

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Flexible Funds Grant

The Office of the State Superintendent of Education (the "OSSE") is soliciting applications from qualified District of Columbia public charter schools to enhance, improve, or implement programs and/or services offered by existing public charter schools within the District of Columbia.

Total grant amount shall not exceed \$21,521.00.

Please visit www.osse.dc.gov or contact Matthew Dunkle to receive a copy of the RFA.

RFA Release Date: June 22, 2007

Application Submission Deadline: August 3, 2007

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BZA APPLICATION NO. 17540 & 17541**PAGE NO. 2**

Two separate applications were filed because the Board had permitted the Applicant to use the two buildings at different times and under different special exceptions. The main school building, *i.e.*, the Dent Building at 210 South Carolina Avenue, has been used by the School as a private school since 1980, pursuant to a special exception granted by the Board in 1979. That special exception did not have a term and therefore does not expire. The use of 214 South Carolina Avenue as part of the School was permitted as a special exception beginning in 1991, but with a five-year term, and was renewed in 1996, for a ten-year term. The special exception granted in 1996 expired in 2006; therefore the Applicant filed Application No. 17541 to renew it.

The Board sees no reason to continue to treat the relief requests for these two buildings, clearly part of one use and more properly subject to the same special exception, as two separate applications. Therefore, this order addresses both Applications Nos. 17540 and 17541, and henceforward the property that is the subject of Application No. 17541 (214 South Carolina Avenue) will be treated as part of the private school use of the Applicant, Capitol Hill Day School. Accordingly, the separate special exception that existed for 214 South Carolina Avenue which expired in 2006 will not be renewed, but the relief that would have been granted if it had been renewed is hereby subsumed into the untermed special exception granted to the Applicant in 1979 by Board Order No. 12860 (March 27, 1979), for the property that is the subject of Application No. 17540 (210 South Carolina Avenue). The Board intends that, until such time in the future as a change is requested, or required, these two subject properties be viewed as a single private school use pursuant to the underlying special exception relief granted by Order No. 12860.

The Board held a combined public hearing addressing both applications on November 28, 2006 and January 16, 2007. At its public meeting on February 6, 2007, the Board voted 5-0-0 to approve both applications and decided to issue a single order with respect to the applications. Therefore, in this Order, the terms "subject property" and "School" are intended to include both 210 and 214 South Carolina Avenue, S.E., unless otherwise noted.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated July 25, 2006, the Office of Zoning ("OZ") sent notice of both applications to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), the D.C. State Historic Preservation Officer, the Architect of the U.S. Capitol, Advisory Neighborhood Commission ("ANC") 6B, the ANC within which the subject property is located, the Single Member District member for ANC 6B01, and the Council Member for Ward 6. Notice of the filing of Application No. 17540 was also sent to the D.C. Department of Housing and Community Development ("DHCD"), pursuant to 11 DCMR § 1202.2. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the Applicant, all entities owning property within 200 feet of the subject property, ANC 6B, and OP. The Applicant posted placards at the property informing the public of the filing of the applications and of the date of the public hearing, and submitted an affidavit to the Board to this effect.

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 3**

Requests for Party Status. ANC 6B was automatically a party to this proceeding. The Board received a request for party status from neighboring property owners Mr. Robert Krughoff (220 South Carolina Avenue, S.E.) and Mr. Bradley Pine and Ms. Catherine Townsend Pine (216 South Carolina Avenue, S.E.). The Board considered Mr. Krughoff's request, but found it did not satisfy the requirements for party status under subsection 3106.2, and denied it. The Board granted the Pines' request for party status and Mr. and Mrs. Pine, represented by counsel, testified at the public hearing as to their concerns about the size of the proposed addition, the loss of light and air to their property, noise, and other adverse impacts due to foot traffic between the proposed addition and 214 South Carolina Avenue, S.E. They also claimed that the construction of the addition to the School would have a negative impact on the value of their property and would change the residential character of the neighborhood.

Applicant's Case. Catherine Peterson, head of the School, and Winfield Sealander, member and Facilities Chair of the School's Board of Trustees, testified on behalf of the Applicant. The Applicant also presented testimony and evidence from experts in architecture (David Cox, FAIA of Cox, Gray and Spack Architects) and traffic management (Martin Wells, P.E. of Wells & Associates).

Government Reports. The Office of Planning filed a report recognizing that the addition could aid in improving and advancing the programming of the School. OP recommended approval of construction of an addition to the Dent Building, including the lot occupancy and rear yard variance requests. OP was of the opinion that the Applicant had not adequately addressed the variance test for the FAR relief requested and was concerned that the size of the proposed addition was too intensive for the site in relation to the surrounding residential area. OP suggested that the Applicant consider a reduction in the size of the addition, which would reduce the FAR. OP expressed concern with regard to the special exception request to reconfigure the parking lot and its effect on safety in the alley. OP recommended that cars be required to back into the proposed parking spaces and requested resolution of traffic and parking issues during and after construction. OP also requested additional information including official documentation of square footage per student requirements based on industry standards and the most recent accreditation report with the accreditation board's official recommendation for the School. This information was supplied by the Applicant during the hearing, as appropriate.

OP also recommended that, if the Board approved the addition to the Dent Building, the Applicant's use of the building at 214 South Carolina Avenue be limited to administrative functions, with classroom use eliminated.

DDOT filed a report supporting the request for the construction of the addition stating that, because the proposed construction does not increase the number of students, faculty, or staff, and does not significantly change current traffic operations related to the School, transportation impacts would be negligible. DDOT also supported the recommendations of the Applicant's Traffic Impact Study Report and recommended the following additional conditions:

1. Provide several on-site preferred parking spaces to staff that participate in carpool or van

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 4**

pool arrangements.

2. Provide one designated car share parking space for staff and neighborhood use.
3. Establish a real and/or virtual bulletin board to help staff and parents understand transportation options and facilitate cooperative arrangements for either commuting or student pick-up/drop-off.
4. Assign one staff member as the Transportation Management Coordinator to maintain the "bulletin board" and serve as a central source of information.

DHCD reviewed Application No 17540 and filed a report supporting the requested special exception and variances to allow construction of the addition and to reconfigure the School's parking area.

ANC Report. ANC 6B filed a letter dated November 15, 2006, indicating that at a regular and properly noticed meeting on November 14, 2006, with a quorum present, it met to consider the requested relief for the subject property. The ANC voted 9-0 to support continued operation of the Applicant's private school use at 214 South Carolina Avenue. It voted 7-2 to support the requests for a variance from lot occupancy, rear yard, FAR,¹ and parking requirements, and the special exception to allow construction of an addition to the Dent Building, subject to several conditions, some of which the Board has incorporated into this Order.

Persons in Opposition to the Application. The Board received many letters in opposition to the applications from neighboring property owners, as well as a petition in opposition signed by neighboring property owners. The letters generally cited potential adverse impacts attendant to the requested variance and special exception relief, including the large size of the addition, the loss of views caused by the placement of the addition, harm to the residential character of the neighborhood as a result of the addition, noise caused by the HVAC units on the roof of the addition, noise and disruption caused by the construction of the addition, creation of objectionable traffic and parking conditions due to the loss of the security fence surrounding the existing parking area and the changes in parking configuration and location of bus parking. Several individuals also testified in opposition at the public hearing citing similar concerns.

Persons in Support to the Application. The Board received many letters in support of the applications from neighboring property owners. The letters generally cited the vital service the School has provided to families in the Capitol Hill community by offering an excellent education within walking distance of their homes. The letters also cited the many benefits the School provides to its neighbors and the community, including its financial aid programs, community outreach, food donations, and financial support of Garfield Park. Several neighbors and teachers

¹The ANC's November 15th letter had inadvertently left out any mention of the requested FAR relief. Therefore, it filed a second letter, dated November 16, 2006, confirming that it had considered, and it supported, the request for relief from the FAR requirements of § 1203.3, based upon the conditions outlined in its November 15th letter.

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 5**

from the School also testified in support of the applications at the public hearing. The testimony of neighbors included information similar to that provided in the letters. Ms. Pearl Bailes and Mr. Luis Correa-Power, teachers at the School who testified at the public hearing, emphasized the considerable need of the School for additional instructional area and modern facilities which could address space, security, safety, and handicapped-accessibility needs.

FINDINGS OF FACT**Background.**

1. The School is a private school for children in pre-kindergarten through eighth grade, which was established in 1969 in two churches on Capitol Hill.
2. In 1979, the use of the Dent Building, located at 210 South Carolina Avenue, S.E., as a private school by the Applicant was first approved by the Board in Order No. 12860, dated March 27, 1979. The School has been located in the Dent Building since 1980.
3. The School purchased the Dent Building in 1998.
4. The Applicant's use of the Dent Building as a private school was most recently sanctioned in Order No. 14780 (August 12, 1988), in which the Board approved the special exception use of the property as a private school for 225 students and 38 faculty and staff members, with twenty (20) car parking spaces and three (3) bus parking spaces. No term was put on the special exception approval. *See*, File No. 17540, Exhibit No. 11.
5. The Dent Building has a side yard of approximately 26 feet between it and the next adjacent row dwelling to its east, located at 214 South Carolina Avenue, S.E.
6. In 1987, the Applicant purchased the building at 214 South Carolina Avenue, S.E., (the "214 Building"), a brick two-story plus basement row dwelling which is attached to the row dwelling immediately to its east, but is, again, approximately 26 feet from the Dent Building to its west.
7. In 1990, in Order No. 15386, the Board approved use of the 214 Building by the School for a period of five years. The approval was further conditioned, most relevantly, in that no classroom use was permitted on the second floor, the maximum number of students in the building at any one time could not exceed 30, and evening use of the premise was limited. *See*, File No. 17541, Exhibit No. 10.
8. In 1996, in Order No. 16120, the Board renewed its special exception approval for the Applicant's use of the 214 Building, with the same conditions, except the term was increased to ten years, thereby ending in 2006. *See*, File No. 17541, Exhibit No. 11.

**BZA APPLICATION NO. 17540 & 17541
PAGE NO. 6**The Property and the Surrounding Area

9. The subject property² is located in the CAP/R-4 zone district on the northeast corner of 2nd and South Carolina Avenues, S.E., and contains approximately 15,222 square feet of land area in Square 765, Lots 802 and 803.
10. An alleyway approximately fourteen feet (14 ft.) wide abuts the rear of the subject property.
11. The property is improved with a large brick, three-story former public school building known as the Dent School (now the "Dent Building"), which was constructed in 1900. The property is also improved with the 214 Building, a two-story plus basement row dwelling constructed in 1913.
12. There are currently 20 car parking spaces and three bus parking spaces located behind and to the east of the Dent Building.
13. The immediate neighborhood consists primarily of single-family row dwellings, churches, parks, and other public and private schools. Two- and three-story row dwellings are located to the north of the subject property, across the alley, and to the west of the property, along 2nd Street, S.E. To the east of the property, fronting South Carolina Avenue like the subject property, are more two- and three-story row dwellings, and immediately south of the property, across South Carolina Avenue, S.E., is Garfield Park, a neighborhood green space used by the students of the School.

The Proposed Project

13. The Applicant proposes to construct an addition to the Dent Building, to be located in its eastern side yard, between the Dent Building and the 214 building (the "Addition").
14. The rear-most portion of the Addition will be attached to the Dent Building to its west on all 3 floors, but the front portion of the Addition's second and third floors will be set away from the Dent Building, thus maintaining the integrity of the Dent Building's design by keeping its eastern wall and windows intact.
15. The eastern wall of the Addition will be constructed on the property line between Lot 802 and Lot 803, but there will be no internal connection between the Addition and the 214 Building, situated on Lot 802.
16. The Addition will include three stories and a basement level. The basement level will be constructed seventeen feet (17 ft.) underground.

