

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Appeal No. 17631 of Advisory Neighborhood Commission 3E and Todd Boley**, pursuant to 11 DCMR § 3100 and 3101, from the decision of the Zoning Administrator (“ZA”) to issue Building Permits Nos. 101584, 101585, 101587, and 101588/104443, allowing the construction of four (4) single-family semi-detached dwellings, allegedly not meeting driveway (§ 2116), parking (§ 2101), lot dimension (§ 401), and lot occupancy (§ 403), requirements, in the R-2 District, at premises 4319, 4319 ½, 4321, and 4321 ½ Fessenden Street, N.W. (Square 1655, Lots 17, 18, 19, and 20).

**HEARING DATE:** July 10, 2007

**DECISION DATE:** July 31, 2007

**ORDER**

**PRELIMINARY MATTERS**

On February 23, 2007, Advisory Neighborhood Commission (“ANC”) 3E and Todd Boley, an adjacent neighbor to the rear, (collectively, “Appellants”), filed this appeal with the Board of Zoning Adjustment (“Board” or “BZA”). The Appellants challenge the December 26, 2006 issuance of building permits<sup>1</sup> by the Department of Consumer and Regulatory Affairs (“DCRA”) to Dunn, Whiskey, LLC, (“property owner”), the owner of the property that is the subject of this appeal (“subject property”). Appellants allege that DCRA erred in issuing the building permits because the plans/permit application documents demonstrate violations of the Zoning Regulations.

The Board heard the appeal on July 10, 2007, and set a decision date of July 31, 2007. At its public meeting on July 31, 2007, the Board deliberated on the appeal and denied it, by a vote of 4-0-1.

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<sup>1</sup>Permit number 101588, issued for lot 19, was revised to reduce the footprint of the proposed building to comply with the maximum permitted lot occupancy in this R-2 zone district. The revision permit, number 104443, was issued on May 11, 2007, after the filing of this appeal. Because it is a revision to a permit being appealed, and because of the nature of the revision, the Board considers this appeal to apply to the revision permit as well as to the four originally-issued permits.

**BZA APPEAL NO. 17631****PAGE NO. 2****FINDINGS OF FACT**Background

1. The property that is the subject of this appeal is located in an R-2 zone district, in Square 1655, Lots 17, 18, 19, and 20, at addresses 4319, 4319 ½, 4321, and 4321 ½ Fessenden Street, N.W.
2. On March 20, 2006, the D.C. Office of the Surveyor approved the subdivision of two lots with street addresses 4319 and 4321 Fessenden Street, N.W. Each of these two lots was subdivided into two lots, resulting in Lots 17, 18, 19, and 20.
3. Lots 19 and 20 each have a 36-foot street frontage on Fessenden Street.
4. The bulk of Lots 17 and 18 are located behind Lots 19 and 20, but narrower “panhandle” strips of both Lots 17 and 18 run along the west side of Lots 19 and 20, reaching Fessenden Street and providing both lots 17 and 18 with 14-foot street frontages on Fessenden Street.
5. Each of these panhandles is encumbered by easements.
6. The easement over the panhandle of Lot 18 is for the exclusive benefit of Lot 19 and adds to its side yard.
7. The easement over the panhandle of Lot 17 is for the benefit of all of the lots and provides access from the street to the required parking space located on each of the four lots.
8. There is one easement on Lot 19 that provides Lot 18 with one additional parking space.
9. There is one easement that straddles Lots 18 and 19 which provides, on that part of the easement that is located on Lot 19, an additional two parking spaces for Lot 17.
10. Appellants make the following contentions with respect to the four easements:
  - a. The Access and Side Yard Easement<sup>2</sup> on Lots 17 and 18 should not have been counted toward their street frontage;

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<sup>2</sup>For ease of reference, the easement referred to in Finding of Fact No. 6 will be called a “Side Yard Easement,” but the land encompassed within the easement is not part of the required 8-foot side yard on Lot 19. This side yard exists without the addition of the land within the easement, but the easement serves to provide the dwelling on Lot 19 with a greater amount of open space on its west side.

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- b. The two Parking Space Easements on Lot 19 should not have been counted toward its lot area; and
  - c. The entire Access Easement should not have been recognized as providing access to the required parking spaces.
11. Appellants make the following contentions that are unrelated to the easements:
- a. Even if an easement could create access to required parking spaces, the route may still not be recognized as providing access because it is shared;
  - b. The parking spaces on Lot 19 cannot serve other lots;
  - c. Even if the Access and Side Yard Easement Areas could be counted toward the street frontage of Lots 17 and 18, their street frontage widths would be substandard;
  - d. The proposed external staircases to be constructed on each lot unlawfully intrude into a required side yard;
  - e. The bay windows on the dwellings on Lots 19 and 20 cause an overage in lot occupancy on those two lots;
  - f. The storm water management equipment will encroach on the width of the driveway; and
  - g. The depth of the rear yard of Lot 19 is less than required.

Notice

- 12. On May 19, 2006, a principal of property owner, Dunn, Whiskey, LLC, notified ANC 3E that he had filed building permit applications for the four subject lots and offered to meet with the ANC to discuss them.
- 13. Between May, 2006, and October 4, 2006, the property owner, ANC 3E, and several neighbors, including the Appellant, Mr. Boley, exchanged correspondence and held meetings concerning the property owner's proposed project.
- 14. In this correspondence and during these meetings, the subdivision plans and several issues of zoning compliance were discussed.
- 15. The subdivision plat was available for inspection in the Office of the Surveyor at Book 200, Page 90, since its recordation on March 20, 2006, but it is merely a recordation of the subdivision and does not depict the siting of the dwellings on the lots, nor the arrangement of the driveway, drive aisle, or parking spaces on the lots.

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16. The four building permits being appealed were issued on December 26, 2006. (*See also*, footnote #1, herein.)
17. This appeal was filed on February 23, 2007.

The Proposed Project

18. On March 23, 2006, just after the two original lots were subdivided into Lots 17, 18, 19, and 20, the property owner purchased them in order to construct four semi-detached single-family dwellings on them, with one dwelling on each lot.
19. On December 26, 2006, DCRA issued four building permits to allow construction of the four single-family semi-detached dwellings. Permit number 101585 was issued for Lot 20 (4319 Fessenden Street), permit number 101588 was issued for Lot 19 (4319 1/2 Fessenden Street), permit number 101584 was issued for Lot 18 (4321 Fessenden Street), and permit number 101587 was issued for Lot 17 (4321 1/2 Fessenden Street). (*See also*, footnote #1, herein.)

*Dimensional requirements*

20. Both Lots 19 and 20 have an area of 3,024 square feet. Lot 17 has an area of at least 5,000 square feet, and the rectangular portion of Lot 18 (not including the "panhandle") has an area of approximately 4,200 square feet. Each lot complies with the Zoning Regulations' mandatory lot area minimum of 3,000 square feet. *See*, 11 DCMR § 401.3.<sup>3</sup>
21. Each lot also has a lot width of at least 30 feet, as required by 11 DCMR § 401.3.
22. Each of the dwellings to be sited on the four lots will have one side yard of eight feet in width, per 11 DCMR § 405.9, and therefore will meet the definition of "dwelling, one-family, semi-detached" contained in 11 DCMR 199.1.
23. The plans show that within each of the required side yards will be an areaway - an opening to the ground below-grade - with a below-grade stairway built into the foundation of the structure providing access to the basement.
24. The dwellings on Lots 19 and 20 will have rear yards of approximately 37 feet, and the dwellings on Lots 17 and 18 will have rear yards of approximately 27 feet, all of

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<sup>3</sup>Including the panhandles, lot 17 has a total lot area of 5,363 square feet, and lot 18 has a total lot area of 6,234 square feet. Exhibit No. 20, attached exhibit B2.

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which comply with the Zoning Regulations' requirement of a 20-foot rear yard. *See*, 11 DCMR § 404.1.

25. There is no front yard requirement in this R-2 district.
26. The four semi-detached dwellings will all have lot occupancies of less than the 40% maximum permitted in this R-2 zone, including those on Lots 19 and 20, which have bay windows that project into the public space. *See*, 11 DCMR § 403.2.
27. The four semi-detached dwellings will all be three stories and less than the 40-foot height maximum permitted in this R-2 zone. *See*, 11 DCMR § 400.1.
28. The 14-foot wide panhandle strip of Lot 18 will contain the storm water management equipment for the subject property, but is subject to the Side Yard Easement, a perpetual use easement for the benefit of Lot 19, to which it runs adjacent.

*Description of Easements*

29. There are four easements within the project, three of which are germane to this appeal.

The Access Easement

30. A common driveway, providing vehicular access from Fessenden Street to all four lots, runs over the 14-foot wide panhandle strip of Lot 17. At the front of the rectangular portion of Lot 17, this common driveway narrows to approximately 11 feet and turns right to run between the front of Lots 17 and 18 and the back of Lots 19 and 20. At its turning point, the common driveway will be joined by an 11-foot-wide paved strip of Lot 18, forming together a common drive aisle of approximately 22 feet in width.
31. The dwellings on Lots 17 and 18 will each have an attached garage providing one parking space on each lot.
32. The common driveway/drive aisle leads to these two garages as well as to one parking space in the rear yard of Lot 20 and three parking spaces in the rear yard of Lot 19.
33. A "Joint Driveway Parking Area and Use Easement" ("Easement Agreement") will be entered into by the owners of all four semi-detached dwellings to regulate the use and maintenance of the common driveway/drive aisle. *See*, Exhibit No 15, Attachment No. 7.

