

THE CESAR CHAVEZ PUBLIC CHARTER SCHOOLS FOR PUBLIC POLICY
SOLICITATION FOR PROPOSALS
CONTRACTOR TO PROVIDE PRE-CONSTRUCTION SERVICES

The Cesar Chavez Public Charter Schools for Public Policy, in accordance with section 2204 (c) (1) (A) of the DC School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals for a contractor to provide pre-construction services for the renovation of an existing facility to house a secondary school.

All necessary forms and a full RFP may be obtained by calling 202-547-3975 ext. 10.

The Cesar Chavez Public Charter Schools will receive bids from April 13, 2007 to COB April 20, 2007. Send Proposals to:

Attn: Christy Gill
709 12th Street, SE
Washington, D.C. 20003.

**COMMUNITY DEVELOPMENT INSTITUTE
HEAD START
CHILD AND ADULT CARE FOOD PROGRAM (CACFP)**

Community Development Institute serving *North Metro, DC*, announces the sponsorship of the Child and Adult Care Food Program (CACFP).

Child Nutrition meals are available to all children at each CACFP facility without regard to race, color, sex national origin, age, or disability. Any complaints of discrimination should be submitted to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202)720-5964 (voice and TDD).

CDI Head Start will receive free or reduced price meal reimbursement based on the following income scales with corresponding dates as shown below.

INCOME ELIGIBILITY GUIDELINES FOR FREE AND REDUCED PRICE MEALS			
Effective from July 1, 2006 to June 30, 2007			
Family Size	Annually	Monthly	Weekly
One	\$18,130	\$1,511	\$349
Two	24,420	2,035	470
Three	30,710	2,560	591
Four	37,000	3,084	712
Five	43,290	3,608	833
Six	49,580	4,132	954
Seven	55,870	4,656	1,075
Eight	62,160	5,180	1,196
Each Additional Family Member: Add	+\$6,290	+\$ 525	+ \$121

Meals will be provided at the following locations:

Azee Bates, 444 16th Street NE, Washington D.C

Lillian Lynch II, 2900 14th Street NW, Washington, D.C.

For further information please contact CDI-HS Serving Washington, DC, at (202) 397-3698.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF MONTHLY MEETINGS SCHEDULED THE MONTH OF APRIL 2007 FOR
BOARDS AND COMMISSIONS**

ALL MEETINGS ARE SCHEDULED TO BE HELD AT 941 NORTH CAPITOL STREET,
NE, SUITE 7616, WASHINGTON, D.C.

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME
THERESA ENNIS	BOARD OF ACCOUNTANCY	N/A	10:30 A.M.-12:30 P.M..
DOROTHY THOMAS	BOARD OF APPRAISERS	18	10:30 A.M.-12:30 P.M.
LEON LEWIS	BOARD OF ARCHITECTURE AND INTERIOR DESIGNERS	27	9:30 A.M.-12:00 P.M.
DOROTHY THOMAS	BOARD OF BARBER AND COSMETOLOGY ANNUAL FORUM GALLUDET UNIVERSITY	02	9:00 A.M.-2:00 PM
GEORGE BEATTY	BOXING AND WRESTLING COMMISSION	10	7:00 P.M.-9:00 P.M.
DOROTHY THOMAS	BOARD OF FUNERAL DIRECTORS	05	1:30 P.M.-5:00 P.M.
THERESA ENNIS	BOARD OF PROFESSIONAL ENGINEERS	26	9:30 A.M.-12.00 P.M.
PAMELA PETERS	BOARD OF INDUSTRIAL TRADES ASBESTOES ELECTRICAL PLUMBING REFRIGERATION/AIR CONDITIONING STEAM & OTHER OPERATING ENGINEERS	17	9:00 A.M.-1:00 P.M.

Dates and times are subject to change. Inquiries concerning this schedule can be directed to the Contact Person at (202) 442-4320.

**BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES**

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

VACANT: 2A02

Petition Circulation Period: **Tuesday, April 17, 2007 thru Monday, May 7, 2007**
Petition Challenge Period: **Thursday, May 10, 2007 thru Wednesday, May 16, 2007**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

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

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

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

**Certification of Filling Vacancies
In Advisory Neighborhood Commissions**

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Kelita Boyd
Single-Member District 4C06

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

FINAL NOTICE OF POLLING PLACE RELOCATION

The Board of Elections and Ethics hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of final action taken at its April 4, 2007 meeting in temporarily relocating Precinct #8, Ward 3 Polling Place due to construction.

The public is advised that the voting area for Precinct #8 will be changed

From: Palisades Recreation Center
5100 Sherrier Place, N.W.
Gymnasium

To New Address: Palisades Public Library
4901 V Street, N.W.
Meeting Room

Please note that the relocation will be effective for the May 1, 2007 Special Election. All registered voters in the precinct will be individually notified of this change.

At this time the Board is anticipating returning to Palisades Recreation Center once the construction has been completed. Based on information received from the District of Columbia Department of Parks and Recreation the estimated date of completion is June 1, 2007.

For further information, members of the public may contact the Board of Elections and Ethics at 727-2525.

**EXECUTIVE OFFICE OF THE MAYOR
OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS**

NOTICE OF FUNDING AVAILABILITY

Community Interpretation Grant

Background Information on the grant:

The Mayor's Office on Asian and Pacific Islander Affairs (OAPIA) received \$46,500 in funding from the Office on Human Rights to be awarded competitively to community-based organization(s) to provide community interpretation training for DC government employees and community members. The purpose of this grant is to secure high quality training to support language minority communities in their efforts to receive adequate bilingual interpretation services. Such training is important to increase the capacity of District Agencies and community-based organizations in order to assist Limited English Proficient (LEP) residents and merchants in the District of Columbia in accessing government services in Chinese (Mandarin), Korean, Vietnamese and Amharic languages. OAPIA will work closely with the Office on African Affairs to ensure both Asian/Pacific Islander and African communities are appropriately addressed.

Amount of grant funds available and number of awards:

OAPIA expects to award \$11,625 per language: Chinese (Mandarin), Korean, Vietnamese and Amharic. Eligible organizations may apply for multiple languages.

Eligible organizations and entities:

Nonprofit (501(c)3) organizations located in the District of Columbia that:

- Serves Asian and Pacific Islander and/or African residents and/or merchants
- Demonstrates cultural understanding of Asian and Pacific Islander and/or African community
- Demonstrates capacity to work effectively with language minority populations
- Have previous experience working with DC Agencies will be preferred.

Program scope:

Focus of the grant will be to provide community interpretation training for total of 18 DC government employees and community members to help Limited English Proficient (LEP) residents and merchants in the District of Columbia receive appropriate services in the Chinese (Mandarin), Korean, Vietnamese and Amharic languages, according to the Language Access Act of 2004.

Release Date of RFA: April 9, 2007

Deadline for Submission: Tuesday April 24, 2007 at 4:00 pm
441 4th Street, NW Suite 805 South
Washington, DC 20001

Contact Names: Thanh Nguyen, OAPIA, (202) 727-3120, thanh.nguyen@dc.gov
Kenyatta Albeny, OAA, (202) 727-5634, kenyatta.albeny@dc.gov

EXECUTIVE OFFICE OF THE MAYOR

**SERVE DC
DC COMMISSION ON NATIONAL AND COMMUNITY SERVICE**

PUBLIC MEETING

The mission of the DC Commission on National and Community Service (Serve DC) is to promote the District of Columbia's spirit of service through national service, partnerships and volunteerism.

The DC Commission on National and Community Service (Serve DC) is pleased to announce its next Commission meeting on:

Wednesday, May 2, 200, 5:00 P.M.
Conference Room 1117
One Judiciary Square
441 Fourth Street, NW
Washington, D.C.

All meetings are open to the public. Meeting minutes can be obtained from 441 4th Street NW, Suite 1140N, Washington, DC 20001.

For additional information or to request a copy of the minutes, please call 202-727-7925.

**EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF VICTIM SERVICES**

PUBLIC NOTICE OF FUNDING AVAILABILITY

Victim Assistance Fund

The Office of Victim Services announces the availability of grant funds under the fiscal year 2008 Victim Assistance Fund to sustain and/or expand the provision of direct services to victims of violent crime.

Eligible applicants are non-profit, community-based organizations and/or District government agencies located in the District of Columbia that provide direct services to crime victims.

The Request for Applications (RFA) will be available electronically beginning Tuesday, April 17, 2007.

The deadline for applications is 12:01 p.m. on Friday, May 18, 2007.

For more information, contact:

Daniza Figueroa
Program Manager
Office of Victim Services
(202) 442-4936
daniza.figueroa@dc.gov

**EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF VICTIM SERVICES**

PUBLIC NOTICE OF FUNDING AVAILABILITY

Crime Victims Assistance Grant (VOCA)

The Office of Victim Services announces the availability of federal grant funds under the Crime Victim Assistance Program for 2007.

