NO. 16916
PAGE 2

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

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

rsn

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

E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16681 of Square 456 Associates pursuant to 11 DCMR § 3104.1 for a special exception from the roof structure requirements of subsection 411.11 not meeting the set back provisions of subsection 770 6(b), and 11 DCMR § 3103.2 for variances from the residential recreation space requirements of subsection 773.3, and the court area requirements of subsection 776.4, to allow construction of a residential building containing 33 units with ground floor arts and retail space in a DD/C-4 District at premises 501-507 7th Street, N.W. (Square 456, Lots 37 and 39).

HEARING DATE: March 13, 2001
DECISION DATE: March 13, 2001 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR 3113 2.

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 the Applicant, Advisory Neighborhood Commission (ANC) 2C and to owners of all property within 200 feet of the property that is the subject of this application..

The subject property is located within the jurisdiction of ANC 2C. ANC 2C, which is automatically a party to the application, did not participate in this application.

As directed by 11 DCMR § 3119.2, the Board has required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR § 411.11 and a variance from the strict application of the requirements of 11 DCMR §§ 770.6(b), 773.3 and 776.4. No person or entity appeared as a party at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board received certain requested corrections to the architectural drawings and closed the record at the conclusion of the hearing, except to allow the applicant to submit the resume of David Mayhood, expert witness in residential development testifying on behalf of the applicant. The Board received the resume into the record.

Based upon the record before the Board and having given great weight to the Office of Planning's report filed in this case, the Board concludes that the applicant has met the burden of proof under 11 DCMR § 3104.1, and that the requested relief can be granted as being 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. The Board also concludes that the applicant has met its burden of proof pursuant to 11 DCMR § 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 the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Prior to the issuance of the building permit, the applicant shall record a combined lot development covenant, pursuant to § 1709 of the Zoning Regulations, for the properties within Square 456 known as Lots 37, 39, and that portion of Lot 40 previously known as Lots 868 and 869, as adjusted, to achieve a composite floor area ratio for the entire development.
2. The applicant shall provide a minimum of 708 square feet of residential recreation space on the first cellar level of the building.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0-1 (Robert N. Sockwell, Susan Morgan Hinton, Sheila Cross Reid and Anne M. Renshaw to grant a special exception from the roof setback provisions of 11 DCMR § 770.6(b), John Parsons not present, not voting),

VOTE: 4-0-1 (Robert N. Sockwell, Susan Morgan Hinton, Sheila Cross Reid and Anne M. Renshaw to grant a variance from the court area requirements under 11 DCMR § 776.4; John Parsons not present, not voting);

VOTE: 3-1-1 (Robert N. Sockwell, Sheila Cross Reid, Susan Morgan Hinton, to grant a variance from the residential recreation space provisions of 11 DCMR § 773 3; Anne M. Renshaw to deny; John Parsons not present, not voting.)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY:


Jerrily R. Kress, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 18 2001

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

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16485 of John and Nancy Krooth, pursuant to 11 DCMR 3108.1 (new section 3104.1), for a special exception for an addition to an existing structure under Subsection 400.7(b) from the setback requirements for penthouses in an R-3 District at premises 1700 35th Street, N.W. (Square 1296, Lot 16).

HEARING DATES: December 8, 1999 & February 2, 2000
DECISION DATE: February 2, 2000 (Bench Decision)

SUMMARY ORDER
AND
RECONSIDERATION ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, by mail to Advisory Neighborhood Commission (ANC) 2E, and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to this application, submitted a statement in support of the application.

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 special exception pursuant to 11 DCMR Subsection 400.7(b). 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 3108.1 (new 3104.1), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the 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: 3-1 (Jerry Gilreath, Kwasi Holman and Sheila Cross Reid to approve. Robert Sockwell opposed to the motion.)

Pursuant to Subsection 3126.7, the Board on its own motion decided to reconsider the application. The Applicant was notified of the Board's decision along with a request for further clarification of the use of the areas designated as "future elevator area" on the plans originally submitted. At a subsequent hearing on February 2, 2000, the Board discussed revised plans provided by the Applicant and heard the Applicant's testimony indicating that he intended to use the space as storage and that he was aware that he would have to come before the Board if he intended to install an elevator. The Board voted to approve the application.

VOTE: 3-0-2 (Robert Sockwell, Sheila Cross Reid and Jerry Gilreath by proxy to approve. Carol Mitten and Ann Renshaw not voting, not having heard the case).

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

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: ^{to} FEB 11 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"

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO.: 16485

As Director of the Office of Zoning, I certify and attest that on FEB 11 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:

John Krooth
1700 35th Street, N W.
Washington, D.C. 20007

Peter Pulsifer, Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N W.
Washington, D.C. 20007

Michael D Johnson, Zoning Administrator
DCRA/BLRA
941 North Capitol Street, N E , Suite 2112
Washington, D.C. 20002

Attested by: 

JERRILY R. KRESS, FAIA
Director

Date: FEB 11 2000

Attest-16485-2/3/00-poh

G

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16223 of the GAP, Inc., pursuant to 11 DCMR 3108.1, for a special exception under Paragraph 400.7(b) to allow a stairway penthouse to setback from all exterior walls a distance less than its height above the roof of a structure in a D/C-2-A District at premises 3200 M Street, N.W. (Square 1200, Lot 841).

HEARING DATE: April 23, 1997
DECISION DATE: April 23, 1997 (Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to the application, submitted a written statement in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 411.11 and 400.7(b). No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in this proceeding. 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 3108, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED.

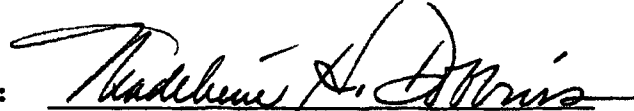
Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3-0 (Maybelle Taylor Bennett, Sheila Cross Reid and Susan Morgan Hinton to grant; Laura M. Richards and Angel F. Clarens not present, not voting).

BZA APPLICATION NO. 16223
PAGE NO. 2

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

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: MAY 13 1997

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 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.

ord16223/JN/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



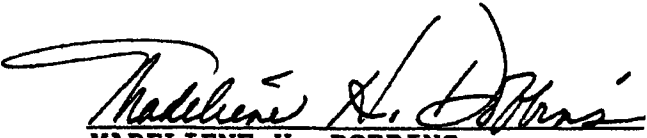
BZA APPLICATION NO. 16223

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 13 1997 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. Don Stedham
The Stedham Company
P.O. Box 2428
Fairfax, Virginia 22031

Steve Schacher
GAP, Inc.-Corporate Architecture
900 Cherry Avenue
San Bruno, California 94066

Fran Goldstein, Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007


MADELIENE H. DOBBINS
Director

DATE: MAY 13 1997

H

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16196 of the Greater Mt. Calvary Holy Church, Inc., pursuant to 11 DCMR 3107.2 and 3108.1, for a variance from the off-street parking requirements (Subsection 2101.1), a special exception under Section 411.11 and 400.7(b) from the set back requirements for elevator and stairwell penthouses, and a special exception under Section 2116.5 to locate accessory parking spaces elsewhere other than the lot upon which the building is located for the conversion of an existing building into a recreational community life center and an accessory parking lot of 22 spaces in a C-M-2 District at premises 605 and 649 Rhode Island Avenue, N.E. (Square 3623, Parcels 131/5, 131/156 and 131/162).

HEARING DATE: January 22, 1997
DECISION DATE: February 5, 1997

AMENDED SUMMARY ORDER*

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 5C. ANC 5C, which is automatically a party to this application, filed a written statement of issues and concerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of providing the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 2101.1 and special exceptions pursuant to Section 411.11, 400.7 (b) and 2116.5. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. 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 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. The Board further concludes that the application has met the burden of proof pursuant to 11 DCMR

3108 and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED, subject to the following conditions:

1. The accessory parking lot walls shall be topped with a fence six feet in height in accordance with plans marked as Exhibit No. 35 of the record.
2. The roof top fence shall be 20 feet in height and topped with a metal tube replicating the metal on top of the silos.
3. The applicant shall establish and maintain a community liaison program consisting of representatives of the facility, the ANC, and the neighborhood. The applicant shall conduct meetings of the community liaison members at least four times a year. Notice of the meetings shall be given to the ANC and the owners of all property within 200 feet of the site. The applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities to the liaison members.
4. No family life center activities shall occur while church service is in session.

* The height of the fence was changed from ten feet to six feet in Condition No. 1.


Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.1 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0 (Maybelle Taylor Bennett, Susan Morgan Hinton and Angel F. Clarens to grant; Laura M. Richards to grant by absentee vote; Sheila Cross Reid not present, not voting).

BZA APPLICATION NO. 16196
Page No. 3

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

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: APR 30 1997

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 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.

ord16196/twr/amb

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



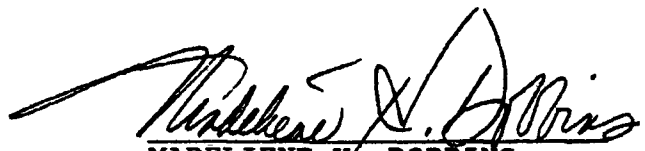
BZA APPLICATION NO. 16196

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 30 1997 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:

Tonia Jones Powell
Jackson & Campbell, PC
1120 20th Street, N.W.
Washington, D.C. 20036

G. Jerry Overbey
5200 Baltimore Avenue
Hyattsville, MD 20781

James D. Berry, Jr.
Advisory Neighborhood Commission 5C
1723 3rd Street, N.E.
Washington, D.C. 20002


MADELIENE H. DOBBINS
Director

Date: APR 30 1997

I

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16129 of Agnes N. Williams, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Paragraph 400.7(b) to allow an addition of an elevator penthouse which does not meet the setback requirements, a variance from the maximum permitted floor area ratio requirements (Subsection 771.5), and a variance from the closed court area and width requirements (Subsection 776.1 and 776.2) for the addition of an 11th floor and conversion of an existing 10-story office building to a hotel in a C-4 District at premises 839 17th Street, N.W. (Square 165, Lot 804).

HEARING DATE: May 1, 1996
DECISION DATE: May 1, 1996 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject property, known as the Hill Building, is located on the southeast corner of the intersection of 17th and I Streets, N.W. (Square 165, Lot 804) at the premises 839 17th Street, N.W. The site is located in the C-4 District.

2. The property was built in 1926 as an office building and is now vacant. The site consists of 5,975 square feet of land area and is rectangular in shape. The site is occupied entirely by the subject building. The building is sited directly adjacent to, and on top of, the eastern most entrance to the Farragut West Metrorail station.

3. The subject property fronts on 17th Street and I Streets, N.W., and is located in an area of downtown primarily developed with office buildings. North of the property across I Street is Farragut Square Park, to the east and immediately abutting to the property is a 12-story office building with a restaurant. South of and abutting the subject property is an office building which has 12 stories and is separated by a 12-foot wide alley. To the west of the subject property across 17th Street is a 12-story office building. To the northwest of the subject premises is a 12-story office building.

4. The subject building currently has ten stories with a basement level. It has a total gross floor area of approximately 53,149 square feet. The allowable square footage is 54,570. The applicant proposes 56,540 square feet, thereby needing a variance for 3.3 percent or 1,790 square feet.

5. The C-4 zone district permits as a matter of right offices, retail, residential, hotels, and mixed uses to a maximum height of 130 feet, and a maximum floor area ratio (FAR) of 10.0 depending on the width of the street.

6. Subsection 400.7(b) of the Zoning Regulations states that if housing for mechanical equipment, a stairway, or elevator penthouse is to be provided on the roof of a building or structure, it must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located.

7. The applicant proposes to convert the existing 10-story office building to an 11-story hotel containing approximately 170 guest rooms (the 11th floor would be newly constructed). A new penthouse would also be constructed on the roof of the building. With the proposed 11th floor addition, the building would contain 56,540 gross square feet of floor space (10.33 FAR). The building's existing closed court (within the interior of the property) would be extended upward with the new floor.

8. The applicant is requesting special exception relief from Subsection 400.7, which requires that mechanical penthouses be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. Subsection 411.11 permits the Board to approve alternative locations where compliance with these setback requirements are not practicable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

9. The applicant's architect, who was recognized by the Board as an expert in architecture and urban planning, stated that the penthouse structure is proposed to be set back a distance in excess of the zoning requirements from three of the buildings four exterior walls: on the north (I Street) side, on the west (17th Street), and on the south (12-foot wide alley). On the east, however, the penthouse abuts a portion of the building's eastern exterior wall which is the inside wall of the building's closed court area. He indicated that the placement of the penthouse wall at this location is not new to the building and that the existing penthouse wall abuts the eastern wall of the building. The new penthouse location corresponds with this historical siting.

10. The architect also testified that the special exception is being sought because it would be physically and financially impractical to reconfigure the shafts in the building to accommodate the addition of a one-story addition to the building in a different location. The location of the penthouse on a portion of this exterior wall will not impair the light and air to the adjacent building since that building has no windows or openings at the subject property's east boundary. Further, locating the

penthouse in this location will minimize its visibility from the surrounding streets.

11. The architect testified that the subject property presents two unique, exceptional situations. The first is that the existing structure, constrained by its size, created practical difficulties in order to renovate it so as to comply with modern building codes and the Americans With Disabilities Act requirements. He indicated that current legal requirements for a second means of egress, larger elevators cabs, various mechanical shafts and the infrastructure to sprinker the building significantly constrain any renovation of the subject building. Further, he indicated that the existence of the Farragut West Metrorail entrance, which eliminates approximately one-half of the ground floor and one-half of the basement level, prohibits a user of the building from using that space to accommodate some of the code and programmatic requirements even though the ground floor used by the Metrorail counts against the building's FAR. He also testified that the column structure of the building is extremely constrained and hinders retrofitting it for practically any use. The architect testified that these unique situations create significant practical difficulties to an owner that can be relieved only by the variances sought in the subject application.

12. The architect also testified that the floor area ratio requirements for the site permit a maximum FAR of 10.0. Given the site's 5,475 square feet of lot area, the property has an allowable FAR of 54,570 square feet. The applicant is requesting a 3.3 percent (1,790 square feet) variance from the provision. The variance is being requested to off-set the loss in FAR which results from the Hill Building's being sited directly adjacent to, and on top of, the eastern most entrance of the Farragut West Metrorail Station and to allow the applicant to have the appropriate gross floor area to accommodate the modern building codes. The metrorail station occupies approximately 2,365 square feet of the Hill Building's ground floor, nearly one-half of the ground floor area.

13. The architect also testified that approximately two-thirds of the eleventh floor can be added to the building as a matter of right, but that finishing off the 17th Street facade of the building in order to provide an efficient floor plan for that floor is practical and in the public interest since it will present a better facade on 17th Street.

14. The variance will allow the addition of a complete 11th story to the building, which would in turn add approximately 18 additional hotel rooms to the project. Without the variance only a portion of the 11th floor addition could be built within the permitted FAR restrictions. The requested variance relief is supported by the practical difficulty inherent in the building sharing its land area with the Farragut West Metrorail Station.

15. The architect, in his testimony on the variance from the closed court area and width requirements, stated that when the Hill Building was constructed in 1926, it incorporated a closed courtyard on its east side. This courtyard extends from the second floor through the tenth floor of the building and is approximately 9 feet 4 inches by 36 feet, or 335.9 square feet. This court was consistent with the zoning when it was built. The applicant's proposal calls for the addition of an 11th floor to the building. Architecturally, the addition is proposed, for practical purposes, to be sited directly on top of the footprint of the tenth story. The proposed 11th story addition will mirror the court width and area dimensions as exist on the floors below it. If the applicant were required to comply with the present day court width and area requirements, just on the new 11th floor, it would be faced with a practical difficulty. In order to comply with the current court requirements the 11th story court would have to be 25.78 feet in width and have an area of 1,329 square feet. This would require the applicant to cut out a notch in the 11th floor area nearly four times as large as the courts on the other floors below and move the building core west in the floor plan thereby severely restricting the number of hotel rooms on all floors. Compliance with such a requirement would serve no practical purpose.

16. The architect also testified that the additional story to be added to this building will significantly improve the urban design effect of this building as it relates to the public streets. He indicated that the building appears "squat" in relationship to its 130-foot tall neighbors and that the proportions of the building's facade will be better articulated with the proposed elongation. He indicated that it was his opinion that the 11th floor addition will significantly improve the urban design and architectural framing of Farragut Square.

17. By report dated April 24, 1996, and by testimony presented at the public hearing the D.C. Office of Planning (OP) recommended approval of the application. The OP stated that it was of the opinion that the applicant has met the burden of proof relative to the zoning relief being sought in this case. The special exception and area variances required in this case result from the conditions that are inherent in the property. These conditions create practical difficulties for the applicant in its ability to reasonably add to the property for a matter of right hotel use, and the proposal would not impact adjacent or surrounding properties adversely and would return the current vacant office building to a viable hotel use. The Office of Planning also stated that it believes that the proposal would not impair the intent, purpose, and integrity of the C-4 zone district.

18. The subject site is located within the jurisdictional boundaries of Advisory Neighborhood Commission (ANC) 2B. The ANC having received notice of the public hearing, did not participate in the public hearing. The Office of Planning and the applicant

proffered that the ANC informed them that no position was taken on this matter.

19. One person, representing the owner of the building immediately to the east of the subject property, appeared at the public hearing in opposition to the application. This witness, testified that the location of the metro entrance on the first floor of the Hill Building should not be used as justification for the variance relief sought in the application. The witness also opposed the application because use of the property as a hotel would increase the use of the public alley to the south of the subject property. Further, he testified that location of the applicant's penthouse at its proposed location would injure his clients because of increased noise from its operation.

FINDINGS OF FACTS:

Based on the evidence of record, the Board finds the following:

1. With regard to the special exception request, the Board agrees with the Office of Planning and finds that the proposed location of the penthouse to coincide with a portion of the exterior wall will not impair the light and air to the adjacent building, which has no windows or openings on that side. In addition, the proposed penthouse would not be visible from the surrounding street grade. In addition, the Board finds that the proposed location of the penthouse is the best location from an urban design perspective and the strict application of the setback regulations in this case would serve no practical purpose.

2. With regards to the area variances requested in this application, their approval responds to the practical difficulties faced by the applicant because of the configuration and structure of the existing building, the size of the lot, and the exceptional situation that results from a large portion of the building's first floor and basement being used by the public for the metrorail station entrance. These conditions correspond directly to an inability to utilize all of the property's land area and FAR.

3. The proposed penthouse and 11th floor court extension would not be visible from the public street at grade and would not deprive adjacent properties of adequate light and air. The overall proposal would return the existing vacant office building to a viable use.

4. At the time the building was built in 1926, a closed court was incorporated on its east side that extended upward from the second through the 10th floors and measures 9 feet 4 inches by 36 feet (335.9 square feet). In 1926, this court met the existing zoning requirements, but these requirements have been amended, rendering the building's court nonconforming. The applicant's proposal in this case includes the addition of an 11th floor to the

building that would be constructed directly above the "footprint" of the 10th floor. This would be done for practical architectural and structural purposes. As a result, the proposed 11th story would duplicate the court width and area dimensions as currently existing on the nine floors below. If the 11th story court complied with the current court requirements of the Zoning Regulations, it would have to be 25.78 feet in width with an area of 1,329 square feet. This would require the 11th floor court to be almost four times as large as each of the existing courts below. The Board concurs with the Office of Planning's conclusion that this situation would serve no practical purpose and would create a practical difficulty for the applicant in its ability to reasonably use the building.

5. The proposed project will substantially advance the purposes of the Zoning Regulations and the Comprehensive Plan. The proposed use of the site for a hotel is not inconsistent with the site's commercial designation by the Land Use Element of the Comprehensive Plan. Under the Zoning Regulations, the use of the site as a hotel is a matter of right, therefore the Board has no jurisdiction over its use.

6. The architectural design of the project and the 11th floor addition will enhance the features of the site and the urban design of the area.

7. There will be no adverse impact because of the bulk or height of the proposed addition. The proposed addition is scaled appropriately to enhance the character of the buildings in the vicinity and those on neighboring properties.

8. The opposition's concerns, related to the use of the alley, the lack of parking or loading in the facility and the noise that might be generated from the proposed penthouse, are not supported by the weight of the evidence. The Board has no jurisdiction over the use of public alleys. The subject property was constructed without off-street parking and loading facilities and the addition, which is the subject of this application, of 8-10 hotel rooms will not adversely affect the use of adjacent properties because of this lack of parking or loading, especially given the building's location at a metrorail entrance. Further, there was no credible evidence presented that the proposed mechanical penthouse would create noise or other objectionable conditions.

9. The Board finds that the applicant's architect and the testimony of the Office of Planning represent sound, credible and irrefutable evidence that the project will not have a negative impact.

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 special exception under Paragraph 400.7(b)] and area variances from Subsections 771.5, 776.1, and 776.2 to allow the addition of an 11th floor and the conversion of an existing ten-story office building to a hotel in a C-4 zone district. The Zoning Regulations permit the granting of a special exception so long as the approval will be in harmony with the general purpose and intent of the Zoning Regulations and Map and where strict application of the penthouse setback requirement would be unduly restrictive, prohibitively costly or unreasonable. [The Board concludes that the special exception from the penthouse setback requirements can be granted without adversely affecting the use of neighboring property.] The penthouse, sited along the east wall of the building, will not be visible at grade from the public street and will not block light and air to adjacent properties.

