

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOL (CAPCS)**CANCELLATION NOTICE**

Community Academy Public Charter School hereby provides notice that it has canceled its RFP issued January 26, 2007 for general contractor services for a project located at 1400 First Street, NW, Washington, DC to create a new campus.

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOL (CAPCS)**REQUEST FOR PROPOSALS****General Contractor Services (Design Build)**

Community Academy Public Charter School (CAPCS), located at 1351 Nicholson Street, NW, canceled its RFP dated January 26, 2007 for general contractor services after proposals failed to result in a signed contract. Accordingly, CAPCS in accordance with section 31-2801,2853.14 of the District of Columbia Reform Act of 1995, is soliciting proposals from qualified General Contractors to complete the renovation of an existing approximately 147,000 square foot historical school building in NW Washington, DC . The selected contractor will be responsible for certain trades including but not limited to Site Work, Site Utilities, Concrete, Masonry, Miscellaneous Metals, Rough Carpentry, Millwork, Waterproofing, Doors/Frames/Hardware, Glass and Glazing, Drywall, ACT ceilings, Ceramic Tile, Carpet,/VCT, Paint, Finishes, Toilet Partitions/Toilet Accessories and Special Conveying Systems. The selected General Contractor contractor(s) must work conjointly with the Project Architect and the Mechanical/Electrical/Plumbing Design Build Contractor(s) to be selected to ensure a complete building on time and within budget. The school is scheduled to open in September 2008. Bonding is required.

CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME.

Final bids are due by COB September 7, 2007.

Further information on the RFP can be obtained by contacting:

Wesley Harvey
wesleyharvey@capcs.org
202-234-5437

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOL (CAPCS)**REQUEST FOR PROPOSALS (Design Build)****Mechanical/Electrical/Plumbing (MEP) Contractor Services**

Community Academy Public Charter School (CAPCS), located at 1351 Nicholson Street, NW, in accordance with section 31-2801,2853.14 of the District of Columbia Reform Act of 1995, is soliciting proposals from qualified MEP contractors for all MEP services for an existing approximately 147,000 square foot historical school building in NW Washington, DC . The selected contractor will perform all Plumbing, Sprinkler, HVAC, Electrical, and Fire Alarm work to provide for a complete and operational system. The selected contractor(s) must work jointly with the Project Architect and the General Contractor (design build) that is selected to develop other parts of the building to enable a complete building on time and within budget. The school is scheduled to open in September 2008. Bonding is required.

CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME.

Final bids are due by COB September 7, 2007.

Further information on the RFP can be obtained by contacting:

Kevin Sullivan
tk@stoneridgeconstruction.com
301-343-9542

BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there are two (2) vacancies in Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code 1-309.06(d)(2); 2001 Ed.

VACANT: **4A01**
 6C06

Petition Circulation Period: **Monday, August 27, 2007 thru Monday, September 17, 2007**

Petition Challenge Period: **Thursday, September 20, 2007 thru Wednesday, September 26, 2007**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions from 8:30 am to 4:45 pm, Monday through Friday at the following location:

D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

FRIENDSHIP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Friendship Public Charter School is seeking bids from prospective candidates to provide the following goods and/or services:

- 1.) **Sports Equipment** in accordance with requirements and specifications detailed in the Request for Proposal.
- 2.) **Transportation Services** in accordance with requirements and specifications detailed in the Request for Proposal.
- 3.) **Shipment Receiving Services** in accordance with requirements and specifications detailed in the Request for Proposal
- 4.) **Supplier of Milk Products** in accordance with requirements and specifications detailed in the Invitation for Bid
- 5.) **Supplier of Paper and Chemical Products** in accordance with requirements and specifications detailed in the Invitation for Bid

Prospective candidates can obtain an electronic copy of the full Request for Proposal (RFP) or Invitation for Bid for all goods and/or services by contacting:

Valerie Holmes

vholmes@friendshipschools.org

202-281.1722

OPTIONS PUBLIC CHARTER SCHOOL

Request for Proposal (RFP)

Options Public Charter School is seeking bids for Special Education Support Services for Occupational Therapy, Speech and Language Therapy, Counseling, and Psycho educational Evaluation. Contractors can bid on one or all services listed.

