

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15613 of Nidal Sukhtian, as amended, pursuant to 11 DCMR 3107.2, for a variance from the minimum lot occupancy requirement (Section 532), a variance from the minimum area required as residential recreation space (Subsection 533.4), and a variance to allow residential recreation space on a roof deck with dimensions of less than twenty-five feet (Subsection 533.8) for construction of a four-unit apartment house in an SP-1 District at premises 1622 18th Street, N.W. (Square 134, Lots 164).

HEARING DATES: January 22 and June 17, 1992

DECISION DATES: March 4, April 8, July 1, July 29, September 2 & October 7, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject property is located on the southwest corner of 18th and R Streets, N.W. and is known as 1622 18th Street, N.W. It is in an SP-1 District.

2. The rectangular site is presently unimproved and is long and narrow. The site consists of three lots of record that total 1,207.14 square feet in land area as follows:

Lot 162 - 402.25 square feet

Lot 163 - 402.25 square feet

Lot 164 - 402.64 square feet

Lot 162 is a corner lot with frontage on both 18th Street and R Street. The two remaining lots front on 18th Street. The site measures 19.47 feet in width along R Street and 62.0 feet in depth along 18th Street.

3. The area surrounding the subject site is characterized by a mix of uses including row dwellings, small to large apartment buildings, offices, retail establishments, restaurants, institutional uses, and foreign chanceries/embassies. Dupont Circle is located approximately two blocks to the southwest of the site. The intersection of 18th Street and New Hampshire Avenue is located one block to the south of the site. In addition, the site is located within the Dupont Circle Historic District.

4. The SP-1 District permits matter-of-right medium density development including all kinds of residential uses, with limited offices for non-profit organizations, trade associations and professionals permitted as a special exception requiring approval of

the Board of Zoning Adjustment, to a maximum height of 65 feet, a maximum floor area ratio (FAR) of 4.0 for residential and 2.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

ORIGINAL PLANS

5. The applicant originally requested area variances from the minimum lot occupancy provisions (Section 532), the floor area ratio (FAR) limitation (Subsection 533.1), the minimum area of residential recreation space requirements (Subsection 533.4), and the minimum roof deck residential recreation space dimensions requirement (Subsection 533.8) to allow the construction of a four-unit apartment house in an SP-1 District.

6. The applicant is proposing to construct a four-unit apartment building which would be five stories in height and would contain one, two-story, one-bedroom unit; two studio flats; and one two-story three-bedroom unit. Two enclosed garages would also be included in the proposed building with access to 18th Street, N.W. The structure would cover 100 percent of the site at the first floor level and 80 percent at the remaining four upper floor levels. As a result of this design configuration, a 234 square-foot rear yard would be located one-story above the finished grade at the rear of the proposed building.

7. The applicant's architect stated that the subject site is very small in comparison to the other lots in Square 134.

8. The architect indicated that lots of this size with SP-1 zoning have been combined with neighboring lots into larger assemblages in this square. And, this had been done at the south and west of the corner property.

9. The architect stated that the original developer of 1800 R Street assembled the six lots during the early 1960s, but was unable to purchase the subject lots as part of the assembly. Subsequent to the demolition of six buildings on his lots, he leased the property now under review.

10. The architect described the property surrounding Square 134. He stated that a nine-story, 72-unit condo apartment building zoned SP-1 at 1800 R Street is located west of and directly abuts the subject property. This lot's size is 7,426 square feet. There are three curb cuts, one on 18th Street and two on R Street. South of the subject property a 10-story condo apartment building zoned SP-1 is located at 1616 18th Street. Farther south is a residential area zoned R-5-B on Corcoran Street. There is a condo apartment building located to the west, zoned R-5-C. This lot's size is 5,100 square feet. The subject site consists of 1,207.14 square feet. It is small in comparison to the other sites just mentioned.

