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November 1, 2011

Via Hand Delivery

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

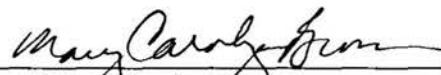
Re: BZA Case No. 18272 – KS FBC, LLC
1328 16th Street, N.W. (17th & O Streets)
Square 181, Lot 163

Dear Board Members:

On behalf KS FBC, LLC, we are submitting herewith an original and twenty copies of the Statement of the Applicant in support of the special exception and variance relief requested for the above-referenced property. We look forward to the Board of Zoning Adjustment's consideration of this application at the hearing on November 15, 2011.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Mary Carolyn Brown

Attachments

cc: Paul Goldstein, OP (via email)
Gabriela Vega, DDOT (via email)
Advisory Neighborhood Commission 2B (via overnight mail)
George Keys, Esq. (via overnight mail)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18272
EXHIBIT NO. 27

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

APPLICATION OF:	)	
	)	
KS FBC, LLC	)	BZA APPLICATION NO. 18272
	)	
For a special exception from section 411.5 to allow	)	
roof structure enclosure walls of unequal height,	)	ANC 2B
and an area variance from section 530.1 to allow	)	
an increase in the permitted height, in order to	)	<u>HEARING DATE:</u>
allow the construction of an apartment house	)	November 15, 2011
addition to the First Baptist Church of	)	
Washington located in the SP-1 and SP-2 District	)	
at 1328 16th Street, N.W., (Square 181, Lot 163)	)	
	)	
	)	

STATEMENT OF THE APPLICANT

**I.
Nature of Relief Sought**

KS FBC, LLC, an affiliate of Keener-Squire Properties, on behalf of the First Baptist Church of the City of Washington ("Applicant"), seeks a special exception, pursuant to section 3104.1, from the requirements of section 411.5 to allow roof structure enclosure walls of unequal height, and an area variance, pursuant to section 3103.2, from the height limitations of section 530.1, in order to construct a nine-story apartment house addition to the First Baptist Church of Washington located in the SP-1 and SP-2 Districts at 1328 16th Street, N.W. (Square 181, Lot 163). The Applicant is withdrawing its request for a variance from the location of compact parking spaces under section 2115.4 as that relief is no longer needed. The property is split-zoned, with the west portion of the parking lot on 17th Street located in the DC/SP-2 District, and the remainder of the site located in the DC/SP-1 District.

II. **Jurisdiction of the Board**

The Board has jurisdiction to grant the requested relief pursuant to D.C. Code § 6-641.07 (2001 ed.) and 11 DCMR §§ 3103.2 and 3104.1.

III. **Background**

A. Site and Vicinity Characteristics

1. The Property

The subject property is located at Lot 163 in Square 181 and has street frontage along 16th Street, 17th Street and O Streets, N.W., Washington, D.C. Lot 163 measures 96.5 feet wide along 16th Street and extends 426.17 feet deep along O Street, with a total land area of 43,287 square feet. Portions of the zoning map and real estate plats showing the property are attached as Exhibits A and B. The east portion of the site on 16th Street is improved with the First Baptist Church of Washington. A school and administration wing are located at the back of the church. The rear portion of the site is improved with a surface parking lot with 36 parking spaces. The property falls within the boundaries of the 16th Street and Dupont Circle historic districts, and abuts the Massachusetts Avenue Historic District. The First Baptist Church contributes to the character of the 16th Street Historic District.

2. First Baptist Church of Washington

The First Baptist Church of Washington was founded in 1802 and has had a continuing presence in the nation's capital since that time. The church moved to its current location in the 1890s and the first services were held in the present sanctuary on Christmas Day 1955. The annex was constructed during the 1980s as a venue for the church's Sunday school, the Child Development Center of the First Baptist Church, and its numerous social programs, including

Alcoholics Anonymous and Narcotics Anonymous. The church has been an anchor in the Dupont Circle neighborhood for over one hundred years. It's continuing operation of church services and programs at its current location is critical to its mission to engage in ministries that directly impact the neighborhood, the city, the nation and the world.

3. The Vicinity

The property is located in the east end of Dupont Circle and is surrounded on three sides by high-density residential and commercial buildings. Across the alley to the south are the Airline Pilots Building and the Johns Hopkins University Rome Building, each of which rises to a height of 90 feet and fronts on Massachusetts Avenue. To the west across 17th Street are the Boston House Condominium and the Bay State Apartments at the corner of Massachusetts Avenue, which are 87 feet and 90 feet in height, respectively. Across O Street to the north is the Richmond Condominium, which is also 90 feet in height. The Australian Embassy, located to the south of the church at the corner of 16th Street and Massachusetts Avenue, is another 90-foot structure in the immediate vicinity of the proposed apartment building.

B. Zoning Parameters

The property is split-zoned DC/SP-1 and DC/SP-2. The west portion of the parking lot fronting 17th Street is located in the SP-2 District for a depth of 40 feet. The remainder of the site is located in the SP-1 District, encompassing the church, the church annex and the east end of the parking lot.

The SP Districts are medium and medium-high density areas designed to preserve and protect areas adjacent to commercial districts that contain a mix of row houses, apartments, offices and institutions, including buildings of historic and architectural merit. The SP-1 District permits a maximum density of 4.0 floor area ratio ("FAR"), all of which may be devoted to residential

uses. Other permitted uses are limited to 2.5 FAR. The maximum permitted height in the SP-1 District is 65 feet, with roof structures permitted to rise another 18.5 feet above the roof level. Under the IZ regulations, a residential building may be built to a density of 4.8 FAR and constructed to a height of 70 feet. The maximum permitted lot occupancy in the SP-1 District is 80 percent.

The SP-2 District permits a maximum height of 90 feet and a maximum density of 6.0 FAR, all of which may be devoted to residential uses. Under IZ, the density may be increased to 7.2 FAR and the lot occupancy may be increased from 80 percent to 90 percent. Other permitted uses are limited to 3.5 FAR. As discussed below, the Applicant's project is a residential addition that increases the gross floor area by more than 50 percent and thus is subject to the Inclusionary Zoning ("IZ") requirements and may avail itself of the bonus standards.

C. Description of Proposed Development

The Applicant proposes to construct an addition to the existing First Baptist Church at 1328 16th Street, N.W., Washington, D.C. (Square 181, Lot 163). The addition will be a nine-story apartment building located on the existing parking lot located immediately behind the church annex at the southeast corner of 17th and O Streets, N.W. The main lobby entrance to the residential building will front on 17th Street. The building will connect with the church annex at the ground floor level through a covered passageway and at the mezzanine/first parking level. The covered passageway from O Street will also provide vehicular access to a drop-off point at the interior of the site, which will also serve as an open plaza for church events. Parking and loading facilities are located at the rear alley and can be accessed from 17th Street. The overall height of the addition will be 90 feet and the density will be 2.6 FAR, or a total of 3.77 FAR including the

church. This well below the permitted maximum IZ bonus density of 4.8 FAR for the SP-1 District and 7.2 FAR for the SP-2 District.

The Historic Preservation Review Board ("HPRB") reviewed the design of the proposed addition and found the concept not incompatible with the historic district and consistent with the purposes of the preservation act. A copy of the staff report adopted by the HPRB at its September 22, 2011, meeting is attached as Exhibit C.

V.

The Application Meets the Standards for Special Exception Review under the Zoning Regulations

A. Standard of Review.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the requested relief are satisfied. The D.C. Court of Appeals has consistently emphasized the narrow scope of the Board's discretion in reviewing special exception applications:

In evaluating requests for special exceptions, the Board is limited to a determination of whether the exception sought meets the requirements of the particular regulation on which the application is based. ... The applicant has the burden of showing that the proposal complies with the regulations; but once that showing has been made, the Board ordinarily must grant the application.

National Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment, 753 A.2d 984, 986 n.1 (D.C. 2000). *See also Stewart v. D.C. Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)(noting that "[s]pecial exceptions, unlike variances, are expressly provided for in the Zoning Regulations"). If the specific requirements of the regulation are met, in other words, the Board is generally precluded from denying an application for special exception relief.

B. Roof Structure Relief.

Section 411.5 of the Zoning Regulations requires penthouse enclosure walls to be of equal height as measured from the roof level. See also 11 DCMR § 530.5. Here, the Applicant could build the penthouse wall to a height of 18 feet to enclose the elevator override equipment and the remainder of the rooftop penthouse. Instead, the Applicant proposes to minimize the appearance of the penthouse enclosure wall by lowering its height to 13 feet and only extending the walls of the elevator and mechanical penthouse to a height of 18 feet. The surrounding walls will be of quality material to integrate them into the overall design of the building.

If the Applicant were required to comply with the provision requiring penthouse walls of equal height, it would need to increase the height of the penthouse enclosure walls by another five feet. In doing so, however, the Applicant would unnecessarily increase the visibility of the roof structure from the street, which would have a negative impact on the surrounding historic community. The Applicant's proposal, however, actually reduces the height of the penthouse to 13 feet, thereby protecting the architectural integrity of the historic districts and meeting the spirit and intent of the regulations to exercise a reasonable degree of architectural control over roof structures.

E. The Requested Special Exception Relief 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 addition to satisfying the specific requirements set forth in sections 770 and 1906.1, the Applicant must also demonstrate that the requested special exception meets the more general requirements of section 3104.1 of the Zoning Regulations. Before granting an application for a special exception, the Board must determine that the requested relief "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." 11 DCMR § 3104.1. The waiver of the overall penthouse enclosure wall height sought by the Applicant in this case is consistent with the purpose and intent of the Zoning Regulations and Map and will not have any adverse impacts on neighboring properties.

The stated purposes of the Zoning Regulations are set forth in section 6-641.02 of the D.C.

Code:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

D.C. Code § 6-641.02 (2001). Those purposes are reproduced in the text of the Zoning Regulations as well. *See* 11 DCMR §§ 101.1-101.2.

The requested special exception is in harmony with the purposes described above. The proposed penthouse walls of unequal height will not interfere with, and rather will enhance, the available light to building occupants or to any existing or proposed building located on adjacent properties. The highest part of the penthouse housing the elevator override and mechanical equipment has been pushed back to the centermost portion of the roof where it will have the least visibility from the street and adjacent buildings. The shorter penthouse is also amply set back from the street walls, which allows for a rooftop terrace that includes plantings and other green elements to help screen the penthouses. The vegetative screening and roof terrace will create favorable

conditions for the health and recreation of District residents. Furthermore, the requested relief will not result in an excessive concentration of population on the site because it does not create any additional habitable space in the building. Finally, the requested waiver will not have and cannot have any adverse effect on neighboring properties since it reduces the size of the roof structure.