These funds are to support system and community-based programs that serve crime victims. Priority programs are those that serve victims of sexual assault, domestic violence, child abuse, and underserved populations such as victims of: federal crimes, drunk drivers, assault, robbery, gang violence, hate crimes, robbery, economic exploitation and fraud, elder abuse, survivors of homicide victims, victims that are disabled, and non-English speaking victims.

Eligible applicants are public agencies and non-profit organizations within the District of Columbia that provide direct services to crime victims and that meet the VOCA eligibility requirements specified for sub-recipient organizations.

The Request for Applications (RFA) will be available electronically beginning Tuesday, April 17, 2007.

The deadline for applications is 12:01 p.m. on Friday, May 18, 2007.

For more information, contact:

Nicolette Gantt,
Program Manager
Office of Victim Services
(202) 727-5047
nicolette.gantt@dc.gov.

**EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF VICTIM SERVICES**

PUBLIC NOTICE OF FUNDING AVAILABILITY

The Services*Training*Officers*Prosecution (S*T*O*P) Violence Against Women Formula Grant

The Office of Victim Services announces the availability of federal grant funds under the FY 2007 S*T*O*P VAWA Formula Grant program.

The goal of the S*T*O*P Program is to encourage a coordinated community response between members of law enforcement, prosecution, courts, and victim service agencies to address the issues of domestic violence, stalking, sexual assault and dating violence.

Eligible applicants are faith-based and community-based non-profit, victim service organizations within the District of Columbia and DC governmental agencies.

The Request for Applications (RFA) will be available electronically beginning Tuesday, April 17, 2007.

The deadline for applications is 12:01 p.m. on Friday, May 18, 2007.

For more information, contact:

Nicolette Gantt
Program Manager
Office of Victim Services
(202) 727-5047
nicolette.gantt@dc.gov

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR PROPOSAL

Architectural and Engineering Services

Friendship Public Charter School is seeking bids from prospective candidates to provide Architectural and Engineering Services for Friendship Technology Preparatory Public Charter School (FTP), in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes
vholmes@friendshipschools.org
202-281-1722

**FRIENDSHIP PUBLIC CHARTER SCHOOL
NOTICE OF REQUEST FOR PROPOSALS**

Integrated Financial System

Friendship Public Charter School is seeking bids from prospective candidates to provide an Integrated Financial System in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes
vholmes@friendshipschools.org
202-281-1722

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR PROPOSAL

Integrated Security System and Services

Friendship Public Charter School is seeking bids from prospective candidates to provide an Integrated Security System and Service in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes
vholmes@friendshipschools.org
202-281-1722

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR PROPOSAL

Project and Development Management Services

Friendship Public Charter School is seeking bids from prospective candidates to provide Project and Development Management Services for the design and construction of an addition to Friendship Public Charter School (FPCS), in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes
vholmes@friendshipschools.org
202-281-1722

**DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD**

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The properties are now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 07-18: Elizabeth G. Randall Junior High School (Francis L. Cardozo Elementary School)

65 I Street (aka 820 and 850 Half Street), SW

(Square 643-S, Lot 801)

Designated March 22, 2007

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

OFFICE OF JUSTICE GRANTS ADMINISTRATION

PUBLIC NOTICE OF FUNDING AVAILABILITY

Edward Byrne Memorial - Justice Assistance Grant (JAG) Program

The District of Columbia's Executive Office of the Mayor / Office of Justice Grants Administration (OJGA), announces the availability of Federal grant funds under the 2007 JAG Block Grant Program. The JAG funds support a range of activities to prevent and control crime in addition to improving the criminal justice system.

Applications should include program areas that address the following: Drug Gang Mediation and Interdiction, Family Substance Abuse and Treatment, Information Sharing (government agencies only), JAG related Program Evaluation (government agencies only), Reduction in Gun Violence, Reduction in Juvenile Violence, Reentry Programs, and Youth/Family Delinquency Intervention.

Eligible applicants include District of Columbia Government agencies, neighborhood or community-based organizations, including faith-based, which are private and non-profit. Approximately \$1,600,000 is available for up to eight (8) approved programs.

A **printable copy** of the Request for Applications (RFA) will be available on Wednesday, April 18, 2007 at the OJGA website: <http://jga.oca.dc.gov>. A hardcopy may be picked up at the front desk of the OJGA which is located at 1350 Pennsylvania Avenue, NW, Suite 407, Washington, DC 20004.

The deadline for applications is 2:00 P.M. on Friday, June 1, 2007.

For more information, please contact:

Phyllis McKinney
Grant Program Manager
Office of Justice Grants Administration
(202) 727-1700
phyllis.mckinney@dc.gov

OFFICE OF JUSTICE GRANTS ADMINISTRATION

PUBLIC NOTICE OF FUNDING AVAILABILITY

Title II Formula Grants

The Office of the Justice Grants Administration (OJGA) announces the availability of federal grant funds under two (2) Title II Formula Grants: 2006-JF-FX-0052 and the 2007 federal award not yet announced.

This will be a multi-year award contingent upon programs achieving its stated goals, objectives, timely, and accurate submission of all quarterly programmatic reports. Also, participation in Technical Assistance workshops, as required by the Office of Justice Grants Administration. Program priorities include Alternatives to Detention, Delinquency Prevention, Juvenile Justice System Improvement, and Serious Crime.

Eligible applicants include agencies of the Government of the District of Columbia and qualified community and faith based [501 (c) (3)] non profit organizations located in the District of Columbia.

A **printable copy** of the Request for Applications (RFA) will be available on Wednesday, April 18, 2007 online at the OJGA website: <http://jga.oca.dc.gov>. A hardcopy may be picked up at the front desk of the OJGA which is located at 1350 Pennsylvania Avenue, NW, Suite 407, Washington, DC 20004.

The deadline for applications is 2:00 P.M. on Friday, June 1, 2007.

For more information, please contact:

CharLynn Bolden
Grant Program Manager
Office of Justice Grants Administration
(202) 727-9541
charlynn.bolden@dc.gov

**DISTRICT OF COLUMBIA
STATE ADVISORY PANEL ON SPECIAL EDUCATION**

Notice of Public Meeting

**Thursday, April 19, 2007
5:30 -7:30 p.m.**

**The District of Columbia Public Schools
825 North Capitol Street, NE
The Renewal Room, 9th Floor
Washington, DC 20002**

The District of Columbia State Advisory Panel (SAP) will meet from 5:30 – 7:30 p.m. on Thursday, April 19, 2007, at the District of Columbia Public Schools (825 N. Capitol Street, NE) in the Renewal Room (9th Floor). Tentative agenda items include: The Education Reform Amendment Act of 2007; an update on Student Support Teams, an overview of Medicaid and the Uniform Per Student Funding Formula, and planning for the 2006-2007 Annual Report.

The State Advisory Meetings are open to the public. For additional information or if special accommodations are needed, please contact Melisa Rawles, State Education Office, at (202) 442-4008 or by e-mail at Melisa.Rawles@dc.gov.

STATE EDUCATION AGENCY

ADULT EDUCATION & FAMILY LITERACY
UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FUNDING AVAILABILITY

Adult Education and Family Literacy Services Grant

The District of Columbia State Education Agency (SEA), Adult Education and Family Literacy is soliciting grant applications from qualified applicants to provide adult education and literacy activities within the District of Columbia. Services funded under this grant must be provided to District residents age 16 and older, or the children of such persons who receive services with their parents in family literacy programs.

Organizations funded under this grant shall provide services in one or more of the following categories: a) Adult education and literacy services, including workplace literacy services; b) Family literacy services; c) English literacy programs.

The following non-profit organizations that currently operate in the District of Columbia are eligible: local educational agencies; community-based organizations of demonstrated effectiveness; volunteer literacy organizations of demonstrated effectiveness; institutions of higher education; public or private nonprofit agencies; libraries; public housing authorities; or other nonprofit institutions with the ability to provide literacy services to adults and families.

Approximately \$1.4 million will be awarded to fund approximately 30 organizations. The maximum grant award will be \$50,000. A consortium may receive grants of up to \$50,000 per organization in the consortium. Grant funds are federal funds made available through Section 231, Adult Education and Family Literacy Act as amended by the Workforce Investment Act of 1998.

The Request for Applications (RFA) will be released April 13, 2007 and the deadline for submission is May 30, 2007 at 5:00 pm. The RFA can be downloaded from the Executive Office of The Mayor, Office of Partnerships and Grants Development website at <http://opgd.dc.gov>, under "District Grants Clearinghouse". The RFA may also be obtained at the University of the District of Columbia, State Education Agency, 4340 Connecticut Avenue, NW, Room 302, Washington, DC 20008. Questions about obtaining the RFA may be directed by e-mail to Keith Watson at kwatson@kairosmgt.com.