11. The architect stated that the Historic Preservation Review Board suggested that the design of the proposed building should relate to the Belmont Mansion, which is opposite the site, and that a building on this site is important to filling out the city grid.00+

12. The architect stated that while designing the building, he tried to stay within a 4.0 FAR. He stated that the dimensions of the kitchen and the layout of the stairway, hallway, recreation space, and living spaces made it impossible.

The architect indicated that the building planned for the site is a four-unit apartment building. It covers 100 percent of the site at the first floor level and sets back to 80 percent on the remaining upper floors. Therefore, a variance was needed for the FAR.

According to the architect, three variances were also needed for the recreation space and rear yard requirement of the SP-1 zoning regulations. The applicant is requesting approval for a 19 and 1/2 foot rear yard distance, five and one-half feet shorter than the zoning requirement that calls for a 25-foot deep rear yard. This would create adequate recreation space. Also, approval of the variances would result in a building which promotes the public good and which is in harmony with the zone plan.

The architect stated that the proposed building responds to the purpose of the SP-1 zone by being 100 percent residential, medium density, and transitional. He indicated that the building's height steps down from nine stories to the height of the historical buildings on three opposite corners. He emphasized that this transitional massing is important in responding to the Historic Preservation Review Board. In addition, two off-street parking spaces will be provided.

He also stated that building anything on the subject site will entail covering the first floor commercial glass window panels at 1800 R Street. The only structure suitable for the site is a private home.

He further indicated that compliance with the Zoning Regulations, without the variances, would limit the use of the property.

13. By memorandum dated January 14, 1991, the Office of Planning (OP) recommended denial of this application. OP stated that in the SP-1 District a residential development would be allowed an 80 percent lot occupancy maximum as a matter of right. This translates into 965.71 square feet in lot occupancy for this 1,207.14 square-foot lot. Because the proposed project would occupy 100 percent of the site, a lot occupancy variance is needed for 242 square feet (25 percent). As well, the SP-1 District permits a maximum 4.0 FAR for residential uses. Relative to the subject site, this FAR would permit a building that would contain a total of 4,828.56 square feet of gross floor area.

The applicant is proposing a building with 5,388 square feet of gross floor space (4.46 FAR), or 559.44 square feet (11.59 percent) greater than that which is permitted. In addition, the SP-1 District requires residential recreation space totaling 538.8 square feet as related to the size of the subject proposal. The applicant is proposing a total of 234 square feet of residential recreation space. That translates into a 304.8 square-foot (56.57 percent) deficiency in recreation space relative to the proposed project.

Based on the analysis above, the OP is of the opinion that the subject proposal appears to be too large in terms of structural density and massing for the site (i.e. FAR and lot occupancy). In addition, OP was unable to determine the practical difficulty for the applicant in this case which would justify the excessive zoning relief requested to allow the subject site to be as densely developed as proposed. Although the proposal is commendable with respect to its design and the provision of additional housing opportunities within the District of Columbia, OP was not able to unequivocally determine that an exceptional or extraordinary situation or condition exists which is inherent in the subject property and which would justify the approval of the requested zoning relief. As stated, the zoning relief requested in this case is excessive. Various lot constraints (i.e., the narrowness and small size of the lot) inherent in the property do not constitute a justification for overdevelopment. A smaller, scaled-down residential project should be considered which would be permitted as a matter-of-right in an SP-1 District.

Finally, OP concluded that the applicant had not met the burden of proof relative to the zoning relief requested in this application. Therefore, OP recommended denial of this application.

14. A report from the Historic Preservation Review Board (HPRB) was submitted into the record. The HPRB recommended that the general concept of the height and massing of the project be approved. It was also recommended that the architect continue to redesign the facade.