²The Board reiterates that, in this Order, the term "subject property" refers to, and includes, both the Dent Building at 210 South Carolina Avenue, and the row dwelling owned by the Applicant at 214 South Carolina Avenue, the "214 Building."

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 7**

17. The Addition will include a much-needed elevator which will provide access to all but the attic level of the Dent Building.
18. The rooftop penthouse structure to be located on top of the Addition will be constructed of concrete block walls filled with sound-absorbing insulation in order to attenuate sound and mitigate any noise impact on the surrounding properties.
19. The Addition will provide classroom, multi-purpose, and administrative space for the School. It will also provide a new entrance lobby for the School which will serve as the entry "control" point.
20. The multi-purpose room will be located on the lower level of the Addition, entirely below grade, and will include a small stage and space for approximately 250 removable seats. An entry way, lobby, administrative offices and 2 classrooms will be located on the first floor. One classroom, 2 administrative offices, and a faculty room will be located on the second floor and three (3) classrooms will be located on the third floor.
21. There are no windows or doors on the part of the wall of the Addition visible from the row dwelling at 216 South Carolina Avenue, the nearest residential row dwelling to the east of the 214 Building.
22. Due to a steep grade change sloping up from west to east on the property, the first floor of the Addition is at a lower grade than the 214 Building lot and adjacent lots to the east.
23. The rear wall of the second and third floors of the Addition is set back from the alley approximately ten feet (10 ft.) further than the rear wall of the first floor, proportional to the rear of the back porch of the residential row dwelling at 216 South Carolina Avenue. A green roof is intended for the top of the first floor in the rear of the Addition.
24. A fire exit stairway will also be installed at the rear of the Addition at the basement level, leading up to the rear yard.
25. The Addition will increase the lot occupancy of the Dent Building from 42% to 67%, above the 40% maximum allowed in this CAP/R-4 zone district. *See*, 11 DCMR § 403.
26. The bulk of the Dent Building, with a rear yard of over 37 feet, will satisfy the required 20-foot rear yard requirement, but the rear yard behind the Addition will be reduced to ten feet, requiring a variance from 11 DCMR § 404.
27. The current floor area ratio ("FAR") of the Dent Building is 1.7. With the Addition, this will increase to 2.42, when 1.8 is the maximum permitted. *See*, 11 DCMR § 1203.3.

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 8**

28. The Applicant proposes to reconfigure the parking area located in the rear yard of the Dent Building, in which it provides the 20 compact car parking spaces and the three bus parking spaces, as permitted by, and required by, Board Order No. 14780.
29. The elevation of the parking area will be dropped to the same grade as the abutting alley, allowing for the removal of a five-foot retaining wall currently separating the parking area from the alley.
30. The parking space layout will be reconfigured to retain the 20 car spaces, but with fewer "stacked" parking spaces than currently exist.
31. During the day, the School's three buses are generally in use and the 20 parking spaces will be available for students, faculty, staff, and visitor parking.
32. At night, and when the buses need to be parked on the subject property, 14 of the 20 parking spaces will be available for cars and the other six will be used to store the three buses.
33. The Applicant has obtained permission from a nearby establishment, "Results The Gym," to park its three buses in the gym parking lot during the day on an "as needed" basis.
34. The Applicant also requests renewal of the special exception to continue use of the 214 Building as part of its private school operations, but once the Addition is completed, student use of the 214 Building will cease and the Building will be devoted wholly to administrative and support functions.
35. Even with the Addition, the size of the classrooms and multipurpose room are still below the standards of the D.C. Public Schools.

Special Exceptions to Construct Addition, Reconfigure Parking Lot, and Continue Use of 214 Building

36. The School does not request an increase in the maximum levels of students or staff in conjunction with the construction of the Addition or in conjunction with the continued use of the 214 Building. These levels, 255 and 45, respectively, have been the same since 1990.
37. The hours of operation of the School will not change and will remain Monday through Friday, from 8:00 a.m. to 6:00 p.m.
38. The School's use of the subject property outside its hours of operation will also remain unchanged. This level of use amounts to no more than three evening events of a maximum of 25 people per month and occasional weekend activities, but no more than six per year.

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 9**

39. The Addition is designed to harmoniously fill the gap between the Dent Building and the 214 Building. Its front façade, set flush with the Dent Building and the row dwellings to its east, rises behind an attractive landscaped play area.
40. The front portion of the Addition immediately adjacent to the Dent Building is set apart from the Dent Building, maintaining the Dent Building's integrity as a separate, grander structure.
41. The second and third floors of the Addition are set back from the rear lot line approximately ten feet more than the first floor, allowing more light and air to reach the rear alley.
42. The daytime parking provided by the School for cars will not change.
43. Buses will be off-site during the day, either in use, or in the "Results The Gym" parking lot. If parking is not possible at the Gym parking lot, the buses will remain on the parking area behind the school, possibly causing the moving of cars parked there. Overnight, the buses will be parked behind the Dent Building.
44. The Applicant has designed the Addition to ensure that no lights will shine on or toward neighboring properties.
45. The phasing-out and cessation of student use of the 214 Building will reduce foot traffic and other impacts related to such use.
46. The noise emanating from the School will not change as there is no increase in enrollment, and with the cessation of student use of the 214 Building, any noise impact on the row dwellings to the east will likely be reduced.
47. The Applicant's private school use on the subject property is compatible with this R-4 residential zone district and, with no increase in its student or staff levels, even with the Addition, its intensity of use will remain as it is today.

Variance Relief**Exceptional Situation or Condition**

48. Unlike the majority of buildings in this Capitol Hill neighborhood, which are low-scale Victorian residential buildings, the Dent Building was constructed in 1900 in the Renaissance Revival style at a larger size, scale, and shape suitable for institutional uses.
49. The layout and configuration of the Dent Building, essentially unchanged since 1900, is inefficient and inadequate for a modern educational institution.
50. The Dent Building was originally designed to house classrooms on two floors. The attic, with few windows and little natural light, and the basement level, originally designed for

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 10**

boiler and storage rooms, were not intended to be used as classroom space, and even though they are so used by the Applicant, the School still does not have adequate space.

51. The Dent Building possesses the following exceptional characteristics and conditions:
1. No single stairway connects all floors;
 2. There is no entrance lobby or other entry "control" point;
 3. It has no multi-purpose space or room;
 4. Office space is inadequate, having been converted from former cloakrooms or carved out of classroom space;
 5. Circulation on and between the floors is extremely inefficient due to multifarious hallways and stair landings;
 6. The building has an usually high percentage of "core" space;
 7. There is no elevator and no space for the installation of an elevator within the building; and
 8. A significant amount of space is unusable "volume" rather than usable floor space, due to very high ceilings.
52. The lot on which the Dent Building sits is exceptionally small for an institutional/educational use.
53. There is inadequate space on Lot 803 for the Dent Building, the parking required by the Board, and any adequate recreation/playing field area even without the building footprint added by the Addition.

Practical Difficulty

54. The Dent Building, as currently configured, lacks sufficient space for classroom instruction, particularly for computer usage and science labs.
55. The Dent Building, as currently configured, has no auditorium space and no emergency shelter space.
56. The Dent Building, as currently configured, has insufficient storage space and no handicapped accessibility.
57. The Dent Building, as currently configured, lacks any central access control point, leading to inadequate control over building access and poor security.
58. The Dent Building cannot be reasonably reconfigured to provide the necessary classroom, storage, auditorium, shelter, and access space within the parameters of the Zoning Regulations.
59. The School currently has 13,547 square feet of classroom instructional space, and with the Addition, it will have 17,231 square feet of such space. According to the D.C. Public Schools specifications, the minimum recommended amount of such space for the number

BZA APPLICATION NO. 17540 & 17541
PAGE NO. 11

of classrooms the School will have after the addition is 25, 925.

60. The D.C. Public Schools' specifications for "multipurpose" room are for 4,500 square feet of area, plus an 800-square-foot stage and a 400-square-foot storage space. The School's proposed underground multipurpose room will be 2,475 square feet in area, including a stage, with a storage area of 136 square feet.

No Substantial Detriment to Public Good or Impairment of Zone Plan

61. The Dent Building has a long history of educational use, first as a public school, then as an equipment repair shop for the D.C. Public School system, and now, as a site for the Applicant's private school use.
62. The proposed Addition is compatible with the Capitol Hill Historic District and has been determined by the Historic Preservation Review Board ("HPRB") to be harmonious with the neighborhood in its massing, design, and style.
63. The first floor of the Addition, the largest of its three floors, is located below the grade of the rear yards of the adjacent lots to the east. Because of the steep grade change between the subject property and these lots, the first floor of the Addition is virtually invisible from the rear yards of these properties.
64. The lengthy street frontage of Garfield Park, directly across South Carolina Avenue from the School, provides available on-street parking.
65. The Board credits DDOT's assessment that "[b]ecause the proposed [A]ddition does not significantly change current parking or traffic operations related to the [S]chool, DDOT deems the transportation impacts negligible." See, File No. 17540, Exhibit No. 118.

CONCLUSIONS OF LAW

Special Exception.

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section(s) pertaining to them. In this case, the Applicant had to meet the requirements of § 3104.1 and the requirements of §§ 1202 and 206. Section 3104.1 sets forth the general standard stated above and § 1202 sets forth a similar general standard, though more particularly tailored to the Capitol Interest Overlay District. Section 206 sets forth more specific standards relating to potential adverse impacts of private schools in residential zone districts.

Under Section 206.1 of the Zoning Regulations, the Board may permit the use of private schools subject to the provisions set forth in 206.2 and 206.3. Section 206.2 states:

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 12**

The private school shall be so located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

The Board finds that neither the construction of the proposed Addition nor the continued use of the 214 Building by the School will cause objectionable conditions or adversely affect neighboring or nearby property. The School does not propose any increase in students, faculty, or staff in conjunction with the proposed Addition. With no such increases proposed, the vehicle trips generated by the School and the parking requirements of the School will remain the same as they are today, and essentially the same as they have been since 1990. Neither the hours of operation of the School nor the number or nature of evening or weekend activities held by the School will change. On the whole, the School's current level of operations and impact on the neighborhood will be unchanged, and will likely even be somewhat reduced with the cessation of student use of the 214 Building.

The proposed Addition is sited on the Property so as to minimize any potentially adverse impacts and is designed in such a manner so as to assure compatibility of bulk, height and scale with the Dent Building, the 214 Building, and the residential buildings along the rest of the block. The largest and potentially most intrusive element of the Addition, the multipurpose room, has been located entirely underground. Core spaces (e.g., stairways, circulation corridors, bathrooms) have been reduced to the smallest sizes practicable. Classrooms have also been reduced to the smallest size possible without disrupting the usability of the instruction space. The steep grade change between the property and the adjacent properties to the east substantially reduces the impact of the first floor of the proposed Addition. The second and third floors of the Addition are set back from the rear lot line approximately ten feet (10 ft.) further than the first floor, proportional to the rear of the back porch of the nearest residential row house located to the east of the 214 Building. Moreover, the Addition does not abut a neighbor, but abuts the 214 Building, part of the School use and the wall of the Addition visible by the neighbor at 216 South Carolina Avenue will be windowless to reduce any impact on privacy.

The design of the proposed Addition has been reviewed and approved by the Historic Preservation Review Board. The Addition will be compatible with the historic Dent Building and the fabric of the residential neighborhood. The façade is brick and the windows mimic the size and style of neighboring residential buildings. The front portion of the Addition nearest to the historic Dent Building is set away from the Dent Building so that views of its front and eastern side are not obstructed.