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34. The easement created by the Easement Agreement is a perpetual non-exclusive ingress and egress easement for the benefit of all four lots.
35. The Easement Agreement specifies that the common driveway and parking area will be paved and maintained and will remain unobstructed. See, Id.
36. Within the area of the panhandle of Lot 18 will be located the largely subsurface storm water management equipment for the property.
37. Consistent with the Easement Agreement, this equipment will not obstruct the common driveway area.

The Two Parking Space Easements

38. There are two parking space easements on the property. One is located entirely on Lot 19 and covers a 9 x 19-foot parking space designated for the use of lot 18. A second easement straddles Lots 18 and 19, and provides, on the 18 x 19-foot part of the easement located on Lot 19, two parking spaces for the benefit of Lot 17. The Lot 18 portion of this easement is not involved in this appeal.

The Side Yard Easement

39. A fourth easement is located over the panhandle of Lot 18 and consists of a narrow swath of land that runs parallel to the western side lot line of Lot 19. This easement is for the exclusive benefit of the owner of Lot 19, and increases the area of his side yard.

**CONCLUSIONS OF LAW**Timeliness

The property owner argued that the appeal was untimely as to any lot area, lot width, and/or shared driveway issues because the Appellants knew of the filing of the subdivision plat as early as May, 2006, and at least by October 2, 2006, and yet did not file the appeal until February 23, 2007, beyond the requisite 60-day period within which to file an appeal with the Board. See, 11 DCMR 3113.2. The property owner further argued that there were no exceptional circumstances outside of the Appellants' control which prevented them from filing the appeal within the 60-day period. See, 11 DCMR § 3112.2(d).

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The Appellants countered that they were not appealing the filing of the subdivision plat, but were appealing the issuance of the four building permits, which were issued on December 26, 2006. They argue, therefore, that their February 23, 2007 filing of the appeal falls within the 60-day window.

The Board agrees with the Appellants that the "decision complained of" and appealed here is the issuance of the four building permits. Even if the Appellants could have appealed the earlier filing of the subdivision plat, they were entitled to wait and appeal the issuance of the permits. A similar argument was rejected by the District of Columbia Court of Appeals in *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 430 (D.C. 2006). In that case, it was argued that the BZA appeal should have been filed within 60 days after the ANC appellant became aware that DCRA had issued a "concurrence letter", not within 60 days after a building permit based upon that letter was issued. The Court disagreed, stating:

Because the issuance of a building permit requires the DCRA to comply with the public notice and other requirements set forth in the zoning regulations, we hold that a party ... may wait to appeal until the DCRA takes official action by issuing the permit, regardless of whether or not that party has appealed (or tried to appeal) from any earlier interlocutory "administrative decision." As the BZA explained, section 6-641.07 (f) of the Code recognizes three types of appealable zoning-related decisions:

- (1) those granting or refusing building permits; (2) those granting or withholding certificates of occupancy; and (3) "other administrative decisions.

We agree with the BZA that each type of decision is separately appealable.

894 A.2d at 430.

Based upon this clear precedent, the appellants' knowledge of the subdivision did not obligate them to appeal that administrative decision. Rather, their time for filing this appeal began on the day they knew or should have known that the subject building permits were issued. Those permits were issued on December 26, 2006, and the Appellants filed their appeal 57 days later – on February 23, 2007. The appeal was timely filed.

**BZA APPEAL NO. 17631****PAGE NO. 8**The Merits of the Appeal

The Appellant sets forth 13 issues on appeal, several of which overlap. The resolution of the majority of these 13 issues depends on the Board's determination of whether land area that is encumbered by an easement may be included in the calculation of lot area and street frontage and recognized as providing access to required parking spaces.

The Board will address these questions first, and then will address Appellants' numerous contentions that do not turn exclusively on the determination of easement-related questions.

*Uses allowed by easements and compliance with the Zoning Regulations*

Appellants generally assert that the Zoning Administrator erred in disregarding the easements on the subject property in determining compliance with the Zoning Regulations. Accordingly, the initial issue to be decided is whether easements generally are properly considered in determining compliance with the Zoning Regulations.

Easements are valid and time-honored legal tools used to permit use or access. *See, e.g., Restatement of the Law, Third, Property (Servitudes)*, The American Law Institute, Introduction (2000).<sup>4</sup> However, the District of Columbia Zoning Regulations are silent as to whether they are to be considered in determining zoning compliance. In addition, there is no District of Columbia Court of Appeals' decision addressing this issue. Accordingly, the Board entertained testimony from the Acting Zoning Administrator on past practices as well as from the parties on the impact of the easements and on court cases in other jurisdictions.

The Acting Zoning Administrator testified that the long standing past practice in the District of Columbia has been to determine compliance with the Zoning Regulations without regard to easements. This Board gives weight to that interpretation. *See, e.g., Smith v. D.C. Board of Zoning Adjustment*, 342 A.2d 356, 359 (D.C. 1975). (The Board must give weight to the long-standing interpretation of the Zoning Administrator.)

In addition, this Board itself has recognized easements in its past proceedings and granted applications which included their establishment. *See, e.g., BZA Order No. 12591 (Application of Hunt and Bartolucci)* (August 1, 1978). The Acting Zoning

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<sup>4</sup>"Servitudes (*i.e.*, easements) have been known since ancient times." They are "extensively used to provide the underlying structure of real-estate developments that include shared amenities or facilities and services financed by assessments against individual owners, as well as for individual and neighborhood land-use restrictions...." *Id.*

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Administrator's interpretation is also in accordance with court decisions in other jurisdictions, specifically discussed below.

Accordingly, based on the above and the discussion below with respect to lot area, the Board determines that it is proper to consider compliance with the Zoning Regulations without regard to easements.

*The inclusion of the easements in the calculation of lot area and street frontage*

Appellants contend that the portion of Lot 19 that is encumbered by the two Parking Space Easements may not be included in its lot area and that the portions of Lot 17 and 18 that are respectively encumbered by the Access and Side Yard Easement may not be included in their street frontage. The Board disagrees.

Appellants cite cases that hold that the land area subject to an easement cannot be counted toward the determination of minimum lot area.<sup>5</sup> However, the Board finds these authorities unpersuasive because they involve either another jurisdiction's specific regulation or ordinance that the land area subject to an easement may not be counted toward the determination of minimum lot area,<sup>6</sup> or publicly-traveled streets or alleys, which, in some cases, had been established and used for years.<sup>7</sup>

A different conclusion results when an easement serves narrower private purposes. *See Metzenbaum v. City of Carmel-by-the-Sea*, 234 Cal.App.2d 62, 44 Cal. Rptr. 75 (1965). In *Metzenbaum*, the local Zoning Board granted a use permit to establish three building sites on a property. Two of the sites could only be reached by private roadway easements established over a part of each site, which then connected to a longer private easement running along the south side of the third site. The calculation of lot area for each of the lots included the land area within the easements. Without the inclusion of the easements, the lots would be substandard. As with the District's zoning regulations, the California ordinance was silent as to whether easement area was to be included or excluded from determinations of lot area.

The court in *Metzenbaum* determined that the inclusion of the easements in the lot area calculation was reasonable under the facts presented, citing the discretion of local zoning

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<sup>5</sup>See, e.g., *Lidke v. Martin*, 31 Colo.App. 40, 500 P.2d 1184 (Colo. Ct. App. 1972) and *Loveladies Property Owners Ass'n., Inc., v. Barnegat City Service Co., Inc.*, 60 N.J.Super. 491, 159 A.2d 417 (N.J. Supr. Ct. App. Div. 1960).

<sup>6</sup>See, e.g., *Lidke v. Martin*, 31 Colo.App. 40, 500 P.2d 1184 (Colo. Ct. App. 1972) and *Loveladies Property Owners Ass'n., Inc., v. Barnegat City Service Co., Inc.*, 60 N.J.Super. 491, 159 A.2d 417 (N.J. Supr. Ct. App. Div. 1960).

<sup>7</sup>See, e.g., *Mudge v. Precinct of Haverhill Corner*, 133 N.H. 881, 587 A.2d 603 (Sup. Ct. N.H. 1991), *Kefauver v. Zoning Board of Appeals of Town of Newtown*, 151 Conn. 144, 195 A.2d 422 (Sup. Ct. Err. Conn. 1963), and *Sommers v. Mayor and City Council of Baltimore*, 215 Md. 1, 135 A.2d 625 (Ct. App. Md. 1957).

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authorities to address the many varying situations which arise. *Id.*, at 65-66. The California court was directed to many of the same cases that concluded otherwise as was this Board, but the Board agrees with the California court that “they deal with different ordinances, other communities, and distinct fact situations.” *Id.*, at 65.

As will be explained below, the Board finds the three types of easements involved here (Access, Parking Space, and Side Yard) share the same or similar characteristics with the easement considered by the California Court of Appeals.

*a. The inclusion of the Parking Space Easements when calculating the area of Lot 19.*

As noted in the Findings of Facts, there are two parking space easements on Lot 19, one of which extends to Lot 18. Both of the easement areas represent separate parking areas, one of which is for the benefit of Lot 18 and the other two for the benefit of Lot 17. Each easement may only be used for the purpose of parking the motor vehicles belonging to the lots to which the parking spaces are assigned. As such, neither serves any public purpose. This is precisely the type of easement recognized by the California Court of Appeals as being properly included within lot area.

Because the Board concludes that the easement areas are included in the calculation of the lot area of the four subject lots, each lot, including Lot 19, has at least the requisite minimum lot area of 3,000 square feet. Accordingly, the lot occupancy of the dwelling on Lot 19 is slightly less than the mandated maximum of 40% - calculated by the Zoning Administrator as 39.34%.