Bids will be received until 12:00 P.M. (EST), September 10, 2007. Copies of the bid specifications can be obtained beginning August 24, 2007 at 9:00 A.M. Please contact the person below for details. Bids should be sent to:

Dr. Cranford, Clinical Director
Options Public Charter School
1375 E Street, N.E.
Washington D.C. 20002
202-547-1028 Ext 232

THE SEED PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

The SEED Public Charter School of Washington, DC will receive bid proposals for a Food Operations Management Service Company to operate a food service program and provide meals to enrolled students until Friday, August 31, 2007 at 4:30 pm. At this time, proposals will be opened at the administrative offices located at (4300 C Street, SE, Washington, DC) All proposals submitted after the deadline will be returned to the sender. All meals must meet, but are not restricted to, minimum National School Lunch and Breakfast and Lunch Program meal pattern requirements.

Meal Pattern requirements and all necessary forms and information may be obtained from:

Keith Robinson
Assistant Director of Campus Operations
The SEED Public Charter School
4300 C Street, SE
Washington DC 20019
202-248-3008 [phone]

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

Application No. 17033-A of Washington Drama Society, Inc. dba The Arena Stage, pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under Section 930, to permit the redevelopment of an existing theater in the W-1 District at premises 1101 6th Street, S.W. (Square 472, Lots 123 and 126).

Hearing Date (Application No. 17033):	July 8, 2003
Decision Date (Application No. 17033):	July 8, 2003 (Bench Decision)
Final Issue Date (Application No. 17033):	July 8, 2003
Modification Decision Date:	July 31, 2007

**SUMMARY ORDER ON
REQUEST FOR MODIFICATION OF APPROVED PLANS**

SELF-CERTIFIED

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

BACKGROUND

The original Application for this property was BZA Application No. 16933, pursuant to 11 DCMR § 3103.2, for a variance from height limitations under Section 930, a variance from the floor area ratio requirements under Section 931, a variance from the lot occupancy requirements under Section 932, and a variance from the rear yard requirements under Section 933, to permit the construction of an addition to the existing theater buildings on the subject property. The addition to the existing project was proposed to remedy several deficiencies, such as acoustic interference, inadequate space, and inefficient circulation and lobby space, while at the same time creating an important space within southwest DC. The Board granted the relief on October 29, 2002 pursuant to the plans submitted.

The final summary order was issued on October 30, 2002 and a corrected summary order (16933-A) was issued on November 7, 2002.

In May 2003, the Applicant filed a new application – No. 17033 – requesting additional variance relief to further increase the height of the project. The Applicant stated that revisions included modifications to the cradle portion of the design, which contained the new theater and temporary accommodations for visiting performers, as well as revisions

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to the cantilevered element. When that approval was granted, the Board allowed the Applicant flexibility to modify the design as long as it received the approval of the Historic Preservation Review Board (HPRB) and/or the Commission of Fine Arts (CFA) and did not increase any areas of relief approved. Prior to the Board's hearing on this application, the CFA and ANC 6D voted to support the revised project. Staff for the HPRB determined that the changes did not require review by the HPRB or the Mayor's Agent. The Board of Zoning Adjustment heard and decided the case by bench decision on July 8, 2003 and issued a summary order with the same date. This relief was a modification to the height requirement approved in Application No. 16933. The instant order addresses the Applicant's request for modification of the July 8, 2003 order – No. 17033.

The Motion to Waive the Six-Month Filing Requirement and The Motion for Modification of Approved Plans

On June 15, 2007, the Applicant filed a motion for modification of approved plans and a motion for waiver of the six-month time requirement for filing motions pursuant to Section 3129 of the Zoning Regulations (Exhibit 34). As noted above, the final order approving Application No. 17033 was issued on July 8, 2003. Pursuant to § 3129.3, any modification to the order or the approved plans would need to be filed within a 6-month period - by January 8, 2004. The instant motion is being filed almost 3½ years later. The Board received reports from OP, CFA and HPRB, all in support of the motion for modification. The affected ANC, ANC 6D, did not file a report related to the current modification request. The Board approved the motion to waive the six-month filing requirement.

Proposed Modification

Subsection 3129.7 of the Zoning Regulations states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon its [sic] approving the application." The Applicant maintains that it meets the requirements of all provisions of § 3129.