The Board also concludes that the proposed reconfiguration of the parking area is not likely to cause objectionable conditions or adversely affect neighboring property. Under BZA Order No. 14780, the Board required the Applicant to "provide on-site parking spaces to accommodate twenty (20) automobiles and three (3) school buses." With the construction of the proposed Addition, the Applicant will continue to accommodate twenty (20) car parking spaces and three (3) bus parking spaces under a new arrangement that provides twenty (20) car parking spaces during the day and fourteen (14) car parking spaces and three (3) bus parking spaces after normal

BZA APPLICATION NO. 17540 & 17541
PAGE NO. 13

business hours. With the reconfiguration of the parking spaces, fewer vehicles will be “stacked” behind each other. Instead of the vehicles being “stacked” 5-deep, they will be “stacked” only 2-deep, and will be backed into the parking spaces, leading to less commotion and greater safety and efficiency.

Section 206.3 sets forth the parking standard for private schools, and states:

Ample parking spaces, but not less than that required in chapter 21 of this title [of the Zoning Regulations], shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

As discussed above, the School will continue to provide the number of parking spaces required by the Board pursuant to Order No. 14780. No increase in student enrollment or faculty and staff level is being requested, and the Board agrees with the Applicant’s traffic expert that the Addition will have little or no impact on the overall vehicle trip generation patterns to and from the School. The traffic expert’s study found that traffic on South Carolina Avenue and other neighborhood streets generally operated well during peak periods and that sufficient on-street parking was available to accommodate any additional parking needs of the School. *See*, File No. 17540, Exhibit No. 96, and File No. 17541, Exhibit No. 52.

DDOT had no objection to the construction of the proposed Addition. DDOT also concurred with the findings of the Applicant’s traffic expert, stating that because the proposed Addition would result in no additional students, faculty or staff, the proposed Addition will have a “negligible” impact on transportation in the area.

The Board agrees with the conclusions of the Applicant’s traffic expert and DDOT that the proposed Addition will have no adverse impacts on traffic and parking operations or levels of service in the area. The Board concludes that, pursuant to §§ 206 and 3104.1, the special exception relief requested for the private school can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, and that it will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Map. Similarly, the Board concludes that, pursuant to subsection 1202(a), the special exception relief requested, as conditioned herein, will be compatible with the present and proposed development of the neighborhood.

Subsections 1202(b) and (c) stipulate that a special exception within the CAP Overlay District must be consistent with the mandates of Title V of the Legislative Branch Appropriation Act, 1976, approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), (the “Act”), and the master plan promulgated under the Act. Title V of the Act authorized funds to enable the Architect of the Capitol to develop a master plan for the future development of the grounds of the U.S. Capitol. The Board sent notice of the Applications No’s. 17540 and 17541 to the Architect of the Capitol and received no opposition nor comments to the effect that the granting of the applications would be inconsistent with the Act or the master plan promulgated pursuant to it.

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 14****Variances.**

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The “exceptional situation or condition” of a property can arise out of structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can only 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.” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

An applicant for area variances must make the lesser showing of “practical difficulties,” as opposed to the more difficult showing of “undue hardship,” which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Because area variances are being sought in this case, the Applicant had to make three showings: exceptional condition of the property, that such exceptional condition results in “practical difficulties” to the Applicant, and that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The Board reiterates and restates the conclusion it made in BZA Order No. 14780 that the subject property is exceptional because of its small size, particularly when compared to the lot sizes of other public and private schools located within the Capitol Hill neighborhood. The Board also finds in the instant proceeding that the Dent Building is unusual for the neighborhood and constitutes an exceptional condition. The Dent Building’s attributes, specifically, its scale, massing, floor plan layout and other interior conditions, and its historic characteristics, are also exceptional conditions with which the Applicant must grapple. The building floor plan layout, dating back to the original building design of 1900, is inefficient and inadequate for modern educational standards and accreditation requirements.

The Applicant has designed the Addition to be as small as it can be while achieving the School’s goals of providing more much-needed classroom and assembly space. Even with the Addition, the square footage of space provided per student will be below the D.C. Public Schools’ standard for square footage per student. The unusual nature of the Dent Building and its exceptional conditions create “practical difficulties” for the School in that strict adherence to the Zoning Regulations would prohibit the Applicant from adding sufficient additional classroom or other space, or facilities, to the Building. No such addition of space is reasonably possible without

BZA APPLICATION NO. 17540 & 17541
PAGE NO. 15

exceeding the allowable lot occupancy, rear yard and floor area ratio requirements of the Zoning Regulations.³

Clerics of St. Viator, supra, holds that the obsolescence of a building on a property may constitute the basis for the “hardship” necessary to the granting of a use variance. *See, Clerics*, at 294. In the context of the use variance case presented in *Clerics*, the applicant had to show that he had no other reasonable use of the land. The Applicant here has a lesser burden to carry. It does not have to show that it cannot use the Dent Building as is, but merely that, due to the Building’s exceptional characteristics, its desired changes to the Building cannot be achieved within the parameters of the Zoning Regulations without encountering exceptional practical difficulties. *Clerics* also makes clear that unless the practical difficulties complained of are the “direct result” of the Applicant’s actions, there is no reason to apply a doctrine of self-imposed hardship, or here, perhaps, self-imposed practical difficulty, 320 A.2d at 294. The District of Columbia Court of Appeals has directly stated that knowledge of limitations of a property prior to its purchase is not a factor to be considered in an area variance analysis. *See, Association for Preservation of 1700 Block of N Street, N.W. and Vicinity v. D.C. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978). (“The YMCA’s self-created hardship [*i.e.*, ‘full knowledge’ of problems with land ‘prior’ to purchase] is not a factor to be considered in an application for an area variance, however, as that factor applies only to a use variance.”) Therefore, the fact that the School purchased the Dent Building in 1998, knowing its limitations and exceptional characteristics, does not prevent the Board from granting the requested variance relief.

No substantial detriment to the public good or substantial impairment of the Zone Plan will result if the variances to allow the requested lot occupancy, rear yard and floor area ratio are granted. The Applicant’s private school use is compatible with its residential neighborhood, and the variances requested will enable the use to continue on the subject property. The Addition has been designed to minimize any potentially negative impacts. The largest element of the Addition – the multi-purpose room – is located entirely below grade. The first floor of the Addition, the largest of the three floors of the Addition, is located below the grade of the rear yards of the adjacent lots along South Carolina Avenue, S.E. to the east and is virtually invisible from the rear yards of the residential properties to the east. Further, the properties to the east are separated from the Addition by the 214 Building and its rear yard and the properties to the north are located across a fourteen-foot (14 ft.) wide alley from the Addition.

The construction of the Addition is not leading to an increase in the maximum number of students enrolled at the School nor an increase in the maximum number of faculty and staff,

³The Applicant points out that, whereas its private school use is limited to a 40% lot occupancy, a row dwelling, flat, or church in the CAP/R-4 zone district is permitted a lot occupancy of 60%. The Zoning Commission also recently amended the Zoning Regulations to permit public schools and public charter schools a maximum lot occupancy of 70% in R-4 zone districts, including within the CAP Overlay, as the Overlay does not specify any lot occupancy maximum applicable exclusively within it. Of course, the Applicant’s private school use is similar to, and in many ways identical to, such school uses, and if it were permitted a lot occupancy of 70%, it would not need a lot occupancy variance.

**BZA APPLICATION NO. 17540 & 17541
PAGE NO. 16**

therefore there will be no increase in the number of cars picking up and dropping off students. Nor will there be any increase in traffic or change in the parking provided.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

ANC 6B voted unanimously to support the Applicant's continued use of the 214 Building and did not recommend that any conditions be put on the use. The ANC also voted to support the requests for the variances from lot occupancy, rear yard, and FAR requirements and for a special exception to allow construction of the Addition to the School and the reconfiguration of the parking lot. This affirmative vote was subject to certain conditions. The Board agrees with the ANC's decision to approve the special exception and variance requests. In addition, the Board has considered and given "great weight" to the ANC's proposed conditions. Those conditions recommended by the ANC that have been agreed to by the Board as appropriate to respond to issues raised during the public hearing and to mitigate potential adverse impacts are reflected in the conditions to this Order set forth below.

The Board has also given great weight to the recommendations of OP. Specifically, the Board recognizes OP's support for the rear yard and lot occupancy variances and agrees with OP's recommendations of approval of these variances.

The Board, however, disagrees with OP's statements that the Applicant did not adequately address the variance test for the FAR relief requested and that the size of the Addition would impair the intent of the CAP Overlay. At the hearing, one of the OP representatives stated that OP was "not opposed or in favor of" the FAR variance, but felt that the Applicant had not yet made a sufficient case to support it. The Board, however, after reviewing all the evidence presented, concludes that the Applicant sufficiently addressed the variance test for FAR relief. The Board finds that neither OP's report nor its testimony during the hearing identified specific, quantifiable negative impacts that would be ameliorated by reducing the size of the Addition. The Board notes that OP supported the height of the Addition and the rear yard and lot occupancy variances, which collectively establish the footprint and massing of the Addition, thus undermining OP's concerns with respect to FAR. In addition, the Board concludes that the size of the Addition will cause no substantial negative impacts on the surrounding area and will not impair the purpose and intent of the CAP Overlay.

The Board has also given great weight to OP's concern regarding the parking reconfiguration and alley safety and is persuaded by OP's suggestion that safety will be improved if cars are required to back into the proposed parking spaces. This Order is so conditioned. The Board also finds that the School has sufficiently addressed traffic and parking concerns and does not find it necessary or appropriate to condition this Order with regard to the provision of any specific off-site parking arrangement.

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 17**

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to special exceptions pursuant to §§ 3104.1, 206, and 1202.1, and with respect to variances from §§ 404, 403, and 1203.3. It is therefore **ORDERED** that Applications Numbers 17540 and 17541 be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Addition to the Dent Building shall be constructed in accordance with the plans at Exhibit No. 31, in File No. 17540. The Applicant shall have the flexibility to modify the design of exterior elements of the Addition which are initiated by the Historic Preservation Review Board and do not require zoning relief.
2. At the beginning of the next academic year (*i.e.*, September) after the issuance of a valid Certificate of Occupancy for the Addition, use of the 214 Building shall be limited to administrative offices and support functions in conjunction with the School's use of the Dent Building.
3. The total number of students enrolled in the School shall not exceed 255.
4. The educational program offered by the Applicant shall not extend beyond a day program and an after-school program for pre-kindergarten through eighth grade students (except for a summer camp that serves the same grade levels and is also subject to all other conditions set forth in this Order).
5. No more than forty-three (43) faculty and staff members shall be employed at the School
6. The Applicant shall provide parking spaces on the subject property to accommodate twenty (20) automobiles during normal (*i.e.*, daytime) hours of operation and three (3) school buses after hours as shown on the site plan at Exhibit 31, in File No. 17540. During the day, if the school buses are not in use, they shall be parked behind the Dent Building or in an alternative off-site, off-street location.
7. The normal hours of operation of the School shall be from 8:00 a.m. to 6:00 p.m., Monday through Friday.
8. Evening and weekend functions and activities for gatherings of twenty-five (25) or more persons shall be limited to those functions and activities that are customary to an elementary school, such as theatrical or musical productions, back-to-school nights, science, math and art fairs, and similar activities, and shall not exceed on average more than two (2) per month. No facilities within the Dent or 214 Buildings shall be made available for commercial purposes.
9. The Applicant shall ensure that any lights on the exterior of the Dent Building, its Addition, or the 214 Building, do not shine onto any neighboring properties (other than the 214 Building, but only for so long as the Applicant uses the 214 Building for School uses in conjunction with the use of the Dent Building).

