Before the Zoning Commission

of the

District of Columbia

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Applicant's Statement in Support of

Area Variance

Application No. 02-03

of

The George Washington University

Arter & Hadden LLP
1801 K Street, N.W., Third Floor
Washington, D.C. 20006-1301

March 28, 2002

ZONING COMMISSION
District of Columbia
Case 02-03
Exhibit 15

ZONING COMMISSION
District of Columbia
CASE NO.02-03
EXHIBIT NO.15

Before the Zoning Commission
of the District of Columbia

Application of the
George Washington University

ZC Application No. 02-03
Hearing Date: April 11, 2002
ANC-2A

I. ACTION REQUESTED

The George Washington University (hereinafter "GW" or the "University") requests relief under Subsection 3103.2 for an area variance from the minimum closed court area and width requirements at Section 406.1 to authorize the design, as proposed, of a new student dormitory structure on its campus on Lot 26 in Square 43 (616 23rd Street, N.W.). On January 14, 2002 the Zoning Commission voted unanimously to grant a special exception pursuant to Sections 210 and 3104.1 of the Zoning Regulations for "further processing" pursuant to an approved campus plan to authorize the construction and use of this new dormitory at this location (Z.C. Case No. 01-21CP). This case comes to the Commission because the design of the approved building, revised and improved to address the concerns of the Commission of Fine Arts, requires an area variance.

Square 43 was added to the University's campus boundary in 2001. The University has assembled this parcel for the purpose of constructing an additional residence dormitory for its undergraduate students. Additional on-campus residence facilities have been an expressed planning priority of the University and

of the D.C. Board of Zoning Adjustment ("BZA"). Accessory food service facilities and below grade off-street parking will also be provided .

The new dormitory's height, FAR, side and rear yard measurements are all consistent with the Zoning Regulations. However, the proposed building design provides a recess at the southeastern "hinge" of the structure which qualifies as a closed court. The court is bounded by the walls of the proposed dormitory, a common lot line with an adjacent property and a public "alley" which is three feet wide. The court width is four feet, which is 16 feet less than the regulations require. The court area is approximately 77 square feet, which is less than the required minimum of 400 square feet. The exceptional narrowness, shallowness and shape of Lot 26, together with other exceptional topographical conditions and extraordinary conditions cause the strict application of Section 406.1 to result in peculiar and exceptional practical difficulties to the owner of the property. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map.

A. Authority of The Zoning Commission to Grant the Requested Relief

The property is located in an R-5-D District. A college or university is permitted in an R-5-D District if, like here, that use is approved by the

Commission as a special exception in accordance with the requirements of Section 210 of the Zoning Regulations.

Pursuant to 11 D.C.M.R. Section 3103.2 of the Zoning Regulations, the Commission is authorized to grant an area variance if the applicant can show that by reason of an extraordinary or exceptional situation or condition of a specific piece of property, strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations.

B. The Campus Plan

The proposed use of the site for a student dormitory is consistent with the approved Campus Plan designation for the site. In BZA Application No. 16553, the BZA approved the University's Campus Plan for the Year 2002 Through the Year 2010 and added Square 43 to the campus boundary. The BZA also approved the University's proposal to designate Square 43 as a University "Housing Opportunity Area".

The approved campus plan specifically acknowledges and supports the University's need to develop additional on-campus student housing to meet the needs of its undergraduate students over the life of the plan. Thus, the University

has publicly expressed its intention to house up to seventy percent of its undergraduate students at University owned or controlled housing by 2005. The University enrolls approximately 20,500 students in six schools that offer both undergraduate and graduate degrees and two schools (the law school and the graduate school of education and human development) that offer only graduate and professional degrees. Full time undergraduate students make up about 37% of total enrollment, graduate students make up 36%, professional students 15%, and continuing education students 8%.

The University's plan to house 70% of its undergraduate students in University owned or controlled housing was premised on an intention to meet a portion of that demand in off-campus facilities. However, in its final order approving the campus plan, the BZA ordered the University to provide residence spaces for 70% of its undergraduate population in student housing within the campus boundary. Subsequently, after further proceedings were held, (BZA Case No. 16553-E) the BZA announced its intention to require the University to ". . . promptly take decisive steps to house the bulk of its undergraduate students on campus." Thus, beginning in August 2002, the BZA has ordered the University to make housing available for at least 5600 full time, undergraduate students on campus or in areas outside of the Foggy Bottom/West End neighborhood.

The BZA has also ordered that, beginning in August 2002, the University must provide one bed on campus, or outside of the Foggy Bottom/West End area, for each full time, undergraduate student in excess of 8000 enrolled. Beginning on August 31, 2006, the University is required to meet the aforementioned requirements exclusively by housing within the campus boundary. The BZA made it clear that these housing requirements are an essential element of the BZA's approval of the campus plan. Hence, the provision of undergraduate student housing is not only a preferred use for all available sites on campus, it is a use that is directed by the BZA. This application comes in response and compliance with that direction.

II. DESCRIPTION OF THE PROJECT

The University will construct a new, state-of-the art dormitory on the site.

The new dormitory will be located across G Street to the south from the University's Health and Wellness Center and across 23rd Street to the east from the Charles E. Smith Athletic Center and another student dormitory that will be built on Square 57.[1]

The dormitory will contain approximately 237,000 gross square feet of floor area, in a nine-story structure with a ground floor and a basement, and will have a

[1] The Zoning Commission has voted to approve the zoning relief necessary to develop this facility. (Z.C. Case No. 01-020CP). The Commission of Fine Arts recently approved the building design.

capacity of approximately 700 beds. The maximum height of the building will be 90 feet from 23rd Street. The floor area ratio (FAR) and parking requirements for the facility are considered in the overall FAR and parking requirements for the University as a whole, pursuant to the approved campus plan.

The dormitory will be located on land owned by the University on its central campus and properly zoned for dormitory use. It will contain dormitory residence rooms for male and female underclassmen, 88 below grade parking spaces and a food venue space on the lower level. The venue space will be similar to that at the University's Marvin Center wherein food services are available to students and to University visitors.

A. The Site

The property that is the subject of this site is located on a nearly triangular square bordered by G Street on the north, 23rd Street on the east, Virginia Avenue on the south and 24th Street on the west. The site is in the southwestern extremity of the campus boundary and two blocks south of the Foggy Bottom/GWU metrorail station. Lot 26 contains approximately 32,723 square feet of land area, and is currently zoned R-5-D.

The site is currently vacant and unimproved. The remainder of the square contains the Wellington Condominium residences and 3 single family structures.[2]

B. Area Description and Building Design

1. Area Description and Character. University uses in the immediate vicinity of the site include the new Health & Wellness Center, which consists of four stories at a height of 80 feet off of G Street, N.W. That building contains 78,580 square feet, and is tastefully designed over a ground, second, third and fourth floors with two small mezzanines at the third and fourth floor levels. The building frontage on G Street is 212 feet and is used as a state-of-the-art health and recreational facility for university students. Other university buildings in the immediate area include Funger Hall (a seven story class room building), the Tompkins Engineering Building (an academic facility) located across 23rd Street to the northeast from the subject site and the Smith Center (a one story structure developed below street level which serves as the intercollegiate sports facility for the University) at the southeast corner of 23rd and G Streets. Also located immediately north of Square 43 is New Hall (a 119 unit residence facility), the

[2] The University has endeavored without success, to purchase the single family structures. Consequently, the proposed dormitory structure has been designed to be as complementary and respectful of these residences as architectural principles will allow. It is noteworthy that the matter-of-right height of structures on Square 43 is 90 feet.

Independent Order of Odd Fellows Building at the northeast corner of 24th and G Streets and the Gewirz B'nai B'rith Hillel Center (a cultural and recreational facility used by mostly Jewish students and faculty) at the southwest corner of 23rd and H Streets. Also on Square 42 the Saint Mary's Episcopal Church, a designated landmark listed in the National Register of Historic Places, and Saint Mary's Court, a nine story building used as housing for the elderly.

The generalized land use map of the District of Columbia Comprehensive Plan Act designates the entire campus plan area for "institutional" uses. The properties that lie adjacent to the campus are generally designated for high density residential and medium and high density commercial uses. Generally, medium to high density residential and commercial uses predominate to the west of the campus while high density commercial uses dominate to the east.

Immediately off Virginia Avenue to the south of Square 43 lies the Columbia Plaza Apartments Complex which consists of 800 residences with an underground parking structure. Off Virginia Avenue to the south and east of the site is the Pan American World Health Organization.

On Square 43 to the west of the site is the Wellington Condominium residences, built in 1982 and containing 52 units. To the north and west of Square 43 is the Western Presbyterian Church. The Potomac Plaza Terrace Apartments and the Potomac Plaza Apartments which contain 168 units and 274 units,

respectively, occupy the remainder of Square 31 to the north and west of Square 43.

2. Building Design. The dormitory building will be nine-stories, plus ground level and basement. In keeping with site usage characteristics of the neighborhood, the proposed structure is triangular in shape, essentially filling its triangular lot. The proposed nine-story massing is comparable to other structures in the neighborhood. The primary building material will be brick.

The proposed design responds to the urban context and neighborhood in its site configuration, massing and materials. In keeping with Washington's tradition of creating vistas and strong street edges, the geometry of the proposed project accepts and follows the diagonal of Virginia Avenue while holding the orthogonal boundaries of G Street and 23rd Street. By holding the street edge at the property lines, the relatively slender floor plate wraps to create an open courtyard in the center of the site. A side yard setback of approximately 44' along Virginia Avenue, adjacent to The Remington, separates the orthogonal geometry of the Remington from the proposed project which follows the Virginia Avenue diagonal.

The proposed design also responds to the immediate context in its massing. The building entry is located mid-block on 23rd Street which, in accordance with zoning, allows a 90' tall structure. The proposed design modulates the proposed 90' height by creating a clear base, middle and top. A two

story base of rusticated pre-cast concrete and a pre-cast belt course at the third floor create horizontal lines which respond to the scale or the adjacent two story townhouses. The scale of the townhouses is further echoed by the introduction of a three story bay projection at the apartment building's main entrance. The 9th and 10th floors are separated from the middle of the building by a second belt course projection above the eighth floor. This belt course relates to some of the articulation found on the façade of the Health and Wellness Center across G Street. The 9th and 10th floor windows are grouped together by the articulation of two story pilasters and a decorative pre-cast spandrel panel. A precast cornice projects at the top of the building to complete the composition. The proposed penthouse maintains the required 1 to 1 setback ratio. The height of the penthouse will be kept as low as possible by using a basement elevator machine room configuration.

While the height of the building is modulated by the base, middle, top articulation described above, the length of the facade is modulated as well. Because of the unique geometry of the side and the views as one approaches from adjacent streets, there are no "rear" elevations in the proposed project. All facades, even within the courtyard, are visible from the surrounding community. Therefore, each façade has been designed as a prominent or significant elevation. Along 23rd Street, an entry tower element is created. The entry tower is defined by recessing the adjacent windows and spandrel panels, thus separating it from the adjacent

façade. A three story arced bay projection at the base and an architectural embellishment which extends above the cornice at the top further enhance the reading of the entry element.

In addition to the entry tower, several other key elements have been articulated in both massing and material. The proposed building houses three to four food venues, one at street level across G Street and the others located on the first floor below grade. The entrance to these venues is located at the corner of 23rd and G. The corner venue entrance is announced architecturally by the use of a projecting canopy. The corner is further articulated by being clad in pre-cast concrete and being set back from the face of the building. The lower level dining area receives daylight through the introduction of an area way along 23rd Street. The fenestration at the dining area is modified to reflect the special function located within.

Another significant element which has been given special consideration is the "hinge" which rises above the townhouses at the intersection of 23rd and Virginia Avenue. The hinge is an architectural expression of the shift in geometry between the orthogonal and the diagonal. A sweeping curve of pre-cast concrete and glass sets back slightly from the property line to allow the masonry blocks which front the streets to be expressed. The windows in the curve

provide light and views for the elevator lobby. The closed court for which this variance relief is requested is at the base of this "hinge".

Finally, the stair towers along Virginia Avenue and along G Street are set back from the property line effectively reducing the length of the building when viewed obliquely. The towers themselves re articulated by recessing a vertical bay of windows at the end of each corridor.

The exterior material plate is consistent with that used in other recent and prominent George Washington University campus buildings on the adjacent squares. This palette includes red brick, limestone colored pre-cast concrete and windows of clear glass with painted frames. The recently completed Health and Wellness Center across G Street exemplifies the use of these materials. The proposed building will be designed to complement the design of the Health and Wellness Center while establishing its own individuality. The project will be predominantly brick with a pre-cast concrete base set on a granite watertable. Pre-cast concrete accents, including belt courses, spandrel panels, window sills, window heads, corner blocks and cornices, will be used to create a rich and textured façade.

Landscape Design

Site landscaping will be coordinated with The George Washington University's campus landscape plan. The City's requirements for curbs, sidewalk paving, and plant material types, sizes and locations is also reflected.

The open courtyard at the center of the site, with a ground plane at the same elevation as the ground floor, will be a combination of hard scape paving materials and raised planter areas. The design of the courtyard will create an intimate scale as a space to be occupied by the building's residents, but in addition, will consider views from the surrounding community. Ornamental trees, ground cover, benches and gates will be included in the design.

Vehicular Access

The project includes a loading dock with two 12' by 30' bays accessed from G Street. The dormitory also includes one and one half levels of below grade parking which provide approximately 88 parking spaces. Parking access is from Virginia Avenue with a drive way located within the side yard set back. The garage will be self parked with a card reader and gate located at the drive way entrance.

C. Zoning History of the Site

Land use records at the Office of Zoning reflect that this site, either in whole or in part, has been zoned for high density residential/institutional uses since 1958. The entire square is within the University's campus boundary.

D. Structural Plans

1. Floor Plans. The floor plans for the addition are typical and are illustrated in Exhibit A.

2. Uses. The new dormitory will provide additional on campus student housing for the University. Construction is expected to be completed in time for the 2004-2005 academic year.

3. Access. Access to the site will be provided by a right-in, right-out driveway on the northern side of Virginia Avenue, approximately 75 feet before intersecting with 24th Street. Motorists will be able to access the site from the ramp portion of Virginia Avenue, as well as from the tunnel lanes of Virginia Avenue. However, the limited sight distance and merging opportunity make this turning maneuver potentially unsafe. Flexible guide posts will be sought by the University to prevent access from the Virginia Avenue tunnel lanes. Access will only be provided from the Virginia Avenue ramp segment.

E. Surrounding Neighborhood

1. Existing Uses. The dormitory will be located in the Foggy Bottom area of Ward 2. The Ward 2 Plan describes uses in the Foggy Bottom area as follows:

> "Foggy Bottom has (2) types of development: mid- and high-rise residential buildings and small-scale townhouses. Mid-rise residential buildings extend along most of K Street, from 26th Street to Washington Circle, with the exception of the buildings within the Foggy Bottom Historic District along the south side of K Street, N.W., which are low-rise, while Virginia Avenue and New Hampshire Avenue are a mixture of predominantly-residential, high-rise buildings and small-scale townhouses. Columbia Plaza and Watergate, both major mixed-use, predominately-residential complexes, are south of Virginia Avenue. The Watergate and Columbia Plaza complexes include office and retail uses. There are several hotels and office buildings in the area. In the center of the neighborhood is an area of small-scale townhouses, most of which have been renovated beginning in the 1950s."

University uses within the immediate vicinity of the site include: the Health and Wellness Center, the new George Washington University

Hospital, the Warwick Building, the George Washington University School of Medicine and Health Sciences (Ross Hall), the School of Public Health and Health Services, the Charles E. Smith Athletic Center and the Jacqueline Kennedy Onassis Hall (a dormitory).

The Generalized Land Use Map of the Comprehensive Plan shows that the properties that are adjacent to the campus are generally designated for high-density residential and medium and high density commercial uses. Generally, medium to high density residential and commercial uses predominate to the west of the campus, while high-density commercial uses predominate to the east.

2. Proposed and Approved University Uses. Proposed uses within the boundaries of the campus include a new 204 bed student residence facility on Square 57 (Z.C. Case No. 00-20CP) and the Elliott School Project, a mixed use residential/academic facility will offer approximately 193 beds.[3]

F. Comprehensive Plan

The approval of this dormitory was not inconsistent with the Comprehensive Plan for the District of Columbia which clearly designates the site for "Institutional Uses".[4]

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[3] Subject to the Commission's approval of a modification to an approved Planned Unit Development.

[4] Land and facilities occupied by colleges, universities, hospitals, religious institutions and similar uses.

The dormitory is consistent with the District Elements of the Comprehensive Plan as follows:

- promotes increasing the quality and quantity of employment in the District by providing more jobs and job stability in a new, state-of-the-art facility, 10 D.C.M.R. §101.1(b);
- promotes a living downtown and reaffirms and strengthens the District's role as the economic hub of the National Capital Region through its location in the most convenient and accessible location for all downtown visitors, 10 D.C.M.R. §§101.1(c) & (h); and
- Stabilizes and improves the District's neighborhoods by enhancing the integral institutional use of the property which contributes to the character of the neighborhood and the District as a whole. 10 D.C.M.R. §§101.1(a), 102.3;
- Increases the quality and quantity of employment opportunities by providing more jobs through appropriate development. 10 D.C.M.R. §§101.1(b), 103.1;
- Develops a living downtown by increasing residential facilities for the University population within the District and strengthening the area's retail and cultural outlets. 10 D.C.M.R. §101.1(c), 104.1;

- Improves the physical character of the District by adding to the special collection of buildings that give the District its unique profile thereby enhancing the character of the city. 10 D.C.M.R. §§101.1(e), 106.1;
- Reaffirms and strengthens the District's role as the economic hub of the National Capital Region by improving the quality of the natural and human environments for the region and maximizing use of the University's location. 10 D.C.M.R. §§101.1(h), 109.1(b), 109.2(a);
- Promotes enhanced public safety by providing safe and secure residential buildings including appropriate security measures for the surrounding area using available resources. 10 D.C.M.R. §§101.1(i), 110.1(a)-(b);
- Provides for diversity and overall social responsibilities by increasing educational and employment opportunities, welcoming residents of diverse backgrounds and needs, and accommodating the disabled. 10 D.C.M.R §§101.1(j), 111.1(b).

G. Traffic and Parking.

Gorove/Slade and Associates, the expert traffic and transportation consultant for the project, undertook an analysis to determine existing traffic volumes on the roadway network in the vicinity of the dormitory; project future

traffic conditions after the development of the proposed hospital; confirm that the proposed site access system will be able to accommodate the development of the dormitory without having any adverse impacts on pedestrians or the surrounding street network; confirm that the University's parking plan will accommodate the needs of the proposed dormitory, and maintain compliance with the Campus Plan.

In summarizing its findings, Gorove/Slade concluded as follows:

- Existing Conditions – The analyses indicate that all of the study area intersections currently operate at acceptable levels of service under Existing conditions.

- Future Background Conditions – The analyses indicate that all of the study area intersections will operate at acceptable levels of service under Future Background conditions.

- Total Future Conditions – The analyses indicate that all of the study area intersections will operate at acceptable levels of service under Total Future conditions. The University will remain in compliance with the Campus Plan's minimum parking requirements of 2,800 spaces.

C. Applicant is Entitled to Zoning Relief Under Section 3103.2 of the Zoning Regulations.

1. Practical difficulty and uniqueness. The D.C. Court of Appeals has repeatedly held that the nature of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.[5] In the instant application it is a confluence of factors which serves to create a practical difficulty on the subject site.[6]

The first factor which, when combined with the other facts and circumstances of this case, creates a practical difficulty, is the size and shape of the lot on which the dormitory building will be constructed. The lot is irregularly shaped in the extreme. It has three relatively straight street frontages along Virginia Avenue, 23rd Street and G Street, N.W. But its boundaries that interface with the two adjacent lots to the west and to the south of the site are serrated and irregular. Lot 26's interface with the properties on the southeast border of the lot is of particular importance here. Located there are three single family structures which the applicant has endeavored to purchase without success.[7] A three foot wide public alley borders those privately owned lots and Lot 26. See the illustration at Exhibit B. The site of the proposed court is at the confluence of the narrow public alley and the privately owned property. The court is surrounded by

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5 Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (DC App. 1972).

6 Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1168 (D.C. 1990).

7 The owner has publicly stated his intention to develop his property to the full extent of the permissible zoning envelope.

the exterior walls of the proposed building, by a rear lot line and by an alley line where the alley is three feet in width. These junctions correspond to the definition of a closed court. If the University were able to acquire the privately owned property and to close the practically unusable public alley, this closed court would not exist. However, the University is unable to do either and must design its building according to the contours of the lot. In these respects the property is unique among others and presents a practical difficulty to development.