The Board notes that approval of the variances from the closed court area and width requirements responds to the practical difficulty that the owner is faced with relating to the size of the lot, age of the building, and the exceptional condition resulting from the fact that a large portion of the first floor of the building is devoted to use by the Farragut West Metrorail Station. These situations directly correspond to the applicant's inability to utilize all of the property's available FAR. Approval of the variances will not be detrimental to the public good and will not impair the purpose and intent of the Zoning Regulations and Map.

The Board concludes that the applicant has fully met the burden of proof for special exception relief under Subsections 400.7(b) and 3108.1, and the area variance relief under subsections 771.5, 776.1 and 776.2 and 3107.2 of the Zoning Regulations. Relief from these provisions addresses the practical difficulty inherent in the subject property's unique situation of having half of its ground floor devoted to the Farragut West Metrorail Station, and the pre-1958 construction of the building. The approval of this application will permit the conversion of a vacant office building into a 170-room hotel. The Board took into consideration the position and rationale of the lone opposition witness. The Board was not persuaded by his arguments in opposition to the application. As stated earlier, the approval of this application will be in harmony with the general purpose and intent of the Zoning Regulations and Map and the Comprehensive Plan, and can be granted without substantial detriment to the public good.

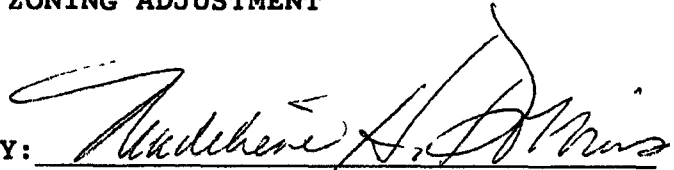
The Board concludes that it could not accord ANC 2B the "great weight" to which it is entitled, as the ANC did not participate in the case.

It is hereby ORDERED that this application is GRANTED.

VOTE: 4-0 (Susan Morgan Hinton, Maybelle Taylor Bennett, Sheila Cross Reid, Laura M. Richards to grant; Angel F. Clarens not present, not voting).

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

ATTESTED BY:



MADELIENE H. DOBBINS
Director

NOV 8 1996

FINAL DATE ORDER OF: _____

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.

16129.ORD/BJW/bjw

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16129

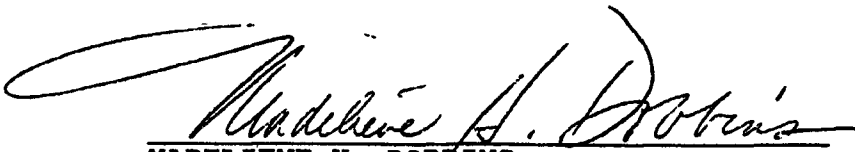
As Director of the Board of Zoning Adjustment, I certify and attest that on NOV 8 1996 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated as a party in the public hearing concerning this matter, and who is listed below:

Phil T. Feola, Esq.
Wilkes, Artis, Hedrick & Lane, Chtd.
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Washington, D.C. 20006

Agnes N. Williams
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555 5th Avenue
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Reuben B. Robertson, Esq.
Ingersoll & Block, Chtd.
1401 16th Street, N.W.
Washington, D.C. 20036

Henry Fernandez, Chairperson
Advisory Neighborhood Commission 2B
Dupont Circle
P.O. Box 33224
Washington, D.C. 20033-3224


MADELIENE H. DOBBINS
Director

Date: NOV 8 1996

J

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15169 of the Copper Beach Valley Company, N.V., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Sub-section 411.11 to allow a mechanical penthouse which does not meet the setback requirements, and a variance from the rear yard requirements (Sub-section 774.1) for construction of a retail/office building with an accessory parking garage in a C-4 District at premises 1430 K Street, N.W., (Square 218, Lots 808 and 823).

HEARING DATE: November 8, 1989
DECISION DATE: November 8, 1989 (Bench Decision)

DISPOSITION: The Board GRANTED the application by a vote of 4-0 (Paula L. Jewell, Lloyd Smith, William F. McIntosh and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

The Board DENIED a motion to waive 11 DCMR 3104.1 by a vote of 3-0 (Carrie L. Thornhill and Paula L. Jewell to deny; Lloyd Smith to deny by proxy; Sheri M. Pruitt and Charles R. Norris not voting, not having heard the case).

FINAL DATE OF ORDERS: May 17 and November 27, 1991

MODIFICATION ORDER

The Board granted the application by its order dated May 17, 1991. By its order dated November 27, 1991, the Board denied a request from the applicant to waive the provisions of 11 DCMR 3104.1 and extend the six month period for filing of the appropriate applications for building permits.

By letter dated November 15, 1991, counsel for the applicant filed a timely motion for modification of the approved plans. The proposed modifications would result in the removal of precast concrete sculptural ornamentation at the roof level of the north facade; the addition of detailed articulation on the east facade from the northeast corner to the first bay; and, a change of materials on the south facade to precast concrete. The proposed modifications are intended to improve the design of and enhance the compatibility of the proposed structure with surrounding development. The proposed modifications would not require any additional zoning relief. There was no opposition to the proposed modification of plans.

Upon consideration of the motion, the record in the case and its final order, the Board concludes that the proposed

BZA APPLICATION NO. 15169
PAGE NO. 2

modifications are generally cosmetic and minor in nature. The proposed modification of plans does not substantially alter the project as originally approved by the Board. No additional zoning relief is required. The material facts relied upon by the Board in approving the application are still relevant.

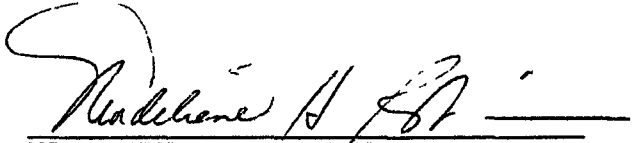
It is therefore ORDERED that the modification of plans is APPROVED subject to the CONDITION that construction be in accordance with the plans marked as Exhibit No. 33A of the record. In all other respects the order of the Board dated May 17, 1991 shall remain in full force and effect.

DECISION DATE: January 8, 1992

VOTE: 3-0 (Carrie L. Thornhill and Paula L. Jewell to approve; Lloyd D. Smith to approve by proxy; Charles R. Norris not present, not voting; Sheri M. Pruitt not voting, not having heard the case).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

JAN 30 1992

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."

BZA APPLICATION NO. 15169
PAGE NO. 3

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.

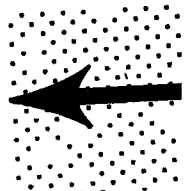
15169Order/SS/bhs

K

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15140 of Peter G. Wharton, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance to allow an addition to an existing nonconforming structure which now exceeds the percentage of lot occupancy requirements and where the addition will create a new nonconformity of structure, [Paragraphs 2001.3(a), (b) and (c)], and a special exception under Sub-section 411.11 to allow a roof structure that does not meet the setback requirement (Sub-section 411.1) for a proposed addition of a roof structure and deck to a nonconforming dwelling in an R-4 District at premises 607 - 3rd Street, N.E., (Square 778, Lot 83).



HEARING DATE: October 11, 1989
DECISION DATE: October 11, 1989 (Bench Decision)

SUMMARY ORDER

The Board duly provided timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to ANC 6A and to owners of property within 200 feet of the site.

The site of the application is located in Advisory Neighborhood Commission ("ANC") 6A. ANC 6A, which is automatically a party to the application, by letter dated October 6, 1989, supported the granting of the application.


As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 2001.3(a), (b) and (c) and a special exception pursuant to 411.11. No person or entity appeared at the hearing or otherwise requested to participate as a party in this proceeding. 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 and 3108 and that the requested relief can be granted without substantial detriment to the public good and as in harmony with the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and maps. It is therefore ORDERED that the application is GRANTED.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 5-0 (Paula L. Jewell, Charles R. Norris, William F. McIntosh, Lloyd D. Smith and Carrie L. Thornhill to grant).

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

ATTESTED BY: 
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: OCT 20 1977

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 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.

15140order/LJP54

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

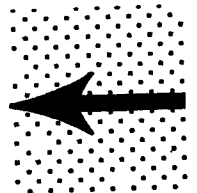


Application No. 14261, of the George Washington University, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations (11 DCMR 3108.1 and 3107.2, respectively), for the following relief to construct a nine story rear addition (the "Burns Building Addition" or the "Addition") to the subject structure, the H.R. Burns Memorial Building according to the plans marked as Scheme 2 (Exhibit No. 69 of the record):

- A. Special exception under 11 DCMR 210 for further processing under a campus plan and under 11 DCMR 210.3 for permission to exceed the normal 3.5 FAR on the residentially zoned portion of the subject property by aggregating the FAR from the residentially zoned portion of the campus;
- B. Special exception under 11 DCMR 411.11 to permit a separate roof structure not meeting the setback requirements of 11 DCMR 400.8 and 770.7 and which does not place all penthouses and mechanical equipment in one enclosure and which does not have all enclosing walls of equal height;
- C. Variance from the open court width requirements (11 DCMR 406.1);
- D. Variance from the prohibition against making an addition to an existing nonconforming structure that creates a new nonconformity (court width) (11 DCMR 2001.3(c)); and
- E. Variance from the prohibition against making an addition to an existing nonconforming structure that extends an existing nonconformity (FAR) in a Commercial District (11 DCMR 2001.3(c)),

to construct a nine-story addition to the subject structure, the H.B. Burns Memorial Building, in an R-5-C and C-3-C District at premises 2150 Pennsylvania Avenue, N.W., (Square 75, Lots 855, 857, 849, 819, 818, 856 and 814).

HEARING DATES: February 27, May 8, June 26, July 31 and
October 16, 1985; December 16, 1987;
February 3, 1988



DECISION DATES: September 4, September 18 and November 6, 1985; February 17, 1888.

FINDINGS OF FACT:

1. The George Washington University ("GWU") is the applicant. The parties currently in opposition are James T. Draude, an owner and resident in the President Condominium, and ANC 2A.

2. On December 14, 1984, GWU filed its application for special exceptions for the alternative now identified as Scheme 1. The application was advertised for hearing on February 27, 1985. On motion of the Intervenors, the Board of Zoning Adjustment ("Board") remanded the application to the Zoning Administrator to determine whether additional zoning relief was necessary. On March 21, 1985, the Zoning Administrator ruled that the application required an additional special exception for a roof structure which does not place all penthouses and mechanical equipment in one enclosure and which does not have all enclosing walls of equal height. A revised application was advertised for hearing on May 8, 1985. At the hearing on May 8, 1985, the Board granted GWU's motion for leave to amend its application to include an alternative design for the proposed Addition (identified as Scheme 2), and to postpone the hearing to allow Scheme 2 to be advertised. Applicants filed an amended application on May 9, 1985, and the application was advertised for hearing on June 26, 1985. The Board approved Application No. 14261 on December 20, 1985, and denied Appeal Numbers 14297 and 14344 on January 28, 1986. The Board approved Scheme 2. Intervenor Draude appealed the Board's decision to the District of Columbia Court of Appeals. On June 9, 1987, the District of Columbia Court of Appeals reversed the Board's decisions and remanded this action to the Board.

3. GWU was founded in 1821 by an Act of Congress. It has been located in the Foggy Bottom/West End area since 1912. It is fully accredited and authorized to confer degrees. It qualifies as a university under the Zoning Regulations, and the Campus Plan approved by the Board in 1970 in BZA Application No. 10403 governs its development.

4. Generally, the Campus Plan boundaries are Pennsylvania Avenue to the north, 19th Street to the east, F Street to the south, and 24th Street to the west. The boundaries include approximately 19 squares of approximately 45 acres. GWU is the predominant land owner within the designated boundaries.

5. The subject premises, known as 2150 Pennsylvania Avenue, N.W., are located on the southeast corner of the intersection of Pennsylvania Avenue and 22nd Street, N.W.

The site is split-zoned C-3-C and R-5-C, with the line of demarcation running immediately to the rear of the Burns Building structure which existed before GWU filed this application.

6. The site is long, narrow, and irregular, albeit generally rectangular, in shape; contains approximately 29,652 square feet; and fronts on Pennsylvania Avenue, 22nd Street, and I Street. The southern two-thirds of the lot begin 57 feet deep from 22nd Street, where the Burns Building ends. It then widens to 100 feet for a distance of 125 feet, and then narrows again to 82 feet for the remaining length. The northern portion of the site is presently improved with the H.B. Burns Memorial Building, while the southern portion has been used as a University parking lot for 53 automobiles.

7. GWU is located in a downtown urban neighborhood characterized primarily by highrise commercial, institutional, and residential buildings and uses. Buildings are permitted to be 90 to 130 feet in height. To the east, zoned C-3-C and C-4, are the White House, the General Services Administration, the World Bank, the International Monetary Fund, and various other institutional, public, and private offices. To the north, across Pennsylvania Avenue, the land is zoned C-3-C. This is the location of the city's West End Business section, which has undergone a variety of highrise developments in recent years, including International Square, the Esplanade, the Regent Hotel, and numerous other commercial and highrise residential buildings. To the immediate west, the zoning is R-5-D and is occupied by several highrise apartment buildings. Farther west the zoning is R-5-B, where several blocks of townhouses are located. To the southwest are the Kennedy Center and the Watergate Complex, in an area zoned SP-2. To the immediate south, the tier of blocks between E and F Streets is zoned R-5-D and is the location of highrise apartment and condominium buildings and institutional office buildings. Farther south, across the E Street Mall, are the State Department, Civil Service Commission, and other federal and institutional office buildings which, except for unzoned Federal land, are in an area zoned SP-2.

8. The site is bordered by Pennsylvania Avenue to the north, I Street to the south; a restaurant, a portion of a public alley system, and the President Condominium to the east; and 22nd Street to the west. GWU is the predominant landowner in the square. On I Street, the entire street except for the President Condominium is owned by GWU. University uses surrounded the President on three sides. The only other non-university uses in the square are five small commercial facilities which front on Pennsylvania Avenue.

9. The Application is consistent with the policies of the Campus Plan and the non-expansion of GWU's campus into low density residential areas.

10. The Applicant submits that the Addition is consistent with and implements the policies enunciated in the Human Services Element of the District of Columbia Comprehensive Plan (10 DCMR Chapter 10). These are:

1000.1 The availability of health and social services is critical to the District community. A wide range of services that are indispensable must be delivered not only to the most desperate and destitute, but to anyone in need of human services. These services include the following:

(a) Prevention and control of disease;

(b) Provision of medical and health care;

1000.2 Providing efficient and affordable human services require[s] intense, sustained, and sharply focused actions by the public and private sectors working together.

1000.3 The involvement of community leaders and agencies, providers, and consumers in such an active manner so as to ensure that high quality human services are provided, is central to efficient and affordable human services. It is essential that programs and actions respond to identified community needs.

1000.4 The District must pursue every available opportunity to improve efficiency and effectiveness and to target its resources most appropriately. Studies currently in progress must be carefully reviewed. Policies and implementation strategies designed to provide comparable services at lower costs must be devised.

1002 HEALTH CARE COST CONTAINMENT

1002.1 The health care cost containment objectives are to ensure high quality and thorough community-based health services that are available and accessible at reasonable cost and to provide quality public and private health services at reasonable cost.

- 1002.2 The policies established in support of the health care cost containment objectives are as follows:
- (a) Improve the efficiency of health service and initiate all appropriate actions to contain the costs of health care, thereby providing quality services at the lowest possible cost; [and]
 - (b) Support the development of appropriate alternatives to inpatient hospital care; develop alternative uses for underutilized hospital beds, and avoid duplication of expensive services and equipment....

1003 HEALTH CARE DELIVERY SYSTEM

1003.1 The health care delivery system objective is to improve the efficiency and effectiveness of the health care delivery system.

1003.2 The policies established in support of the health care delivery system objective are as follows:

- (a) Refocus the health care system from one of crisis response to one that emphasizes preventing disease and promoting health and well-being by enhancing client capabilities to make informed choices about life styles and health practices, by avoiding disease, disability, and stress, and by establishing local health policies directed at increasing individual responsibility for health;
- (b) Promote the accessibility of quality primary care services in all areas of the District at reasonable cost, especially in medically-underserved and critical staff shortage areas;

- (e) Promote the efficient and effective delivery of acute care services by reducing inappropriate service

utilization and by exploring
alternative reimbursement mecha-
nisms;

- (g) Seek to ensure that sufficient rehabilitation services are readily accessible at costs that will not inhibit patient access to care and seek to ensure that appropriate referral patterns for rehabilitation services are maintained.

The Board concurs that the Addition is consistent with and contributes toward fulfilling these policies and goals of the Comprehensive Plan.

11. In 1985, the Council of the District of Columbia approved land use maps, pursuant to the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984. Map One, the Generalized Land Use Map, designates the Burns Building frontage on Pennsylvania Avenue as high-density commercial. The remainder of the site is designated for institutional uses. The addition is consistent with and implements these designations.

12. The President Condominium is located adjacent to the site, at 2141 I Street. It contains 125 units, of which 17 are one-bedroom units and 108 are efficiencies. The building was constructed in 1940 as an eight-story apartment building and remained as such until 1981, when it was converted into condominiums.

13. Twenty-second Street is a local street, one-way northbound, with a paved width of 32 feet. Two-hour metered parking is allowed on the east side of the street between 7:00 A.M. and 6:30 P.M. On the west side, two-hour metered parking is allowed between 9:30 A.M. and 4:00 P.M.

14. I Street is a local street with a paved width of 32 feet. Two-hour residential permit parking is in effect on both sides of the street between 7:00 A.M. and 6:30 P.M.

15. Pennsylvania Avenue is a principal arterial with a paved width of 80 feet. Parking is not permitted during the peak period in the peak direction curb lane.

16. The site is within the service area of the Foggy Bottom Metrorail station, which is less than 500 feet from the project. In Addition, the site is served by the Pennsylvania Avenue Metrobus line, which links the site to downtown and the Friendship Heights area.

17. GWU seeks Board approval for construction of an addition to the H.B. Burns Memorial Building. The Burns Building houses much of the office practice of the faculty associated with the University Medical School. The Addition is intended to relieve overcrowding within the Burns Building, and to permit off-campus medical facilities housed within leased space to return to campus, to consolidate other on and off campus facilities, and to provide a modern ambulatory care center. Included in this latter category is the Department of Health Care Sciences ("HMO") currently located at 1229 25th Street, N.W. In Orders numbered 11952 and 13350, the Board granted permission to the University to locate at the 25th Street address premised on eventual relocation of the activities to the main university campus. The Department of Health Care Sciences serves approximately 20,000 enrollees in an HMO, as well as other clients needing medical care.

18. In addition to examination, treatment, and support space for the Department of Health Care Sciences, the proposed Addition will contain medical faculty office space, administrative office and support space, multiple exam and procedure rooms, and will consolidate ambulatory care services offered at GWU Medical Center into a modern, functionally efficient complex capable of providing convenient, consumer-oriented medical service.

19. To achieve this objective, GWU submitted to the Board two alternative designs for the Addition. Scheme 1, which located the building on the east property lined, is no longer before the Board. It would have contained 120,950.99 square feet in a structure 90 feet in height as measured from Pennsylvania Avenue, and 118.5 feet in height, inclusive of penthouse as measured from I Street. The height differential results from a grade change. The structure would have had 12 levels, eight above grade and four below. Of the 12 levels, nine would have been used for medical-related activities and three for underground parking. A total of 140 full sized, 9 feet by 19 feet parking spaces would have been provided, accessible by way of a ramp from I Street, N.W. Vehicular access to the Addition would also have been available from a circular driveway with curb cuts on I Street and 22nd Street, N.W. This driveway would have permitted a drop off/pick-up point for nonambulatory patients at the front entrance of the structure. Access to the structure would have also been available by way of elevators from the parking garage and connections with the Burns Building.

20. GWU developed Scheme 2 after a series of meetings with Councilmember John Wilson, the Office of Planning and the President Condominium. In an effort to ameliorate the Condominium's concerns, GWU was encouraged to develop a design that would provide additional light and air. GWU did

not originally apply for the configuration of Scheme 2, because it required the approval of two variances. Scheme 2 contains 121,923.4 square feet and is also 90 feet in height from the point of measurement. The number of levels contained in the Scheme 2 structure is the same as those in Scheme 1, and the distribution of functions by level is also identical. Finally, the two plans also correspond in terms of the number of parking spaces, vehicular access points, and pedestrian entrances. Only Scheme 2 is before the Board.

21. The major difference between the two schemes is the distance between the east wall of the proposed Addition and the west wall of the adjacent President Condominium. In Scheme 1, a portion of the east wall of the proposed Addition would have extended along the western wall of the President Condominium. In Scheme 2, the proposed Addition has been pulled back approximately 21 feet from the property line adjacent to the west wall of the President Condominium. The area between the walls of the two buildings expands to approximately 36 feet to the north. The effect is the creation of additional open space between the proposed addition and the President. To offset the loss of gross floor area resulting from the setback, the Applicant has extended the structure closer to I Street. In Scheme 1, the proposed Addition would be set back approximately 32 feet from I Street; in Scheme 2, this setback has been reduced to 15.5 feet.