IV.
The Applicant Meets the Standards for
Area Variances under the Zoning Regulations

A. Standard of Review for Variance Relief

The Applicant seeks a variance from the height limitations of the SP-1 District in order for the addition to have a uniform height of 90 feet, which is only permitted in the SP-2 portion of the site. The Applicant requests a waiver from section 530.1 to extend the 90-foot building height to the SP-1 segment of the lot.

Under D.C. Code § 6-641.07(g)(3) (2001 ed.) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) the property is unique because, *inter alia*, of its size, shape or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. See *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that "area variances have

been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, the proposed project meets all three prongs of the variance test.

B. The Site's Extraordinary or Exceptional Conditions

The subject property is affected by several exceptional and extraordinary conditions. First, the property is already improved with an existing historic church that contributes to the character of the 16th Street Historic District. Second, the church includes an annex that houses the Sunday School, social programs, the child development center and administrative offices that are active on the weekdays and weekends. The buildings have extensive deferred maintenance issues in excess of \$5 million that jeopardize their mechanical and structural longevity and historic integrity. Third, the site is also exceptional in that it is a combination of an unusually large parcel with frontage on three streets that is also split-zoned. Finally, the lot is exceptionally narrow in comparison to its length along O Street.

C. Resulting Practical Difficulty

The confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the height restrictions requirements of the Zoning Regulations. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1979) (uniqueness may stem from a confluence of factors).

The church entered into this project to develop its parking lot site in an attempt to address the near-term financial difficulties, as well as to provide an "endowment" to enable the church to continue to serve its members and the community well into the future. Over the past decade, the

church has had to use all available funds for operating costs of the congregation and community outreach programs. As a result, the church has been unable to reserve funds to help pay for what is now over \$5 million of deferred maintenance for the main sanctuary building, which was constructed in the 1950s, and the administrative building or annex, which was constructed in the 1980s.

When the church initiated this project, it considered numerous options related to developing the parking lot. After much study, two clear alternatives emerged: (i) new construction on the vacant parking lot, which would require seeking a height variance; or (ii) demolition of the existing administrative building and construction of a significantly larger building, with space for the church, that would not require zoning relief. The church explored the zoning compliant alternative, but the extreme difficulties that it would produce rendered it impractical, as described below.

In order to avoid the practical difficulties associated with demolition of the annex building, the Applicant is seeking a variance to bring the entire building up to the 90-foot height level on the western portion of the site, consistent with the surrounding buildings. Although the new addition would not use all of the permitted density on the site, the building would be of sufficient size to generate the income necessary to sustain the church. At the same time, the apartment addition would be located so that it does not compromise the integrity of the historic church and instead provides an appropriate distance and backdrop to the building.

If the Applicant were forced to comply with the height limitations of the SP-1 District, the annex would need to be demolished in order to accommodate all the residential density necessary to generate income for the deferred maintenance and reserve funds. Demolition of the annex, or even construction over the annex, however, would not only disrupt normal church activities,

including the Sunday School and office administration, it would also interfere with the numerous community groups that use the building, including Alcoholics Anonymous, Narcotics Anonymous, and other small churches without their own facilities. Perhaps the greatest hardship would be felt by the families in the Child Development Center ("CDC"), which has space for approximately 80 children under the age of 5, many of whom live within walking distance of the church. If the administrative building were demolished, the CDC would have to relocate and, possibly even shut down for the duration of construction. The CDC and other social programs could be without space for as long as three years under this scenario.

Constructing the building to unequal heights – 90 feet in the SP-2 portion of the site and 70 feet in the SP-1 area – is also very problematic from a design standpoint. The SP-2 portion of the building would have a relatively small floor plate of approximately 40 feet by 86 feet, with a total area of 3,440 square feet. In order to accommodate the highest part of the building, the service core would need to be located in this section of the building, which would include two egress stairs and three elevators. It would be impractical and inefficient to create a design that would stop two of the elevators at the 70-foot level and continue only one of the elevators to the top two floors. Thus, a significant part of the SP-2 floorplate would be devoted to service elements, dramatically devaluing the highest floors, which generate the greatest return in a building. In addition, at least one more egress staircase would be required on the east side of the building, further reducing the useable space in the building.

Because of the 40-foot depth for the SP-2 portion of the site, the Applicant would either have to design completely different units on the top two floors from what is designed for the lower floors, resulting in expensive and awkward plumbing, electrical risers, and column shifts, or the building would end up with a single-loaded corridor, which is a very inefficient use of space.

Additional difficulties would include the placement of the mechanical equipment on two different roofs at two different heights, and smaller roof spaces limiting or eliminating the ability to provide outdoor roofdeck space to residents. Constructing a two-height building would likely be so inefficient that it makes the project untenable.

The Board has previously found that height variances are warranted under similar circumstances, particularly when historic properties are involved. For example, in BZA Case No. 16536, the Board granted the National City Christian Church a variance to increase the height from 90 feet to 110 feet to construct a residential addition to its church in the SP-2 District. The residential addition was necessary to help provide the church funds to maintain its historic building and continue its social programs. Similar relief was granted in BZA Case No. 16702 (Millennium Georgetown Partners granted variance to increase height from 40 feet to 50.6 feet for addition to the Georgetown Incinerator); BZA Case No. 16857 (HQ Acquisition LLC granted variance to increase height to 70 feet for Cityline at Tenley residential condominium); and BZA Case No. 17271 (JBG/Louisiana Ave LLC granted variance to increase height to 130 feet for an addition to the Acacia Mutual Life Insurance Building). Copies of relevant BZA orders are attached as Exhibit D.

E. No Harm to Public Good or Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. The surrounding buildings on 17th Street and Massachusetts Avenue are constructed to a height of 90 feet. The variance relief will allow the Applicant to maximize residential use to the extent reasonably possible in a downtown location where residential use is encouraged. Most of the site is designated for high-density residential use on the Future Land Use Map, with the O Street frontage designated medium-density residential. Even

with the variance relief, the maximum residential density on site would be 2.6 FAR, which falls below what the Comprehensive Plan would otherwise allow. The overall density (residential and church) is only 3.77 FAR, which is approximately 20 percent less than the overlay permitted residential density on site of 4.99 FAR. The building height has been endorsed by HPRB as being compatible with the surrounding buildings in the historic districts.

V. Community Support

The Applicant undertook an extensive community outreach program beginning in early July 2011. Flyers were distributed to all of the buildings on 17th Street between P Street and Massachusetts Avenue, including the Airlines Pilots Association building and the Johns Hopkins office buildings. The Applicant hosted open community meetings on July 19 and July 28 in the church. Each meeting was attended by approximately 15 neighbors, mostly from the Richmond Condominium across O Street to the north. The Applicant also made a presentation to the Dupont Circle Conservancy, which endorsed the project. The Applicant likewise presented its plans to Advisory Neighborhood Commission ("ANC") 2B on August 10 and to the ANC's zoning subcommittee on September 6. At its duly noticed and regularly scheduled meeting of September 14, 2011, Advisory ANC 2B voted unanimously to support this application as well as the HPRB concept application. A copy of the ANC 2B resolution supporting the project is attached as Exhibit E.

VI. Witnesses

The following witnesses will provide testimony at the Board's public hearing on the application:

1. Gary Squire, KS FBC LLC
2. Representative(s) of First Baptist Church of Washington
3. Eric Colbert, Colbert & Associates, Architects
4. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP

VII.
Exhibits in Support of the Application

The following exhibits are attached to this statement in further support of the application:

- Exhibit A: Portion of the Zoning Map illustrating the site;
- Exhibit B: Portions of the Sanborn/Tax Maps illustrating the site;
- Exhibit C: HPRB Staff Report
- Exhibit D: BZA Cases
- Exhibit E: ANC 2B Letter
- Exhibit F: Outlines of Witness Testimony
- Exhibit G: Architectural drawings

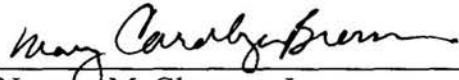
VIII.
Conclusion

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose, and integrity of the Zoning Regulations. The Applicant therefore respectfully requests that the Board grant the application.

[continued on next page]

Respectfully submitted,

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By: 
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November 1, 2011

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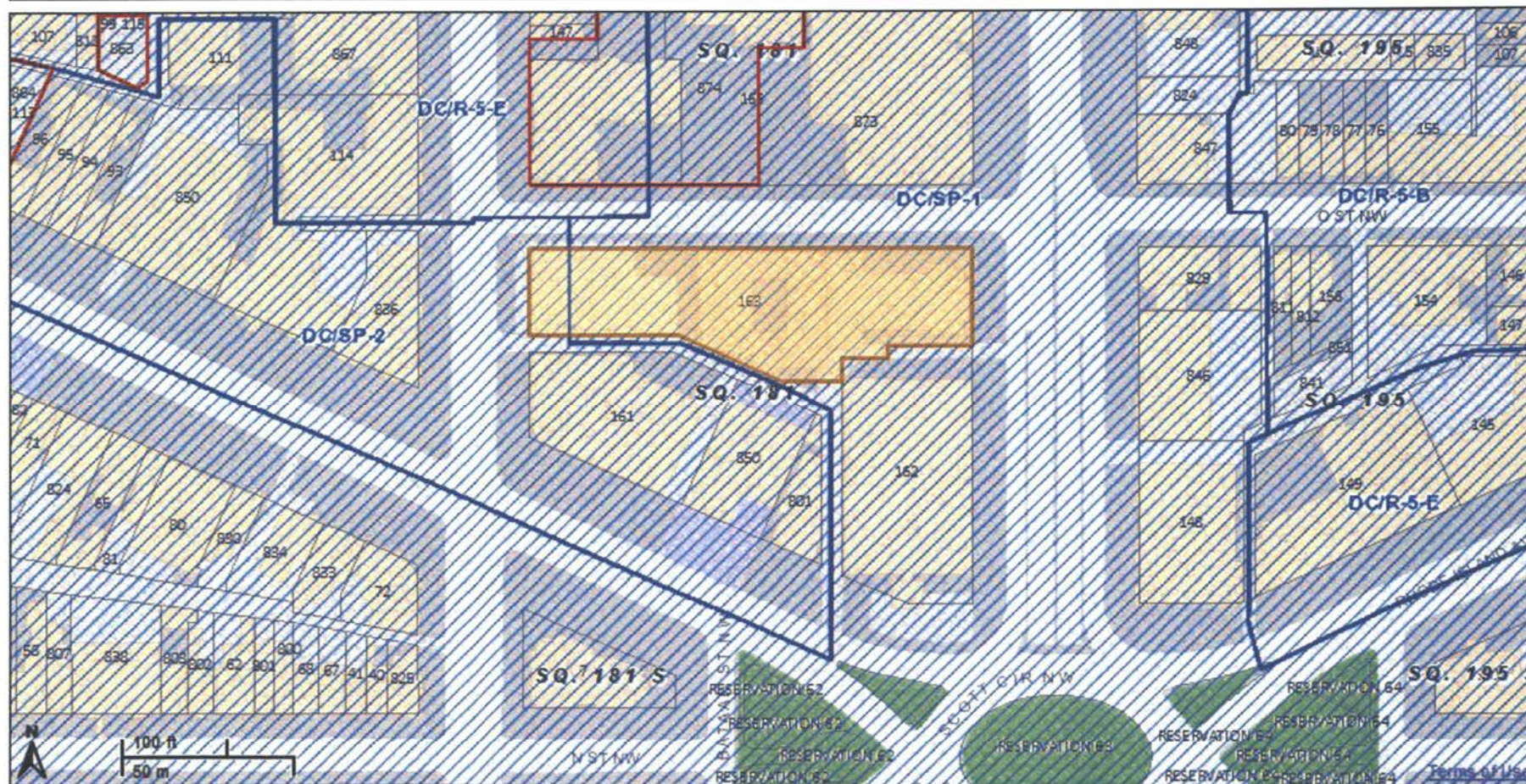
A