*b. The inclusion of Access and Side Yard Easements when calculating the street frontage of Lots 17 and 18.*

Although the *Metzenbaum* decision concerned lot area, its analysis also warrants a conclusion that the Access and Side Yard Easements were properly included within the calculation of the street frontage of Lots 17 and 18.

The Side Yard Easement on the Lot 18 panhandle is an exclusive easement that may be used only by the owner of lot 19. It serves no public purpose and although the Driveway Easement on Lot 17 is non-exclusive, it is nevertheless for the benefit of, and intended only for the use of, the four lots which it serves. It is not intended to service the public and is not situated so as to permit through-access to any other public, or private, street or way.

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In summary, the Board rejects the Appellants' argument that all easements should be excluded from the computation of lot area and street frontage. Such an interpretation would lead to the artificial exclusion of land area from the computation of zoning requirements. For not only would the easement areas be excluded from the computation from the lot area and street frontage of the lots where they exist, but they could not be included within the land area of the lots they serve, because, obviously, they are not within the footprint of those lots. Thus the square footage they represent would simply be lost. While that may make sense when the easement is for the benefit of the public, it becomes illogical when the easement is intended for private use.

Accordingly, the Board finds no violations of the Zoning Regulations with respect to the computation of lot area and street frontage. The Board agrees with the Acting Zoning Administrator, and upholds his interpretation that the land areas within easements do count toward calculations of dimensional requirements of the Zoning Regulations.

*The recognition of the Access Easement as providing access to required parking.*

Although the Appellants phrase this argument in terms of "ignoring" the four easements when determining parking access, it is no different from the arguments they make with respect to the street frontage of Lot 17. There as here, Appellants claim that the mere existence of an easement precludes it from serving any purposes pertaining to zoning compliance.

Again the Board must disagree for the reasons stated above. In requiring access to required parking, the Zoning Regulations do not specify the type of property interest that must be held. It could be held in fee, easement, or leasehold. Thus, the existence of the ingress and egress easement over the panhandle of Lot 17 violates no Zoning Regulation and the area within the panhandle is competent under the Regulations to provide the required access to the parking spaces for Lots 19 and 20.

*Depth of Rear Yard not affected by Parking Easement*

The Appellants also claim that the depth of the rear yard of Lot 19 is slightly less than the required 20 feet due to the presence, within that rear yard, of the parking easements for the benefit of Lots 17 and 18. Again, the Board disagrees with the Appellants because easement areas are not deducted from lot/yard size calculations. That is especially clear here because parking spaces are specifically permitted in rear yards, with no deduction of yard area required. *See*, 11 DCMR § 2116.2(b)(1). *See also*, Finding of Fact No. 24.

**BZA APPEAL NO. 17631****PAGE NO. 12***Non-Easement Related Issues***1. Use of Shared Driveway to Access Required Parking Spaces.**

Appellants contend that § 2117.4 mandates that each required parking space be accessible via its “own” driveway, and that the shared access provided by the one driveway to all four lots violates this provision. *See*, Exhibit No. 15, at 4-5. Section 2117.4 does not specify that each required parking space must be accessible by its own individual driveway. It merely states that “each required parking space ... shall be accessible from improved streets and alleys via graded and unobstructed private driveways.” 11 DCMR § 2117.4. This has been the long-standing interpretation of the Zoning Administrator and is consistent with Board precedent. *See*, BZA Order No. 12591, *supra*. Accordingly, 11 DCMR § 2117.4 has not been violated in this case as each required parking space is accessible from an improved street via a graded and unobstructed private driveway.

**2. Location of Parking Spaces under Section 2116.**

The Appellants also allege violations of subsections 2116.1 and 2116.2(b). Subsection 2116.1 states, that “Except as provided in Sections 214 , 510, 708, 730., 743.2(d), 753.2(c) , 761.2, 804.1, 926, 2116.5 and 2117.9 (c) .all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.” 11 DCMR § 2116.1. Each dwelling on the subject property has a parking space on the same lot which is intended to serve that dwelling. Lot 19 contains an additional parking space that by easement is for the benefit of Lot 18 and two additional parking spaces that by easement are for the benefit of Lot 17.

The Acting Zoning Administrator testified that because each lot has at least one off-street parking space for the house it serves, it complies with the required parking set forth in Section 2101.1. He further stated that no provision of the regulations prohibits allowing additional off-street parking spaces beyond the requirement and that it is instituted in the Office of the Zoning Administrator to look at this situation in the context of required parking. Appellants argue that Section 2116.1 refers to “all” parking spaces, not just to required parking spaces.<sup>8</sup>

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<sup>8</sup> The Board notes that Section 2118.9 states : “Except where otherwise indicated, whenever the word “all” is followed by the words ” parking spaces” in the same sentence, the parking requirements as specified shall apply to all parking spaces whether or not the spaces are required by this chapter. The requirement shall also apply to both accessory parking spaces and parking spaces that are constructed as a principal use unless otherwise specified.”

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The Board concurs with the Acting Zoning Administrator's interpretation that 2116.1 does not prohibit a one family dwelling from providing additional parking spaces by easement for the benefit of another lot. While 2116.1 does refer to "all" parking spaces, the word "all" is preceded by the phrase "Except as provided in sections 214, 510, 708, 730., 743.2(d), 753.2(c), 761.2, 804.1, 926, 2116.5 and 2117.9." The Board finds that the Zoning Administrator's interpretation that Section 2116.1 applies only to required spaces in the context of one family dwellings is consistent with the long-standing practice in the Office of the Zoning Administrator, the regulatory scheme and common sense.

Subsection 2116.2(b) states that off-street parking spaces must be located either in a rear or side yard. 11 DCMR § 2116.2(b). Appellants contend that there will be parking spaces in the front yards of the dwellings on Lots 17 and 18. There is, however, no front yard requirement in this R-2 district and the parking spaces in question are actually located in the rear yard of Lot 19, although their physical placement is in front of Lots 17 and 18. Further, as pointed out by the Zoning Administrator, the Zoning Regulations do not prohibit parking in "front yards," but prohibit parking spaces "between a building line and lot line abutting a street." See, 11 DCMR § 2116.4. The subject property will not have any parking spaces in this prohibited area.

### 3. The Effect of the External Staircases on Side Yard Width.

The Appellant claims four violations of the 8-foot side yard requirement of § 405.9 because each of the four semi-detached dwellings has an exterior stairway built into its foundation, leading to the basement, which occupies approximately half of the 8-foot side yard width. Pursuant to § 2503.2 of the Zoning Regulations, "[a] structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under" this Title. The exterior stairways in question here are structures, but are located entirely below grade, no part of which is more than four feet above grade, therefore, pursuant to § 2503.2, they are permissible within the side yard and do not diminish the width of the yard.<sup>9</sup>

### 4. Width of Street Frontages of Lots 17 and 18.

The Appellants also make the argument that the "frontage" of each of the rear lots

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<sup>9</sup>There was discussion during the hearing of the construction of retaining walls along the sides of the areaways, but retaining walls do not constitute an encroachment on a side yard, because they are permitted in yards, with no stated height limitation, pursuant to § 2503.3. The size of a retaining wall and the amount of earth it retains may have some bearing on a determination of whether it is permitted in a yard, but here, the ZA testified that: "[t]here is nothing in the plans or my site visit that presented evidence to me that any retained earth structure [that] exceeded four feet in height exists or is approved here." BZA Transcript of July 10, 2007, at 347, lines 6-10.

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narrows to less than the required 14 feet after the panhandles turn to create the drive aisle. "Frontage," as pointed out by the Zoning Administrator, is "measured along the street" pursuant to § 401.6. The frontage of lots 17 and 18, measured along the street, is 14 feet, in compliance with the regulation. There is no requirement in the regulation that this 14-foot measurement continue for the length of the lot.

**5. Bay Windows and Lot Occupancy.**

Appellant alleges that the bay windows on the dwellings on Lots 19 and 20 cause the dwellings' lot occupancies to increase to over 40%. The Board agrees with the Zoning Administrator's determination that "[t]he cited bay window feature projects into the public space of Fessenden Street and is not counted as part of the subject lot's occupancy calculation." (Emphasis in original.) *See*, Exhibit No. 25 at 6.

**6. Width of Driveway and Effect of Storm Water Management Equipment.**

Appellants allege that the driveway established by the access easement over the panhandle of Lot 17 appears to be only 13 feet wide because the storm water management equipment will encroach upon the width of the driveway. The storm water management equipment is located in the panhandle of Lot 18 and the Board finds nothing in the record to show that it intrudes into the panhandle of Lot 17, where the driveway is located. Moreover, the equipment is largely underground and will not interfere with the use of the driveway, as ensured by the Easement Agreement. Therefore, the storm water management equipment does not encroach into the required 14-foot driveway width. *See*, 11 DCMR § 2117.8(c)(2).

**Great Weight**

Pursuant to 11 DCMR § 3115.2, the Board is required to give "great weight" to issues and concerns raised by the affected ANC. *See also*, D.C. Official Code § 1-309.10(d). Great weight means acknowledgement of these issues and concerns and an explanation of why the Board did or did not find the ANC's views persuasive. The Board, in this order, has addressed all the issues raised by ANC 3E, but, as explained thoroughly above, did not find the ANC's arguments persuasive.

For the reasons stated above, the Board concludes that the Appellants did not meet their burden of demonstrating that DCRA and the Zoning Administrator erred in issuing building permits Nos. 101584, 101585, 101587, and 101588/104443, and in consequently allowing the construction of two flats on the subject property. Therefore, it is hereby **ORDERED** that this appeal be **DENIED**.

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**VOTE: 4-0-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, John A Mann II to deny; No Zoning Commission member participating or voting.)

