GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14976 of the American Osteopathic Association pursuant to 11 DCMR 3107.2, for a variance from the floor area ratio requirements (Sub-section 771.2) to establish an office use in excess of the non-residential FAR in a CAP/C-2-A District at premises 300-302 - 5th Street, N.E., (Square 813, Lot 800).

HEARING DATE: January 25, 1989
DECISION DATE: January 25, 1989 (Bench Decision)

FINDINGS OF FACT:

1. The site of the application is located on the north side of Stanton Square on the northwest corner of 5th and C Streets, N.E. in the Capitol Hill Historic District. The property is known as premises 300-302 - 5th Street, N.E. It is zoned CAP/C-2-A.

2. The subject site has 80 feet of frontage along 5th Street, N.E. and 20 feet along C Street, N.E. and a total lot area of 1,600 square feet. A ten-foot wide public alley abuts the northern edge of the subject property.

3. The subject site is improved with a three-story brick structure which was constructed in 1925.

4. The subject building is a semi-detached corner row structure that is set back approximately 20 feet from the sidewalk and is bordered by shrubs and mature trees. The basement of the subject structure is a self-contained unit with a separate entrance. No off-street parking is provided on the subject property.

5. The predominant uses surrounding Stanton Square are institutional and office uses consisting primarily of government-oriented organizations and associations. Immediately adjacent to and west of the subject property are townhouse-type office condominiums that were built in 1981. New brick townhouse-type office buildings are also located to the east of the subject site in the 500 block of C Street, N.E. A large number of rowhouses on the south side of Stanton Square have been recently renovated for office use also. To the east and north are large residential areas characterized basically by older row houses. The Union Station Metro Station is located west of the subject property.

6. Zoning District C-2-A permits office, residential and a variety of retail uses. It permits a maximum FAR of 2.5 with non-residential uses limited to 1.5 FAR. The C-2-A District permits a maximum height of 50 feet.

7. The CAP District overlay zone regulations, which became effective in May 1985, decreased the height and density of the underlying C-2-A District. The 50 foot maximum height standard with no limits on the number of stories permitted in the C-2-A District was decreased to a 40-foot maximum height with a three-story height limitation. The maximum FAR standard was also decreased to 1.8 FAR. The maximum FAR of 1.5 for non-residential uses remained the same. The gross floor area for the entire structure is approximately 4,765 square feet or 2.98 FAR. The English basement contains approximately 1,453 square feet of space. The first and second floors each contain approximately 1,453 square feet of gross floor area or a total of 1.8 FAR. The third floor contains approximately 405 square feet of gross floor area or approximately .25 FAR. Because the subject structure prexisted the CAP/C-2-A zoning, it is a nonconforming structure.

8. The applicant proposes that the basement of the structure will be used as two rental residential units, and that the first, second and third floors will be used as nonprofit office space by the American Osteopathic Association ("AOA") and the American College of Osteopathic Internists ("ACOI"). The two residential units will be occupied by an AOA employee who will serve as caretaker of the property. The third floor, which is small (approximately 400 square feet) and inappropriately designed for residential use, will be used as an employee lounge and a kitchen area in conjunction with the office space on the first and second floors. The ceiling on the third floor slopes down but there are areas where 7 to 7.2 feet of ceiling height exist. A refrigerator will be placed in the sloped area. A bathroom is located on the third floor.

9. Over the past 18 years, the subject building has gradually been converted from residential to office use. A 1970 Certificate of Occupancy (No. 69690) indicates that the entire building was being used for six apartments at that time. A 1976 Certificate of Occupancy (No. B99346) was subsequently issued for office use on the first and second floors. When the applicant purchased the property last year, the entire building was being used for office space.

10. The AOA will have approximately seven employees working in the building. The ACOI will have three employees.

11. The applicant proposes to lease four parking spaces nearby at Union Station to serve the proposed office space.

12. The applicant testified that the third floor is accessible only from the building's single stairway which runs through the first and second floors and is located in approximately the center of the building. Given the lack of a separate entrance to the third floor and the cramped quarters, it was the Applicant's opinion that the only practical use of the third floor is for office space in conjunction with the first and second floors.

13. The applicant testified that a residential use on the third floor would cause security problems in the building. The only point of access to the first through third floors will be locked at all times and will have a controlled access system which will be primarily operated from the inside. After office hours, a security system with motion detectors will be operational. The motion detectors pick up any movement in the building, including the stairwell, and sound an alarm upon detection. A residential use on the third floor would necessitate that this system be constantly overridden to permit access to the residential tenant, thus compromising the security of the office space.