District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

November 1, 2011

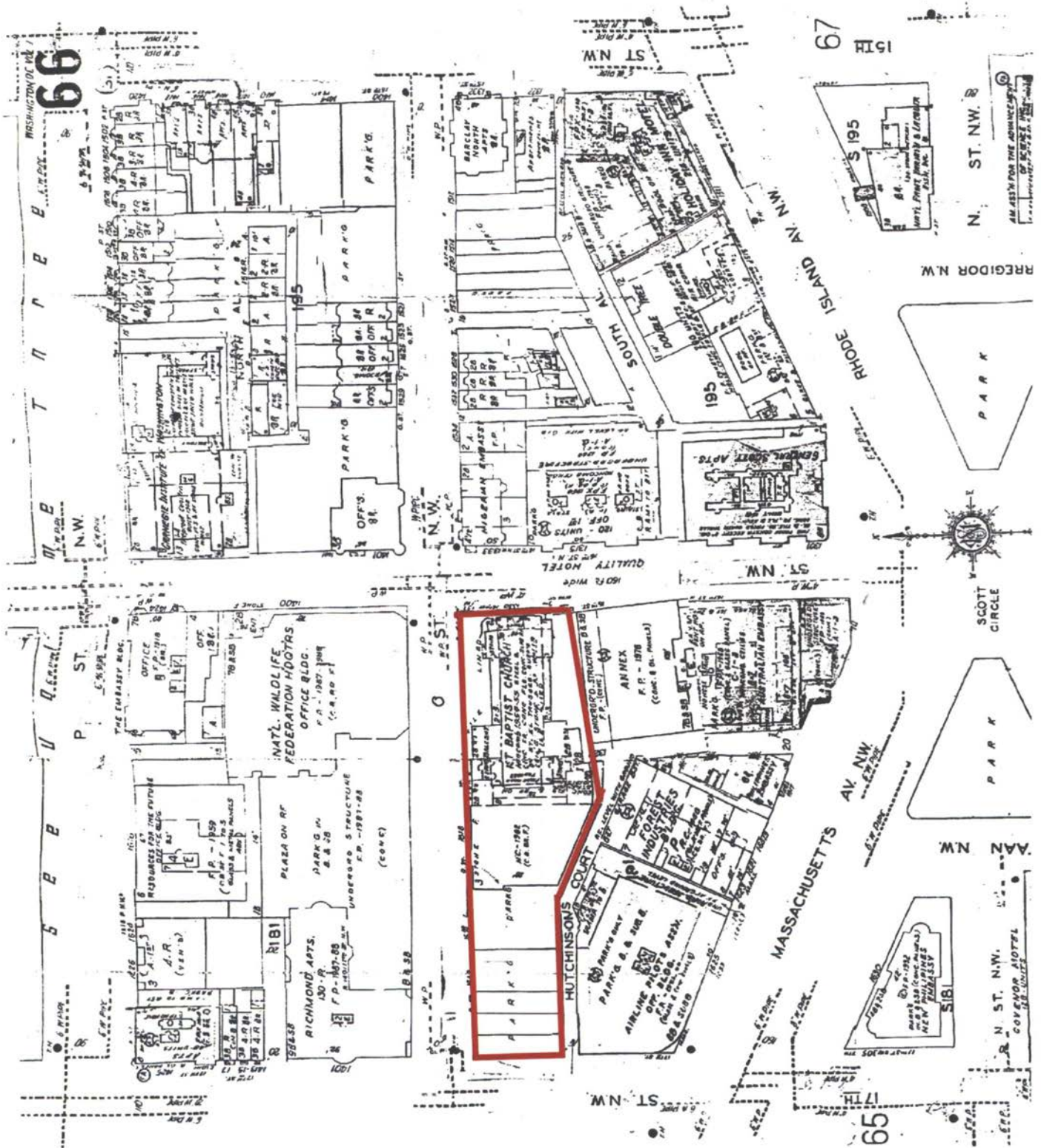


Zoning Layers

Zone Districts	CEA	Pending PUDs
Historic Districts	Campus Plans	PUDs
Overlay Districts	TDRs	Air Rights Zone

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

B



C

Exhibit C-1

**HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION**

Property Address:	1328 16th Street, NW (17th & O)	Agenda
Landmark/District:	Sixteenth Street and Dupont Circle Historic Districts	Consent Calendar
Meeting Date:	September 22, 2011	X Concept Review
H.P.A. Number:	11-397	Alteration
Staff Reviewer:	Steve Callcott	X New Construction
		Demolition
		X Subdivision

Architect Eric Colbert, representing Keener-Square Properties, seeks conceptual review for construction of a nine-story apartment building on a vacant parcel at the corner of 17th and O Streets, NW. The site is on the same lot as the First Baptist Church on 16th Street (at the east end of the block) and is currently used as a surface parking lot. Because it is located on the same lot as the church, it is technically located in the 16th Street Historic District, despite not having direct frontage or prominent visibility from that district; the site is also located in the Dupont Circle Historic District and abuts the Massachusetts Avenue Historic District to the south.

Proposal

The project calls for a contemporary apartment building of light-colored brick, precast detailing, large openings of fixed and casement windows, and metal and glass projections. Brick banding and other detailing would be evocative of the Streamline Moderne style of the early 20th century without being literally replicative. The primary 17th Street elevation would be symmetrically composed with two projections flanking a centered entrance. The O Street elevation would have three projections and would recess slightly from the street at the rear to accommodate a covered parking entrance serving both the new building and the church.

Evaluation

While located within or adjacent to three historic districts, the site is not defined by a particularly strong sense of historic context. The parcel is located at the opposite end of the block from the church with which it shares a lot, such that the new construction will not have a presence or prominent visibility from the church or 16th Street. To the north and south are large-scale non-contributing buildings -- the 1980s Richmond condominium to the north and the 1970s Airline Pilots Association Building to the south. The most relevant historic context for the site is the Bay State and Boston House apartment buildings across 17th Street to the west, with which the proposal will share a common 90 foot height, coloration, and contemporary styling. In its use of materials, proportions, scale, detailing, articulation, and vertical orientation, the proposed design is compatible with the character of its context.

Recommendation

The HPO recommends that the HPRB find the concept not incompatible and consistent with the purposes of the preservation act, and that final approval be delegated to the staff.

Exhibit C-2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD



HPRB ACTIONS
September 22, 2011

The Historic Preservation Review Board met on September 22, 2011 and considered the following items.
Present: Catherine Buell, Chair; Elinor Bacon, Tersh Boasberg, Maria Casarella, Christopher Landis, Pamela Scott, Robert Sonderman and Joseph Taylor.

AGENDA

DESIGN GUIDELINES

Guidelines for Window Repair and Replacement: Consideration of draft.

Consideration only; no action taken. Anticipated adoption of final guidelines at October meeting.

PRESERVATION PLANNING

Historic Preservation Plan for the District of Columbia, 2012-2015: Status report.

Discussion only; no action taken.

LANDMARK DESIGNATION HEARING

Marjorie Webster School and Junior College Campus, 1638-1640 Kalmia Road and 7753-7775 17th Street, NW, Case #10-14.

The Board designated the property as the Marjorie Webster Junior College Historic District and recommended that the nomination be forwarded to the National Park Service for listing in the National Register of Historic Places with three contributing buildings (Main School, Webster house, and springhouse) and two non-contributing buildings (Fraser Hall and Parkside). Approved: 8-0.

HISTORIC LANDMARKS

The Harrison (Canterbury), 704 3rd Street, NW, HPA #11-343, concept/eleven-story addition and substantial demolition and reconstruction.

The Board approved the project in concept, with a delegation to staff of further review, with the conditions that the applicant retain, repair and incorporate the brick stairwell/elevator core and the floors extending out from it to, and including, the four surrounding steel columns, as well as the large, hexagonal lightwell; that alternatives to reconstruction of the damaged bays of the 3rd Street elevation be explored; that the earliest fire escapes be retained; that a high standard will be applied to restoring the remaining fabric of the landmark and replacing elements such as windows; that the brick of the new building will be sufficiently distinct but not jarringly different from the landmark; and that the bays receive consideration as to the orientation of the windows, the possibility of raising the bottom of the east bays one story and the introduction of spandrel panels, and that in any case, much care be given to the development of the details of the mullions and the use of appropriate, clear-glass units. Vote: 8-0.

ANACOSTIA HISTORIC DISTRICT

13th and W Streets, SE, HPA #07-433, revised concept/subdivision, construction of 23 dwellings and reconstruction of demolished historic building.

The Board approved the design in concept, with delegation to staff of further review, with the conditions that the V Street building be limited to two stories of height; the applicant satisfactorily address the issues raised in the staff report; and that the applicant carefully revise and develop the balcony details on the Type

2 houses, the stairs, the siding on the Type 3 houses, and the width of the alley and the continuation of the 13th Street sidewalk and vegetation along it. Vote: 8-0.

1108-1110 Good Hope Road, SE, HPA #11-468, storefront construction.

The Board did not approve the application as submitted, and recommended that the applicant revise it with removal of some of the steel bars, as outlined in the staff report. Vote: 8-0.