22. 11 DCMR 210.1 provides that a college or university that is an academic institution of higher learning, including college or university that is an academic institution of higher learning, including college or university hospital, dormitory, fraternity or sorority house proposed to be located on the campus of a college or university, shall be permitted as a special exception in a residential district (R-1) provided that:

- A. Use as a college or university shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. (Section 210.2)
- B. [In an R-5-C District], bulk increases may also be permitted; Provided that the total bulk of all buildings and structures on the campus shall not exceed the gross floor area prescribed for the R-5-C District. Because of permissive increases as applicable to normal bulk requirements in the low density districts regulated by this Title, it is the intent of this subsection to prevent unreasonable campus expansion into improved low-density districts. (Section 210.3)

- C. The applicant shall submit to the Board a plan for developing the campus as a whole, showing the location, height, and bulk, where appropriate, of all present and proposed improvements, including, but not limited to the following:
- (a) Buildings and parking and loading facilities;
 - (b) Screening, signs, streets, and public utility facilities;
 - (c) Athletic and other recreational facilities; and
 - (d) A description of all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development. (Section 210.4)

23. Under Section 3108.1, the Board is authorized to grant special exceptions, where, in the judgement of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

24. The Board approved the George Washington University Campus Plan ("Plan"), BZA Order No. 10403, December 22, 1970. The Plan provides flexibility through emphasis on general policies for the location and character of proposed buildings. The Plan consists of the following documents contained in the file of BZA Application 10403:

- A. Text material and supplement designated as Exhibits 10 and 11;
- B. Functional Areas, Illustrative Site and Staging Plans, respectively designated as Exhibits 2b, 2c, and 2d; and
- C. Four additional maps submitted May 26, 1970, after National Capital Planning Commission review entitled Identification of Existing Buildings, Vehicular Circulation Plan, Landscape Treatment Plan and Land Use Plan.

The Applicant has adopted as its official plan, a plan report entitled "A Revised Campus Plan for George Washington University" dated August, 1970. This plan report is a slightly revised version of the approved Campus Plan but is identical for purposes of considering the subject site. The

1985 campus plan is substantially more detailed, but does not amend the 1970 Plan in any way which adversely affects the consistency of the proposed Addition with the Plan.

25. The proposed Addition is located within an area of the approved 1970 Campus Plan designated "Medical School-Hospital." This use has been expressed in the Plan since at least 1970. GWU owned slightly over half of the site when the 1970 Plan was approved. Thereafter, it acquired the remainder. Further, the Illustrative Site Plan shows this site for an extended medical care center. Ambulatory care services are similar to the intent of the Illustrative Site Plan. Emphasis on short hospital stays has replaced the extended medical care centers. Thus, the spirit of flexibility provided in the Plan fits well with the proposed use. The Board notes that, as stated in the approved 1970 Plan:

The Campus Plan must, like a city plan, be expressed in terms of policies. A plan only in terms of specific building projects would be of limited value; precise needs for the projects to be built in the more distant future cannot be specified, but these projects must be anticipated in general terms if the long-range campus pattern is to be a rational and workable one. Therefore, the campus plan itself is in terms of locational and design policies.

The Board finds that the proposed Addition is consistent with what is shown on the approved 1970 campus master plan. The 1985 Campus Plan contains no amendments which would materially affect this finding.

26. BZA Order No. 13350, issued December 22, 1980, approved the continued use of 1229 25th Street, N.W. as the location of the applicant's Department of Health Care Sciences. The Board granted the continuation for a period of five years but dictated that the applicant find permanent space on the campus for the use within the five-year time period. The present application is consistent with the mandate.

27. The hours of operation of the facility will be from 7:00 A.M. to 8:00 P.M. Monday through Friday, and some hours on Saturday.

28. Approximately 75 percent of the proposed facility will be used by functions to be relocated from several different locations and presently utilizing 107,000 net usable square feet. Net usable square feet includes only the interior dimensions of functional rooms and does not include walls, corridors, mechanical, or public areas. The Addition will allow for vitally needed expansion. There

will also be a modest increase in the number of patient visits.

29. GWU presented Dr. L. Thompson Bowles, Acting Vice President for Medical Affairs, Dean for Academic Affairs and Professor of Surgery at the George Washington University Medical Center; Mr. Charles E. Diehl, Vice President and Treasurer of GWU; E.M. Knowles, Jr., National Director of Facilities Planning for Hamilton/KSA, health care planning consultant; Avery Faulkner, F.A.I.A., senior partner with the Cannon Faulkner Partnership and specialist in the design of health care buildings; John F. Callow, President of Callow Associates, a traffic, transportation, and environmental consultant; and William S. Harps, MAI, and expert real estate appraiser, who testified as to the need for the Addition as designed, its impact on the neighboring property, and the appropriateness of granting the relief sought.

30. The School of Medicine and Health Science is responsible for the education of over 600 medical students, 300 allied health students, and nearly 400 medical residents. The medical center conducts a large research program involving a significant number of projects funded by the National Institutes of Health, the National Science Foundation, and the National Academy of Sciences. These academic activities are major and integrated missions of the medical school, the hospital, the Burns Building, and the medical faculty practice.

31. The Pre-existing Burns Building is overcrowded and permits neither efficient ambulatory health care facilities nor an appropriate level of academic functions. The lack of on-campus space forced GWU to locate the Department of Health Care Sciences in leased off-campus space. The proposed Addition will allow the return of this department to campus, so as to integrate health services, even though some of the faculty requested programs will not be accommodated in the Addition, due to space limitations. The provision of efficient, integrated medical services requires close proximity to the hospital. There are no other locations that would permit GWU to construct the required ambulatory health care facility without being prohibitively expensive.

32. The Addition is essential to the academic mission of GWU, in order to keep pace in the field of medical education. As the emphasis in health care shifts from the in-patient to the out-patient setting, GWU must shift the focus of its medical student and resident education. This shift is required not only to comply with insurance provider requirements, but also to comply with educational accreditation agencies. The new facility will enable students to learn by increased provision of more complex care in the

ambulatory setting. Diagnostic facilities, examination rooms, procedure rooms, and educational support areas have been included in the Addition and are an integral part of the training experience needed by the students. A modern facility at a central location will provide student physicians with the necessary educational setting.

33. Consolidation of the ambulatory care services offers the community an efficient and convenient, one-stop, comprehensive, out-patient facility. It will increase the efficiency of the delivery of health care and minimize the duplication of costly functions. Students will learn about out-patient services in a modern facility. Health care services at a single location will allow GWU to distribute patient flow, and thereby diminish the impact of traffic which is generated during peak hours.

34. The existing health program is inefficient because of its decentralization. Patients, many of whom are elderly, must make trips between the hospital and the Burns Building to the Department of Health Care Sciences located on 25th Street. The proposed Addition will allow patients to receive all required care at a single site, as well as aid in the delivery of emergency services due to the proximity of the large number of doctors.

35. GWU was required to use this particular site for an addition to the Burns Building for a variety of reasons. First, this site allows GWU to continue to use the valuable asset of the pre-existing Burns Building, which is already devoted to ambulatory care. Second, a successful ambulatory care center requires proximity to the hospital, due to the extensive interaction between the medical staff and the hospital. Third, any new addition must comply with the George Washington University Campus Plan. Fourth, the expansion of the Burns Building on the subject site is the only economically feasible location for the required consolidated ambulatory care facility. Granted, Square 40 is also in reasonable proximity to the Hospital and is identified for that reason as the site for further medical facilities. However, it would be unreasonable to require GWU to convert a valuable resource, that is, the existing Burns Building, to other medical, or to other than medical, use at this time, in order to locate a comparable ambulatory care facility on Square 40.

36. GWU was required to expand the Burns Memorial Building. Ambulatory care is presently being provided at a variety of facilities and locations both on and off campus. All existing facilities are crowded and require additional space. The existing ambulatory care is fragmented and inefficient, and counter to the recognized need for academic medical centers to consolidate and expand outpatient activities. The primary reason for this shift is the need

to locate patient care in the least costly setting. Improved technology now allows for diagnosis, treatment, and intervention in an ambulatory setting without days and weeks of preparation and recovery in a hospital. Consolidation also allows patients and their physicians to have easy access to sophisticated equipment and a variety of health care professionals. The multi-discipline approach is required, particularly at an academic medical center which often treats the most complex cases. The Board further finds that with the shift to an ambulatory care setting, the clinical teaching of medical students must also shift to that setting, resulting in a need for increased space for the accomplishment of that academic mission.

37. The Addition and the pre-existing Burns Building contain the minimum square footage which could reasonably provide for a modern ambulatory care center. In its initial analysis, before filing an application for a building permit, GWU had determined that the care center would require 181,000 square feet of net usable space to accommodate the desired program elements. In view of the inability of the building envelope to accommodate all program elements, reductions in space were required. After eliminating space not absolutely required, and maximizing net areas by redesign and minimizing circulation space, the program space was reduced to 152,000 net usable square feet. The Addition is designed at the minimum size which will accommodate an effective and functional ambulatory care center.

38. The Addition has been sized at a functional minimum, and it was essential to have the various functions at a single location. The uses must be coordinated with the functions in both the Burns Building and the hospital. The Addition must be cross-spliced with existing functions in the Burns Building. Finally, there are certain sequential functions within the Addition that must be configured in a certain manner for the clinical operation to work for the physicians.

39. As a major provider of medical care, GWU is a public service organization that needs to consolidate and expand its ambulatory health care facilities, and the subject site is the only feasible location for such expansion. The Addition, as designed, is an institutional necessity for GWU.

40. The lot occupancy of the subject site with the Addition is 92 percent in the C-3-C portion, and approximately 75 percent in the R-5-C portion. The height of the Addition is 90 feet as measured from Pennsylvania Avenue and therefore is approximately 35 feet lower than the existing Burns Building.

41. Landscaping will be provided in a coordinated fashion with GWU's overall campus landscape plan and the District's requirements for types, sizes, and location of plant material.

42. To the extent that the mechanical penthouse of the proposed Addition is Scheme 2 exceeds the 0.37 FAR allowance, the excess has been appropriately charged to the FAR of the Addition. The penthouse complies with the 18.5 foot height limit. The penthouse will house critical major mechanical equipment for the addition, as well as the emergency power and the central cooling tower and associated equipment for the complex. It has been designed so that the equipment is within the smallest envelope which the building codes allow. Some equipment which is normally placed in a penthouse was moved to mechanical rooms on each floor below the penthouse due to space restrictions. This resulted in a loss of clinical space. No further transfers could reasonably be made. Due to the required equipment and the elevation differential between the Burns Building and the Addition, two separate penthouses are required. Due to the required equipment, the walls of the Addition penthouse cannot match the lower height of the Burns Building penthouse. The same constraints require a special exception from the setback requirements for roof structures.

43. The Board will address the objections to the penthouse based on light and air considerations in its subsequent findings dealing with light and air. The site is long and narrow, and the placement of all required equipment for this highly-specialized building can only be accomplished by encroaching upon the setback line of the roof structure.

44. The effect of light on buildings is of two types: direct sunlight and reflected light. Reflected light is light which is deflected from one object to another. The source of reflected light may be direct sunlight and may be reflected from a light-colored object or from the sky. In the District, the north elevations of buildings receive virtually no direct sunlight, but have reflected light from nearby buildings or the sky. Many people prefer north orientations because they are protected from direct sunlight.

45. Based upon the record, the Board is persuaded that the overall effect of the Addition on the light of the President Condominium causes no material adverse impact. Even with the completed Addition in place, the western rooms in the President do not fail to benefit from a reasonable level of direct and reflected light. The Board so finds as an absolute fact. It therefore does not reach the question whether there is no greater adverse impact than could reasonably result from a matter-of-right structure.

46. The Addition has no adverse effect on the reflected light of the President Condominium. Where the west wall of the Condominium steps back as it moves north, much of the west wall is in shadow cast by the President itself. The west wall of the President Condominium receives reflected light from the Addition in the morning and at noon, and direct and reflected light in the afternoon.

47. The Addition will have no cognizable adverse impact on air circulation for the President Condominium. Air circulation in urban areas is provided by having open space between buildings. The continuous passageway between the Addition's east walls and the Condominium's west walls, which runs the full length of both buildings, provides maximum air flow between the structures, and provides an adequate source of air for natural ventilation.

48. The practical effect of the Addition on the Condominium with respect to light and air may also be appropriately considered by examining the provisions of the Zoning Regulations which are designed to provide adequate light and air for habitable rooms. Under the Building Code, habitable rooms are required to front on a street, alley, or a yard or court meeting the requirements of the Zoning Regulations. The Zoning Regulations require that in open courts the opposing walls must be separated by a distance equal to three inches for each foot of the highest wall. The distance between the east wall of the Addition and the west wall of the Condominium which contains habitable rooms is approximately 36 feet. The Zoning Regulations would require, if the Condominium and the Addition were parts of a single building, the courtyard width opposite habitable rooms to be 29 feet, 7½ inches. In fact, the width of the open space between the Addition and the habitable rooms of the Condominium is well in excess of the width of court which would be required, to wit, 36 feet. The Addition, as designed, will exceed the standards in the Zoning Regulations for the provision of light and air by open courts. The Board is mindful that the Zoning Regulations set higher standards for buildings which are on separate lots, but it would be unreasonable to evaluate the Addition's impact without considering standards which the Zoning Commission has found to be reasonable in other circumstances which are significantly similar to those which are before the Board.

49. The Addition, including the roof structure, does not adversely affect the light and air of the Condominium.

50. As found above, strict application of the Zoning Regulations would require a court of 29 feet, 7½ inches. The Addition as designed provides a court of 21 feet. The wall was moved to the maximum extent possible without serious and significant loss of functional space required

for the ambulatory care center. The further narrowing of the Addition would have resulted in a building not acceptable for ambulatory health care services. Further narrowing of the building would have resulted in the loss of a substantial number of exam and treatment rooms on each level of the Addition, which rooms could not have been relocated to the front portion of the building. Additionally, had this portion of the lot been a width of 100 feet, a 29-foot court could have been provided.

51. The ramp leading to the garage is roofed, and will contain the noise from vehicles entering and leaving the parking garage. The design of the ramp entrance allows ease of access to enter the garage with noise levels approximately those of the surrounding street. Automobiles leaving the garage ascending the slope arrive at the street at a flat plateau with noise levels comparable to surrounding streets. Additionally, the garage will be ventilated in conformance with the requirements of the D.C. Building Code. The garage ramp roof and the garage opening will contain fumes and draw them gradually down the garage to the vertical exhaust shafts of the building. The garage entrance will not create an objectionable impact on the President Condominium due to noise or fumes.

52. The ramp roof will be landscaped.

53. The use and occupancy of the proposed Addition will not generate objectionable noise. The use is not noise intensive. The building design will utilize materials which will insulate internal operations from the surrounding properties. The three levels of the garage will be completely enclosed to attenuate the sound from vehicles within the garage. Noise emanating from the garage will be less than the ambient noise on I Street. Overall, the Board finds that noise from the Addition will be less than presently generated by the vehicles which use the surface parking lot. Further, noise generating equipment on the roof will be located above the roof line of the Condominium. The emergency generator will be located on the west side of the addition away from the Condominium. Cooling towers will be shielded and will direct noise to the sky. Noise levels will be similar to those created by the through-the-wall air conditioning units in the Condominium.

54. The proposed Addition will have a three-level parking garage with a capacity for approximately 140 full-size automobiles. The approved 1970 Campus Master Plan requires GWU to provide 2700 to 3000 parking spaces. The 1985 Campus Plan does not amend this provision. The total number of spaces provided if the proposed Addition is constructed would be 2863. The number of parking spaces is within the range of spaces required pursuant to the Campus Plan.

55. Ambulatory care faculty and staff presently on campus use 141 of GWU's existing parking spaces. GWU's traffic consultant reasonably estimates that the requirement for parking will increase to 188 by 1990. This increase includes faculty and staff being relocated from the 28th Street Department of Health Care Sciences facility.

56. The pre-existing Burns Building presently has an average of 663 daily patient visits. Upon completion of the Addition, the number of visits will increase to 1,076 by 1990, due chiefly to the transfer from the 25th Street HMO facility, and also allowing for a modest amount of growth.

57. Ample parking spaces exist elsewhere on the campus to meet present and future demand. Faculty, staff, and patients will therefore have the use of other GWU parking facilities. The Board finds that GWU will provide adequate off-street parking.

58. The Burns Building presently has assigned to it 394.2 full-time equivalent (FTE) faculty and staff. Other on-campus facilities at the Hospital and Ross Hall which furnish ambulatory care services have 56 FTE's. The Burns Building, the Hospital, and Ross Hall are located in the immediate proximity of each other, and for traffic purposes constitute a single traffic generator. An FTE is equivalent to a staff member who works full-time. Two half-time staff equal 1.0 FTE. Full-time staff split in two assignments would have two .5 FTE positions.

59. After a department-by-department analysis in considering each staff category, the health planning consultant calculated the average daily population. The methodology used involved a 3-step process. First, full and part-time staff were assigned a full population value; for example, if a person was a .5 FTE at the Burns Building that person was assigned a 1.0 for population count purposes. Second, after calculating the total population, an adjustment was made downward for average conditions relating to vacations, holidays, and sick leave. Third, additions were made to account for personnel who performed functions at the on-campus ambulatory facilities who had not been included in the FTE count. The health planning consultant determined that the average daily population for the Burns Building, the Hospital, and the Ross Building, considered collectively as one facility for traffic generation purposes, was 476. The health planning consultant also determined the average population that would be in the new Burns complex, using the same methodology and with allowances for a modest increase in staff. He determined that there would be 694 FTE's at the Burns complex after consolidation, and further determined that the average daily population at such time would be 647. The daily visitor and patient population at the Burns Building and other on-campus sites (Hospital and

Ross Hall) is 663. After consolidation in the Burns medical complex, the visitor and patient population is projected to be 1,076, which includes a modest growth in such population. These calculations were prepared for and used by the traffic consultant for his purposes. The Board finds that these calculations are a reasonable basis for examining the traffic impact of the addition.

60. Existing levels of service of traffic will not change as a result of the Addition. The adjacent intersections at 21st and I Streets, and 22nd and I Streets operate at level of service A, and the intersection at 22nd Street and Pennsylvania Avenue operates at level C. These constitute favorable levels of service. Upon the opening of the new ambulatory facility, approximately 20 percent of the patients will arrive prior to 10:00 A.M., as compared to the present figure of 46 percent, by distributing patient visits throughout the day.

61. The distribution of traffic will be favorable. Traffic that is not destined for the ambulatory care locations will go to a single location that is very convenient to the Metro subway station. Centralizing the staff will also increase carpooling opportunities, and eliminate duplication of trips to separate facilities. The proposed Addition will not create objectionable traffic conditions.

62. The traffic generated by the Burns Building and the other on-campus ambulatory facilities totals 90 vehicles in the A.M. peak hour. The A.M. peak hour (8:30- 9:30) represents the highest volume of traffic on adjacent streets. After consolidation there will be an increase of 84 vehicles in the A.M. peak hour, which, as previously found, does not change the operational levels of service on I Street, 22nd Street and Pennsylvania Avenue.

63. No safety problems will be caused by vehicles entering the Addition's parking garage. Approximately 84 vehicles will enter the garage during the A.M. peak hour. The pedestrian traffic in the morning hours is projected at roughly 412 persons between 8:30 and 9:30 A.M. This pedestrian movement represents seven persons per minute. The estimated 84 vehicles generated in the A.M. peak hour by the garage represents 1.4 vehicles per minute. The interaction of these numbers of vehicles and pedestrians poses no safety problems. Even if 140 vehicles, the garage's capacity, entered during this period, the result would be 2.33 vehicles per minute, which the Board finds would not create a safety problem. At a typical downtown garage, 5 vehicles per minute enter the garage.

64. The Board finds that vehicles turning left into the garage off I Street, approximately 59, will produce no congestion or significant traffic conflict, due to the low

number of vehicles traveling west on I Street and passing the new garage entrance. In addition, the garage ramp is sufficiently long to accommodate 7 cars, which is adequate to prevent queuing or congestion on I Street.

65. The proposed Addition will not increase the number of students.

66. The proposed Addition, when added to existing buildings on campus, will not exceed the FAR prescribed for buildings within the campus. Pursuant to 11 DCMR 210.3, a particular building may exceed the maximum bulk requirements normally allowed in the district in which it is situated, provided that the total bulk of all buildings on campus do not exceed the gross floor area prescribed for that particular district. The Addition, and the President Condominium are located in an R-5-C district, which permits an FAR of 3.5. GWU's FAR is 2.16. The proposed addition of 121,951 number of square feet for Scheme 2 will increase the total of FAR to approximately 2.24, well below the maximum aggregate permitted FAR of 3.5. Exceeding the 3.5 FAR at this site is consistent with the intent of the Regulations to avoid expansion into low density residential districts.

67. On the basis of the Department of Public Works ("DPW"), memoranda dated February 20 and June 19, 1985, and testimony at the public hearing, the Board finds that, from a transportation point of view, the proposed Addition would have a negligible impact on the adjacent street system. The Addition would generate between 100 and 120 vehicle trips during its peak activity period, but this peak period would not coincide with the peak hours on the surrounding streets. The level of parking to be provided would be more than adequate to accommodate future activity at the complex. The proposed number of parking spaces on campus would be 2,863. This figure conforms with the approved Campus Plan requirement of between 2,700 and 3,000 spaces.

68. The intersection of I and 22nd Streets operates at level of Service A. Vehicular and pedestrian trips generated by this project during its peak activity would not affect the existing level of service.

69. The Office of Planning filed three memoranda on the application in the prior proceedings and participated through a representative at the public hearings. The first memorandum, dated February 20, 1985, recommended approval of the application based upon OP's review of Scheme 1 only. OP found the Addition to be consistent with the approved Campus Plan and within the permitted bulk for the University. OP found that noise from the project would be minimal, but requested the applicant to address further the noise emanating from the roof structure. The project architect addressed this issue to OP's satisfaction by submitting a

memorandum into the record. OP concurred with the analysis prepared by the applicant's transportation consultant. OP found that the Addition would not result in an increase in the student body. With respect to the two roof structure special expectations, OP found that strict compliance with Sub-section 3308.2 (11 DCMR 411.11) appears to be unduly restrictive, prohibitively costly or unreasonable. Overall, OP was of the opinion at the time of the report that the proposed addition to the Burns Building would be in harmony with the general purpose and intent of the Zoning Regulations and would not tend to affect adversely the use of neighboring property.