The Board of Zoning Adjustment has repeatedly found practical difficulty and granted area variances where the shape and topography of a lot were unique. In Zoning Commission Case No. 16104 (May 1, 1996) for example, the Board found practical difficulty when the characteristics of an adjacent property put the applicant's property in a "hole-like" situation such that compliance with the Zoning Regulations decreased the light and air to the applicant's building. Such is clearly the case here. In addition, in BZA Case No. 15461 (June 9, 1993) the Board found practical difficulties in the physical characteristics of an irregularly shaped building on an irregularly shaped lot. In so finding, the Board ruled that there was no practical way to develop a building according to the Zoning requirements. The D.C. Court of Appeals has repeatedly upheld the Board in finding practical difficulty in granting area variances on irregularly shaped lots that present structure and design problems to the owner. Association for Preservation

of N Street, N.W. v. DCBIA, 384 F.2d 674 (D.C., 1978). Thus, there is practical difficulty in the unusual shape of the University's lot.

The BZA has also found practical difficulty in developing a building at a specific location. The location of this site is at the southwestern border of the University campus. This makes it a particularly important site because of the gateway value to the University's campus. In addition, and perhaps more importantly, the site is also located on a street of federal interest: 23rd Street which runs between the Lincoln Memorial and Washington Circle.[8] As such, the concept design of the building was presented to the Commission of Fine Arts. When the building was designed without the closed court, the staff of the Commission of Fine Arts recommended certain design changes that resulted in the closed court at issue here. As a consequence, the Commission of Fine Arts has approved the concept of the reworked design of the dormitory which includes the closed court. "The BZA has taken notice of design limitations imposed by the Commission of Fine Arts and the Historic Preservation and Review Board in granting area variances. See, for example, BZA Case Nos. 16116 (June 5, 1996) and 16131 (February 3, 1997). The latter case specifically found that the location of the site in an area of federal interest, the relationship of a public alley and adjacent townhouses to the irregularly shaped site and that applicant's building

[8] Twenty-third Street is also accorded a "Special Street" status in the "District of Columbia Elements of the Comprehensive Plan for the National Capital".

plans changed to meet the requirements of the Historic Preservation and Review Board all contributed to its determination of unique and practical difficulties and exceptional conditions on the site.

The DC. Court of Appeals in Draude v. District of Columbia Board of Zoning Adjustment, quoting Monaco v. Board of Zoning Adjustment affirmed the BZA's approval of area variance relief stating: "when a public service has inadequate facilities and applies for a variance to expand it to an adjacent area in common ownership which has long been regarded as a part of the same site, the Board of Zoning Adjustment does not err in considering the needs of the organization as possible other extraordinary and exceptional situations or conditions of a particular property." 407 A.2d 1091, 1092. The court in Draude went on to apply the test found in Monaco v. Board of Zoning Adjustment, for a public service organization which applies for an area variance: "it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought." 527 A.2d 1242, 1246 (D.C. App. 1987). Throughout this submission, the Applicant has demonstrated how it meets the requirements of the Monaco test. First, in terms of proving institutional necessity, it is clear that the design which creates a closed court was created to attract the favor of the federal interest as determined by the Commission of Fine

Arts. The closed court at the base of the dormitory is part and parcel of the architectural "hinge" which rises above the townhouses at the intersection of 23rd Street and Virginia Avenue. The windows in the hinge curve provide light and views for the elevator lobby. The University specifically created this architecture at the invitation, and later concept approval of the Commission of Fine Arts. The second part of the Monaco test is also met and addressed in that the only way for the University to be able to construct the dormitory without further and uncertain procedural delays is to address the institutional necessity of this design by asking this Board for variance relief.

The BZA has also found that specific University buildings are unique to the city as a matter of policy. See, for example, BZA Case No. 15837 (April 6, 1994) where the Board found that an area variance was justified for an addition to the Marvin Center. In so finding, the BZA cited the complexity of the University building, the design of the building, the prior zoning history of the building and the location of the building on the University campus to be sufficient to justify the variance relief that had been requested.

The Applicant wishes to emphasize that this request for area variance relief is not made for as a matter of convenience or as a matter of cost. Nor is it an attempt by the Applicant to make the most profitable use of the land.

Instead this application amounts to an honest endeavor to create the most reasonable and efficient use of available land in a timely manner.

The University's approved campus plan specifically acknowledges the need to develop additional student housing which meets the anticipated needs of undergraduate students. In its final order approving the plan, the BZA ordered the University to meet specific housing objectives beginning in August 2002 and another beginning on August 31, 2006. In so doing, the Board made it clear that these housing requirements are an essential element of the Board's approval of the campus plan. Hence, the provision of undergraduate student housing, such as that proposed here, is not only a preferred use for all available sites on campus, it is a use that is directed by the Board. And that direction is extremely time sensitive, thus making it impractical for the University to redesign a building that has already been approved in concept by the Commission on Fine Arts and by the D.C. Zoning Commission.

In sum, there are significant and substantial inherent factors both in the land, and extraneous to the land, which are historically justified and sustain a finding of exceptional topographical conditions or other extraordinary or exceptional situation on condition that result in peculiar and exceptional practical difficulties. DeAzacarte v. D.C. Board of Zoning Adjustment, 388 A.2d 1233 (D.C. App. 1978).

3. The practical difficulty can be remedied without substantial detriment to the public good and without substantially impairing the intent, purposes and integrity of the zone plan as embodied in the Zoning Regulations and map. By public vote taken on January 14, 2002 and by final order issued _____, 2002, the Zoning Commission has already determined that the special exception required to build the dormitory as proposed 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. Such a finding was integral to the approval of the "further processing" special exception that had been requested in Case No. 01-21CP. In so ruling, the Zoning Commission also determined that the building, as designed with the proposed closed court, will not affect adversely the use and enjoyment of neighboring property. Thus, the Commission has already determined that the dormitory building as proposed is consistent with and within the purposes of the Zoning Regulations and will not adversely affect neighboring property or the public good. The Commission of Fine Arts has also approved the concept design of this building, with the proposed closed court, as consistent with federal interest.

III. WITNESSES

The following witness will present testimony in this case for the Applicant:

1. Barry Goldfarb, Ayers Saint Gross Architects

IV. CONCLUSION

It is for these reasons that the George Washington University submits that it has met its burden of proof under the applicable Zoning Regulations and is entitled to the variance relief that is requested.

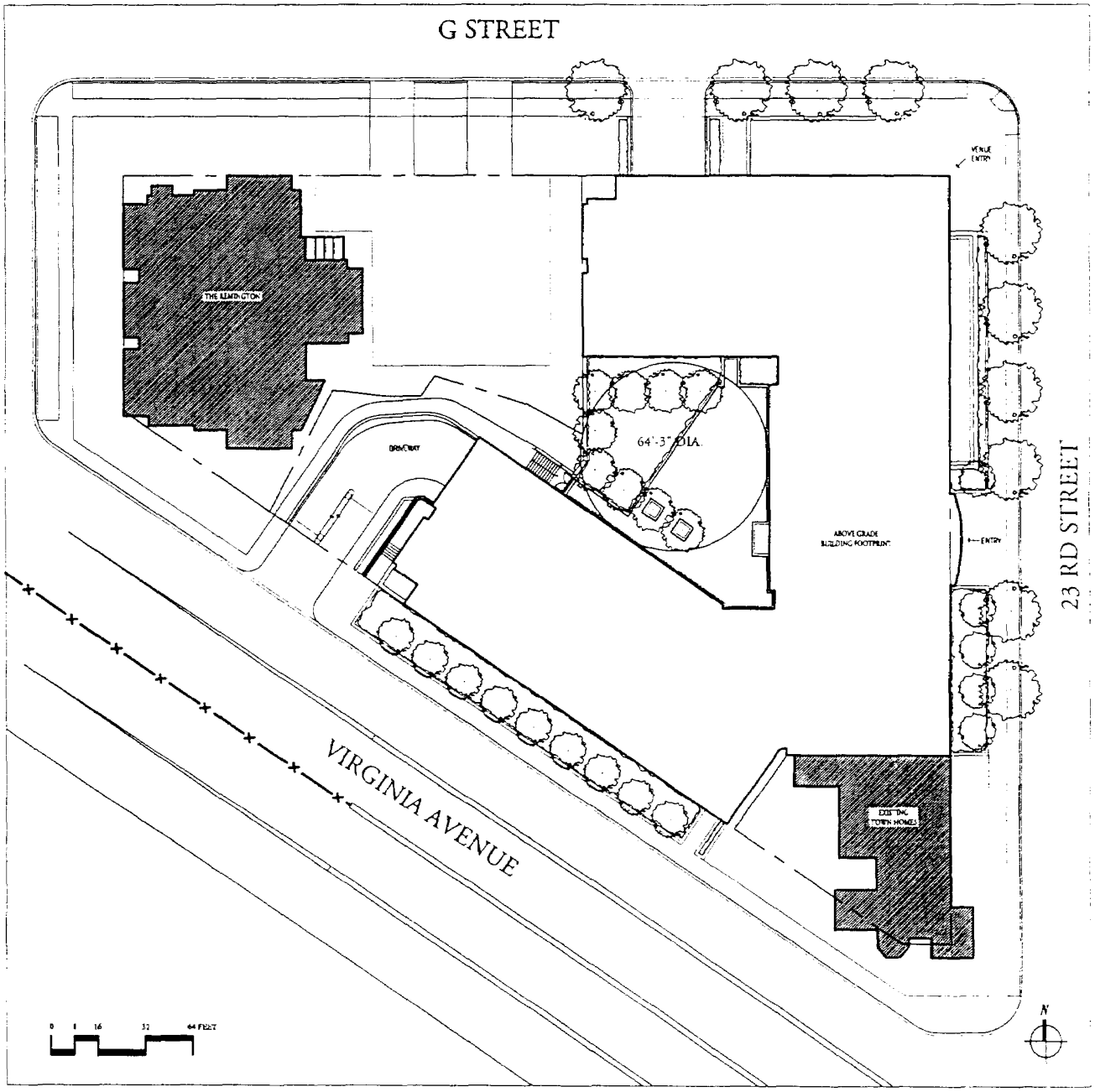
Respectfully submitted,

Jerry A. Moore III
Counsel to the Applicant
ARTER & HADDEN LLP
1801 K Street, N.W.
Third Floor, L Street Entrance
Washington, D.C. 20006
(202) 775-7101

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The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



ZS-2 • SITE PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



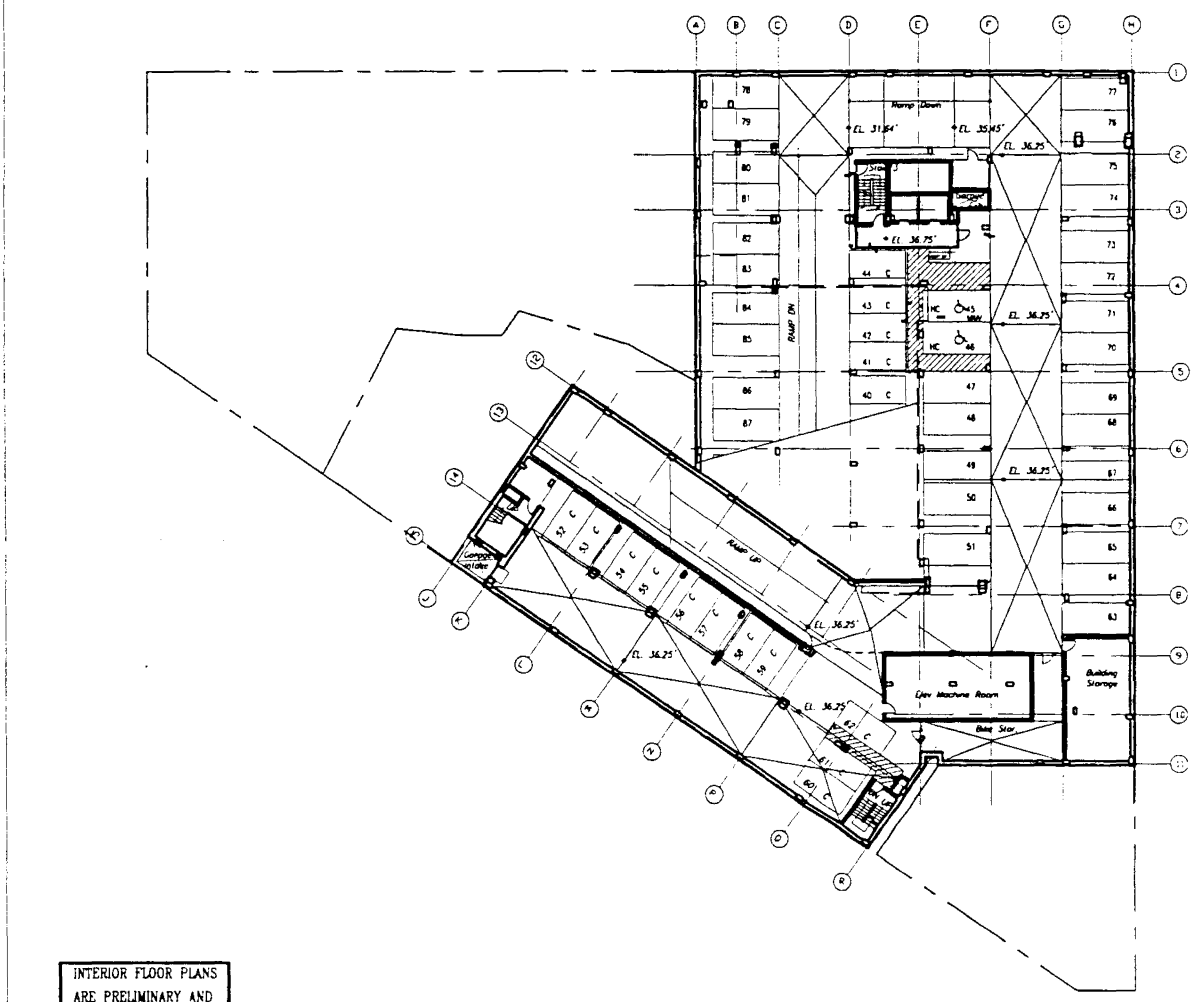
ZS-3 • P-2 LEVEL PARKING PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



INTERIOR FLOOR PLANS ARE PRELIMINARY AND SUBJECT TO CHANGE UPON FINAL DESIGN

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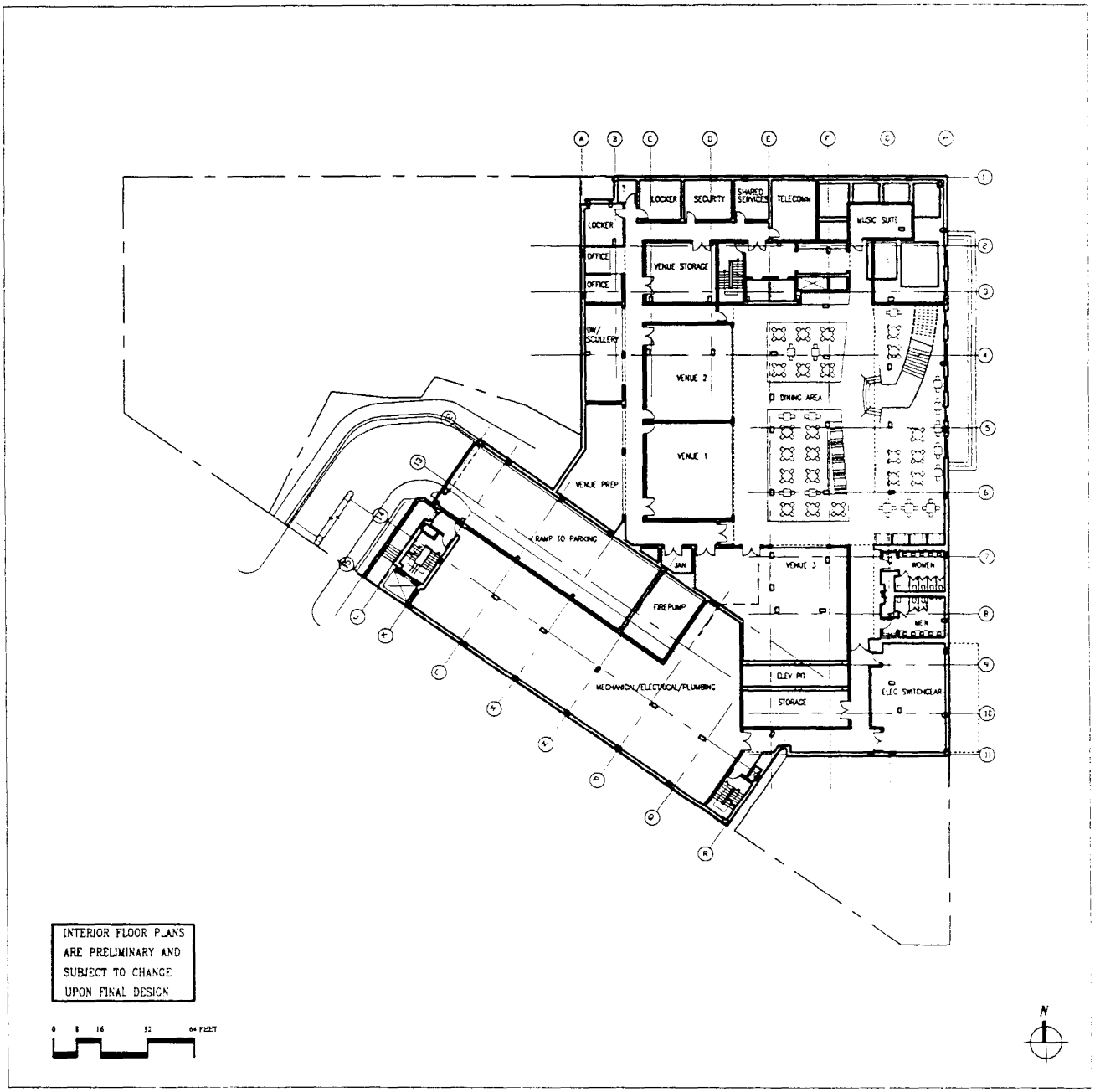
ZS-4 • P-1 LEVEL PARKING PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001

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SQUARE 43 STUDENT RESIDENCE HALL



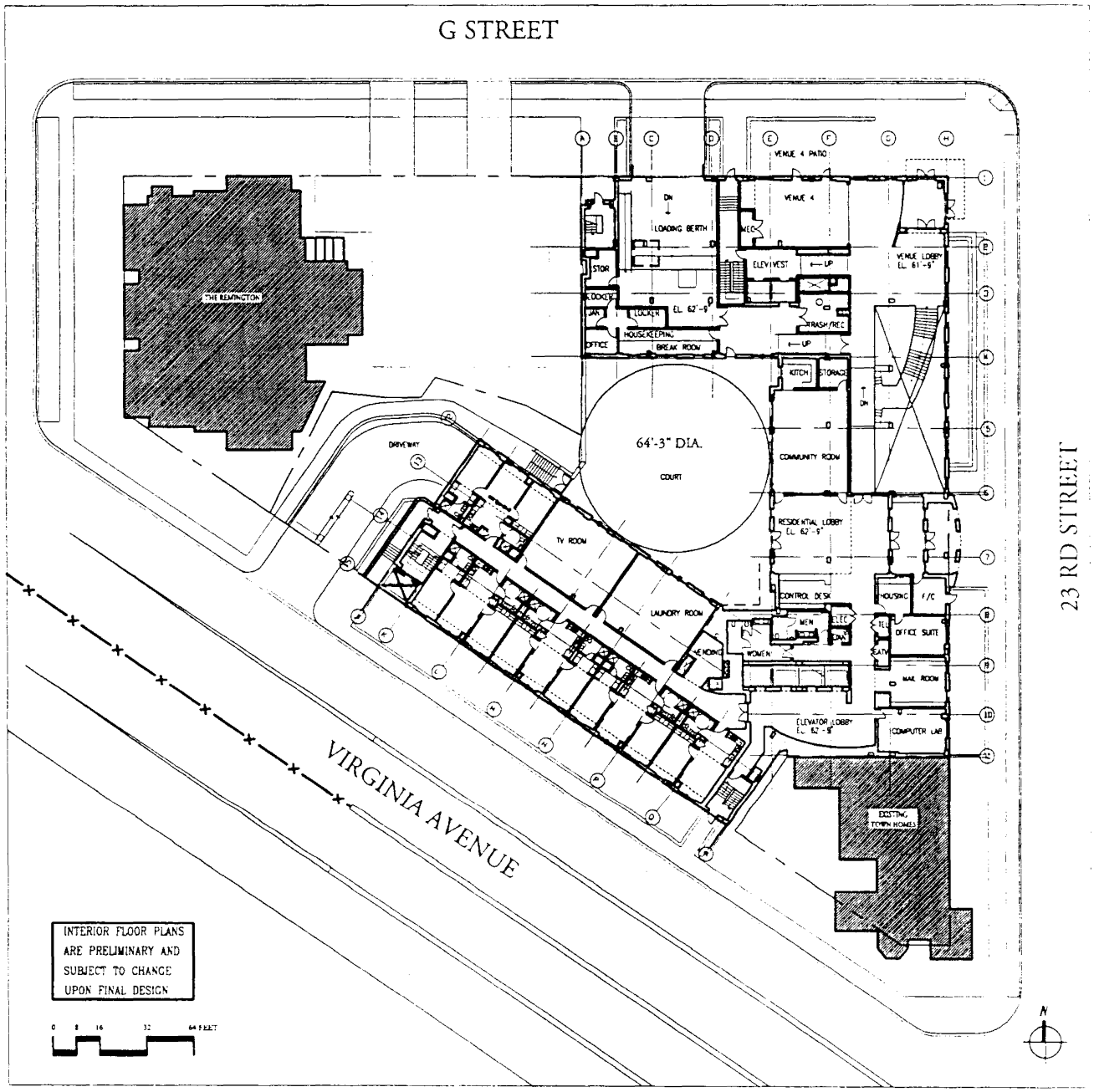
ZS-5 • LOWER LEVEL FLOOR PLAN

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ZS-6 • GROUND FLOOR PLAN

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SQUARE 43 STUDENT RESIDENCE HALL