Each concurring Board member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

**FINAL DATE OF ORDER: MAR 07 2008**

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 17718 of the Archdiocese of Washington, on behalf of the Shrine of the Most Blessed Sacrament**, pursuant to 11 DCMR § 3104.1, for a special exception to construct a new recreational playing field to serve an existing private school under section 206, in the R-1-B District at premises 3637 Patterson Street, N.W. (Square 1863, Lots 824, 825 and 826 (record lots 6, 7 and 8)).

**HEARING DATE:** February 19, 2008  
**DECISION DATE:** March 4, 2008

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. ANC 3G submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 206. The opposing parties to the application withdrew their opposition as a result of reaching a separate agreement with the applicant. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 206, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further

**BZA APPLICATION NO. 17718****PAGE NO. 2**

concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the FOLLOWING CONDITIONS:**

1. The recreational playing field may be used between 10:00 a.m. – 6:30 p.m., but in no event shall the field be used after sunset.
2. No more than 90 students shall be permitted to use the field at any given time.
3. The field shall be developed in accordance with the plans filed on February 27, 2008 and included in Exhibit 35 of the record of this case, which plans show landscape buffers, the installation of a fence around the site, and the installation of two security floodlights on 10-foot poles. The Applicant shall have the flexibility to substitute comparable planting based on availability, planting season, and specific requests from the adjacent neighbors.
4. The primary means of access to the field for students shall be the alley entrance. Kindergarten students shall have flexibility to use either Patterson Street or the alley entrance.
5. Gates shall be kept locked whenever the field is not in use by the school or other authorized party.
6. No permanent recreational structures such as baseball backstops, soccer goals, or basketball hoops shall be constructed on the field.
7. The field shall not be used for major athletic or sporting events, nor shall it be used by organized groups that are not a part of the school's educational and religious program.
8. No amplifiers, generators, compressors or other loud devices shall be used by the school on the field.
9. The school shall be permitted, but is not required, to use the field or make the field available to neighboring families during the hours of 10:00 am – 6:30 p.m. on weekends, holidays or other times when school is not in session, subject to any rules and restrictions imposed by the school regarding security and noise levels.
10. The school shall be responsible for maintenance of the field, including maintenance of the landscaping and removal of trash and debris from the field and the adjacent sidewalk and alley.
11. Approval shall be for **THREE YEARS** from the effective date of this order.

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**VOTE: 5-0-0** (Ruthanne G. Miller, Shane L. Dettman, Marc D. Loud and Mary Oates Walker to approve; Gregory N. Jeffries to approve by absentee ballot)

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** MAR 06 2008

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY

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RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17727 of Anthony V. Serafino**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a second floor rear addition to an existing one-family row dwelling under section 223, not meeting the lot area (section 401), lot occupancy (section 403), and rear yard (section 404) requirements in the R-4 District at premises 1000 D Street, S.E. (Square 971, Lot 805).

Note: The Board amended the application at the public hearing by adding and approving relief from section 401 (lot area).

**HEARING DATE:** March 4, 2008  
**DECISION DATE:** March 4, 2008 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 8 – Plans) be **GRANTED**.

**VOTE:** 5-0-0 (Shane L. Dettman, Michael G. Turnbull, Ruthanne G. Miller, Marc D. Loud, and Mary O. Walker to Approve)

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** March 4, 2008

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION,

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DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 07-13**

**Z.C. Case No. 07-13**

**Consolidated Planned Unit Development and Related Map Amendment  
Trustees of the Corcoran Gallery of Art and MR Randall Capital, LLC – 65 I Street, S.W.  
(Square 643-S, Lot 801)  
January 14, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on September 27, November 8, and December 6, 2007, to consider an application from the Trustees of the Corcoran Gallery of Art and MR Randall Capital LLC (collectively referred to herein as the "Applicant"), for consolidated review and one-step approval of a planned unit development and related zoning map amendment from the R-4 to the C-3-C Zone District. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**Application, Parties, and Hearings**

1. On April 11, 2007, the Applicant filed an application with the Commission for consolidated review and approval of a planned unit development ("PUD") for property consisting of Lot 801 in Square 643-S ("Property"), as well as an amendment of the Zoning Map from the R-4 to the C-3-A District. The Applicant later amended its application, as discussed below, to request rezoning to the C-3-C District. The subject Property consists of approximately 115,724 square feet of land and is bounded by I Street on the south, former 1<sup>st</sup> Street on the west, partially-closed H Street on the north, and former Half Street on the east, in southwest Washington, D.C. The Property is presently improved with the former Randall Junior High School, an historic landmark listed in the D.C. Inventory of Historic Places. The Applicant intends to redevelop the site to establish a new campus for the Corcoran College of Art and Design ("Corcoran") and construct a new multi-family residential building consisting of approximately 440-490 units. Twenty percent of the residences will be designated affordable units.
2. At its public meeting held on May 24, 2007, the Commission voted to schedule a public hearing on the application. The Commission directed the Applicant to restudy the design

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of the building and its compatibility with the historic Randall School prior to any hearing on the application.

3. On June 25, 2007, the Applicant submitted a pre-hearing statement, along with revised architectural drawings. Consistent with the C-3-A Zone District initially proposed, the new residential building would be constructed to a height of 90 feet with a large wing in the former H Street right-of-way at the north. As a result of community concern over the use of the former H Street right-of-way for a portion of the rear wing, and at the recommendation of the Office of Planning ("OP"), the Applicant revised the design to eliminate the rear wing. In order to recapture the lost density, the Applicant added one floor to the building, thereby increasing the height to 100 feet. Because the maximum height permitted in the proposed C-3-A Zone District is limited to 90 feet, the Applicant amended its application on September 7, 2007, to seek rezoning, in the alternative, to the C-3-C Zone District, which permits a maximum height of 130 feet.
4. After proper notice, the Commission convened a hearing on September 27, 2007, to consider the application and the proposed amendment to the C-3-C Zone District in the alternative. The Commission indicated its support for the additional height and rezoning, but continued to express reservations about the overall architectural design. The Commission continued the hearing until November 8, 2007, to allow the Applicant sufficient time to develop the ten-story scheme and restudy the design. The Commission also postponed consideration of party status until that time. The Applicant submitted supplemental plans for the ten-story scheme on October 18, 2007, but with only limited modifications to the overall architectural design. Instead, the Applicant requested the opportunity to engage in a "design dialog" with the Commission so that the architectural issues could be appropriately addressed.
5. On November 8, 2007, the Commission reconvened the hearing. Square 643 Associates, LLC, the property owner to the north across H Street, requested party status in support of the application, with reservations. Because the request was only filed that day, the Commission denied party status as untimely. No other requests for party status were received. Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located, was an automatic party to the proceeding.
6. The Applicant's architect, Shalom Baranes of Shalom Baranes Associates, presented testimony on the architectural intent and design theory for the proposed PUD. The Commission offered further suggestions on material and color selection, and continued the hearing until December 6, 2007.
7. At the December 6<sup>th</sup> hearing, the Applicant presented five witnesses in support of its amended plans for the ten-story scheme and rezoning to the C-3-C Zone District: Paul Greenhalgh, Director of the Corcoran; Jocelyn File, Director of Special Projects at the Corcoran; Russell Hines, Vice President of Monument Realty LLC, on behalf of MR

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- Randall Capital LLC; Chris L. Kabatt, a traffic engineer with M.J. Wells and Associates; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP. Based upon their professional experience and previous qualifications before the Commission, Mr. Baranes was recognized as an expert in architecture, Mr. Sher an expert in land use, zoning, and planning, and Mr. Kabatt as an expert in transportation planning.
8. Square 463 Associates LLC ("Square 463 Associates"), through its counsel, Cynthia Giordano of Arnold & Porter, testified in support of the project but with reservations concerning the parking and loading facilities along H Street that will face Square 463 Associates' proposed PUD, which was approved by the Commission in Case No. 03-30. Osborne George, of O.R. George and Associates, testified regarding the Applicant's traffic report and raised questions about some of the data and conclusions reached. These issues, however, were fully addressed by the Applicant and the District Department of Transportation ("DDOT"), as discussed in greater detail below.
  9. At its meeting on October 15, 2007, which was duly noticed and at which a quorum was present, ANC 6D voted to support the amended application.
  10. The Commission received letters in support of the project from the following: Councilmember Tommy Wells; Neil Albert, Deputy Mayor for Planning and Economic Development; Stephen Richard, Arena Stage; Charlene Drew Jarvis, President of Southeastern University; Dixie Eng, General Manager of Best Western Hotel; John Goudeaux, Principal of Amidon Elementary School; Almeta Hawkins, Principal of Bowen Elementary School; Capitol Park IV Condominium; Pastor Fitzgerald Carter, Bethel Pentecostal Tabernacle Church; George Lentz, President of Capitol Park IV Condominium; and Mark S. Bauernhuber, Southwest resident. There were no parties or persons in opposition to the project.
  11. At its public meeting held on December 10, 2007, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and plans for the ten-story scheme that were submitted to the record and the PUD-related rezoning to the C-3-C Zone District.
  12. The applications were referred to the National Capital Planning Commission ("NCPC") for review of any impacts on the federal interest under the Comprehensive Plan pursuant to § 492 of the District Charter. NCPC, by action dated January 3, 2009, advised "that the project would be adverse to the federal interest because a penthouse element on the top of the roof causes the building to exceed the maximum height allowed under the Height of Buildings Act of 1910, which states that 'Pent houses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof.'" NCPC recommended, "that the Zoning Commission require the applicant to modify the project design to setback a distance from the exterior wall of

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- the building equal to the penthouse height.” The NCPC action was transmitted to the Commission by letter dated January 8, 2008.
13. At its regularly scheduled January 14, 2008 public meeting, the Commission re-opened the record to receive a supplemental report from DDOT (Exhibit 72), a response to the NCPC report from the Applicant (Exhibit 73), and a submission from Wells and Associates regarding the Transportation Management Plan (Exhibit 75).
  14. At its January 14, 2008 meeting, the Commission considered the NCPC report and the Applicant’s written response. The Commission voted to approve the application, but did so without taking a position on NCPC’s interpretation of the An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 601.01 to 601.09) (“Height Act”). The Commission noted that it was up to the Zoning Administrator, not the Commission, to interpret the Height Act. While the Commission would be reluctant to approve plans that clearly violated the Height Act, no such clear cut infraction was present. Rather, the question of whether the penthouse should be setback its distance from the exterior wall, or whether the Height Act only required a setback equivalent to the distance the penthouse exceeds the height limit, is a question best left to the judgment of the Zoning Administrator. Nevertheless, the Zoning Administrator should not view the Commission’s approval of this modification as obviating the need for a careful review of these plans for compliance with the Height Act and the Zoning Regulations.
  15. The Commission took final action to approve the application on January 14, 2008 by a vote of 5-0-0.