U STREET HISTORIC DISTRICT

2001 15th Street, NW, HPA #11-407, concept/construction of nine-story apartment building.

The HPRB approved the general concept, advising the applicant to continue refining the proportions and design of the corner projection and the amount and treatment of glass. The project will return for further review when appropriate. 8-0.

SIXTEENTH STREET AND DUPONT CIRCLE HISTORIC DISTRICTS

1328 16th Street, NW, HPA #11-397, concept/construction of nine-story apartment building.

The HPRB approved the concept as consistent with the purposes of the preservation act, and delegated final approval to staff, 8-0.

CLEVELAND PARK HISTORIC DISTRICT

3414 29th Street, NW, HPA #11-400, six-foot-tall front fence.

The Board found the 6'0" fence installed in the front yard of the property without permit approval to be inconsistent with the character of the Cleveland Park Historic District; the rear yard 6'0" high fence was approved. 8-0.

MOUNT VERNON SQUARE HISTORIC DISTRICT

1225 5th Street, NW, HPA #11-375, concept/subdivision and alterations, two-story side addition on two-story rowhouse.

The Board provided a variety of ideas for improving the compatibility of the addition, and advised the applicant to restudy the proposal and return to the Board after further development. Vote: 8-0.

471 M Street, NW, HPA #11-474, concept/third-story addition on two-story flats.

The case was deferred to the October meeting.

SHAW HISTORIC DISTRICT

1220 and 1224 11th Street, NW, HPA #11-464 and 465, concept/four-story rear and roof additions on three-story rowhouses.

The case was deferred to the October meeting.

CONSENT CALENDAR

The HPRB approved by a vote of 8-0 the following items, with the following comments, on the consent calendar:

BLAGDEN ALLEY/NAYLOR COURT HISTORIC DISTRICT

1321-25 Naylor Court, HPA #11-466, concept/new construction.

CAPITOL HILL HISTORIC DISTRICT

713 E Street, NE, HPA #11-469, concept/one-story rear addition to one-story house.

The Board approved the concept, but asked that better quality drawings be developed and that the project return to the Board for final permit review.

327-331 Pennsylvania Avenue, SE, #11-475, concept/storefront alterations and façade alterations.

The Board approved the concept and delegated final approval to staff.

DOWNTOWN HISTORIC DISTRICT

801 7th Street, NW, HPA #11-484, concept/alterations and additions.

The Board approved the concept, contingent on the one-story addition on 7th Street being pulled back sufficient to ensure that it won't be visible from the street, and delegated final approval to staff.

DUPONT CIRCLE HISTORIC DISTRICT

1914 S Street, NW, HPA #11-320, concept/demolition of two-story frame structure.

U STREET HISTORIC DISTRICT

1905-1917 14th Street, NW, HPA #11-323, revised concept/new construction, seven story retail and residential building.

The Board commended the architect and developer for working with the community to develop a more compatible design with additional setbacks, and asked that the fenestration continue to be refined to give the building a more residential appearance.

1932 9th Street, NW, HPA #09-393, revised concept/new construction, four story retail and residential building.

The Board project was removed from the consent calendar and scheduled for the October meeting agenda

CONSENT DENIAL

DUPONT CIRCLE HISTORIC DISTRICT

1701 Q Street, NW, HPA #11-417, sign permit.

The HPRB found the proposed sign incompatible with its location in the Dupont Circle Historic District and inconsistent its sign standards and the purposes of the preservation act. Vote: 8-0.

Transcripts of Historic Preservation Review Board Meetings may be purchased from the court reporting agency that covered this hearing – Olender Reporting, Inc. (202) 898-1108, www.olenderreporting.com, or info@OlenderReporting.com. Copies of individual staff reports that are prepared in advance of the hearing are posted on our website at:

<http://planning.dc.gov/DC/Planning/Historic+Preservation/About+HPO+&+HPRB/Who+We+Are/Historic+Preservation+Review+Board/Agendas+and+Reports/Historic+Preservation+Review+Board+Meeting+and+Hearings,+September+22,+2011>

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



CORRECTED ORDER

Application No. 16536 of National City Christian Church pursuant to 11 DCMR 3103.2, for a variance under Subsections 530.1 and 533.4 from the building height restriction and recreation space requirements for the construction of an apartment house containing 175-180 units on the site that is now the parking lot and maintain the existing church in an SP-2 District at premises 14th and Thomas Circle Streets (Square 212, Lot 123).

HEARING DATE: January 19, 2000

DECISION DATE: January 19, 2000 (Bench Decision)

ORDER

PRELIMINARY MATTERS:

1. On the date of hearing, the applicant, after explaining how the residential recreation space would be provided on site, with the consent of the Board, withdrew its application for a variance from subsection 533.4 as being no longer necessary. Pursuant to discussions held by the applicant with the Office of Planning and upon further study of the available spaces present in the subject property, it was determined that the applicant is able to satisfy the ten percent residential recreation space requirement.
2. The Board, pursuant to its rules, 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) 2F and to owners of property within 200 feet of the site.
3. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application, and which submitted a letter and testified in support of the application.
4. As directed by 11 DCMR 3119.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance pursuant to Section 3103.2. The only parties to the proceeding were the applicant and ANC 2F. No other person or entity requested to participate as a party or was granted party status in this proceeding.
5. Seven witnesses testified in support of the application, including the applicant and experts in architectural history, architecture, real estate development, urban planning, and traffic analysis. Five persons testified in opposition to the application.

6. The Office of Planning submitted a report and testified in support of the application.

FINDINGS OF FACT:

1. The property that is the subject of this application is known as premises 14th and N Streets, N.W. and consists of Lot 123 in Square 212. The property is roughly L-shaped and bounded by Thomas Circle and Massachusetts Avenue to its south, 14th Street to its east, N Street to its north, public alleys to its west and north, and the 90 foot high Heatherington Apartments building to its west.
2. The subject property has a total lot area of approximately 75,595 square feet.
3. Lot 123 is improved with the sanctuary and congregational and office space of the National City Christian Church. The subject building, erected in 1930 to the design of John Russell Pope, with additions, has been formally designated a historic landmark and is listed in the D.C. Inventory of Historic Sites.
4. The portion of Lot 123 proposed in the application to be occupied by an apartment building consists of approximately 19,630 square feet and is a rectangular space located to the north of the church building. This smaller portion of the subject property is currently utilized as an asphalt parking lot.
5. The applicant has proposed to construct a twelve-story apartment building measuring 110 feet in height and containing 175-180 units and approximately 175,000 square feet of gross floor area. Included in the proposal are three below-grade floors to provide parking for the occupants of the apartment building and the church.
6. The subject property is zoned SP-2. The SP-2 District is designed to stabilize the areas adjacent to the C-4 District and to act as a buffer between adjoining commercial and residential areas. SP zoning is designed to preserve and protect areas adjacent to commercial districts, which contain a mix of medium to high-density row houses, apartments, offices and institutions. The SP-2 District provides for a maximum floor area ratio (FAR) of 6.0 for residential uses. Non-residential FAR is limited to 3.5 FAR. There is a height limit of 90 feet. The project complies with all applicable use and density provisions set forth in the Zoning Regulations for the SP-2 District.
7. By Zoning Commission Order No. 862 in Case No. 97-7, regarding SP text and map amendments, the District of Columbia Zoning Commission approved HP/SP-2 zoning for lots 115-117 and 122 in Square 212, which comprise the western and southwestern portions of the square. This approval by the Zoning Commission thereby permitted 8.5 FAR and 130 feet in building height.
8. At its regularly scheduled October 6, 1999 meeting, ANC 2F voted 4-0 to support the applicant's proposed height variance.

9. The applicant's development proposal was reviewed and granted conceptual design approval by the District of Columbia Historic Preservation Review Board (HPRB) at its November 18, 1999 public meeting. The HPRB approval noted the exemplary design of the building and found its massing to establish a pleasant rhythm.
10. The applicant testified that funding is desperately needed for the church's service and outreach efforts. National City Christian Church is an active urban congregation that is involved in many forms of community outreach and service. The church is also always exploring ways of expanding its ministry as well as its partnerships with other churches and with community groups.
10. The applicant testified that the maintenance and upkeep of the historic landmark church building places an acute strain on the financial resources of the church. The largest single item on the church's current \$1 Million annual budget is property, with more than \$300,000 spent on day-to-day operations and maintenance and upkeep of the landmark building and grounds. This amount covers only the most pressing of repairs needed to the structure. It does not include needed replacement of the roof or repairs caused by moisture intrusion into the limestone façade. The church has been given estimates that the needed repairs for the building could total \$1 Million.
11. The applicant testified that the open-air parking spaces lost to the church as a result of the development project will be replaced with a level of covered, below-grade parking, reserved for church use. The cost of constructing this level of parking will total more than \$1 Million, exclusive of maintenance, repair and security.
12. The applicant testified that the project's approval by the Historic Preservation Review Board is predicated upon the incorporation of added design elements and the use of designated building materials. These aspects of the project could increase its cost by as much as \$500,000.
13. The applicant testified that, owing to the subject property's location, the rents it could reasonably expect to achieve for the project would be discounted 15 to 20 percent from those rents of similar newly constructed residential projects in the downtown area.
14. The applicant testified that the proposed apartment building will contain approximately 175,000 square feet of area on twelve above-grade floors, thereby creating an FAR of approximately 2.3 for the apartment building and a total FAR for lot 123, when including the church building, of approximately 3.3.
15. The applicant testified and submitted evidence as to the visual and shadow impact of the proposed building as compared to a 90-foot matter of right building.
17. The applicant testified that the addition of 175-180 residential units would not have a significant negative impact upon traffic in the vicinity of the subject property, along N Street,

- 14th Street, Massachusetts Avenue and Thomas Circle. Residential traffic as well as service and loading functions will be channeled through the public alley located to the west of the property, accessible from N Street. Residential traffic is comparatively less intense and more dispersed over time than would be traffic to and from an office building on the same site.
18. The applicant testified that the church parking lost as a result of the project would be replaced by a level of underground parking devoted exclusively for church use within the apartment building.
19. The Office of Planning, by memorandum dated January 12, 2000, recommended that the application be approved. The Office of Planning was of the opinion that the applicant satisfied its burden of proof for a variance from the height restrictions of the SP District set forth in the Zoning Regulations.
19. Advisory Neighborhood Commission 2F, the only other party to this application, offered its support for the application, by letter dated November 15, 1999 and by testimony of the ANC 2F Secretary. ANC 2F concluded that the requested variance is appropriate because of the uniqueness and practical difficulties of the site, in that a historic landmark takes up most of the subject site and an apartment building on the remaining lot would be economically marginal if limited to a 90 foot height. The Commission further concluded that the limitation of the building to a floor area ratio of approximately 2.2 insures that the density contemplated by the Comprehensive Plan for the SP Zone will not be exceeded. Factors that weighed heavily in the ANC's unanimous decision were its preference for residential, over office or other development and the absence of significant adverse impacts on light, air or shadows on neighboring buildings. According to Section 3115.2 of the Zoning Regulations, the Board is to give "great weight" to the written report of the ANC.
20. Five witnesses testified in opposition to the application with concerns about the potential shadows cast by the proposed 110-foot high building upon neighboring buildings, the adequacy of parking for tenants and guests, and the overall impact on the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based upon the foregoing findings of fact, the Board concludes that the applicant is seeking an area variance under subsection 530.1 of the Zoning Regulations from the building height restriction in the SP-2 District. The granting of such variance relief requires proof of a practical difficulty upon the applicant arising out of some unique or exceptional condition of the property. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent of the zone plan.