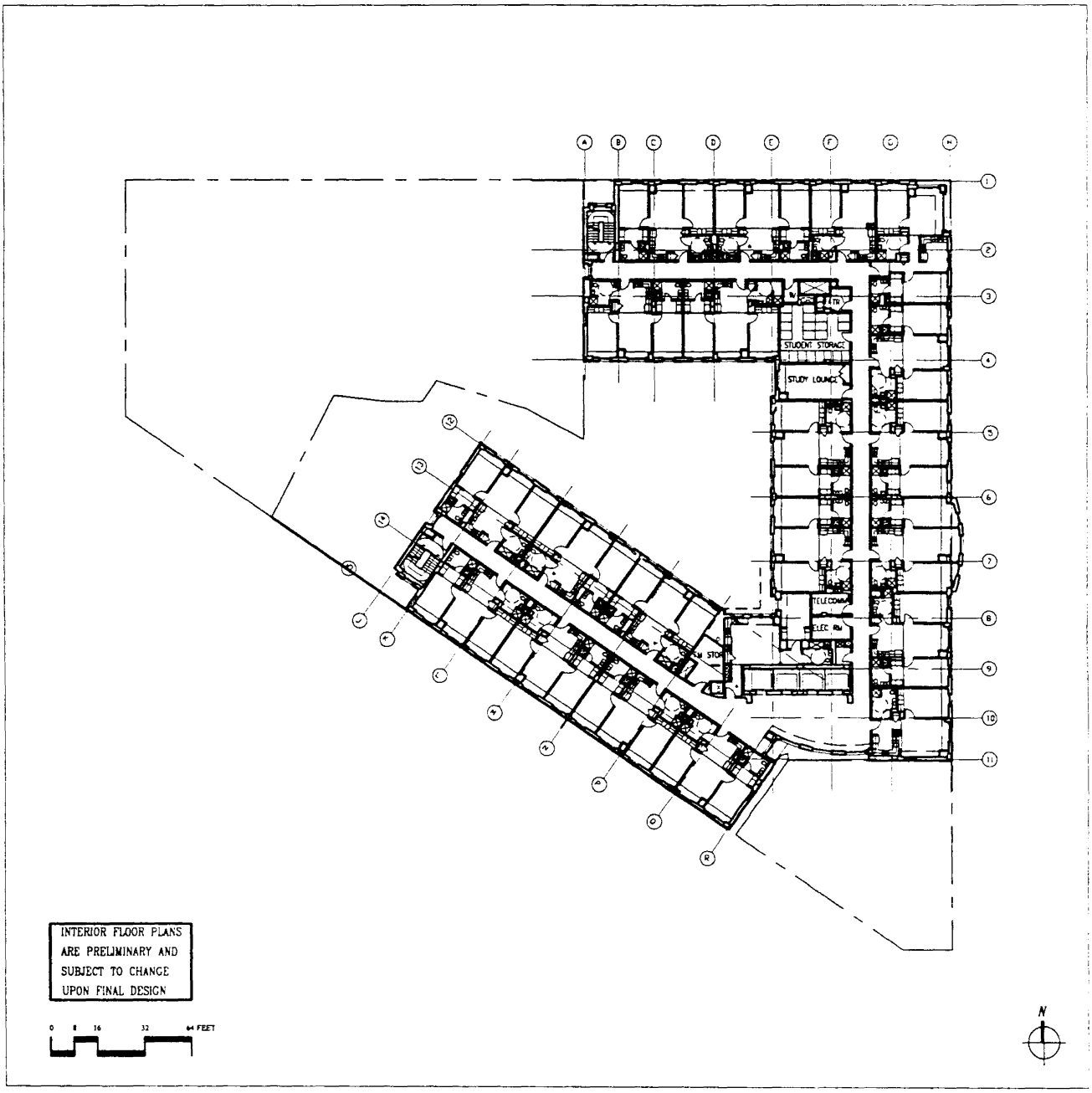
ZS-7 • SECOND FLOOR PLAN

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SQUARE 43 STUDENT RESIDENCE HALL



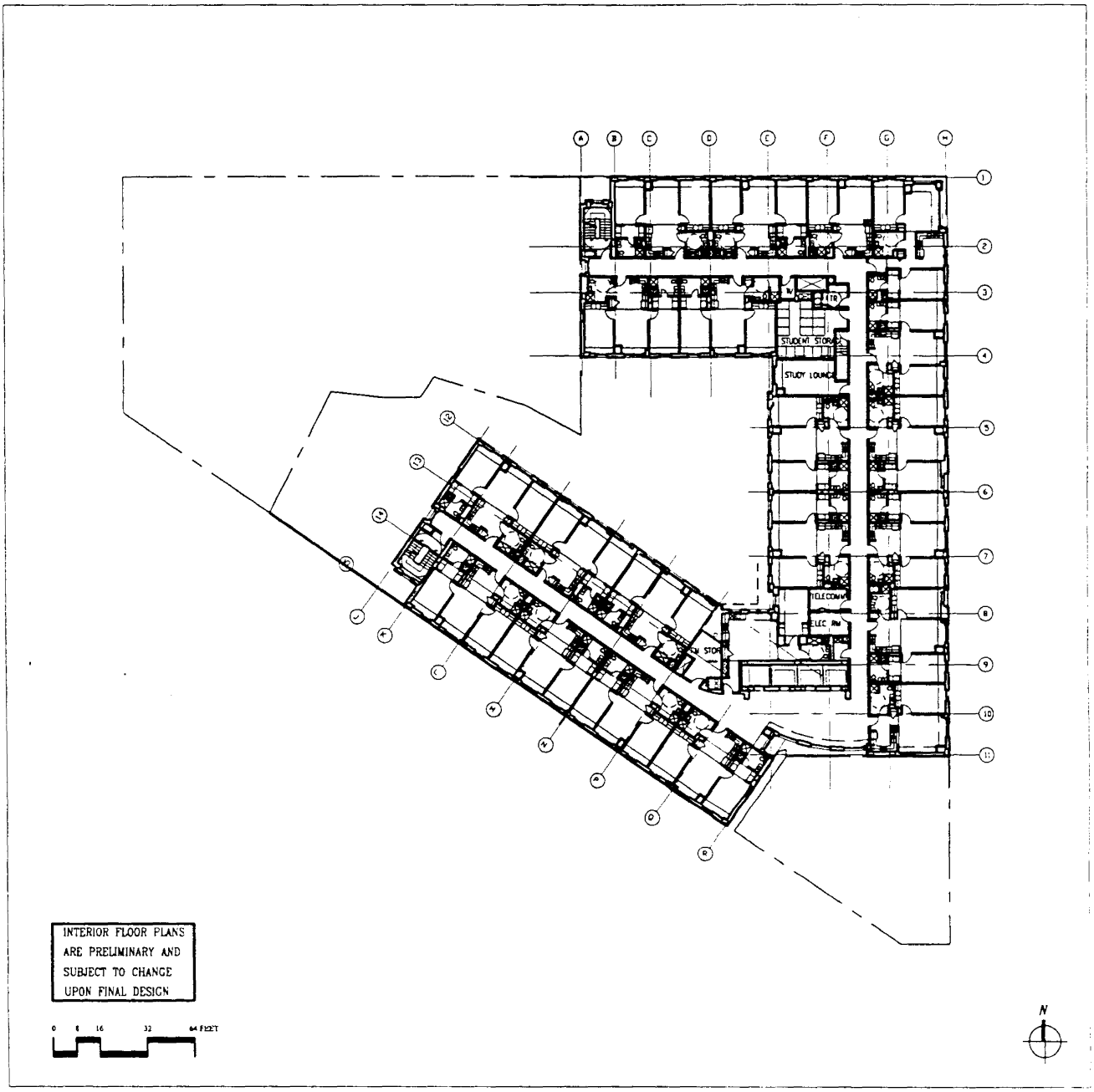
ZS-8 • TYPICAL FLOOR PLAN

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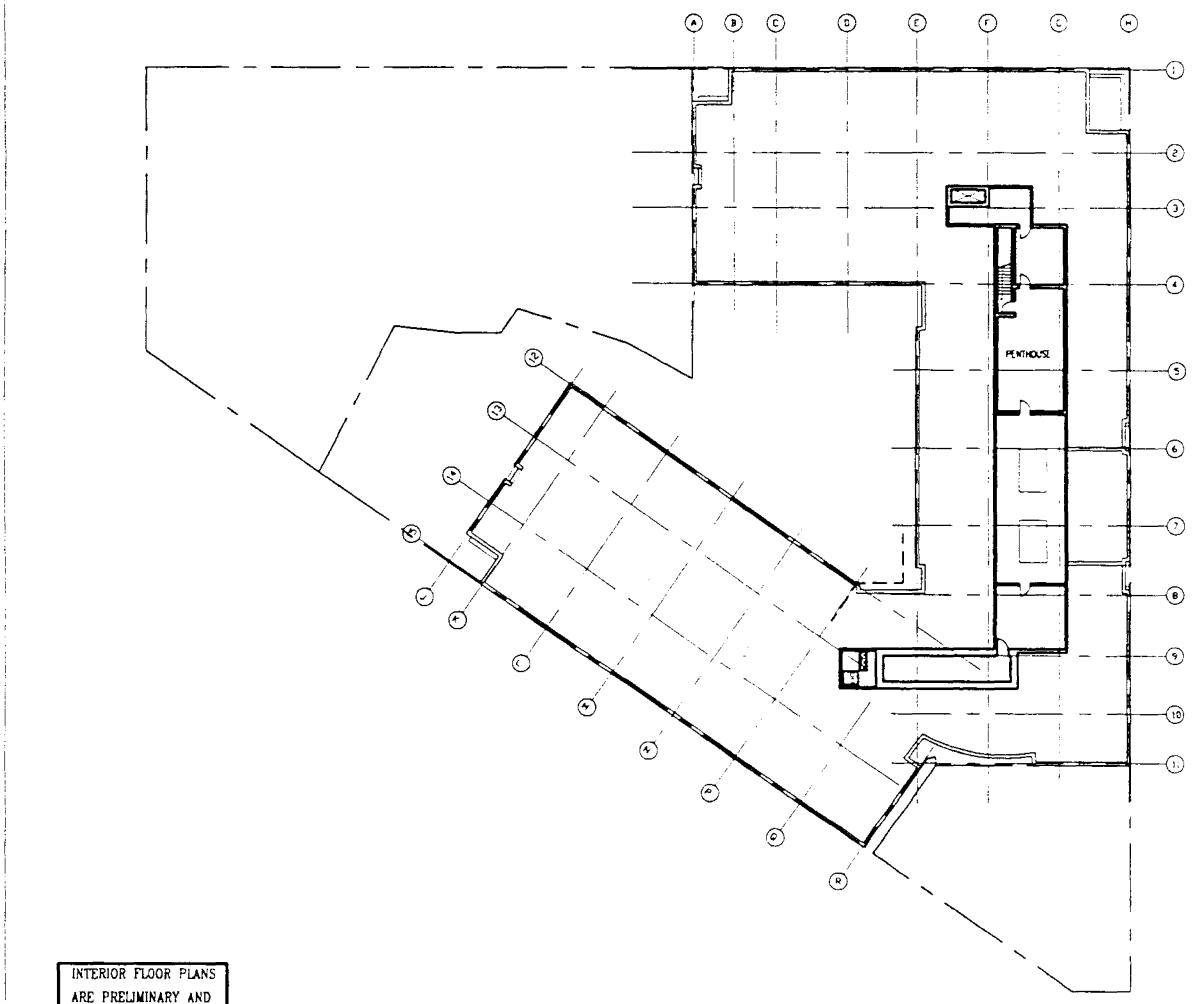
ZS-9 • TENTH FLOOR PLAN

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SQUARE 43 STUDENT RESIDENCE HALL



INTERIOR FLOOR PLANS ARE PRELIMINARY AND SUBJECT TO CHANGE UPON FINAL DESIGN

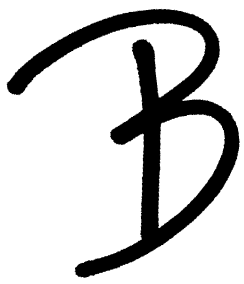
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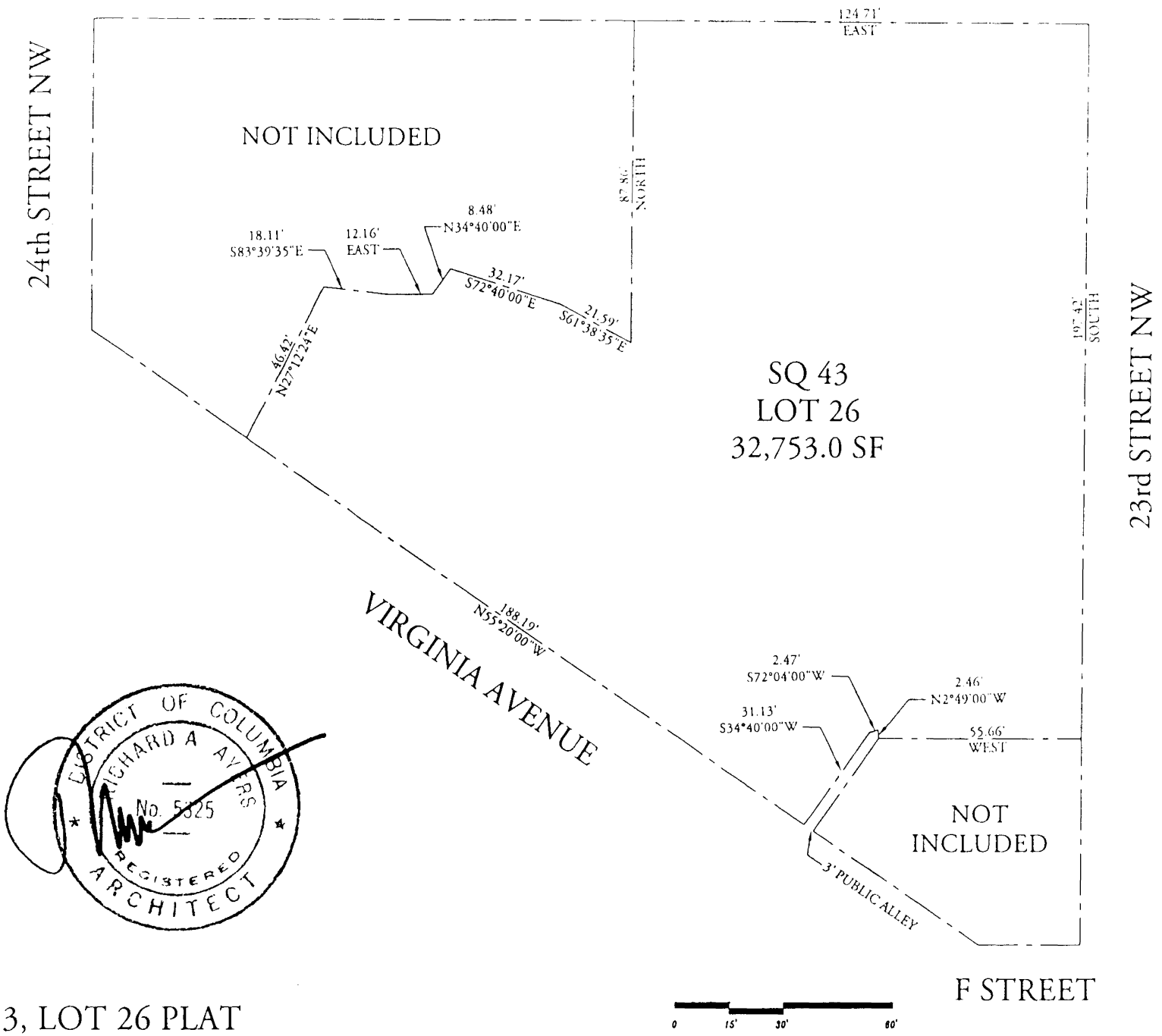
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ZS-10 • ROOF PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001



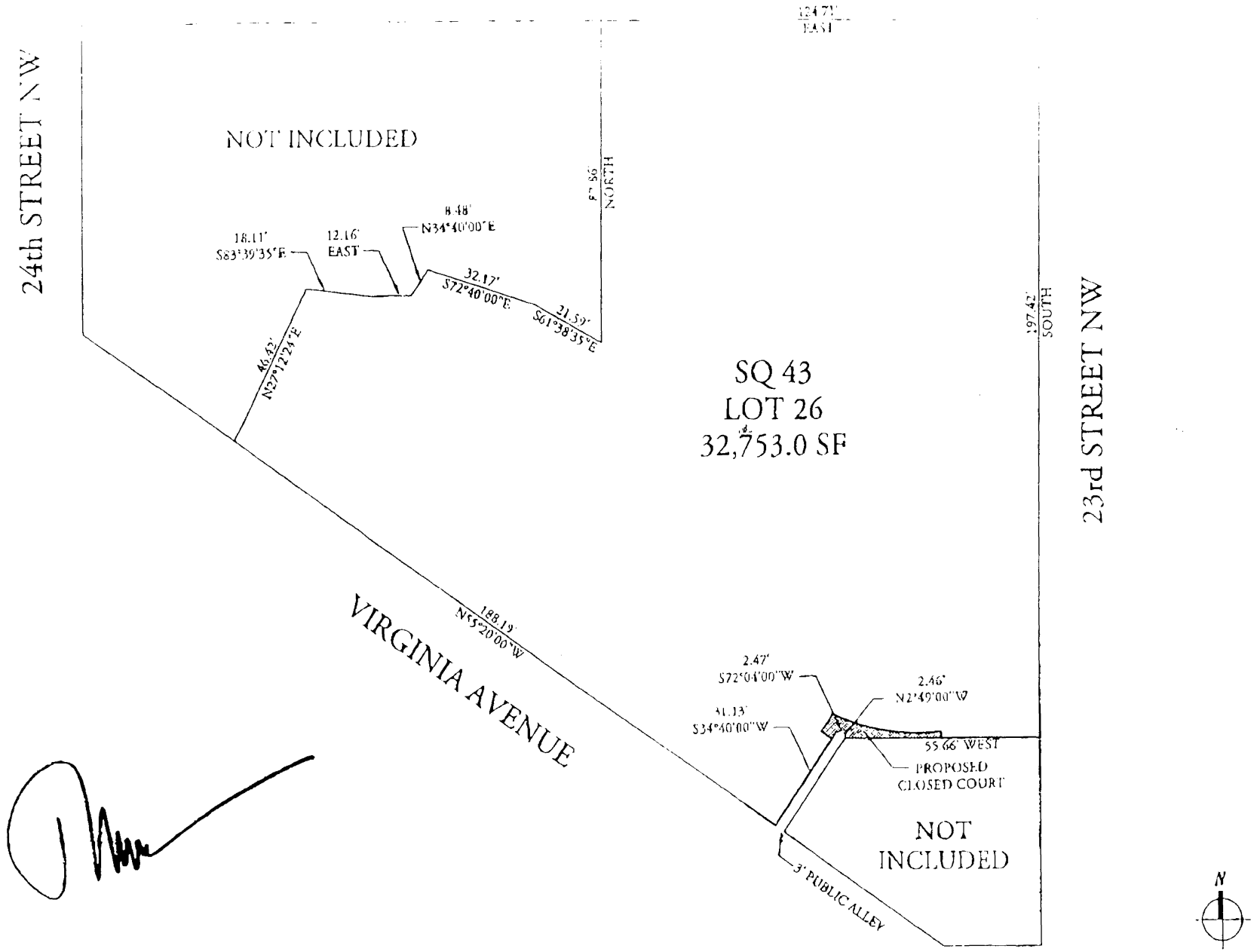


SQUARE 43, LOT 26 PLAT

The George Washington University - Square 43 Student Residence Hall

Aug 31, 2001

AYERS SAINT GROSS



SQUARE 43, LOT 26 PLAT

The George Washington University – Square 43 Student Residence Hall *January 17, 2002*

AYERS SAINT GROSS



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16131 of the District of Columbia Housing Authority and the Ellen Wilson Redevelopment Limited Liability Company, pursuant to 11 DCMR 3108.1 and 3107.2, for the following special exception and variance relief:

1. Special exception under Section 2516 to allow new construction on theoretical lots;

2. Special exception under Paragraph 2516.5(b) for the front yard set back requirements;

3. Special exception under Paragraph 2516.6(b) and (c) for ingress and egress requirements;

4. Special exception under Section 2116 to allow required parking spaces to be located on another lot;

5. Special exception under Section 205 to establish a child development center;

6. Special exception under Section 209 to establish a community center;

7. A variance from the rear yard requirements (Subsection 404.1);

8. A variance from the side yard requirements (Subsection 405.9);

9. A variance from the off-street parking requirements (Subsection 2101.1);

10. A variance from the allowable lot occupancy requirements (Subsection 403.2), and;

11. A variance from the size of required off-street parking spaces (Subsection 2115.1).

For the construction of 62 flats and 30 single-family dwellings, a community center with a child development center and utility shed in an R-5-B District at premises 704-710 6th Street, S.E.; 715 and 719 7th Street, S.E.; 610-638 Ellen Wilson Place, S.E.; 611-639 Ellen Wilson Place, S.E.; 600-610 I Street, S.E.; 614-632 I Street, S.E.; 636-654 I Street, S.E.; 721-733 7th Street, S.E.; 737 7th Street, S.E.; 649-659 I Street, S.E.; 745 and 743 7th Street, S.E.; 619-645 I Street, S.E.; and, 601 and 603 I Street, S.E. (Square 878 Lots 1-93, Parcels A-D).