BZA APPLICATION NO. 17540 & 17541**PAGE NO. 18**

10. Subject (if necessary) to review by HPRB and the issuance of public space permits therefore, the Applicant shall screen the air conditioning units that are located on grade in the public space along 2nd Street, S.E. with an acoustic screen wall in order to mitigate their noise impacts on nearby properties.
11. Subject (if necessary) to review by HPRB, the Applicant shall erect or install a fence between the reconfigured parking lot and the abutting public alley. The fence may be movable.
12. The Applicant shall post signs that instruct faculty, staff, and visitors who use the on-site parking spaces in the rear of the Dent Building to back into such parking spaces.
13. The Applicant shall provide faculty and staff with incentives, such as the MetroCheck program, to encourage the use of public transportation or to carpool to and from the subject property.
14. All previous orders and conditions therein pertaining to the subject property shall remain in effect until issuance of a valid Certificate of Occupancy for the Addition, at which time this Order and the conditions herein shall supersede all such previous orders and their conditions.
15. The Applicant shall maintain a community liaison and shall meet with concerned neighbors and other interested parties, including the local ANC representative, a minimum of four times per year. All property owners within 200 feet of the subject property shall be notified in advance of such meetings and shall be invited to attend.

VOTE ON BOTH APPLICATIONS

NUMBERS 17540 AND 17541: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Carol J. Mitten to approve.)

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

Each voting Board member has approved the issuance of this Order granting the applications.

JUN 11 2007

FINAL DATE OF ORDER _____

PURSUANT TO 11 DCMR § 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6"

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 STRUCTURES

**BZA APPLICATION NO. 17540 & 17541
PAGE NO. 19**

WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

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, RENOVATIONS, 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.

LM

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

Application No. 17509 of Bernard L. Renard, as amended, pursuant to 11 DCMR §3104.1, for a special exception allow an addition to one of two row dwellings sharing the same lot proposed for subdivision under section 223, not meeting the minimum width requirements for an open court (section 406.1) or the maximum percentage of lot occupancy limitations (section 403) and under § 3103.2, for a variance from the minimum lot width requirements under section 401 in the R-4 District at premises 521-523 11th Street, S.E. (Square 973, Lot 67) (site per sub).

Note: The relief was amended to indicate a special exception under §223 in combination with one area of variance relief.

HEARING DATES: September 19, 2006, January 30 and May 22, 2007
DECISION DATE: May 22, 2007 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

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) 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 a 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.

BZA APPLICATION NO. 17509**PAGE NO. 2**

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 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 ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, (§ 401) 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. The Board grants the applicant flexibility in whether or not to construct the basement.

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** pursuant to revised plans dated "01-31-2005, REV 02/01/07" - Exhibit No. 38 in the record.

VOTE: 5-0-0 (Ruthanne G. Miller, John G. Parsons, John A. Mann II,
Marc D. Loud and Curtis L. Etherly, Jr. 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: June 11, 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."

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

BZA APPLICATION NO. 17509

PAGE NO. 3

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

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

Application No. 17595 of O'Tilia V. Hunter, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and width requirements under section 401, a variance from the side yard requirements under section 405, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a single-family detached dwelling in the R-2 District at premises 3107 20th Street, S.E. (Square 5850, Lot 7).

Note: The applicant amended the application by eliminating her request for a variance from the lot occupancy requirements under section 403.

HEARING DATE: April 17, 2007
DECISION DATE: June 5, 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) 8B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8B, which is automatically a party to this application. ANC 8B did not submit a report or participate in this 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 § 3103.2, for variances from § 405, and 2101.1. 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 Office of Planning report filed in this case, the Board concludes that the applicant has met the

BZA APPLICATION NO. 17595**PAGE NO. 2**

burden of proving under 11 DCMR §§ 3103.2, (405 and 2101.1) 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 be **GRANTED** per revised plans, Exhibit No. 31.

VOTE: 5-0-0 (Ruthanne G. Miller, Marc D. Loud, John A. Mann II, and Curtis L. Etherly, Jr. to grant; Michael G. Turnbull to grant 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: JUN 08 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."

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

BZA APPLICATION NO. 17595

PAGE NO. 3

THERE TO) 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

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

Application No. 17599 of Taiwo Demuren, pursuant to 11 DCMR § 3104.1, for a special exception to construct a four (4) unit apartment building under section 353, in the R-5-A District at premises 5300 E Street, S.E. (Square 5299, Lot 16).

HEARING DATE(S): April 24, 2007, May 15, 2007, May 22, 2007
DECISION DATE: June 5, 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) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application. The Department of Transportation and the Department of Housing and Community Development both submitted reports 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 353. 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 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 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.

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

BZA APPLICATION NO. 17599

PAGE NO. 2

findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 31 – Revised Plans) be **GRANTED**.

VOTE: 4-0-1 (Marc D. Loud, Ruthanne G. Miller, Curtis L. Etherly, Jr. and John A. Mann II to approve; the Zoning Commission member, not voting, not having participated in the case.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUN 08 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."

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

BZA APPLICATION NO. 17599

PAGE NO. 3

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

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

Application No. 17608 of Taiwo Demuren, pursuant to 11 DCMR § 3104.1, for a special exception to construct a ten (10) unit apartment building under section 353, in the R-5-A District at premises 1430 Eastern Avenue, N.E. (Square 5171, Lots 21 & 22).

HEARING DATE(S): May 15, 2007

DECISION DATE: June 5, 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) 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. ANC 7C did not submit a report in this application. The Office of Planning (OP) submitted a report in support of the application. The Department of Transportation submitted a report having no objection to 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 353. 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 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 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.

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

BZA APPLICATION NO. 17608

PAGE NO. 2

findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 31 – Revised Plans) be **GRANTED**.

VOTE: 3-1-1 (John A. Mann II, Ruthanne G. Miller and Curtis L. Etherly, Jr. to approve, Michael G. Turnbull opposed to the motion, and Marc D. Loud, not voting, not having participated in the case.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUN 08 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."

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

BZA APPLICATION NO. 17608

PAGE NO. 3

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

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

Application No. 17616 of Family and Child Services of Washington, D.C., Inc., pursuant to 11 DCMR § 3104.1, for a special exception to continue the operation of a parking lot, having nineteen (19) spaces,* under section 213 (last approved by BZA Order No. 16873), in the R-5-B District at premises 1522-1526 Church Street, N.W. (Square 194, Lots 50, 51 and 52).

**Note: The application was amended to reduce the number of parking spaces originally requested from 22 to 19.*

HEARING DATE: June 5, 2007
DECISION DATE: June 5, 2007 (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) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B 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 213. 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 213, 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.

BZA APPLICATION NO. 17616**PAGE NO. 2**

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** per surveyor's plat, Exhibit No. 30.

1. The approval shall be for **TEN (10) YEARS**.
2. Visitors and employees of Family and Child Services of Washington, D.C., Inc. (FCSW) shall use the parking lot during business hours.
3. During evenings and on weekends, the parking lot shall be made available to members of the community and to nearby churches.
4. The parking lot shall be posted with a sign, which limits its use during the day exclusively to Family and Child Services of Washington, D.C., Inc. The signage shall continue to indicate that the lot is reserved for Family and Child Services of Washington D.C.; Inc. members from 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. At least 5 percent of the lot shall be landscaped.
6. A designated person shall police the parking lot on a regular basis, Monday through Friday, for security purposes.
7. The parking lot shall be striped so as to designate the location of all parking spaces.
8. Lighting shall be provided to sufficiently illuminate all areas of the lot. Such illumination shall be so arranged that all direct rays of the lighting are confined to the surface of the parking lot.
9. The applicant shall maintain the existing landscaping.

VOTE: **3-0-2** (Curtis L. Etherly, Jr., John A. Mann II and Ruthanne G. Miller, to approve; Marc D. Loud and a Member of the Zoning Commission 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: _____

BZA APPLICATION NO. 17616

PAGE NO. 3

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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 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

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

Application No. 17622 of Manna, Inc., pursuant to 11 DCMR § 3104.1, for a special exception for a third story addition to an existing row (flat) dwelling under section 223, not meeting the rear yard requirements (section 404), and the nonconforming structure provisions (subsection 2001.3), in the R-4 District at premises 3229 11th Street, N.W. (Square 2845, Lot 31).

HEARING DATE: June 12, 2007
DECISION DATE: June 12, 2007 (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) 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. ANC 1A did not participate in 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 report 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.

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

BZA APPLICATION NO. 17622

PAGE NO. 2

findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 5-0-0 (Ruthanne G. Miller, Anthony J. Hood, Curtis L. Etherly, Jr., Marc D. Loud and John A. Mann II 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: June 13, 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."

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.

BZA APPLICATION NO. 17622

PAGE NO. 3

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. 05-23**

Z.C. Case No. 05-23

**(Consolidated Planned Unit Development and Amendment to the Zoning Map for
CSX Realty Development Corp. and FF Realty, LLC)**

October 16, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 13, 2006 to consider an application for CSX Realty Development Corporation and FF Realty, LLC for the consolidated review and approval of a planned unit development and a related amendment to the Zoning Map of the District of Columbia from the M to the C-3-C Zone District for Lot 815 in Square 3576, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on September 11, 2006, the Zoning Commission took proposed action by a vote of 5-0-0 to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated September 28, 2006, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission took final action to approve the application on October 16, 2006, by a vote of 5-0-0.

FINDINGS OF FACT

1. The property that is the subject of this application is Lot 815 in Square 3576 and is bounded by Eckington Place, NE and Harry Thomas Way, NE (the "Subject Property" or "Property"). The planned unit development ("PUD") is located in the Eckington neighborhood of Ward 5. The Property consists of approximately 187,958 square feet of land and is currently vacant. (Exhibit 3, p. iv.)

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 2

2. The Subject Property is owned by CSX Realty Development Corporation. FF Realty, LLC is the contract purchaser of the Property (the "Applicant"). (Exhibit 3, p. iv.)

3. The PUD site is currently located in the M Zone District, which prohibits new residential structures. The residential and commercial components of the PUD require a rezoning of the entire site to a zone classification that permits both uses together with the height and density sought. The Applicant has proposed the C-3-C Zone District. (Exhibit 3, p. 1.)

4. The Applicant filed an application for consolidated review and approval of a PUD and a related amendment to the Zoning Map of the District of Columbia on July 18, 2005.

5. The Zoning Commission voted 4-1-0 to set the case down for a public hearing at its January 9, 2006 public meeting. The Zoning Commission held a public hearing on the above-mentioned application on July 13, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022.

6. There were no requests for party status.

7. At the July 13, 2006 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted Robert Keane of WDG Architecture as an expert in architecture; Robert Good of Stephenson & Good as an expert in landscape architecture; and Lou Slade and Robert Schiesel of Gorove/Slade as experts in traffic and parking.

8. On September 20, 2006, Advisory Neighborhood Commission ("ANC") 5C, which as the affected ANC was an automatic party in this case, provided the Commission with a resolution dated September 19, 2006, indicating that at a properly noticed meeting with a quorum present, it voted unanimously in support of the PUD application.

PUD SITE

9. The Property consists of 187,958 square feet of vacant land in Ward 5 at the northeast corner of the intersection of Harry Thomas Way and Eckington Place, N.E. (Exhibit 3, p. 1.) Q Street, NE dead-ends at the PUD site. This area is commonly known as the Capital Commerce Center. (Exhibit 12, p. 3.)

10. The area to the west of the PUD site is located in the C-M-2 Zone District. An extensive area to the northwest of the site is located in the R-4 Zone District. The properties to the north, south, and east of the Property are located in the M Zone District. Immediately to the south of the PUD site is the Federal Express distribution center; to the

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 3

north of the site is the Washington Wholesale Flower Center; to the southwest is XM Radio; to the northwest are single-family row dwellings; and to the east is property owned by PEPCO, which is currently vacant. (Exhibit 3, Exhibit F, A01.)