### **The PUD Project**

16. The proposed PUD is being developed pursuant to a covenant between the District of Columbia and the Trustees of the Corcoran Gallery of Art. In the Fall of 2006, the District sold the former Randall Junior High School property to the Corcoran in order that it may be redeveloped for use as a museum and school of fine arts, and a new residential development. Under the terms of the agreement, the Corcoran must provide a minimum of 80,000 square feet of space to arts education and arts-related uses, and a minimum of 340,000 square feet of space for residential uses. Twenty percent of the residential units must be set aside for households earning no more than 80% of the AMI. To fulfill its obligations under the covenant, the Corcoran selected MR Randall Capital LLC as its development partner.
17. The proposed project will integrate the historically significant portions of the existing Randall Junior High School complex into a new development consisting of residential, educational, and arts-related uses. Upon completion, the building will contain approximately 499,843 square feet of gross floor area, which equates to an overall

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density of approximately 4.32 FAR. Approximately 76,043 square feet of gross floor area will be devoted to exhibition, studio, and classroom space for the Corcoran College of Art and Design.<sup>1</sup> The College will occupy the renovated Randall Junior High School buildings, as well as additional space on the first three floors of the western wing in the proposed new construction. The residential portion of the development, containing approximately 423,800 square feet of gross floor area, will be located in the remaining portions of the new building. The residential space will be divided into approximately 440-490 condominiums. The development will also include a three-level underground parking garage, which will contain spaces for approximately 390 to 470 vehicles. The new construction in the development will rise to a maximum height of 100 feet, which is below the maximum permitted height of 130 feet allowed under the PUD standards for the C-3-C Zone District.

18. The massing of the new construction is E-shaped in configuration, with the two end-legs connecting to the historic wings of Randall School. The shorter, center-leg will project into an interior courtyard that separates the new construction from the existing building. The massing concept places a majority of the project's density away from the historic building toward the rear of the site. Small, two-story additions are located to either side of the 1927 wings. The sensitive massing of the new construction allows the historic Randall School to continue to appear as a separate building along I Street, S.W., and maintain the character of the existing streetscape. The design was approved in concept by the District's Historic Preservation Review Board ("HPRB").
19. Designed in institutional interpretation of the Georgian Revival style, the historic building is faced with red brick and limestone trim. In order to distinguish the historic building from the new construction, the proposed PUD will be clad primarily in metal and a contrasting brick color which complements the former school, as shown in Scheme B at the December 6, 2007, hearing. Different shades of brick will be blended to render the Project's distinctive massing elements. Painted aluminum window systems will be incorporated throughout. Cast stone or concrete copings, window openings, and horizontal trim will articulate certain floor levels, and other architectural elements will add rich detailing to the facades.
20. The PUD will provide a series of landscaped courtyards along former 1<sup>st</sup> Street and at the interior of the site. A sculpture courtyard and exhibition garden at the western perimeter will enliven the former 1<sup>st</sup> Street corridor. An interior courtyard for ceramics and other art displays will animate the interior of the site while also offering passive recreation space for residents of the complex.

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<sup>1</sup> The Corcoran School of Art and Design will occupy a total of approximately 100,000 square feet of space, a portion of which is below grade and does not count toward FAR.

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21. Parking and loading access is at the rear of the site along H Street, S.W., with a private driveway located in a portion of the former 1<sup>st</sup> Street right-of-way. The residential portion of the building will have two points of pedestrian access. The primary entrance will be located at the southeast corner of the building on I Street and connect by corridors to a second set of elevators and the main lobby. A second entrance will be located at the northwest corner of the site, leading to the lobby with front-desk service and the main elevators. Pedestrian access around the site will be accommodated through pathways and public sidewalks. Patrons of the Randall Recreation Center will continue to have vehicular and pedestrian access along H Street. Through an agreement with the city, the Applicant will also grant a perpetual easement over the former H Street right-of-way to continue access across that portion of the property.

#### **Matter-of-Right Development Under Existing Zoning**

22. The subject Property is located in the R-4 Zone District, which "is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families." (11 DCMR § 330.1.) Buildings in the R-4 Zone District may be constructed to a maximum height of 40 feet as a matter-of-right and may contain no more than three stories. (11 DCMR § 400.1.) The Zoning Regulations require a minimum lot area of 1,800 square feet for row dwellings and flats, 3,000 square feet for semi-detached one-family dwellings, and 4,000 square feet for all other structures. (11 DCMR § 401.3.) The minimum lot width in the R-4 District for row dwellings, semi-detached dwellings, and detached dwellings are 18, 30, and 40 feet, respectively. (11 DCMR § 401.3.) There is no maximum floor-area ratio ("FAR") prescribed for the R-4 Zone District, 11 DCMR § 402.4, and the maximum lot occupancy is 60%. (11 DCMR § 403.2.) The height, number of stories, and lot occupancy limitations within the R-4 Zone District result in an effective density ceiling of 1.8 FAR.
23. Under the PUD guidelines for the R-4 Zone District, buildings may be constructed to a height of 60 feet and a maximum density of 1.0 FAR. (11 DCMR §§ 2405.1, 2405.2.) The Commission may increase these ceilings by as much as five percent if "the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of ... [Chapter 24 of the Zoning Regulations]." (11 DCMR § 2405.3.)

#### **Matter-of-Right Development Under Proposed C-3-C Zoning**

24. The Applicant seeks to have the subject Property rezoned from R-4 to C-3-C. The C-3-C Zone District allows "medium-high density development, including office, retail, housing, and mixed-use development." (11 DCMR § 740.8.) Buildings in the C-3-C Zone District may be constructed to a maximum height of 90 feet as a matter-of-right with no limit on the number of stories. (11 DCMR § 770.1.) Development in the C-3-C

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Zone District may have a maximum density of 6.5 FAR. (11 DCMR § 771.2.) The maximum lot occupancy in the C-3-C Zone District is 100%. (11 DCMR § 772.1.)

### **Proposed Development Under the PUD Guidelines for C-3-C**

25. Under the PUD guidelines, the maximum allowable height for a building in the C-3-C Zone District is 130 feet. The Height of Buildings Act of 1910, however, limits the maximum permitted height at the Property to 110 feet. Development within the C-3-C Zone District may have a maximum density of 8.0 FAR. (11 DCMR §§ 2405.1, 2405.2.)
26. The proposed project falls within the PUD guidelines for the C-3-C Zone District. The overall density of the PUD will be 4.32 FAR, with approximately 0.66 FAR devoted to non-residential uses and the remaining 3.66 FAR devoted to residential uses. The building will not exceed 100 feet in height.

### **Development Incentives and Flexibility**

27. The Applicant seeks flexibility from the area requirements for loading facilities, penthouse setback and multiple penthouses of varying height, and several non-compliant courts. As permitted under § 2405.8, the Commission may grant such flexibility without the need for special exception approval from the Board of Zoning Adjustment or compliance with the special exception standards that might otherwise apply.

### **Public Benefits and Amenities**

28. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
  - a. *Culture, Arts, and Education – Corcoran College of Art and Design.* The most significant feature of the proposed PUD is the introduction of the Corcoran College of Art and Design to southwest Washington. Almost 100,000 square feet of space (76,043 square feet of gross floor area) in the proposed development will be occupied by classroom, exhibition, and studio space for the college. This space will allow the school to significantly expand its undergraduate and graduate degree programs, as well as its non-degree art programs for children and adults. The Arts Education Degree Program offers courses and experiential learning opportunities that are explicitly and specifically tailored to the District educational policies. This Master of Arts Teaching program integrates graduate students into the D.C. Public Schools ("DCPS") to expand the arts curriculum of the public school system not otherwise possible while providing valuable teaching experience for Corcoran's M.A. candidates. For example, Corcoran will work with Amidon and Bowen Elementary Schools, and Jefferson Junior High School to integrate art as a teaching tool for math and science. The Master of Arts

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Students will have their field rotation at Jefferson Junior High School. Numerous other highly successful art programs initiated by the Corcoran, such as ArtReach will operate from this location.