HEARING DATE: April 17, 1996
DECISION DATE: June 5, 1996

ORDER

SUMMARY OF EVIDENCE OF RECORD:

The property which is the subject of this application is located at 704-710 6th Street, S.E.; 715 and 719 7th Street, S.E.; 610-638 Ellen Wilson Place, S.E.; 611-639 Ellen Wilson Place, S.E.; 600-610 I Street, S.E.; 614-632 I Street, S.E.; 636-654 I Street, S.E.; 721-733 7th Street, S.E.; 737 7th Street, S.E.; 649-659 I Street, S.E.; 745 and 743 7th Street, S.E.; 619-645 I Street, S.E.; and, 601 and 603 I Street, S.E. (Square 878 Lots 1-93, Parcels A-D). It is bonded by (i) 6th Street, S.E. on the west, (ii) Virginia Avenue, S.E. and the SE Southwest Expressway on the south, (iii) 7th Street, S.E. on the east and (iv) an east-west public alley on the north. The site, which is located within the Capitol Hill Historic District, is zoned R-5-B.

The site is currently improved with vacant, boarded-up and dilapidated two-story and three-story structures which were built in the 1940s. These structures, built in the style of garden apartments traditional for the time of their construction and containing 134 units, were previously used for public housing until their abandonment in 1988. The Ellen Wilson site also contains an abandoned building previously used for storage purposes. There are four townhouses located in the middle of the block on Sixth Street which abut the subject site on three sides but which are privately owned and therefore not a part of the site.

The applicants, the D.C. Housing Authority and the Ellen Wilson Redevelopment Limited Liability Company, propose to demolish the existing structures and to develop 134 replacement units, which would be owned as the Capitol Hill Cooperative Housing Association (the "Cooperative"), 20 market rate units and a community center which would also contain a child development center. The market rate units would be scattered throughout the development and would be built to the same standards as the replacement units. Of the replacement units, the proposal contemplates the following: 46 one-bedroom, one-bath units; 6 two-bedroom, one-bath units; 76 two-bedroom, two-bath units; and 6 three-bedroom, two-bath units.

The overall design goal of the new development is to transform a failed and abandoned public housing site into a housing development with a low-scale townhouse character, consistent with the historic patterns and appearance of residential development in the Capitol Hill Historic District. The site plan includes a new public street, proposed to be named "I Street, S.E.," and a "mews" (technically a public alley), to be designated "Ellen Wilson Place, S.E." The new street is designed to replace a street which bordered on the site prior to 1940 and the mews is intended to replicate numerous narrow streets on Capitol Hill. New sidewalks are to be composed of brick, with granite curbs along I Street and

concrete curbs along Ellen Wilson Place. The site plan would also incorporate planting strips for street trees.

Plans for the redevelopment of the Ellen Wilson site have been developed over a five-year period by the members of the Ellen Wilson Neighborhood Redevelopment Corporation (the "CDC"). The CDC is an organization drawn from the community surrounding the Ellen Wilson site, including area businesses and residents, as well as former residents of Ellen Wilson public housing. The CDC was organized in the fall of 1991, and subsequently selected a development team to design, develop, build and manage the new Ellen Wilson community.

The development team is comprised of the CDC, the Telesis Corporation, a specialist in community development, affordable housing, and neighborhood planning, and the Corcoran Jennison Companies, an experienced real estate development and management firm with experience in mixed-income redevelopment projects. The development team was selected in a competitive process administered by the D.C. Department of Public and Assisted Housing (now the District of Columbia Housing Authority, "DCHA"). In the fall of 1993, based on a proposal prepared by the development team, DCHA was awarded a HOPE VI/Urban Revitalization Demonstration grant to redevelop the Ellen Wilson site. The private firm of McHenry/ TAG, Inc. was designated by HUD and DCHA to administer the grant on behalf of DCHA.

As the Alternative Administrator, McHenry/TAG works for the D.C. Housing Authority and represents the housing authority, HUD and the public's interest to insure that the redevelopment is carried out in accordance with the HOPE IV guidelines and the Revised Revitalization Plan.

HOPE IV is a demonstration program of partnerships designed to revitalize public housing communities.

In order to facilitate community involvement, the applicants will create a New Community Trust (the "Trust"), which will be comprised of community and cooperative members, and which will serve as the intermediary between the DCHA and the new Cooperative in the governance of the new community.

DCHA owns the land on which the site is to be developed. Under the proposed plan, DCHA would provide the Trust with a 99-year renewable ground lease allowing subleasing to the Cooperative. The ground lease would contain restrictions on the use of the land and the operations of the Cooperative, which the Trust would be bound to enforce.

The Trust would lease the land to the Cooperative on the same terms as the ground lease. Additional restrictions or requirements

would be incorporated into this sub-lease where appropriate. The Trust would also monitor the operations of the Cooperative and provide detailed reports to DCHA.

The Cooperative would lease the land from the Trust under restrictions specified in the Ground Lease. The Cooperative would own the buildings on the land, except for the twenty (20) fee simple units, and would perform the day-to-day management functions with the help of a professional management company. The Cooperative would report to the Trust.

The day-to-day operations of the new Ellen Wilson Development would be managed privately by the CJ Management Company ("CJ"), a division of the Corcoran Jennison Companies. CJ is experienced with management of mixed-income communities.

The R-5-B zoning classification allows the proposed residential uses as a matter of right. The community center and child development center require special exception approval. In addition to the relief needed for the uses, the applicants seek relief in a number of other areas to address problems with the development of the project.

Zoning Relief Requested:

Exceptions to Building Lot Control Residence Districts:

Section 2516 of the Zoning Regulations allows the construction of two or more principal buildings or structures on a single subdivided lot if the enumerated conditions are met. This special exception is required because the new street and the new mews (alley) have not yet been dedicated. Therefore, for an interim period, most of the lots do not front on a public way. Upon these dedications, each lot in the project would have public right-of-way frontage.

Front Yard Requirement

Subsection 2516.5(b)- relating to the front yard requirement states:

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:

. . .

(b) Open space in front of the entrance shall be required that is equivalent either to the required

rear yard in the district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater; ...

The proposed development would provide front yard setbacks for all the lots that require such setbacks. However, the front yards of the units located on the mews (Ellen Wilson Place) would be 13 feet rather than 15 feet deep, and the ones located on the south side of the new street (I Street) would be 11 feet rather than 15 feet deep.

Ingress/Egress/Turning Area Requirements:

Subsection 2516.6(b) and (c) state:

2516.6 In providing for net density pursuant to Subsection 2516.11, the Board shall require at least the following:

. . .

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five (25 ft.) in width, but need not be paved for its entire width;

. . .

(c) If there are not at least two (2) entrances and/or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.); . . .

With regard to Subsection 2516.6(b), vehicle ingress and egress to all the proposed dwelling units on the mews would be by means of a paved 16-foot wide right-of-way which would be dedicated as a public alley. Both the Departments of Public Works and Fire and Emergency Medical Services have indicated that the width is adequate for all vehicular traffic. Combined with a 7-foot wide parking area on both sides of the mews, a 30-foot wide paved vehicular area would be created. This total width could not be increased without adversely affecting the width of the parking spaces in front of the mews dwellings or the sidewalks which serve them.

A special exception from Subsection 2516(c) is required only because the mews would be a one-way street rather than two-way. However, all the dwelling units located on the north side of the mews would be accessible from the rear by means of an existing

public alley, and all units on the south side of the mews would be accessible by a means of a private driveway, which would be subject to a recorded easement or right-of-way. As a result, two means of ingress and egress (and adequate access) would be provided for all units.

Location of Parking Spaces

Section 2116 sets forth the requirements for the provision of parking spaces for the individual lots. Generally, this provision requires all parking spaces to be located on the same lot as the structures they are intended to serve. These spaces are to be located within a garage or carport or on an open area in the rear yard or side yard.

If the parking spaces are not located on the particular lot, under this Section of the Zoning Regulations, the preferred location would be on adjacent lots or lots separated only by an alley from the lot where the structure is located.

With regard to these requirements, each residential structure in the project would be provided with the required parking spaces, although some parking spaces cannot be provided on the individual lots they would serve. Those lots which are landlocked, or which abut another lot in an intersection of two public streets, cannot provide the required parking spaces on site. However, these required parking spaces would be provided within the development (on the same record lot) and within the proximity of the associated theoretical lot.

Child Development Center

The applicant maintains that the proposed child development center would comply with all the provisions promulgated in Section 205. It is the applicant's contention that the facility would meet all applicable District of Columbia code and licensing requirements It would not generate any objectional traffic conditions or create an unsafe condition for picking up and dropping off children. Parking would be provided for users of the facility as follows: four spaces on site and four spaces nearby on other theoretical lots. An outdoor play space would be provided adjacent to the building. The hours of operation of the Day Care Center would be Monday - Friday, 6:00 a.m. to 8:00 p.m. The maximum number of children enrolled at the child development center would be 24, with a maximum staff of five.

Community Center.

The applicant stated that the proposed community center meets the provisions in Section 209 of the Zoning Regulations. The proposed two-story community center would be constructed at the

intersection of Sixth Street, S.E., Virginia Avenue, S.E. and the new street (proposed I Street, S.E.). The proposed structure would be designed as an identifiable neighborhood facility, such as is found elsewhere on Capitol Hill. Its siting, scale, size, orientation and materials would reflect its function and distinguish it from the new townhouses, while maintaining a compatible character with the fabric of the historic district. The community center would house the child development center, management offices, sales office and a community services office and would contain approximately 5,600 square feet of floor space.

The proposed community center would contain a meeting room, to be used by the residents of the Ellen Wilson development. It would accommodate approximately 58 persons.

Because of its location and use by residents of the development, it is the applicant's contention that the center would not become objectionable due to noise or increased traffic.

The hours of operation of the proposed community center and its offices would be as follows:

Management:	Monday - Friday 9:00 a.m. to 5:00 p.m.
Sales Office:	Monday - Friday 10:00 a.m. to 6:00 p.m. Saturday - 10:00 a.m. to 5:00 p.m.
Community Services:	Monday - Friday 3:00 p.m. to 8:00 p.m. Saturday - 10:00 a.m. to 6:00 p.m.

Area Variance

Subsection 404.1 requires a rear yard depth of not less than 15 feet in an R-5-B zone district. The proposed dwellings on Ellen Wilson Place (the mews) would not have the required rear yards but, instead, would have side and front yards. As explained by the applicants' architect, the practical difficulty in meeting the requirements of subsection 404.1 arises from a number of factors:

A. Unusual size and dimensions of Square 878:

Because of the size and trapezoidal dimensions of Square 878, some of the houses on the mews will not have rear yards. To provide rear yards in some instances would

eliminate room for access and parking, and moving some of the houses to create rear yards would interfere with the existing townhouses.

B. Policies of the Historic Preservation Review Board: The applicant maintains that certain limitations are placed on the project because of the policies of the HPRB.

C. Mandate of U.S. Department of Housing and Urban Development:

The applicant stated that HUD requires that at least 134 public housing units be replaced in the proposed redevelopment.

D. Department of Public Works and D.C. Code Requirements: The applicant stated that DPW and the D.C. Code have requirements related to the minimum width of the new mews. These requirements impact on the applicants' ability to provide rear yards in compliance with the Zoning Regulations.

Subsection 405.9. sets forth the minimum side yard requirements for the project:

A side yard variance is needed for Lots 36, 45 and 93. With respect to Lot 36, the dwelling on Lot 36 does not provide the necessary side yard width because it is set back 1.34 feet (not eight feet) in order to allow for sheeting and shoring which is required along the west property line. However, a side yard of eight (8) feet, as required, is provided along the east property line. The properties to the west of Lot 36 are at a considerably different grade. Therefore, this variance is required because of the unusual condition of the grade at this location. The applicants stated that there will be no adverse impact because adequate light, air, space and privacy will be provided on the east side of the dwelling and in the rear yard.

As to Lot 45, a side yard variance of 2.8 feet is needed at the front of the lot only because the lot is trapezoidal due to a bend in the new street. Notwithstanding this variance, the side yard averages 9.8 feet, in excess of the required eight (8) feet. With respect to Lot 93, which contains the community center and the child development center, a side yard of four (4) feet is provided. This size of the side yard is necessary to accommodate a sidewalk for the drop off and pick up of children at the day care center (i.e., for safety reasons) and for general pedestrian circulation on the site. This lot is trapezoidal due to the angle of existing Virginia Avenue and the requirement, imposed by DPW, that the new street (I Street) be perpendicular to 6th Street at the point where they connection. The applicants maintain that this side yard variance creates no adverse impact because Lot 93 is quite large and provides adequate light, air, and open space.

spaces would be provided off-street (behind Lots 79-92) and along the new I Street for use by staff and visitors.

The Proposed Dwelling Units and Site Plan

The applicant's architect testified that there were eight design goals for the site plan: (1) accommodation of the architectural program, including the HUD mandate that 134 units be built, maximization of the number of fee simple units, and inclusion in the plans of a community building; (2) maximization of security and safety for the residents; (3) promotion of a sense of community and personal investment for the residents of Ellen Wilson; (4) incorporation of a variety of unit sizes and shapes; (5) construction of all units to the same design standard; (6) integration into the surrounding community; (7) minimization of the effect of the adjacent highway on the quality of life within the community; (8) integration of the four existing row houses into the site development.

The new townhouses would consist of single- and two-family buildings and would vary in height from two to four stories and in width from 17'-4" to 24', keeping with the range of building dimensions in the Capitol Hill Historic District. Buildings would be either rowhouses or semi-detached. All structures would be oriented toward public space - either an existing street, the new public street or the mews. Materials, textures, colors, architectural details, projecting bays, stairs and roof forms of the flats and single family structures would be similar to those seen throughout Capitol Hill. Five unit types would be provided, each representative of an existing Capitol Hill dwelling type, in order to provide architectural diversity within the Ellen Wilson Community, as well as further the goal of blending with the surrounding Capitol Hill neighborhoods.

In order to facilitate safety, the site plan would contain no dead-ends or cul-de-sacs, so that pedestrians would not feel trapped. In addition, all streets would be double-sided.

The applicants' architect stated that although some synthetic building materials would be used, the predominant building material would be brick. It was further explained that synthetic materials would be included in the construction of the dwelling units, as seen throughout Capitol Hill, to create a variety of fronts to the dwelling units. Finally, synthetic materials would be used on the rears of buildings, as is common on Capitol Hill.

When questioned whether it would be possible to put fewer units on the site (placing the remaining replacement units in other areas of the city), the applicants' architect responded that to do so would prevent the site plan from blending in with the surrounding blocks, and from a design point of view, would prevent a

community feeling. It was explained that in designing the site plan, the architect attempted to avoid any gaps, thus creating a community which complements the surrounding units. That is, the architectural design of the units has been kept consistent with the placement of buildings against one another, as is seen on surrounding Capitol Hill streets.

Landscaping, Fencing and Site Lighting

The applicants' landscape architect testified about the landscape design for the Ellen Wilson Redevelopment project.

He stated that the goal of the landscape design of the Ellen Wilson Redevelopment proposal is to fit naturally into the fabric and blend in with the character of the surrounding Capitol Hill neighborhood.

Lighting would be provided by carefully placed Martha Washington globe lights matching those found throughout Capitol Hill. Street trees, including maples and little leaf lindens, would be located so as to provide shade along the public streets. These street trees would also provide an element of unity throughout the site and knit it into the existing character of the surrounding neighborhood. Trees would be selected from the D.C. street tree master plan.

Brick sidewalks, in herringbone pattern, would parallel the streets and physically tie the site to the adjacent 6th and 7th Streets.

The front gardens which face the public streets would be surrounded by 32-inch high decorative iron fences, which are commonly seen around Capitol Hill. Front gardens themselves would be individually designed for each house, using a simple palette of trees, shrubs and ground covers. The management staff of the Cooperative would be responsible for the upkeep of front gardens, while the residents would be responsible for the upkeep of side and rear gardens, which would require little maintenance.

A collection of evergreen trees and screen plantings, shrubs and ground covers would be planted so as to create a screen from the noise and traffic of Virginia Avenue. The existing street trees (red oaks) on Virginia Avenue would remain and missing trees would be replaced.

Private yards would be divided by six foot high wood fences, each of which would have a gate access to the private parking areas of the site. Private yards would be accessed through the houses by either a spiral stair from the upper unit, or an on-grade access from the lower unit. Each yard would contain a simple selection of surface materials, including a bluestone terrace, stepping stones

leading to the gate, a lawn area and small flowering trees or groupings of shrubs.

Planted parking islands containing large shade trees, shrubs and ground cover plantings would be incorporated into the private parking areas to soften the look of the paving and cars. Martha Washington globe lights would be used to provide effective lighting for pedestrians.

Parking

The applicants' architect testified about the parking conditions and the applicants' traffic engineer submitted a report related to the traffic conditions and parking, in the vicinity of the site.

The report noted the current conditions at the site. On-street parking (two-hour residential permit) is currently available on both sides of Sixth, Seventh and G Streets. Although there are no posted parking restrictions, vehicles normally are not parked on Virginia Avenue.

The site plan provides approximately 163 parking spaces for the residential units (more than one per unit) and the community center. This is approximately 75% more than the amount that the D.C. Department of Public Works has found necessary for this type of land use and 30% more than current car ownership in the surrounding area. On-site parking would consist of 121 residential spaces and four spaces for the community center. In addition, 38 new parallel parking spaces would be provided on the new I street.

It is the opinion of the applicants' traffic engineer that the proposed on-site parking should be adequate for all of the residents as well as their guests in normal circumstances, and that there should be no need to use on-street parking on any of the surrounding streets.

Residents and employees would be issued parking stickers allowing them to park on-site. All vehicles that do not display resident parking stickers would be towed. Enforcement would be part of the management duties and would ensure enough parking for both residents and employees.

Eight parking spaces would be provided at or near the community center: four spaces on the community center site and four spaces in the private on-site parking areas. Three guest (i.e., visitor) parking spaces would be clearly marked for visitors to the sales office. Maintenance and grounds staff would park elsewhere in available spaces on-site. Any sub-contractors would be told where to park by management when on site. This would not create a parking problem as they would be on site generally during the day

and could park in available parking spaces. Any after hours sub-contractors (i.e., cleaners for the day care center) would be able to park in spaces designated for the manager or sales office.

As it is expected that all residential meetings would be held in the evenings, and that all residents would walk to the community center, no parking spaces would be necessary for meeting room activities.

In a memorandum dated April 5, 1996, DPW stated that the provision of 121 parking spaces and 35-40 new on-street parking spaces would be adequate to meet parking demand with little or no spillover into surrounding neighborhood streets.

Traffic:

The applicants maintain that the Ellen Wilson redevelopment would have no adverse impact on traffic in the neighborhood. The applicants' traffic engineer submitted a report related to the traffic conditions in the vicinity of the site.

The report noted the current conditions at the site. The site is currently served by 6th Street and 7th Street, both minor collectors; G Street, a local street; and Virginia Avenue, a major-collector service road for the Southeast Expressway. The intersections of Virginia Avenue with 6th Street and with 7th Street are controlled by two-phase traffic signals operating on 80-second cycles.

The intersection of 6th Street and G Street is controlled by stop signs for G Street. The intersection of 7th Street and G Street is controlled by 4-way stop signs.

