GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15233 of Manufacturers Real Estate, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 411.11 to allow less than the minimum set back requirement for a roof structure, a variance from the floor area ratio requirements [Sub-section 771.2 and 1703.4(a)], a variance from the requirement that not less than fifty percent of the surface area of the street-wall at the ground floor of each building be devoted to display windows and to entrances to commercial uses (Sub-section 1702.3), and a variance to allow less than fifty percent of the arts uses and arts related uses requirement (Sub-section 1701.2) for the construction of a retail and office structure with accessory parking in a SHOP/C-4 District at premises 555 12th Street, N.W. [Square 321, Lots 24, 808, 809 and 823 (25)].

HEARING DATE: January 17, 1990
DECISION DATE: January 17, 1990 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located in Square 321, bounded by F Street to the north, E Street to the south, 11th Street to the east and 12th Street to the west. The subject site comprises approximately three-quarters of the Square except for the commercial building located at 550 11th Street, NW.

2. The subject site is currently improved with the Perpetual Building Association Building at 1101 E Street, N.W., a 12-story office building at 521 12th Street, N.W., two 3-story buildings along F Street and a mid-block, surface parking lot.

3. The site is located in the retail core of the District of Columbia and is within the boundaries of the SHOP Overlay District ("SHOP").

4. The applicant and the District of Columbia Government have entered into an Agreement for the development of the site which provides that a department store will be located in the southern half of the Square and will occupy the E Street frontage of the subject site and portions of the 11th and 12th Street frontages in four floors of the building. The Agreement has a duration of twenty years.

5. The applicant intends to execute Minority Business Opportunity Commission and Department of Employment Services Agreements as part of the proposed project.

6. The proposed project will devote approximately 133,303 square feet to department store and retail space and approximately 518,289 square feet to general office space.

7. The penthouse is set back twenty-seven feet from the property line on 12th Street and twenty-eight feet from the property line on F Street. The penthouse is adjacent to the property line on the interior of the square and is partially adjacent to the penthouse of the 130-foot high office building on the northeast corner of the square. The penthouse will not be visible from the street and is approximately the same height as the adjacent building's penthouse.

8. Section 411.11 of the Zoning Regulations provides that the Board may approve the location, design, number or any other aspect of a roof structure even if it does not comply with the setback requirements of Section 400.8 where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable.

9. The Board finds that the L-shaped configuration of the lot and the need to accommodate the department store necessitates that the office elevator cores and mechanical equipment be located adjacent to the east property line along the interior of the Square. The penthouse setback requirements would make the layout of the department store and office elevator cores impractical.

10. The SHOP Overlay District permits, with the utilization of bonus density, a maximum FAR of 10.5 on the subject site. The proposed project will contain 11.5 FAR.

11. Pursuant to the Agreement, the applicant will provide approximately 107,000 square feet of space for the department store. In accordance with Section 1703.4 of SHOP, bonus FAR is computed at a ratio of 3:1, for an accrued bonus of approximately 321,000 square feet for the department store alone.

12. The size, shape of the lot and the topographical grade change between the E Street and F Street frontages allows the applicant to increase on-site FAR to 11.5 without any adverse impact. The Board finds that a portion of the bonus FAR generated from the department store and the retail space in accordance with Sections 1703.2(b) and 1703.3(a), may be used on site for an FAR of 11.5, and that the remaining bonus FAR may be used off-site consistent with Section 1705 without further action of this Board.

13. The Zoning Regulations require that entrances to the proposed retail buildings between the main entrance on 12th Street to the corner entrance at the intersection of 12th and F Streets, be separated by not more than fifty feet on average for the linear frontage of the building. The proposed distance between the two entrances is approximately 135 feet.

14. The grade changes more than fifteen feet from E to F Street along 12th Street. Between the two entrances, the grade changes 7 feet, 6 inches. The architect for the applicant testified that the grade change precludes an entrance between the main entrance and the entrance on the corner of 12th and F Streets because such an entrance would require steps in the public space, and would greatly impair the internal floor plan. Handicapped access would be difficult to provide.

15. The SHOP regulations would require the applicant to provide 50,415 square feet of the area designed for retail/SHOP uses and a like amount for retail space for arts or arts-related uses. The Board finds that the art space requirement would make the department store and overall project infeasible. Under the terms of the Agreement, the applicant must provide a minimum of 90,000 square feet for a department store. Compliance with the SHOP regulations would require the applicant to provide a total of 140,000 square feet of below market rate uses, which would result in an infeasible project.

16. The applicant testified and the Agreement with the Executive Branch confirms that the proposed use substantially advances the purposes of the SHOP/Overlay by the provision of the department store. Furthermore, there is no other downtown site which can accommodate a department store and the neighboring properties will benefit from the proposed use which will continue to attract visitors and shoppers to the downtown area. The Board finds that the proposed development will substantially advance the stated purpose of the SHOP District and will not adversely affect neighboring property.