The Board concludes and agrees with the Office of Planning and the ANC that the applicant has met the requisite burden of proof. The Board further concludes that the site is subject to extraordinary or exceptional conditions by virtue of the irregular lot shape and the presence of the historic National City Christian Church building on the subject site, which create a practical difficulty upon the applicant in complying with the height restriction of the SP Zone. Finally, the Board concludes that the relief requested will not cause substantial detriment to the

public good. The project will increase the housing stock in this neighborhood, will allow the applicant to expand its community outreach and service programs, and will provide this neighborhood with an architecturally exceptional product. Furthermore, this residential project will stimulate support service and retail operations, which will contribute to the vitality of the neighborhood.

It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 3-0 (Sheila Cross Reid, Kwasi Holman and Robert Sockwell to grant.)

PURSUANT TO 11 DCMR 3121.5, THE RECORD WAS LEFT OPEN FOR SUBMISSION OF ARCHITECTURAL STUDY DEMONSTRATING IN ELEVATION THE POTENTIAL SHADOW EFFECTS OF THE APPLICATION.

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

ATTESTED BY: _____


Jerrily R. Kress, FAIA
Director

MAR 27 2000

FINAL DATE OF ORDER: _____

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 DAYS AFTER HAVING BECOME FINAL PURSUANT TO SUBSECTION 3125.6."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16536

As Director of the Office of Zoning, I certify and attest that on MAR 27 2000 a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

Norman N. Glasgow, Jr., Esq.
Wilkes, Artis, Hedrick & Lane, Chartered
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Washington, D.C. 20006

The Chairperson
Advisory Neighborhood Commission 2F
Washington Plaza Hotel
P. O. Box 9348
Washington, D.C. 20005

Michael Johnson, Zoning Administrator
Building & Land Regulation Administration
Dept. Consumer & Regulatory Affairs
941 North Capitol Street, N.E., 2nd Floor
Washington, D.C. 20002

Attested By 
JERRILY R. KRESS, FAIA
Director

Att16536/JKN/03220000

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 16702 of Millennium Georgetown Partners, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the height restrictions of subsection 930.1 and the floor area ratio (FAR) limitation of subsection 931.1, to construct mixed-use buildings/structures of residential, hotel, and commercial uses in a W-1 District at premises 3100 South Street, N.W. (Square 1189, Lot 88).

HEARING DATE: April 17, 2001; May 1, 2001; June 19, 2001

DECISION DATES: May 15, 2001; June 26, 2001

DECISION AND ORDER

Millennium Georgetown Partners LLC (Millennium), the owner of Square 1189, Lot 88, and developer of the "Georgetown Incinerator Project," filed an application with the Board of Zoning Adjustment on February 2, 2001, seeking area variances from the maximum height limitations of 11 DCMR § 930.1 and the floor area ratio (FAR) limitations of 11 DCMR § 931.1. The variances would allow Millennium to insert an additional floor plate into both of the project's two residential condominium components and to make use of certain interior space. The application is self-certified. The property that is the subject of this application has a street address of 3100 South Street, N.W., and is located in a W-1 Zone District. Millennium is represented in these proceedings by Robins, Kaplan, Miller & Ciresi LLP. After a public hearing, the Board granted the application.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Hearing. By memoranda dated February 7, 2001, the Office of Zoning advised the Zoning Administrator; D.C. Office of Planning; Department of Public Works; Advisory Neighborhood Commission (ANC) 2E, the ANC for the area within which the subject property is located; the ANC commissioner for the affected Single-Member District; and the Ward 2 Councilmember of the application.

The Board scheduled a public hearing on the application for April 17, 2001. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on February 13, 2001, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 2E notice of the hearing. Notice of hearing was also published in the *D.C. Register* on February 16, 2001, at 48 DCR 1347. The applicant's affidavit of posting indicates that on March 30, 2001, four zoning posters were placed on the Wisconsin Avenue, K Street, 31st Street, and South Street frontages of the subject property, in plain view of the public.

Request for Party Status. The Board waived its filing deadline to accept a request for party status from the Citizens Association of Georgetown (CAG). The Board granted CAG party status pursuant to 11 DCMR § 3106.3, as CAG has a long history of involvement in zoning and historic preservation issues, and includes members who would be affected by the project. Barbara Downs, CAG president, and Barbara Zartman, preservation committee member, represented CAG at the hearing.

Applicant's Case. Millennium is in the midst of construction of a mixed-use, matter-of-right project encompassing an entire square that will accommodate residential condominium, hotel, theater, retail, and parking uses in the Georgetown waterfront area. Millennium, which confronts extraordinary and exceptional circumstances in developing the property due to the historic resources located on the property, a steeply sloping topography, geologic conditions, a high water table, the proximity of the Whitehurst Freeway, and development constraints from deed restrictions and historic preservation covenants, was prompted to seek variance relief after the financial difficulties of Loews Cineplex Entertainment Corporation, the theater chain participating in the project, jeopardized project funding.

Millennium presented testimony from Anthony Lanier, on behalf of the developer; Emily Hotaling Eig, architectural historian; Shalom Baranes, Shalom Baranes and Associates, architect; and Carrie Johnson, Gary Edward Handel and Associates, project architect; as well as written and electronic materials and a site model. Ms. Eig and Mr. Baranes were qualified as expert witnesses.

D.C. Office of Planning (OP) Report. OP submitted a report dated April 9, 2001, recommending that the requested variances be granted. OP submitted a second report, dated May 11, 2001, summarizing key facts about the project and again recommending approval of the application. The Board waived its filing deadline to accept OP's third supplemental report dated July 15, 2001, based on a site visit and review of the Millennium's viewshed studies. OP believes that Millennium has met the tests for variance relief, and stated that the project, which it found to be well-designed, would not present any significant adverse impacts on the environment or surrounding neighborhood. OP Director Andrew Altman and Ward 2 Planner John Fondersmith presented the reports at the hearing.

Department of Public Works (DPW) Report. DPW submitted a report dated April 10, 2001, indicating that the additional residential units and parking spaces to be provided as a result of the variance would not cause adverse traffic impacts in the area. In its follow-up report dated May 11, 2001, DPW indicated that the housing, hotel, entertainment, and retail elements of the Georgetown Incinerator Project would generate additional traffic. DPW believes, however, that the additional traffic would not impact peak hour traffic in the Georgetown – Washington Circle area. DPW also stated that the traffic generated by the proposed 28 residential units would not impact traffic congestion or the level of service on lower K Street or at Washington Circle.

Department of Housing and Community Development (DHCD) Report. DHCD submitted a letter dated March 7, 2000, supporting the application. DHCD relayed the history of the project and the economic circumstances of the movie industry that led to the request for variance relief. DHCD indicated that the movie theater complex, which would serve as the major commercial anchor tenant for the project, would benefit the District of Columbia by creating a major destination-type entertainment venue and by creating new jobs. Jim Thackaberry, DHCD project manager, presented the report at the hearing.

The Commission of Fine Arts and Old Georgetown Board Reports. The Commission of Fine Arts, in a letter dated April 11, 2001, stated that it was strongly opposed to the proposed project exceeding the 40-foot height limit. The Commission indicated that the building, without the variance, would limit the views from the C & O Canal down Wisconsin Avenue and 31st Street to the Potomac River, an important aspect of the Old Georgetown Historic District. The Commission stated that to add an additional floor to the Incinerator Project would further diminish these views. According to the Commission, the Old Georgetown Board indicated that from a design standpoint only, the additional floor was acceptable. However, in response to background information on the Waterfront zoning designation, the concerns of the CAG, and various community organizations, as well as the Commission's efforts to lower building heights in the waterfront area, the Old Georgetown Board recommended against the added height. The Commission concluded that it strongly concurred with the Old Georgetown Board.

On April 20, 2001, the Commission of Fine Arts recommended that a building permit for the proposed construction be denied. Millennium has requested that the Mayor's Agent for Historic Preservation reject the Commission of Fine Art's recommendation.

National Park Service Report. The National Park Service submitted a letter dated April 17, 2001, supporting the application. The National Park Service is planning to close the Harbor Parking facilities adjacent to the Potomac River along K Street, N.W., in order to convert the area into the Georgetown Waterfront Park. It indicated that it is relying on the parking to be provided by the project to absorb those cars now parking on the waterfront. The National Park Service also stated that the project and its amenities will help vitalize the new park.

ANC Reports. In its report dated April 6, 2001, ANC 2E indicates that on February 27, 2001, at a regularly scheduled and duly-noticed meeting, with a quorum present, ANC 2E adopted a resolution to not object to the requested variances. The ANC indicated that it was very concerned about the added massing that would result from the height and associated FAR variance, but that it would rely upon the expertise of the Commission of Fine Arts and the Old Georgetown Board with respect to the height and sight lines, especially along Wisconsin Avenue and 31st Street.

In a follow-up letter dated April 20, 2001, ANC 2E reiterated that it accepts the position of the applicant that "a confluence of factors unique to the site' had created an impediment to realizing the project could be resolved by building the additional housing units and parking proposed in the application." ANC 2E concluded by requesting "that a design be found that resolved the particular issues to the satisfaction of the Commission of Fine Arts and Old Georgetown Board, to ensure that granting the application did not result in any significant adverse impact to the community."

Persons in Support of the Application. The Reverend David Bird, Rector of Grace Episcopal Church, which, along with its school, is located directly across from the subject property on the South Street, testified in support of the application. In its written comments, the Church states that it does not believe that the requested variance will adversely affect the neighborhood or have any adverse visual impacts. It also states that it "is relieved to see that the vacant, rat-infested, litter-strewn Incinerator complex is finally being renovated for the good of the community."