Current peak hour traffic operates at the highest level of service ("A").

The site plan would restore the character of the public streets that bordered the site prior to 1940, and would add a new mews, resulting in efficient internal circulation.

The new street, which would be built in accordance with D.C. standards and requirements, would run parallel to Virginia Avenue, turning slightly to meet 6th Street at a 90 degree angle. The mews would be designed to look like a street and not an alley, with parking on either side of the street.

Based on many measurements of trip generation by residential units in the District of Columbia, it is expected that the new Ellen Wilson Dwellings would produce approximately 0.4 trips per unit during each peak hour, predominantly outbound in the morning

and inbound in the evening. Based on these estimates, 154 units would generate the following peak hour trips:

	In	Out
AM Peak Hour	6	56
PM Peak Hour	50	12

These additional trips would not change the current "A" level of service at any of the four intersections.

In a memorandum dated April 5, 1996, DPW stated that after reviewing the proposal with regard to trip generation, it agreed with the applicant's traffic report that the 62 vehicles which would be generated by the project during the morning and evening peak hours would have a negligible impact in terms of capacity and level of service in the area road network.

Proposed Provision for Utilities at Ellen Wilson

The applicants civil engineering expert testified about the proposed provision of utilities of Ellen Wilson. Currently, the site is surrounded by existing water and sewer facilities. The plans would abandon all but one interior sanitary facility, which would be rerouted.

The Office of Planning (OP), by report dated April 10, 1996 and through testimony at the hearing, recommended approval of the application. OP noted the proposed use of the site. OP stated that the area surrounding the site is characterized by primarily residential uses (e.g., row dwellings, flats, apartment buildings, etc.) interspersed with small commercial establishments.

OP addressed the relief requested and expressed the opinion that the applicants have met the burden of proof relative to the zoning relief being sought in this case. OP stated that the area variances required in this case result from conditions that are inherent in the property. This creates practical difficulties for the appli-cants in the ability to reasonably develop the property for matter of right residential uses. The continued use of the site in a low-intensity residential capacity would not impact the surrounding neighborhood adversely in terms of noise, traffic, parking, environmental quality, or other objectionable conditions. Rather, the proposed development would return the site to a viable use that would benefit the neighborhood and would provide additional housing opportunities within the city. The proposed subdivision of the site and the residential construction that would follow would not impair the intent, purpose, and integrity of the R-5-B zone district regulations. Accordingly, the Office of Planning recommends approval of this application.

The Department of Public Works submitted a memorandum dated April 5, 1996. DPW stated that the applicant seeks special exceptions and variances to allow new construction of 62 two-unit flats and 30 single-family dwellings containing 154 new townhouse units on theoretical lots in the R-5-B Zone. The development will also include a Community Center with a child development facility and the construction of two new streets to be designed and built to DPW standards. The development will provide 121 parking spaces for the residents and four spaces for the Community Center.

DPW examined the proposal with regard to trip generation levels, parking adequacy, site access and circulation and the public financial investment needed to accommodate the proposal.

The Department has reviewed the applicants' traffic report and agrees that approximately 62 vehiclar trips will be generated by the project during the a.m. and p.m. peak hours. A review of the existing capacity of the street system leading to and from the site indicated that all adjacent intersections are operating at a good level of service during both the a.m. and p.m. peak hours. DPW is of the opinion that an addition of the 62 vehicles generated by this project will have a negligible impact in terms of capacity and level of service in the area road network.

DPW noted that the Zoning Regulations require 77 parking spaces for this project, however, the applicant will provide 121 parking spaces to accommodate residents and visitors to the new development. In addition, there will be 35 to 40 new on-street parking spaces on the new I Street created by the project. DPW is of the view that the proposed parking supply will be adequate to meet the parking demand of this project with little or no spillover into the surrounding neighborhood streets.

With regard to access and circulation, access to and from the development will be from Sixth and Seventh Streets via the new street designed and built by the applicant. The Department has no objection to the proposed traffic circulation pattern as shown on the site plan. However, as the project moves toward implementation, coordination with DPW will be required for street design and construction, street lighting, and water and sewer system connection.

With regard to public investment needed to accommodate this project, DPW noted that the cost of improving the new streets and installing new sidewalks will be borne by the applicant.

Therefore, this development will not require the expenditure of additional District funds for capital transportation improvements.

Finally, DPW concluded that the proposed subdivision will have no adverse impact from a transportation standpoint. Accordingly, the Department has no objection to the proposal.

Advisory Neighborhood Commission (ANC) 6B submitted a report and resolution dated April 9, 1996. The ANC stated that it has grave reservations about the economic structure of the Ellen Wilson development. The Commission believes that the fatal flaws in developments of this kind, as identified in numerous studies and statistics, have not been adequately addressed in this case. ANC 6B supports the concept of mixed income housing, but it believes that the success of the Ellen Wilson development is contingent on the conditions listed below being met. The ANC insists that these issues be satisfied.

1. The development team shall prepare a clear and comprehensive written statement for potential residents explaining what their obligations and rights are (e.g., How do they obtain credit to purchase shares in the co-op?). The statement shall include the co-op bylaws, the occupancy and subscription agreements, and the organization plan. These materials shall be prepared before any units are offered for sale.

2. There shall be a comprehensive and adequately funded long-term training plan to provide on-going training for residents and Board members. The development team shall sign a contract with an appropriately experienced organization to institutionalize and carry out this plan.

3. The development team shall meet the same bonding requirements (10% of the development construction costs held in a surety bond for three years) that would apply to any private project, i.e. the requirements that would apply if the District government were not involved in the project.

4. An expert panel shall confirm the adequacy of budget expectations and assumptions before the development team offers any units for sale/occupancy. The expert panel consist of three members, one selected by the development team, one selected by ANC 6B, and a third member jointly chosen by the first two.

The applicants noted that the issues raised by the ANC are not within the purview of the Board.

In its report dated April 15, 1996, the Capitol Hill Restoration Society noted the variance and special exception relief needed. It expressed no objection to the relief except that with regard to the special exceptions for the child development center and community center, the CHRS takes no position due to lack of information. The CHRS was of the opinion that the relief sought is minor and therefore not objectionable.

No one from the neighborhood appeared at the hearing to testify as a party in support of the application.

Three witnesses testified in opposition to the application.

The first witness is a Washington native who has been in business on Capitol Hill for many years. He does not believe that the mixed income housing plan will work and he expressed a concern that the proposed housing plan will just ammount to another low income housing project. He is concerned that the fee simple owners will not be able to acquire equity in their homes. Finally, he noted that many people and organizations in the neighborhood do not support the proposed project.

Another party in opposition to the application is a Board Member of the Sousa Neighborhood Association. She stated that the proposed plan will have a substantial impact on the community for a number of reasons. She believes that because of the financial structure, the plan will be unsuccessful if the applicants are unable to fill the fee simple houses with upper income homeowners. She stated that the fee simple homes may not be built because the plan is to build them only after buyers are found for those units.

This witness noted some inconsistencies between the applicants' words and their actions in some instances and she expressed a concern about her ability to trust them not to alter their plans in the future.

She urged the Board not to approve the relief requested until certain particulars are worked out, including the issues raised by the ANC.

The last opposing party to testify expressed similar concerns about the impact of the project on the community. She expressed a preference for traditional home ownership over the limited equity ownership provided for in cooperative housing. She argued that the limited equity owners would not have pride in the property, and there-fore would not take care of their units, again leading to the deterioration of the Ellen Wilson development. A related concern regarding the residents of Ellen Wilson was that too many people on welfare would reside in the development.

Responding to the concerns raised by the opponents, the applicants' representative testified that with regard to the fee simple units, they would lay the foundation for these units along with the other units but that the structure would be built after they have a pre-construction contract. He testified that the applicants had an independent firm conduct a market study and if changes needed to be made in the marketing plan to ensure the viability of the project, the participating parties will meet to make those changes. However, he believes that the market units

will be sold because there are people in the delineated income tier who will want to buy the houses.

The applicant stated that the plans submitted to the Board are only likely to change to meet the requirements of the HPRB.

At the end of the public hearing, the Board left the record open to receive the independent market analysis which was to be prepared for the DCHA, and a construction phasing schedule to determine whether fee simple units would be included in each phase of construction.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The shape of the site, its topography and location in the Capitol Hill area all create unique and exceptional conditions for the applicants in implementing the proposed plan under existing regulations.

2. It will not adversely affect the use of neighboring property to:

   a. Allow construction on theoretical lots;

   b. Allow front yard setbacks of 13 feet for units on the mews;

   c. Permit the mews to be a one-way street; or

   d. Locate some of the residential parking spaces off-site;

   e. Allow a community center; or

   f. Allow a child development center on site.

3. An adverse impact will not be created by:

   a. Allowing some units without rear yards since adequate side yards will be provided;

   b. Allowing substandard side yards on three of the lots;

   c. Allowing Lot 1 to exceed the allowable lot occupancy by 1.025 percent; and

d. Allowing some parallel parking spaces to be less than 9 x 19 in size.

4. The community center will not be organized for profit. It will be organized exclusively to promote social welfare in the Capitol Hill neighborhood where it is located.

5. The community center will not offer articles of commerce for sale.

6. The community center is reasonably necessary and convenient to the subject community and it is unlikely to become objectionable because of noise and traffic.

7. The applicant will meet all of the applicable code and licensing requirements for the child development center.

8. The child development center will not create objectionable traffic conditions or unsafe conditions for picking up or dropping off children.

9. There will be sufficient off-street parking spaces provided at the center to meet the reasonable needs of teachers, other employees and visitors.

10. The child care center will be located and designed so as not to create objectionable impacts on adjacent or nearby properties due to noise, activity or visual or other objectionable conditions.

11. The play area will not be located off site.

12. The conditions to approval of this application recommended by ANC 6B are outside of the purview of the zoning regulations and outside of the jurisdiction of the Board.

13. Based on the applicants' traffic report and the DPW report, the proposed development will have no adverse impact from a transportation standpoint.

14. The market study and construction phasing plan were requested by the Board and submitted by the applicants to address some of the issues raised by opponents to the application. The construction phasing schedule revealed that the simple units are to be built along with the co-operative units in various phases of construction. However, the concerns raised by the opposing parties, including the proposed financial plan, the resident profile, the mixed-income resident population and the ability to attract residents from the higher income brackets, the cooperative homeownership structure, the ability to sell the fee simple units and concerns as to whether the fee simple units would be

constructed are matters not within the purview of the zoning regulations or the jurisdiction of this Board. Therefore, the Board makes no further findings with regard to these matters.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicants are seeking variance and special exception relief to allow the construction of 62 flats, 30 single-family dwellings, a community center with a child development center and a utility building, in an R-5-B district. Granting of the special exception relief requires a showing through substantial evidence that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not adversely affect the use of neighboring property in accordance with the Regulations and Maps.

Based on the record before the Board, the Board concludes that the applicant has met this burden of proof. The Board concludes that the development plan, design and the proposed use of the site will be in harmony with the intent and purpose of the Zoning Regulations and Map. The Board further concludes that the proposed development will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

Granting of the variance relief, requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board is of the opinion that the applicants have met this burden of proof. The Board concludes that there exist unique and exceptional situations related to the site which create a practical difficulty for the owner in the effort to comply with the Zoning Regulations.

The Board concludes that granting the variance relief will not be of substantial detriment to the public good. The Board further concludes that approval will not tend to impair the intent, purpose or integrity of the zone plan.

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

1. The maximum hours of operation for the day care center shall be Monday through Friday, 6:00 a.m. to 8:00 p.m.

2. The maximum number of children shall be 24 and the maximum number of staff shall be 5.

3. A minimum of four spaces shall be provided for exclusive use of the day care center for purposes of dropping off and picking up children.

4. The proposed community center and child development facility shall meet all code and licensing requirements.

5. The exterior of the dwellings and community center shall be maintained in good repair in keeping with the other residences in the area. Landscaping of common areas and front yards shall be maintained in a neat and orderly manner and in a healthy growing condition.

6. The applicant shall establish and maintain a community liaison program consisting of representatives of the applicant and the ANC. The applicant shall conduct meetings of the community liaison members at least four times a year. Notice of the meetings shall be given to the ANC. The applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities.

VOTE: 4-0 (Susan Morgan Hinton, Herbert M. Franklin, Sheila Cross Reid and Laura M. Richards to grant; Angel F. Clarens not voting, not having heard the case).

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

FINAL DATE OF ORDER: September 23, 1996

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16116 of Michael and Elissa Baly, III, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable percentage of lot occupancy requirements [Paragraph 2001.3(a) and (c)], and a variance from the rear yard requirements (Subsection 404.1) for a second-story addition to a single-family structure in an R-3 District at premises 1561 35th Street, N.W. (Square 1274, Lot 222).

HEARING DATE: May 15, 1996
DECISION DATE: June 5, 1996

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject premises is located at the southeast corner of the intersection of 35th and Q Streets, NW. The site is in an R-3 district and is known as premises 1561 35th Street, NW.

2. The subject site is rectangular in shape. Its dimensions are fifty feet on the east and west sides and 39.72 feet on the north and south sides. The lot has an area of 2,224.35 square feet.

3. The site is improved with a row dwelling. The subject dwelling is a three-story brick structure with basement. The structure is located at the western end of a row of dwellings that face north on Q Street. The subject structure has its entrance facing 35th Street on the west. For zoning purposes, Q Street has been determined to be the front of the structure. The house was originally built in the early 1900s, as a free-standing dwelling. It was subdivided in the 1940s, and became a rowhouse.

4. There is access to and from the subject site through 35th Street on the west and through Q Street on the north. There is no alley access. The subject square is developed with rowhouses, apartment houses and single-family dwellings. At the southwest corner of the square is the Volta Bureau for the Teaching of Speech to the Deaf.

5. The neighborhood surrounding the subject site is zoned R-3 on all sides of the square. The Convent of the Visitation and Georgetown University are located immediately west of the subject site across 35th Street. There is a C-2-A strip located three blocks east of the site on Wisconsin Avenue. The subject area is part of the Georgetown Historic District.

6. While the original determination by the Zoning Administrator's office was that the building had a 40 percent lot occupancy requirement, the Zoning Administrator subsequently

determined that the building was a row house, and, as such, had a 60 percent lot occupancy requirement. The property already is at 61 percent lot occupancy; the proposed porch would continue the nonconformity, but would not extend it.

7. The Office of Planning (OP) by report dated May 7, 1996, recommended against granting the variance, largely based on two factors. The first was that it felt that there had not been a sufficient finding of practical difficulty. Second, while the Office of Planning report indicated that it did not see any adverse impact on the neighbors, and indeed found that the design was "superior", it felt that increasing the bulk on the property could harm the integrity of the zone plan, because it already had a lot occupancy much greater than that permitted in R-3 zones. However, OP indicated at the hearing that the report had been written before the Zoning Administrator had corrected the permitted lot occupancy from 40 to 60 percent.

8. The applicant testified about the level of traffic in the neighborhood. She pointed out that 35th Street is a major arterial serving the entire Georgetown community. It represents a major north-south connection, the only one west of Wisconsin Avenue which connects with the University, Georgetown Visitation, Ellington School and Holy Trinity Church and school. She also indicated that Q Street is an east-west connector, and that both Q Street and 35th Street are well-used bus routes.

9. The applicant testified that, because of the traffic on both streets, the noise and pollution levels are such that the family cannot open its windows. The family has two very young children, and wishes to provide a protected, private play area for them. She also indicated that the noise and dust levels will be considerably aggravated over the next several years, by Georgetown Visitation's recent decision to build two new large structures, immediately across the street from the Baly residence.

10. The architects for the project testified that, because of the noise and pollution, they concluded that the enclosure of the second story porch would be the only way to provide a play space and privacy area for the family.

11. As to the uniqueness of the property, the architects traced the development of the property over the years. It was initially built in the early 1900s as a single family, free-standing structure, with a rear and side yard, which were subsequently subdivided in the 1940s, eliminating the side yard and much of the rear yard. He testified that, unlike all the other houses on 35th Street, the subject property has no rear yard separated from the noise and pollution of the street by the dwelling. He pointed out that this was unique to houses in the immediate neighborhood.

12. The architects also testified regarding the practical difficulty inherent in a strict application of the zoning regulations. He corroborated the applicant's description of the noise levels along 35th Street, indicating that merely fencing off the paved area along 35th Street would not make a suitable privacy area and play space. The architects also pointed out that, although it appears from the outside that the house is quite large and would have existing space which could be used as a play area, a great deal of the internal space of the building is consumed by a u-shaped central stairway.

13. The applicant indicated that, in terms of practical difficulty, the family had considered using the second story porch, but the noise and pollution levels were still too high, and it was not safe for small children to play there without installing higher walls, which would in turn require a variance, and may not be able to win approval from the Fine Arts Commission. Responding to the Office of Planning suggestion that they use the paved driveway as a play area, the applicant pointed out that this would displace the family auto, which would then further exacerbate the shortage of on-street spaces in the rest of the neighborhood.

14. The subject property is within the historic district boundaries. The proposed addition has received approval from the Fine Arts Commission.

15. The architects testified that they used large amounts of glass in the proposed addition to minimize any appearance of bulk. They also testified that the walls of the addition exactly mirror the dimensions of the first level, and does not extend the non-conformity at all.

16. The single member district commissioner for the neighborhood from the Advisory Neighborhood Commission (ANC), testified that ANC2E voted unanimously to support the variance request. She explained that, while the ANC usually testifies in opposition to variances in the neighborhood, the proposed addition was in keeping with the scale and character of the neighborhood, and that she concurred that the traffic along 35th Street did necessitate a protected, privacy area.

17. There was no opposition to the proposed variance from any neighbors. A letter of support was submitted from the neighbor most directly affected.

18. Counsel for the applicant argued that no rear yard variance was actually needed, since Section 2001.3 of the Zoning Regulations provides that additions and enlargements may be made to nonconforming structures, providing that they meet three criteria. The first is that the structure conform to lot occupancy requirements, which is virtually the case here, since the existing

structure only exceeds the maximum lot occupancy by one percentage point. The other two criteria, that the addition conforms to use and structure requirements and that the addition may not extend the nonconformity, or create any new conformity, are both met in this case.

FINDINGS OF FACT:

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

1. The proposed addition does not increase the nonconforming lot occupancy.

2. The structure is nonconforming because it is one percent over the maximum lot occupancy of 60 percent.

3. The structure was built prior to the adoption of the current Zoning Regulations.

4. The Board disagrees with the opinion of the Office of Planning.

5. The nonconforming rear yard was created before the adoption of the current Zoning Regulations.

6. The Board credits the testimony of the applicant and their architects.

7. The Board agrees with the recommendation of the ANC.

8. The second story rear addition provides a 19-foot rear yard.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. 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 and purpose of the zone plan. The Board agrees with counsel for the applicant that a variance for lot size is unnecessary. However, a variance from the rear yard

is necessary since the addition does not meet the rear yard set back of 20 feet. The addition extends to the limits of the first floor which has a 19 foot rear yard.

The Board concludes that the applicant has met his burden of proof in evidencing a practical difficulty inherent in the property and unique to this site. The manner in which the lot has been subdivided has left this property as the only one in the neighborhood which has its yard area directly abutting on 35th Street, with no protection or privacy area from the traffic congestion, noise and fumes of the buses and other vehicles which use that street.

The Board further concludes that alternatives do not exist for providing a privacy area and play space for the children. If the applicants eliminate the paved driveway, it will not provide a private space, since it is directly abutting 35th street, and it will also exacerbate the parking shortage in the neighborhood. The existing porch, in its current unenclosed state, would appear to be a poor candidate from a safety standpoint, and the Board accepts the architects' argument that the interior stairwell consumes sufficient internal space that their is no other space with in the house which is suitable.

The Board further concludes that the variance can be granted without impairing the integrity of the zone plan, since the structure is not increasing the nonconformity of the structure.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the great weight to which it is entitled. Accordingly, it is hereby **ORDERED** that the application is approved.

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

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

FINAL DATE OF ORDER: October 1, 1996

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

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE

SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTSMENT

Application No. 15988 of the Irving Street Condominium Association, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable lot occupancy and floor area ratio requirements [Paragraph 2001.3 (a) and (c)] and a variance from the floor area ratio requirement (Subsection 402.4) for alterations, repairs and an addition to a four unit condominium building in a DCOD/R-5-B District at premises 1813 19th Street, N.W. (Square 132, Lot 210).

HEARING DATE: October 12, 1994
DECISION DATE: October 12, 1994 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject site, located on Lot 210 in Square 132, is in the Dupont Circle Historic District in Ward 2. It is bounded on the north by Swann Street, N.W., on the east by 18th Street, N.W., on the south by S Street, N.W., and on the west by 19th Street, N.W.