70. Office of Planning's second memorandum, dated May 1, 1985, superseded the first memorandum. OP met with members of the opposition concerning the light and air issue. OP then suggested to the applicant that it re-examine the design of the addition in order to address the opposition's concerns. The applicant complied with this request by preparing a sketch plan that later became Scheme 2. Although the revised plan required variances, OP found it to be superior to Scheme 1. At that time, however, Scheme 2 was not before the Board, and OP could not officially comment on the plan. Subsequent to the filing of the second memorandum, the applicant filed Scheme 2 with the Board as an alternative to Scheme 1.

71. Office of Planning's final memorandum, dated June 19, 1985, considered both Scheme 1 and Scheme 2. OP's recommendation was that the applicant and the opposition continue to work toward an alternative solution that responded to both party's needs and concerns. Nevertheless, OP addressed the criteria for the requested relief. OP found both schemes to be consistent with the approved 1970 Campus Plan. The proposed addition is located within the area of the campus designated "Medical School/Hospital" in the approved plan. The proposed use as an ambulatory care center is not the precise use indicated in the plan, but OP noted that a campus plan serves as a guide and that the proposed use bears a relationship to the medical complex and is appropriate.

72. The Office of Planning, by Memorandum dated December 15, 1987, recommended that the application be granted. Specifically, as the basis for its recommendation, OP reported to the Board that:

[T]he George Washington University is located in a fully developed urban area and in our opinion, the proposed building addition is consistent with the approved campus plan. The setback from the President Condominium and the resulting court it creates, ameliorates the impact of the proposed building addition upon the light and air of units on the west side of the

President Condominium. The proposed building addition is intended to relieve overcrowding within the Burns Building and to improve administration and delivery of medical services. Any changes in the building configuration would impede materially the delivery of services. The site in question is long and narrow which in addition to the configuration of the existing building creates practical difficulty and hardship, and basis for special exceptions and variances that are needed. We note that the proposed use of the building addition is not noise intensive so that it is not likely to create objectionable and adverse impacts on the surrounding neighborhood.

73. On January 28, 1988, OP supplemented its December 15, 1987 Report, repeating the recommendation that the application be granted. Specifically, OP reported that:

1. **Comprehensive Plan.** The property in question is located in an area indicated for institutional use on the Land Use Map of the Land Use Element of the Comprehensive Plan. It is included in The George Washington University Campus Plan. It should be noted that the site is located within the Central Employment Area as defined by the Zoning Regulations. The proposed addition to the existing Burns Building (hereafter, Burns Addition) located at 22nd and I Streets, N.W. is designed to improve the efficiency and the effectiveness of the health care delivery system in the area.

We note that The George Washington University and Medical Center is a valuable resource for the city in the Central Employment Area. It has provided some extraordinary health services to the general public. We think that it is important for the city that this resource be maintained in this area and that it be operated with maximum efficiency.

2. **Special Exception to 3.5 FAR.** The D.C. Court of Appeals ruled that in addition to the special exception for a university use, The George Washington University must obtain a special exception in order to exceed the 3.5 FAR in a R-5-C District. The intent in this respect is to prevent unreasonable expansion in the low density areas. In the present case, this issue is addressed by aggregating the Campus FAR for various buildings, thereby providing open spaces with development, and limiting the uniform and horizontal spread of the campus uses.

3. **Light and Air.** The Zoning Regulations provide that an open court must have a width of 3 inches per foot of height in the R-5-C District (11 DCMR 406.1). The height of the easterly wall of the Burns Addition would require a court of 29 feet in width. The habitable rooms of the President Condominium face a 15-foot wide court within the property of the Condominium. The wall of the Burns Addition is set 21 feet from the property line separating the Burns Addition and the Condominium. Thus, the distance between these walls is 36 feet. Consequently, in our view, the purpose and intent of the light and air requirements of the Zoning Regulations are satisfied.

4. **Public Service Institution.** The George Washington University is a public service institution providing educational and medical services in the District of Columbia. The importance of the ambulatory care service to be provided by the Burns Addition project is underscored by the authorization for the issuance and sale of the District of Columbia revenue bonds in connection with the construction of the facility. In the authorizing legislation, the City Council found that the facility would contribute to community betterment and be in the public interest.

In the opinion of the Office of Planning, the Burns Addition is appropriately located. The variances and special exceptions as requested are not excessive. The Office of Planning recommends that this application be approved.

The Board concurs with the substantive findings made by OP.

74. The Board finds that the combination of factors described by GWU's witnesses and OP, and as found by the Board in this order, creates practical difficulty and hardship.

75. The Office of Planning noted that DPW found the level of parking under Scheme 2 to be more than adequate to accommodate future activities at the complex. Also, the parking requirement must be viewed in terms of the overall level of GWU parking mandated by the approved Campus Master Plan. The approved plan requires 2,700-3,000 parking spaces. GWU currently provides 2,746 spaces. The total number of spaces provided on campus if the Addition is constructed will be 2,833.

76. The best method of gaining access to the proposed Addition is the straight line ramp as proposed. An L-shape ramp, scissor ramp, helical ramp are all unacceptable. Any access from 22nd Street would have to move across the Addition and, because of the depth of penetration, return on an L-shaped leg to reach the ultimate elevation. This would create a physical barrier within two levels of the Addition that would impair the functioning of two essential treatment floors. The straight-line ramp does not bisect any floor area. A helical ramp could not fit on the site, and would require ingress and egress cuts on 22nd Street. It would also require the use of public space which is already heavily loaded with sewer, water, electrical utilities, and vaults. Relocation of the utilities would be very expensive.

77. Based on testimony and memoranda from the Office of Planning and the Department of Public Works, and reports and testimony of Faulkner, the project architect, the Board finds that I Street is the most acceptable location for the garage entrance, and that a 22nd Street garage entrance is not feasible.

78. GWU studied traffic on 22nd Street, and requested changes to the traffic light cycles. These changes resulted in less congestion on the street and an overall improvement in both vehicular and pedestrian traffic flow.

79. Based on the testimony of the Applicant's traffic consultant (Callow), the Board finds that from a transportation planning perspective, it would be safer to restrict traffic flow into the drive-through on the site in a one-way direction. A two-way flow would not be in the interest of the public health, safety, and general welfare.

80. Adequate loading facilities will serve the Addition. Loading dock facilities will be located on the eastern side of the Addition, and will operate off of an existing public alley. One 20-foot deep bay and one 30-foot deep bay will be provided. The loading docks will be shielded visibly and audibly from adjacent residential properties. There will be approximately 20 van deliveries per day utilizing the public alley system. Large bulk deliveries will continue to be made at the School of Medicine, which is located two blocks west of the subject site.

81. A trash compactor will be located adjacent to the loading dock. It will be a small, self-contained eight cubic yard compactor. This area will be shielded visually from the President Condominium. The compactor will replace the one that currently exists on the site. There will be no increase in noise over existing conditions.

82. Based on an October 9, 1985, memorandum by the Office of Planning, and through the testimony of its representative at the further hearing, the Board finds that the Applicant responded to the concerns raised by the Board and that the proposed modifications represent an improvement to Scheme 2. OP reconfirmed its earlier conclusion that I Street constitutes a proper location for the garage entrance. As to noise and fumes, the ramp roof, including the landscaping on the roof terrace that was originally proposed by OP, will have a favorable impact. The roof will have negligible impact on the light and air of the President Condominium. Finally, OP noted that DPW has previously found that the Addition will have a negligible impact on the adjacent street system. The Board concurs with the findings and reasoning of the Office of Planning, and will incorporate the design changes to Scheme 2 in its final decision.

83. The Addition will have no adverse effect on the fair market value of units in the President Condominium. Based upon the totality of the evidence about sales, including Mr. Draude's testimony in particular, the Board finds that the value of the units in the President which would hypothetically appear most likely to be affected by the Addition has not been adversely affected by the construction of the Addition pursuant to the vacated orders of the Board.

84. Advisory Neighborhood Commission 2A filed four resolutions with the Board in prior proceedings. ANC 2A opposed both Schemes 1 and 2 of the proposed Addition. The ANC believed the proposed addition in either form to be too large in terms of height and bulk for the site, and adversely impacts the light and air of residential units located on the west side of the President Condominium. The ANC also objected to the I Street location of the entrance to the underground garage. The ANC maintained that the location of the garage entrance immediately adjacent to the west wall of the President Condominium and its close proximity to other GWU garage entrances would generate an unsupportable level of congestion and noise.

85. By resolution and report dated December 8, 1987, and resolution and report dated January 12, 1988, Advisory Neighborhood Commission 2A advised the Board as to its concerns and its opposition to GWU's application for special exception and variance relief. ANC 2A opposes the application because in its opinion the Addition will eliminate light and air and the view of 48 units in the President Condominium, and will have a significant adverse traffic and noise impact; and that the application does not meet the standards for the special exception and variance relief sought. Furthermore, ANC 2A states that the Addition does not meet the standards in the Zoning Regulations to protect residential property from adverse effects of University

construction. Specifically, with regard to the special exception for University use in a residential district, the ANC states that this relief should be denied because of the objectionable conditions and adverse effects on residential property, i.e., light, air, and view of the 48 units; the location of the parking ramp and driveway would create objectionable traffic conditions due to noise and fumes, hazards to pedestrians, conflicting traffic movement; and that the parking ramp and driveway should be located on 22nd Street. Furthermore, the noise from the east wall of the Addition and the size and proximity of the roof structure will contribute to objectionable noise.

With regard to the special exception to exceed 3.5 FAR in the residential district, the ANC states that the excess FAR adversely affects the residential property and that the relief sought should only be used to avoid adverse impacts in residential districts. The ANC further states that the granting of this special exception would not be consistent with the Zoning Regulations governing University uses in residential districts. The increase in FAR would contribute to the excessive size of the building, which significantly adversely affects residential property. Additionally, the ANC states that the increase in FAR is not consistent with the approved campus plan.

With regard to the variance to permit extending an existing non-conformity (FAR) in a commercial district, the ANC states that there is no extraordinary or exceptional condition, no peculiar and exceptional practical difficulties, and that the addition does not represent an institutional necessity for GWU. Furthermore, the ANC argues that there is no justification for the public service area variance standards established by the Court of Appeals. Additionally, the ANC states that the Addition is a detriment to the public good and is inconsistent with the provision of the Zoning Regulations regarding non-conforming structures.

With regard to the special exception relief for the roof structure, the ANC states that the roof structure contributes to the significant adverse impact on the light and air of the President Condominium and that GWU does not qualify for the special exception relief sought.

The ANC also objects to pedestrian bridges which are not before the Board.

86. The Board is required by statute to give "great weight" to the issues and concerns of the ANC that are reduced to writing and upon which a written recommendation is made. The Board, as demonstrated by its findings of fact and conclusions of law, has addressed each of the issues and concerns of the ANC.

CONCLUSIONS OF LAW:

1. The application was heard by the Board pursuant to the provisions of the Zoning Regulations and the directions of the Court of Appeals, which remanded this matter to the Board for further proceedings. Draude v. District of Columbia Board of Zoning Adjustment, 527 A.2d 1242 (D.C. 1987).

2. GWU is seeking special exception and variance relief in order to construct a nine-story addition to the H.B. Burns Memorial Building in a R-5-C and C-3-C District at premises 2150 Pennsylvania Avenue, N.W. (Square 75, Lots 855, 857, 849, 819, 818, 856, and 814). The specific special exceptions and variances sought are:

- A. Relief sought: Special exceptions under Section 210 for further processing under the campus plan and under Sub-section 210.3 for permission to exceed the normal 3.5 FAR on the residentially zoned portion of the subject property by aggregating the FAR from the residentially zoned portion of the campus;
- B. Relief sought: Special exception under Sub-section 411.11 to permit a separate roof structure not meeting the setback requirements of Sub-sections 400.8 and 770.7 and which does not place all penthouses and mechanical equipment in one enclosure and does not have all enclosing walls of equal height;
- C. Relief sought: Variance from the open court width requirements (Sub-section 406.1);
- D. Relief sought: Variance from the prohibition against making an addition to an existing nonconforming structure that creates a new nonconformity (court width) (Sub-section 2001.3(c)); and

E. Relief sought: Variance from the prohibition against making an addition to an existing nonconforming structure that extends an existing nonconformity (FAR) in a Commercial District (Sub-section 2001.3(c)).

3. Based on the findings of fact and the record herein the Board concludes that GWU has presented substantial evidence and met its burden, and is entitled to the special exception and variance relief sought.

A. GWU and the Addition.

4. George Washington University is an academic institution of higher learning that operates and maintains ambulatory health care services as an integral element of its academic and health care missions. The Board concludes that GWU is a public service organization.

5. The present ambulatory health care facilities are inadequate and need to be expanded. The Board concludes that the subject site is required for such expansion, that there is no alternative feasible site, and that the Addition is consistent with and implements the approved Campus Plan and the District of Columbia Comprehensive Plan. The Board further concludes that the expansion of the facilities into the Addition is a benefit to the public good, and in the public interest.

B. The Section 210 and Subsection 210.3 special exceptions.

6. The Addition as designed is consistent with the approved 1970 and 1985 Campus Plans, and will not tend to adversely affect neighboring residential property due to objectionable conditions affecting light and air, traffic noise, and fumes. The Addition as designed is consistent with the policy of avoiding unreasonable expansion into low-density residential areas by University uses, will be in harmony with the general purpose and intent of the Zoning Regulations and Maps, and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

7. The Board concludes that the Addition will not adversely affect the light and air of the President Condominium. The Board has included that there will be no cognizable adverse impact on light and air. Further, the Board recognizes that the location of the Addition and the President Condominium creates, as a practical matter, an open space that exceeds the standards of the Zoning Regulations for open courts. The Board concludes that, in the first instance, the appropriate standard for measuring

the impact of light and air by the Addition on the President is whether the granting of the special exception would have any significant objectionable effects. If, as the Board has found in this case, there is no such effect, the Board's task is over. Only if there had appeared to be such effects, would it then have become necessary to consider whether those effects would be no greater than those which an alternative as-of-right structure would reasonably be likely to create.

8. The Board concludes that the Addition will not have an adverse impact on the traffic, because the levels of service will not be adversely affected and will remain in the current favorable condition. As with the issue of light and air, the Board concludes that the appropriate standard for measuring traffic impact is to determine whether the absolute, that is, the total ultimate level of traffic created by the granting of a special exception, is not objectionable, and that the appropriate benchmark for this measurement is whether the traffic will affect existing levels of service on adjacent streets. Furthermore, the Board concludes that consolidation of the ambulatory care facilities will create a more favorable traffic distribution pattern than presently exists. The Board also concludes that no objectionable noise or fumes will be created by the addition.

9. The Board concludes that the parking garage ramp cannot feasibly be located on 22nd Street, and that its location on I Street will not tend to affect adversely neighboring property due to traffic, noise, or fumes. There will be no pedestrian conflict with vehicles entering the garage, nor will left-turning vehicles create an objectionable condition due to congestion or conflict with westbound traffic. There will be no objectionable condition due to noise or fumes from the garage or ramp. The Board notes that by placing the garage underground and roofing over the entrance ramp, there will be reduction in noise and fumes, as compared to the former open parking lot adjoining the President.

10. The Addition, including the roof structure, has been designed to minimize any noise impact on the President. The Addition is not a noise intensive use and does not create objectionable noise conditions.

11. The Addition is in a highly urban area zoned R-5-C (medium-high density) and designated for institutional use by the Comprehensive Plan. The Board concludes that it is appropriate to exceed the 3.5 FAR at this site. This is consistent with the policy of avoiding campus expansion into low-density districts.

C. The Subsection 411.11 special exception.

12. The Board concludes that full compliance with the roof structure provisions would be impracticable and such compliance would be unduly restrictive, prohibitively costly or unreasonable. The shape of the lot, configuration of the Addition, the existing Burns Building and the equipment required for a modern ambulatory care center have dictated the design of the roof structure. That structure has been designed to minimum dimensions and equipment normally placed in such structure has been transferred to the lower floors to the maximum extent feasible.

13. The Board's conclusion, supra, as to the Section 210 and Subsection 210.3 special exceptions concerning the effect of the Addition on neighboring residential property addressed the entire structure, including the roof structure, and therefore the Board concludes that the roof structure will not adversely affect the light and air of adjacent property, will not materially impair the intent and purpose of the Regulations and is not likely to become objectionable to neighboring property.

D. Subsections 406.1 and 2001.3(c) variances.

14. The Board concludes that these variances concerning the open court are area variances that are to be decided on the same facts and law.

15. As previously found and concluded, GWU is a public service organization that needs to expand its inadequate ambulatory health care facilities into an adjacent area in common ownership which has long been regarded as part of the same site. GWU has shown that the specific design of the addition is an institutional necessity that requires the specific variances, that is, an open court that does not comply with Subsection 406.1 and the prohibition in Section 2001.3(3) against creating a new nonconformity. Full compliance with Subsection 406.1 would significantly frustrate GWU's needs for expansion.

16. The Board further concludes that the granting of these variances will benefit the public interest and good and will not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board adopts its conclusions, supra, respecting the special exceptions, and concludes that the granting of these variances will not affect adversely the use of neighboring property.

17. Alternatively, the Board concludes that the irregular shape of the lot, the narrowness of its southern portion, and the pre-existing Burns Building constitute an extraordinary or exceptional situation or condition of the subject site, and that the strict application of Subsections 506.1 and 2001.3(c) would result in peculiar and exceptional

difficulties to or exceptional and undue hardship upon the owner.

E. Subsection 2002.3(c) variance (FAR).

18. The Board concludes that this is an area variance to be decided under the same law and, to a certain degree, the same facts as the other two variances.

19. The light and air effect on the President is not at issue here, nor is the specific design that requires a variance from the open court provisions. Nonetheless, the Board concludes that the granting of this variance will not affect adversely the light and air of the President. The Board incorporates its previous conclusions that the Addition will not affect adversely the use of neighboring property.

20. The Board concludes that it is an institutional necessity for GWU to expand its ambulatory health care facilities and that such expansion requires that the Addition be physically linked to and interconnected with the Burns Building. This, in turn, requires that a portion of the Addition be constructed on the C-3-C portion of the site, thereby requiring the granting of this variance. The granting of this variance will benefit the public good and interest and will not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

21. Alternatively, the Board concludes that the location of the Burns Building on the same site creates an extraordinary or exceptional situation or condition of the subject site, and that the strict application of Subsection 2001.3(c) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner.

Accordingly, it is hereby ORDERED that the application is GRANTED subject to the condition that the development shall be constructed in accordance with the modified plans of Scheme 2, marked as Exhibit No. 56B of the record.

VOTE: As to variance relief from 11 DCMR 2001.3(c),
5-0 (Lindsley Williams, Carrie L. Thornhill,
Charles R. Norris, Paula L. Jewell, and
William F. McIntosh to grant);

As to special exceptions under 11 DCMR 210 and 411,
and variance relief from 11 DCMR 406.1,
4-1 (Carrie L. Thornhill, Charles R. Norris,
Paula L. Jewell, and William F. McIntosh to
grant; Lindsley Williams, to deny).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF 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 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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13990, of 1023 Fifteenth Street, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for reinstatement of BZA Order No. 13716 for a special exception under Sub-section 3308.2 to construct a roof structure which does not meet the setback requirements of Paragraph 5201-24 for a proposed new office, retail and garage building in a C-4 District at the premises 1023 15th Street, N.W., (Square 216, Lot 806).

HEARING DATE: July 13, 1983
DECISION DATE: July 13, 1983 (Bench Decision)

ORDER

In Application No. 13716, by Order dated June 21, 1982, the Board approved the identical special exception relief as requested herein, for the same applicant, to construct the same development as proposed herein. The applicant did not proceed to file for building permits to construct the project because of adverse economic conditions. In accordance with Paragraph 8205.11 of the Zoning Regulations, the approval expired after six months.

The applicant now proposes to go forward with the project. The Office of Planning, by memorandum dated July 5, 1983, noted that neither the application nor the conditions within the neighborhood have changed since the earlier application and that its previous comments and recommendations were still applicable.

The Board incorporates herein the findings of fact and Conclusions of Law set forth in Order No. 13716, dated June 21, 1982, a copy of which is attached. It is therefore ORDERED that the application is GRANTED.

VOTE: 5-0 (Lindsley Williams, William F. McIntosh, Carrie Thornhill, Douglas J. Patton and Charles R. Norris to GRANT).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

BZA APPLICATION NO. 13990

PAGE 2

FINAL DATE OF ORDER: AUG - 2 1983

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 CONSUMER AND REGULATORY AFFAIRS.

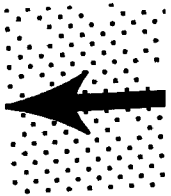
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 13528, of AVG Exploitative VI B.V. (AMFAS), pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 3308.2 permitting construction of a roof structure which does not meet the normal setback requirements for a proposed new office, retail and garage building in a C-4 District at the premises 801 - 18th Street, N. W. (Square 127, Lots 44, 45 and part of 15).



HEARING DATE: August 5, 1981

DECISION DATE: August 5, 1981 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located at the northeast corner of the intersection of 18th and H Streets, N. W., and is identified as 801 - 18th Street, N. W. It is in a C-4 District.