The Board also received written comments in support of the application from Loews Cineplex Entertainment Corporation; the Georgetown Business and Professional Association; and R.B. Associates, Inc., owners of the Waterfront Center office building, located across 31st Street from the subject property; as well as a petition letter signed by a number of Georgetown residents.

The comments received from the Georgetown Business and Professional Association, representing nearly 300 business entities located or doing business in Georgetown, are typical of the letters and public agency reports the Board has received in support of the proposed variance. The Association states:

The proposed development not only provides entertainment and services for Georgetown residents through the retail and theater components of the development, these components will attract non-residents to the area, which will benefit the surrounding business and retail establishments. Benefits include additional patronage of retail stores and restaurants, as well as higher usage of local parking garages during off-peak hours from theater patrons. Lastly, the residential and hotel components of the development will bring additional life to an area of Georgetown where there is currently little residential use.

Loews noted that the District of Columbia is one of the few major metropolitan areas in the country that does not have a major, modern multiplex theater. According to Loews, "The kind of large, open volumes of space that are required for today's modern stadium seating multiplexes are extremely difficult and expensive to construct in any urban environment but are almost an economic impossibility given Washington's height restrictions."

Party and Persons in Opposition to the Application. CAG has concerns about the views down Wisconsin Avenue and 31st Street to the Potomac River and beyond. It

also argued that the variances should not be justified on the basis of economic hardship alone; and that a height variance for this project would set a precedent for other variances in the Georgetown waterfront area, ultimately impairing the intent, purpose, and integrity of the zone plan. In addition, ANC 2A Commissioner Dorothy Miller expressed a number of concerns at the public hearing relating to traffic congestion in the area.

The Board received several letters opposing the variances. Like CAG, Kirk White opposed the granting of a variance on economic hardship grounds. Nearby resident Seth Blumberg was concerned that with the requested height variance, his views of the Potomac River and Virginia riverside trees would be blocked.

Closing of the Record. At the conclusion of its public hearing on April 17, 2001, the Board requested Millennium to provide copies of reports or other documentation from the Commission of Fine Arts; CAG to submit information relating to the organization and how its members would be affected by the proposed variances as well as copies of legislation relating to the project; DPW to provide a traffic study; and ANC 2E to clarify its position on the application. At the conclusion of its May 1, 2001, public meeting, the Board requested Millennium to provide additional information relating to its practical difficulties in complying with the Zoning Regulations, additional information from Old Georgetown Board proceedings, and a copy of the historic preservation memorandum of agreement; DPW to take a more extensive look on the project's traffic and parking impact; and CAG to provide copies of the organizational materials previously requested. At the conclusion of its public meeting on May 15, 2001, the Board requested sight line and viewshed studies on both Wisconsin Avenue and 31st Street, N.W., from M Street, N.W., to K Street, N.W., to compare the views of the Potomac River and waterfront with the matter-of-right building and the building with the proposed height and related FAR variance, as well as responsive materials from the parties and OP. Millennium presented these studies at the June 19, 2001, hearing.

Decision Meetings. At its May 1, 2001, public meeting, the Board determined that it did not have an adequate record on which to base a decision on the requested variances. On May 15, 2001, the Board voted 4 – 0 – 1, with one member not voting, not having heard the case or reviewed the record prior to the meeting, to approve the FAR variance to allow an increase in gross floor area within the mass of the existing matter-of-right building. After reviewing the viewshed studies, the Board held a meeting on June 26, 2001, and voted 4 – 1 – 0 to grant the application to permit the increase in height and associated FAR.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property, Lot 88, comprises an entire city block, Square 1189, in the Georgetown waterfront area. It has a street address of 3100 South Street, N.W., and is located in a W-1 Zone District and within the Old Georgetown Historic District.

2. The property, which consists of 99,661 square feet (2.10 acres) of land, is rectangular in shape. It is bounded by Wisconsin Avenue, N.W., to the west; South Street, N.W., to the north; 31st Street, N.W., to the east; and K (Water) Street, N.W., and the Whitehurst Freeway to the south. The property overlooks the Potomac River.
3. Immediately to the north of the property, across South Street, is Grace Episcopal Church, and beyond that, the C & O Canal. The area to the north of the property is predominantly characterized by low-scale, federal style residential townhouses.
4. The waterfront area to the east, south, and west of the property is characterized by modern, large-scale commercial structures. The Whitehurst Freeway and the site of the new Georgetown Waterfront Park are located along the southern edge of the property.
5. Until recently, there were nine buildings spanning two centuries in age on the western portion of the property. The property is the site of the Brickyard Hill House, two Copperthwaite Lane houses, and the Georgetown Incinerator and its smokestack.
6. The Brickyard Hill House, constructed around 1800, is an historic landmark. In a decision dated October 6, 1998, the Mayor's Agent for Historic Preservation found that it is "one of the most important structures in the Old Georgetown Historic District." Millennium has undertaken to preserve as part of the development the house, as well as two Copperthwaite Lane Houses (the Red House and a stone stable, 3133 Copperthwaite Lane). These structures have been moved off-site and will be relocated on the site, on the South Street side of the property, when construction is complete.
7. The Georgetown Incinerator is located on the eastern portion of the property, toward the center of the property. Erected in 1932, the Incinerator is an Art Deco-style building that was in operation until 1971. Since then, it has remained unoccupied and, prior to the commencement of construction, unattended, overgrown, and in poor condition. The Incinerator is a contributing structure to the Old Georgetown Historic District.
8. The Georgetown Incinerator Project has undergone an extensive process of community consultation and design refinement.
9. In 1996, after numerous failed attempts to re-use the Incinerator property, the DHCD issued a request for proposals seeking a private developer for the site. DHCD selected the Millennium proposal in early 1997 because of its housing, theater, retail, and parking components. During the summer of 1997, the District of Columbia Financial Responsibility and Management Assistance Authority, the Council of the District of Columbia, and the National Capital Planning Commission (NCPC) reviewed the sale of the surplus Incinerator site. Because the sale involved a contributing building to the Old Georgetown Historic District, NCPC referred the matter to the Advisory Council on Historic Preservation for review under § 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C.A. § 470f (2000). This review resulted in the imposition of

an architectural preservation covenant on the rehabilitation of the Incinerator and redevelopment of the site.

10. Since the District of Columbia had decided to close the parking facilities adjacent to the Potomac River along K Street, N.W., and turn the area into a park, DHCD asked Millennium to provide additional public parking on the site. In order to provide for the construction of underground parking facilities and to meet other DHCD programmatic requirements, Millennium purchased the remaining portion of Square 1189 from private property owners.

11. In May 1999, the District of Columbia, acting by and through DHCD, sold the Incinerator building and property, approximately 56,564 square feet of the 99,661 square-foot site, to Millennium.

12. On February 19, 1998, Millennium filed with the Commission of Fine Arts for conceptual design review of its proposed development project and the demolition of certain buildings necessary for the construction of the project. The proposal was supported, among others, by DHCD, OP, the affected ANC, CAG, the Georgetown Business and Professional Association, and neighboring property owners, including Grace Episcopal Church. On May 21, 1998, the Old Georgetown Board gave conceptual approval to the proposed development, and on June 22, 1998, the Commission of Fine Arts did as well, recommending approval of the demolition of the buildings determined to be non-contributing to the historic district. The Commission of Fine Arts also directed the applicant to re-submit a new concept application for design development review. Preliminary demolition permits were filed on June 1998 and the Old Georgetown Board formally approved the demolitions on July 9, 1998.

13. The project was also reviewed by the DHCD Architectural Review Panel, the Mayor's Agent for D.C. Law 2-144, and the Historic Preservation Review Board. The Council of the District of Columbia closed an alley that bisected the project site. In addition, because of the size of the project site, OP completed a Large Tract Review of the project in June 1998, recommending approval.

14. In its review of the project, the Mayor's agent concluded that "the project constitutes a project of special merit" for the following reasons: (a) it provides for full building restoration of four historic buildings, including an historic landmark; (b) the uses selected through an open competition provide the greatest benefits to the community and the city; (c) other than the existing Convention Center, the project benefits far exceed those proposed for other special merit projects; (d) the proposed project goes far beyond what could be built as a matter of right to address residential, arts, theater, retail, and parking issues, which have high priority in Georgetown; and (e) the project will provide vitality for a neglected area.

15. The Commission of Fine Arts approved the concept design on January 21, 1999, with suggestions for further study of some elements. The project architect presented revisions to the Old Georgetown Board on five separate occasions (June 3, July 1,

September 2, November 4, and December 2, 1999). Working drawings were presented to the Old Georgetown Board at three public meetings (February 3, April 6, and June 1, 2000). The Old Georgetown Board reported to the Commission of Fine Arts in a report dated June 15, 2000, and recommended approval of the project. The Commission of Fine Arts also recommended approval on June 15, 2000.

16. Millennium submitted its proposed design changes relating to the variance request to the Old Georgetown Board on March 1, 2001, and to the Commission of Fine Arts on March 13, 2001. Millennium returned to the Old Georgetown Board on April 5, 2001, with revisions to respond to community requests for setbacks of the proposed additional residential floors along the Wisconsin Avenue and 31st Street frontages. The Old Georgetown Board recommended against the added floor. The Commission of Fine Arts, in its April 11, 2001, letter to the Board recommended denial of the height and associated FAR variance.

The Matter-of-Right Project

17. The project is a mid-rise development consisting of two residential components providing 22 condominium units; a 91-suite Ritz Carlton hotel; a multiplex movie theater that will accommodate 3,000 patrons; 2,700 square feet of retail space; and an underground parking garage that will contain 345 marked parking spaces and that is designed to accommodate valet parking for 500 to 600 cars. OP describes the project as a significant mixed-use project with 247,886 square feet of above ground space.

18. With the requested variances, the project would have 28 condominium units and ten more parking spaces, for a total of 355 marked parking spaces.

19. Because all of its components are connected, the project is considered one building for zoning purposes. See 11 DCMR § 199.1 (definition of "building"). The project, however, is designed to appear as several separate buildings so as to be compatible with the surrounding historic district.

20. The residential and hotel components will be grouped around a plaza, with the Incinerator and smokestack in the center. The plaza is designed to maintain the three-dimensional sense of the Incinerator and to provide maximum visual access from several directions, all focusing on the smokestack.

21. The building plans have been organized to take advantage of the steep sloping nature of the site. The lower subterranean levels step up the hill around the Incinerator. The heights of the new project components are consistent with the heights of the roofs of the buildings surrounding the property.