15. In a letter dated January 15, 1992, Advisory Neighborhood Commission (ANC) 2B resolved to oppose the subject application. ANC 2B stated the following reasons for denial: 1) there is nothing unique or exceptional about the subject site, in comparison with surrounding lots, which could show that the applicant satisfies the legal requirements necessary to obtain an area variance; 2) increases in density and in FAR are inconsistent with zoning map changes in the Dupont Circle area and the objectives of the Dupont Circle Overlay enacted by the Zoning Commission; 3) ANC 2B has consistently opposed new curb cuts because of their adverse impacts on parking availability and traffic safety, and this is a problem at the subject site; and 4) granting of this variance would be detrimental to the light and air quality for the occupants of the proposed building due to the excess FAR requested.

16. A letter dated January 22, 1992, submitted by the Dupont Circle Citizens Association (DCCA) Zoning Committee, indicated the group's opposition to the application.

17. The 1800 R Street Condominium Association's counsel appeared in opposition to the application. It is the position of the Condominium residents that the proposed building would block the first floor windows of their building and decrease the value of those units. In addition, the curb cut for the proposed building would create a dangerous condition in relation to the access now provided to the underground garage for the 1800 R Street Condominium and would reduce the number of parking spaces currently available along 18th Street.

18. A planning consultant on behalf of the 1800 R Street Condominium testified in opposition to the application. Her testimony was based on the following: 1) there exists a

problem in regards to the lot occupancy requirement; 2) the site presents no uniqueness, hardship, or practical difficulty which would merit the granting of such variances; and 3) the granting of these variances would impair the integrity of the zone plan for the area and have serious adverse impacts on the neighborhood.

REVISED PLANS

19. At the public hearing on January 22, 1992, the record was closed at the end of the hearing except that the applicant was to file revised plans that would reduce the degree of variances resulting in a less dense project. The submission was due by February 14, 1992. Responses and proposed findings were to be submitted by February 26, 1992.

20. On February 12, 1992, a set of revised drawings were submitted to the Board.

The architect reduced the FAR to 4.0 as permitted by the Zoning Regulations for the SP-1 District. Accordingly, the application was amended to eliminate the previous FAR variance request. He stated that the other variances would still be needed for reasons set forth at the public hearing on January 22, 1992.

The applicant also reduced the off-street parking from two spaces to one, in order to reduce the FAR. The proposed curb cut remains at 14 feet as required for curb cuts that open onto two-way streets.

21. A letter dated February 26, 1992, was submitted by counsel on behalf of the R Street Condominium Association. The letter indicates opposition to the revised application. It states that the applicant failed to include calculations for the total FAR, including spaces devoted to the balconies. Thus, to the extent the revised plans provide a 4.0 FAR without balconies included, the applicant still needs a variance from the FAR requirements because the calculations should have included the balcony square footage.

Furthermore, the proposed building still occupies 100 percent of the lot, it requires substantial variances from the recreation space requirements, and the applicant still has not demonstrated that the site is unique so as to justify the Board's consideration for any variance. Moreover, aside from the due process concerns inherent in accepting the applicant's revised plans without another public hearing, the plans should be rejected since the floor plans do not contain dimensions which would allow a meaningful comparison with the previous floor plans.

22. The applicant submitted a memorandum to the Board on February 26, 1992, requesting a one day extension for filing the proposed order.

23. A memorandum dated February 26, 1992 was submitted by the Office of Planning (OP). It indicated that OP had met with the applicant several times and had reviewed the revised plans.

26. OP stated that the applicant had modified the original proposal to bring the revised project into compliance with the Zoning Regulations. The following development schemes were submitted:

Scheme "A":

- Lot Occupancy 80 percent
- FAR 4.0
- Recreation Space Limited area on high roof at the rear of the building (286 square feet)
- Parking One standard-size parking space in open rear yard

Scheme "B":

- Lot Occupancy 100 percent
- FAR 4.0
- Recreation Space Roof over rear garage (second floor) with access from all four residential units (197 square feet)

High roof at the rear of the building with access from top-floor residential unit (286 square feet).