The Applicant stated that the proposed changes are minor and only result in the elimination or reduction of the previously approved variance relief. As a result of the removal of the residential uses, the project has no requirement for a rear yard and 100% lot occupancy is permitted; therefore no variance relief is needed from the rear yard provisions of § 933 or the lot occupancy provisions of § 932. Furthermore, the FAR of the proposed modified design is now within that permitted as a matter-of-right, eliminating the need for variance relief from § 931. Finally, although variance relief from the height requirements set forth in § 930.1 remains, the proposed height is now less than that approved in Application No. 17033. The Applicant's table below sets forth the elimination or reduction of each area of relief:

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	Permitted in W-1 District	BZA Case No. 16933-A (11/7/02)	BZA Case No. 17033 (7/8/03)	Proposed Modification
Height	45 feet*	75 feet	89.77 feet	77.27 feet
FAR	Per 11 DCMR 2521.1(a) permits 2.0 FAR for commercial or nonresidential uses	2.8	2.5	2.0 No relief necessary
Rear Yard	3 in/ft but not less than 12 feet for <i>residential use</i>	8 ft. provided 4 ft variance approved	8 ft. 2 in. provided 3 ft 10 in variance approved	None required; no residential use No relief necessary
Lot Occupancy	80% for building with residential use	99% 19% variance approved	99% 19% variance approved	100% permitted; no residential use No relief necessary

*At the time of the previous BZA cases, only 40 feet was permitted by 11 DCMR §930.

Since the approval granted in Application No. 17033, the Applicant has continued to refine the project and, more recently, has made necessary revisions to bring the project within budget. The applicant has been able to maintain the programmatic use elements, with the exception of the residential uses for artists, and has made relatively minor revisions to the architecture of the project. The Applicant notes that the approved project is significantly in keeping with the design of the proposed modification.

The Office of Planning submitted a report dated July 24, 2007. The report includes background information, details of the project and a zoning evaluation, pursuant to Section 3129. According to OP, the current proposal is to modify the original design in response to various programmatic, engineering, and cost concerns. The major revisions

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are elimination of the artists' apartments above the new "cradle" theater; the re-engineering and modification of the overhanging roof, and the removal of the continuous reflecting pool along the Maine Avenue front of the building. Less significant changes would involve the corner entrance at 6th Street and Maine Avenue, the terrace layout, and design of the north elevation facing the adjoining apartment complex. The Office of Planning analyzed the zoning and design of the project and recommended approval of the modification request.

On July 12, 2007, the Applicant filed supplemental information (Exhibit 35), including letters of support from the U.S. Commission of Fine Arts and the Historic Preservation Review Board (HPRB).

There were no other parties to the application.

CONCLUSIONS OF LAW

The Board, after reviewing the Applicant's written submission and plans, as required by 11 DCMR § 3129.5, concludes that the modifications requested are minor and do not change the material facts upon which the Board relied in approving the application. See, 11 DCMR § 3129.7. Therefore, the Board concludes that the Applicant's request for permission to modify its plans meets the requirements set forth in the regulations for a minor modification. It is hereby **ORDERED** that the motion is **GRANTED** and the plans (Exhibit 34) are approved, **SUBJECT** to the **CONDITION** that the Applicant may modify the design of the building as necessary to gain the approval of the Historic Preservation Review Board and/or the Commission of Fine Arts, provided that any such modifications do not increase any of the areas of relief granted by the Board of Zoning Adjustment, or create any new areas of relief.

VOTE: 3-0-2 (Curtis L. Etherly, Jr., Ruthanne G. Miller, and John G. Parsons (by absentee ballot) to grant; Marc Loud and John A. Mann II not participating.)

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

Each concurring Board member has approved the issuance of this Order.

FINAL DATE OF ORDER: AUG 09 2007

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."

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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, 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.

TWR

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

Application No. 17438-A of Braden P. and Conner W. Herman, pursuant to 11 DCMR 3104.1 for a special exception to allow a two-story addition to a row dwelling under section 223, not meeting the percentage of lot occupancy or court width provisions of §§ 403 and 406 at premises 628 East Capitol Street, NE (Square 868, Lot 805) in the R-4 District.