Applicants are encouraged but not required to submit a notification of intent to apply for this grant by May 15, 2007 to Keith Watson by e-mail at kwatson@kairosmgt.com or by fax at (202) 318-5638. Applicants are also encouraged to attend a pre-application conference, the time, date, and location of which are included in the RFA.

NOTE: The SEA may rescind or revise this NOFA prior to the RFA release date if necessary to comply with Federal laws, regulations, or guidance.

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

Appeal No. 16998-B of Advisory Neighborhood Commission 5B, pursuant to 11 DCMR §§3100 and 3101, from the administrative decision of David Clark, Director, Department of Consumer and Regulatory Affairs ("DCRA") to issue Building Permit No. B425438, for the renovation of a warehouse for use as a community corrections center. The subject property is located in the C-M-2 District at premises 2210 Adams Place, N.E. (Square 4259, Parcel 154.81).

HEARING DATES

FOR APPEAL NO. 16998: April 22, 2003, May 20, 2003, June 17, 2003, July 8, 2003, and July 22, 2003

DECISION DATE

FOR APPEAL NO. 16998: September 9, 2003

**DATE OF DECISION
ON RECONSIDERATION**

AND STAY OF APPEAL NO. 16998: May 4, 2004

**DATE OF DECISION
ON MOTION TO STAY
REVOCATION OF
CERTIFICATE OF
OCCUPANCY, ARISING
OUT OF APPEAL NO. 16998:**

June 7, 2005

ORDER DENYING MOTION TO STAY NOTICE OF REVOCATION

On May 2, 2005, Bannum filed a motion for a stay of any action by the Department of Consumer and Regulatory Affairs (DCRA) to revoke Bannum's Certificate of Occupancy until the District of Columbia Court of Appeals (DCCA) decided Bannum's appeal of the underlying order in this case, Appeal No. 16698, issued on March 31, 2004.¹ DCRA issued a Notice of Intent to Revoke on April 27, 2004 and a

¹ As of the date of the motion and the Board's ruling on the motion, that appeal was pending before the DCCA. The DCCA has since issued its decision upholding the Board's denial of the appeal. The DCCA decision was made on March 16, 2006. Accordingly, while this issue is now moot, it was not moot at the time of the Board's ruling.

BZA APPLICATION NO. 16998-B
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Notice of Revocation on April 21, 2005, to effectuate the Board's decision in Appeal No. 16998, granting the Appeal of Advisory Neighborhood Commission 5B.

Background

In Appeal No. 16998, appellant Advisory Neighborhood Commission ("ANC") 5B ("Appellant") claimed that the Department of Consumer and Regulatory Affairs ("DCRA") had erroneously issued a building permit allowing a prohibited community-based residential facility ("CBRF") in a C-M zone district. Appellee DCRA claimed that it had acted properly in issuing the permit pursuant to 11 DCMR § 801.7(k), which permits, in a C-M district, a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years." DCRA alleged that an 801.7(k) institution was a type of CBRF permitted in a C-M zone. Bannum, Inc., property lessor and intervenor in Appeal No. 16998, claimed that its facility was not a CBRF, but a community corrections center ("CCC"), and that therefore the use fell squarely within § 801.7(k).

On May 2, 2003, during the pendency before the Board of the proceedings in Appeal No. 16998, DCRA issued Bannum Certificate of Occupancy No. C53679 ("C of O") for its community corrections center facility at 2210 Adams Place, N.E. Appeal No. 16998 was not amended to include the issuance of the C of O as one of the grounds for the appeal.

The final order of the Board of Zoning Adjustment ("Board" or "BZA") granting Appeal No. 16998 was issued on March 31, 2004 (referred to herein as the "underlying order"). The underlying order explained, in detailed findings of fact and conclusions of law, that although the Board found Appellant's theory of error unpersuasive, it nonetheless determined that DCRA had erred in issuing the building permit. The Board ultimately concluded that the proposed facility was neither a CBRF nor a temporary detention or correctional institution under § 801.7(k) of the Zoning Regulations.

On April 13, 2004, Bannum timely moved for reconsideration and for a stay of the final decision while reconsideration was pending. The next day Bannum filed a petition for review of the Order with the DCCA. On May 4th, 2004, the Board voted to deny the Bannum's motion for reconsideration and stay. In its written order of August 24, 2004, the Board held that Bannum failed to address any of the four factors that must be proved before a stay can be granted. On June 1, 2004, Bannum asked the Court of Appeals to stay the underlying order. By order dated August 24, 2004, the DCCA denied Bannum's request, finding that Bannum was unlikely to succeed on the merits, citing *Barry v. Washington Post*, 529 A.2d 319, 320-321 (D.C. 1987).

**BZA APPLICATION NO. 16998-B
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Meanwhile, based on the underlying order, DCRA, on April 27, 2004, issued a Notice of Intent to Revoke Bannum's C of O. Exhibit No. 112, Second Attachment. This Notice of Intent to Revoke cited Bannum with being "in violation" of two municipal regulations through its continued occupancy of the premises at 2210 Adams Place, N.E. (11 DCMR § 3023.11 and 12A DCMR §110.1.1)

Bannum then requested a hearing before the Office of Adjudication, and on August 6, 2004, an Administrative Law Judge ("ALJ") ordered that the proceeding before him be continued until the DCCA decided Bannum's appeal of the underlying order.

Approximately one year after the Notice of Intent to Revoke was issued, DCRA rescinded it and issued in its place, on April 21, 2005, a second Notice of Revocation of Bannum's C of O. Exhibit No. 110, First Attachment. The second Notice of Revocation was not predicated on any violation of municipal regulations, but on the fact that the C of O had been issued erroneously. This second Notice of Revocation acted to automatically revoke the C of O in 10 days from the date of service of the Notice.

In late April and early May, 2005, Bannum requested a stay or a temporary restraining order ("TRO"), preventing DCRA from revoking its C of O, from DCRA, the DCCA, the Superior Court of the District of Columbia, and the United States District Court for the District of Columbia. DCRA agreed to withhold its revocation until May 5, 2005, and the other three forums denied Bannum's stay/TRO requests on May 4, 5, and 6, respectively.

On May 2, 2005, Bannum filed an appeal of the second Notice of Revocation with the Board (Appeal No. 17356) together with this request that the Board stay "any action" by DCRA to revoke Bannum's C of O until the DCCA decides Bannum's appeal of the underlying order. Exhibit No. 103. Although filed concurrently with the appeal of the C of O revocation, the Board treats the motion as arising from the building permit appeal proceeding. Accordingly, the Board heard and decided the appeal and the motion separately.²

Conclusions of Law

Bannum, in its request for a stay from this Board, states that the "sole basis for DCRA's revocation is the BZA's decision, dated March 31, 2004, regarding zoning for the building permit issued by DCRA." *See*, Exhibit No. 103, at 1. DCRA's Zoning Administrator ("ZA") agrees with Bannum's assertion that the Notice of Revocation is

² See BZA Order No. 17356, deciding Bannum's appeal of the second Notice of Revocation, issued concurrently with this order.

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based solely on the BZA decision in the underlying order that the building permit on which the C of O is predicated was issued in error.

Bannum asserts two grounds for its May 2, 2005 request for a stay. First, Bannum asserts that the Board should "adopt," or at least, look to, the August 6, 2004, ALJ decision continuing the revocation action until the DCCA decides the appeal of the underlying order. Second, Bannum sets forth the four-prong test for the granting of a stay, and claims that it meets each prong of the test.

As to Bannum's first request, the Board is not required to adopt or give deference to an order issued by an Administrative Law Judge. If that were the case, the Board would be compelled to deny any appeal of an ALJ decision that comes before it. The BZA, however, is bound to adhere to DCCA holdings. The DCCA has twice found that Bannum has not made the requisite showing for a stay. Such a showing requires a demonstration: (1) of likelihood of success on the merits, (2) that an irreparable injury will result if a stay is denied, (3) that no harm to opposing parties will result if a stay is granted, and (4) that the public interest favors the granting of a stay. A party must demonstrate all four requisites to prevail. *Barry v. Washington Post Co.*, 529 A.2d 319, 320-321 (D.C. 1987). In its most recent order, dated May 4, 2005, and attached to Exhibit No. 106, the DCCA wrote:

[P]etitioner advances the same arguments for stay which this court has previously rejected; it has not shown either a likelihood of success on the merits of its claims or the existence of any irreparable harm. *See Barry v. Washington Post Co.* 529 A.2d 319, 321 (D.C. 1987).

As was the case with the Court of Appeals, this is the second time that Bannum is requesting that this Board grant a stay based upon alleged deficiencies in the underlying order. Bannum essentially is asking this Board to reconsider its denial of the previous motion to stay. Even if such repetitive motions were permitted under the Board's rules, and not barred by the doctrines of issue and claim preclusion, Bannum has not presented any persuasive new evidence or arguments to warrant a change in the Board's ruling. Indeed, the only new evidence before the Board is that the Court of Appeals has now twice indicated that Bannum is unlikely to succeed on the merits of its appeal of the underlying order.