14. The applicant further testified that, given the infeasibility of residential use on the third floor, the AOA would experience a hardship if it could not use the third floor of the building as an employee lounge and kitchen. The AOA was not aware when it purchased the property that the Zoning Regulations would not permit use of the third floor for office space without variance relief. AOA was told by its real estate agent that the first, second, and third floors could all be used for offices. Thus, the price that the AOA paid for the building in good faith assumed that the entire building could be so used. If the AOA cannot use the space for an employee lounge and kitchen, it will remain vacant.

15. The applicant testified that its proposal to extend the office space to the third floor of the building will not adversely affect the neighborhood. It will not intensify use of the building. The building will house seven AOA employees and three ACOI employees, irrespective of whether the AOA can use the third floor. The third floor will merely be used for an employee lounge and kitchen. There will be no additional burdens upon the building, parking facilities or public services in the area. Of AOA's current employees, only two drive to work.

16. The AOA testified that in its opinion, the public will actually benefit by the granting of the requested variance. Granting this variance will allow AOA to remain in the District and permit the relocation of the ACOI to the District of Columbia. Prior to the purchase of this building, AOA's District of Columbia offices were located at 122 C

Street, N.W. and the offices of ACOI were located in Florida.

17. Since the building already exists and the space is already built, AOA testified that there will not be any adverse zoning impact. The mixed-use of the building for apartments and nonprofit office space will remain consistent with the intent of the existing zoning. It will also permit the most efficient use of the existing structure. Further, AOA's renovation of the building will promote the economic revitalization of the Capitol Hill area.

18. By memorandum dated January 18, 1989, the Office of Planning ("OP") recommended denial of the application. OP indicated that the combined FAR of the first and second floors already exceed the allowable commercial FAR, and concludes that to permit yet the third floor to be added to the non-residential FAR ceiling for this zone district would be excessive. It was the opinion of OP that to grant this variance would encourage relief requests of a similar nature and would "seriously impair and erode ... housing opportunities in the city as a whole." OP also stated that no practical difficulty exists because the staircase that serves all of the floors of the building would have to be enclosed to comply with the Building Code so that a person living on the third floor would not have to go through the office to get to a third floor apartment. The Board disagrees with the recommendation of the OP.

19. By letter dated January 13, 1989, ANC-6A indicated that it opposed the variance application, but that it would not oppose a modified application that:

1. requests a special exception for the duration of applicant's ownership,

2. continues to lease at least four (4) off street parking spaces at Union Station for use by staff and visitors,

3. uses the 3rd floor space for employee lounge, and not for staff offices.

20. The Board is not required by statute to give great weight to the issues and concerns raised by ANC-6A because the January 13, 1989 letter from the ANC does not meet the Board's criteria for ANC reports. However, in addressing the ANC's concerns, the Board finds that:

1. the requested relief cannot be granted as a special exception; a variance is required. Further, variance relief may not be restricted by the Board to an individual applicant.

2. the applicant has agreed to continue to lease at

least four (4) off-street parking spaces at Union Station for use by staff and visitors; and

3. the applicant has agreed to use the third floor space for an employee lounge, and not for staff offices.

The Board is therefore satisfied that the application meets the concerns raised by ANC-6A.

21. By letter dated January 17, 1989, the Capitol Hill Restoration Society indicated its support for the application. The Society indicated that the subject building is located in a commercial district and always has been. Further, converting the third floor to residential use would require entry through the office floors of the building. The Society also commented that the third floor is badly configured for residential use.

22. There was no other testimony either in opposition or in support of the applicant.

23. The record contained a letter of support from the District of Columbia Dental Society located at 502 C Street, N.E.

CONCLUSIONS OF LAW AND OPINION

Based upon the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of 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 application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met its burden of proof. The Board concludes that the small size and configuration of the third floor in the subject commercial building and the fact that a residential use on the third floor would compromise the security of the first and second floor office uses constitutes an exceptional condition and a practical difficulty for the applicant.

The Board further concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zone Plan as embodied in the Zoning Regulations and Maps. The use of the third floor for an employee lounge will not intensify use of the building or place additional burdens on parking facilities or public services in the area. The proposed use of the subject property will be compatible with surrounding uses and the renovation of the

subject building will further the economic revitalization of the area.

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

1. The applicant shall lease a minimum of four parking spaces at Union Station for use by employees and visitors.

2. The use of the third floor space shall be limited to an employee lounge. Staff office space on the third floor shall be prohibited.

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

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: JUN 16 1989

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

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

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

14976order/bhs5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION No. 14976

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated JUN 16 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Cynthia A. Giordano, Esq.
Linowes and Blocher
655 - 15th Street, N.W.
Suite 400
DC 20005

Brian Donadio
American Osteopathic Association
300-302 Fifth Street, N.E.
DC 20002

Clarence Martin, Chairperson
ANC 6A
Maury Elementary School
13th & Constitution Ave., N.E.
DC 20002

EDWARD L. CURRY
Executive Director

DATE: JUN 16 1989