17. The Board finds that the variances requested are needed to accommodate the large area required by the department store. The Board finds that there are exceptional circumstances affecting the property making compliance with the SHOP provisions difficult.

18. In accordance with the Agreement the applicant has met regularly with representatives of the Office of Planning during the design development stage of the plans. The applicant stated that at the direction of the Office of Planning it gave special attention to the design of the

retail frontages and overall building design. The Board finds that the architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located.

19. The project will contain parking for 350 cars located on five below grade levels, six loading berths and two loading spaces. Access to the parking garage and loading docks is located mid-block on 11th Street. The applicant's architect testified that the vehicular access is designed to be located away from the major pedestrian thoroughfares on E and F Streets, and away from the main entrance to the building on 12th Street. The Board finds that the vehicular access and egress are so located as to minimize the pedestrian conflict, to function efficiently and to create no dangerous or otherwise objectionable traffic conditions.

20. The Office of Planning (OP), by report dated January 10, 1990, stated that the applicant had met the burden of proof for a special exception and variance relief, and recommended approval of the application. OP noted that it and other District government agencies were integral participants in the development process and are in full support of the project. The report also stated that the shape of the lot necessitated the location of the penthouse, that the department store on the subject site advances the purposes of the SHOP district, and that the exceptions requested are needed to accommodate the large area needed by the department store and to provide the economic justification for the project.

21. Advisory Neighborhood Commission (ANC) 2C is in support of the project. In its report dated January 5, 1990, the ANC noted that the location was appropriate for the department store in the downtown area and recommended that the Board rule favorably on the application. The Board concurs with the ANC.

22. By letter dated January 8, 1990, the owner of the abutting property at 550 11th Street, Willco Construction Company, stated his support of the proposed development and noted that the proposal furthers the goals of the Comprehensive Plan and the SHOP Overlay District. The representative stated further that the department store will provide a

concentration of retail space that will assist other property owners in leasing ground floor retail space.

23. At the hearing, one person who worked in the building at 550 11th Street, testified as to questions which he had concerning the impacts of the project. The individual stated that he had not had an opportunity to review the plans prior to the hearing, and he was concerned about the penthouse location adjacent to the property line. He appeared at the hearing without written authorization from any organization or unit leasing space in the building. The individual recommended that the Board postpone action until he could review the plans. The Board finds that the location of the penthouse will in part be adjacent to the penthouse on 550 11th Street, and that the applicant has addressed issues relating to impacts on the adjacent property. The Board further finds that the owner of the building is in support of the project.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Sub-section 411.11, and that the applicant is seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique exceptional condition of the property.

The Board concludes that the applicant has met his burden for granting the special exception. The placement of the penthouse adjacent to the property line on the interior of the Square will not adversely affect the use of the neighboring property. The location of the penthouse, necessitated by the shape of the lot and the need to accommodate the department store, will be adjacent to and approximately the same height as, the penthouse of the 130 foot office building on the northeast corner of the Square. In addition, the penthouse will not be visible from the street. The proposed penthouse is in harmony with the general purpose and intent of the Zoning Regulations and Maps and that the light and air of the adjacent buildings will not be adversely affected.

As to the area variances, the floor area ratio (FAR) variance is based on the topographical change in grade from one end of the site to the other. The grade change between E and F Streets allows an 11.5 FAR to be absorbed in the building without exceeding the height limit. The change in grade and the location of the department store also affects the ability of the site to provide entrances to the building separated by not more than fifty feet on average

for the 12th Street linear frontage of the building, between the main entrance and the entrance at the intersection of 12th and F Streets. The 135 foot distance between the main entrance on 12th Street and the corner entrance at 12th and F Streets provides display windows consistent with the requirements.

The grade change between the two entrances would require either steps in the public space, or a graduated internal floor plan in order to provide the required entrances. Handicapped access would be exceedingly difficult to provide and would create inefficient space. With respect to preferred arts and arts-related uses, the applicant can not practically provide the department store as required by the agreement retail space and other retail to be used for arts or arts-related uses.

The Board concludes that the portion of the bonus FAR not used on the site may be transferred off-site consistent with Section 1705 of the Zoning Regulations by right, and without further action of this Board.

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 in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED the application is GRANTED SUBJECT to the CONDITION that construction shall be in accordance with the plans marked as Exhibit No. 21-A of the record.

VOTE: 3-0 (Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to grant; William F. McIntosh abstaining; Tersh Boasberg, not present, not voting).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: APR 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.

15233order/LJP59

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION No. 15233

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated _____, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Norman M. Glasgow, Esquire
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Clarene Martin, Chairperson
Advisory Neighborhood Commission 2-C
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Washington, D. C. 20009

EDWARD L. CURRY
Executive Director

DATE: APR [illegible]