Nor has the Board seen any persuasive evidence that denying the stay will cause irreparable injury. Bannum has known since at least March 31, 2004 – the date of the underlying order – that its operations at 2210 Adams Place, N.E. could be shut down. Bannum has taken no steps to mitigate the damage it claims will result from revocation. In fact, ever since the original appeal of its building permit was filed, Bannum has been

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operating at its own risk. Bannum has presented no new evidence since the Board's previous consideration of this issue to cause the Board to change its previous finding.

Finally, granting Bannum's request for a stay would not be in the public interest. The ANC's appeal was granted and yet, the granting of the appeal has resulted in no real change as Bannum is still operating at 2210 Adams Place, N.E. Further delay in closing Bannum's operations only makes a mockery of both the underlying order and the proper implementation and enforcement of the zoning regulations. Such a situation is clearly not in the public interest.

For the reasons stated above, the Board concludes that Bannum has not met its burden of demonstrating that it is entitled to a stay of DCRA's revocation of its C of O. Accordingly, Bannum's May 2, 2005 request for a stay of such revocation is **ORDERED DENIED**.

VOTE: 5-0-0

(Geoffrey H. Griffis, Ruthanne G. Miller,
Curtis L. Etherly, Jr., David Zaidain and
John G. Parsons to deny)

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

Each concurring member approved the issuance of this order.

MAR 30 2007

FINAL DATE OF ORDER: _____

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

LM

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

Application No. 17337 of N Street Follies, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for special exceptions to allow a hotel under section 512, for a partial waiver of the rear yard requirements under subsection 534.6, and to allow multiple roof structures and roof structures not meeting the normal setback requirements of subsection 530.4 under section 411, and for variances from the height requirements under section 530, the floor area requirements under section 531, and the court requirements under section 536, to allow the construction of an addition to an existing building to be used as a hotel in the DC/ SP-1 Zone District.

HEARING DATES: November 1, 2005, January 24, 2006, February 28, 2006 and June 27, 2006

DECISION DATE: June 27, 2006

DECISION AND ORDER

This application was submitted on March 31, 2005 by N Street Follies, Ltd. ("Applicant"), the owner of the property that is the subject of the application. The Applicant sought special exception and variance relief from the Board of Zoning Adjustment ("Board" or "BZA") to construct and establish a hotel at 1743-1755 N Street, N.W., Square 158, lots 69, 835 and 836. For the reasons stated below, the Board dismisses the application as moot.

PRELIMINARY MATTERS:

Notice of Application Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated August 2, 2005, notified Advisory Neighborhood Commission (ANC) 2B of the application, and on August 6, 2005, so notified the Councilmember for Ward 2, Single Member District /ANC 2B05, the District of Columbia Office of Planning (OP), and the District Department of Transportation (DDOT). On August 2, 2005, OZ mailed notices of the public hearing to the ANC, the Applicant and all of the owners of property within 200 feet of the subject property, advising them of the date of hearing.

Request for Party Status The Tabard Corporation, which operates Tabard Inn, located at 1739 N Street, N.W. was granted party status. William A. Green, Director of

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Operations for Science Service Inc, located at 1719 N Street, N.W., was also granted party status to represent his company and other companies in the area including John Hopkins University, Penn Arts Ladies, United Auto Workers, and Middle East Institute.

Government Reports

Office of Planning Report In its report dated October 18, 2005, OP recommended denial of the application. After the Applicant revised its plan to reduce the amount of relief requested, OP filed a supplemental report dated January 13, 2006, in which it recommended approval of the requested special exception to allow a hotel in the SP-1 zone and a variance from the court width. OP recommended postponement of consideration of the roof structure special exception.

District Department of Transportation In a memorandum dated February 28, 2006, DDOT recommended that the application be approved with 31 parking spaces for a 96-room hotel, rather than the 96 parking spaces requested by the Applicant.

ANC Report In a letter dated October 11, 2005, ANC 2B indicated that at a regularly noticed meeting held on September 14, 2005, with a quorum present, ANC 2B Commissioners voted 9-0 to oppose the application for a special exception and variance relief.

FINDINGS OF FACT

1. On March 31, 2005, N Street Follies Ltd., ("Applicant" or "Owner") filed an application for special exception and variance relief in order to construct and operate a hotel at 1743-1755 N Street N.W., Square 158, lots 69, 835 and 836 ("the subject property").
2. The subject property is zoned DC\SP-1¹ and is located in the Dupont Circle Historic District.
3. Because the property is located in a historic district, no building permit can be issued unless the Historic Preservation Review Board ("HPRB") recommends approval or the Mayor finds, after a hearing, that that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. D.C. Official Code §§ 6-1104 and 6-1105 (2001).

¹ DC/SP-1 means that the property is mapped within the Dupont Circle Overlay District with an underlying zoning of Special Purpose-1.

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4. The regulations of the Historic Preservation Review Board allow property owners to request conceptual design review prior to the filing of an application for a building permit in order "to benefit from the guidance of the Review Board." 10A DCMR § 301.2.
5. Prior to the filing of this application, the Owner met with the staff of the Historic Preservation Office ("HPO"), which provides administrative and technical support to the HPRB. On at least two separate occasions (March 16, and October 1, 2004), HPO staff informed the Owner that conceptual design approval would not be recommended because the project was too large in height and density, and inconsistent with the character of the historic district.
6. Nevertheless, the Owner proceeded with conceptual review before the HPRB, while at the same time seeking zoning relief before this body.
7. On October 17, 2005, the Applicant filed a request for postponement of its upcoming BZA hearing in order to address the concerns expressed by the Office of Planning, the Historic Preservation Office staff, the ANC, and the community.
8. On the November 1, 2005 hearing date, the Board postponed the hearing to January 24, 2006.
9. At the January 24, 2006 hearing, the Applicant presented its case based upon somewhat revised plans. Following the testimony of the Office of Planning, the hearing was continued to February 28, 2006.
10. Prior to that continuation date, the Historic Preservation Review Board ruled that it could not approve the project on a conceptual basis because of the extensive demolition of the historical site and the failure to maintain more of the existing structures.
11. Rather than proceed before the BZA with rejected plans, the Applicant requested a continuance of the February 28th hearing so that it could consult with HPO staff on possible revisions and go back before the HPRB. The hearing was rescheduled for June 27, 2006.
12. The Applicant did not submit revised plans to the HPRB by the June 27th continuation date.
13. Prior to the resumption to the hearing, the opposing parties made an oral motion to dismiss the application, arguing that it was futile for the Board to consider a

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zoning request based upon plans that the HPRB considered unacceptable. The Board agreed and granted the motion to dismiss.

CONCLUSIONS OF LAW

The Applicant is requesting that this Board grant the special exceptions and variances needed to construct and operate a hotel in a DC\SP-1 zone district. Subsection 3125.7 of the Board's Rules of Practice and Procedure provides that approval of an application shall include approval of the plans submitted with the application unless the Board provides otherwise. In addition, applicants are "required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise." 11 DCMR § 3125.8. Thus, if this Board were to grant the relief requested, any application for a building permit to construct this project must be accompanied by the revised plans filed in this case, which are the same plans rejected by the HPRB on a conceptual basis. The project cannot be built in accordance with these plans without HPRB's approval. Although there is nothing to prevent the HPRB, once it formally receives these plans, from recommending that the Mayor issue a building permit, the record and common sense suggests this is unlikely to happen. Moreover, if this were to occur, then nothing in this decision would preclude the Applicant from seeking relief from the Board at that time.

It has been held that "a case is moot when the legal issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome. *See Murphy v. Hunt*, 455 U.S. 478, 481, 71 L. Ed. 2d 353, 102 S. Ct. 1181 (1982) (citations omitted)"; *Cropp v. Williams*, 841 A.2d 328 (D.C. 2004). The legal issue in this case is whether zoning relief should be granted based upon the plans submitted. Since those plans are moribund, if not deceased, there is no "live" legal issue left to be decided.

Based upon the record before the Board and for the reasons stated above, the Board concludes that the Applicant's application for a special exception and variance relief is moot. Accordingly, it is therefore **ORDERED** that the application be **DISMISSED**.

VOTE: 4-1-0 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Carol Mitten to grant the motion to dismiss; Curtis L. Etherly, Jr., voting to deny the motion to dismiss)

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

Each concurring Board Member approved the issuance of this order.

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FINAL DATE OF ORDER: APR 02 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."