2. The Dupont Circle Historic District and neighborhood contain a variety of uses, including single-family rowhouses, flats, apartment units, offices, retail stores, hotels, embassies, chanceries, churches and schools. The Dupont Circle Redline Metrorail station and several Metrobus routes provide public transportation to the area. The development pattern of the area, easy accessibility to public transportation, and the area's proximity to downtown, provide a vibrant mixed-use community and an attractive neighborhood setting.

3. The site is level and rectangularly-shaped. The property is 20-feet wide and 96.04 feet deep, and has a total land area of 1,920.8 square feet. The building occupies about 77 percent of the site. The remaining portion of the site accommodates two parking spaces and a walkway. A 10-foot wide public alley abuts the site at the rear.

4. The site is zoned DCOD/R-5-B. The R-5-B District permits matter of right development of general residential use including single-family dwellings, flats, and apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8, and a maximum height of 50 feet. The Dupont Circle Overlay District (DCOD) does not affect the instant application.

5. The applicant is requesting area variance relief under Subsections 3107.2 and 402.4 and Paragraph 2001.3(a) and (c) of 11 DCMR for alterations, repairs, and an addition to a four-unit condominium building.

6. This property is also the subject of BZA Appeal No. 15754 of Paul Reneau, challenging the issuance of a certificate of occupancy No. B-162715 on April 27, 1992, by Edgar T. Nunley, Chief, Zoning Review Branch, to the effect that the certificate was approved as to zoning despite the fact that illegal building additions were made beyond the scope of Building Permit No. B-352782 for a four-unit apartment building in a DCOD/R-5-B District at premises 1813 19th Street, N.W. (Square 132). It was the appellant's contention that an addition had been made to the fourth floor of the structure and that before a valid occupancy permit could be issued on the property, the owners of the property at that time, Steven and Lori Esrig, would need to seek relief from the Zoning Regulations. The appellant contended that the Zoning Administrator erred in failing to require the owners to seek variance relief from the Board of Zoning Adjustment.

7. The appellant made note of other documents related to the case, that should have affected the Zoning Administrator's decision.

8. By order dated September 8, 1993, in Appeal No. 15754, the Board granted the applicant's appeal and therefore reversed the decision of the Zoning Administrator.

9. The Board, in granting the appellant's appeal, believed that whatever the accurate characterization of the alleged addition and alterations made to the subject building which went beyond what was approved as specified under building permit No. B352782, the Zoning Administrator had an obligation to require compliance with the Zoning Regulations and to refer the owners to the Board if the rules were not met. The Board concluded that failure to do so was an error and therefore, Certificate of Occupancy No. 162715 should not have been issued on April 27, 1992.

10. The Board noted that the revocation was a "very difficult, a very emotional case" and strongly suggested to and advised the owners that a variance application be filed hence the submission of the subject application.

11. Based on the Zoning Administrator's calculations, the building contains 4,093.7 square feet of which 4,017.5 square feet existed prior to the renovation. The discrepancy at issue in this application concerns the difference of 76.2 square feet, most if not all of this "excess" FAR is attributed to an "attic mezzanine located in the third floor unit of the property, which provides access to the building's roof top. The report of the Office of Planning notes that because of the present nonconformity, the building's other excess FAR of approximately 560 square feet which was grandfathered must now be accounted for. Therefore, in order for the building to come within FAR compliance, 636.2 square feet of habitable space would have to be eliminated.

12. This project does not meet the lot occupancy requirement of the Zoning Regulations. The building is allowed to occupy 60 percent of the 1,920.8 square-foot lot, or 1,152.4 square feet. The existing building is 1,344.5 square feet, exceeding the allowable lot occupancy by 192 square feet. Thus, the applicant is also requesting variance relief from this condition.

13. The project architect testified that the renovations affecting the attic and the roof were as a result of a large fire which caused extensive damage to the building in 1982. After the fire, and long before the developers purchased the property, the roof was constructed over the party wall on each side of 1813 19th Street, which eliminated all rated separations an exacerbated the original fire hazard in violation of applicable building codes. The project architect testified that as part of the renovation, the roof was brought into fire code compliance which required the rebuilding of part of the roof as well as the addition of parapet wall extensions on the north and south property lines. It is with respect to these additions and modifications that this variance relates to.

The project architect testified that it would not be possible to reconfigure the building to reduce the living area by 76.2 square feet much less, 636.2 square feet. Additionally, the project architect testified that the only area subject to any reconfiguration to reduce the FAR, would be the removal of the attic mezzanine on the third floor apartment which would also necessitate the removal of the roof.

14. The project architect testified that such demolition work would cost on the order of $50,000 and would necessitate the evacuation of the building for three to four months.

15. The applicant unit owners of the Irving Street Condominium Association testified that they relied on the original Certificate of Occupancy posted prominently on the premises when they purchased the condominium units.

16. The applicant unit owners testified that the purchase of the condominium was a major investment for each of them; and that each of the owners had placed a substantial amount of their life savings into the purchase of the units.

17. The applicant unit owners testified that in the event of demolition and evacuation, they would be forced to sell their apartment units, and move, resulting in a tremendous loss. One of the unit owners, further testified that he had severe heart disease, and any evacuation could be life threatening.

18. The applicant unit owners further testified that their financing was imperiled because of the zoning status, as such status constituted a violation under their loan documents.

19. Testimony was also presented that the uncertain status of zoning presented a potential title problem, such that any sale of the property would produce significant economic losses not covered by title insurance.

20. The owners of the third floor unit, testified that in the event the attic mezzanine was demolished, the reconfigured apartment would no longer serve their needs, and they would be forced to sell their home. Testimony was also presented that in the event that the attic mezzanine was removed, the apartment would loose approximately $100,000 in value. This figure was arrived at as the reconfigured apartment would be comparable to another unit in the building, which was sold at $100,000 less than the third floor unit.

21. The Office of Planning (OP), by its memorandum dated October 5, 1994, and by testimony at the public hearing, recommended approval of the application, if the Board determined at the public hearing that there was a practical difficulty in this case. At testimony at the public hearing, the Office of Planning stated that based on the facts before it, on a review of the record in BZA No. 15754, and in conversations with the Zoning Administrator, it could not make a determination as to the existence of a practical difficulty.

22. On cross examination, the OP admitted that it had not considered the practical difficulty to the unit owners of the condominium -- the applicants in the present case -- but was under the mistaken assumption that the applicant was the developer of the property.

23. The Metropolitan Police Department (MPD), by its memorandum of August 25, 1994, stated that the department did not oppose the subject application. The MPD further stated that the change proposed by the applicants did not appear to affect the public safety negatively in the immediate area or generate an increase in the level of public services provided in the area.

24. The Department of Fire and Emergency Services (DFES), by its memorandum dated August 26, 1994, had no objection to the application.

25. The Advisory Neighborhood Commission (ANC) 2B, by its letter of September 15, 1994, unanimously supported the application.

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26. A resident of 1836 Swann Street, N.W., a neighbor of the subject property for over 30 years, testified that it would be unjust not to grant the variance. He stated further that prior to the renovations, the building was in a dilapidated condition and was used as a rooming house. The developers had spent a considerable amount of money in improving the building, and in replacing the temporary roof placed on the building after a fire destroyed the building in the early 1980s. He further testified that the variance at issue did not concern alterations visible from the street.

27. Part-owner of the building at 1819 19th Street, N.W. in the neighborhood opposed the application. His argument was that any additional floor area ratio (FAR) to the application was technically illegal.

FINDINGS OF FACT:

Based upon the Court's rulings in de Azcarate vs. D.C. Board of Zoning Adjustment, and Beins v. District of Columbia Board of Zoning Adjustment, the Board of Zoning Adjustment finds the following facts in the record to be relevant to the issue of "an extraordinary or exceptional situation or condition":

(a) The developer of the property received both preliminary and final approvals for the Property from zoning officials of the District of Columbia Government. These included investigations by zoning officials prior to the issuance of the certificate of occupancy, the stamping of the construction documents as approved for zoning, and the issuance of all building permits on October 2, 1991, and a certificate of occupancy on April 27, 1992. Additionally, the Historic Preservation Review Board recommended approval of the project on June 19, 1991.

(b) Upon receipt of the certificate of occupancy, the developer marketed the property for sale as condominium units. The purchasers of these units relied on the certificate of occupancy in purchasing and obtaining financing for these units.

(c) The applicant unit owners were not aware of any circumstances warranting the invalidity of the certificate of occupancy when they purchased the units.

(d) The applicant unit owners acted in good faith, justifiably relied on the actions of the D.C. officials as acting on the issuance of Certificate of Occupancy No. B162715, made expensive and permanent improvements to their property.

(e) The revocation of Certificate of Occupancy No. B162715 on

September 8, 1993, in Appeal No. 15754, stayed for a reasonable time, however, to allow the applicant owners to apply for area variances.

(f) On October 5, 1992, a Board of Zoning Adjustment (BZA) appeal was filed by Paul Reneau with the city alleging that a certificate-of-occupancy (C of O) was issued in error for the subject property. The appeal, Application No. 15754, was heard by the Board on January 27, 1993.

The appellant alleged that additions and alterations were made to the subject building which went beyond what was approved under the project's building permit. Specifically, variance relief from the floor area ratio (FAR) requirements of the Zoning Regulations should have been sought prior to the city's issuance of a building permit and certificate of occupancy for the subject building.

On September 8, 1993, the Board decided the case and concluded that the project's originally submitted plans did not accurately delineate all of the modifications that were to be made to the project. The Board, thereafter, revoked the Certificate of Occupancy.

2. Based upon the evidence and testimony, the Board finds that the strict application of the Zoning Regulations would impose a practical difficulty since it would require at least one of the applicant unit owners -- who purchased the unit in good faith reliance on the existing Certificate of Occupancy -- to demolish or lose a portion if not all of a unit's habitable space.

3. The Board finds that the applicant unit owners purchased their homes with a valid certificate of Occupancy in place. If the variance is not granted, each unit owner faces an extended evacuation, as well as an economical loss in the inability to sell at market rate a unit in a building not in compliance with the zoning regulations. Additionally, one unit owner suffers from heart-disease, the street attendant any evacuation or economic loss could be life-threatening.

4. With respect to the Office of Planning's report and recommendation, the Board notes that the Office of Planning, by its own admission at testimony at the hearing, did not consider the practical difficulty from the perspective of the applicant unit owners, but only from the perspective of the developer. Accordingly, the Board disagrees with the Office of Planning's decision not to reach a determination with respect to practical difficulty.

5. The Board agrees with the recommendation of Advisory Neighborhood Commission 2B.

6. Based upon the evidence and testimony, the Board finds that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The renovation of the building is an improvement over the prior existing condition of the property; and the excessive FAR is not noticeable from the street.

7. The Board also finds that great harm to the public good will occur from a policy standpoint if the applicant unit owners are forced to demolish any portion of the building to come into compliance with the FAR.

8. As to Mr. Reneau's argument that the excessive FAR is technically illegal, the Board finds that the building was provided with a certificate of occupancy, and that the applicant unit owners are before the Board having fully relied on that certificate of occupancy seeking variance relief relating to the impermissible FAR. Given the statutory and legal standard for an area variance, the issue of whether or not the excessive FAR is technically "illegal" is immaterial to this application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing that the site is affected by extraordinary or exceptional situations or conditions, that the strict application of the Zoning Regulations will result in practical difficulties to the applicants and that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant has satisfied these tests for an area variance. The property is affected by extraordinary or exceptional conditions relating to its history. The D.C. Court of Appeals held in de Azacarte v. D.C. Board of Zoning Adjustment, 388 A.2d 1233 (D.C. 1978), that the extraordinary or exceptional condition which is the basis for a variance need not be inherent in the land, but can be caused by subsequent events extraneous to the land itself. As applied to this application, the Board concludes that these events include the city officials' issuance of the building permits and the Certificate of Occupancy, the reliance of the applicant unit owners on that Certificate of Occupancy in purchasing their units, the economic prejudice to applicant unit owners would suffer in the event this variance is denied, and that to at least the one unit owner with heart disease, the denial of the variance and the attendant consequences could be life threatening. Further, on this basis,

the applicant unit owners reasonably proceeded in good faith in purchasing their units.

The Board concludes that there are practical difficulties as a result of the exceptional conditions. Strict application of the Zoning Regulations would require demolition of some or substantial portion of the building, all at substantial cost. The practical difficulty also involves the applicant unit owners' good faith and detrimental reliance on assurances and actions of the officials at the Zoning Administrator's office and the economic prejudice to the applicant unit owners if the regulations are strictly applied.

The Board further concludes that the building is consistent with the purpose and intent of the DCOD/R-5-B District and can be granted without substantial detriment to the public good. The Board believes greater harm will result if the applicant unit owners are required to demolish any part of the building to conform to the applicable floor area ratio (FAR).

The Board finally concludes that the unit owners acted in good faith relying on actions of the officials at the Zoning Administrator's office in purchasing their units, and seeking necessary renovations, and that the equities strongly favor the applicant unit owners of the Irving Street Condominium Association.

The Board afforded ANC-2B the "great weight" to which it is entitled. Accordingly, it is hereby **ORDERED** that the application be **GRANTED.**

VOTE: 3-0 (Craig Ellis, Susan Morgan Hinton and Angel F. Clarens to grant; Maybelle Taylor Bennett and Laura M. Richards not present, not voting, not having heard the case).

This order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on October 11, 1996. The filing deadline for exceptions and arguments was November 1, 1996, and responses were due by November 15, 1996. No party to this application filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case.

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

FINAL DATE OF ORDER: November 27, 1996

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED,

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15837 of George Washington University, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 210 for further processing of an approved campus plan, or, in the alternative, special exceptions under Sections 210 and 411 for further processing of an approved campus plan and a roof structure, and a variance from the lot occupancy requirements (Subsection 403.2) to allow an addition to an existing University building containing a student center, offices, theater, dining room and dormitory in an R-5-D District at premises 800 21st Street, and 2100 Eye Street, N.W. (Square 77, Lots 5, 7 and 58).

HEARING DATES: July 21, 1993; September 22, 1993; January 12, 1996 and January 26, 1994

DECISION DATE: March 2, 1994 and April 6, 1994

ORDER

PROCEDURAL HISTORY: At the request of both Advisory Neighborhood Commission (ANC) 2A and the applicant, the public hearing scheduled for July 21, 1993 was postponed and rescheduled to September 22, 1993 to allow further discussion between the two groups. At this hearing, the relief requested was for a special exception pursuant to Section 210 of the Zoning Regulations. The hearing scheduled for September 22, 1993 was also postponed at the applicant's request and the Board granted permission to readvertise the case in conformance with the issues raised by the ANC. The ANC claimed that the advertisement for the case was deficient in that it did not include either special exception relief for the roof structure pursuant to Section 411, or variance relief for lot occupancy. The applicant tendered the determination of the Zoning Administrator as proof that their original advertisement was proper. Nevertheless, to protect the record, the applicant agreed to readvertising the case.

The hearing was readvertised for January 12, 1994, however, since proper notice of the alternative variance and special exception relief published in the D.C. Register (required by Section 3317.3) was deficient by seven days, the hearing was continued to January 26, 1994. At the hearing, ANC 2A raised a further procedural issue, claiming that additional variance relief was required from the prohibition on additions to nonconforming structures, and that this variance relief was not advertised. Applicant offered proof of BZA approval of the 85.5 percent lot occupancy in Application 9314-9315 issued in 1967 to show that the structure is not a nonconforming structure. At its March 2, 1994 public meeting, the Board deferred its decision on the application in order to receive, inter alia, advice from the Office of Corporation Counsel regarding whether this case should be decided on the basis of the original relief requested, or in the alternative, and whether this was a nonconforming structure requiring additional variance relief. Corporation counsel issued a report stating that the second

advertisement, requesting relief in the forms of two special exceptions and a variance was the proper procedure by which the BZA is to process this application. Corporation Counsel further concluded that this structure was not a nonconforming structure, and therefore did not require additional relief.

SUMMARY OF EVIDENCE:

1. The subject site is located in Square 77 in the center of the George Washington University campus, an area designated in the campus plan for educational/mixed-use buildings. It is surrounded on three sides by University-owned property. Across 21st Street to the east of the site is a faculty parking lot and commercial property owned by the University known as "Red Lion Row." University-owned commercial property is also located across I Street, N.W., to the north. To the south of the subject site is the University's Lisner Auditorium and Gelman Library. To the west of the subject site in Square 77 on H Street is Crawford Hall, a George Washington University dormitory. On I Street, N.W., the Marvin Center abuts the privately-owned West End Apartment Building.

2. Square 77 is located in the R-5-D zone district which permits a building height of 90 feet and a lot occupancy coverage of 75 percent. The 1910 Height Act limits the building height on the subject site to 80 feet. The maximum floor area ratio for buildings in the R-5-D District is 3.5. However, pursuant to the GWU Campus Plan approved by the Board of Zoning Adjustment, the University is permitted a 3.5 aggregate FAR for all its campus buildings.

3. The site of the subject property on Lots 57 and 58 has been subdivided into one new record known as Lot 60. The site is improved with the Marvin Center at 800 21st Street, N.W., (former Lot 58) and Adams Hall at 2100 I Street, N.W. (former Lot 57).

4. The five-story Marvin Center serves as the University student center, and includes offices, a theater, a bookstore, dining halls, meeting space and recreational facilities. It contains approximately 219,653 square feet of gross floor area. The additional building is located on the west side of 21st Street, N.W., with additional street frontage on H Street to the south and on I Street to the north. A 30-foot alley abuts the rear of the building in the center of the square. The entrance to the building is currently set back approximately 90 feet in a court yard on 21st Street. A second entrance is located on H Street, N.W., with fire exits from the theater on I Street.

5. George Washington University proposes to renovate and expand the existing Marvin Center by construction three additions to the building. New construction within the court yard at the south elevation will provide an entrance lobby into the food court

directly from H Street. This new entrance lobby will be two stories in height, and will provide a terrace at the third floor level, off the reception room. On 21st Street, a new two-story entrance lobby, with full height interior atrium, will be created in the present courtyard by constructing new exterior walls at the building line. There will be small lounges and meeting areas at the third through fifth floors, above the entrance lobby and around the atrium. At I Street, two floors will be added above the theater (including double height space at the third level) to increase the height of the I Street elevation from two stories to five stories. Additional meeting and student activity space will be provided in the two-story addition above the existing theater. The additions will not increase the overall height of the building. Finally, the addition of a small canopy connection between the Marvin Center and Adams Hall to provide covered access will render the two buildings as one for zoning purposes, thus bringing Adams hall into the overall calculations.

6. The improvements are part of an overall renovation of the Marvin Center. Retail, food and student services on the ground floor and student activity and recreational areas on the upper floors will be upgraded and modernized. Administrative offices serving the needs of the student body at the fourth floor will also be renovated.

SPECIAL EXCEPTION UNDER SECTION 210

7. The University previously filed and received approval for a long range plan for developing the campus as a whole (the 1985-2000 Campus Plan) in BZA Order 14455, as amended. The subject site is located in an area shown on the approved Land Use Map in "The George Washington University Campus Plan for the Year 1985 through the Year 2000" as being designated for "Educational Mixed Use." "Educational Mixed Use" is defined as classrooms, laboratories, libraries, student activity facilities, faculty offices, parking, parks and open space, and related support functions.

8. Pursuant to the George Washington University Campus Plan approved in BZA Order 14455, dated February 25, 1988, and as amended with conditions on June 29, 1988, the Board had set forth certain additional requirements for further processing of specific buildings within the George Washington University Campus Plan area which must be met. The applicant contended that it complied with and met the requirements contained in BZA Order 14455.

9. The applicant offered evidence to the effect that the proposed additions are not likely to become objectionable to neighboring properties because of noise, traffic, or the number of students.

10. By memorandum dated September 15, 1993, and by testimony at the public hearing, the Office of Planning recommended approval of the application, indicating that the applicant had met the burden of proof under Section 210 of the Zoning Regulations.

11. The D.C. Department of Public Works, by report dated July 16, 1993, reported no objection to the application under Section 210 of the Zoning Regulations.

SPECIAL EXCEPTION UNDER SECTION 410

12. In 1968, at the time of the original BZA approval for the Marvin Center, the roof structure zoning regulations for mechanical equipment, stairway and elevator penthouses differed from the current regulations in at least two relevant respects. First, under former Section 3308.2, all roof structures were required to be reviewed by the Board of Zoning Adjustment. Secondly, under former Section 3201.26, the penthouse setback requirement only applied above the building height limit.

13. The permitted height limit in the R-5-C District in 1968 was 90 feet. Based upon the width of the adjacent streets, and the terms of the 1910 Height Act, the building height limit on the subject site is 80 feet. The building height was originally approved at 70.36 feet from the measuring point at the curb to the high point of the roof.

14. Although the penthouse was reviewed and approved by the BZA in Order No. 9314-9315, no penthouse setbacks were required for the project at that time. However, setbacks were provided from the H street, I Street and 21st Street sides of the lot.