HEARING DATES: February 28, 2006, May 16, 2006, and September 5, 2006

DECISION DATE: October 3, 2006

**DATE OF DECISION ON
MOTION FOR**

RECONSIDERATION: May 1, 2007

ORDER DENYING RECONSIDERATION

On April 10, 2007, Madison and Solveig McCulloch (the McCullochs¹) submitted a motion for reconsideration of the Board of Zoning Adjustment's (Board) March 29, 2007 order, which granted a special exception to Braden P. and Conner W. Herman (the Applicant) (Exhibit 49). The special exception allowed the Applicant to build a two-story addition not meeting the lot occupancy or court width requirements under the Zoning Regulations. The McCullochs alleged specific errors in the Board's order pursuant to 11 DCMR § 3126.4 and requested that the Board reconsider its decision. On April 19, 2007, the Applicant filed its response to the motion. *See*, 11 DCMR § 3126. As an initial matter, the Applicant argued that the motion was untimely filed. At a decision meeting on May 1, 2007, the Board found that the motion was not untimely and also voted to deny the motion on its merits.

The Timeliness Issue

The motion for reconsideration was timely filed. The Order stating the Board's decision was issued and served by first class mail on the parties on March 29, 2007 pursuant to 11 DCMR § 3125. Although § 3126.2 requires that a motion for reconsideration "be filed with the Director within ten (10) days from the date of issuance of a final written order by the Board", § 3110.3 provides that "[w]henver a party ... is required to do some act within a prescribed period after the service of a notice or other paper, and the paper or notice is served upon the party by mail, three (3) days shall be added to the prescribed period." Therefore, the McCullochs had 13 days

¹ The McCullochs occupy the adjacent property at 626 East Capitol Street, NE. They participated in the Board proceedings as a party in opposition and were represented by counsel.

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after March 29, 2007² to file a motion for reconsideration. The 13th day after March 29th was April 11, 2007. The motion for reconsideration was received on April 10th by the Office of Zoning in a facsimile transmission sent by the McCullochs, who were then in France. Thus, the motion was filed within the specified time period.

The Alleged Errors

The Board has reviewed the alleged errors raised by the McCullochs. For reasons that will be explained below, the Board finds that no errors were committed and therefore denies the motion for reconsideration.

1. The McCullochs allege that the Board erred when it qualified the Applicant's mechanical engineer as an expert in "residential design and lighting" and when it accepted the Applicant's "Daylighting Impact Study" as an expert study. They also allege that their expert, Matthew Tantari, was "eminently qualified as an expert architect".

The Board had ample basis for qualifying Michael Babcock as an expert in residential design and lighting. Mr. Babcock testified that his firm, EMO Energy Solutions, provided comprehensive services to clients, including "daylighting design" services (T. p. 97). He also testified that he had done extensive work in the District (T. p. 99). While most of his experience was institutional/commercial and not residential, Mr. Babcock testified that the methodology for residential daylighting studies was the same (T. p. 97-98).

The Board does not dispute that Mr. Tantari was a well qualified expert. Nevertheless, the Board was not persuaded by his testimony, and concluded that the project would not unduly impact on the McCullochs' light and air.

2. The McCullochs allege that the Board erred when it disallowed cross examination regarding the computer program used by the Applicant's expert.

The Board does not agree that cross-examination was unduly restricted. In fact, the record shows that counsel for the McCullochs conducted extensive cross-examination regarding the Applicant's daylighting study, including the software and methodology employed, (See, T. p. 160 – 176).

3. The McCullochs allege that the Board's order is deficient because it does not specify the building material that was assumed in the daylighting study or the material that will be used on the west facing walls.

The Board is not required to specify building materials in its final decision and order. The Regulations only require the Applicant to build in accordance with the submitted plans.

² When an action triggers a period in which a party is to act, the date of the action is not counted. 11 DCMR § 3110.2.

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(See, 11 DCMR Section 3125.7, which states that approval of an application includes approval of the plans submitted with the application, unless the Board orders otherwise.) While 11 DCMR Section 223.4 provides that the Board may specify building materials to protect adjacent and nearby properties, the McCullochs did not seek such a condition and the record does not support its imposition. The Applicant's revised "Scheme B" plans were entered into the record during the public hearing (Exhibit 40). The plans did not specify a building material. However, during the hearing the Applicant proffered to use white painted brick as a way to maximize reflected light. In response to questioning during cross-examination, Mr. Babcock noted that the daylighting study also assumed a white painted brick material, consistent with the proposed design (T. p. 162). The McCullochs did not argue that this building material was necessary to protect their property nor did they express a preference with respect to the building material. Accordingly, there was insufficient evidence in the record to impose a condition regarding the building material.