Total recreation space would be approximately 483 square feet
- Parking One-car garage for compact car

OP indicated that Scheme "A" would eliminate the need for variances from the maximum lot occupancy requirements of Section 532 of 11 DCMR and the floor area ratio (FAR) requirement specified in Subsection 531.1. However, this scheme severely negates the total square footage of on-site residential recreation space and limits access to and use of the available recreation space to the top-floor residential unit only. The provision of one open rear yard parking space would comply with the parking requirements of the Zoning Regulations. However, this surface parking space would have a negative visual impact on the area.

Scheme "B" would eliminate the need for a variance from the FAR requirement (Subsection 531.1 of 11 DCMR) and would provide residential recreation space located on the roof of the proposed one-car garage that would be available to all four residential units (197 square feet). As with Scheme "A", recreation space would also be provided on the high roof at the rear of the building for exclusive use of the top-floor unit. The lot occupancy would remain at 100 percent as a result of providing the rear yard garage and garage roof recreation space. Like Scheme "A" the

provision of on-site parking for one vehicle would be provided. The garage space provided, however, would accommodate a compact car and would not fully comply with the Zoning Regulations' requirement for one standard-size (9"x19') parking space. The proposed garage would be an aesthetic improvement over the open rear yard parking space in Scheme "A".

The Office of Planning is of the opinion that, while Scheme "A" comes closer to meeting the specific requirements of the Zoning Regulations, Scheme "B" provides a solution which offers more amenities to the future residents of the project as well as to the neighborhood. OP's rationale is as follows:

- A. The total FAR for the project has been reduced to 4.0, which is in compliance with the SP-1 zone district regulations.
- B. Although the lot occupancy remains at 100 percent, an additional amount of residential recreation space is provided above the rear yard garage that would be accessible to all tenants of the proposed building.
- C. An attached garage for one compact car at the rear of the proposed building would be more aesthetically pleasing than would an open, rear yard parking space. In addition, the provision of the garage would have a positive visual impact on the area since it would help to relieve the negative visual impact that the adjacent apartment building's blank wall has on pedestrians on the street. As noted above, the provision of a garage would also provide additional recreation space above it. Although garage space for one compact car does not fully comply with the requirements of the Zoning Regulations, the additional recreation space included above the garage would be an added project amenity and would bring the proposal more into compliance with the residential recreation requirements of the Zoning Regulations.
- D. As a result of informal consultation with the staff of the Historic Preservation Review Board (HPRB), the Office of Planning is of the opinion that Scheme "B" would contribute more positively to the character of the Dupont Circle Historic District and would provide an added amenity to the residents of the neighborhood.

25. The Dupont Circle Advisory Neighborhood Commission 2B submitted into the record a letter, dated February 27, 1992, in opposition to the revised application. The ANC continued to feel that the modified project did not resolve its concerns and did not meet the legal requirements for the variances requested.

26. At the March 4, 1992 meeting, the Board deferred action on the application because Mr. Ensign was unable to review the applicant's revised plans and amended application. The Board requested that Mr. Clarens and Ms. Pruitt read the record and participate in the decision.

27. On February 27, 1992, the applicant submitted into the record a copy of the proposed findings of fact, conclusions of law, and order in reference to the revised plans.

28. A letter, dated March 30, 1992, was submitted to the Board requesting a further hearing on the proposed project in view of the applicant's revised plans.

29. A letter, dated April 4, 1992, stated that the request for a further hearing was granted.

30. A letter, dated May 29, 1994, was submitted by the Dupont Circle Advisory Neighborhood Commission 2B in opposition to the application. The Commission's concerns remained as previously stated in correspondence, dated January 15, 1992.

31. Written testimony, dated June 1, 1992, was submitted to the Board of Zoning Adjustment by the 1800 R Street Condominium Association. The Association concluded that the changes made by the applicant did not solve the problems discussed earlier in the public hearing on January 22, 1992. In fact, the proposed changes make matters worse, because the removal of one parking space will add to the problem of insufficient on-street parking. In addition, a further perusal of the Zoning Administrator's memo to the Board indicates that another variance from the rear yard depth requirement is needed and has not been requested.