11. The New York Avenue Metrorail Station is located one-quarter mile to the southeast of the site. (Exhibit 12, p. 3.) The site is parallel to the Metropolitan Branch Trail. (Exhibit 24, p. 2.)

12. The Generalized Land Use Map of the Comprehensive Plan includes the Subject Property in the Production and Technical Employment land use category. A draft of the Office of Planning's "Industrial Land in a Post-Industrial City: District of Columbia Industrial Land Use Study" identifies the Subject Property as "an area for land use change." (Exhibit 13, p. 8.)

PUD APPLICATION AND PROJECT

13. The Applicant seeks to construct a residential project with a ground floor retail component on the Subject Property.

14. The Applicant's first submission proposed three large residential buildings. The Office of Planning, however, requested that the Applicant extend Q Street through the property to establish the street grid in the project. The Applicant complied and created three large residential buildings and several townhouses to line the extended Q Street. (Exhibit 3, Exhibit F, A03.)

15. The PUD will be composed of approximately 739,951 square feet of residential area and 15,084 square feet of retail space. A range of 585-636 residential units will be located in the three residential buildings and will contain a mix of studio, one-bedroom, one-bedroom with den, two-bedroom, and two-bedroom with den units. The PUD will also include 27 piggyback townhouse units and 5 four-story single family townhouses. The total gross floor area of the PUD will consist of approximately 755,035 square feet; the PUD will have a floor area ratio ("FAR") of 4.01. Building heights will range from 40 feet for the townhouses to 110 feet for the larger buildings. The project will have a lot occupancy of 47.43%, including the proposed streets. (Exhibit 13, pp. 14-17, Exhibit B.)

16. The first residential building will be located at the corner of Eckington Place and Harry Thomas Way and will include the entirety of the project's ground floor retail ("Building 1"). Building 1 is designed to look like three distinct buildings. The western section relates to the XM headquarters with its oversized windows, arched embellishments, and subdued brick color. The middle and eastern portions of the building continue to reflect a "warehouse" feel with a deeper brick color and spanning windows. The building will have alternating glass bays and balconies. Façade materials will include brick with precast concrete and stone accents and trim. The duplex units on the eastern

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 4

end of Building 1 will have street entrances to enliven the streetscape along Harry Thomas Way. The street entrances will be lined with arch block and recessed archways to maintain the industrial feel of the area. The roof will include landscaped recreation spaces, a club room, and a pool for the residents of the building. (Exhibit 13, pp. 15, 17-18, Exhibit A; Exhibit 27; Transcript, p. 21.)

17. The height of Building 1 will range from 70 feet and 7 stories on its western end to 90 feet and 9 stories on the eastern end. The building will include approximately 212,435 square feet of gross floor area and 175 units. (Exhibit 13, p. 15.)

18. The building on the eastern edge of the Subject Property ("Building 2") will consist entirely of residential units. The building's frontage along Harry Thomas Way will include a series of bays and balconies with a façade consisting of masonry and metal windows. A brise soleil will shade the upper floors of the building. The duplex units will be directly accessed from the street. The duplex entry consists of painted metal and arch block with precast window sills. (Exhibit 13, pp. 16-18; Exhibit 27; Exhibit 32, Exhibit B; Transcript, pp. 21, 62.)

19. The height of Building 2 will range from 90 feet and 9 stories to 110 feet and 11 stories. Building 2 will be composed of approximately 211,842 square feet of development and contain approximately 190 units. (Exhibit 13, p. 16.)

20. The building located at the corner of Harry Thomas Way and the north side of Q Street will consist entirely of residential units ("Building 3"). The building is composed of varying layers of brick, glass, and metal. Along the glass façade of the building, there is a metal panel extending horizontally along the building. Building 3 is set back from the northern side of the extended Q Street to allow for extensive green space for the residents; private terraces for the residents also open onto the green space. (Exhibit 13, p. 16.)

21. The height of Building 3 will range from 90 feet and 9 stories to 110 feet and 11 stories. The building will consist of approximately 265,224 square feet of gross floor area and approximately 239 residential units. (Exhibit 13, p. 16.)

22. Townhouses will be located on the northwestern corner of the PUD site. The townhouses along Eckington Place will be single-family townhouses and those lining the extended Q Street will be piggybacked two-floor townhouses. The townhouse facades will consist of masonry and metal window frames. (Exhibit 13, p. 17.)

23. The height of the townhouses will be 40 feet and 4 stories. The townhouses will consist of 65,534 square feet of gross floor area and comprise 32 residential units. (Exhibit 13, p. 17.)

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 5

24. The PUD will have extensive landscape and hardscape improvements on private and public space. A large private plaza will be located on the north side of the extended Q Street; smaller private plazas are located on the north sides of Buildings 1 and 2. The large plaza will be 45 feet separated from the public walkway by painted metal pickets and brick piers. A privacy hedge will conceal the metal pickets from the interior of the plaza. The plazas will each have detailed landscaping, and the plazas on the north sides of Buildings 1 and 2 will provide circular drives for the residents. A stone block wall will enclose the plazas north of Buildings 1 and 2. (Exhibit 13, p. 18; Exhibit 26, L-1-7.)

25. A brick plaza lined with trees and benches along the northeast portion of the extended Q Street will be open to the general public. (Exhibit 26, L-8.)

26. Below-grade parking will be provided for Buildings 1, 2, and 3. The parking garages will provide approximately 875 spaces for residents and guests. Access to the garage for Buildings 1 and 2 will be from a new north-south access street, whereas access to the parking garage below Building 3 will be from an alley off Harry Thomas Way. (Exhibit 13, p. 19; Exhibit 26.)

27. Garages will be provided for each townhouse unit. Additional parking will be located in a surface lot north of the townhouses. The townhouses on Eckington Place will have two-car garages. (Exhibit 13, p. 19.)

28. One loading berth at 55 feet deep, 1 loading platform at 200 square feet, and 1 delivery/service space at 20 feet deep will be provided for each of the three large buildings. A private alley will be used for loading for the townhouses. The Applicant is not providing dedicated loading docks for the retail portion of the project. Given the size of the retail component of the project, deliveries to the retail uses will be made from the adjacent streets. (Exhibit 13, p. 22, Exhibit B.)

29. The Applicant will incorporate two new streets into the development: one public, the other private. It will extend Q Street east of where it currently ends, and it will establish a north-south access street between Buildings 1 and 2. The Applicant will construct Q Street to the specifications established by the District Department of Transportation ("DDOT") and will dedicate the street to the District of Columbia through the public street dedication process. The Applicant will not dedicate the access street to the District. (Exhibit 13, pp. 13, 19.)

30. The PUD will require an amendment to the Zoning Map to rezone the property from the existing M Zone District to the C-3-C Zone District. The existing zoning designation for the site does not permit residential use. It permits commercial or industrial uses up to 6.0 FAR with no lot occupancy limitation. Building heights of up to 90 feet are permitted. The C-3-C Zone District permits residential uses and development up to 6.5 FAR and a height of 90 feet as a matter-of-right. PUD guidelines for the C-3-C Zone District allow development up to 8.0 FAR for residential or commercial uses and a

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 6

building height of up to 130 feet. A 100% lot occupancy is permitted. (Exhibit 13, Exhibit B.)

31. The Office of Planning issued a draft of its industrial land-use study entitled, "Industrial Land in a Post-Industrial City: District of Columbia Industrial Land Use Study." The study concludes that "[a] very large site on Eckington Place has been proposed for rezoning for a planned residential development. This location near two major thoroughfares and a Metro, and on the northern edge of the NoMA initiative, is *the* prime development site outside of Downtown. It no longer contains a large number of PDR uses and is appropriate for a change of use to accommodate this development." This site mentioned in the Industrial Land Use Study is the Subject Property. (Exhibit 13, p. 9.)

32. The Office of Planning also issued a draft of the New York Avenue/North of Massachusetts ("NY/NoMA") study. The NY/NoMA study encourages "walkable, transit-accessible, dynamic and diverse mixed-use neighborhoods with retail services," "connections between new development, the new Metro Station, and the existing nearby residential neighborhoods," and "quality public space and pedestrian environment with community amenities." (Exhibit 13, p. 9.)

33. As will be discussed in the conclusions of law, the proposed rezoning of the site would not constitute spot-zoning.

34. The PUD complies with the underlying zoning district requirements; however, the Applicant requires relief from § 400.7 of the Zoning Regulations, which requires all roof structures to be enclosed in one structure. Due to the size of the buildings and their varying heights, providing a single roof structure would result in a needlessly large roof structure. The PUD also needs relief from the requirements of Chapter 22 of the Zoning Regulations for dedicated loading docks for the retail portion of the project. The Applicant is proposing approximately 15,000 square feet of neighborhood-serving ground floor retail; therefore, the Applicant believes that it is likely that deliveries to the retail uses can be made from the adjacent streets. Finally, the Applicant needs relief from § 773.3 of the Zoning Regulations requiring at least 10% of the gross floor area devoted to residential use to be provided as residential recreation space. The Applicant will provide several green plazas and rooftop recreation spaces, but will not fully comply with the regulations. (Exhibit 13, pp. 21-22.)

35. The Applicant's traffic and parking expert provided written documentation and testimony that the PUD is an example of transit oriented development and will have no negative impact on the surrounding road network. The close proximity and quality of access to Metrorail significantly reduces potential traffic impacts. The traffic generated by the PUD can be accommodated by the surrounding road network. The proposed project will contribute only 1% (or less) of the traffic going through the Florida Avenue and New York Avenue intersection. (Exhibit 13, Exhibit E, pp. 18, 34; Transcript, pp. 33-34.)

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 7

36. The Applicant provided an analysis of area intersections including New York Avenue and Florida Avenue, Eckington Place and Q Street, Rhode Island Avenue and 3rd Street, and R Street with Lincoln Road and North Capitol Street. The analysis concluded that the intersections operate under acceptable conditions, although DDOT and the Eckington community should work toward a solution to alleviate the existing long queues on westbound R Street. (Exhibit 32, Exhibit A, p. 12.)

37. The proposed project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods: The PUD will provide 625-675 residential units, which will help stabilize and enhance the Eckington neighborhood. The ground floor retail space will provide neighborhood-serving retail in an area that suffers from a lack of retail opportunities (Exhibit 13, p. 33);
- Respecting and improving the physical character of the District: The Applicant will extend Q Street through the center of the PUD, which will integrate the site with the Eckington neighborhood. The PUD will also replace land that is currently vacant and contaminated with a development that is environmentally clean and includes residential construction (Exhibit 13, p. 34); and
- Preserving and ensuring community input: The Applicant presented its proposal to ANC 5C on four separate occasions; it presented its proposal to the Eckington Civic Association on two occasions, as well as to the Bates Civic Association, the Edgewood Civic Association, and the Ward 5 Economic Summit. The Applicant also met on several occasions with representatives of the various community organizations. The Applicant also submitted a development and construction management plan with its June 23, 2006 submission, pursuant to feedback from the community. The plan provides guidelines for construction traffic, contact information for voicing concerns regarding construction, and provides for a resume bank to encourage employment of local residents. (Exhibit 19, Exhibit C; Transcript, p. 35.)

38. The PUD is consistent with many Major Elements of the Comprehensive Plan, including; the Transportation Element, the Housing Element, the Urban Design Element, the Land Use Element, and portions of the Ward 5 Element.

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 8

- Transportation Element: the PUD is consistent with the following goal:
 - Support land use arrangements that simplify and economize transportation services, including mixed-use zones that permit the co-development of residential and nonresidential uses to promote higher density residential development at strategic locations, particularly near appropriate Metrorail stations. (10 DCMR § 502.1.)