SG

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

Appeal No. 17356 of Bannum, Inc., pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (DCRA) for the revocation of Certificate of Occupancy Permit No. C053679, dated May 2, 2003, for a temporary correctional institution. The subject property is located in the C-M-2 District at premise 2210 Adams Place, N.E. (Square 4259, Parcel 154/81)

HEARING DATES: October 4, 2005, November 15, 2005, November 22, 2005,
and December 20, 2005

DECISION DATE: February 7, 2006

ORDER

PRELIMINARY MATTERS

On April 28, 2005, Bannum, Inc. ("Appellant") filed this appeal with the Board, alleging that the Department of Consumer and Regulatory Affairs ("DCRA") had had no authority to revoke Bannum's Certificate of Occupancy ("C of O"), No. CO53679 and that, even if it did, DCRA should be estopped from doing so.

The Board heard the appeal at a hearing originally scheduled for October 4, 2005, but continued until November 15, November 22, and December 20, 2005. A decision meeting was set for February 7, 2006, at which the Board, after deliberation, and for the reasons stated below, decided to dismiss the appeal, by a vote of 5-0-0, for lack of subject matter jurisdiction.

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 2210 Adams Place, N.E. ("Subject Property"), which is located in the C-M-2 Zone District.
2. DCRA issued C of O No. CO53679 to Appellant on May 2, 2003, authorizing the use of the Subject Property as a temporary correctional institution.
3. At the time the C of O was issued, the Board was hearing Appeal No. 16998 of Advisory Neighborhood Commission 5B, challenging DCRA's earlier decision to issue a building permit that authorized the conversion of the building at the Subject Property from a warehouse to a "community corrections facility."

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4. DCRA's defense to that appeal was that the proposed use was a type of temporary correction facility, a use classification allowed as a matter of right in a CM zone. 11 DCMR § 801.7(k).
5. The Board disagreed and found that that Appellant's building permit had been issued in error. BZA Order No. 16698 (March 31, 2004).
6. As of the date of that order, Appellant was operating pursuant to the almost-one-year-old C of O No. CO53679.
7. On April 27, 2004, DCRA issued a "Notice of Intent to Revoke Certificate of Occupancy No. CO53679" ("first notice") based on two charges of violations, one a violation of Title 11, the Zoning Regulations, and one, a violation of Title 12, the Building Code. Exhibit No. 8.
8. Appellant appealed the first notice to the Office of Administrative Hearings, as instructed by the notice.
9. The appeal to the OAH was heard by ALJ Henry McCoy, who, on August 6, 2004, orally granted the Appellant's motion to stay any action on the revocation of the C of O until after the DCCA issued a decision on the merits of Order No. 16998.
10. On April 21, 2005, while the OAH proceeding was stayed, DCRA sent the Appellant its second notice that the C of O was to be revoked. ("second notice"). Exhibit No. 2.
11. The second notice was not based on allegations of regulatory infractions, but on 12A DCMR § 110.5.3, which states that the Director of DCRA may revoke a C of O "if it is found to have been issued in error." The "error" DCRA alleged was the same error it had denied committing in Appeal No. 16998, i.e., that the Appellant's building permit, and, by extension, its C of O, had been issued for a non-permitted use in a CM zone.
12. Appellant appealed the issuance of the second notice to both the Board and OAH.
13. Appellant alleges that the second notice was issued in error because it violated Section 16 (c) of the Office of Administrative Trials and Hearings Establishment Act of 2001, effective Mar. 6, 2002, (D.C. Law 14-76; D.C. Official Code § 2-1831.13 (c) (2001) ("OAH Act"). That provision reads as follows:

When a case is brought before the [OAH], any agency that is a party shall take no further decisional action with respect to the subject matter in issue, except in the role of a party litigant or with the consent of all parties, for so long as the Office has jurisdiction over the proceeding.

D.C. Official Code § 2-1831.13(c) (2001).

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14. In its appeal before this Board, Bannum claims that the second notice was a "further decisional action with respect to the subject matter at issue" in the stayed OAH proceeding, and therefore an action prohibited under the OAH Act.
15. Appellant also challenges the second notice on grounds of the equitable theory of collateral estoppel.
16. Bannum does not contend that DCRA made any error based in whole or in part on the Zoning Regulations.

CONCLUSIONS OF LAW

Section 8 of the Zoning Act, presently codified at D.C. Official Code § 6-641.07 (g)(1), authorizes the Board to "hear and decide appeals where it is alleged by the appellant that there is error in any decision, determination, or refusal made by [DCRA] in the carrying out or enforcement of any regulation adopted pursuant to this Act."¹ The decision must be based "in whole or in part" on the Zoning Regulations. D.C. Official Code § 6-641.07 (f).

As indicated in the findings of fact, the error complained of was not based upon the Zoning Regulations at all, but upon § 16 (c) of the OAH Act. No misinterpretation of the Zoning Regulations is asserted. Because the alleged error is not based upon the Zoning Regulations, the Board does not have the subject matter jurisdiction to hear or decide the error claimed.

Appellant also contends that, even if the basis for the revocation is correct, the equitable doctrine of estoppel requires that the revocation should not occur. The Board, however, declined to decide estoppel because a similar theory of estoppel was before the DCCA in the Appellant's appeal of Order No. 16998. The Court of Appeals ultimately concluded that the estoppel claim was "untenable and must be rejected". *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 432 (D.C. 2006).

In any event, a claim of estoppel does not itself involve an allegation of zoning error. The Board has, nevertheless, considered claims of estoppel as part of appeals that do claim such error. This is no different from the ability of federal district courts to hear claims under state laws, so long as a federal claim is also alleged. But just as a federal court may not hear state claims when no federal case or controversy also exists, this Board may not hear estoppel contentions that are not part of an appeal also alleging an error made in the interpretation of the Zoning Regulations.

¹ The current D.C. Code text actually says, "adopted under this subchapter and subchapter V of this chapter".

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For the reasons stated above, the Board concludes that it cannot hear this appeal because it lacks the subject matter jurisdiction to do so. Therefore, it is hereby **ORDERED** that this appeal be **DISMISSED**.

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

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

FINAL DATE OF ORDER: MAR 30 2007

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

LM

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

Appeal No. 17439 of Advisory Neighborhood Commission 6A, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (DCRA), to issue Certificate of Occupancy (C of O) Permit No. 102037, dated July 27, 2005, authorizing a 49-seat restaurant use ("Cluck-U-Chicken"); Appellant alleges that DCRA erred by issuing the C of O for a fast-food restaurant without Board of Zoning Adjustment special exception review under § 733. The subject property is located in the HS (H Street Northeast Commercial Overlay)/C-2-A zone district at premises 1123 H Street, N.E. (Square 982, Lot 823).

HEARING DATES: April 4 and April 25, 2006

DECISION DATE: June 6, 2006

DECISION AND ORDER

This appeal was filed September 23, 2005 by Advisory Neighborhood Commission ("ANC") 6A, which appealed from the administrative decision of the Acting Zoning Administrator to grant a certificate of occupancy for a "restaurant" operating in the C-2-A zone at 1123 H Street, N.E. (Square 982, Lot 823). According to the ANC, the establishment was operating as a "fast food restaurant" and therefore required special exception approval.

Following a public hearing, the Board voted at its public meeting on June 6, 2006 to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated September 30, 2005, the Office of Zoning provided notice of the appeal to the Office of Planning, the Department of Consumer and Regulatory Affairs ("DCRA"), the Councilmember for Ward 6, ANC 6A, and Single Member District/ANC 6A02. Pursuant to 11 DCMR § 3112.14, on January 12, 2006 the Office of Zoning mailed letters or memoranda providing notice of the hearing to Mildred K. Sternberg, c/o Delbe Realty, on behalf of the owner of the subject property; the Zoning Administrator; and ANC 6A. Notice was also published in the D.C. Register on January 20, 2006 (53 DCR 434).

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Party Status. In addition to the Appellant and DCRA, the owner and operator of the subject establishment was a party in this proceeding. There were no additional requests for party status.

Appellant's Case. The Appellant argued that the Department of Consumer and Regulatory Affairs erred in its decision to grant Certificate of Occupancy Permit No. CO-102037 to Gibson Investments, Inc., trading as Cluck-U-Chicken, because: (i) the certificate of occupancy allowed use of the premises as a "restaurant" but Cluck-U-Chicken was in fact a "fast food restaurant" as defined by the Zoning Regulations; (ii) the certificate of occupancy was issued for a fast-food restaurant in the C-2-A zone district without a special exception as required by 11 DCMR § 733; and (iii) DCRA granted a certificate of occupancy to Cluck-U-Chicken for a lot that does not correspond to the lot where Cluck-U-Chicken was actually located.

ANC 6A asserted that approximately 80 percent of the floor space of the establishment was allocated for use for customer queuing, for self-service, for carry-out, or on-premises consumption. The ANC also claimed that Cluck-U-Chicken had a "brisk carryout business" such that its "off-premises consumption exceeds on-premises consumption," and that even customers dining on the premises used disposable containers and flatware. According to the ANC, the manner of operation at the establishment appeared to fall within the definition of fast-food restaurant, in part because the establishment had "the intent, capacity, and appliances to hold a large quantity of food items prepared in advance to serve customers on disposable containers that customers would throw away in the dining room trash can." See 11 DCMR 199.1, definition of Restaurant, fast-food.