2. The site is vacant and is "L" shaped, with 5,689 square feet in area. It has 120.5 feet of frontage on 18th Street on the west, and slightly more than thirty-five feet of frontage on H Street on the south. The northern property line extends to a depth of approximately eighty-five feet from 18th Street.

3. The site is totally within a commercial zone and is predominantly surrounded by commercial uses. Immediately to the east of the property is a five-story, forty-five foot wide office building designated as a Category II historic landmark and identified as the Baronet Building. Across 18th Street to the west of the subject site is a six-story office building with ground floor retail uses. To the north is an unimproved lot and an eight story apartment building with ground floor retail uses, which is slated for demolition as part of an office building project. Diagonally across the intersection of 18th and H Streets is Edward R. Murrow Park. To the south, directly across H Street, is a ten-story office building.

4. The applicant proposes to construct a ten-story office building with a roof structure to accommodate elevator machinery, cooling tower, exit stairs and air conditioning fans, pumps and related equipment. The ground level will contain retail space with support amenities, plus building lobby and common area space. There will be a below grade parking garage with eighteen compact

car parking spaces. The office portion of the building will be occupied in its entirety by the Paralyzed Veterans of America, a national association that represents the interests of Americans who were disabled in the military service of the United States.

5. The proposed building meets all the requirements of the Zoning Regulations with the exception of the set back requirements for roof structure. The applicant seeks a special exception pursuant to Sub-section 3308.2 of the Zoning Regulations to allow construction of a roof structure that will not be set back from all lot lines a distance equal to its height, as required under Paragraph 5201.24 of the Zoning Regulations.

6. The height of the roof structure will be fifteen feet, which is less than the maximum permitted height. The roof structure will conform to the setback requirements of the Zoning Regulations on the north, west and south sides, and a portion of the east side, of the building. The roof structure will be placed so that there is no setback on a portion of the east lot line. The roof structure will comply with the Zoning Regulations on all sides of the building which abut public streets and alleys.

7. The same exterior materials will be used on the roof structure as will be used on the building itself.

8. Strict adherence to the setback requirements of the Regulations would be impracticable because of the peculiar shape and narrow size of the lot. Because of the location of adjacent and nearby buildings, including the ten story building to the east of the Baronet Building, the roof structure will not be visible from most places on the street. To the extent that it is visible, the impact is minimal due to the use of the same materials for the exterior of the building and the roof structure.

9. Placement of the roof structure as proposed is the most reasonable and economic placement possible which would accommodate the goals of both the applicant and the Zoning Regulations. The light and air of adjacent buildings will not be impaired by the granting of this special exception. Strict compliance with the regulations would allow a roof structure only five feet in width, which would be inadequate to serve a modern office building of this size, and would require a substantial reduction in the usable square footage of the building without achieving any significant amenity from the standpoint of the purposes of the setback requirements.

10. The Office of Planning and Development, by memorandum dated July 31, 1981, and by testimony at the hearing, recommended that the application be approved. The OPD reported that in order to bring the elevator to the tenth floor, a penthouse height of fifteen feet is required, with a penthouse minimum width of

twenty feet. If full compliance with the set back provision on the east side were enforced, a penthouse width of only five feet could be achieved, which would not accommodate the mechanical equipment, stairs, etc., necessary for the building to function effectively. The narrow width and irregular shaped site is at the base of the practical difficulty facing the applicant. The Office of Planning and Development was of the view that there are conditions relating to the shape and width of this property which create an unduly restrictive and unreasonable situation. These conditions would create operating difficulties if the strict compliance with the penthouse set back provisions were enforced. The proposed penthouse design complies with the other provisions relating to its location and bulk and would not, in OPD's opinion, adversely affect the light and air of surrounding properties, nor cause detriment to the present and future streetscape at this location. The OPD recommended approval of this application as being in harmony with Section 3308 and meeting the purpose and intent of Sub-section 8207.2 of the Zoning Regulations. The Board concurs with the findings and recommendation of the OPD.

11. Advisory Neighborhood Commission 2-B submitted no report on this case.

12. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception allowing construction of a roof structure that does not meet the setback requirements on a portion of one side of the proposed structure. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Sub-section 3308.2 and Sub-section 8207.2 of the Zoning Regulations.

The Board concludes that the applicant has met the requirements of Sub-section 3308.2 and Sub-section 8207.2. Because of the small size and narrow configuration of the lot, it would be unduly restrictive and unreasonable to require strict compliance with the roof structure setback regulations on all four sides of the building. The setback requirements are met on all sides, except for a portion of the east side. Due to screening by adjacent buildings, most of the east side of the roof structure will not be readily visible to persons at street level. The Board further concludes that requiring a fifteen foot setback on the east side of the building would require a substantial reduction in the usable square footage of the building without achieving any corresponding amenity intended by such setback requirements.

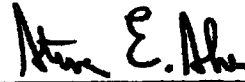
Based on the evidence, the Board further concludes that the granting of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and map and will not tend to adversely affect either the use of neighboring property or the light and air requirements of adjacent buildings, nor will the intent and purpose of the Zoning Regulations be materially impaired.

Accordingly, it is hereby ORDERED that the special exception for the roof structure under Sub-section 3308.2 is GRANTED, subject to the condition that the exterior materials of the proposed building conform in brick courses, mortar, color and texture to the greatest possible extent to that of the existing Baronet Building located immediately to the east at 1737 H Street, N. W.

VOTE: 5-0 (William F. McIntosh, Charles R. Norris, Connie Fortune Douglas J. Patton and Lindsley Williams to grant).

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 3 SEP 1981

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."

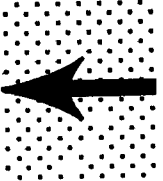
THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

0

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13449, of American Security Bank, N.A. and Albert C. Borglie, Trustees, under the will of Elmer J. Payne, pursuant to Sub-section 8207.2 of the Zoning Regulations, [for a special exception under Sub-section 3308.2 to allow the construction of a roof structure which does not meet the normal set-back requirements] in a C-4 District at the premises 1819 L Street, N.W., (Square 140, Lot 876).



HEARING DATE: March 18, 1981
DECISION DATE: March 18, 1981 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the north side of L Street between 18th and 19th Streets, N.W., in a C-4 zone district at premises known as 1819 L Street, N.W.

2. The subject site is improved with a three story brick structure that is currently vacant. The site is 5,500 square feet in area, with an L Street frontage of fifty feet.

3. The lot is bounded on the north by an alley, on the west by the Anthony House Hotel, which is ninety feet high, and on the east by a parking garage that has an L Street frontage of 110 feet, and extends to the corner of 18th and L Streets.

4. The immediate area of the site has been the subject of substantial re-development within the past ten years, as ten and twelve-story commercial buildings have been constructed to replace many of the row structures and vacant lots that were used for commercial and retail purposes, including parking. Recently, in applications No. 13124 and 13187 this Board granted the applications of the owners of the garage located on the land adjacent to the subject site on the east to permit the development of that site by two complementary 110 foot office structures.

5. The proposed building on the subject site is to be 110 feet in height, the maximum height permitted by the Zoning Regulations, with a roof structure that rises the permissible eighteen feet, six inches above the top story. The roof structure has been designed so that its area of 1,528 square feet does not exceed the permitted allowance of one-third of the total roof area of 4,617.64 square feet. It will enclose a cooling tower area, mechanical equipment, the stairway to the roof, and the elevator shaft. The facade of the new building will be brown granite, and the roof structure will be constructed with brick of a color that is compatible with the building's facade.

6. Paragraph 5201.24 of the Zoning Regulations provides that a roof structure is to be set back from all lot lines a distance equal to its height, in this instance eighteen feet, six inches. Because of the narrow width of the subject site, it is impossible to locate the roof structure for the proposed building this distance from the east and west lot lines, respectively. The applicant therefore seeks a variance, permitting it to locate the eastern wall of the roof structure along the eastern property line, with a resulting set back on the west side that is two feet and six inches less than that ordinarily required. There will be no encroachment of the set-back requirements on the north or south. Thus the application seeks the same relief which this Board granted in BZA 13124 for the adjacent site to the east, in permitting a slightly greater deviation pursuant to Section 3308.2 of the Zoning Regulations in respect to a lot of substantially identical dimensions.

7. The applicable 8.5 FAR permits a gross floor area, per floor of only approximately 4,600 square feet. As a consequence, the placement of the elevator core along other than the east or west property line would render the building unsuitable for office or commercial use as approximately 1,500 square feet would be required, on each floor, for just corridor access alone to the elevators. Thus the need for elevators, stairways, and rest rooms dictate the location of the roof structure as proposed by applicant. Moreover, because of the small size of the site, the cost of construction on it may be as much as thirty percent greater than would be incurred in developing a larger site.

8. The proposed roof structure will not materially impair the light and air of either adjacent building. It will be located sixteen feet from the property line of the lower ninety-foot building on the west. Not only is the parking garage on the adjacent lot to the east also twenty feet lower in height than the proposed building, it is scheduled to be replaced with a building of the same height as that proposed by this applicant.

9. The Office of Planning and Development by report dated March 12, 1981, recommended approval of the application on the grounds that given the small size of the lot, if the strict compliance with the roof set-back requirements is imposed, the applicant will be faced with an unduly restrictive, and unreasonable floor plan, which would reduce substantially the amount of useable commercial floor space, thus, reducing the marketability of the building. The OPD noted that the practical difficulties arise from the size and width of the lot, and that the application can be granted without impacting the light and air of adjacent structure nor spoiling the appearance of the L Street frontage. The Board agrees with the findings of the OPD. The Board notes, however, that the applicant is not seeking an area variance, and is thus not required to meet the "practical difficulty" test.

10. Advisory Neighborhood Commission - 2B, by letter dated March 10, 1981, voted unanimously not to object to the relief requested in this application.

11. There was no opposition to the granting of this application.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking a special exception which requires that the applicant meet the requirements of Sub-section 3308.2. The Board concludes that the applicant has substantially complied with Sub-section 3308.2. Due to the narrow width of the lot and its relationship to surrounding properties, the Board concludes that full compliance with the setback requirements would be unduly restrictive and unreasonable. The Board further concludes that the relief can be granted as in harmony with the intent and purpose of the Zoning Regulations and will affect adversely the use of the neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh and Connie Fortune to GRANT; Douglas J. Patton not voting, not present at hearing of the application).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

23 APR 1981

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.

P

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13124 of 1100 Eighteenth Street Associates, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 3308.2 to allow construction of a roof structure which does not meet the normal setback requirements of Paragraph 5201.24 for a proposed office, retail and parking garage building in a C-4 District at the premises 1811 L Street, N.W., (Square 140, Lot 873).

HEARING DATE: January 17, 1980 and March 12, 1980
DECISION DATE: April 2, 1980

FINDINGS OF FACT:

1. The subject application was scheduled for the Public Hearing of January 16, 1980. At the Public Hearing the Dupont Circle Citizens Association and an adjacent property owner raised objection to the hearing of the application on the procedural grounds that the application was not advertised in the name of the owner but a lessee and that since the proposed roof structure would be placed on the property line the owner of the abutting lot who plans to construct a similar structure as the subject one should have submitted a waiver as to the possible harm he might incur if the proposed roof structure were permitted. The Chair ruled that since the applicant held a ninety year lease and that in all respects he was in fact the true owner of the proposed improvement the applicant lessee was the proper party to process the application. As to the second objection the chair ruled that it was premature since the evidence had not yet been presented. In addition, since an application no. 13187 had been filed on the abutting property the Board determined that both applications should be heard simultaneously.

2. The subject property is located on the north side of L Street between 18th and 19th Streets, N.W., and is known as 1811 L Street, N.W. It is in a C-4 District

3. The subject lot 873 is approximately 5,320 square feet in area. It is an interior lot with a street frontage on L Street of fifty feet. The subject property is intended to be developed with an adjacent companion building known as 1801 L Street, N.W. The companion building on lot 872 is the subject of BZA application no. 13187. Both applications were heard by the Board at the same time. Both lots are improved with a six story parking garage which is to be demolished.

4. In both applications it is proposed to construct a ten story office, retail and parking garage building.

5. Adjacent to the site on the west is a two story structure which houses two restaurants. This structure is adjoined by a ten story hotel. North of the subject property along 18th Street, are a group of smaller structures which house a number of retail shops, restaurants, and service establishments. Most of these are housed in converted row structures. There are also a number of restaurants to the rear of the site and other establishments which are housed in one and two story structures. This section of the city has undergone significant development in the past ten to fifteen years. Ten and twelve story commercial buildings have in large part replaced the row structures, parking lots and auto dealerships which formerly populated the area. Nineteenth Street, at this location, forms the western boundard of the C-4 district. West of 19th Street C-3-B zoning is in place.

6. Lots 872 and 873 are held in different ownership but each is under a longterm lease by the applicant.

7. The applicant requests a special exception to allow construction of a roof structure which does not meet the strict setback requirements of paragraph 5201.24. Under that paragraph the roof structure is required to be setback 18.5 feet from the lot line. The applicant proposes to construct the roof structure against the east property line.

8. In all other respects the roof structure strictly complies to all other C-4 Zoning Regulations. The penthouse is enclosed in a single enclosure and contains a stairway, mechanical equipment including cooling tower, water pumps, fans and water heater, and elevator override. The material of roof structure blends harmoniously with the facade of the main building.

9. The subject lot is fifty feet wide. If the applicant complied with the setback requirements of the Zoning Regulations it would leave the applicant thirteen feet of space in which to locate all the equipment. The necessary width of the penthouse structure is thirty-one feet.

10. Due to the narrow width of the building the placement of the elevator core in any place other than against a property line would render useless the floor area on either side, impairing the functional arrangement of the space within the building and creating operating difficulties.

11. The subject property and its relationship to the surrounding property makes it a practical requirement to join the elevator cores of the two buildings. If the two were to be required strictly to meet the regulations, the functional space would be impaired for both buildings.

12. As an interior lot, the subject property will not have a roof structure on a property line abutting a street or alley. The roof structure will be an interior penthouse not visible except from elevated or distant viewpoints. When built with the adjoining penthouse, the penthouse will be less visible and more compact than having separate structures on the roof of each of the buildings. The effect created will be a single roof structure which straddles the two proposed office buildings.

13. The Office of Planning and Development by report dated February 13, 1980 considered the subject application and application No. 13187 simultaneously. The OPD recommended that both applications be approved. The Office of Planning and Development noted that in these cases because of the nature of the ownership of this site and the long term lease agreements, one building will be constructed on each lot. Both buildings will however, appear as one from the exterior. The roof structures will be architecturally coordinated and also appear as one from the exterior. The combined structure will be centered over the two buildings overlapping both lots. The need for the relief from the roof structure setback requirements arises from the fact that technically these are two buildings, which should have separate roof structures and each enclosing wall should be setback from all property lines. It was OPD's opinion that combining the roof structure into one enclosure is consistent with the intent and purpose of Section 3308 of the Zoning Regulations which encourages roof structures to be in one enclosure. The Board so finds.

14. The Dupont Circle Citizens Association objected to the application on the grounds that it would object to any penthouse being on a property line and that the builder had not given serious consideration to any energy utilization program. The Board finds that it is sufficient for the applicant to address itself to the requirements of the sections of the Zoning Regulations under which it seeks relief. The energy utilization program is not a proper issue before this Board in this application.

15. Advisory Neighborhood Commission 2B made no recommendation on the application.

16. There was a letter on file from a neighboring property owner in support of the application.

17. The applicant submitted a letter to the record evidencing that the American Arbitration Association had determined that the subject long-term lessee had a right to process the application before the BZA under the terms and conditions of its ground lease.

CONCLUSIONS OF LAW

Based on the record the Board concludes that the applicant is seeking a special exception which requires that the applicant meet the requirements of Sub-section 3308.2. The Board concludes that the applicant has substantially complied with Sub-section 3308.2. Due to the narrow width of the lot and its relationship to surrounding properties the Board concludes that full compliance with the setback requirements would be unduly restrictive and unreasonable. The Board further concludes that the relief can be granted as in harmony with the intent and purpose of the Zoning Regulations and will not affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE. 4-0 (William F. McIntosh, Charles R. Norris and Connie Fortune to grant, Theodore F. Mariani to grant by proxy, Leonard L. McCants not voting not having heard the case)

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 18 JUN 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."

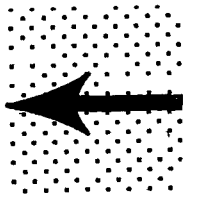
THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

Q

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13061, of Washington Circle Theatre Corporation, et al., pursuant to Paragraph 8207.11 and Sub-section 8207.2 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) and for a special exception under Sub-section 3308.2 to permit a roof structure not meeting the normal setback requirements in order to construct an apartment house addition at the premises 2301 Washington Circle, N.W., (Square 38, Lots 23, 25, 801, 806, 807 and 814).



HEARING DATES: August 29, 1979 and October 15 and November 19, 1980
DECISION DATES: September 19, 1979 and March 5, September 3, November 5 and November 19, 1980

FINDINGS OF FACT:

1. The subject application was originally heard by the Board on August 29, 1979.
2. At a hearing held on September 19, 1979, the Board granted the application by votes of 3-1 as to the special exception (William F. McIntosh, John G. Parsons and Chloethiel Woodard Smith to GRANT, Leonard L. McCants opposed, Charles R. Norris abstained) and 4-0 as to the lot occupancy variance (William F. McIntosh, John G. Parsons, Leonard L. McCants and Chloethiel Woodard Smith to Grant, Charles R. Norris abstained).
3. The final Order granting the application was issued on November 8, 1979. As a condition of the approval, the Board stated in the Order "that the building shall be constructed in accordance with the plans submitted to the Board, marked as Exhibit No. 15 of the record, provided that the details of the fenestration and the color and texture of building materials to be used shall be as approved by the Joint Committee on Landmarks."
4. By letter dated March 4, 1980, the applicant requested the Board to approve certain minor modifications to the approved plans. By Order dated March 19, 1980, the Board approved the modifications, and ordered the substitution of the plans marked as Exhibit No. 41 of the record for those originally approved. The modifications approved were all minor architectural changes.
5. By letter dated August 22, 1980, the applicant again requested the Board to approve revised plans. The revisions were interior alterations, designed to permit medical clinic use of a portion of the building. The applicant requested approval of the revised plans marked as Exhibit No. 49.

6. At its public meeting held on September 3, 1980, the Board with the consent of the applicant and Advisory Neighborhood Commission - 2A, waived its Supplemental Rules of Practice and Procedure and reopened the case. The Chairman of the Board directed that a further hearing be held on October 15, 1980 with testimony limited to the following designated issues:

- a. Did the Board intend to limit use of the interior of the subject building in issuing its Order approving a lot occupancy variance and penthouse location special exception to permit the construction of a building in Application No. 13061?
- b. If the Board did so limit the building uses, should the Board now approve a modification of the plans to permit medical clinic use of a portion of the subject building and if so, what portion?

7. At the further hearing, the Board heard testimony and argument from the applicant, Advisory Neighborhood Commission - 2A and other area residents. The applicant and ANC introduced an agreement into the record by which the ANC had agreed to support clinic use of a specified portion of the building. Opposition to the proposed clinic use was based on the proposition that there were sufficient existing medical facilities in the area already and the building should be reserved for exclusively residential use.

8. As a result of the testimony and arguments presented, the Board finds that its approval of November 8, 1979 clearly did not contemplate clinic use, and that the plans as approved by the Board did not permit clinic use.

9. The Board was not satisfied that it had received sufficient information to understand what modification in the plans the applicant then sought. The Board therefore scheduled an additional hearing for November 19, 1980 to consider only whether it should "permit medical clinic use of a portion of the subject building, and if so, what portion?"

10. The applicant presented plans marked as Exhibit No. 70 of the record at the hearing. Those plans indicate that portions of the ground and first floor and all of the second, third and fourth floors of the new building would be used for clinic purposes. Advisory Neighborhood Commission - 2A, by agreement dated September 19, 1980 and by letter dated November 13, 1980, supported the applicants' request.

11. The modifications requested do not change or affect the exterior elevation of the proposed building as previously approved by the Board.

12. A clinic is a use permitted as a matter-of-right in the R-5-D District.

13. The modification do not require any additional special exceptions or variances beyond those already approved by the Board. None of the material facts which the Board relied upon in granting the relief previously are altered by the proposed modifications.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the modifications requested are minor in nature and do not affect the relief previously granted nor affect compliance with the Zoning Regulations in this case. The Board further concludes that all of the material facts which the Board relied upon in granting the application are still valid. The Board concludes that the proposed changes represent minor interior architectural changes. The use is normally permitted as a matter-of-right in an R-5-D District. The exterior elevations are not affected by the proposed changes. The Board further notes the support of Advisory Neighborhood Commission - 2A for the modifications.


It is therefore ORDERED that the revised set of plans submitted by the applicant, marked as Exhibit No. 70 of the record is hereby APPROVED, and shall be substituted for the appropriate sheets of those plans previously submitted to and approved by the Board. In all other respects, the previous orders of the Board dated November 8, 1979 and March 19, 1980 shall remain in full force and effect.

DECISION DATE: November 19, 1980

VOTE: 5-0 (Theodore F. Mariani, Charles R. Norris, Connie Fortune, Douglas J. Patton and William F. McIntosh to APPROVE the MODIFIED PLANS).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

30 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.

R

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12759, of 1140 - 19th Street Associates Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 3308.2 to permit a roof structure which does not meet the set back requirements for a proposed office/retail building in the C-3-B District at the premises 1140 - 19th Street, N.W. (Square 117, Lot 81).