15. The new I Street stairwells are fire stairs required by the Building Code, and are continuations of the existing stairwells which currently extend from the ground floor to the second floor of that portion of the building. The stairwells will be located adjacent to the exterior walls, congruent with the existing stairs. The western stairwell currently extends above the roof of the theater (third floor level), and is adjacent to the exterior wall. The existing eastern stairwell does not extend to the roof, as there is currently a second means of egress connecting the roof terrace directly to the third floor elevator lobby. However, the present roof terrace is not handicapped-accessible.

16. The roof above the theater currently contains protrusions to accommodate the smoke exhaust cowls for the loft above the state. There is also a stair tower at the southern edge which continues up two levels beyond the exiting roof of the theater. These existing roof structures, plus the existing western stair tower described above, do not meet the current roof structure setback regulations. They will all be removed as part of the new construction.

17. The portion of the handicapped elevator penthouse which does not meet the strict setback requirements is recessed in an interior portion of the lot, at least 60 feet from the nearest lot line, although it is adjacent to an exterior wall. This is

intended to provide access to the roof in the most efficient and nonobtrusive way possible.

18. The applicant contends that the placement of the mechanical housing, the elevator penthouses, and the stair towers as proposed will not have an adverse impact on light and air, and will maximize the amount of available rooftop passive recreation space (and provided shadow studies as evidence of this contention).

19. The applicant testified that full compliance is impractical because of operating difficulties, size of the building lot, and other conditions relating to the building that would tend to make full compliance unduly restrictive, prohibitively costly and unreasonable.

20. The University testified that it will take every precaution to ensure that the project will not create any objectionable conditions. The building design will enhance the exterior visual appearance of the building and will improve the overall quality of the streetscape. Existing projections into the streetscape will be removed as part of this project.

VARIANCE RELIEF UNDER SUBSECTION 403.2

21. The evidence of record indicates that the Marvin Center was constructed in 1968, pursuant to BZA Appeal No. 9314-9315. The building was built on former Record Lot 58 with a BZA-approved lot occupancy of 85.8 percent, which is above the matter of right limitation of 75 percent in the R-5-C (now R-5-D) zone (Subsection 403.2). Adams Hall, the residence building on former Record Lot 57, was built in 1925 with a lot occupancy of 68.4 percent. The combination of the two record lots into Record Lot 60 results in a combined lot occupancy of 84.24 percent for the existing buildings. The proposed additions to the Marvin Center include filling in the existing open courtyards facing H Street and 21st Street, and will result in an additional lot occupancy of 9.35 percent, for a new combined lot occupancy of 93.6 percent for Record Lot 60. Other than a canopy connection to the Marvin Center, no additions to the Adams Hall residence building are proposed in this application.

22. The total gross floor area of the additions is approximately 52,440 square feet, of which 21,200 square feet will be devoted to entrances and interior circulation space. The new construction will increase the lot occupancy from 68.4 percent (former lot 57) and 85.8 percent (former Lot 58) to 93.6 percent for the new lot.

23. The current floor area ratio for the campus is approximately 2.30. The project will add approximately 52,440 square feet of gross floor area, thereby increasing the floor area ratio for the campus to approximately 2.34.

24. The applicant testified that The Marvin Center is a multi-use facility which serves the academic, social, cultural and

recreational needs of the University in a central location on the campus. The proposed expansion of the Marvin Center will enhance the Center's ability to serve those needs, will blend harmoniously with the existing building and surrounding land uses, and will continue to be unobjectionable to neighboring properties.

25. The applicant contended that the most efficient use of the student union building is to have all necessary services provided for in one single location.

26. The University stated its belief that the property is affected by an exceptional situation or condition in the design of the building and therefore believes that strict application of the lot occupancy regulations would serve only to exacerbate the condition and result in a practical difficulty. This difficulty would severely compromise the very purpose of the student union building, would not achieve the desired barrier free accessibility, and would result in a significant amount of expense and space reallocation.

27. The applicant contended that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, or integrity of the Zoning regulations in that the relief will decrease traffic, brighten H Street, improve the streetscape, and promote the efficient use of space.

28. Advisory Neighborhood Commission (ANC) 2A, by amended report dated January 5, 1994, and by written and oral testimony at the public hearing, opposed the project for the following reasons:

A. The University has applied for only the lot occupancy variance for the project, and two variances are required. The additional variance required is from the prohibition of an addition to a nonconforming structure. In any event, the applicant is unable to meet the burden of proof for variances in this case.

B. The applicant has not met the burden of proof for special exception relief for the roof structure.

C. The BZA should not process the subject application or any other applications for individual University projects until the University begins construction of an adequate number of residence hall beds on campus within the period covered by the 1985 Campus Plan sufficient to remove the objectionable conditions created by the large number of students residing in the Foggy Bottom neighborhood outside the campus boundaries, as a result of the absence of on-campus residence hall construction.

D. The balconies on the upper floors of the proposed addition to the Marvin Center extend 4.5 feet into the public air space on

all three street frontages, without any proffered public benefit. Moreover, the balconies will constitute a safety hazard to pedestrians below, and the use of public air space requires approval by the Zoning Commission.

E. The Board should deny the University's application because the proposed addition will create the following adverse impacts:

1. The building will be out of scale and character with the campus surroundings and will cause adverse impacts on neighboring properties.

2. The addition will adversely impact the light, air and courtyard space of the neighboring properties.

3. Objectionable traffic impacts will result, with increased pedestrian and vehicular traffic resulting from the new construction.

4. Existing objectionable conditions include early morning food deliveries and trash pick-ups which generate noise in the alley, blocking of vehicles parked along the alley, fumes, rodents and odors.

5. Parking spaces behind the West End Apartments will be blocked. Construction noise will affect residents of the West End Apartments and others.

28. The board received several letters and a petition in opposition to the application. Additionally, the Board heard testimony in opposition to the application from residents in the vicinity of the subject site, including representatives of the West End Tenants Association. The opponents identified their concerns related to the existing Marvin Center operations including service deliveries, noise, traffic, rodents, safety concerns and the impact on their quality of life. They stated that the adverse impacts of existing operations at the Marvin Center would only be exacerbated by the proposed additions.

29. In response to the above enumerated concerns, the University, in independent negotiations with ANC 2A, agreed to perform the following actions: work with its vendors to change the pick-up and delivery hours; exterminate the West End building, when written authorization is received from the tenants; comply strictly with the applicable noise ordinances during construction; provide free parking off-site for residents of the West End Apartment whose spaces may be inaccessible during construction; restore any significant damage or deterioration of the alley because of construction activity; keep the alley free of trash and debris resulting construction; and finally, acquire the proper public space permit for any construction activity which may take place in the public space.

FINDINGS OF FACT

The Board is required to give "great weight" to the written issues and concerns of the Advisory Neighborhood Commission. In response to the written issues and concerns of ANC 2A and based on the evidence of record the Board finds as follows:

A. **INSUFFICIENT RELIEF REQUESTED**: The Marvin Center is not a nonconforming structure, and therefore, a variance to allow an addition to a nonconforming structure is not applicable in this instance.

Upon the advice of Corporation Counsel, the Board reviewed this application both as special exception and variance relief.

B. **NOT ENTITLED TO AREA VARIANCE FOR LOT OCCUPANCY**: The public nature of the building requires more latitude in determining its uniqueness. This Board approved the Marvin Center in 1967 with a lot occupancy in excess of that permitted by the regulations at that time.

The Marvin Center is unique to the city, there is no other building like it in the City, and it is the combination of the complexity of the building (mixed uses, different constituencies), design of the building, prior zoning history, and its placement, when considered in totality, which create an exceptional situation and establish the building's uniqueness; which if applied strictly to the regulations will result in an exceptional practical difficulty.

Alternative options presented to the proposed plan were found to be contrary to the purpose of the renovation (to increase efficiency) and therefore serve only to contribute to the practical difficulty.

The relief, if granted, will not substantially impair the public good or the Zoning Regulations.

C. **BURDEN OF PROOF FOR SPECIAL EXCEPTION FOR ROOF STRUCTURE NOT MET**: Portions of the mechanical and elevator housing and the handicapped-accessible rooftop elevator, plus the two stair towers to the roof on the I Street side of the building, do not meet the strict setback requirements of the Zoning Regulations.

Full compliance with the roof structure setback provisions is impracticable because of operating difficulties, size of building lot, and other conditions relating to the building that would tend to make full compliance unduly restrictive, prohibitively costly, and unreasonable.

The shadow study provided by applicant was dispositive in showing no adverse impact on light and air will result from the roof structure.

The roof structure is necessary to provide for handicapped accessibility and will not adversely affect the neighborhood.

D. **BZA SHOULD NOT PROCESS SUBJECT APPLICATION UNTIL THE APPLICANT BEGINS CONSTRUCTION OF RESIDENCE HALLS**: There is another case pending before the Board, and this issue will be disposed of at that time.

However, The Board does find that the current uses of the Marvin Center and its proposed expansion are consistent with the approved Campus Plan Land Use designation of the site.

The total campus FAR will not exceed 3.5 as a result of this approval. The approved Campus Plan for the University designates the site in the "educational mixed-use" category. The Board finds that the use, height, bulk and design of the proposed addition are sensitive to and compatible with adjacent and nearby non-University owned property. The Board further finds that the project will not tend to adversely affect the use of adjacent and neighboring properties, and will not impair the intent, purpose and integrity of the R-5-D District regulations.

E. **BALCONIES**: The Board does not have the authority to regulate intrusion into public air space. Balconies and bays which extend no more than four feet into the public space are permitted as a matter of right under the Building Code. There has been no evidence to indicate that such projections would constitute a safety hazard, nor is there any requirement to proffer public benefits in exchange for approval of such projections. The record is clear, there is no unauthorized intrusion into public air space.

F. **OBJECTIONABLE CONDITIONS**: Objectionable conditions can be addressed by the Board by conditioning the approval of any special exception. However, it is beyond this Board's jurisdiction to prohibit or restrict any applicant's use of the public rights-of-way for any purpose.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant, George Washington University, pursuant to 11 DCMR 3108.1 and 3107.2 is seeking a special exception under Section 210 for further processing of an approved campus plan, a special exception under Section 411 for a roof structure, and an area variance from the lot occupancy requirements (Subsection 403.2) to allow an addition to an existing

University building containing a student center, offices, theater, dining room, and dormitory in an R-5-D District at premises 800 21st Street, N.W. and 2100 Eye Street, N.W. (Square 77, Lots 57 and 58).

The granting of a special exception requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the exception will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board concludes that the applicant has met the burden of proof for approval of special exceptions under Sections 210 and 411.

The Board concludes that the special conditions of BZA Order No. 14455, dated February 25, 1988 and amended on June 29, 1988, have been met.

The Board concludes that subject to compliance with conditions listed below, the facility will not have an adverse impact on the neighborhood because of traffic, noise, number of students, or other objectionable conditions.

The Board concludes that granting the application for the special exceptions is in harmony with the general purposes and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property.

The granting of an area variance for lot occupancy requires a showing through substantial evidence that a strict application of the Zoning Regulations would result in an exceptional practical difficulty upon the owner of the property. Furthermore, the variance relief requested can be granted only with a showing of no substantial detriment to the public good and no substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concludes that the applicant has met the burden of proof for variance relief from the lot occupancy requirements of Subsection 403.2.

The Board concludes that granting the application will not be of substantial detriment to the public good, and will not substantially impair the intent, purpose, and integrity of the zone plan for the R-5-D District.

The Board concludes that it accorded the views of ANC 2A the "great weight" to which they are entitled.

In light of the foregoing, the Board **ORDERS** that this application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Construction shall be in accordance with the plans marked as Exhibit No. 38 of the record. The western wall of the addition over the theater shall be constructed of a light colored material to enhance reflected sunlight into the courtyard.

2. The application shall comply with all relevant D.C. licensing regulations and standards, particularly with respect to controlling the hours of construction, noise of construction activities, and use of public space.

3. Deliveries and pick-ups shall be limited to the hours of 7:00 a.m. to 8:00 p.m. Monday through Friday and 8:30 a.m. to 8:00 p.m. on Saturday and Sunday.

4. Trash shall be stored in a closed container screened from view. The applicant shall maintain the surrounding area free of refuse, debris and vermin.

5. The applicant shall prevent blockage of the parking spaces which serve the residents of the West End Apartment building and/or provide alternate parking arrangements on campus for those residents during the construction period.

6. The applicant shall provide the West End Tenants Association with the name, office, and telephone number of the appropriate contact person to be notified in case of vehicle blockage in the alley. Such information shall be updated as often as necessary to prevent its becoming outdated.

VOTE: 5-0 (John G. Parsons, Craig Ellis, George Evans, Laura M. Richards and Angel F. Clarens to grant).

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

FINAL DATE OF ORDER: January 31, 1997

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONIN GADJUSTMENT

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

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

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

ORDER

SUMMARY OF EVIDENCE OF RECORD:

Background

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

The 1991 Hearings

Procedural Matters

2. At the February 27, 1991 hearing, at the request of counsel for the applicant, and in response to the motion to dismiss filed by counsel for several parties in opposition, the Board rescheduled the hearing for April 24, 1991, so that the case could be properly advertised to indicate that the northernmost portion of the site is zoned R-5-B. A revised zoning memorandum was filed on

March 4, 1991 reflecting the necessary relief because of the split zoning of the subject property. Subsequently, to reflect changes to the project as presented to the Historic Preservation Review Board (HPRB), the applicant revised the plans to:

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

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

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

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

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

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

The Application

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

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

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

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

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

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

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

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

11. The architect stated that the Luzon occupies a significant portion of the subject site, which is a corner lot, thus leaving limited areas for development. Because the Luzon is

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

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

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

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

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

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

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

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

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

19. The expert architect witness testified, that to effectively develop the site, strict application of the lot occupancy limitation would require that the additional building mass in the 1991 plan (which was spread throughout the lot) be placed over the top of the Luzon Building, to a height of 90 feet

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

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

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

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

23. The expert architect witness testified that the landmark structure and the small irregular site resulted in an inefficient layout in the 1991 plan where the core occupied about 1/3 more

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. On-street parking would be reduced; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68. In its posthearing submission of July 1, 1991, the Applicant submitted photographs of the massing model prepared in response to the request by the Board, as further embellished pursuant to the request of several neighbors. The massing model was prepared showing the building as presented during the public hearing with the court niche, and also showing a setback of 15 feet from the public alley in the R-5-B portion of the property. The model was displayed and discussed at the June 4, 1991 meeting with the community.

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

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

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

72. The applicant's posthearing submission indicated that the applicant would work with the engineers as the penthouse machinery is designed, to further lower the penthouse. In its 1991 conceptual design approval, the HPRB requested the applicant to work to lower the height of the penthouse. As a penthouse height

is lowered, its footprint spreads out. The architects indicated at the June 4, 1991 meeting that they would be seeking a way to lower the penthouse height and decrease the footprint at the same time.

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

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

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

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

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

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

Settlement Agreement and 1993 Plans

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

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

77. At the further hearing, the applicant testified that subsequent to the Board's 1991 vote of approval, litigation was instituted challenging a number of aspects of the project. Subsequently, the applicant and members of the opposition entered into settlement discussions, which culminated in a Settlement Agreement governing a number of different aspects of the project.

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

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

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

A. Variances

1) Residential recreation space - variance eliminated.

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

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

4) Floor Area Ratio.

a. Total FAR - Variance eliminated.

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

B. Special exceptions

1) Roof structure setback - special exception eliminated.

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

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

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

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

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

D. The Settlement Agreement achieved with the community is comprehensive, and places additional restrictions on the

physical configuration of the building, and includes a number of other features.

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

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

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

84. The Office of Planning, by report dated June 2, 1993, recommended approval of the modified application. OP concluded that the applicant is faced with practical difficulties, and that the proposed project is the most suitable development for the site. OP also believes that the use, height, bulk and design of the project would be in harmony with the use, height, bulk and design of other properties and structures in the surrounding neighborhood. OP concluded that the applicant has met its burden of proof.

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

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

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

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

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

FINDINGS OF FACT:

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

1991 Plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Settlement Agreement and 1993 Plans

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW AND OPINION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL DATE OF ORDER: February 3, 1997_

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16104 of Rand Brittingham Beers, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the lot occupancy requirements (Paragraph 2001.3(a), (b) and (c)), a variance from the width and area of a closed court (Subsection 406.1), and a variance from the rear yard requirements (Subsection 404.1) for a deck addition in an R-5-B District at premises 1908 Biltmore Street, N.W. (Square 2549, Lot 418).

HEARING DATE : April 17, 1996

DECISION DATE: May 1, 1996

ORDER

SUMMARY OF EVIDENCE:

1. The property that is the subject of this application is located in Square 2549 in Adams Morgan, on the south side of Biltmore Street between Columbia Road and 19th Street, N.W. The site contains 2,553.28 square feet of land area. The existing structure on the site occupies approximately 1, 691.23 square feet of land area (66 percent).

2. The area surrounding the site is characterized by a preponderance of single family row dwellings, some of which have been converted to apartment buildings and flats. In addition, a number of small apartments are interspersed throughout the area.

3. The site is located in an R-5-B zone district. This district permits matter of right development of general residential uses including single-family dwellings, flats and apartment buildings to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8, a maximum height of 60 feet, a minimum rear yard depth of 20 feet, and a minimum width and area of a closed court of 15 feet and 350 square feet, respectively.

4. The applicant is proposing to construct an 18.9-foot wide by 19-foot long deck with an above-grade height of 9.6 feet. The deck would be located in the rear yard abutting the alley and would provide two parking spaces below it.

5. The existing dwelling on the site is nonconforming regarding lot occupancy. The proposed deck would add 342 square feet of lot occupancy, increasing the existing lot occupancy to 79 percent (2033.23 square feet) and adding to the existing nonconformity of the property. The proposed deck would also create a new nonconformity regarding the required minimum depth of a rear yard, which in this case would be reduced to two feet (as opposed to the 20 feet minimum required). The deck would also create a

nonconforming closed court by closing off the property which would measure three feet in width and 294 square feet in area, the required minimum being a width of 15 feet, and an area of 350 square feet.

6. The applicant contends that a practical difficulty exists in the unique nature of the rear of the house, because the characteristics of the adjacent properties combine to leave his property in a situation which creates a "hole"-like effect in the rear. The applicant further offered testimony to the effect that the proposed relief would not serve as a substantial detriment to the public good, nor would it affect the integrity of the zoning plan.

7. The D.C. Office of Planning (OP) offered evidence to support its recommendation that the variances be denied, as it found that the property was neither unique, nor was it affected by a practical difficulty. The OP found that the proposed deck would adversely affect the neighboring properties as it would increase the structural density of the property relative to adequate light, air, privacy, and aesthetics. In addition, the OP found that the proposed structure would impair the intent, purpose, and integrity of the R-5-B District Regulations by extending an existing nonconformity and adding two others.

8. ANC 1C did not submit a report either approving or denying the application for zoning relief.

9. No other persons or parties appeared at the hearing either in support or opposition to the application.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The property contains a practical difficulty in that the characteristics of the adjacent properties combine to put the applicant's property into a "hole"-like situation such that compliance with the existing regulations would effectively decrease the light and air available to the applicant.

2. The public good will not be adversely affected, nor would the proposed relief substantially impair the intent, purpose and integrity of the Zoning Regulations and Map.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant, is seeking an area variance pursuant to 11 DCMR 3107.2, to allow an addition to an existing nonconforming structure that now exceeds the lot occupancy

requirements (Paragraph 2001.3(a), (b) and (c)), a variance from the width and area of a closed court (Subsection 406.1), and a variance from the rear yard requirements (Subsection 404.1) for a deck addition in an R-5-B District at premises 1909 Biltmore Street, N.W. (Square 2549, Lot 418).

The granting of such variances requires a showing through substantial evidence that the application can be granted when by reason of an exceptional situation, the strict application of the regulation would result in a practical difficulty upon the owner of the property, and that the relief can be granted without a substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concludes that the public good will not be adversely affected, nor would the proposed relief substantially impair the intent, purposes and integrity of the zoning regulations and map.

The Board concludes that the applicant has met the burden of proof for all three variances.

Based on the foregoing, the Board **ORDERS** that this application is **APPROVED**.

VOTE: 3-2 (Sheila Cross Reid, Laura M. Richards, and Herbert M. Franklin to approve; Susan Morgan Hinton, and Angel F. Clarens opposed to the motion).

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

FINAL DATE OF ORDER: January 31, 1997

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16084 of Mira N. Marshall, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable lot occupancy requirements and will increase the nonconformity [Paragraph 2001.3(a) and (b)] a variance from the lot occupancy requirements (Subsection 403.2), a variance from the minimum rear yard requirement (Subsection 404.1), and a variance from the minimum width of the open court requirements (Subsection 406.1) for an addition to a nonconforming single-family row structure in an R-4 District at premises 2041 Rosemount Avenue, N.W. (Square 2618, Lot 128).