22. The massing of the project is designed to provide an architectural transition from the church and townhouse properties on the north side of the property to the contemporary, large-scale commercial structures on the waterfront.

23. The two residential components of the project that are the subject of the height and associated FAR variance request are located on the southern edge of the property, above the K Street theater and retail space. They will overlook the Whitehurst Freeway and offer views of the Potomac River.

24. The theater is a state-of-the-art multiplex cinema with stadium seating, digital surround sound, and enhanced projection capabilities. There will be 14 theaters of varying seating capabilities to allow a wide range of motion pictures, from independent art films to major Hollywood studio releases. The theater also affords Millennium the opportunity to provide a large number of parking spaces for business and residential use during daytime hours.

25. The retail portion will be built on the corners of Wisconsin Avenue and K Street and 31st and K Streets, with the theater fronting mid-block along K Street, with parking in the inner core.

26. The hotel components, which are also accessed through the Incinerator, are on South Street, Wisconsin Avenue, and 31st Street.

27. The exterior of the Incinerator will be restored to its original condition and renovated and adapted for hotel common areas. A five-story glass atrium will enclose and surround the smokestack and act as the entrance to the theater below along K Street.

28. Pedestrian and automobile access to the hotel and condominium components will be from South Street. The entrances to the cinemas, commercial parking, and loading docks will be from K Street. The project has been developed to create major pedestrian access to the south side along K Street.

The Requested Variances

29. Millennium is seeking a FAR variance (1) to fill in certain interior voids in the structure, which would otherwise be left unconstructed and vacant, shown on the plans (Ex. 48) as "additional FAR slab area"; and (2) to insert additional floor plates into each of the two residential condominium components. The additional floor plates would increase the height of the building and also necessitate a height variance.

30. The matter-of-right project has a total FAR of 2.48. With the requested variance, the total FAR would equal 2.9, approximately half of which would be attributable to the additional FAR slab area and would not be visible from the exterior of the building. The other half would result from the additional floor plates and would be visible as increased building mass.

31. The FAR variance that would allow the reconfiguration of certain interior space would not impact the building height. It would allow for ten additional parking spaces, additional space for mechanical equipment, and the construction of slabs to help support the historic houses.

32. With respect to the height variance, the property slopes moderately steeply to steeply from the northwest to southeast, falling from 20 to 30 feet between South Street and K Street.

33. The 40-foot height limit for the project has been measured from South Street, which is the customary in developing a property with the maximum allowable density. See 11 DCMR § 199.1 (definition of “building, height of”).

34. The proposed height variance adds ten feet, eight inches, of height to the two residential components.

35. The added floor would be the fifth residential floor. It would be set back from 12 to 20 feet along the Wisconsin Avenue frontage and 12 feet along the 31st Street frontage, to address community concerns about view lines on these streets. Ex. 47.

36. In addition, to address Old Georgetown Board concerns relating to the views of the Incinerator, the top floor would have a ten-foot setback to the east and west of the Incinerator viewshed. Ex. 47.

Extraordinary or Exceptional Conditions of the Property

37. Historic Resources. The most significant condition of the site involves the preservation of the historic resources that are on the site, as well as the open space around them. An adequate amount of open space is necessary to protect the context and character of the historic structures.

38. One of the buildings, the Incinerator, has a large interior volume that, relative to the size of its footprint, consumes a significant portion of the zoning envelope. Its preservation precludes construction underneath the building. In addition, Millennium has agreed to maintain the interior open space. The smokestack, one of the most visible landmarks on the Georgetown skyline, requires open space around it to retain its legibility.

39. To preserve these historic structures, Millennium has created a preservation precinct in the northeast quadrant of the site. In addition, Millennium is providing viewsheds to preserve certain views of these historic resources from public vantage points.

40. The historic structures, open space, and viewsheds render a substantial portion of the site, approximately 33 percent of the site according to OP’s calculations, undevelopable.

41. Topography. Much of the deep space on the downward slope of the site counts against the allowable FAR. The theater component of the project, with a volume equivalent of three stories, will be located in this area, which is under the Whitehurst

Freeway and under the water table. The 100-year floodplain in Georgetown is at elevation 17.5 feet. The elevation of K Street is 10 feet. Floodplain regulations prohibit the placement of habitable rooms within the 100-year floodplain. As a result of the topography and floodplain elevation, the lower levels of the project cannot be used for the residential condominium units, hotel rooms, and most retail uses.

42. Geology. The subsurface conditions are composed primarily of rock, making the excavation of the hotel support areas, theater, and parking facilities unusually difficult.

43. Whitehurst Freeway. Located approximately three stories above K Street, the Whitehurst Freeway renders the first three floors of the project along K Street unusable for either residential or hotel uses. This is primarily due to the traffic noise emanating from the highway and the reduced natural light. In response to these conditions, Millennium has set all residential floors back ten feet from the south property line and close to ten feet above the Whitehurst Freeway roadbed. This has made a strip of the property adjacent to the highway unusable.

Practical Difficulties

44. The preservation of the historic resources, the associated open spaces, and the viewsheds presents a practical difficulty, since Millennium cannot construct in these areas. If Millennium could use these areas for the project components, it would not require the additional height and associated FAR for the residential components.

45. As a result of the elevation of the high water table, the 100-year floodplain elevation, and the proximity of the Whitehurst Freeway, Millennium is precluded from placing the residential condominium units, hotel rooms, and most retail uses in the area below the level of the Whitehurst Freeway. These conditions preclude Millennium from converting the theater component to any other viable use that might obviate the need for variance relief.

46. The Board finds that due to "a confluence of factors unique to the property," including the presence of historic resources, topography, geology, and the proximity of the Whitehurst Freeway, Millennium would encounter practical difficulties if the Zoning Regulations are strictly applied.

The Requested Variances Will Not Result in Substantial Detriment to the Public Good or Substantially Impair the Zone Plan

47. The Comprehensive Plan Generalized Land Use Map designates the site for "mixed-use moderate density residential and commercial land use."

48. The Georgetown Incinerator Project contributes substantially to the objectives of the Comprehensive Plan in a variety of elements, including housing, transportation, public facilities, urban design, preservation of historic features, as well as economic development. The project will enhance the area of Wisconsin Avenue and K Street

adjacent to the Whitehurst Freeway by contributing to the residential character of the area. Additionally, the project will help to animate an area that has been somewhat foreboding because of the elevated freeway and derelict streetscape along K Street. The project will also preserve and adaptively reuse historic structures on the site, and will help connect the rest of Georgetown with the new waterfront park. The public parking to be provided by the project will benefit the area, while the residential and hotel uses bring additional life to the area and provide among the highest tax revenue per square foot of any use. OP therefore advises that the project is compatible with the Comprehensive Plan Generalized Land Use Map and the Ward 2 Waterfront Objective.

49. As stated in the Zoning Regulations, the purpose of the Waterfront Districts is to encourage a diversity of compatible land uses at various densities, including combinations of residential, office, retail, and other miscellaneous uses. 11 DCMR § 900.4.

50. The Zoning Regulations divide the Waterfront Districts into three districts, the W-1, W-2, and W-3 Districts, with W-1 permitting only a low height and density. 11 DCMR §§ 900.2 – 900.3.

51. The Zoning Regulations in 11 DCMR § 930.1 prescribe a maximum height of 40 feet in the W-1 District.

52. Subsection 931.1 prescribes a density or maximum FAR in a W-1 District of 2.5, not more than 1.0 of which may be used for other than residential purposes.

53. Matter-of-right uses in the W-1 District include multiple dwellings, hotel, theater, and retail uses. 11 DCMR § 901.1.

54. The Board finds that the Zoning Commission, in rezoning the area to W-1 in 1973, did not intend to divest the Board its authority to grant variances in appropriate circumstances, including height and FAR variances, in the Waterfront Districts.

55. Millennium is requesting a total increase in FAR of 0.42.

56. Approximately one-half of the requested increase in gross floor area would be within the mass of the existing matter-of-right building (the “additional FAR slab area”) and would not be visible from outside of the building. This increase in gross floor area would not have any adverse effect on the public or the zone plan.

57. Millennium is requesting a height variance of ten feet, eight inches, and the associated FAR to add a floor plate to each of the projects two residential components.

58. Millennium proposes to set the added floor (fifth floor residential) back 12 to 20 feet on Wisconsin Avenue frontage and 12 feet on 31st Street frontage to address community concerns about the view lines on those streets. In addition, the top floor would be set back ten feet to address Old Georgetown Board concerns about the

Incinerator viewshed. The project as a whole is designed to nestle into the hillside, reducing its impact on the views of the Potomac River from the north.

59. The Board credits the opinion testimony of architectural historian Emily Hotaling Eig that the proposed increase in height will not harm the integrity of the historic resources on the site or the historic district. Rather, it will help to retain, enhance, and adapt the landmark Brickyard hill house and the Incinerator, by helping to provide for its restoration.

60. The Board also credits Ms. Eig's testimony that the proposed additional height does not detract from the unique character of the site, but rather improves the project's architectural integrity. The change in design better distributes the building mass, allowing for a more articulated volume, including modulation of the roof-scape forms and setbacks, as well as varied heights as viewed from the street.

61. Millennium submitted drawings of the viewsheds along both Wisconsin Avenue and 31st Street, from M Street, to K Street. These drawings show the matter-of-right building and the proposed building with the height variance and setbacks provided at Wisconsin Avenue and 31st Street. Millennium also presented a computerized, continuous animation of the viewsheds at the June 19, 2001, public hearing, which showed the views as a pedestrian walks from M Street to K Street, down both Wisconsin Avenue and 31st Streets.

62. These view studies were not available at the time the Old Georgetown Board and the Commission of Fine Arts were conducting their review of the proposed variances. Also, the affected ANC, which relied upon the Old Georgetown Board and the Commission of Fine Arts to assess the visual impacts of the requested variances, did not have these studies available at the time of the ANC's review.

63. The drawings and computerized animation of the views from Wisconsin Avenue and 31st Street show that the additional visible building mass that would result from the increased height and FAR is negligible from anywhere along the public streets.

64. The drawings and animation also show that that the proposed added height would not adversely affect views of the waterfront or the Potomac River or the views across the River.

65. The Board finds that it is the matter-of-right building mass that is defining the view corridor along the public streets and that would block certain views, not the proposed addition.

66. With the additional height, slightly less sky would be visible from certain vantage points along Wisconsin Avenue and 31st Street. However, with the setback, the additional height at the top of the building would not protrude into the view corridor or adversely affect the adjacent properties' light or air.

67. Moreover, there is commercial office use across both Wisconsin Avenue and 31st Street, in the area where Millennium is proposing the additional floor. The additional floor therefore would not affect residential uses with respect to light and air.

68. There will also be trees lining both streets, which will help to screen the building.

69. The Waterfront District in Georgetown is sufficiently large in size that granting a variance for the subject property will not impair the intent of § 900.4, which is to encourage a diversity of compatible land uses at various densities. Further, the Zoning Regulations in 11 DCMR § 2405.1 allow for a height of 60 feet and a FAR of 3.0 in the W-1 District pursuant to a planned unit development. The proposed variances, which are below that amount, would not therefore substantially change the character of the W-1 District.

70. Based on DPW's reports, the Board finds that the requested height and FAR variances, which would result in six additional condominium units and ten additional parking spaces, would not adversely affect traffic or parking conditions.

71. CAG raised a number of concerns that the matter-of-right project presently under construction departs from plans previously reviewed and approved. In response, the applicant's architect, Shalom Baranes explained first that the open spaces surrounding the historic buildings had not been eliminated, but rather had increased in size. Second, Mr. Baranes explained that Millennium never proposed to place a restaurant on the roof of the Incinerator building and that the restaurant contemplated for the top mezzanine of the building was moved to a lower location in order to preserve the open space within the Incinerator. Mr. Baranes explained that Millennium never included a rooftop restaurant in any plans due to safety requirements, which would require the construction of a large stairwell for emergency egress. This testimony was supported by a letter from Jonda McFarlane, former ANC 2E Commissioner. Lastly, Mr. Baranes testified that contrary to CAG's statement that the setback from the adjoining streets had been reduced, the setbacks had actually been increased. Based on Mr. Baranes' testimony, the Board finds that to the extent the changes described by Mr. Baranes have been made, they will not adversely affect the public or the zone plan.

72. Based upon the above findings, the Board finds that the additional residential floor plates, with the setbacks as proposed by Millennium, and the resulting height and FAR variances will not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. Millennium Georgetown Partners LLC is seeking area variances from the provisions of 11 DCMR §§ 930.1 and 931.1 relating respectively to maximum height and FAR restrictions in a W-1 District to construct a mid-rise, mixed-use development consisting of residential condominium, hotel, theater, retail, and parking uses. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

Subsection 930.1 prescribes a maximum height of 40 feet, while § 931.1 prescribes a density or maximum FAR of 2.5, not more than 1.0 of which may be used for other than residential purposes. The applicant proposes adding a floor plate to each of the project's two residential components, with the result that the building would exceed the height limit by ten feet, eight inches. The top floor on both residential components would be set back ten feet along the west and east side of the Incinerator smokestack, while the added residential floors would be set back 12 – 20 feet along the Wisconsin Avenue frontage and 12 feet along the 31st Street frontage. Approximately one-half of the FAR increase is associated with the additional floor plate and would be visible as increased building mass, while the other half, the additional interior slab area, would have no visual impact from the exterior of the building.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

In reviewing a proposed variance to determine whether it meets the three-prong test, the Board is required under D.C. Code § 6-623.04 (2001) to give "great weight" to OP recommendations. The Board has carefully considered OP's reports, and for the reasons stated in this decision, agrees with its recommendations that the requested variances should be granted.

The Board is also required under D.C. Code § 1-309(d) (2001) to give "great weight" to the affected ANC's recommendations and to articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and to make specific findings and conclusions with respect to each of the ANC's issues and concerns. Like the ANC, the Board concludes that the applicant has encountered practical difficulties in realizing its project in strict compliance with the Zoning Regulations. The Board has not, however, accepted the recommendations of the Commission of Fine Arts and the Old Georgetown Board that the height and associated FAR variance should be denied. The Board's conclusions that the variances would not

result in substantial detriment to the public or the zone plan are based upon its review of the applicant's viewshed and sightline studies, studies that were not available to the Commission of Fine Arts, the Old Georgetown Board, or the ANC at the time of their review.

Extraordinary or Exceptional Circumstances of the Property

Reviewing the criteria for an area variance, the District of Columbia Court of Appeals in *Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987), stated that:

The threshold requirement to show the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship *uniquely* affect the *petitioner's property*"

Id at 941-42, quoting *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 234 (D.C. 1973) (emphasis in original); see also *Russell v. Board of Zoning Adjustment*, 402 A.2d 1231, 1235 (D.C. 1979) (the requirement that the practical difficulty be caused by the uniqueness of the property "insures relief for problems peculiarly related to the applicant's land or structure, and not shared by other property in the neighborhood, thus avoiding a de facto amendment of the zoning laws.").

Millennium must demonstrate that compliance with the area restrictions is unduly burdensome and that the practical difficulties it confronts are unique to the site. In finding an extraordinary or exceptional condition, the Board may rely upon a confluence of factors relating to the property. *Gilmartin*, 579 A.2d at 1168. As recognized in *Capitol Hill Restoration Society*,

A condition inherent in the structures built upon the land, rather than in the land itself, may also serve to satisfy the applicant's burden of demonstrating uniqueness. In addition, the extraordinary or exceptional conditions which justify a finding of uniqueness may be caused by subsequent events extraneous to the land at issue. However, the extraordinary or exceptional conditions must uniquely affect a single piece of property.

534 A.2d at 942 (citations omitted). The Board concludes Millennium's property is unique for the following reasons.

First, the property is improved by the landmark Brickyard Hill House, the two related Copperthwaite Lane houses, and the Georgetown Incinerator, a contributing building to the Old Georgetown Historic District. These historic resources, and the measures the applicant must take to provide for their preservation, are unique to the subject property. In a similar context involving the Corcoran Art Gallery, the court, in affirming a decision of the Board, made it clear that while historic buildings within a

historic district may have characteristics that are shared by all buildings within that district, "the landmark status of a single building is legally predicated on the unique attributes of that building." *United Unions v. District of Columbia Bd. of Zoning Adjustment*, 554 A.2d 313, 317 (D.C. 1989). For that reason, the court and the Board further recognized that the "designation as an historic landmark reflects characteristics of exceptional design requiring special treatment in the planning of contiguous structures and additions." *Id.* The same is true of Millennium's property. Furthermore, there is no other structure in the historic district that has the Incinerator's qualities and that presents the challenges of developing a project around it.

The Incinerator, which was previously abandoned and has suffered deterioration, is being preserved and the project designed so as to respect the qualities that make it worthy of preservation. Its preservation precludes construction of any portion of the project underneath it. In addition, Millennium has agreed to preserve the open space within the Incinerator building. Similarly, the preservation of the Brickyard Hill House and Copperthwaite Lane houses requires Millennium to forego the development of the available FAR attributable to those buildings.

In addition, the preservation of these historic resources requires Millennium to maintain open spaces around them to provide an appropriate context and to preserve their character, and to provide viewsheds from public vantage points. The preservation of these resources and the associated open space and viewsheds present extraordinary and exceptional conditions unique to the subject property, sufficient to satisfy the first prong of the variance test.

Moreover, the topography and geologic conditions of the property create a practical difficulty. The slope of the property between South and K Streets is between 20 and 30 feet. Further complicating matters is the nature of the site, which is predominantly rock, as well as the need to construct within the 100-year floodplain and under the water table. The site is also adjacent to the Whitehurst Freeway, which limits the uses that may be made of the property adjacent to and below the Freeway. *Gilmartin*, 579 A.2d at 1168. Based on the above, the Board concludes that property is unique.

Practical Difficulties

The Board also concludes that, as a result of the unique conditions of the property, Millennium will encounter practical difficulties if the Zoning Regulations are strictly applied. Millennium is precluded from using a substantial portion of its property as a result of the extraordinary and exceptional conditions described above. These conditions result in certain constraints upon where and how Millennium may locate the various components of the project upon the property, such that Millennium will encounter practical difficulties if the Zoning Regulations are strictly applied. If Millennium were not constrained by these conditions, a height and FAR variance would not be required.

The Requested Variances Will Not Detrimentially Affect the Public Good or the Zone Plan

The Board concludes that the variances, which will allow Millennium to construct six additional condominium units, ten additional parking spaces, and make use of certain interior areas, will not result in substantial detriment to the public good or the zone plan.

As determined above in Findings Nos. 58 - 68, the variances will not adversely affect the historic resources on the site, the integrity of the historic district, or the architectural integrity of the project. The applicant's view studies demonstrated that the proposed added height will not adversely affect views of the waterfront or the Potomac River or the views across the River. The added height will not affect the light and air of nearby residential uses.

Further, the variances will not substantially impair the zone plan as embodied in the Zoning Regulations and Map. The variances will not undermine the purpose of the Waterfront zoning, which is to encourage a diversity of uses at various densities, since there will still be a diversity of heights and densities among the buildings in the Waterfront area. Nor will the granting of variance relief in this case set a precedent that will undermine the Waterfront zoning, as feared by CAG and others, because the variances are based on practical difficulties that are unique to the property. Each variance application must be evaluated on its own merits, and depends upon the threshold showing of uniqueness of the property. Finally, since Millennium is not responsible for creating the unique conditions of the property, the fact that Millennium knew of the conditions when it acquired the property does not preclude area variance relief. *See Association for the Preservation of 1700 Block of N Street v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978).

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**.

Vote taken May 15, 2001, to approve the variance to allow an increase in FAR, to be fully contained within the matter-of-right building (the "additional FAR slab area"):

VOTE: 4 - 0 - 1 (Anthony J. Hood, Anne M. Renshaw, Sheila Cross Reid, Susan Morgan Hinton, to approve; Geoffrey H. Griffiths not voting, not having heard the case or reviewed the record prior to the May 15, 2001, decision meeting).

Vote taken June 26, 2001, to approve the variances to allow an additional ten foot, eight inches, in height for the two residential condominium buildings and the associated FAR, with setbacks as shown on Ex. 47 along the Wisconsin Avenue and 31st Street frontages and on the west and east side of the Incinerator smokestack:

VOTE: 4 - 1 - 0 (Anthony J. Hood, Susan Morgan Hinton, Sheila Cross Reid, and Geoffrey H. Griffis, to approve; Anne M. Renshaw, opposed.)

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 22 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 ADDITION WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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 14 IN TITLE 2 OF THE D.C. CODE. *SEE* D.C. CODE § 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

MS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16702

As Director of the Office of Zoning, I hereby certify and attest that on AUG 22 2001, a copy of the foregoing Decision and Order in BZA Application No. 16702 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 and who is listed below:

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ATTESTED BY:


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