32. A petition, dated June 3, 1992, was submitted to the Board of Zoning Adjustment by the residents of the 18th and R Street neighborhood. The petition stated that approval of this application would result in too much traffic, with too little parking and open space.

33. Mr. Mitchell testified at the hearing on June 17, 1992 that the property is unique. It is a long and narrow lot. Therefore, conforming to the Zoning Regulations would create a practical difficulty.

He also stated that the applicant's evidence shows that the necessity of providing code required egress stairs, while preserving minimal dimensions for the proposed requirements in providing recreation space and parking, supports the requested variances.

In addition, the applicant also submitted evidence addressing the requirement that the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan. Briefly, the rationale given was that the proposed development is a residential development of medium density consistent with SP-1 zoning that is compatible with the mixture of uses in the neighborhood, it provides a transition from the high density high rise apartments immediately south and west of the similar and smaller scale buildings in the neighborhood, and is compatible with surrounding historic structures. The massing and density of the proposed building have been approved in concept by the Historic Preservation Review Board.

34. The architect, Thomas S. Shiner, testified at the June 17, 1992 hearing. Mr. Shiner stated that he had met with the Office of Planning (OP). The proposed project was discussed in terms of unique difficulties with the lot, considerations of the Historic Preservation Review Board (HPRB) code officials, and ways by which the applicant might review alternatives.

Mr. Shiner stated that he discovered that the height and massing could be maintained as approved by the HPRB and still reduce the building's total gross floor area.

35. Mr. Shiner produced schemes A and B at the hearing. Both had an FAR of 4.0 as prescribed by the Zoning Regulations.

In Scheme A the lot occupancy is 80 percent. It negates recreation space and limits recreation space to the top residential unit. The open rear yard would be used for the required parking space and would not contribute to any negative visual impacts on the community.

Scheme B uses 100 percent of the lot. It would provide a parking garage with recreation space on the roof. The residential building without the garage would occupy 80 percent of the lot.

Moreover, Scheme B provides commonly accessible recreation space above the garage, and a total aggregate of recreation space common and private at over ten percent of the floor area. Scheme B is an aesthetic improvement over Scheme A.

The architect pointed out that the Office of Planning (OP) supported Scheme B as opposed to Scheme A. Scheme A lacks accessible recreation space.

Scheme B, on the other hand, creates recreation space elevated above street level and an enclosed parking garage. The enclosed parking garage (combined with the residential building) increases the lot occupancy to 100 percent. The residential building sits on 80 percent of the lot.

In addition, Scheme B incorporates one parking space, balconies less than six feet deep, a reduced floor area on the top floor, an increase in recreation space accessible to the top floor.

Mr. Shiner also indicated that Scheme B has a void in the facade of the building. The balcony is less than six feet deep and would be a visual problem. It would bring down the FAR.

36 Mr. Shiner submitted into the record a copy of a letter received from OP commending him for the new concept which was compatible with the nature of the historic district.

37. OP recommended that the HPRB approve the height and massing of the project. Also, the facade design and materials should be refined.

38. The architect stated that the building will remain the same. Therefore, additional zoning relief is not necessary.

Mr. Shiner indicated that the front of the building had been hollowed out and the number of garage spaces reduced from two to one. The top floor area of the building was reduced by changing it over to attic space less than six feet high. The rear yard is located directly above the garage.

39. Mr. Mitchell indicated that the plan in all respects was identical to the first one in terms of density. Also, the excess FAR had been eliminated.

40. Chairperson Thornhill stated that the Advisory Neighborhood Commission submitted a written statement which indicated that they opposed the application and plans.

41. Richard Nettler, representative for the 1800 R Street Condominium Association, stated that the Association opposed the application. Mr. Nettler further stated that there was nothing unique about the site. He also stated that while there are three very small lots that are part of this project, those three small lots are being combined into one lot for purposes of constructing this building to a size that is no smaller than other lots, not only in the same square, but those particularly in SP-zoned areas within the vicinity. In addition, this project is no different from the building that was proposed earlier.