4. The McCullochs allege that the Board's order "should state specifically" that frosted glass or "similar glass" will be used on the two new windows that are proposed.

The Board is not required to state the type of glass that will be installed. The Applicant specified in the plans that he will install frosted glass, and the addition must be built in accordance with the plans.

5. The McCullochs allege that the Board's order is deficient because it erroneously states that the rear yard is 78 feet deep when it is only 48 feet deep.

The rear yard is 78 feet deep. It appears that the McCullochs miscalculated and reduced the rear yard dimension by the length of the carriage house (30 feet). However, 11 DCMR § 199.1 defines a rear yard as the "mean horizontal distance between the rear line of a building and the rear lot line." An accessory building does not end the rear yard, but is located "in a rear yard," 11 DCMR § 2500.2.

6. The McCullochs claim that the Board erred because it stated that several houses in the area have narrow "unusable" courtyards (Findings of Fact 18 and 19). They also state that the Board failed to consider their design proposal to have "one double wide courtyard" serving both properties.

The McCullochs misstate both of these Findings. The Board never found that the narrow single courtyards in the area were "unusable". Quite the opposite, the Board found that single courtyards were typically used to allow more natural light in townhouse neighborhoods. Nor did the Board fail to consider the double courtyard which was proposed by the McCullochs. The Board specifically addressed the McCullochs' position within Findings of Fact #18 and #19.

In Finding of Fact #18, the Board found that the five foot court that would be created is "standard" and "typical". As set forth therein, this finding was based upon testimony from the Applicant's land use expert, Nathan Gross (See, T. p. 135-136). Mr. Gross explained that it was

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a challenge to get natural light into the interior rooms of townhouses. Continuing, he stated that the typical way to do so was to create a narrow single court at the side/rear of two abutting townhouses, which would allow for windows on the side walls of the abutting houses. To demonstrate this practice, Mr. Gross submitted a map of Square 868 (where the property is located). This map shows more than fifteen instances of deep, narrow courtyards which are similar to the court which would be created by the proposed addition (Exhibit 44).

With respect to Finding of Fact #19, the Board considered the McCullochs' suggestion that the addition be designed so as to create a "double" court. However, the Board was persuaded by the Applicant that a double court "would offer little value" because it would result in inferior use of both interior and exterior space at the subject property. The Board also found that the existing court is adequate for both properties. The McCullochs have offered no convincing evidence in this motion for reconsideration to support a conclusion that the Board erred in this assessment or that a double court would be necessary to mitigate adverse impacts upon neighboring properties.

In conclusion, the McCullochs have not identified any legal or factual errors, or any other basis upon which the Board should reconsider its decision in this case. For these reasons, it is hereby **ORDERED** that the Motion for Reconsideration is **DENIED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Curtis L. Etherly, Jr., and John A. Mann II to deny;
Marc D. Loud not participating; Gregory N. Jeffries, necessarily absent)

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

Each concurring member has approved the issuance of this Decision and Order.

FINAL DATE OF ORDER: AUG 10 2007

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.

SG

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

Appeal No. 17502 of Jonathan Gottlieb pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs (DCRA) to issue Building Permit No. 84942, dated January 17, 2006, for the alteration, repair, and addition to an existing residence at 4641 Dexter Street, N.W., in the WH/R-1-A District (Square 1381, Lot 6).

HEARING DATES: July 18, 2006 and September 26, 2006

DECISION DATE: September 26, 2006

DECISION AND ORDER

This appeal was filed on March 17, 2006 with the Board of Zoning Adjustment (the Board) challenging DCRA's decision to issue a building permit. At DCRA's request, the Board continued the initial public hearing that had been set for July 18, 2006. Prior to the new hearing date on September 26, 2006, the property owner moved to dismiss the appeal, claiming that the Notice of Appeal and its attachments did not state a claim upon which relief could be granted. Elaborating, the owner urged dismissal because "no facts" were stated for the Board to evaluate. DCRA joined in the owner's motion. After giving the Appellant an opportunity to identify the errors he believed were made and the facts upon which his claims of error were based, the Board granted the motion to dismiss. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on July 18, 2006. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, ANC 3D (the ANC in which the subject property is located), the property owner, and DCRA.