HEARING DATE: September 27, 1978
DECISION DATE: September 27, 1978 (bench decision)

FINDINGS OF FACT:

1. The affidavit of posting the property was filed three days late. The Board, for good cause shown, waived the requirement and proceeded to hear the application.
2. The subject property is located on the west side of 19th Street, N.W., between L and M Streets. It is in a C-3-B District.
3. The subject lot is approximately 10,462 square feet in area and is "L" shaped with approximately sixty-five feet of frontage on 19th Street.
4. Adjacent to Lot 81 on the south are two four story row structures which house commercial uses including two restaurants and a barber shop. Adjacent to the north, is a three story commercial structure. Nearly all the remaining structures in this block of 19th Street are eight or ten story commercial structures, the majority of which contain retail uses on the ground floor.
5. Nineteenth Street at this location forms the boundary between the C-4 Central Business District and a C-3-B high density Major Business and Employment Center. The C-3-B District is designed to accommodate important commercial sub-centers which are supplementary to the Central Business District. The C-3-B District in which this property is located has been the scene of a great deal of new construction in recent years. It is one of the most active commercial development areas of the city. The boundaries of the district are generally N Street, 19th Street, Pennsylvania Avenue and New Hampshire Avenue.

6. The proposed building will have a gross floor area of approximately 67,810 square feet. Office and retail space will be provided as well as parking in accordance with the requirements of the Zoning Regulations.

7. The proposed structure meets all the requirements of the Zoning Regulations with the exception of the setback requirements of the roof structure. With a height of 17.37 feet, an equal setback from all property lines is required.

8. The west, north and east facades of the roof structures exceed the 17.37 foot setback requirement. The south wall of the roof structure has no setback from the property line at this location.

9. The Board under Sub-section 3308.2 of the Zoning Regulations is empowered to approve the location of roof structures which do not fully comply with the Zoning Regulations where such compliance is deemed impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area.

10. The building is relatively narrow for a ninety foot high office building, and if the roof structure were to be setback from the south lot line, the elevator core could not be located in the center of the building, creating operating difficulties for the applicant.

11. The Municipal Planning Office, by report dated September 19, 1978, recommended that the application be approved. It noted that the proposed building complies with all requirements of the Zoning Regulations with the exception of the roof structure setback and that the lot area of 10,462 square feet is relatively small for a downtown C=3=B assemblage. In addition, the shape of the lot itself allows a street frontage of some sixty-five feet which is relatively narrow. The MPO further noted that the proposed roof structure is 17'-4" in height where 18'-6" is allowed as a matter-of-right and has a floor area ratio of 3,752 square feet where 3,871 is allowed. The MPO stated that as a practical matter with such a narrow building lot width and the shape of the lot, it was extremely difficult to comply with the roof structure setback requirements in this case given modern mechanical equipment parameters. Any reasonable configuration and location of this roof structure would intrude into the required setback. The Municipal Planning Office reported that the application would not adversely affect the light and air of adjacent buildings or impair the intent and purpose of the Zoning Regulations. The Board so finds.

12. Advisory Neighborhood Commission 2B, filed no recommendation on this application.

13. There was no opposition to the application.

CONCLUSIONS OF LAW:

Based on the record, the Board concurs with the recommendations of the MPO. The subject property with its narrow building lot width and its "L" shape creates an impracticability which makes full compliance with the Zoning Regulations unduly restrictive and unreasonable and compliance with the regulations would create operating difficulties for the building. The characteristics of the property meet substantially the requirements of Sub-section 3308.2 wherein relief may be granted by the Board.

The Board concludes that the relief sought can be granted under Sub-section 3308.2 and it further concludes that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that the relief will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 5-0 (William F. McIntosh, Walter B. Lewis, Chloethiel Woodard Smith, Charles R. Norris and Leonard L. McCants to GRANT).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

30 OCT 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.

S

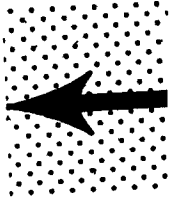
GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 06-46
Z.C. Case No. 06-46
Capitol Gateway Overlay Review
WMATA, MR N Street S.E, LLC, and MR Ballpark 5 LLC

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on January 11, 2007 to consider an application for property owned by the Washington Metropolitan Area Transit Authority ("WMATA"), MR N Street Southeast LLC, and MR Ballpark 5 LLC for review and approval of a new development pursuant to the Capitol Gateway Overlay District provisions ("CG Overlay District Review") set forth in § 1604 of the D C Zoning Regulations (the "Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR") The property that is the subject of this application consists of Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 in Square 701 and portions of the public alley in Square 701 closed on an emergency basis pursuant to Closing of Portions of a Public Alley System on the West Side of Square 701, S O 06-3392, Emergency Act of 2006, effective December 28, 2006 (D C Act 16-657) (the "Emergency Alley Closing Legislation") MR N Street Southeast LLC and MR Ballpark 5 LLC, affiliates of Monument Realty LLC, are collectively referred to as the "Applicants "

In addition, the Applicants sought approval, pursuant to § 1604.9, for (1) a special exception from the setback requirements for roof structures in the CR District, (2) a variance from the private residential recreation space requirements of the CR District, and (3) a variance from the loading requirements of the CR District On November 10, 2006, the Commission issued its Notice of Proposed Rulemaking in Z.C. Case No 05-10 for text and map amendments to the provisions for the Capitol Gateway Overlay District In response to the Commission's Notice of Proposed Rulemaking in Z.C. Case No 05-10, the Applicants, pursuant to § 1604.9, also requested (1) a variance from the step back requirements of proposed § 1607.2, (2) a variance from the ground floor preferred uses requirements of proposed § 1607.3, (3) a variance from the requirements of proposed § 1607.4 for street frontage along Half Street, S E , and (4) a variance from the minimum floor-to-ceiling clear height requirements of § 1607.5. The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 For the reasons stated below, the Commission hereby approves the application.



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FINDINGS OF FACT

Application, Parties, and Hearing

- 1 On November 2, 2006, the Applicants filed an application for review and approval of new development pursuant to the CG Overlay District Review for property located in the Southeast quadrant of Washington, D'C and generally bounded by M Street on the north, Half Street on the west, N Street on the south, and Cushing Place on the east. Consisting of approximately 102,494 square feet of land, the site includes Lots 3, 98-118, 144-147, 161, 162, 167, 815 and 824 in Square 701 and portions of the public alley in Square 701 closed pursuant to the Emergency Alley Closing Legislation (the "Subject Property"). The site is presently zoned CG/CR. Pursuant to § 1604 of the Zoning Regulations, the Applicants are seeking review and approval of the proposed development under the CG Overlay District Review, a special exception from the setback requirements for roof structures in the CR District, and variances from the private residential recreation space, loading, proposed step back, proposed ground floor preferred uses, proposed street frontage along Half Street, and proposed minimum floor-to-ceiling clear height provisions of the Zoning Regulations.
- 2 The purposes of the CG Overlay District that are relevant to the proposed development include
 - a Assuring development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area;
 - b Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses,
 - c Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S E., near the Navy Yard Metrorail Station; and
 - d Providing for the development of Half Street, S E. as an active pedestrian-oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air and a pedestrian scale
- 3 After proper notice, the Commission held a hearing on the application on January 11, 2007. Parties to the case included the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located.
- 4 At its duly noticed meeting held on January 8, 2007, ANC 6D voted 4-0-2 in support of the application for CG Overlay District Review. In its January 9, 2007 report, the ANC

found that the project meets the architectural criteria set forth in the CG Overlay with respect to height, mass, and setbacks and is consistent with the objective of creating a lively and welcoming stadium district

5. Expert witnesses appearing on behalf of the Applicants included Robert Sponseller of Shalom Baranes Associates, Jordan Goldstein of Gensler, John Fitch of Landscape Architecture Bureau, Steven Sher of Holland & Knight, and Daniel Van Pelt of Wells and Associates
6. Uwe Brandes of the Anacostia Waterfront Commission (“AWC”) appeared before the Commission as a person in support of the application. Mr Brandes expressed AWC’s strong and enthusiastic support for the application. Mr Brandes noted that there are several new buildings along M Street and within the Capitol Gateway (CG) Overlay, but none have the attention to detail that the Applicants present in their application. Mr Brandes pointed out that the building design celebrates pedestrian movement along Half Street. Mr Brandes also stated that the D C Sports and Entertainment Commission is responsible for designing a circulation plan for baseball game days
7. At the conclusion of the hearing, the Commission directed the Applicants to submit the following: (1) revised articulation of how the Applicants meet their burden of proof for special exception and variance relief; (2) an interim plan for Half Street prior to construction of the ultimate streetscape plan and a description of the traffic plan for game days, (3) an explanation of the design and operation of Monument Place and the intersection of Half Street and Monument Place, (4) an evaluation of the roof structure located on the hotel roof, (5) a description and study of the location of the elevator for the parking garage to street level, (6) a confirmation as to whether the Applicants will provide showers for the office tenants in response to the District Department of Transportation (“DDOT”) Report; (7) a description of sustainable building design features based on LEED certification categories likely to be incorporated in to the proposed development, (8) the likelihood of moving the hotel lobby to the first floor, (9) status report regarding DDOT approval of proposed street lighting, and (10) an explanation of signage at the northeastern corner of the site and on the roof of the South Building. By submission dated January 25, 2007, the Applicants addressed the areas identified by the Commission as requiring supplemental information
8. At its public meeting on February 12, 2007, the Commission took proposed and final action, by a vote of 5-0-0, to approve the plans submitted into the record and all but one of the relief requests. The Commission denied that portion of the request for relief from the requirements of proposed § 1607.2 to permit a four-foot setback, instead of the required 20-foot setback, from the building line along Half Street

Project Overview

- 9 The Applicants propose to develop the Subject Property with a 762,680-square-foot mixed-use development consisting of residential, office, hotel, and retail uses. The proposed development includes two buildings on a single record lot: (1) the north office building with ground floor retail (the "North Building") and (2) the south residential building containing two wings of residential use, a hotel and ground floor retail (the "South Building"). The two buildings will be separated by a private driveway. For floor area ratio ("FAR") purposes, the proposed development will consist of approximately 105,560 square feet of hotel use, 51,010 square feet of retail use, 320,100 square feet of residential use, and 277,600 square feet of office use.
- 10 Pursuant to § 1602.1 of the Zoning Regulations, the Applicants will transfer approximately 49,680 square feet of floor area from Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700 to the Subject Property in order to achieve density of approximately 7.44 floor area ratio ("FAR") and a building height of 110 feet. The Applicants have also devoted street frontage at the ground floor, exclusive of the entrance to the Navy Yard Metro Station and building entrances, to preferred retail use along M Street and Half Street.
- 11 The proposed development will provide 264 parking spaces for the residential use and 279 parking spaces for the hotel, retail, and office uses. The proposed development will also provide one 55-foot loading berth, six 30-foot loading berths, and two 20-foot service/delivery loading spaces.

Description of the Surrounding Area

12. The proposed development is surrounded by a variety of uses. Immediately across N Street to the south will be one of the two parking garages serving the baseball stadium, which is currently under construction. To the north of the site, across M Street, a new office building is nearing completion. To the northeast, a proposed development consisting of a new twelve-story office building with ground floor retail has been approved by the Commission under the CG Overlay District Review. A development consisting of a mixed-use office and residential building with ground floor retail is being considered for the eastern portion of Square 701. The WMATA bus garage is west of the Subject Property across Half Street.

Renovation and Expansion of the Navy Yard Metrorail Station

- 13 One of the major components of the proposed development is the renovation and expansion of the Navy Yard Metrorail Station located at the northwestern corner of the site. The Navy Yard Metrorail Station will be updated with a more welcoming entrance that includes additional gates and fare-card machines at street level. The Applicants

testified that the renovation and expansion of the Navy Yard Metrorail Station must be complete by April 2008, in order to accommodate Opening Day for the Washington Nationals at the baseball stadium. The renovation of the Navy Yard Metrorail Station will enhance the pedestrian experience around the baseball stadium and within the proposed development. The renovation and expansion also provide an alternative means of transportation for baseball patrons and District residents. As the Applicants stated in their written materials and testimony at the public hearing, the Navy Yard Metrorail Station limits the amount of gross floor area the Applicants can devote to preferred uses at the ground floor level, which also affects the amount of street frontage for preferred uses along Half and M Streets.

Ground Floor Preferred Uses

- 14 In complying with the provisions of the CG Overlay District, the Applicants have incorporated preferred uses at the ground floor level throughout the proposed development. The Applicants have devoted 56.3%, or 51,010 square feet, of the gross floor area at the ground floor to retail and preferred uses. The Applicant's allocation of preferred uses at the ground floor is limited by the renovation and expansion of the Navy Yard Metrorail Station and the building entrances that access uses that begin at the second floor. The Navy Yard Metrorail Station and the extension from Cushing Place to N Street, required as part of the alley closings that unified the site, account for 11,400 square feet of the gross floor area at the ground floor.
- 15 The Applicants have provided minimum floor-to-ceiling clear heights for all of the ground floor preferred uses except in the spaces labeled as Retail 7, Retail 5a, and back of house spaces on Sheet A13 of the Architectural Plans and Elevations, dated January 25, 2007 (the "Architectural Plans and Elevations"), which are identified as "Exhibit A" of the Applicants' post-hearing filing. The Applicants will provide a minimum floor-to-ceiling height in Retail 7 of 13 feet, to accommodate the slope in the site that occurs at Retail 7. The Applicants will provide a minimum floor-to-ceiling clear height of 11 feet, 6 inches at the ground floor for Retail 5a, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct in Retail 5a an exterior, covered stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. The location of the hotel lobby and bar above Retail 5a requires that the hotel lobby and bar have clear ceiling heights taller than the typical clear ceiling height of 9 feet, 8 inches which are found on the second floor of the South Building. The Applicants also will provide a minimum floor-to-ceiling clear height of 11 feet for back of house space that contains large mechanical equipment (such as kitchen exhausts and other equipment associated with restaurant use) and for back of house space located below residential space.

Requested Areas of Relief: Special Exceptions

Setback Requirements for Roof Structures in the CR District

16. The Applicants requested special exception relief pursuant to § 411 of the Zoning Regulations to permit roof structures facing the interior courts of the building that do not meet the setback requirements for roof structures in the CR District. The Applicants will locate three mechanical penthouses on the roof of the residential building. All setback requirements from Half, M, and N Streets, S E. will be met.
17. The Applicant's land use expert, Steven Sher, testified that Applicants' compliance with the roof structure regulations is impractical because of the size of the building lot, the "J" shaped footprint of the South Building, the required setbacks and step backs along Half Street, and the need for three separate cores to accommodate the hotel use and the residential uses located on two separate wings of the South Building. Mr. Sher explained that, if the Applicants were to meet all the setback requirements of the roof structure regulations, the Applicants would not have sufficient room to accommodate all necessary rooftop functions, such as housing mechanical equipment, nor would the Applicants meet the step back requirements of the proposed CG Overlay provisions relating to Half Street, S E.
18. Mr. Sher stated that the proposed roof structures will not impair the intent and purpose of § 400.7 of the Zoning Regulations and will not adversely affect the light and air of adjacent buildings. The deviations from the Zoning Regulations will now only be located along the walls of the interior court of the South. The interior court will be surrounded by the proposed development and, thus, not providing a setback for exterior walls facing the interior courts will not adversely affect the light and air of the adjacent buildings.

Step Back Requirements on Half Street, S.E.

19. As of the date of this Order, there are no specified standards for review for a special exception for step backs that deviate from the step back requirements of proposed § 1607.2, other than compliance with § 3104. The Applicants, pursuant to proposed § 1607.2, requested special exception relief from the step back requirements to permit a 12-foot step back above a height of 80 feet along Half Street. Mr. Sher testified that the requested special exception is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Maps. The 12-foot step back will provide reasonable apartment depths on the 8th, 9th, and 10th floors, which will be lost if the Applicants are required to comply with proposed § 1607.2's minimum step back of 20 feet at a height of 65 feet. The 4-foot setback is an architectural marker that will provide compositional relief to an otherwise flat façade. The requested special

exception from the step back requirements on Half Street will not adversely affect the use of neighboring property

Requested Areas of Relief: Variances

- 20 The Applicants, pursuant to § 1604.9, requested (1) a variance from the private residential recreation space requirements of the CR District, (2) a variance from the loading requirements of the CR District, (3) a variance from the step back requirements of proposed § 1607.2, (4) a variance from the ground floor preferred uses requirements of proposed § 1607.3, (5) a variance from the requirements of proposed § 1607.4 for street frontage along Half Street, S E , and (6) a variance from the minimum floor-to-ceiling clear height requirements of § 1607.5. The Applicants withdrew their request for a variance from the percentage of lot occupancy requirements.

Uniqueness of the Property

- 21 The Applicants explained, in their pre-hearing and post-hearing filings, as well as in their testimony before the Commission, that the Subject Property is unique due to its large size, the entrance to the Navy Yard Metrorail Station located on site, and the need to comply with the provisions of both the CG Overlay District and the CR District. The Subject Property is a large site that fronts on both M Street and Half Street. It is required to comply with both the CG Overlay provisions for buildings, structures, and uses on M Street and the CG Overlay provisions for buildings, structures, and uses on Half Street. The presence of the Navy Yard Metrorail Station limits the design and allocation of uses within the proposed development. Thus, the Applicants have met their burden of showing that the property is unique.

Private Residential Recreation Space Requirements of § 635

- 22 The private residential recreation space provisions of the Zoning Regulations require that the Applicants devote an area equal to 15% of the residential gross floor area (or 48,000 square feet) to private residential recreation space. The proposed development devotes approximately 4,500 square feet (or 1.5% of the residential gross floor area) to private residential recreation space. Compliance with the private residential recreation space requirement would require the Applicants to devote 43,500 square feet of gross floor area designated to residential units or preferred retail uses to private residential recreation space. A change in the allocation of gross floor area devoted to residential units will require that the Applicants reduce the size and number of residential units and substantially alter their provision of retail, residential, and hotel uses in order to provide the required amount of private residential recreation space.

- 23 On January 7, 2007, the Commission took final action to repeal the residential recreation space requirements of the Zoning Regulations. Thus, the Applicants will not be required to comply with § 635 of the Zoning Regulations.

Loading Requirements of § 2201

- 24 The loading provisions of the Zoning Regulations require that the Applicants provide two 55-foot loading berths, five 30-foot loading berths, and four 20-foot service/delivery spaces. The proposed development provides one 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery space for the residential building and three 30-foot loading berths for the office building. Compliance with the loading requirements would force the Applicants to eliminate a portion of the ground floor area devoted to preferred uses and to alter their provision of proposed uses.
- 25 In their pre-hearing filing, the Applicants submitted a traffic impact study. That traffic impact study found that the number of loading berths required by the Zoning Regulations does not correspond with the demand in a mixed-use development nor do the regulations reflect consideration of how and when loading berths may be shared among the various uses. The traffic impact study concluded that the Applicants' proposed provision of loading berths and service/delivery spaces should adequately meet the needs of the proposed uses. The Applicants also stated that DDOT had no objection to this area of relief. Thus, a variance from the loading requirements will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

Step Back Requirements of Proposed § 1607.2

- 26 The proposed step back provisions of the CG Overlay require that any portion of a building or structure that exceeds 65 feet in height must provide a minimum step back of 20 feet in depth from the building line along Half Street, S E. The Applicants requested a variance from the step back requirements to permit a 4-foot setback for 17 linear feet at the northern end of the hotel facing Half Street. The 4-foot setback will serve as an architectural marker that provides compositional relief to the building façade.
27. The Applicants explained that strict application of the step back provisions of the CG Overlay would require the Applicants to develop alternative means for creating compositional relief for an abnormally long building façade, but this explanation is insufficient to meet the variance test.

Ground Floor Preferred Uses of Proposed § 1607.3

- 28 The Applicants requested a variance from proposed § 1607.3, which requires that each new building shall devote not less than 75% of the gross floor area of the ground floor to retail service, entertainment, or arts uses. The Applicants testified that compliance with proposed § 1607.3 would require the Applicants to eliminate access to residential, hotel, and office uses and the extension of Cushing Place to N Street.
- 29 The proposed development will provide 56.3%, or 51,010 square feet, of gross floor area of the ground floor to preferred uses. A portion of the gross floor area of the ground floor will be devoted to lobby space for residential, hotel, and office uses, which start at the second floor. Of the difference between the required 75% and the provided 56.3% of gross floor area of the ground floor to preferred uses, 11,400 square feet will be devoted to the Navy Yard Metrorail Station entrance and the extension of Cushing Place to N Street.

Street Frontage along Half Street Requirements of Proposed § 1607.4

- 30 Pursuant to proposed § 1607.4, preferred uses must occupy 100% of the building's street frontage along Half Street, S E, except for space devoted to building entrances or required to be devoted to fire control. Compliance with proposed § 1607.4 would create a practical difficulty for the Applicants, because the Applicants have no control over the amount of space devoted to the Metrorail Station entrance, which occupies 17% of the street frontage along Half Street.

Minimum Floor-to-Ceiling Clear Height Requirements of Proposed § 1607.5

- 31 The Applicants have requested relief from the minimum floor-to-ceiling clear heights for ground floor preferred uses requirement of proposed § 1607.5 to provide floor-to-ceiling clear heights of 13 feet in the retail space labeled "Retail 7" on the Architectural Plans and Elevations, 11 feet, 6 inches in the retail space labeled "Retail 5a" on the Architectural Plans and Elevations, and 11 feet in back of house space located below residential space. Retail 7 and Retail 5a can be found on Sheet A1 of the Architectural Plans and Elevations. The Applicants testified that compliance with proposed § 1607.5 would result in the loss of one floor due to the maximum building height of 110 feet and would require the Applicants to change their mixed-use program.
- 32 Proposed § 1607.5 requires that the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses be 14 feet. A floor-to-ceiling clear height of 13 feet is provided in Retail 7, because the site slopes along N Street. The retail areas to the west and east of Retail 7 will have floor-to-ceiling clear heights in excess of 14 feet.