42. Mr. Nettler also stated that the Association was concerned about the parking and traffic situation along 18th Street.

Mr. Nettler pointed out that the architect indicated that in order to enter the garage on 18th Street, one would have to back into the space or back into 18th Street when exiting the garage, creating a serious traffic condition.

43. Mr. Nettler also stated that the residents were interested in maintaining the open space adjacent to the condominium.

44. Mr. Whelan, a resident of the 1800 R Street Condominium, stated that the residents are opposed to this application based on the reasons cited by Mr. Nettler.

FINDING OF FACTS:

1. The subject lots are unique when compared to other SP-1 lots in Square 134. Each of the subject lots is exceptionally small in relation to other SP lots in the square. Moreover, each lot is smaller than surrounding R-5-B lots in the square. The long and narrow shape of the lot is unique within the square and creates an exceptional condition which would make conforming development difficult for any owner for any purpose consistent with the SP-1 regulations.

2. The necessity of providing code-required egress stairs would create a practical difficulty for the owner in preserving minimal dimensions for the proposed apartments and providing recreation space and parking.

3. The proposed increase in FAR is no longer an issue in this application and the Board need not make any findings as to that issue.

4. The Board disagrees with the recommendation of ANC-2B. With respect to the ANC's objections to the proposed increase in density as being inconsistent with the zoning map changes in the Dupont Circle area and the objectives of the Dupont Circle overlay, the Board finds this particular objection to be without merit since those regulations are designed to regulate planned unit development activity in the Dupont Circle area. The proposed density, even with the requested variances, is consistent with the SP-1 District and certainly compatible with surrounding buildings in the square and in the adjacent squares.

5. The applicant requested approval of a 19 and one-half foot deep rear yard, five and one-half feet shorter than the zoning requirement that calls for a 25-foot deep rear yard.

6. The proposed building responds to the purposes of the SP-1 zone by being 100 percent residential, medium density, and transitional. The building's massing steps down from nine stories to the height of the historical buildings in the area. This transitional massing is important in responding to the Historic Preservation Review Board.

7. There was no evidence adduced that the proposed new curb cut would adversely impact parking availability and traffic safety in the area. The Board determines that a curb cut which eliminates two on-street parking spaces will not have a significant effect. The applicant originally proposed the curb cut in question to allow for off-street garage parking for two automobiles. Under the revised plan, only one such automobile will have off-street parking. The 14-foot width of the proposed curb cut is consistent with the requirements for curb cuts which open onto two-way streets.

8. The effects of the proposed building on the light and air of the contiguous apartment building at 1800 R Street may well be no greater than that of a matter-of-right SP-1 building. The party wall at 1800 R Street abutting the subject property has first-floor windows which do not open. Hence a matter-of-right building could have the same impact on light and air as the subject building.

9. The applicant was proposing to construct a building with 5,388 square feet of gross floor space (4.46 FAR) or 559.44 square feet (11.59 percent) greater than that which is permitted.

In addition, the SP-1 District requires residential recreation space totaling 538.8 square feet as related to the size of the subject proposal. The applicant is proposing a total of 234 square feet of residential recreation space. This translates into a 304.8 square-foot (56.57 percent) deficiency in recreation space relative to the proposed project.

10. The exterior balconies do not exceed a projection of six feet beyond the exterior walls of the building.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking area variances. The granting of an area variance requires a showing of practical difficulty upon the owner arising out of some unique or exceptional condition of the property which

is inherent in the property itself. Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 541 (D.C. App. 1972).

The applicant has established that the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties. The property is unique due to its exceptionally small size in relation to other SP-1 and R-5-B lots in Square 134. Its long and narrow shape constitutes an extraordinary or exceptional situation or condition. The applicant, in order to construct the proposed apartment building, (a matter-of-right use within the SP-1 District) is required to provide egress stairs. In order to comply with the building code requirements for such stairs and provide minimum front to back dimensions for apartments and recreation space, the requested variances are necessary.