- Housing Element: the PUD is consistent with the following goals:
 - Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies and objectives. (10 DCMR § 302.2(a).)
 - Review and recommend suitable regulatory zoning, tax and financing incentives under appropriate controls to meet housing production goals, particularly for low-income, moderate-income and elderly households. (10 DCMR § 302.2(b).)
 - Designate, as residential development opportunity areas, sites where significant housing development can appropriately occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed moderate-income residents. (10 DCMR § 302.2(d).)
 - Encourage housing on suitably located public or private properties that are vacant, surplus, underutilized or unused... (10 DCMR § 302.2(e).)
 - Provide zoning incentives, as appropriate to developers prepared to build low- and moderate-income housing, such as permitting additional densities in exchange for incorporating low- and moderate-income housing in development projects. (10 DCMR § 303.2(d).)

The PUD provides housing on a site that is currently vacant; a portion of the residential units are reserved for moderate income housing; and the site is one-quarter mile from a new Metrorail station.

- Urban Design Element: The PUD is consistent with the following urban design goals:
 - Encourage in-fill development to be complementary to the established character of the area. In-fill development in stable areas shall not create sharp changes in physical pattern which might lead to deterioration. (10 DCMR § 711.2(a).)

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 9

- Encourage well-designed developments in areas that are vacant, underused or deteriorated. These developments should have strong physical identities. (10 DCMR § 712.2(a).)
- Utilize large-scale development or capital improvement projects as opportunities for establishing a positive image or redirection in deteriorated areas.” (10 DCMR § 712.2(g).)

The PUD includes prominent residential buildings with ground floor retail and townhouse units, on a parcel that is currently vacant. This PUD will also link the Eckington neighborhood to the New York Avenue Metrorail Station.

- Land Use Element: The PUD is consistent with the following land use goals and objectives:
 - To assure the efficient use of land resources within legal, economic, fiscal, environmental, and other public policy constraints to meet neighborhood, community, and District-wide needs, and to help foster other District goals. (10 DCMR § 1101.1.)
 - To conserve and enhance the essentially satisfactory qualities of the District’s many stable residential neighborhoods including those qualities that make them unique (10 DCMR § 1102.1(a).)
 - To enhance other neighborhoods and achieve stability. (10 DCMR § 1102.1(b).)
 - To encourage development of adequate neighborhood shopping and support services in all sections of the District. (10 DCMR § 1102.1(c).)
 - Promote the conservation, enhancement, and revitalization of the residential neighborhoods of the District for housing and neighborhood related uses. (10 DCMR § 1104.1(a).)
 - Encourage the retention and expansion of residential uses in mixed-use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary. (10 DCMR § 1104.1(b).)
- Generalized Land Use Map: The Generalized Land Use Map designates the site as being appropriate for production and technical employment. It

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 10

further designates the site, and the entire Capital Commerce Center, as the Northeast 1/Eckington Yards Special Treatment Area, an area targeted for high-tech and light industrial uses. However, the site is one-quarter mile from a new Metro station. The station was not under consideration when the Comprehensive Plan's Generalized Land Use Map designation was adopted. Approximately \$100 million has been contributed for the new station's construction by a combination of the District and Federal government agencies and from private sources. A special taxing district was established at the behest of the local business community to collect the \$25 million private share of the station's cost. The owner of the subject property and the adjacent Capital Commerce Center are part of the special taxing district. The Industrial Land Use Study issued by the Office of Planning states that the site is appropriate for rezoning, because it no longer contains a large number of production, distribution, and repair businesses. The Industrial Land Use Study concludes the area is appropriate for land use change to include residential uses.

- Ward 5 Element: The Ward 5 Element emphasizes development and rehabilitation measures that contribute to an orderly process of neighborhood revitalization, encourage the creation of new job opportunities and the effective use of inventory of commercial land, encourage and promote development around Metro Stations, ensure that neighborhoods like Eckington benefit from new and rehabilitated housing and increased retail and encourage new and rehabilitated affordable housing for area residents. (10 DCMR §§ 1600.4, 1601.1, 1605.1, 1609.1.) The PUD will be located within one-quarter mile of the New York Avenue Metrorail Station and effectively makes use of a vacant site. (Exhibit 12, p. 3.)

39. The PUD will provide several public benefits and project amenities, including the following:

- Housing and Affordable Housing: The PUD will create 625-675 new residential units on a site that is currently vacant. Additionally, eight percent of the gross floor area allocated for residential use (approximately 59,150 square feet) will be dedicated to affordable housing. Individuals with incomes at or below 80% of the Area Median Income will be eligible for the reserved units. The size, number, and location of the units will be evenly distributed throughout the three larger residential buildings, but will not be provided on the top floor of those buildings. No affordable units will be provided from the townhouses or the piggy-back townhouses. The affordable unit types (i.e., studio, one-bedroom, one-bedroom with den, two-bedroom, etc.) will be proportionate to the market rate unit types. The

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 11

affordable units shall not constitute a majority of units on any floor of any building. (Exhibit 13, p. 19; Exhibit 32, Exhibit K.)

- Urban Design and Architecture: The PUD is designed to reflect the character of the previous industrial uses that existed on the site. It will remain consistent with the neighboring residential uses. The massing and height of the PUD will create a human scale for pedestrians along the street frontages of Eckington Place and Harry Thomas Way, as well as the extended Q Street. (Exhibit 13, pp. 26-27.)
- Site Planning: The PUD will expand the established the street grid system by extending Q Street through the project. The extended Q Street improves access through the Subject Property and breaks up the massing of the project. (Exhibit 13, p. 27.)
- Effective and Safe Vehicular and Pedestrian Access: There will be several points of access into and out of the PUD. The Applicant's traffic and parking consultants submitted a report indicating that the project will generate approximately 139 morning peak trips and 214 evening peak hour trips and a total of 2,698 daily trips. There will be little or no significant change in the levels of service for those intersections included in the study. The PUD will provide 875 parking spaces for residents, guests, and the retail component. (Exhibit 13, p. 28.)
- Uses of Special Value: The Applicant will provide the following public benefits and amenities with the PUD:
 - o Pedestrian/Bicycle Connection to the Metropolitan Branch Trail – The Applicant will design and construct a 10-foot-wide trail connecting the development with the Metropolitan Branch Trail. The estimated cost of the design and construction is \$55,000. (Exhibit 13, p. 20; Transcript, p. 27.)
 - o North Capitol Main Streets Program – The Applicant will contribute \$25,000 to the general account of North Capitol Main Street, Inc. to assist with implementing work plans that will aid in the revitalization of a neighborhood business district on North Capitol Street between Rhode Island and New York Avenues, with initial emphasis being placed on the Eckington portion of North Capitol Street. (Exhibit 43, Transcript, p. 36.)
 - o Regional Addiction Prevention (“RAP”), Inc. - The Applicant will contribute \$5,000 to RAP, Inc. to fund a prevention and intervention outreach program for individuals who routinely congregate in the

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 12

vicinity of North Capitol Street and Florida Avenue and may have a substance abuse problem, or in the opinion of these professionals, be at high risk for the development of one.

- o Community Office Space – Approximately 1,200 square feet of space will be reserved in a high-visibility location along Harry Thomas Way for community office space.
- o Design and Construction of Signalized Intersection – The Applicant will contribute at least \$25,000 to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street. (Exhibit - 34, p. 2).
- o McKinley Technology High School – The Applicant will contribute \$20,000 to the McKinley Tech Fund, a 501(c)(3) organization.
- o Harry Thomas Recreation Center – The Applicant will contribute \$10,000 to the Harry Thomas Recreation Center to be used for the purchase and installation of a new scoreboard. (Exhibit 13, p. 21; Exhibit 19, Exhibit D; Transcript, p. 36.)
- o Eckington Civic Association – The Applicant will contribute \$20,000 to the Eckington Civic Association to: (i) assist with organizing and conducting community meetings relating to the development of a North Capitol Street Small Area Development Plan; (ii) develop and disseminate updates for distribution within the community regarding business and economic development issues in Eckington, and along the North Capitol Street Corridor; (iii) establish a senior safety grants program in Eckington, to make small grants to help repair items that put senior citizens at risk for accidents in their home; and (iv) assist with a historical signage program. (Exhibit 13, p. 20; Exhibit 19, Exhibit D; Transcript, p. 36.)
- o Emery Elementary School – The Applicant will contribute \$20,000 for new books, audio-visual equipment, draperies for the school's stage, and supplies for the Emery Elementary/Harry Thomas Recreation Center community garden. This contribution will be made to the Emery Elementary School Student Account Fund. (Exhibit 19, Exhibit D; Transcript, p. 36.)
- o City Year - Young Hero's Program – The Applicant will provide \$5,000 to the City Year - Young Hero's Program for participation of Emery Elementary School sixth graders in the program. (Exhibit 19, Exhibit D; Transcript, p. 36.)

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 13

- Car Sharing Service – The project will include seven parking spaces for the commercial car-sharing service. (Exhibit 32, Exhibit J.)
- Green Design - The PUD will include several elements of green design, including energy efficient light fixtures in common areas; garage exhaust fans controlled by sensors to prevent continuous running; low-flow showerheads, sinks, and toilets; Low-E glass; three of the cars provided by the car-sharing service will be hybrids or low emissions; bike storage; use of local brick, gravel, concrete, asphalt, and roof ballast; use of a Baffle Filtration System under Buildings 1, 2, and 3, as well as extensive pervious ground planting to recharge ground water; low-emitting materials; a recycling program for residents; energy efficient appliances; and landscape and building design to reduce heat island effect. (Exhibit 32, Exhibit E.)
- First Source Employment Program - The Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program to promote and encourage the hiring of D.C. residents. (Exhibit 13, p. 30 and Exhibit F.)
- Local Business Opportunity Program - The Applicant will enter into a Memorandum of Understanding with the Department of Small and Local Business Development to use the resources of the Office to utilize local business enterprises in the development of the PUD. (Exhibit 13, pp. 30-31 and Exhibit F.)

40. At the public hearing, the Zoning Commission requested that the record remain open to allow the Applicant to submit additional information to address certain questions and concerns.

41. On August 11, 2006, the Applicant filed its post-hearing submission, which included the following:

- An expanded traffic study including an analysis of traffic flow and project impacts at the Florida Avenue and Eckington Place intersection, the Eckington Place and Q Street intersection, North Capitol Street, R Street and Lincoln Road and an analysis of the need for a traffic signal at 3rd Street and Rhode Island Avenue;
- Detailed plans of the brise soleil on Building 2 and a plan depicting the relationship of the metal cornice and property line for Building 2;
- Revised duplex entry plan for Building 1 blending the colors of the arch block used at the base of the building and the color of the brick to reduce the contrast between the two materials;

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 14

- Proposal for providing a financial contribution for the construction of a traffic signal at 3rd Street and Rhode Island Avenue, should one be deemed necessary by DDOT;
- Elements of “green” design included in the project;
- Draft of the NY/NoMA study;
- Draft of the New York Avenue Corridor Study;
- Summary of area retail to demonstrate that there is a viable market for retail at this site;
- Street dedication plat from the Office of the Surveyor confirming that Harry Thomas Way is a public street;
- Additional information regarding the provision of car-sharing parking spaces onsite;
- Revised summary of the affordable housing program clarifying that unit types for market rate housing and affordable housing will be proportionate; and
- Details regarding the proposed phasing of the project.

42. The record was kept open until September 28, 2006 to allow DDOT and OP to respond to the Applicant’s submission and additional analyses.

43. On September 20, 2006, the Applicant submitted an additional post-hearing submission that included a document entitled, “Final Community Amenities Package and Procedure for Monitoring Use of Financial Contributions.” The document stated the Applicant’s revised community amenities package and procedures for monitoring the use of financial contributions made by the Applicant.