HEARING DATES: January 1, 1996 and March 20, 1996
DECISION DATE: March 20, 1996 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject site is located in Square 268 in the Mount Pleasant Historic District, in the northern most section of Ward 1 and close to the Rock Creek Park. Square 2618 is bounded on the north and west by Rock Creek Park, on the east by Pierce Mill Road and on the south by Klingle Road.

2. The site contains 1,536 square feet of land area. Its width is 20 feet and its depth, on average, is 77 feet. The subject lot slopes downward from front to rear. The dwelling was built similar to the other dwellings in the block to take advantage of the contour of the land. A 20-foot wide public alley is located at the rear of the site.

3. The site contains a two-story plus basement structure that was built in 1923. The building's gross floor area is 1,926 of space.

4. The site and the structure are both nonconforming. Accordingly, area variance relief is required to permit an addition to an existing structure that now exceeds the allowable lot occupancy requirements and will increase the nonconformity [Subsection 2001.3(a) and (b)], a variance from the lot occupancy requirement (Subsection 403.2), a variance from the minimum rear yard requirement (Subsection 404.1), and a variance from the minimum width of open court requirement (Subsection 406.1) of the Zoning Regulations. These variances are required to permit the construction of a new 10-foot high wooden deck off the rear of the house.

difficulty existing at the site to support the excessive relief that is being requested; 2) the property is too small to accommodate the proposed project; 3) the addition would increase the structure's nonconformity; 4) negative impacts would be created if this application is approved because of its excessive lot occupancy, and; 5) the proposal would substantially impair the intent, purpose and integrity of the Zoning Regulations.

FINDINGS OF FACT:

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

1. There are several exceptional conditions associated with the property. Three of the four variances the applicant is seeking arise from the unusually small size of the lot. If the lot were as large as the average lot size in the square, there would be no need for a variance relief in order to construct the deck. The average size of the 47 lots in the square is 2,263 square feet. The subject lot is 1,536 square feet. This is significantly smaller than the average size. In addition, the rear of the lot drops off toward the public alley, resulting in little usable area in the yard. As a result of the topography, the deck must be more than 4 feet off the ground to align with the main level of the house. If the height of the deck were less than 4 feet, three out of four requested variances would no longer be required. The court width variance is needed only because the deck is not constructed from lot line to lot line. A wider deck would not require a court variance.

2. The size, shape and topography of the lot are different from the majority of neighboring properties. The townhouse is part of a row of thirteen houses that were all built at the same time. The subject lot is the third smallest of all the lots in the row. Furthermore, the lot is not rectangular due to the angle of the rear lot line. If the rear yard were deeper or the lot were of a more regular configuration, variance relief would not be required. In addition, since the house is nonconforming as to lot occupancy, variance relief would be required for any enlargement or addition to the house regardless of its size.

3. Many of the properties in the immediate vicinity of the site have rear decks, including decks on each of the properties that abuts the subject site.

VOTE: 3-1 (Jerrily R. Kress, Sheila Cross Reid and Angel F. Clarens, to grant; Susan Morgan Hinton opposed tc the motion; Laura M. Richards not present, not voting).

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

FINAL DATE OF ORDER: March 28, 1997

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

ORDER DISMISSING APPLICATION

Application No. 16089 of the Kenilworth/Parkside Resident Management Corporation, pursuant to 11 DCMR Section 3107.2 for a variance from the use provisions (Section 350) to allow a barber and beauty shop with retail sales of hair/skin/nail products in part of the basement of an apartment building in an R-5-A District at premises 4406 Quarles Street, N.E.; and to also allow a dollar store with retail sales of general merchandise in an R-5-A District at premises 4406 Quarles Street, N.E. (Square 5113, Lot 101).

DECISION DATE: MARCH 6, 1996

Application No. 16089 of the Kenilworth/Parkside Resident Management Corporation was filed with the Board of Zoning Adjustment on July 21, 1995. A request was filed by the applicant for a reduction of the application fee. The request was denied. The applicant has not, as of the date of this order, paid the fee necessary to continue the processing of the application. No further action was taken by the applicant to either remit the proper fee amount or to proceed with the case. The only reasonable result of the applicant's election not to proceed pursuant to the Board's Rules is dismissal of the application.

The applicant has left the Board no reasonable alternative other than to dismiss this application for failure to prosecute.

Accordingly, it is **ORDERED** that this application is **DISMISSED** for want of prosecution.

VOTE: 5-0 (Laura M. Richards, Sheila Cross Reid, Angel F. Clarens, Susan M. Hinton, and Maybelle Taylor Bennett to dismiss).

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

FINAL DATE OF ORDER: January 30, 1997

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

ORDER DISMISSING APPLICATION

Application No. 16091 of the United States Government and Kenilworth/Parkside Resident Management Corporation, pursuant to 11 DCMR Section 3107.2 for a variance from the use provisions (Section 350) to allow a catering business and a Delicatessan/Snack Bar-no seating-in part of the basement of an apartment building in an R-5-A District at premises 4500 Quarles Street, N.E. and to allow retail vending sales of fruits, vegetables, plants, candy, etc. on the front lawn in an R-5-A District at premises 4500 Quarles Street, N.E. (Square 5113, Lot 8).

DECISION DATE: MARCH 6, 1996

Application No. 16091 of the United States Government and Kenilworth/Parkside Resident Management Corporation was filed with the Board of Zoning Adjustment on July 21, 1995. A request was filed by the applicants for a reduction of the application fee. The request was denied. The applicants have not, as of the date of this order, paid the fee necessary to continue the processing of the application. No further action was taken by the applicants to either remit the proper fee amount or to proceed with the case. The only reasonable result of the applicants' election not to proceed pursuant to the Board's Rules is dismissal of the application.

The applicants have left the Board no reasonable alternative other than to dismiss this application for failure to prosecute.

Accordingly it is **ORDERED** that this application is **DISMISSED** for want of prosecution.

VOTE: 5-0 (Laura M. Richards, Sheila Cross Reid, Angel F. Clarens, Susan M. Hinton, and Maybelle Taylor Bennett to dismiss).

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

FINAL DATE OF ORDER: January 30, 1997

ASSOCIATION FOR PRESERVATION OF 1700 BLOCK OF N STREET, N. W., AND VICINITY, et al., Petitioners,
v.
DISTRICT OF COLUMBIA BOARD OF **ZONING** ADJUSTMENT, Respondent,
Young Men's Christian Association of Metropolitan Washington, D. C., Intervenor.

No. 10903.

District of Columbia Court of Appeals.

Argued Feb. 18, 1977.

Decided March 29, 1978.

Petition was filed for review of an order of the Board of **Zoning** Adjustment granting a private club's application for a variance from the parking requirements of the **zoning** regulation. The District of Columbia Court of Appeals, Gallagher, J., held that: (1) the application was properly characterized as one for an area variance rather than use variance; (2) the club satisfied its burden of showing a practical difficulty sufficient to support the grant of the variance

Affirmed.

[1] ZONING AND PLANNING ⇐703
414k703
On review of decision of Board of **Zoning** Adjustment, court must determine whether findings made are supported by and in accordance with reliable, probative and substantial evidence in whole administrative record, and whether conclusions of board flow rationally from such findings.

[2] ZONING AND PLANNING ⇐509
414k509
Private club's application for variance from parking requirements of **zoning** regulation on grounds that irregular shape of site of proposed building made provision of required off-street parking on property impossible was properly characterized by Board of **Zoning** Adjustment as application for area variance rather than use variance since use of property as private club would be compatible use and club was seeking to erect its proposed structure in manner other than that prescribed by ordinance, i. e., without providing required number of qualified off street parking spaces.

[3] ZONING AND PLANNING ⇐481
414k481
Distinction between use variance and area variance is that former permits use other than that prescribed by **zoning** ordinance whereas area variance has no relation to change of use but is primarily grant to erect, alter or use structure for permitted use in manner other than that prescribed by ordinance.

[4] ZONING AND PLANNING ⇐536
414k536
Private club seeking grant of area variance from **zoning** regulation requirement relating to off-street parking had burden of proof before Board of **Zoning** Adjustment to show that it was entitled to requested area variance

[5] ZONING AND PLANNING ⇐536
414k536
Where area variances are involved, applicant must demonstrate that compliance with area restriction would be unnecessarily burdensome and that practical difficulties are unique to particular property.

[6] ZONING AND PLANNING ⇐497
414k497
Private club's self-created hardship was not factor to be considered in club's application for area variance to erect proposed structure without providing required number of off street parking spaces, since rule of self created hardship applies only to use variance

[7] ZONING AND PLANNING ⇐540
414k540
Evidence, in proceedings on private club's application for area variance to construct its proposed building without providing required number of off-street parking spaces, supported finding that club satisfied its burden of showing practical difficulty entitling it to variance.

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*675 Nicholas A. Addams, Washington, D. C., for petitioners.

Richard W. Barton, Deputy Corp. Counsel, Washington, D. C., for respondent. John R. Risher, Jr., Corp. Counsel, and Louis P. Robbins, Principal Deputy Corp. Counsel, Washington, D. C., also entered appearances for respondent. Respondent adopted the brief of the intervenor.

Norman M. Glasgow, Washington, D. C., with whom Whayne S. Quin, John F. McCabe, Jr., and Iverson O. Mitchell, III, Washington, D. C., were on the brief, for intervenor.

Before GALLAGHER, YEAGLEY and MACK, Associate Judges.

GALLAGHER, Associate Judge:

This is a petition for review of an order of the District of Columbia Board of **Zoning** Adjustment (BZA). The BZA order granted an application submitted by the Young Men's Christian Association of Metropolitan Washington, D. C. (YMCA), for: (1) a special exception for roof structures under **Zoning** Regulation, art. 43, s 4306.2; and (2) a variance from the parking requirements of **Zoning** Regulation, art. 72, s 7202.1.[FN1] These relate to the construction of a new YMCA facility at 1701 Rhode Island Avenue, N.W.

FN1. At a subsequent oral argument in associated case No. 12202, petitioners confirmed there is no issue left on appeal regarding roof structures. We are left with only one issue, viz., the parking variance.

Petitioners also contend the new YMCA facility is not a private club within the meaning of **Zoning** Regulation, art. 12, s 1202. The BZA declined to rule specifically on that question, concluding that the issue "should only be considered as an appeal of the decision of the **Zoning** Administrator, such appeal to be properly filed and advertised with the Board." [FN2] This was later accomplished and the issue is squarely presented to us in a subsequently filed proceeding, which we decided this date.[FN3] Consequently, the only question for review here [FN4] is whether the BZA erred in granting the parking variance to an organization (YMCA) which in the companion proceeding,*676 we have now determined to be a private club within the meaning of **Zoning** Regulation, art. 12, s 1202.

FN2. We point out, however, that by admitting some evidence relating to the issue and discussing that evidence, the BZA confused the record. We decided not to compound the confusion, but, instead, to await the subsequent proceeding then on its way to us to decide the issue, as it was there properly presented.

FN3. Ass'n for Preservation of 1700 Block of N Street, N.W. v. District of Columbia Board of **Zoning** Adjustment, D.C.App., 384 A.2d 668 (No. 12202, decided this date).

FN4. Petitioners also raised an issue concerning the form of the notice in this case. Since petitioners had actual notice and showed no prejudice, we conclude there is no merit to that issue. Dupont Circle Citizens Ass'n v. District of Columbia Board of **Zoning** Adjustment, D.C.App., 364 A.2d 610, 612-13 (1976).

The Central Branch of the YMCA was located at 18th & G Streets, N.W., and had been at this location since the turn of the century with additions made over the years. Those facilities became obsolete and future improvements and modernizations were found to be not economically feasible. The new location was selected for its more central location and for its proximity to the new subway system. The Executive Director of the Metro YMCA testified that the proposed facility would fulfill four general functions: (1) headquarters for the YMCA of Metropolitan Washington which includes sixteen operating units; (2) training center for YMCA staff; (3) an international program; and (4) health and fitness. He also testified that the facility would be open, at a maximum, from 6 a. m. until 10 p. m. on Monday through Saturday with peak hours from 11 a. m. until 2 p. m. and from 4:30 p. m. until 7 p. m. He further stated that the projected membership at the new facility would be 5,600 with a projected

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daily usage of 1,000.

The following is a summary of findings of fact by the BZA pertinent to the parking issue: [FN5] The proposed site is vacant, unimproved, and irregularly shaped with 57.5 feet on 17th Street, 175.61 feet on Rhode Island Avenue, 119.25 feet on the west property line, and 155.55 feet along the north property line. Provision of the required off-street parking with the proposed building on the subject property is impossible due to its irregular shape; furthermore, even if the lot were rectangular in shape, only thirty parking spaces rather than the required forty could be provided with the building. There would be further hardship to the YMCA if the required parking were to be placed below the proposed swimming pool. Each such parking space would cost over $20,000 to provide, whereas the normal cost of each off-street parking space located within a garage structure is between $6,000 and $8,000. Additionally, providing such $20,000 parking spaces would require the YMCA to reduce its proposed recreational facilities. Without drastic reduction in the proposed size of the pool, the number of parking spaces capable of being built would not be materially affected

FN5. Petitioners do not specifically challenge any of the findings of fact relevant to the parking issue as being unsupported by substantial evidence in the record.

A large number of persons using the new YMCA would be walk-in patrons, particularly local workers. Those patrons of the YMCA who would be driving would have available ample off-street parking in the area.[FN6] There is also public transportation available with twenty-two existing bus routes serving that vicinity, as well as a Metro subway stop within two blocks.

FN6. For example, statistics on the average number of available parking spaces in facilities within a two-block radius of the new YMCA revealed the following: (1) daytime 448; (2) evening until 9 p. m. 1,449; and (3) weekend 1,279. The same study disclosed that the maximum parking demand at any one time for staff, members, and guests would be 92 spaces.

Significantly, the BZA also found that it had granted a variance as to the location of off street parking in a prior case (BZA No. 9362) involving part of the proposed YMCA site because of the property's irregular shape. Furthermore, the Municipal Planning Office supported the granting of this parking variance. [FN7]

FN7. The testimony of the staff planner for this office was:
Recognizing the character, surrounding land uses, and irregular shape of the lot, the activities that the applicant (YMCA) seeks to provide, and the estimated transportation patterns of the applicant's clientele, it does not appear that the proposed use will adversely affect the public good, or impair the integrity of the zoning plan.

In pertinent part the BZA concluded
that the parking variance requested is an area variance, the granting of which requires the showing of a practical difficulty sufficient to satisfy that burden. The Board concludes that the applicant has carried the burden of not needing parking *677 spaces on site, as demonstrated by the large number of spaces located in the immediate vicinity. The Board also concludes that there will be a large number of walk-in patrons particularly from the working population in the area
Petitioners argue that the BZA "abused its discretion and was plainly erroneous in waiving all parking spaces contrary to overwhelming evidence and controlling case law." (Brief for Petitioners at 26.) We disagree.

[1] Our duty on review is narrowly prescribed See D.C.Code 1973, s 1- 1510; Dietrich v. District of Columbia Board of Zoning Adjustment, D.C.App., 320 A.2d 282 (1974). We must "determine whether findings made are supported by and in accordance with reliable, probative, and substantial evidence in the whole administrative record, Schiffmann v. ABC Board, D.C.App., 302 A.2d 235 (1973), and whether the conclusions of the Board flow rationally from these findings, Stewart v. BZA, D.C.App., 305 A.2d 516

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(1973).' Marjorie Webster Junior College, Inc. v. BZA, D.C.App., 309 A.2d 314, 319 (1973)." Dietrich v. District of Columbia Board of **Zoning** Adjustment, supra at 285.

[2] To determine whether the BZA applied the correct legal standard to the YMCA's application, we must first decide whether the BZA erred in treating the application as one for an area variance, rather than a use variance. "The burden of proof is greater for a use variance than an area variance." Palmer v. Board of **Zoning** Adjustment, D.C.App., 287 A.2d 535, 541 (1972). In Taylor v. District of Columbia Board of **Zoning** Adjustment, D.C.App., 308 A.2d 230, 233 (1973), when this court found the requested variance (not from the off-street parking regulation) to be a hybrid, "use-area variance," we applied the stricter burden of proof i. e., undue hardship. We view the BZA's characterization of the application as correct.

[3] The distinction between a use variance and an area variance is that the former " 'permits a use other than that prescribed by the **zoning** ordinance' whereas an 'area variance has no relation to change of use. It is **primarily a grant to erect, alter or use** a **structure for a permitted use in a manner other than that prescribed by the ordinance**.' " [FN8] Since we have previously decided that the YMCA is 'a private club within the meaning of the applicable **zoning** regulation,[FN9] **Zoning** Regulation, art. 12, s 1202, and given that a private club is a permitted use in the relevant area here,[FN10] it is apparent that the YMCA is seeking to erect its proposed structure in a manner other than that prescribed by ordinance i. e., without providing the required number of off-street parking spaces. The principal rationale for the different standards applicable to the two variances is that an area variance does not affect the use of the land and does not threaten the neighborhood or adjacent landowners with the maintenance of an incompatible use of the subject property. 3 Anderson, American Law of **Zoning** s 14.45, at 3-4 (1968). The use of the property by the YMCA as a private club will be a compatible use.[FN11]

FN8. 2 Anderson, American Law of **Zoning** s 14.07 (1968), quoting in part, Alumni Control Board v. Lincoln, 179 Neb. 194, 137 N.W.2d 800, 802 (1965).

FN9. That issue was decided today by this court in another proceeding, see note 3 supra, and accompanying test.

FN10. No party to these proceedings has ever challenged that fact, nor could they, as this site is located in a Special Purpose district. See **Zoning** Regs., art. 41, ss 4101.3, 4101.31; art. 31, ss 3105.3-.31, 3104.3, 3104.39.

FN11. See notes 9 and 10 supra, and accompanying text.

[4][5] The YMCA had the burden of proof before the BZA to show that it was entitled to the requested area variance. Taylor v. District of Columbia Board of **Zoning** Adjustment, supra at 234. Where area variances are involved, we have construed the applicable statute [FN12] as requiring proof that compliance with the applicable **zoning** regulation would cause "peculiar ***678** and exceptional practical difficulties" for the owner of the subject property. Barbour v. District of Columbia Board of **Zoning** Adjustment, D.C.App., 358 A.2d 326, 327 (1976). This standard of proof consists of two elements. The applicant must demonstrate that (1) "compliance with the area restriction would be unnecessarily burdensome . . . ", A.L.W. Inc. v. District of Columbia Board of **Zoning** Adjustment, D.C.App., 338 A.2d 428, 431 (1975); and (2) the practical difficulties are unique to the particular property. Barbour,supra at 327.

FN12. D.C.Code 1973, s 5-420(3).

Two factors are responsible for the peculiar practical difficulties of the YMCA at its proposed site. First, as the BZA found, the subject site is irregularly shaped. Second, the construction of the YMCA's proposed indoor pool as part of its private club facilities presents certain structural design problems.

[6] Before turning to the evidence supporting

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the YMCA's peculiar practical difficulties, we examine petitioners' contention that the rule of self-created hardship applies here and should have been considered by the BZA. Petitioners state that whatever hardship faced the YMCA "was self-created to the extent of Metro YMCA having full knowledge of all problems with the alleged shape of the land, the type of **zoning**, and costs of putting in the parking, prior to the purchase of the property in March 1974." The YMCA's self-created hardship is not a factor to be considered in an application for an area variance, however, as that factor applies only to a use variance. See Salsbery v. District of Columbia Board of **Zoning** Adjustment, D.C.App., 357 A.2d 402, 404 (1976); A.L.W., Inc. v. District of Columbia Board of **Zoning** Adjustment,supra at 431.

[7] There is no dispute that the lot is irregularly shaped. The BZA concluded on the basis of the lot's irregular shape that the YMCA had satisfied its burden of showing a practical difficulty, sufficient to support the grant of an area variance. We cannot say that the Board erred in so doing.[FN13]

FN13. We are aware that our decision in Barbour v. District of Columbia Board of **Zoning** Adjustment, supra, affirmed the denial of an area variance where the primary evidence of practical difficulty was the financial burden of construction conforming with the **zoning** regulation. That case is, however, distinguishable. There the owner of the property had two alternative methods of construction which would have fully complied with the **zoning** regulation, whereas here the YMCA had no feasible alternative method which would have provided both the pool and all of the required parking spaces.

The YMCA showed by **expert testimony**, supported by exhibits, that due to the irregular shape of the lot, which appears to be unique, the cost to provide the required off-street parking would be extraordinary. One approach to the problem would require cutting the swimming pool tank in half; even so, the cost of providing parking spaces under the tank would be prohibitive. Additionally, construction with parking would cause an inability to provide all of the YMCA's programs.

The YMCA also introduced evidence to demonstrate that there is available a combination of area parking spaces, bus and subway service; and that consequently off-street parking was not necessary in order to avoid frustrating the parking regulation. The Board credited this evidence.

We conclude the BZA findings are supported by substantial evidence; and that its conclusion that the YMCA be granted a parking variance flows rationally from those findings.

The order of the BZA is

Affirmed.

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