The granting of the requested area variances will be without substantial detriment to the public good and without substantial impairment of the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The SP District is designed to preserve and protect areas adjacent to commercial districts that contain a mix of row houses, apartments, offices, and institutions at a medium to high density, including buildings of historic and architectural merit. The SP-1 District in which the subject property is located provides for medium density development and favors residential development by permitting new residential development to be at a higher density than new office development. The surrounding neighborhood contains a mix of uses. The high rise apartment building next door at 1800 R Street, N.W. contains a mixture of office use on the first floor and residential use on the upper floors. Other uses in the neighborhood include residential, a museum, chanceries, and non-profit and professional offices. The proposed structure is compatible with the density requirements for SP-1 and provides a transition from the high density high rise immediately to the south and the west and to similar and smaller scale buildings in the neighborhood. The proposed use is entirely residential. The design was undertaken from the outset with a view toward compatibility with the historic structures in the neighborhood in its mass and density and has been approved in concept by the Historic Preservation Review Board. Off-street parking for one car will be provided in an enclosed garage. The revised plan offers amenities to the neighborhood and to future residents of the project.

The Board concludes that it has afforded the ANC 2B the "great weight" to which it is entitled. The Board concludes that the variances can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

In light of the foregoing, the Board hereby **ORDERS** that the application be **GRANTED**, subject to the **CONDITION** that construction shall be in accordance with the revised plans marked as Exhibit Nos. 30 and 31 as amended by Scheme B of Exhibit No. 41 of the record.

VOTE: **3-0** (Betty King, Sheila Cross Reid and Susan Morgan Hinton to grant the application and adopt the proposed order as amended; Laura M. Richards not present, not voting).

THE EXCEPTIONS PROCESS:

Pursuant to the provisions of D.C. Code Section 1-1509(d), the proposed order was first sent to all parties on June 10, 1997. The filing deadline for exceptions and arguments was July 18, 1997. Because several of the parties claimed to have misunderstood the process regarding when exceptions were due in this application, and two attorneys associated with the case were not served or did not receive the initial letter with the proposed order, the Board sent the proposed order to all parties for the second time on August 26, 1997. The filing deadline for exceptions and arguments was September 8, 1997. Exceptions and responses were submitted by the Advisory Neighborhood Commission (ANC) 2B on September 5, 1997, and by the 1880 R Street Condominium Association on September 8, 1997. The applicant, by letter dated September 8, 1997, stated that it had no exceptions to file since it considered the proposed order as reflecting the Board's decision in the case.

At the Board's public meeting on January 7, 1998, Board Members, having considered all submissions and exceptions by all opposing parties, as well as additional responses by the applicant, **DENIED** the request for oral arguments. The Board thereafter voted to **ADOPT** the proposed order as amended. In a final vote, the Board **AFFIRMED** its **ADOPTION** of the proposed order after review of additional responses that were inadvertently overlooked in the previous discussion.

VOTE: 3-0 (Susan Morgan Hinton, Sheila Cross Reid and Betty King to deny).

VOTE: 3-0 (Betty King, Sheila Cross Reid and Susan Morgan Hinton to adopt).

VOTE: 3-0 (Susan Morgan Hinton, Betty King and Sheila Cross Reid to affirm).

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

ATTESTED BY: 
SHERI M. PRUITT-WILLIAMS
Interim Director

MAY 14 1998

Final Date of Order: _____

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

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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.

15613ord/JN/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15613

MAY 14 1998 MAY 14 1998
As Director of the Board of Zoning Adjustment, I certify and attest that on _____ a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

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Attested By: *Sheri M. Pruitt-Williams*
SHERI M. PRUITT-WILLIAMS
Interim Director

Date:
MAY 14 1998

attest/ljp