GOVERNMENT REPORTS

44. In its July 3, 2006 report, the Office of Planning (“OP”) recommended that the Zoning Commission approve the project. OP concluded that the development of housing and retail on this site is a sound planning objective and that the Applicant has given the proposed site plan, design, and program considerable attention, has engaged in an extensive consultation process with OP and with the community. OP determined that the project’s layout would enable it to become an extension of the Eckington neighborhood, while its scale would enable it to act as a transition between that neighborhood and the light-industrial and commercial uses to the south. OP also noted that this project will provide retail space to an underserved neighborhood. OP found the project architecture to be contemporary, yet respectful of nearby residential and warehouse structures. (Exhibit 20, pp. 17-18.)

45. OP noted that there are several factors that indicate an industrial land use designation may no longer be appropriate for this site, including many of the existing Comprehensive Plan policies, the recently completed Industrial Land Use Study, the

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 15

District's Transit Oriented Development Objectives, and the completion of the New York Avenue Metro Station. OP also noted that the new station triggered a transformation of the entire area surrounding it. OP's report listed eight large commercial, residential, industrial, and mixed-use developments that are newly completed or are planned for the area. In addition, the report stated that the stable residential neighborhood of Eckington is experiencing substantial investment in renovation and new residential construction. (Exhibit 20)

46. The July 3, 2006 OP report indicated that its recommendation was contingent on the satisfactory resolution of the following :

- Submission of comments to DDOT regarding the acceptability of the Applicant's Traffic Impact Analysis;
- A response from DDOT on the conditions for its acceptance of the new Q Street into the public road system;
- An outline of the method by which DDOT will receive funds and execute the construction of the connection of the Metropolitan Branch Trail;
- Specification of mortar colors;
- Specifications for signage and awnings;
- Identification of recipient for the contribution for Eckington historical signage; and
- Identification of a method of monitoring the implementation of the community benefits package for which the contributions are intended. (Exhibit 20, p. 17.)

47. At the hearing, OP recommended keeping the record open for additional time to include information regarding:

- The number of car-sharing vehicles that will be available on site;
- Analysis of the intersection of 3rd Street and Rhode Island Avenue;
- Further analysis of Eckington Place and Florida Avenue intersection and R Street and North Capitol Street;
- Identification of how money given to community organizations will be spent; and
- The proffered green roof.

OP indicated that, with the exception of these items, the issues it raised in its pre-hearing report had either been resolved or were no longer a priority for OP. (Transcript, pp. 82-84.)

48. OP filed a supplemental report on August 28, 2006. The supplemental report requested that the Commission leave the record open for an additional month to allow for a complete resolution of the Community Amenities Package offered by the

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 16

Applicant. The supplemental report also addressed the concerns expressed by the Commission at the hearing.

49. OP filed a second supplemental report on September 22, 2006. The second supplemental report recommended that the Commission approve the project as updated with the Applicant's Final Community Amenities Package and Procedure for Monitoring Use of Financial Contributions dated September 19, 2006, subject to the submission of a Memorandum of Understanding between the Applicant and DDOT prior to final action on the case.

50. In its July 11, 2006 report, DDOT, stated that it had no objections to the project. DDOT expressed concern that the Applicant did not study the nearby signalized intersections of Florida Avenue and Eckington Place, and North Capitol Street and R Street, NE. (Exhibit 23, p. 2; Exhibit 31, p. 2.)

51. DDOT staff met with the Applicant's traffic consultant. The Applicant agreed to investigate trip assignments/average daily trip ("ADT") numbers for the Florida Avenue and Eckington Place intersection; an analysis of the traffic stream and intersection at Eckington Place and Q Street, NE; a traffic signal study at 3rd Street and Rhode Island Avenue; and an analysis of traffic flow and project impacts at North Capitol Street, R Street, and Lincoln Road. (Exhibit 23, p. 2; Exhibit 31, p. 2.)

52. In their report to the Commission, DDOT stated that it had no objections to the project provided the Applicant continues to work with it to ensure that the extension of Q Street, NE, and the proposed connection to the Metropolitan Branch Trail are constructed to DDOT standards. DDOT also stated that, if additional analysis demonstrates that a signal installation is warranted at 3rd Street and Rhode Island Avenue, the developer should be required to participate in the cost of design and construction. (Exhibit 23, p. 2; Exhibit 31, p. 2.)

53. Chris Holben, DDOT Bicycle Specialist, submitted a report dated July 11, 2006. The report confirmed that the Applicant, as part of its PUD amenities package, agreed to design and construct a connection to the Metropolitan Branch Trail from Harry Thomas Way. DDOT and the Applicant will enter into a formal agreement through the Office of Partnerships and Grants Development to provide the District with the aforementioned connection. (Exhibit 24.)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

54. On September 20, 2006, ANC 5C provided the Commission with a resolution dated September 19, 2006 indicating that, at a properly noticed meeting with a quorum present, it voted unanimously in support of the PUD application. (Exhibit 19, p. 2; Transcript, p. 10.)

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 17

PARTIES AND PERSONS IN SUPPORT

55. The Eckington Civic Association submitted a letter in support of the PUD dated May 16, 2006. The Eckington Civic Association unanimously recommended approval of the PUD, because rezoning the site is appropriate given its proximity to the New York Avenue Metrorail Station. (Exhibit 21.)

56. R Street Self-Storage submitted a letter in support of the PUD dated July 10, 2006. R Street Self-Storage stated that the PUD will be the cornerstone of redevelopment activity north of New York and Florida Avenues, and they enthusiastically endorse the project. (Exhibit 22.)

57. Eartha Isaac, President of the Eckington Civic Association, spoke in support of the application at the hearing. She testified that the PUD would provide the community with several benefits, and the Applicant was responsive to the community's concerns. (Transcript, pp. 93-94.)

58. J.T. Englehardt of the Eckington Civic Association testified that he believed that the PUD represents good urban design. (Transcript, p. 95.)

PARTIES AND PERSONS IN OPPOSITION

59. The Edgewood Civic Association submitted a letter stating that it could not support the application, because it felt that the Applicant did not adequately address the issues it raised. (Exhibit 30.) Michael Clark, President of the Edgewood Civic Association, testified in opposition at the July 13, 2006 hearing and stated that the Applicant's traffic analysis was not comprehensive. (Transcript, p. 101.)

60. Quinta Martin testified in opposition to the PUD at the July 13, 2006 hearing. She expressed concerns with the heights of the buildings on the site. (Transcript, pp. 96-97.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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.) The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 18

development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested flexibility from the roof structure, retail loading, and recreation space requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

3. The development of this PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

5. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does provide superior features that benefit the surrounding neighborhood to a greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the amount of affordable housing provided in this project is a significant amenity that will be available for "workforce" District residents. The Commission believes that the design and site planning of the project create a transit and pedestrian-oriented project that will integrate the Property with the surrounding neighborhood through the creation of an extended Q Street, provide a mix of residential unit types, and provide an appropriate amount of ground floor retail for a neighborhood that currently lacks retail opportunities.

The Commission finds that the proposed massing and heights of the buildings proposed in the project relate well to the surrounding buildings also will create a sense that the buildings were developed over a period of time, rather than through a single project. The Commission believes that the direct access from the street level to the duplex units in the larger buildings is an amenity of the project that will further animate street level activity and will be a benefit for the surrounding community.

6. The Commission concludes that approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan.

In deciding this case, the Commission had to reconcile the Comprehensive Land Use Map's designation of the site for production and technical employment with the largely residential character of the PUD.

Dramatic changes have occurred in the area surrounding this site after the Generalized Land Use Map designation was adopted and amended. Since then, the New York Avenue Metrorail Station was conceived, constructed, and opened. The completion of the new station, coupled with other factors, led to substantial new commercial and residential development in the area. As a result of these dramatically changed

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 19

circumstances, the Generalized Land Use Map designation for the area is no longer an appropriate basis upon which to determine consistency of the PUD and related map amendment with the Comprehensive Plan.

The Commission, therefore, considered the issues and circumstances particular to this site and assessed the consistency of the PUD and related map amendment with the Comprehensive Plan as a whole. Because the Commission could not rely on the guidance of the Generalized Land Use Map, the Commission also considered the guidance provided by the Office of Planning's Industrial Land Use and NY/NoMa studies in its deliberations.

The PUD is a mixed-use project with a high-density residential component on a vacant site close to a Metrorail station. A portion of the PUD's residential units are reserved for moderate-income housing. The site is one-quarter mile from a new Metrorail station. The PUD will link the stable, residential Eckington neighborhood to the New York Avenue Metrorail Station. The project will advance several major themes and elements of the Comprehensive Plan. The Transportation Element of the Comprehensive Plan encourages development of mixed-use developments with a high-density residential component near Metrorail stations. (10 DCMR § 502.1.) The Housing Element supports multi-unit housing near Metrorail stations in areas adjacent to Downtown, housing on vacant parcels, and zoning incentives for developers prepared to build low to moderate-income housing. (10 DCMR §§ 302.2(d) and (e), 303.2(d).) The Urban Design Element encourages in-fill developments that complement the existing character of the area, particularly well-designed developments on vacant parcels that establish a positive image or redirection in deteriorated areas. (10 DCMR §§ 711.2(a), 712.2(a) and (g).) Finally, the Land Use Element supports the conservation and enhancement of the satisfactory qualities of its stable residential neighborhoods, development of neighborhood shopping and support services in all areas of the District, and the expansion of residential uses in mixed-use neighborhoods to help maintain the residential character of these areas through modification of land use and regulations. (10 DCMR §§ 1102.1(a) and (c), 1104.1(b).)

OP has studied the area since the construction of the Metrorail station. It concluded in its recent Industrial Land Use Study that the area was appropriate for land use change, including change to permit residential use on the site. In its recent NY/NoMa study, OP encouraged mixed residential and retail development in the area to exploit the new Metrorail station and create a walkable, transit-oriented neighborhood.

For the foregoing reasons, the Commission concludes the PUD, and related map amendment, are not inconsistent with the Comprehensive Plan.

7. The Commission agrees with the conclusions of the Applicant's traffic and parking expert (including the Transportation Impact Analysis Addendum post-hearing submission), as well as the conclusions of DDOT, that the proposed project will not create unacceptable adverse traffic or parking impacts on the surrounding community. The

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 20

Commission also notes that this project will contribute 1% or less of the traffic that flows through the Florida Avenue and New York Avenue intersection.

8. The map amendment does not constitute spot zoning. According to the District of Columbia Court of Appeals:

To constitute illegal spot zoning, the Commission's action (1) must pertain to a single parcel or a limited area -- ordinarily for the benefit of a particular property owner or especially interested party -- and (2) must be inconsistent with the city's comprehensive plan

Citizens Assoc. of Georgetown, Inc. v. District of Columbia Zoning Comm., 402 A.2d 36, 40 (D.C. 1979). The Commission has concluded that the PUD and related map amendment are not inconsistent with the Comprehensive Plan therefore do not constitute spot zoning.

9. The Commission finds that the Development and Construction Management Plan proffered by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community.

10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

11. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

12. Notice of the public hearing was provided in accordance with the Zoning Regulations.

13. The Applicant 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 of a Planned Unit Development and Zoning Map amendment application from the M Zone District to the C-3-C Zone District for Lot 815 in Square 3576. The approval of this PUD and Zoning Map amendment is subject to the following guidelines, conditions, and standards:

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 21

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 13, 26, and 32 of the record, as modified by the guidelines, conditions, and standards of this Order.