- b. *Housing.* The PUD will result in a significant addition to the District's housing stock and to Southwest Washington in particular, which has had only one new multi-family project completed in the past three decades. The development will contain approximately 440-490 units.
- c. *Affordable Housing.* The project will set aside 20% of the residential units for households earning no more than 80% of the area median income ("AMI") for Washington, D.C. The affordable housing component is two and a half times that required under the recently adopted Inclusionary Zoning ("IZ") provisions under Chapter 26 of the Zoning Regulations.
- d. *Historic Preservation.* The PUD will also allow the renovation and adaptive reuse of the historic portions of the Randall Junior High School. These structures have fallen into a state of disrepair in recent years and are in danger of losing their historic character. The proposed project contemplates the rehabilitation of these historically significant buildings and their careful integration into the planned development on the site. The renovation of these buildings will significantly improve the appearance of the streetscape and enhance the attractiveness of the surrounding neighborhood. The project also preserves the historic rights-of-way at 1<sup>st</sup> and H Streets, which are now closed.
- e. *Sustainable Design Features.* The project features significant sustainable design features, including a "green roof." Approximately 6,000 square feet of the lower roof levels will be devoted to green roofs, while portions of the upper roof levels will be treated with reflective materials to reduce heat island effects. The remaining portions of the roofs will be used for mechanical penthouses and residential recreation space, including a rooftop swimming pool and ancillary recreational space. The Applicant has retained a LEED consultant to ensure the sustainability of the project design. Based on the consultant's assessment, the PUD will qualify for a *minimum* of 18 LEED points.
- f. *First Source Employment Opportunities.* The Applicant will work with the Department of Employment Services ("DOES") to execute a First Source Employment Agreement in order to achieve the goal of utilizing District residents for at least 51% of the jobs created by the PUD project. The Applicant will use DOES as its first source for recruitment, referral, and placement of new hires for employees whose jobs are created by the PUD.

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- g. *Local Business Opportunities.* The Applicant will enter into a Memorandum of Understanding with the D.C. Department of Small and Local Business Development in order to achieve, at a minimum, the goal of 35% participation by small, local, and disadvantaged businesses in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the PUD. This memorandum contributes significantly to the District's goal of ensuring adequate opportunities for small and local businesses to participate in development projects throughout the city.
- h. *Features of Special Value to the Neighborhood.* In addition to the exemplary project amenities and public benefits, the Applicant has entered into an agreement with ANC 6D to ensure that many of the benefits target ANC residents specifically. To that end, the Corcoran will provide scholarships the ANC 6D students; host an annual arts festival and visual arts project for Southwest; initiate an open-house day for the Corcoran; provide complimentary Corcoran Gallery of Art memberships to five public school teachers; provide Corcoran Gallery tours to area residents; install a permanent art gallery at the Randall School for student faculty and local artists; offer free space for 25 community meetings; install a sculpture in Delaware Avenue circle, if approved by the District's Department of Transportation ("DDOT"); and other similar visual improvement efforts.

#### **Compliance with the Comprehensive Plan**

29. The Future Land Use Map designates the subject Property for medium-density residential uses. The proposed rezoning of the property to C-3-C and residential development is consistent with this designation, with a total residential density of 3.66 FAR and a density of only 0.66 FAR devoted to school uses, which is less than previous school uses on the site.
30. The proposed project is also consistent with the site's designation as a "Neighborhood Conservation Area" on the Generalized Policy Map. The Comprehensive Plan provides that development of Neighborhood Conservation Areas, "should be compatible with the existing scale and architectural character of the area." (10 DCMR § 223.5.) Compliance with this provision is ensured through design review of the project by HPRB.
31. The proposed development will likewise be compatible with the land use designation of this site and those of the surrounding area. With the exception of the Randall Recreational Center and Playground to the east, the property in the vicinity of the subject site is designated in the Future Land Use Map for moderate-, medium-, and high-density residential uses, as well as medium- and high-density commercial uses. The proposed project—a mixed-use arts and residential development—will be consistent with the character of this transitional neighborhood.

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**Compliance with the Citywide Elements of the Comprehensive Plan**

32. *Land Use Element (Chapter 3)*. The Comprehensive Plan provides that, “[b]ecause the Land Use Element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced.” (10 DCMR § 300.2.) The underlying goal of the Land Use Element is to ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries. (10 DCMR § 302.1.) The proposed project will advance this important goal by complying with a number of the policies set forth in the Land Use Element of the Comprehensive Plan.
- a. *Policy LU-1.1.5: Urban Mixed Use Neighborhoods*: The proposed project contemplates the construction of a mixed-use development that will include nearly 100,000 square feet of arts-related space, including cellar areas, and approximately 423,800 square feet of gross floor area devoted to residential use. Twenty percent of the residential units will be set aside for households earning less than 80% of the AMI. The presence of the Corcoran College of Art and Design and the adjacent residential development will significantly enhance the vitality of the South Capitol Street corridor/stadium area.
  - b. *Policy LU-2.1.4: Rehabilitation Before Demolition*: The Applicant intends to retain and rehabilitate the principal building in the Randall Junior High School complex, as well as its east and west wings. The center and west historic buildings will house the Corcoran College of Art and Design and will represent precisely the type of adaptive reuse encouraged by Policy LU-2.1.4.
  - c. *Policy LU-2.1.12: Reuse of Public Buildings*: The District of Columbia sold the Randall Junior High School property to the Corcoran Gallery of Art after determining that the property was no longer needed for any public use. The proposed use of the existing buildings as a center devoted to arts education will be compatible with the property's surroundings and will not adversely affect the Near Southwest community. Similarly, the residential portion of the development will have no adverse effects on the surrounding neighborhood. Indeed, the proposed development will help create the critical mass of residential uses that will be necessary to ensure the economic health of this rapidly changing area.

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33. *Housing Element (Chapter 5)*. The proposed project will help achieve the District's housing goal to develop and maintain a safe, decent, and affordable supply of housing for all current and future residents.
- a. *Policy H-1.1.1: Private Sector Support*: The proposed development will include approximately 423,800 square feet of gross floor area devoted to residential uses. As noted above, the Applicant intends to reserve 20% of the residential units in the development for households earning not more than 80% of AMI. The proposed project will further the District's policy of leveraging private development to create affordable housing within the city.
  - b. *Policy H-1.1.4: Mixed Use Development*: The proposed development will contain both residential and arts-related uses. The subject site is located only one block away from South Capitol Street and is within walking distance of four Metrorail stations on three separate lines. The project will represent precisely the type of mixed-use development that Policy H-1.1.4 is designed to encourage.
  - c. *Policy H-1.1.5: Housing Quality*: The Declaration of Covenants executed by the Corcoran Gallery of Art and the District of Columbia specifically requires that the affordable units in any development on the Randall Junior High School property be indistinguishable from the market-rate units in the project. As a result, the project will comply with Policy H-1.1.5 of the Housing Element.
  - d. *Policy H-1.2.5: Workforce Housing*: Twenty percent of the residential units in the proposed development will be reserved for families who earn less than 80% of AMI. These units will be priced at a level that is affordable for nurses, teachers, and members of the other occupational categories listed in Policy H-1.2.5. Thus, this project more than meets the standards set forth in Chapter 26 of the Zoning Regulations.
34. *Economic Development Element (Chapter 7)*. The proposed project will strengthen the District's economy by accommodating future job growth, fostering the success of small businesses, revitalizing neighborhood commercial centers, improving resident job skills, and helping a greater number of District residents find and keep jobs in the Washington regional economy. In addition to creating new jobs and tax revenues for the District, the Randall School redevelopment project will also advance the Comprehensive Plan's specific policy for economic development and institutional growth.
35. *Policy ED-2.4.1: Institutional Growth*: The Corcoran College of Art and Design has a current enrollment of 350 undergraduate and 150 graduate students and intends to double that figure over the next five years. Additionally, the College presently employs approximately 196 faculty and 44 staff and those number would increase to a total of 365 faculty and 80 staff at the Randall School site. The proposed expansion of the College's

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undergraduate and graduate programs is expected to result in a corresponding increase in employment opportunities for District residents.

36. *Urban Design Element (Chapter 9)*. The presence of the school and design of the project will enhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces. The Applicant has gone to great lengths to integrate the new residential portion of the development with the historic fabric of the Randall School complex. Additionally, the project respects the integrity of the L'Enfant street plan and thus complies with the Urban Design Element's policy of reinforcing the L'Enfant and McMillan Plans.
37. *Policy UD-1.1.2: Reinforcing the L'Enfant and McMillan Plans*: The western edge of the subject property includes a portion of 1<sup>st</sup> Street, S.W. that was closed in connection with the southwest urban renewal plans of the 1950s. Although this area is no longer used as a public street, the Applicant has agreed to forego development on this portion of the site to maintain the integrity of the original L'Enfant street plan. Similarly, the Applicant will forego construction in the former H Street right-of-way and grant an easement to the city to ensure continued access to the Randall Recreation Center to the east.
38. *Historic Preservation Element (Chapter 10)*. The sensitive treatment of the historically significant portions of the Randall School complex, and the integration of the new residential building into the historic fabric of the existing structures, will significantly advance the goal described above. In addition, the proposed project will further a number of the specific policies outlined in the Historic Preservation Element of the Comprehensive Plan.
- a. *Policy HP-1.3.1: Designation of Historic Properties*: On its own initiative, the Applicant filed a landmark application with HPRB for the Randall Junior High School site to ensure retention and rehabilitation of its most significant original building and its east and west wings. Landmark status was granted on March 22, 2007. Although landmark designation significantly affects the site's development potential, the Applicant believes that these structures are historically significant and should be preserved.
- b. *Policy HP-2.3.1: The Plan of the City of Washington*: The Plan of the City of Washington will be protected through the Applicant's commitment not to construct any improvements on its property at the closed portion of 1<sup>st</sup> Street and H Street, S.W. The current design of the project will further the objectives of Policy HP-2.3.1 by preserving the historic pattern of streets established by the L'Enfant Plan.

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- c. *Policy HP-2.4.1: Rehabilitation of Historic Structures:* The proposed development will be subject to review by HPRB, the Mayor's Agent for Historic Preservation and the Commission. These proceedings will involve precisely the type of extensive design review contemplated by Policy HP-2.4.1. Because the Randall Junior High School building and its wings have been designated as landmarks, moreover, any future attempts to demolish or alter these structures will require further review by HPRB.
- d. *Policy HP-2.4.2: Adaptation of Historic Properties for Current Use:* Although the Randall Junior High School will no longer be used by DCPS, it will still be devoted to an educational use. The Corcoran College of Art and Design has a current enrollment of 500 undergraduate and graduate students and provides non-degree art classes to more than 3,000 children and adults each year. The proposed change in use is fully consistent with the objectives of Policy HP-2.4.2.
- e. *Policy HP-3.2.1: Preservation and Community Development:* In its current state, the Randall Junior High School actually detracts from the character of the surrounding neighborhood. The rehabilitation and adaptive reuse of these historic structures will provide an attractive physical environment for the students of the Corcoran College of Art and Design. In addition, the renovation of these deteriorating buildings will improve the overall appearance of the streetscape and help stimulate additional private investment in the surrounding area.
39. *Community Services and Facilities Element (Chapter 11).* The Community Services and Facilities Element of the Comprehensive Plan is designed to provide high-quality, accessible, efficiently managed, and properly funded community facilities to support the efficient delivery of municipal services, protect public health and safety, and enhance the well-being of current and future District residents. In support of that objective, the Community Services and Facilities Element includes a policy addressing the disposition of public properties that have become—like the Randall Junior High School—functionally obsolete.
40. *Policy CSF-1.1.4: Addressing Facilities That Are Functionally Obsolete:* At the time of its sale to the Corcoran Gallery of Art, the Randall Junior High School had become a serious drain on public resources. The District's decision to sell the property was based on its determination that the existing structures could not be rehabilitated in a cost-effective manner for any public use. The redevelopment of the property by a private third party, on the other hand, will benefit the District in two ways. First, the District is entitled to 50% of the proceeds on any subsequent sale of development rights on the property. Second, the transfer of this site to private ownership will result in a significant increase in property tax receipts. In short, the sale of this property will provide a substantial economic benefit for the District.

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41. *Arts and Culture Element (Chapter 14).* The Arts and Culture Element of the Comprehensive Plan reflects the District's longstanding commitment to the development and retention of arts and other cultural uses in the city, particularly in areas where such uses are underrepresented. The proposed project, which will include approximately 100,000 square feet devoted to arts-related uses, is consistent with this general goal and will further a number of the specific policies enunciated in the Arts and Culture Element.
- a. *Policy AC-1.1.2: Development of New Cultural Facilities:* The proposed project will include almost 100,000 square feet of exhibition, studio, and classroom space for the students of the Corcoran College of Art and Design. Approval of this PUD application will further Policy AC-1.1.2 by allowing the development of an important new cultural facility in the Near Southwest neighborhood.
  - b. *Policy AC-1.1.3: Distribution of Facilities:* There is currently a dearth of arts and cultural facilities along the South Capitol Street corridor. The proposed PUD will help correct this imbalance in the geographic distribution of the District's cultural resources.
  - c. *Policy AC-4.4.1: Arts Education Programs:* In addition to its undergraduate and graduate programs of study, the Corcoran College of Art and Design offers art classes to more than 3,000 children and adults each year. The proposed development will further the objectives of Policy AC-4.4.1 by allowing the school to significantly expand these programs.
42. *Compliance with the Lower Anacostia Waterfront/Near Southeast Area Element.* In addition to the citywide elements, the Comprehensive Plan includes 10 geographically based "area elements." The subject property is located within the Lower Anacostia/Near Southeast area. The proposed project is consistent with the objectives and policies of the Lower Anacostia/Near Southeast Area Element, and in particular Policy AW-2.2.1, the South Capitol Street Urban Boulevard. The project will provide an appropriate mix of residential and arts-related uses in close proximity to South Capitol Street. The introduction of an arts college and new condominiums in this area will help achieve the District's goal of creating a vibrant urban neighborhood along this important corridor.

### **Office of Planning Report**

43. By reports dated September 17, 2007 and October 29, 2007, OP recommended approval of the PUD application subject to (i) redesign of the large mechanical penthouse so that it does not constitute a parapet; (ii) provision of a rooftop mechanical plan; and (iii) a description of the affordable units within the building. In response, the Applicant setback the penthouse from the north wall of the building a distance of four feet. That setback was later increased to six feet, six inches. The Applicant also provided the rooftop mechanical plan and a plan showing the location of the affordable units. OP found, and

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the Commission concurs, that the proposed PUD is not inconsistent with the Comprehensive Plan. The Plan calls for medium-density residential uses in this area and the proposed 4.32 FAR is consistent with that designation.

### DDOT Reports

44. DDOT submitted a memorandum dated November 7, 2007, in support of the PUD. DDOT indicated that the Applicant had worked extensively with the agency to make modifications to the building design and the Traffic Impact Study to address DDOT's concerns. In particular, the Applicant's redesign of the north elevation allowed for better spacing of the school and residential loading docks, and aligned the building's garage access with the garage entrance to the proposed PUD across the street to the north. According to DDOT, these arrangements allow for better sight lines, and alleviate many of the potential vehicle-to-vehicle and vehicle-to-pedestrian conflict points.
45. DDOT also supported the Applicant's commitment to limit the size of trucks accessing the site to 40 feet in length to ensure appropriate turning maneuverability at the Delaware Avenue Circle. As a result of this limitation on truck size, DDOT supported the Applicant's request to reduce the size of the loading berth from the required 55-foot length to 40 feet.
46. In order to ensure pedestrian safety and neighborhood access to the Randall Recreation Center, DDOT recommended that the Applicant convey to the District of Columbia a permanent public easement over the Applicant's private property in the former right-of-way. The easement would protect the city's ability to construct a road, sidewalk, trail, or other necessary transportation facility to the recreation center. The Applicant agreed to provide the recommended easement.
47. DDOT also supported the Applicant's *Randall School Transportation Management Plan* and recommended that the transportation demand management measures included in the plan be incorporated into the Commission's PUD order.
48. Notwithstanding the DDOT report, Square 463 Associates presented testimony questioning the Applicant's Traffic Impact Study and the failure to adequately study relocation of the loading docks and garage entrance to former 1<sup>st</sup> Street. It indicated that the proposed loading and parking garage access – the "back of house" operations – currently located on the H Street frontage of the PUD have the potential to negatively impact the PUD approved to the north for Square 643 Associates. Square 463 Associates submitted its own traffic analysis, prepared by O.R. George & Associates, to support its views. O.R. George testified that the Applicant's traffic study may not be reliable with respect to trip generations by students because the study assumed a student body of 9,500, while the Corcoran will only enroll up to 1,000 students.

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49. In a supplemental report dated January 4, 2007, DDOT acknowledged that the Applicant's initial traffic study had some shortcomings, but also found that the traffic study had been substantially revised after extensive negotiations with DDOT. Among other things, the Applicant reconfigured the rear of the building and agreed to dedicate a permanent access easement along the former H Street right-of-way. DDOT also indicated its satisfaction with the liberal mode split used given the Transportation Demand Management commitments made by the Applicant.
50. The Commission finds that the Applicant used the most conservative calculation for student trip generations by assuming an enrollment of 9,500 when projected enrollment will be no more than 1,000 students. If three trips are generated per day for 9,500 students, it is only logical that 1,000 students will generate fewer trips. Nevertheless, in order to address any unforeseen potential impacts to the Square 643 Associates property, and because it used a liberal mode split, the Applicant agreed to certain TDM commitments and other parking and loading restrictions along H Street, as outlined in DDOT's supplemental report. DDOT recommended, and the Applicant agreed, that it was appropriate to incorporate these commitments and restrictions as conditions of this order. The Commission concurs in this recommendation.
51. The only remaining issue was whether relocation of the service access points to 1<sup>st</sup> Street had been explored sufficiently. While Square 463 Associates is concerned about its proposed building facing the service wing of this PUD, the evidence of record, including the record in Z.C. Case No. 03-30, indicates that greatest truck-loading impacts may be generated by Square 463 Associates itself. Square 463 Associates' project was not required to provide loading facilities, so that any moving van for the building residents will load and unload from the street. In order to minimize any adverse impacts on the Square 463 Associates' project, the Applicant has agreed to provide additional landscaping and design treatment to the north elevation to make it more pedestrian friendly.
52. With respect to studying loading from former 1<sup>st</sup> Street, the Commission notes that the Applicant owns only 45 feet of the 90-foot former right-of-way. The western half is owned by the District of Columbia and used for parking for the adjacent clinic. The clinic has objected to loading facilities at former 1<sup>st</sup> Street because they would conflict with the existing parking spaces, and both DDOT and the staff of HPRB opposed such a use of 1<sup>st</sup> Street. The Commission credits the recommendations of DDOT that the loading facilities can be adequately and safely located along H Street. It finds that additional landscaping, agreed to by the Applicant, will further lessen any adverse impacts that the Square 463 Associates' PUD may experience.

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### Office of the Deputy Mayor

53. Konrad Schlater represented the Deputy Mayor's Office for Planning and Economic Development and spoke in strong support of the project. He described the city's long history with this parcel and its vision to create an artistic and cultural center in the former Randall Junior High School for local artists, residents and children, and a new residential development on the site with both market-rate and affordable units. He testified that the project is fully consistent with the Comprehensive Plan and the Mayor's goals for the city. He noted that the public benefits – the arts and housing, in particular – are exceptional and rarely seen on this scale, and that the project will provide approximately 80-90 affordable units alone.

### ANC Report

54. ANC 6D submitted a letter dated October 16, 2007, in support of the application. The ANC noted that the Applicant had substantially improved the massing and design of the project during the numerous public review processes, and that its benefits package would significantly enhance the quality of the S.W. community. They noted that the Applicants had relocated the loading docks along H Street and agreed to limit this size of delivery trucks to no more than 40 feet, thereby improving vehicular and pedestrian safety. The ANC also supported the project's provision of educational scholarships for Southwest residents, classes and gallery tours for the local community, training for local art teachers and art programs for area public schools. The ANC urged the Commission to approve the Applicant's PUD and map amendment application.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned

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developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and academic uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
8. Approval of this PUD and map amendment is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application with certain conditions persuasive.
10. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD") and an application to

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amend the Zoning Map from the R-4 to the C-3-C Zone District for the Property, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Shalom Baranes Architects, dated October 19, 2007, marked as Exhibit 47 in the record (the "Plans"), and supplemented by drawings submitted December 6, 2007 and December 21, 2007 and marked as Exhibits 60 and 71 in the record, respectively; as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a mixed-use residential and academic development, as shown on the approved Plans. The PUD shall have a maximum density of 4.32 FAR and a combined gross floor area of no more than 499,843 square feet. Approximately 100,000 square feet of space (76,043 square feet of gross floor area) shall be devoted to the Corcoran College of Art and Design. The PUD shall occupy no more than 65% of Lot 831.
3. The PUD shall retain, rehabilitate, and adaptively reuse the original building and two flanking wings of the historic former Randall Junior High School, which front on I Street, consistent with the recommendations of the D.C. Historic Preservation Review Board.
4. The project shall contain approximately 440-490 dwelling units. The Applicant shall be permitted to adjust the layout and configuration of the units.
5. The maximum height of the building shall not exceed 100 feet. Beginning at the 110-foot level, the penthouse shall be setback from the roof edge a distance equal to its height.
6. The color and type of exterior materials shall include brick masonry, aluminum window mullions, and an exterior metal panel system as shown in "Scheme B" presented by the Applicant to the Zoning Commission at its December 6, 2007 hearing.
7. Twenty percent of the residential units shall be devoted for use by individuals earning no more than 80% of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Area. The remaining units may be offered at prevailing market rates. These affordable units shall not be isolated in one location in the building but shall be interspersed with the market-rate housing.
8. The Applicant shall offer affordable units to eligible households pursuant to the eligibility, selection, and enforcement provisions to be established under the Inclusionary Zoning ("IZ") process. Where there is any conflict between this PUD Order and the IZ provisions, this PUD Order shall govern. In the event the IZ provisions on eligibility, selection, and enforcement for affordable units are not in effect at the time the units in this PUD are offered for purchase or sale, the Applicant shall work with the Office of Planning to develop alternative provisions and shall file a copy of the alternative plan with the Office of Zoning and the Zoning Administrator.

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9. The project shall include a minimum of 393 off-street parking spaces, of which 60 shall be set-aside for use by the Corcoran College of Art and Design.
10. The Applicant shall institute a Transportation Management Plan to include the following:
  - a. The Corcoran College of Art and Design ("Corcoran") shall provide 50 bicycle spaces for students and faculty located on the top level of the parking garage near an entrance/exit. A shower for the cyclists will be provided. The residential component will provide approximately one bicycle storage space for every three units. Additional storage facilities will also be available for purchase. Temporary bicycle parking, consisting of three to five "U racks," will be provided on the street near building entrances.
  - b. The Corcoran will provide shuttle service to accommodate the needs of students and faculty, and one or two parking spaces will be reserved for this service. This service will also be offered to the public. The shuttle drop-off/pick-up location shall not be located on H Street.
  - c. The Corcoran and MR Randall Capital LLC shall reserve two parking spaces on the Property for a car-sharing service, to be located in area that has unrestricted access, such as the former 1<sup>st</sup> Street right-of-way.
  - d. The Corcoran shall provide a computer lab and printing station for students and administration. The residential building will include a business center that will provide residents access to a copier, fax machine, and Internet service.
  - e. The Corcoran shall post on its website information regarding alternative transportation choices and provide "hotlinks" to [CommuterConnections.com](http://CommuterConnections.com) and [goDCgo.com](http://goDCgo.com). The Corcoran will incorporate transit information in the new employee and student orientation information. For the residential building, transit information will be provided to new residents upon move-in.
  - f. To encourage use of public transportation, the Applicant shall provide a SmartTrip card with a value of \$20 to the first owner of each condominium unit, or to the first tenant of each residential unit who signs a one-year lease.
  - g. The Applicant shall designate individuals with the Corcoran and MR Randall Capital LLC to coordinate and implement the transportation demand management commitments and provide those names to DDOT.
  - h. The Applicant shall restrict truck deliveries to weekday off-peak hours and Saturdays only; alternatively the Applicant may engage individuals employed

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with the school or condominium, or the delivery service, to monitor the loading and unloading of trucks at the site, and ensure that trucks do not idle on adjacent portions of H Street and Delaware Avenue north of I Street, S.W.

11. The Applicant and the District of Columbia shall enter into an easement agreement whereby the Applicant provides access over its private property in the former H Street right-of-way to the city.
12. The PUD shall devote approximately 6,000 square feet of space on the lower roof level to a "Green Roof" and portions of the upper roof levels will be treated with reflective materials to reduced heat island effects, as shown on Drawing L-4 of the approved plans marked as Exhibit 47 in the record. The Applicant shall include landscaping, streetscape, and open-space treatment for the project as shown on the Plans. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT.
13. Prior to issuance of a building permit, the Applicant shall execute a Memorandum of Understanding with the Department of Small and Local Business Development and submit a copy to the Office of Zoning. The Memorandum of Understanding shall commit the Applicant to achieve, at a minimum, the goal of 35% participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security for the property to be created as a result of the PUD.
14. The Applicants and its general contractor shall execute a First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing D.C. residents for at least 51% of the jobs created by the PUD. The Applicant shall give residents from the Southwest community special consideration for employment.
15. No building permit shall be issued for this PUD until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") evidence demonstrating that the Applicant has purchased, or provided the funding to purchase, the items identified in the community amenities package, marked as Exhibits 49 and 63 in the record.
16. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including the distribution of the residential and academic uses, partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;

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- b. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments, and trim, or any other minor changes to comply with the District of Columbia Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
  - c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified.
17. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
18. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
19. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*, ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On December 10, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Gregory N. Jeffries, Curtis L. Etherly, Jr., Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve).

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The Order was **ADOPTED** by the Zoning Commission at its public meeting on January 14, 2008, by a vote of 5-0-0 (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Peter May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on MAR 21 2008.

DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., April 12, 2007

Plat for Building Permit of SQUARE S-643 LOT 801

Scale: 1 inch = 50 feet Recorded in Book A&T Page 3419-F

Receipt No. 07033

Furnished to: HOLLAND & KNIGHT

*[Signature]*  
For Surveyor, D.C.

By: L.M.A. *[Signature]*

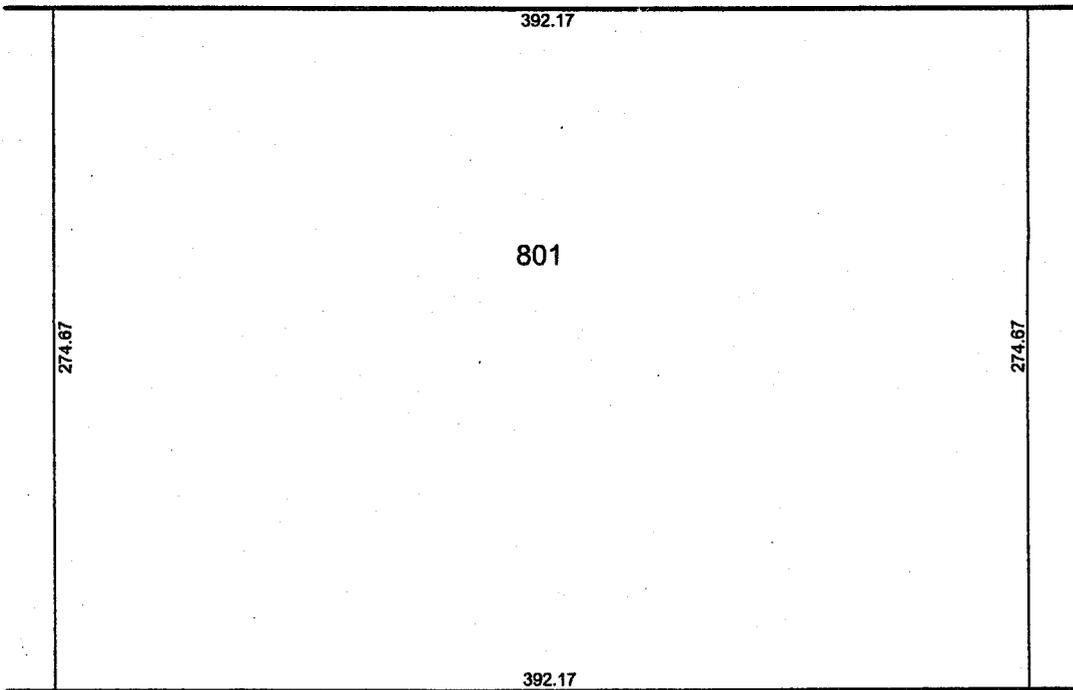
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

H STREET, S.W.



EYE STREET, S.W.

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