33. Retail 5a will have a floor-to-ceiling height of 11 feet, 6 inches at the ground floor, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct an exterior, covered stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. Because the hotel lobby and bar are intended to be lively, attractive places, the ceiling heights for the hotel lobby and bar are taller than the typical ceiling height of 9 feet, 8 inches found on the rest of the South building's second floor. The additional ceiling height has been transferred from the ground floor area below the hotel to the hotel lobby and bar on the second floor.
34. A floor-to-ceiling height of approximately 11 feet is provided for back of house space located below residential space and back of house space that stores large air handling equipment and kitchen exhausts. Storage facilities, kitchens, administrative offices, and other service areas associated with preferred uses are considered "back of house space." The Applicants have provided a section showing back of house space on Sheet A19 of the Architectural Plans and Elevations.
35. The proposed development requires a floor-to-ceiling clear height of approximately 11 feet for back of house space for two reasons. First, residential space requires a significant amount of mechanical equipment, which must be located below the residential space. Thus, a portion of the ceiling height for ground floor preferred uses must be devoted to equipment that serves the residential uses. Second, a portion of the ground floor preferred uses will require additional space for larger mechanical equipment, such as kitchen exhausts and other equipment associated with restaurant use. The size of mechanical equipment varies depending on the type of use and type of mechanical equipment selected.

Applicant's Responses to Areas Identified as Requiring Additional Information

Design and Operation of Monument Place

36. In response to the Commission's request for additional information, the Applicants, in their post-hearing filing dated January 25, 2007, have provided more information on the design and operation of Monument Place, a new 30-foot wide east-west connection, located between the office and residential buildings. Monument Place provides for vehicular and pedestrian circulation between Half Street and Cushing Place.
37. The 30-foot width of the connection includes a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive line, an 8-foot vehicular lay-by lane for the hotel and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones are demarcated with a line of bollards that serve as a protective barrier for pedestrians and the buildings. Pedestrians will use Monument Place to access the retail elevators and the hotel entrance.

- 38 The vehicular circulation program is designed to be one-way east bound, from Half Street to Cushing Place. The one-way vehicular circulation program provides a number of benefits to the proposed development. It enhances pedestrian safety by providing unobstructed views of pedestrians from Half Street. The width of Monument Place is minimized in order to maximize the retail frontage and the amount of natural light to the hotel and office uses. The lay-by zone as designed minimizes the traffic impact on Half Street and Cushing Place.

LEED Certification Standards

- 39 The Applicants in their post-hearing filing have submitted a summary of the sustainable design features based on LEED certification categories that are likely to be incorporated into the proposed development. The Applicants also stated that at least 30 percent of the roof areas for the proposed development will be green roofs. Those green roofs will include a sorghum green roof system located on the penthouse roofs and a green roof over at least half of the central courtyard located at the second floor.

Proposed Streetscape & Interim Plan for Half Street

- 40 The Commission asked the Applicants to meet with DDOT regarding its approval of the proposed streetscape plan and to develop an interim plan for Half Street, S E. As stated in their post-hearing filing, the Applicants and their design team met with representatives of DDOT to review the proposed streetscape improvements included in this submission. DDOT was represented by members of its Ward 6 Transportation Planning team, Anacostia Waterfront Initiative ("AWI") team, and Traffic and Safety Division.
- 41 At that meeting, the Applicants presented their vision for Half Street, which included a discussion of grading, paving, street furniture, lighting, and pedestrian and vehicular circulation. The Applicants also explained key design elements such as the materials to be used, the elimination of curbs in the street section, the proposal of a raised section at the intersection of N and Half Streets, drainage, and planted storm water retention beds.
- 42 Representatives from DDOT noted that the proposed materials and street furniture deviated from AWI standards and that DDOT's position is that the Applicants would be responsible for the maintenance of those non-standard elements. In response to DDOT's position, the Applicants have identified standard DDOT pavers that will be incorporated into the current design.
- 43 The Applicants, in their post-hearing filing, provided an interim plan for Half Street on Sheets L2 through L4 of the Architectural Plans and Elevations. As of Opening Day

for the Nationals, April 2008, construction of the Metrorail station expansion will be complete. However, the Applicants' office building above the Metrorail station and the residential buildings at the southern end of Half Street will remain under construction during the first season of play at the new stadium. The Applicants intend to provide a covered walkway in the eastern curb lane of Half Street between M and N Streets during this first season. The Applicants anticipate that, by April 2009, construction of the buildings will be complete and the street paving will be in place for the eastern pedestrian zone and street area from east trench drain to west trench drain.

Traffic Plan for Game Days

44. At the public hearing, the Commission asked the Applicants to provide information concerning the traffic plan for game days. The Applicants, in their post-hearing submission, stated that they have been in contact with DDOT, the Sports and Entertainment Commission ("SEC"), and Gorove/Slade Associates, the traffic consultant developing the new Ballpark Traffic Operations Control Plan ("Ballpark TOCP"), to acquire information regarding the new Ballpark TOCP. The Applicants reported that, based on communication with DDOT and Gorove/Slade Associates, a draft Ballpark TOCP is not expected until April 2007. The Applicants stated that they will continue to coordinate with DDOT and the SEC as the Ballpark TOCP is developed.

Description and Study of the Retail Elevator

45. The Commission requested that the Applicants provide a description of the elevator from the parking garage to street level and study the location of that elevator. In their post-hearing submission, the Applicants describe the elevator as a way to transport guests from the parking garage directly to preferred uses located at the ground floor. The Applicants also have completed a study of the location of the elevator and have relocated the elevator from its original location along Half Street to Monument Place. The Applicants explained in their post-hearing submission that the placement of the elevator along Monument Place will provide additional street frontage for preferred uses along Half Street.

Location of the Hotel Lobby

46. The Commission asked the Applicants to provide information regarding the likelihood of relocating the hotel lobby to the first floor. In their post-hearing submission, the Applicants stated that the hotel lobby will remain at the second floor. The Applicants have proposed to construct an open, interior stair connecting the ground floor to the second floor in order to create a lively, attractive atmosphere for hotel guests and other patrons. The open, interior stair will also enhance the pedestrian experience as well as the streetscape.

Showers for Office Tenants

- 47 In response to the DDOT report requesting that the proposed development provide shower facilities for the employees of and visitors to the commercial component, the Commission requested that the Applicants confirm whether or not they would provide shower facilities for the office building. In their post-hearing submission, the Applicants stated that they will rough in the plumbing for shower facilities and leave to the office tenants the decision as to whether the shower facilities should be built out.

Restudy of Roof Structure Located on the Hotel Roof

- 48 The Commission asked the Applicants to restudy the roof structure located on the hotel roof. The Applicants have redesigned the penthouse structure located on the low roof of the hotel to minimize the visual impact of the penthouse structure. The penthouse structure has been reduced in height from 15 feet to 6 feet. The larger mechanical equipment has been relocated to locations within the South Building. The penthouse structure is set back a distance greater than 6 feet from all exterior walls and, therefore, complies with the zoning provisions concerning setbacks.

Signage at the Northeastern Corner of the Site and on the Roof of the South Building

- 49 The Commission requested an explanation of signage at the northeastern corner of the site and on the roof of the South Building. In their post-hearing submission, the Applicants replaced the banner sign located at the northeastern corner of the site, above the Metrorail station entrance in the previous submission, with a vertical architectural element related to the truss. The vertical element has been incorporated to emphasize the importance of the location at the corner of Half and M Streets and to assist in identifying the Metrorail station entrance.
- 50 For the signage located on the roof of the South Building, the Applicants provided two alternatives for the hotel sign located on the roof of the South Building, one with the embellishments and one without. The two alternatives to the hotel sign are illustrated in Sheets A9 and A9a in the Architectural Plans and Elevations.

Office of Planning Report

51. Through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the proposed development subject to the receipt of additional information outlined in their January 3, 2007 report. OP concluded that the review of the proposed development under the provisions of the CG Overlay District is appropriate and no planned unit development or rezoning approval is required. OP found that the proposed development is consistent with and furthers the goals of the Comprehensive Plan and the planning principles of the AWI.

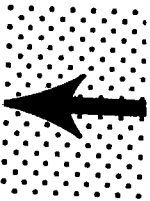
- 52 OP had no objection to granting the requested variances from the private residential recreation space requirements of § 635, the loading requirements of § 2201, the requirements of § 1607.2 for ground floor preferred uses, the minimum floor-to-ceiling clear height requirements of § 1607.5, the step back requirements of § 1607.2, and the requirements of § 1607.4 for street frontage along Half Street, S.E. OP also had no objection to the special exceptions for roof structures under § 639 and for the step back requirements of § 1607.2
- 53 In its January 3, 2007 report, OP stated that it believes the proposed development will provide an attractive gateway to the baseball stadium, provide for pedestrian movement to and from the Navy Yard Metrorail Station, and help achieve an active, mixed-use neighborhood, all while keeping with the objectives of the CG Overlay. However, OP requested additional information regarding architecture and streetscape in order to complete their evaluation of the proposed development.
- 54 The Applicants provided additional information regarding architecture and streetscape in their presentation at the January 11, 2007 public hearing on the matter and in their post-hearing filing dated January 25, 2007.

Other Governmental Agency Reports

- 55 By report dated January 5, 2007, DDOT recommended approval of the application subject to the following conditions: (1) design and installation by Applicants of a traffic signal at Half and M Streets, S.E.; (2) right-in/right-out control at Cushing Place and M Street, S.E. during peak hours, (3) truck delivery restrictions during peak hours, (4) negotiation of acceptable uses and operation of on-site parking spaces, (5) agreement and adherence to Transportation Demand Management measures to promote alternative modes of travel, (6) continued coordination with DDOT regarding ballpark operations, (7) continued coordination with WMATA regarding Navy Yard Metrorail Station improvements; and (8) DDOT approval of the conceptual designs for Half Street between M and N Streets, S.E. At the public hearing, the Applicants testified that they would pay 40% of the costs for the installation of the traffic signal at Half and M Streets, S.E., agreed to DDOT's request for right-in/right-out control at Cushing Place and M Street, S.E., and agreed to provide car share spaces for the commercial portion of the proposed development. The Applicants also agreed to provide transportation management information online, to provide bicycle storage facilities, and to continue coordination with District agencies regarding ballpark operations and Navy Yard Metrorail Station improvements.

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11 DCMR § 1604.1 and proposed § 1610, for review and approval by the Commission. The application, pursuant to 11 DCMR § 1604.9, requested special exception and variance relief for the proposed development.
2. The Commission provided proper and timely notice of the public hearing on this application, by publication in the *D C Register*, and by mail to ANC 6D, OP, and to owners of property within 200 feet of the site.
3. Pursuant to 11 DCMR § 1604, the Commission required the Applicants to satisfy the burden of proving the elements that are necessary to approve the overall project under § 1604, establish the case for special exception relief from the roof structure requirements of §§ 639.1 and 411.11, establish the case for special exception relief from the step back requirements of § 1607.2, satisfy the requirements for variance relief from the private residential recreation space provisions of § 635; meet the elements for variance relief from the loading provisions of § 2201, satisfy the elements for variance relief from the step back provisions of proposed § 1607.2; meet the requirements for variance relief from the ground floor preferred uses provisions of proposed § 1607.3, satisfy the requirements for variance relief from the provisions of § 1607.4 for street frontage along Half Street, S.E., and meet the requirements for variance relief from the minimum floor-to-ceiling clear height provisions of § 1607.5.
4. The proposed development is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. The residential, office, hotel, and retail uses are appropriate for the site, which is located in the CG/CR District. The impact of the project on the surrounding area is not unacceptable. The proposed development has been appropriately designed to complement existing and proposed buildings adjacent to the site, with respect to height and mass.
5. No person or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
6. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
7. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A)(2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, at its duly notice meeting held on January 8, 2007, ANC 6D, the ANC within which the Subject Property is located, voted 4-0-2 in support of the application for CG Overlay District Review.



8. Based upon the record before the Commission, having given great weight to the views of the ANC, having considered the testimony of AWC, and having considered the report and testimony OP provided in this case, the Commission concludes that the Applicants have met the burden of satisfying the applicable standards under 11 DCMR § 1604 and proposed § 1610, the independent burden for each special exception, and all but one of the variances requested
9. The Commission concludes that the Applicants failed to meet the burden of satisfying the applicable standards for variance relief from proposed § 1607.2 in order to permit a four-foot setback, instead of the required 20-foot setback, from the building line along Half Street. The three-part variance test requires the Applicants to show an extraordinary or exceptional situation or condition resulting in practical difficulties to the Applicants in complying with the Zoning Regulations, and relief can only be granted where there will be no substantial detriment to the public good or substantial impairment of the zone plan. (11 DCMR § 3103.2)

The Commission concludes that the property exhibits the extraordinary or exceptional conditions necessary to meet the first part of the variance test (*See*, Finding of Fact No 21), but fails to see how, in the context of this particular variance request, the second part of the test is met. There is no evidence that meeting the 20-foot setback requirement results in any particular practical difficulties for the Applicants. As stated in Finding of Fact No 27, the Applicants explained that, without this variance, it would need to “develop alternative means for creating compositional relief” for the building façade. The Applicants’ statement belies the fact that other alternatives are available, and its evidence did not show that such alternatives, perhaps not requiring zoning relief, had been attempted, but somehow failed, thereby leaving the Applicant with the need to request this variance relief. Because the second part of the test is not met, the Commission does not need to reach a determination of the third part of the test.

10. The application for CG Overlay District Review will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and the Map of the District of Columbia

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the application for CG Overlay District Review. This approval is subject to the following guidelines, conditions, and standards

- 1 The approval of the proposed development shall apply to Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 in Square 701 and portions of the public alley in Square 701 closed on an emergency basis pursuant to Emergency Alley Closing Legislation.
- 2 The project shall be built in accordance with the Architectural Plans and Elevations, marked "Exhibit A" in the post-hearing filing, dated January 25, 2007, and marked Exhibit 33 in the record of the case, as modified by the guidelines, conditions, and standards below
3. The project in its entirety shall include a maximum of 277,600 square feet of gross floor area of office space, a maximum of 105,560 square feet of gross floor area of hotel space, a maximum of 51,010 square feet of gross floor area of retail space, and 320,100 square feet of gross floor area of residential space. The distribution of uses and densities shall be as shown on Sheet D1 of the Architectural Plans and Elevations
4. The overall maximum permitted density shall be 7.44 FAR. In order to achieve the maximum permitted density, the Applicants shall transfer non-residential density from Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700 by the process set forth in § 1602.1 and those same lots shall receive a like amount of residential density
- 5 Except for roof structures, the maximum permitted heights of the North and South Buildings shall be 110 feet. Roof structures shall be as shown on Sheet A7 of the Architectural Plans and Elevations
- 6 The project shall include a minimum of 264 off-street parking spaces for residential use and 279 off-street parking spaces for hotel, office, and retail uses including vault spaces
- 7 The landscape treatment shall be as shown on Sheet L1 of the Architectural Plans and Elevations, subject to DDOT approval
- 8 The interim plan for Half Street shall be implemented in accordance with Sheets L2 – L4 of the Architectural Plans and Elevations
9. In accordance with proposed § 1607.2, a 12-foot step back shall be provided above a height of 80 feet along Half Street, as shown on Sheets A5 and A7 of the Architectural Plans and Elevations
- 10 A minimum floor-to-ceiling clear height of 14 feet shall be provided in those areas designated for ground floor preferred uses, except for
 - a Retail 7, which shall provide a minimum floor-to-ceiling clear height of 13 feet for ground floor preferred uses,

- b. Retail 5a, which shall provide a minimum floor-to-ceiling clear height of 11 feet, 6 inches for ground floor preferred uses; and
 - c. A minimum floor-to-ceiling clear height of 11 feet shall be provided for back of house space
11. One 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery spaces shall be provided for the proposed development
 12. A minimum of 56.3%, or 51,010 square feet, of gross floor area of the ground floor shall be devoted to preferred uses
 13. The new 30-foot-wide east-west connection, labeled "Monument Place" on Sheet A1 of the Architectural Plans and Elevations, shall consist of a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive lane, an 8-foot vehicular lay-by lane for the hotel use, and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones shall be demarcated with a line of bollards
 14. The vehicular circulation program for the new 30-foot-wide east-west connection shall be one-way east bound, from Half Street, S E to Cushing Place, S E
 15. The Applicants shall provide sustainable building design features as set forth in "Exhibit B" of the Applicants' post-hearing filing, dated January 25, 2007 (Exhibit 33). At least 30% of the roof areas for the proposed development shall be green roofs
 16. The elevator from the parking garage to street level shall be located on Monument Place, as shown on Sheet A1 of the Architectural Plans and Elevations
 17. The main area of the hotel lobby shall be located on the second floor of the South building with ground floor entry provided as shown on Sheet A4 of the Architectural Plans and Elevations
 18. The Applicants shall rough in the plumbing for shower facilities, leaving the decision to build out the facilities to the office tenant.
 19. Signage located on the roof of the South Building shall be consistent with the illustrations on Sheets A9 and A9a of the Architectural Plans and Elevations
 20. The Applicants shall contribute up to 40% of the costs for the installation of the traffic signal at Half and M Streets, S E.
 21. The Applicants are required to comply fully with the provisions of the Human Rights Act of 1977, D C Law 2-38, as amended, and this Order is conditioned upon full compliance

with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action. The failure or refusal of the Applicants to comply with the Act shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On February 12, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007 by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on NOV 23 2007.

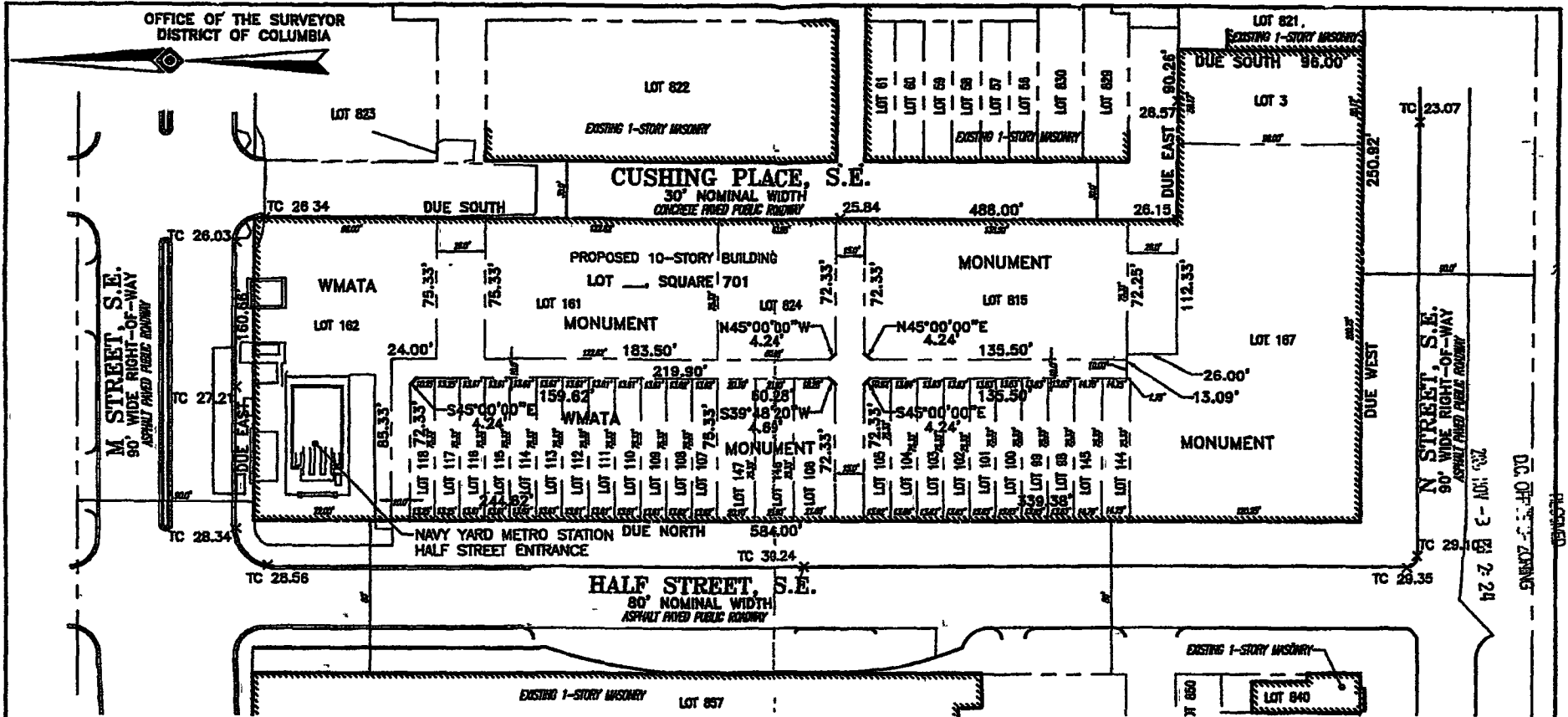


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



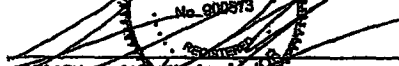
JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

OFFICE OF THE SURVEYOR
DISTRICT OF COLUMBIA



SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THE PROPERTY LINES AND BEARINGS AND DISTANCES HEREON ARE BASED UPON SURVEYED INFORMATION BASED UPON A BOUNDARY SURVEY PERFORMED BY CONTROL POINT ASSOCIATES, INC. AND VIKI INCORPORATED IN 2005 AND 2006. THE PROPOSED IMPROVEMENTS ARE CORRECTLY DRAWN ON THE PROPERTY THIS EXHIBIT WAS PREPARED FOR THE PURPOSES OF THE ZONING SUBMITTAL FOR THE PROPERTY DESCRIBED HEREON.