2. The Applicant shall make the following financial contributions, and obtain the written agreements described in Condition 3, prior to the issuance of a building permit for the first residential building on the Subject Property:

- McKinley Technology High School – The Applicant shall make a contribution of \$20,000 to the McKinley Tech Fund.
- Harry Thomas Recreation Center – The Applicant shall make a contribution of \$10,000 to the Harry Thomas Recreation Center. The contribution shall specify that the funds may only be used for the purchase and installation of a new scoreboard.
- North Capitol Main Streets Program – The Applicant shall contribute \$25,000 to the general account of North Capitol Main Street, Inc. to assist with implementing work plans that will aid in the revitalization of a neighborhood business district on North Capitol Street between Rhode Island and New York Avenues, with initial emphasis being placed on the Eckington portion of North Capitol Street.

The contribution shall specify that the funds may only be used for the following: (i) the establishment of a “Green Team,” which will employ local homeless persons to clean and maintain the appearance of the North Capitol Street corridor; (ii) conducting and disseminating consumer and business surveys; (iii) recruitment and promotion of businesses along North Capitol Street; (iv) volunteer recruitment; (v) promotion of a North Capitol Street Business improvement District; and (vi) matching funds for a facade improvement program with initial emphasis on the Eckington portion of the North Capitol Street corridor.

- Eckington Civic Association - The Applicant shall contribute \$20,000 to the Eckington Civic Association. The contribution shall specify that the funds may only be used for the following programs: (i) assistance with organizing and conducting community meetings relating to the development of a North Capitol Street Small Area Development Plan; (ii) developing and disseminating updates for distribution within the community regarding business and economic development issues in Eckington, and along the North Capitol Street Corridor; (iii) establishment of a senior safety grants program in Eckington, which is intended to make small grants to help repair items that put senior citizens at risk for accidents in their home; and (iv) a historical signage program.

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 22

- Regional Addiction Prevention (“RAP”), Inc. — The Applicant shall contribute \$5,000 to the general account of RAP, Inc. The contribution shall specify that the funds may only be used to fund a prevention and intervention outreach program for individuals who routinely congregate in the vicinity of North Capitol Street and Florida Avenue and may have a substance abuse problem or be at high risk for the development of one.
- Emery Elementary School – The Applicant shall contribute \$20,000 to the Emery Elementary School Student Account Fund. The contribution shall specify that the funds may only be used for new books, audio-visual equipment, draperies for the school’s stage, and supplies for the Emery Elementary/Harry Thomas Recreation Center community garden.
- City Year - Young Hero’s Program – The Applicant shall contribute \$5,000 to the City Year - Young Hero’s Program. The contribution shall specify that the funds may only be used for participation of Emery Elementary School sixth graders in the program.

3. The Applicant shall require those organizations receiving a monetary contribution to agree in writing that each will present evidence to the Office of Zoning’s Compliance Review Manager demonstrating that the money has been applied to the designated use within six months of after receiving the contribution. The written agreement shall further specify that if the money has not been applied to the designated use within six months, the recipient must shall provide a reasonable explanation to the Office of Zoning’s Compliance Review Manager as to why not and must present evidence to the Office of Zoning’s Compliance Review Manager within one year indicating that the contribution has been properly allocated.

4. The Applicant shall abide by the Development and Construction Management Plan, as submitted on June 23, 2006 as Exhibit 19 of the record.

5. The project will shall include seven parking spaces for exclusive use by Zip Car or a similar car-sharing company. Four of the car-sharing spaces will be located on the street, and three of the car-sharing spaces will be located in the parking garages included in Buildings 1-3. Three of the seven cars provided in the project shall be reserved for hybrid or low emissions vehicles will be hybrid or low emissions vehicles. Two of the on-street, car-sharing parking spaces, and one of the car-sharing parking space in the commercial parking lot of Building 1 shall be provided at the time of the construction of Building 1, the extended Q Street and the townhouse structures.

6. No through-wall HVAC systems shall be permitted in any of the buildings and no EIFS shall be used on any of the buildings.

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 23

7. Retail awnings may be canvas or similar non-rubberized cloth material, glass, or metal. Vinyl or other plastic-like sheeting is not acceptable. Awning surfaces may be any color or pattern. Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Lettering and logos shall not be placed on sides, tops, or sloping surfaces of the awnings.

8. The project shall include eight percent of the residential gross floor area available for sale (approximately 59,150 square feet) as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit C of Exhibit 13 of the record of this case. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.

9. The Applicant shall design and construct a connection to the Metropolitan Branch Trail consisting of a ten (10) foot wide path, pedestrian solar scale lighting, and call box(es). The Applicant shall enter into an agreement with DDOT and the District Office of Partnerships and Grants Development (OPGD), regarding the Applicant's construction of the connection to the Metropolitan Branch Trail and DDOT's ownership and maintenance of the connection as part of the Metropolitan Branch Trail. The proposed construction of the connection to the Metropolitan Branch Trail shall occur concurrently with the construction of the first residential building. In the event the cost of the design and construction of the trail connection is less than \$55,000, the Applicant shall contribute the balance to the organizations listed as receiving financial contributions in Paragraph 2 above. No Certificate of Occupancy for the first building shall be issued until DDOT provides a written statement to the Zoning Administrator indicating that the construction has been accepted by DDOT.

10. The Applicant shall make a financial contribution to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street, N.E. The amount of the financial contribution shall be commensurate with the percentage of traffic that this project contributes to that intersection, but not less than \$25,000. The requirement for the Applicant to provide such a financial contribution shall be triggered by DDOT's submission of a letter to the Applicant and the Zoning Commission indicating DDOT's formal decision to construct the traffic signal and the time period in which design and construction is to be completed. The Applicant shall provide such payment within 30 days after receipt of DDOT's letter, but not earlier than the issuance of a building permit for the first residential building on the Subject Property.

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 24

11. The project shall include approximately 1,200 square feet of community office space in a high-visibility location along Harry Thomas Way.

12. The Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit F of Exhibit 13 of the record.

13. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit F of Exhibit 13 of the record.

14. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the structures;
- To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

15. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23. Within such time, an application must be filed for a building permit for the construction of the extended Q Street through the property and one of the four residential buildings. The filing of the building permit application will vest the Zoning Commission Order. If the building permit application does not include all four residential buildings, the application shall include a phasing plan for the remaining construction. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.

16. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the

Z.C. ORDER NO. 05-23

Z.C. CASE NO. 05-23

PAGE 25

Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

17. The change of zoning from the M Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 16, pursuant to 11 DCMR § 3028.9.

18. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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, 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 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

On September 25, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Gregory N. Jeffries, Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood to approve; John G. Parsons to approve by absentee ballot).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on October 16, 2006 by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, John G. Parsons, Anthony J. Hood, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on JUN 22 2007.

OFFICE OF THE SURVEYOR

Washington, D.C., April 5, 2005

Plat for Building Permit of SQUARE 3576 LOT 815

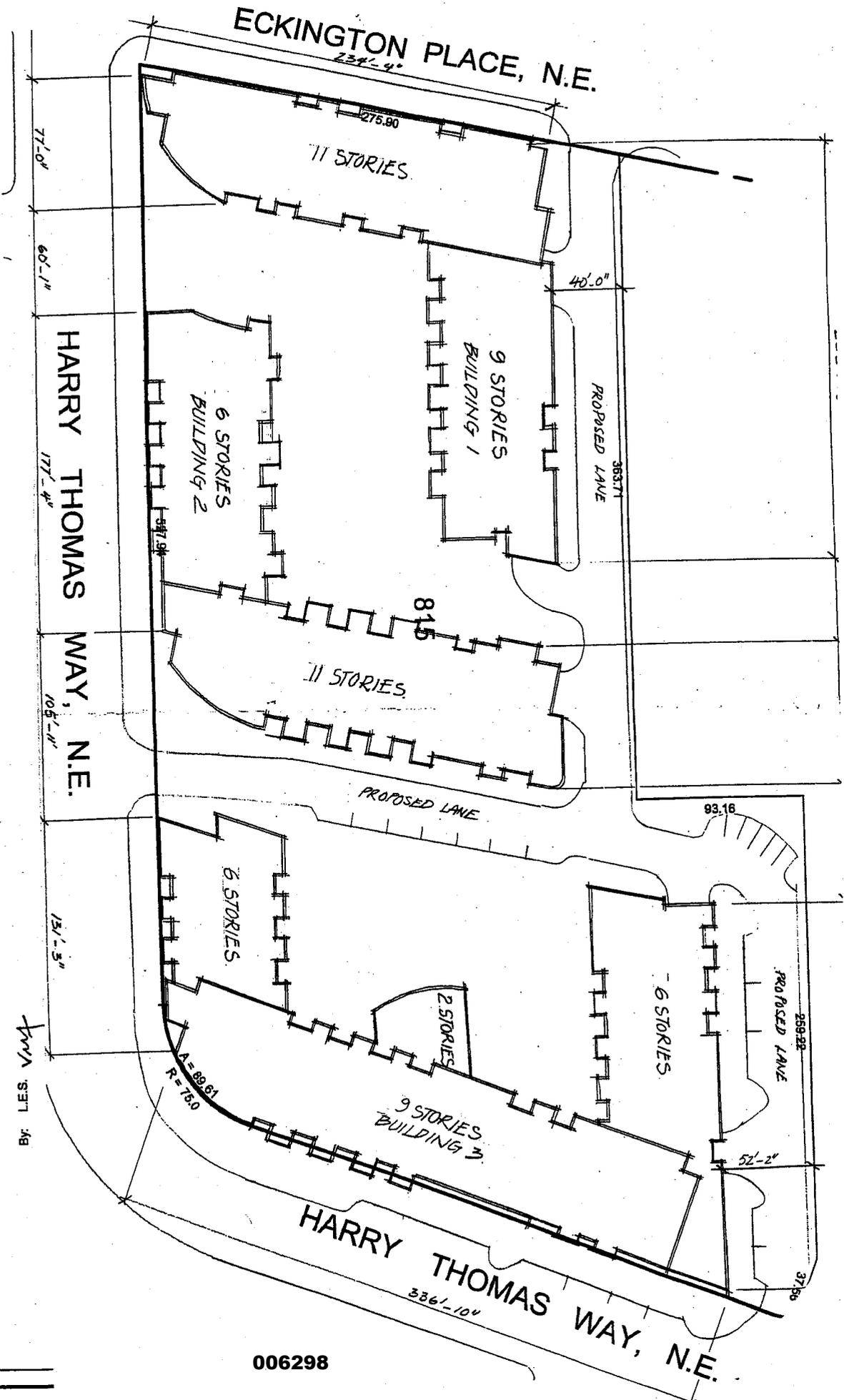
Scale: 1 inch = 50 feet Recorded in A & T Book Page 3810-T

Receipt No. 18345

Furnished to: SHAW PITTMAN

Les V. V. V.
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By: L.E.S. V.V.V.



006298

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF FILING****Z.C. Case No. 05-23A****(Modification to a previously-approved PUD – Square 3576, Lot 815)****June 12, 2007****THIS CASE IS OF INTEREST TO ANC 5C**

On June 7, 2007, the Office of Zoning received an application from NoMa West Residential I, LLC, on behalf of CSX Realty Development, Inc. (the “applicant”) for approval of a modification to a previously-approved planned unit development (PUD) for the above-referenced property.

The property that is the subject of this application consists of Square 3576, Lot 815 in Northeast Washington, D.C. (Ward 5) and is located on a 187,958-square foot site that is bounded by Eckington Place, N.E. and Harry Thomas Way, N.E. The property is currently zoned M with a PUD-related map amendment to the C-3-C District.

The applicant proposes to modify the PUD to accommodate a wholly residential project, reducing the square feet of residential gross floor area from 739,951 to 617,318 and eliminating the 15,084 square feet of retail space. The unit mix would change from 585-636 multi-family units in three buildings, piggy-back townhouses, and single family townhouses to 540-660 multi-family dwelling units housed in three buildings.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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