Parties

The Appellant in this case is Jonathan Gottlieb (Appellant). Mr. Gottlieb resides at 4610 Dexter Street, NW, across the street from the subject property.

The Appellee, DCRA, was represented by Doris Parker-Woolridge, Esq. The owner of the

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subject property, Decker Development Co. (the owner), was automatically a party under 11 DCMR § 3199.1 and was represented by the law firm of Holland & Knight LLP.

ANC 3D, as the affected ANC, was also automatically a party in this appeal, and was represented at the public hearing by Alma Gates. In a resolution dated July 10, 2007, the ANC voted to support the appeal. The resolution was issued after a regularly scheduled monthly meeting with a quorum present (Exhibit 15). Among other things, the ANC stated that DCRA's decision allows "the rebuild of an existing dwelling and the new construction of a second dwelling", and a "sizable addition" that is "equal to or greater in scale and mass than the size of the original house". The ANC also voted to "request a stop work order" for all construction, "given the absence of any documentation and/or plans" for the construction. At the hearing on September 26, 2006, however, Ms. Gates supported the motion to dismiss the appeal stating, in essence, that the appeal did not belong before the Board because it only alleged construction irregularities.

FINDINGS OF FACT

1. The subject property is a single-family dwelling located at 4641 Dexter Street, NW, in the R-1-A District in the Wesley Heights Overlay (WH) Overlay.
2. The owner applied to DCRA for a building permit on or about July 14, 2005. The application proposed to do alterations and repairs, and an addition to the dwelling.
3. DCRA granted the application and issued Building Permit No. 84942 ("the permit") on or about January 17, 2006, after the application was reviewed by DCRA's Zoning Administrator, Bill Crews. The Zoning Administrator's review indicated that the proposed project complied with zoning regulations for the WH Overlay and R-1-A zone where the property was located.
4. About two months later, on March 17, 2006, Appellant filed an appeal (Exhibit 1) and "Statement in Support of Appeal" ("Statement") (Exhibit 2), detailing the basis of his claims.
5. Appellant alleged that the permit "purported to authorize [the owner] to gut and rebuild an existing house and...build a second house of greater size" at the property (Exhibit 2, p. 2).
6. The Statement also alleges that DCRA's decision to issue the permit "violates numerous provisions of the Zoning Regulations of the District of Columbia and other regulations and laws" (Exhibit 2, p. 1). It cited specific violations of the Zoning Regulations, including provisions of the WH Overlay, and provisions relating to lot

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occupancy, side yards, rear yards, and building height (see, Exhibit 2, Section VI. "The Errors in the Administrative Decision"), but did not explain the factual or legal basis for these assertions.

7. DCRA filed a motion to continue the hearing that was initially scheduled for July 18, 2006 due to the unavailability of counsel.

8. Appellant opposed the postponement and also claimed that DCRA had failed to provide him with necessary information.

9. The Board continued the public hearing to September 26, 2006, and directed DCRA to provide Appellant with all documents in its permit file. In addition, the owner's counsel offered to provide its documentation.

10. After the July 18, 2006 hearing, on or about July 21, 2006, the owner provided a full-size set of stamped-approved drawings to the Appellant. The owner also filed the drawings with the Board, along with several reduced copies of the site plan (Exhibit 19).

11. DCRA provided copies of the permit file and drawings to Appellant and the ANC during early August, 2006 (Exhibits 18 and 19). The record is unclear whether Appellant received the DCRA documents on August 3, 2006 (Exhibit 19) or August 7, 2006 (Exhibit 18). However, Appellant acknowledged that he received copies of the permit plans before the September 26th hearing date (September 26, 2006 Transcript of Public Hearing, hereafter "T.", p. 77).

12. On or about September 20, 2006, the owner filed a motion to dismiss the appeal. The owner asserted that Appellant failed to state a claim upon which relief could be granted. Alternatively, the owner asserted that the appeal should be denied because the authorized work complied with the Zoning Regulations (Exhibit 17).

13. DCRA joined in the owner's motion, and adopted the owner's arguments.

14. At the time of the re-scheduled hearing on September 26, 2006, the Appellant requested a continuance because documentation had not been provided regarding DCRA's "wall check" and other post-construction inspections (T. p. 70, 71).

15. Appellant also argued that the parties were attempting to "work a settlement out" (T. p. 60), it was not within the public interest to proceed with the hearing (T. p. 74), and the Board should continue the case out of common courtesy (T. 111).

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16. The owner opposed the request to postpone, and maintained that Appellant never contacted him about the request (T. p. 61).

17. DCRA also requested a continuance because the Zoning Administrator received a subpoena compelling his appearance in Superior Court during the same time as the hearing was scheduled (T. p. 88).

18. In response to Board questioning, DCRA confirmed its position supporting the motion to dismiss, but asked that the Board defer its ruling on the motion on grounds that DCRA was willing to work with Appellant to resolve these issues outside the proceedings. (T. p. 90, 92)

20. After discussion on the record, the Board found there was no basis for the continuance. The Board established that DCRA had provided Appellant with all the documents upon which it had relied in issuing the permit and that Appellant had sufficient documentation to proceed with the hearing. Further, because the motion to dismiss involved a legal issue, and because DCRA's counsel was present at the hearing, the Board was able to dispose of the motion without further participation by the Zoning Administrator. Accordingly, the Board denied the request for the continuance.

21. The Board then took up the motion to dismiss and offered the Appellant an opportunity to proffer the facts that would support his contention that the building permit was issued in violation of the zoning regulation he cited, but the Appellant was unable to do so.

22. Specifically, when the Chairman asked Appellant to identify the specific error(s) alleged, Appellant stated: (a) the proposed project exceeds the 30 percent maximum lot occupancy that is permitted in the Overlay, and (b) the proposed project exceeds the 40 percent maximum FAR that is permitted in the Overlay (T. p. 77). Appellant did not supply or proffer any zoning calculations showing that the proposed work exceeded the lot occupancy or FAR limits. When asked for the specific lot occupancy measurement, Appellant responded that he "did not know" (T. p. 78).

25. Appellant also raised non-zoning issues; for example: concerns relating to stormwater management, and lead hazard control. In addition, Appellant contended that the project, as-built, differed from the approved plans, such as an as-built side yard that he claimed measured only four feet nine inches where the Zoning Regulations require a minimum of eight feet (T. p. 128).

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CONCLUSIONS OF LAW**Denial of Continuance**

The Board concludes that there was no basis to continue the September 26 hearing and that neither Appellant nor any of the other parties were prejudiced by the denial of the continuance. Appellant argued that he could not proceed on the second hearing date because he lacked sufficient information regarding DCRA's inspections and wall check. However, these details relate to construction compliance and have nothing to do with whether DCRA erred when it conducted its zoning review. Thus, even had Appellant been given more time by the Board, it would have only been more time to gather irrelevant information.

Nor was it in the public interest to continue this matter, even if DCRA was amenable to further discussion with the Appellant. The owner was opposed to the request and prepared to resolve the issues concerning the legality of the new construction. Because the BZA determined that all of the relevant facts were available to the Appellant, no legitimate interest would have been served by further delay in considering the motion to dismiss which addressed only the articulation of an alleged error.

Motion to Dismiss

Pursuant to section 8 of the Zoning Act, the Board has jurisdiction to hear appeals alleging "error in any order, requirement, decision, determination, or refusal made by ... any [District] administrative officer or body in the carrying out or enforcement of" the Zoning Regulations. D.C. Official Code 6-641.07(g)(1) (2001).

No Board rule establishes a minimum degree of pleading specificity for notices of appeal. However, in order to proceed at hearing, the Board and the parties must know the basis of the errors alleged – an appellee to defend the appeal, any intervening parties to address the appeal and the Board to evaluate it. For that reason, the Instruction to the Notice of Appeal provides:

All Appellants are required to submit in specific detail each and every exception they have to the administrative decision. Details should state the allegations of error in the administrative decision – "why it was an error" and reference the relevant Sections of the Title 11 DCMR Zoning Regulations and/or Map. It shall be typewritten or printed and attached to Form 125 Appeal.

(Emphasis supplied).

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The owner's motion argued that the Appellant never explained the "why" of the errors claimed.

This appeal was filed on March 17, 2007. In the Statement in Support of Appeal, the Appellant asserted only general allegations of error with no factual support or specificity. Despite the Board's continuance of the hearing once - from July 18, 2006 (which Appellant opposed) - and direction to DCRA to provide to Appellant all documents in its permit file, which it did, Appellant still could not articulate a factual error at this hearing. While an appellant may have some leeway to develop further its case for an error it alleges when initially filing an appeal, absent egregious withholding of information by DCRA, the Appellant must, at minimum, articulate at the hearing the error alleged.

At the September 26th hearing date, the Board directed the Appellant to explain the basis of his appeal. While the Appellant was able to identify the subject matter of the errors (lot occupancy and FAR), he could not explain in what respect the plans approved by the Zoning Administrator exceeded these limitations nor point to any errors in the methodology used or calculations made by the Zoning Administrator in concluding that the plans were compliant.

Less than two years ago, this Board dismissed *Appeal No. 17127 of Nebraska Avenue Neighborhood Association*, 52 DCR 5854 (2005) for similar reasons, stating:

[T]he Appellant failed to state its FAR- related claim with any degree of particularity, despite being afforded the opportunity to do so during two public hearings and/or by written submissions. In the interests of fairness and justice, and as a matter of law, the Board cannot countenance further proceedings on this issue when Appellant has failed to state a case that can be responded to by the Appellee and [the property owner], and considered by the Board.

Id. at 5860¹

Because these same principles apply here, and the Appellant failed to articulate an error of the Zoning Administrator in issuing the building permit, the Board dismisses this appeal with prejudice.

¹ The Board's dismissal of an appeal on these grounds is consistent with the rules and practice of the DC Superior Court. Rule 8 of the Superior Court Rules of Civil Procedure requires a "short and plain statement of the claim showing that the pleader is entitled to relief". Rule 12(b)(6) allows a motion "to dismiss for failure of the pleading to state a claim upon which relief can be granted."

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The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d) (3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's written recommendations. As explained above, ANC 3D voted to support the appeal. However, it became clear at the public hearing that the dispute did not concern a zoning error; and the ANC representative testified as such.

For reasons discussed above, the Board must deny the Appellant's motion to continue the public hearing. It is hereby **ORDERED** that the motion to continue the appeal is **DENIED**.

Vote taken on September 26, 2006

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Michael Turnbull to deny the motion to continue)

For reasons discussed above, the Board must grant the motion to dismiss the appeal. It is hereby **ORDERED** that the motion to dismiss the appeal is **GRANTED** based upon Appellant's failure to allege facts supporting a claim of zoning review error.

Vote taken on September 26, 2006

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Michael Turnbull to grant the motion to dismiss)

FINAL DATE OF ORDER: **AUG 15 2007**

PURSUANT TO 11 DCMR § 3125.6, THIS 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. 17627 of RIA, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy provisions under section 403, and a variance from the parking space requirements under subsection 2117.4, and pursuant to 11 DCMR § 3104.1, for a special exception allowing the conversion and addition to an existing building to permit a new eight (8) unit apartment house under section 353, in the R-5-A, at premises 1007 Rhode Island Avenue, N.E. (Square 3870, Lot 49).

Note: The Board amended this self-certified application at its July 31, 2007 public meeting to include a variance from 11 DCMR §§ 2101 and a variance from 11 DCMR § 2115.1.

HEARING DATE: June 26, 2007
DECISION DATE: July 31, 2007

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) 5B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. ANC 5B did not submit a written report in this application. The Office of Planning (OP) submitted a report in support of the application. The ANC Commissioner for Single Member District 5B-03, the single member district in which the property is located, submitted a letter 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 a special exception under section 353. No parties appeared at the public

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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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, 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 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.

Based upon the record before the Board and having given great weight to the Office of Planning report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, (403, 2101, 2115, and 2117) that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and 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 (pursuant to revised plans – Exhibit No. 39) be **GRANTED**.

VOTE: **4-0-1** (Ruthanne G. Miller and Marc D. Loud to approve; John A. Mann II and Michael G. Turnbull to approve by absentee ballots; Curtis L. Etherly, Jr. not participating.

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: **AUG 10 2007**

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."

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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.

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 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.

TWR

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