 GREGORY S. GALBREATH
 DISTRICT OF COLUMBIA SURVEYOR #900573
 DATE 10/6/06

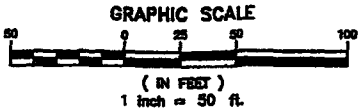


EXHIBIT PLAT
LOT TO BE RECORDED
SQUARE 701
DISTRICT OF COLUMBIA
 SCALE: 1" = 50' OCTOBER, 2006


CONTROL POINT ASSOCIATES, INC.

22830 DAVIS DRIVE, SUITE 200
 STERLING, VIRGINIA 20164
 703.804.9400 FAX 703.804.9797

33 TECHNOLOGY DRIVE
 WARREN, IN 07059
 808.668.0099 FAX 808.668.8595

Z.C. Case No. 00-44

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-46

As Secretary to the Commission, I hereby certify that on NOV 19 2007 copies of this Z.C. Order No. 06-46 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
| 1. <i>D.C. Register</i> | 6. Councilmember Tommy Wells |
| 2. Norman Glasgow, Jr., Esq.
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Washington, D.C. 20006 | 7. Office of Planning (Harriet Tregoning) |
| 3. Robert Moffatt, Chair
ANC 6D
25 M Street, SW
Washington, DC 20024 | 8. DDOT (Ken Laden) |
| 4. Commissioner Robert Siegel
ANC/SMD 6D07
919 5 th Street, SE
Washington, DC 20003 | 9. Zoning Administrator (Matt LeGrant) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Jill Stern, Esq.
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | 11. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

T

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION ORDER NO. 03-04
Z.C. Case No. 03-04
Consolidated Planned Unit Development
for 1437-1451 Belmont Street, N.W.
January 12, 2004**

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 9, 2003, to consider an application from Belmont Partners, LLC for consolidated review and approval of a Planned Unit Development ("PUD") (the "Application"). The Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR") The Public Hearing was conducted in accordance with the provisions of 11 DCMR § 3022 For the reasons stated below, the Zoning Commission hereby approves the Application subject to conditions.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On January 17, 2003, Belmont Partners, LLC, on behalf of Bozzuto Holdings, LLC and George H Purcell (collectively, the "Applicant") submitted an application to the Zoning Commission for the consolidated review and one-step approval of a PUD for the subject property located at the north side of Belmont Street, N W between 14th Street, N W and 15th Street, N W and consisting of Lots 54, 215, 216, and 860 in Square 2661. On April 14, 2003, the Zoning Commission decided to set down the Application for public hearing
2. A description of the proposed development, including a description of the subject property, and Notice of Public Hearing were published in the *D.C Register* on August 22, 2003, and were mailed to all property owners within 200 feet of the property as well as Advisory Neighborhood Commission ("ANC") 1B
3. The parties in the case were the Applicant and ANC 1B The Zoning Commission opened the public hearing on October 9, 2003 At the public hearing, the Commission heard testimony and received evidence from the Applicant and the Office of Planning. ANC 1B submitted a letter in support of the proposed PUD dated August 22, 2003 Members from Association of Community Organizations for Reform Now ("ACORN"), who expressed concern that the project did not provide enough affordable housing units and that it would raise property taxes in the area, testified in opposition to the PUD

- 4 At the conclusion of the hearing on the PUD application on October 9, 2003, the Commission requested the submission of certain additional materials and information by the Applicant. The additional materials requested by the Commission at the hearing include the following:
- a Revised architectural drawings including a landscape plan with a detailed list of plants, colored renderings, roof plan showing recreational space, alley traffic plan, and bicycle parking in the garage area,
 - b More specific information about the value of services rendered in lieu of monetary donations to the Garnet-Patterson Middle School and the Metropolitan Police Boys and Girls Club,
 - c Additional details on the sale of parking spaces to project residents and surrounding neighbors;
 - d Additional details regarding the assurance that the majority of units will be owner-occupied; and
 - e Samples of materials to be used in the project
- 5 The Applicant submitted the requested materials and information in its Post-Hearing Submission dated October 30, 2003.

Office of Planning Report

6. By report dated September 29, 2003, and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the Application, subject to certain conditions
- 7 OP identified several key public benefits and project amenities of the PUD, including urban design, architecture, landscaping, and creation/preservation of open spaces, site planning and efficient and economical land utilization, effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts, employment and training opportunities, housing and affordable housing; social services and facilities; environmental benefits, such as stormwater runoff controls and preservation of open spaces or trees; uses of special value to the neighborhood or District of Columbia as a whole; and other public benefits and project amenities by which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan. OP further stated that the PUD is "not inconsistent" with the Comprehensive Plan, noting compliance with the Generalized Land Use Map of the Land Use Element and various policies in major elements of the Plan as well as consistency with several major themes of the Plan

- 8 OP's recommendation for approval was conditioned by provisions, some of which were complied with by the time of the Zoning Commission hearing on October 9, 2003, including the provision of a signed DOES Agreement, the provision of signed agreements with the Metropolitan Police Boys and Girls Club and the Garnet-Patterson Middle School, and the provision of a signed construction management plan. The other conditions that OP sought will be complied with at the time the condition arises, including providing a service contract for the computers to be donated to the Garnet-Patterson Middle School (in lieu of a warranty on the computers), providing the proposed donations to the Metropolitan Police Boys and Girls Club and the Garnet-Patterson Middle School prior to the granting of the first Certificate of Occupancy, and installing the off-site landscaping prior to the issuance of the last Certificate of Occupancy. The Applicant will provide covenant provisions to ensure compliance with the expressed conditions

Reports of Other Agencies

9. The District Department of Transportation ("DDOT") submitted a report to OP dated September 29, 2003. The report stated that the proposed PUD will generate far less traffic than the Applicant calculated, and DDOT does not expect that the PUD will significantly impact the current level of service on the surrounding intersections. DDOT also noted that the number of parking spaces for the PUD more than adequately accommodates the parking needs of the development and minimizes the parking spillover to the adjacent neighborhood parking, which DDOT noted as having a "chronic deficit of off-street parking facilities." DDOT recommended that the Applicant provide at least ten (10) bicycle parking spaces and revise the plan for the loading berth and secondary access to the rear entrance to the parking garage.

The Site and Surrounding Area

10. The subject property consists of Lots 54, 215, 216, and 860 in Square 2661. The subject property is situated in Ward 1 on the north side of Belmont Street, N.W. between 14th Street, N.W. to the east, and 15th Street, N.W. to the west, and has a land area of approximately 42,750 square feet. Its rectangular configuration extends along Belmont Street for 280 feet and along the alley 150 feet north of Belmont Street. The topography of the site is highest at the northwest corner and slopes down approximately fifteen (15) feet to the southeast.
11. The subject property is currently improved with a vacant and dilapidated structure, formerly known as the Pitts Motel, on Lots 860 and 54. Lots 215 and 216 are each occupied by a vacant three-story brick row house.

12. The site is located in the Columbia Heights neighborhood and is one-half block east of Meridian Hill Park. The immediately surrounding neighborhood contains a mix of single-family and multi-family residential structures. There is a six-story apartment building, Garden Tower Apartments, immediately west of the site. The site is within one block of 14th Street, N W and one and one-half blocks of 16th Street, N W, where there is a mix of residential and commercial uses. The site is six (6) blocks from the Columbia Heights and U Street Metrorail Stations and is one block from Metrobus lines on 14th Street and 15th Streets.
13. The site is neither a designated historic landmark nor is it within a historic district.
14. The site is zoned R-5-B, as are the majority of the lots to the north and south of the site between 14th Street and 15th Street. Both the immediate east and west sides of 14th Street are zoned C-2-B between Florida Avenue and Columbia Road. Land to the immediate east of 15th Street and proceeding north from Chapin Street is located in the R-5-B District. Meridian Hill Park, to the west of the intersection of 15th Street and Belmont Street is federal government property and is under the jurisdiction of the National Park Service.
15. The Applicant is not requesting a zoning map amendment in conjunction with this PUD.
16. The R-5 Districts are designed to permit all types of urban residential development that conforms to applicable height, density, and area requirements. The R-5-B District is a moderate height and density residential zone that allows multi-family dwellings on the site. With a PUD, the maximum permitted building height is 60 feet and the maximum permitted density is 3.0 floor area ratio ("FAR").

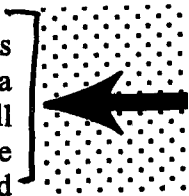
The PUD Project

17. The proposed PUD, known as the Meridian Hill Condominiums, consists of a U-shaped building oriented along Belmont Street. The development borders an open courtyard facing north and contains garden space along both the east and west side yards of the site. The site will be further landscaped with trees along the Belmont Street facade of the building. The Applicant also proposes to landscape the opposite side of Belmont Street for the length of the proposed project.
18. The proposed PUD contains 103 residential units, comprised of forty-one (41) one-bedroom, fourteen (14) one-bedroom plus den, thirty-two (32) two-bedroom, and sixteen (16) two-bedroom plus den units. The unit sizes range from 705 square feet to 1559 square feet.
19. The proposed PUD also contains a two-level below-ground parking garage, which will accommodate 136 automobile parking spaces and twelve (12) bicycle parking spaces, and

above-ground parking at the rear of the building that will accommodate 18 automobile parking spaces for visitors. Parking spaces in the garage will be offered for sale to unit owners and residential neighbors within one block of the development. Each unit owner may purchase no more than two spaces. Neighbors may purchase no more than one space.

20. The Applicant proposes to raze the Pitts Motel and the two vacant row houses and replace them with the proposed development.
21. The proposed PUD is designed to incorporate the architecture of the surrounding neighborhood. The Belmont Street facade is designed to make a transition from the higher scale of the Garden Tower Apartments to the west, to the townhouse scale of the eastern end of the site and on the south side of Belmont Street. Thus, the western portion of the Belmont Street facade will read as a unified building located along the property line, while the eastern portion of the Belmont Street facade reflects the neighboring townhouses by being set back an extra six (6) feet from the property line and utilizing private entrances for the first floor units, mansard roofing, and bay windows.
22. In its Post-Hearing Submission, the Applicant provided a detailed policy to ensure that the project will continue to be an owner-occupied building. The Applicant intends to limit purchase of units for investment purposes to no more than fifteen percent (15%) and encourage sales to those persons who will reside in the condominiums. This policy will be included in all purchase agreements, deeds, and condominium registration documents generated by the Applicant.
23. The Applicant's plans include a rooftop recreational space so that the residents of the development can take advantage of views of the Washington, DC skyline. The roof plan is shown in Exhibit 38, and it incorporates a roof deck for residents surrounded by planters. There are two means of egress from the roof deck. A 17-foot tall structure in the middle of the roof houses the elevators and stairwell to the roof, a second 10-foot tall structure on the northwest part of the roof houses a second stairwell. Additional HVAC platforms that are four feet in height are also located in groups on the roof.
24. Automobiles will gain ingress to and egress from the development through a garage door at the middle of the Belmont Street facade. Service trucks, including garbage trucks, will have access to the development through the entrance at the rear off of the 20-foot alley behind the site. Trucks that cannot maneuver through the 20-foot alley in the back will be able to make deliveries or otherwise provide services through the front of the development.

- 25 The Applicant requests that the Zoning Commission grant the following relief:
- a. A waiver of the one acre minimum area required under § 2401.1 of the Zoning Regulations,
 - b. An increase in lot occupancy from the maximum permitted sixty percent (60%) to sixty-three percent (63%) as may be allowed under 11 DCMR § 2405.4,
 - c. A decrease in the side yard setback on the east and west from thirteen (13) feet, nine (9) inches, as required under 11 DCMR § 405 6, to twelve (12) feet, as may be allowed under 11 DCMR § 2405 5
 - d. A smaller loading berth than required under 11 DCMR § 2201 1 11 DCMR § 2405 5 allows the Zoning Commission to reduce the size of a loading berth based on the use and location of the project. The loading berth as planned is thirty-five (35) feet deep, twenty (20) feet less than required under the Zoning Regulations
 - e. A special exception for varying heights of the roof structure and roof setback as allowed under 11 DCMR § 2405 7 to accommodate a roof structure that houses a second means of egress at the northwest corner of the roof that is ten (10) feet tall and is set back seven (7) feet and seven and one-half (7 5) inches from the northern roof edge. The roof penthouse that encompasses the main stairwell and the elevators is 17 feet tall



Public Benefits from the PUD

- 27 The proposed PUD provides public benefits and project amenities in accordance with 11 DCMR § 2403 9 These include the following:
- a. Housing and Affordable Housing The proposed PUD offers new high-quality housing to replace a dilapidated and underutilized property The Applicant proposes to provide four (4) affordable housing units in the PUD – two 2-bedroom units, one 1-bedroom plus den unit, and one 2-bedroom unit, in accordance with Exhibit 38.
 - b. Urban Design, Architecture, Landscaping or Creation or Preservation of Open Spaces This proposed PUD was designed with the primary intent of creating a building that conforms with the architectural characteristics of the neighboring buildings. The proposed building transitions from the large-scale apartment style of the Garden Towers Apartments, to the west of the site, to the small-scale single-family townhouses, to the east and south of the site. Building elements—such as the brick facade, mansard roofs, bay windows, and private entrances for

first floor units—ensure that the proposal reflects the neighborhood’s characteristics. The proposed PUD also contains landscaped street frontage and a landscaped courtyard, side yards, and rooftop deck

- c Transportation Issues The traffic impact study conducted by Gorove/Slade Associates, Inc and DDOT’s report show that there are no adverse traffic impacts to the surrounding area due to an increase in traffic to and from the site. The Applicant’s proposal provides enough parking for its residents. The proposed project provides additional parking to mitigate existing parking shortages in the immediate area
 - d Employment and Training Opportunities The Applicant seeks to employ local contractors to work on the construction of the proposed development. The Applicant has executed a memorandum of understanding with the Local Business Opportunity Commission and has executed a First Source Employment Agreement with the Department of Employment Services (“DOES”) as shown in Exhibit 33
 - e Social Services/Facilities In accordance with Exhibits 30 and 31, the Applicant has pledged donations of cash, services, and equipment to the Garnet-Patterson Middle School and the Metropolitan Police Boys and Girls Club
 - f Environmental Benefits, Such as Preservation of Open Space or Trees. The Applicant proposes to add open space to the site and enhance both sides of Belmont Street with landscaping as shown in Exhibit 38. Currently, Belmont Street is primarily residential but does not have street landscaping. The landscape plan proposed by the Applicant is a direct public benefit of the PUD
28. The Applicant has proffered a Construction Management Plan, as shown in Exhibit 32, to ensure responsible construction on the site and to mitigate any adverse impacts from construction on the surrounding neighborhood
29. The Commission credits the testimony of OP that this proposed PUD is “not inconsistent with the recommendation of the Generalized Land Use Plan” or “other sections of the Comprehensive Plan” including stabilizing and improving district neighborhoods, respecting and improving the physical character of the District, and preserving and ensuring community input. OP further notes that the proposed PUD is consistent with the following Ward 1 policies: housing, urban design, and land use
30. ANC 1B has submitted a letter in support of the proposed PUD, as shown in Exhibit 19. The Applicant has consistently worked with the ANC and with the immediate neighbors of the site to come up with a responsible development that takes into account factors that are important to the surrounding community.

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits 11 DCMR § 2400 01 The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare and convenience” 11 DCMR § 2400 02.
- 2 Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this Application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
- 3 The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development
- 4 The proposed PUD does not meet the minimum area requirements of § 2401 1 of the Zoning Regulations The proposed PUD is 810 square feet less than the required one acre minimum area requirement The Zoning Commission may waive not more than 50% of the minimum area requirement under certain circumstances with the requirements of § 2401 2, the Commission finds that the proposed PUD is of exceptional merit in that the project will provide new housing, including some affordable units on a dilapidated, underutilized site in a residential neighborhood, is in the best interest of the city, and will devote at least eighty percent (80%) of the gross floor area of the development exclusively for dwelling units and uses accessory thereto
- 5 The PUD is within the applicable height and bulk standards of the Zoning Regulations The height and density will not cause a significant adverse effect on any nearby properties. The proposed residential use is appropriate for this site, which is served by minor arterial streets, bus lines, and a nearby Metrorail station As set forth in the Findings of Fact, the proposed PUD is appropriately designed to respect the surrounding areas, including the lower density residential areas to the east and south of the site and the higher density residential building to the west of the site

6. The Applicant seeks an increase in lot occupancy as permitted by 11 DCMR § 2405.4. The project benefits and amenities, particularly the provision of housing and affordable housing, the landscaping plan, and the donations to the Metropolitan Police Boys and Girls Club and the Garnet-Patterson Middle School, are a reasonable trade-off for the requested development flexibility
7. Approval of the Application is appropriate, because the proposed PUD is consistent with the present character of the area.
8. Approval of the PUD is not inconsistent with the Comprehensive Plan
9. In accordance with D.C. Official Code § 1-309 10(d) (2001), the Zoning Commission must give great weight to the issues and concerns of the affected ANC. The Commission notes that ANC 1B submitted written recommendations in this proceeding in support of the Application.
10. Approval of the Application will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia
11. Notice of the public hearing was provided in accordance with the Zoning Regulations.
12. The Applicant is subject to compliance with D.C. Law 2-38, The Human Rights Act of 1977

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for consolidated review of a Planned Unit Development for Square 2661, Lots 54, 215, 216, and 860. This approval is subject to the following guidelines, conditions, and standards

1. The PUD shall be developed in accordance with the plans prepared by SK&I Architectural Design Group, LLC dated October 30, 2003, marked as Exhibit 38 in the record (the "Plans") as modified by the guidelines, conditions, and standards herein
2. The PUD shall be a residential building consisting of approximately 115,260 square feet of gross floor area, with no more than 103 dwelling units. The Project shall not exceed a density of 2.7 FAR. The building shall not exceed a height of 55 feet, as measured in accordance with the Zoning Regulations. The project may include a roof structure with a height not to exceed 17 feet as indicated in the Plans and in accordance with the Zoning Regulations

3. The Applicant shall provide affordable housing as described in Exhibit 38. To the extent that minor modifications are needed in the execution of the program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development to make such changes to comply with the same.
4. The proposed PUD shall include a minimum number of parking spaces in the amount of 15 parking spaces per dwelling unit. The proposed PUD shall include 136 parking spaces in the below-ground garage and 18 parking spaces behind the building in an above-ground surface lot. At least twelve (12) bicycle parking spaces shall be provided in the garage. All of the parking spaces behind the building shall be devoted to visitor parking and shall be free of charge to visitors. Parking spaces shall be offered for sale to owners of dwelling units in the proposed PUD and to residents within a one block radius of the proposed project. There is no requirement for any dwelling unit owner to purchase a parking space. Ownership of the parking spaces in the below-ground garage shall be limited to two per person.
5. The proposed PUD shall include one 15-foot by 35-foot loading berth, with a 200-square-foot loading platform as shown on the Plans.
6. The proposed PUD shall include open, green space that is accessible to residents of the building and has gating as depicted in the Plans. Landscaping improvements shall be in accordance with the Plans. The Applicant or its successors shall maintain all landscaping improvements in good condition.
7. The Applicant shall include landscaping improvements as indicated on the Plans along both sides of Belmont Street for the length of the building. The off-site landscaping shall be installed prior to the issuance of the last Certificate of Occupancy for the PUD. The Applicant or its successors shall maintain all landscaping improvements in good condition.
8. The Applicant shall create a recreational roof structure in accordance with the Plans.
9. The Applicant shall have flexibility with the design of the proposed PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, kitchens and toilet rooms, provided that the variations do not change the exterior configuration of the building,
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, but with no reduction in quality, based on availability at the time of construction, and

- c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit
- 10 The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D C Office of Local Business Development in order to achieve, at a minimum, a goal of thirty-five percent (35%) participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project. After the completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the D C. Local Business Opportunity Commission regarding compliance with this agreement.
- 11 The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services (DOES) in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After completion of construction of this project, the Applicant shall provide a written status report to the Zoning Commission and the DOES regarding compliance with this agreement
- 12 The Applicant shall abide by the terms of the executed Construction Management Plan in order to achieve the goal of constructing the PUD in a reasonable manner and to minimize any adverse effect the construction of the PUD may have on the immediate surrounding neighborhood
13. The Applicant shall abide by the executed Contribution Agreements entered into with the Metropolitan Boys and Girls Club and the Garnet-Patterson Middle School and shall provide these donations prior to the granting of the first Certificate of Occupancy for the PUD
14. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between owners and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission
15. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission

16. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this order.
17. Pursuant to the Human Rights Act of 1977, D.C. Law 2-38, as amended, codified at D.C. Official Code § 2-1402.67 (2001), the Applicant is required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

On December 18, 2003, the Zoning Commission approved the Application by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Peter G. May to approve, James H. Hannaham, not present, not voting).

The Order was adopted by the Zoning Commission at its public meeting on January 12, 2004, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Peter G. May to approve; James H. Hannaham, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D C Register*, that is on JUN 18 2004.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning