GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15197 of the Cato Institute, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 508 to allow the offices of an international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional persons, and a variance from the side yard requirements (Sub-section 535.4) for the construction of a five-story professional office building with an accessory parking garage in an HR/SP-2 District at premises 1000 Massachusetts Avenue, N.W., (Square 342, Lot 58).

HEARING DATES: December 20, 1989 and February 21,1990
DECISION DATE: February 21, 1990 (Bench Decision)

FINDINGS OF FACT:

1. In the prehearing statement that was filed on February 7, 1990 and at the time of the public hearing, the application was amended to withdraw the request for a special exception under Section 411.11 to allow a mechanical penthouse which does not meet the setback requirements (Sub-section 530.5), the originally requested variance from the loading berth and platform requirements (Sub-section 2201.1), and the variance from the floor area ratio requirements (Sub-section 531.1). As requested by the applicant, the revised application involves only a special exception for SP office use, a side yard variance and a variance from any applicable provision of the proposed Downtown Development District.

2. At the public hearing, the Board considered the provisions of 11 DCMR 3202.6, vesting of construction rights when an application for a building permit is filed. Paragraph 3202.6(a) states:

> If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by §3202.4 and §3202.5;

The application was filed with the Board on September 1, 1989. The memorandum from the Zoning Administrator's office is dated August 9, 1989. Therefore, an application for a building permit was filed for prior to August 9, 1989. The Zoning Commission on December 14, 1989, set for

public hearing the proposed Downtown Development District Text and Map Amendments in Zoning Commission Case No. 89-25. The Board finds that an application for a building permit was filed before the date on which the Zoning Commission decided to hold a public hearing on the proposed text and map amendment in Z.C. Case No. 89-25 that would affect the subject property. Therefore, the Board further amended the application to eliminate the variance from the provisions of the proposed Chapter 17, Downtown Development District.

3. The subject property is located on the southwest corner of the intersection of Massachusetts Avenue, N.W., and 10th Street, N.W. It is located in the HR/SP-2 Zone District at premises known as 1000 Massachusetts Avenue, N.W.

4. This site contains a total area of 10,097 square feet. The property is irregularly shaped with seventy feet of frontage on Massachusetts Avenue, N.W. and seventy-five feet of frontage along 10th Street, N.W. A fifteen foot wide public alley abuts the property's western edge running perpendicular to Massachusetts Avenue.

5. The site is presently unimproved and is used as a parking lot for the Henley Park Hotel, which is located to the immediate east across 10th Street, N.W.

6. Immediately to the west and south of the subject property are two new buildings serving as headquarters for the National Food Brokers Association at 1010 Massachusetts Avenue, N.W. and the National Medical Association at 1012 - 10th Street, N.W. The subject square contains a number of other institutional uses and a number of vacant and abandoned structures. Immediately to the east of the site across 10th Street is the Henley Park Hotel at 926 Massachusetts Avenue, N.W. Across Massachusetts Avenue at the intersection of Massachusetts Avenue, 11th and L Streets, N.W., is the recently renovated Morrison-Clark Inn.

7. The site is located two blocks north of the Washington Convention Center and one block west of Mount Vernon Square. The subject square and surrounding area is undergoing revitalization. The general area surrounding the site consist largely of offices, apartment buildings, rooming houses, churches, parking lots, row houses and other buildings and uses. The architectural character of neighboring buildings is varied and individualized.

8. Medium to high-density office structures are concentrated south of Massachusetts Avenue, N.W., along L and K Streets, N.W., and to the west and south moving toward the central part of Downtown. The HR/SP-2 zone district borders on the HR/C-3-C zone district just south of the adjacent National Medical Association site. The HR/C-3-C

zoning to the south accounts for the higher density, commercial office uses along K Street and beyond. In the immediate vicinity of the subject property, the northwest corner of 11th and L Streets, N.W., there is an eleven-story office building. Office uses are also found dispersed both north and south of Massachusetts Avenue in converted row structures.

9. The Zoning Commission has approved three Planned Unit Developments ("PUDs") within two blocks of the subject site. These PUDs, which are located at 902 New York Avenue, N. W., and 1001 New York Avenue and the Franklin Plaza Site at 12TH AND K Streets, N.W., each involving only commercial use.

10. The HR/SP-2 District allows a maximum FAR of 6.0 of which 3.5 FAR may be devoted to non-residential uses. A maximum height of 90 feet is allowed and a maximum lot occupancy of 100 percent is permitted for non-residential uses. No side yard is required in the SP-2 District. If a side yard is provided, it shall be at least two inches per foot of height of the building, but not less than eight feet. The SP-2 District is intended as a transition zone between commercial and residential zones and allows medium to high density residential and institutional development. Offices for non-profit organizations, trade associations and professionals are permitted as a special exception.

11. The applicant proposes to construct a six-story office building to serve as headquarters for The Cato Institute, a nonprofit public policy research foundation dedicated to preserving and extending social and economic freedom.

12. The total floor area ratio for the project will be approximately 3.37. The subject structure has a height of 89.25 feet, including an extension of the roofline that allows for the full screening of the penthouse from public view. The building will occupy seventy-one percent of the lot. The project will contain two levels of underground parking with a total of 34 spaces, one 12 x 30 foot service bay, and one 10 x 20 foot delivery space accessible by way of the public alley to the west of the site.

13. The Cato Institute plans to immediately occupy the top two floors and rent the remaining floors to other permitted SP office uses. The applicant plans ultimately to extend its offices to the other floors as its needs require.

14. The Cato Institute purchased the site in 1987 as the future site of its headquarters. The Cato Institute is currently headquartered on Capitol Hill in a renovated townhouse located at 224 2nd Street, S.E., which it occupies pursuant to this Board's approval in Application No. 13419. According to the applicant, the 5,000 square foot townhouse is

no longer capable of meeting Cato's growing space needs. The subject site was especially appealing to Cato because of its proximity to Capitol Hill and its easy access to downtown. The applicant explained that, as a non-profit organization searching for a single-purpose site, the restrictions imposed by the SP zone district were easily satisfied by Cato. Further, the SP-2 District allowed a 3.5 FAR for non-profit and professional office use, which fully satisfied Cato's needs, given the 10,000 square foot area of the subject site.

15. After purchasing the site, Cato immediately assembled a development team to execute its plan to build its headquarters. The process of designing the building has proceeded over the course of almost two years and has involved substantial carrying costs, architectural fees, and substantial fees for other consultants. In addition, Cato met with area citizens, including the Gompers Park Association, ANC 2C and a community task force that was formed to review the project.

16. A hearing before this Board was originally scheduled on December 20, 1989. By letter dated December 19, 1989, however, the applicant, through its counsel, requested postponement of the hearing. Citing the dissatisfaction of the Office of Planning and the neighborhood with the physical design and appearance of the building, the applicant requested an extension to devise a new design concept for the building. On December 20, 1989, the Board granted the applicant's request and rescheduled the hearing for February 21, 1990.

17. The applicant's architects began a complete redesign of the project after the postponement. The architect noted that the principal focus was on designing a building which was unique yet contextual in nature. He noted that in the course of refining the new design, the architects met with the Office of Planning and area citizens. Redesigning the project also offered an opportunity to eliminate some of the variance and special exception relief needed for the project.

18. The design of the proposed building is modern, yet highly compatible with the older buildings in the area. The pattern of the fenestration is derived from the neighboring Henley Park Hotel. In addition, the building's red masonry exterior is consistent with several neighboring buildings. Finally, the impressive and modern glass winter garden area will provide an outstanding entrance into the five-story lobby and will enhance the streetscape by adding significant green space. The offices on the north side of the building face the atrium area and will have balconies to maximize the use and enjoyment of the winter garden.

19. The architect explained that it is essential to protect the glass winter garden structure from damage at the street level. The winter garden borders on the alley that

provides access to the parking garage. The most effective way to prevent damage is to incorporate protective devices at its base. The architect therefore included a one-foot side yard in the proposed plan so that protective mechanisms would be included. A side yard is not required in the SP-2 District. Therefore, the applicant is in the unusual position of requiring variance relief for providing a side yard. The provision of a one-foot side yard will not have any adverse impact on neighboring properties and will enable the inclusion of the architecturally significant winter garden element in the new project.

20. The economic consultant testified regarding the infeasibility of providing housing on the subject site. The witness explained the impact of the proposed Downtown Development District ("DDD") on the subject site. The proposed DDD would require the applicant to construct residential FAR on-site or to account for the residential requirement off-site. Given the small size of the site and the inability to provide sufficient buffering, providing an all residential or a mixed-use project on the site will be infeasible. The construction of housing on the subject site is not feasible from an economic standpoint.

21. The applicant's traffic consultant testified that thirty-four parking spaces to be provided in the project are more than sufficient to serve the needs generated by the project. In addition, the loading berths are fully accessible and will meet the needs of the project. Vehicular access to the subject site is facilitated by its location on two major streets, 10th Street and Massachusetts Avenue, and the site is readily accessible by public transportation.

22. The Office of Planning (OP), by report dated December 6, 1990, recommended that the application be approved, with conditions. The Office of Planning testified that, in its opinion, the proposed building would be in harmony with the neighborhood and nearby properties and will be of substantial benefit to the area. The OP testified that the design of the building substantially improves upon the previous design. With regard to the side yard variance, the Office of Planning noted that the need for the variance arose from the site conditions and that the variance should be granted.

23. The Downtown Development District (DDD), in Zoning Commission Case No. 89-25 as proposed by the Office of Planning, would rezone the site to C-2-C and eliminate the HR Overlay. Square 324 is located within Housing Priority Area B, which has a minimum residential use requirement of 3.5 FAR. In the scheduled hearings on the DDD, the Zoning Commission will also consider a mandatory on-site residential requirement of 6.5 as an alternative to the 3.5 FAR

requirement. The DDD also provides certain area-wide design standards that may pertain to the subject site.

24. By letter dated February 13, 1990, Advisory Neighborhood Commission (ANC) 2C recommended approval of the special exception for SP office use and the variance from the side yard setback requirements. The ANC noted that it strongly recommended that the applicant continue to meet with the ANC Task Force until an agreeable final design is developed. Finally, the Advisory Neighborhood Commission did not have any comment on the applicability of the Downtown Development District to the subject site.

25. One person who resides at 937 N Street, N.W. testified in opposition to the application at the hearing, questioning the design of the building and its modern architecture.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the requested relief requires a special exception and one variance. The Board concludes that a variance from any applicable provisions of the proposed DDD is not necessary because the applicant's rights to construct a building under the HR/SP-2 zoning are vested. The applicant filed a building permit application and an application to the Board prior to the setdown of the DDD by the Zoning Commission. Also, the review and report by the Zoning Administrator occurred prior to the setdown of the DDD by the Zoning Commission. For these reasons, the Board concludes that the applicant's rights to construct a project consistent with the HR/SP-2 zoning were vested. In addition, the Board concludes that under Section 3202.7 of the Zoning Regulations it is bound to decide the case based on the regulations in effect on the decision date. The Board concludes that the DDD was not in effect on the decision date because it had not been adopted by the Zoning Commission at that time.

The granting of the special exception requires that the applicant prove that it has complied with the requirements of Sub-section 508 of the Zoning Regulations. The Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the applicant has met the burden of proof with regard to both the special exception and the variance.

With regard to the special exception, the Board concludes that the proposed office building will be in harmony with existing uses on surrounding properties and will provide

adequate parking on the site so as to avoid the creation of objectionable traffic conditions.

As to the area variance, the Board concludes that the irregular shape of the property creates a practical difficulty for the owner. Further, the Board concludes that the variance is minor and technical in nature and incidental to the primary relief requested.

The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The proposed project will be in harmony with the general purpose and intent of the Zoning Regulations and Map.

The Board has given the ANC the "great weight" to which it is entitled. Accordingly, it is hereby ordered that the application is GRANTED, SUBJECT to the CONDITION that construction shall be in accordance with the revised plans marked as Exhibit No. 37A of the record.

VOTE: 3-1 (William F. McIntosh, Paula L. Jewell and Charles R. Norris to grant; John G. Parsons opposed to the motion; Carrie L. Thornhill not present, not voting).

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

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

FINAL DATE OF ORDER: AUG 17 1990

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.

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