Zoning Administrator. The Zoning Administrator testified that the certificate of occupancy had been issued based on information provided by the applicant, which included building permit plans showing the subject premises and an affidavit indicating how the establishment would be operated, and on the basis of an inspection conducted by the staff of the Office of the Zoning Administrator before the establishment began operation. According to the Zoning Administrator, the certificate of occupancy authorizing restaurant use had been properly issued because the proposed use of the subject property would be "restaurant" and not "fast food restaurant" since the establishment lacked a drive-through, only 10 percent of the food would be prepared or packaged prior to a customer placing an order, and the establishment would not serve food or beverages in disposable containers or use disposable tableware. The staff's inspection indicated that the establishment had non-disposable plates, glasses, and tableware.

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Intervenor. The Board received testimony and evidence from Bernard Gibson, the owner and operator of the Cluck-U-Chicken establishment. According to the owner, the establishment was a restaurant, and not a fast-food restaurant because the business prepared and sold food and beverages primarily for consumption on the premises; the floor space allocated and used for customer queuing, self-service for carry-out, and on-premises consumption was less than 10 percent of the total floor space on any one floor accessible to the public; more than 80 percent of the food items were made to order; the staff served food to the eat-in patrons on non-disposable plates, with silverware and glasses, and bused the tables after patrons finished eating; the facilities for carry-out were subordinate to the principal use of providing prepared foods for consumption on the premises; and the establishment did not have a drive-through facility.

FINDINGS OF FACT

1. On July 27, 2005, the Acting Zoning Administrator issued Certificate of Occupancy Permit No. CO-102037 to Gibson Investments, Inc., trading as Cluck-U-Chicken. The permit reflected a use change from a variety store to a 49-seat restaurant on the first floor of 1123 H Street, N.E. (Square 982, Lot 803), in the R-4 zone. A corrected certificate of occupancy was subsequently issued to reflect that the property was zoned C-2-A and was located at Lot 823 in Square 982.
2. The subject property is located at 1123 H Street, N.E. (Square 982, Lot 823) and is now zoned HS-R/C-2-A, within the Retail subdistrict of the H Street Northeast Commercial Overlay district.¹
3. At a public meeting on September 8, 2005, with a quorum present, ANC 6A voted 5-3 to appeal the administrative decision of the Zoning Administrator to issue a certificate of occupancy for a "restaurant" at the subject property.
4. A restaurant, not including a fast-food restaurant, is permitted as a matter of right in the C-2-A zone. 11 DCMR §§ 701.4(q), 721.1. A fast-food restaurant may be permitted in the C-2-A zone, subject to Board approval as a special exception. See 11 DCMR §§ 733, 1304, 1320.4(c), 1325.
5. The Zoning Regulations define a "restaurant" as:

¹ The H Street NE Neighborhood Commercial Overlay zone district was approved by the Zoning Commission on January 9, 2006 and became effective on March 10, 2006. See Z.C. Order No. 04-27.

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A place of business where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises.

11 DCMR § 199.1.

6. The Zoning Regulations define "fast food restaurant" as:

A place of business devoted to the preparation and retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it has a drive-through. A restaurant will be considered a fast food restaurant if the floor space allocated and used for customer queuing for self-service for carry out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor that is accessible to the public, and it exhibits one (1) of the two (2) following characteristics:

- (a) At least sixty percent (60%) of the food items are already prepared or packaged before the customer places an order; and/or
- (b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware. (This definition does not include an establishment known as a retail grocery store, convenience store, ice cream parlor, delicatessen, or other business selling food or beverages as an accessory use or for off-premises preparation and consumption.)

11 DCMR § 199.1.

7. The certificate of occupancy was issued based on information provided by the owner of Cluck-U, which included building permit plans showing the subject premises and an affidavit indicating how the establishment would be operated, and on upon an inspection conducted by the staff of the Office of the Zoning Administrator before the establishment began operation.

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8. The affidavit indicated that eight percent of the floor space that is accessible to the public on any one floor would be used for "queuing self-service for carry-out or on-premises consumption."
9. The affidavit stated that 10 percent of the food items would be prepared or packaged prior to a customer placing an order.
10. The affidavit indicated that the proposed establishment would not primarily serve food and beverages in disposable containers or provide disposable tableware.
11. The pre-operation inspection revealed that the area between the entrance and the service counter – a distance of approximately 42 feet was furnished with tables and chairs, with an area approximately eight feet deep left open in front of the service counter. The remainder of the premises appeared devoted to food preparation, product storage, an office, and bathrooms.
12. The staff's inspection indicated that the establishment had non-disposable plates, glasses, and tableware.
13. No drive-through was observed at the time of the inspection, and none existed as of the date of the hearing on this appeal.
14. Patrons dining in the establishment are served on non-disposable plates and use non-disposable cups and silverware. Customers place orders at the counter, and the food is served to them at the tables by Cluck-U staff.
15. Take-out orders are also placed at the counter. The establishment uses disposable plates, cups, and flatware for orders placed by take-out customers.
16. The owner of the establishment provided daily operation reports reflecting three months of operation at the establishment. The reports indicated the number of customers who purchased food for consumption on-premises, for carry-out, for pick-up, or for delivery. The daily operation reports reflected that, for the three-month period, a large majority of sales were for customers dining at the establishment.
17. More than 80 percent of the food items are made to order at the establishment.

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CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration the Zoning Regulations. 11 DCMR §§ 3100.2, 3200.2. In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. 11 DCMR § 3100.4.

The Appellant contended that the certificate of occupancy authorizing a "restaurant" use at the subject premises was improperly issued because the Cluck-U-Chicken establishment was in fact a "fast food restaurant," as that term is defined in the Zoning Regulations, and should have been required to seek a special exception.

Almost all of the ANC's assertions concern how Cluck U is now operating, which is not the focus of an appeal. The issue before this Board is whether the facts known to the Acting Zoning Administrator at the time the Certificate of Occupancy was issued could have reasonably led him to believe that the proposed use was to be a restaurant, and not a fast food restaurant. The Appellant has not offered persuasive evidence that the decision to issue the certificate of occupancy was erroneous based upon the facts known at the time of the application.

Those facts consisted of the content of the application, the representations made by the Cluck-U owner in its affidavit, the depiction of the facility in the building permit plans, and the observations made by Office of the Zoning Administrator staff during a pre-operation inspection. As summarized in findings of fact 8 through 13, those facts describe a business that would meet the definition of a "restaurant", not a fast food restaurant.

Appellant's contention that the business is actually being operated as a fast food restaurant does not prove that the issuance of the certificate of occupancy was in error. Although a lawfully issued certificate of occupancy may be revoked by DCRA and enjoined by the Superior Court if "the actual occupancy does not conform with that permitted," 12A DCMR § 110.5.1, this Board cannot invalidate a valid certificate of occupancy on that ground.

In any event, the evidence in the record of the business's actual operation does not indicate that a fast food restaurant use is in place. The property lacks a drive-through. More than 80 percent of the food items sold at the establishment are made to order; therefore, less than 60 percent of the food items are already prepared or packaged

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before a customer places an order. Finally, the establishment serves its food and beverages in non-disposable containers and provides non-disposable tableware to customers eating on the premises.²

The Board is required to give "great weight" to issues and concerns raised by the affected ANC. D.C. Official Code §6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of the affected ANC and an explanation of why the Board did or did not find their views persuasive. This opinion fully addresses the issues raised by the Appellant ANC and, for the reasons discussed above, the Board does not find its arguments persuasive.

For the reasons stated above, the Board concludes that the Appellant has not satisfied the burden of proof with respect to its claim of error in the administrative decision of the Zoning Administrator to issue Certificate of Occupancy Permit No. 102037, dated July 27, 2005, authorizing a 49-seat restaurant use ("Cluck-U-Chicken") at 1123 H Street, N.E. (Square 982, Lot 823) without requiring special exception approval by the Board as a fast-food restaurant pursuant to § 733 of the Zoning Regulations. Accordingly, it is therefore **ORDERED** that the appeal is **DENIED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann and Carol J. Mitten (by absentee ballot) voting to deny the appeal; Curtis L. Etherly, Jr. not participating, having recused himself)

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

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: MAR 30 2007

² The Board need not make a finding with respect to that part of the definition regarding: "floor space allocated and used for customer queuing for self-service for carry out and on-premises consumption" because that finding is only relevant if the restaurant exhibits at least one of the two characteristics listed in (a) or (b) of the definition of a fast-food restaurant. As set forth above, the Board has found that it does not.

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

SG

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

Application No. 17575 of 4620 Iowa Avenue Cooperative Assn., Inc., pursuant to 11 DCMR § 3103.2, for a variance from the minimum lot area requirements under subsection 401.3, and a variance from the off-street parking requirements under subsection 2101.1, to add a residential apartment unit to the first floor of an existing apartment building in the R-4 District at premises 4620 Iowa Avenue, N.W. (Square 2814, Lot 800).

HEARING DATE: March 13, 2007
DECISION DATE: March 13, 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) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C submitted a late report in support of the application. The Board waived its rules to accept the late filing into the record. 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 § 3102.2, for variances from § 401.3 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 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 and 2101) 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

BZA APPLICATION NO. 17575**PAGE NO. 2**

that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 7 – Plat and Plans) be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The applicant shall remove the two curb cuts in front of the existing garage entrances.
2. The applicant shall store the trash bins in the abandoned garage space and roll the bins down the sidewalk for removal on public trash pick-up day until the applicant receives permission from the Public Space Office to locate the trash bins outdoors.

VOTE: **3-0-2** (Carol J. Mitten, John A. Mann II and Curtis L. Etherly, Jr. to approve; Ruthanne G. Miller and the third mayoral appointee, 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: APR 04 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.

BZA APPLICATION NO. 17575
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PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY 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. 17578 of Hartford Street LLC, pursuant to 11 DCMR § 3104.1, for a special exception to construct a new residential development consisting of eighteen (18) row dwellings under sections 353 and 410, in the R-5-A District at premises 2700 Hartford Street, S.E. (Square 5727, Lots 149-154).

HEARING DATE: March 13, 2007

DECISION DATE: April 3, 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 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 submitted a report stating 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 sections 353 and 410. 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, 353 and 410, 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.

BZA APPLICATION NO. 17578

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit Nos. 22 and 31 – Plans) be **GRANTED**.

VOTE: 3-0-2 (Carol J. Mitten, Curtis L. Etherly, Jr. and John A. Mann II to approve; Ruthanne G. Miller and the third mayoral appointee, 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: April 4, 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

BZA APPLICATION NO. 17578

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

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

Application No. 17583 of 1634 Associates LLC, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirements under section 773, a variance from the retail use provisions under subsection 1901.1, and a variance from the off-street parking requirements under subsection 2101.1, to construct a thirty-two (32) unit residential building with ground floor retail in the ARTS/C-3-A District at premises southwest corner of the intersection of 14th & R Streets, N.W. (Square 208, Lots 806, 807 and 808).

HEARING DATE: April 3, 2007
DECISION DATE: April 3, 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) 2F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. ANC 2F submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the 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 and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 773, 1901.1 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,

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purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to the architectural plans - Exhibit 22 in the record) be **GRANTED**.

VOTE: 3-0-2 (Curtis L. Etherly, Jr., John A. Mann II and Ruthanne G. Miller to grant; the Zoning Commission member and the third mayoral appointee not voting not having heard 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: April 4, 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.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE

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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.

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

Application No. 17584 of Stephen Lerner, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing single-family row dwelling under section 223, not meeting the open court (section 406) and nonconforming structure (subsection 2001.3) requirements in the R-5-B District at premises 2729 Ontario Road, N.W. (Square 2581, Lot 295).

HEARING DATE: April 3, 2007
DECISION DATE: April 3, 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) 1C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1C, which is automatically a party to this application. ANC 1C 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 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

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

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that (pursuant to Exhibit 13 – Plans/Elevations) this application is **GRANTED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Curtis L. Etherly, Jr. and John A. Mann II to grant; the third mayoral appointee not voting, not having heard the case; no Zoning Commission Member participating.

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: APR 04 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.

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

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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

ZONING COMMISSION ORDER NO. 05-28
Case No. 05-28
(First Stage Planned Unit Development &
Related Zoning Map Amendment - Parkside Residential LLC)
September 11, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 15, 2006 to consider an application from Parkside Residential LLC for first-stage review and approval of a planned unit development ("PUD") and related zoning map amendment for Square 5041, Lots 806-809, 811, 812, 814, 815, 817, 818, 820, and 822; Square 5055, Lots 14-25 and 801-813; Square 5056, Lots 806, 809, 810-814, and 821, 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.

FINDINGS OF FACT

1. The project site consists of Square 5041, Lots 806-809, 811, 812, 814, 815, 817, 818, 820, and 822; Square 5055, Lots 14-25 and 801-813; and Square 5056, Lots 806, 809, 810-814, and 821 (the "Property" or "PUD Site"). The Property is located in the Parkside neighborhood of Ward 7 and consists of approximately 15.5 acres of land area with frontage along Kenilworth Avenue, Foote Street, Anacostia Avenue, Barnes Street, Grant Place, Parkside Place, Roosevelt Place, Burnham Place, Kenilworth Terrace, and Hayes Street, all in the Northeast Quadrant. (Exhibit 2, Statement of the Applicant, Exhibit I)

2. The PUD Site is currently split-zoned R-5-A and C-2-B. The PUD application includes a PUD-related rezoning of the majority of the site to the C-3-A Zone District and a rezoning of a limited portion along Kenilworth Avenue to the CR Zone District to permit the construction of two office/retail buildings. (Exhibit 2, Statement of the Applicant, p. 17; Exhibit 21, Pre-hearing Statement, Exhibit A)

3. Parkside Residential LLC (the "Applicant"), which is a joint venture between Banc of America Community Development Corporation, Marshall Heights Community Development Organization, Lano International, Inc., and Building Hope, filed an application for

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first-stage review and approval of a planned unit development and a related amendment to the Zoning Map of the District of Columbia on August 31, 2005. (Exhibit 2, Statement of the Applicant, pp. 9-10)

4. The Applicant initially proposed to rezone the residential portions of the site to CR and the portion to be used as office space to C-3-C. The Applicant proposed a maximum height of 110 feet for some of the residential buildings and a height of 130 feet for the office buildings. (Exhibit 2, Statement of the Applicant, p. 9)

5. At a public meeting on November 14, 2005, the Office of Planning ("OP") stated its support for the project; however, OP proposed an alternative rezoning for the Property: the portion of the site of the proposed office buildings would be rezoned to CR, limiting the height of the buildings to 110 feet, and the remainder of the site would be rezoned to C-3-A, allowing a maximum height of 90 feet for the residential buildings. (Exhibit 18, November 4, 2005 OP Report)

6. The Commission set both the Applicant's proposal and OP's alternative proposal down on November 14, 2005 for a public hearing.

7. The Applicant subsequently amended the application to conform to the zoning classifications and heights proposed by OP. (Exhibit 21, Pre-hearing Statement, p. 7)

8. The Commission held a public hearing on the amended application on May 15, 2006.

9. At the public hearing, the Commission accepted Don Carter of Urban Design Associates as an expert in architecture and land-use planning; Dennis Carmichael was accepted as an expert in landscape architecture; and Robert Schiesel and Louis Slade were accepted as experts in traffic and parking. ANC 7D, the ANC in which the Property is located, was automatically a party to this application. The Commission granted party status in opposition to the application to the Parkside Townhomes Condominium, Inc.

10. The Commission took proposed action on June 12, 2006 to approve the amended application, subject to conditions.

11. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated June 29, 2006, found the proposed PUD would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.

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12. The Commission took final action to approve the application of Z.C. Case No. 05-28, subject to conditions, on September 11, 2006.

PUD SITE

13. The Property consists of approximately 15.5 acres of land area just north of the intersection of Minnesota Avenue and Benning Road and across Kenilworth Avenue from the Minnesota Avenue Metrorail Station. The PUD Site is located in Ward 7, east of the Anacostia River. The Property is within the area that has been targeted by the Anacostia Waterfront Corporation for revitalization, it is within the vicinity of three roadways included in the Mayor's Great Streets Initiative, and it is within both a Housing Opportunity Area and a Development Opportunity Area. (Exhibit 21, Pre-hearing Statement, p. 3)

14. The Trust for Public Land created a master development plan for the original 26-acre Parkside site. (Exhibit 21, Pre-hearing Statement, p. 1, Exhibit A)

15. Phase I was successfully developed in the early 1990s as 100 townhomes known as the Parkside Townhomes. The Parkside Townhomes development is roughly bounded by Barnes Street, Roosevelt Place, Parkside Place, and Cassell Place, N.E. (Exhibit 21, Pre-hearing Statement, p. 4)

16. The PUD Site is roughly bounded by Anacostia Avenue, Foote Street, Kenilworth Avenue, Hayes Street, Barnes Street, Roosevelt Place, Grant Place, Burnham Place, and Parkside Place.

17. Land uses in the vicinity of the site include a Pepco generating plant and the Benning Road solid waste transfer station to the southwest, Neval Thomas Elementary School and an assisted housing complex to the northwest, Kenilworth Avenue/Interstate 295 to the south, and residential developments known as Mayfair Mansions and Paradise at Parkside to the north. The Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River, and the National Arboretum are located to the west of the PUD Site.

18. The PUD Site is located in the residential medium-density/commercial moderate-density land use category as defined on the District of Columbia Generalized Land Use Map.

PUD APPLICATION AND PROJECT

19. The proposed PUD consists of a series of residential, mixed-use, commercial, and retail buildings that will contain approximately 3,003,000 gross square feet with accessory parking. There will be approximately 1,500–2,000 dwelling units; 500,000–750,000 square feet of office space; and 30,000–50,000 square feet of retail. The 15.5-acre project will complete the development of a 26-acre site that began in the early 1990s. The floor area ratio ("FAR") of the

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PUD project will be 4.4. The office buildings will be 110 feet in height along Kenilworth Avenue. The residential and mixed residential/retail buildings will have a maximum height of 90 feet, and will gradually scale down as they become more proximate to the existing Parkside Townhomes. Greater heights will be maintained along Foote Street to shield the interior units from the adjacent Pepco plant. (Exhibit 21, Pre-hearing Statement, p. 6)

20. The project is split into ten building "blocks." Block A is located in the eastern corner of the PUD Site, at the corner of Foote Street and Anacostia Avenue. It is adjacent to both the Pepco plant and the Neval Thomas Elementary School. Block A will have a lot occupancy of 62.6 percent and will contain a gross floor area of 134,400 square feet, with a density of 4.12 FAR. A range of 105-120 residential units will be located on Block A. The structure proposed for Block A will be constructed in a "U" shape. Heights will range from 54 feet to 84 feet. (Exhibit 21, Pre-hearing Statement, Exhibit B)

21. Block B is bounded by Anacostia Avenue, Grant Place, Barnes Street, and Block A. It is located adjacent to the Neval Thomas School and the existing Parkside Townhomes; it also acts as a gateway to the adjacent park land and the Anacostia River. Block B will contain five separate residential buildings, with a lot occupancy of 41 percent, a gross floor area of 69,940 square feet, and a density of 1.26 FAR. It will consist of 35-45 residential units and will provide approximately 77 parking spaces. Heights for the five buildings will range from 28 feet to 52 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

22. Block C is bounded on the southwest side by Foote Street and by Roosevelt Place on the northeast side, adjacent to the Pepco plant and the Parkside Townhomes. It will contain four residential buildings, with a lot occupancy of 78.3 percent, a gross floor area of 277,920 square feet, and a density of 3.31 FAR. It will include 140-160 residential units and will provide approximately 336 parking spaces. Building heights for Block C will range from 43 feet along Roosevelt Place to 64 feet along Foote Street. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

23. Block D consists of a park that is nearly one acre in size. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

24. Block E is located in the western portion of the PUD site and is adjacent to the Pepco plant. A range of 140-160 residential units will be developed in a single building in Block E, with a lot occupancy of 63 percent, a gross floor area of 183,000 square feet, and a density of 4.6 FAR. Heights for this U-shaped building will range from 54 feet to 90 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

25. Block F is located in the central portion of the site and is bounded on the north by Parkside Place and on the south by Kenilworth Terrace. The Parkside Townhomes are located to the northwest of Block F. There are three portions of Block F: a retail portion will line a central pathway and will be flanked by residential components on both the east and west. Block F will

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have a lot occupancy of approximately 47 percent. It will include a range of 330-365 residential units, with a gross square floor area of 444,825 square feet and a density of 3.13 FAR. Approximately 485 parking spaces will be located on Block F. There will be six buildings in Block F. Building heights along Kenilworth Terrace will reach a maximum of 90 feet; heights along Parkside Place will range from 47 feet to 72 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

26. Blocks G, H, and I are located along the southeastern portion of the PUD Site. They each have frontage on Kenilworth Avenue and Kenilworth Terrace. Block G is adjacent to the Pepco plant. These Blocks will have a combined lot occupancy of 80.6 percent, a gross floor area of 1,709,800 square feet, and a density of 7.05 FAR. A range of 785-875 residential units will be located in these Blocks, as well as approximately 1,400 parking spaces. The portions of the residential buildings fronting on Kenilworth Avenue will be 90 feet in height. Toward Kenilworth Terrace, the buildings will scale down to as low as 44 feet in height. The office buildings fronting Kenilworth Avenue will be 110 feet in height. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

27. Block H, which is located between Blocks G and I, will be developed with the office space component of the project. If the Applicant cannot secure a lead tenant for the office use, Block H will be used for an additional 500,000 – 750,000 square feet of residential space.

28. Block J is located in the northernmost corner of the site, bounded by Hayes Street, Kenilworth Terrace, Parkside Place, and Block F. It is adjacent to the Cesar Chavez Public Charter School to the northwest and the Mayfair Mansions to the north. The Block will be developed with one building with a lot occupancy of 63 percent, a gross floor area of approximately 183,000 square feet, and a density of 4.58 FAR. The building will contain 140-160 residential units and 96 parking spaces. The height of the portion of the building fronting on Kenilworth Terrace will rise to 90 feet, while the remainder of the building will scale down from 74 feet to 54 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

29. The Applicant provided several views of the PUD in the Pre-hearing Statement. These views demonstrated that the PUD will not be highly visible from the Anacostia Waterfront or the National Arboretum. The PUD will largely not be visible from Minnesota Avenue once the new Government Center is constructed. Only a few floors of the PUD will be visible looking west from Interstate 295. (Exhibit 21, Pre-Hearing Statement, Exhibit C)

30. As shown in Exhibit 21 (the Statement of the Applicant, Exhibit G), vehicular ingress/egress to the PUD Site is possible from Kenilworth Avenue at Hayes Street and Foote Street, and from Kenilworth Terrace. The Applicant is working with the Anacostia Waterfront Corporation and the Deputy Mayor for Planning and Economic Development to open up an additional point of access via a public road that lies outside but adjacent to the northwest property line of Pepco's property on one side and the southwest property line of National Park

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Service land on the other. The road is in existence, but it terminates before it connects the PUD Site with Benning Road. (Exhibit 21, Pre-Hearing Statement, p. 11)

31. The PUD will provide approximately 2,400 parking spaces. Each element of the PUD will have parking to accommodate demand and it will be arranged discreetly on the site. Parking will be provided below grade to the extent that it is economically feasible. The remainder of the parking will be arranged in independent parking garages between residential buildings. The Applicant proposed implementing green design ideas such as rooftop gardens to improve views of the garages. The details of the Applicant's parking plan will be more fully developed in later stages of the Applicant's application. The Applicant also requested flexibility to allow off-site parking within above-grade parking structures for some of the residential units, although revisions to the parking layout are anticipated as part of the more detailed second-stage review. (Exhibit 21, Pre-Hearing Statement, p. 18)

32. The PUD includes landscape improvements and will provide nearly five acres of open space, including a central plaza almost one acre in size. The central plaza will provide various pathways for pedestrians and will be shaded by trees. Additionally, each Block will be surrounded by trees and landscaping. The open area between the retail buildings will include of public seating, and the Applicant will make an effort to preserve an existing willow oak located at the site. Finally, a grand stairway stretching from Kenilworth Terrace to a plaza will be located between the two office buildings. The plaza will lead to a new pedestrian bridge that will span Interstate 295 and terminate at the Minnesota Avenue Metro Station. The plaza between the office buildings will have additional landscaping. The grand stairway will be flanked by pedestrian pathways that may be used for outdoor seating for cafes located in the ground floor retail areas. The PUD will encourage utilization of Kenilworth Park and will serve as a gateway to the Anacostia Waterfront Riverwalk and regional trail network. (Exhibit 2, Statement of the Applicant, Exhibit F; Exhibit 21, Pre-hearing Statement, Exhibit B)

33. There is an existing pedestrian bridge that abuts the PUD Site and connects directly to the Metro Station. The District Department of Transportation ("DDOT") is planning to spend \$500,000 to improve the existing bridge and make the bridge span safer and more convenient. In addition to the existing bridge, the Applicant is providing \$3 million toward the design and construction of another pedestrian bridge that will be a central component to the PUD. The Anacostia Waterfront Corporation and DDOT are discussing apportioning an additional \$10 million to the design and construction of the bridge. The Anacostia Waterfront Corporation is hosting a design competition to ensure a sophisticated bridge design. (Exhibit 21, Pre-Hearing Statement, p.12)

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34. In addition to pledging \$3 million to the construction of the new pedestrian bridge, the Applicant is providing a number of additional benefits and amenities with the PUD:

a. **Affordable Housing:** The Applicant will dedicate 20 percent of the residential component of the PUD to individuals with incomes equal to or less than 80 percent of the Area Median Income ("affordable housing"). The rental portion of the affordable housing will be reserved for those with an income less than 60 percent of the Area Median Income. The rental affordable housing will remain affordable for a minimum of 30 years; the for-sale affordable housing will remain affordable for the same term required by the public subsidy used to provide the tenant's gap financing (Exhibit 21, Pre-Hearing Statement, p.14; Exhibit 56).

b. **Workforce Housing:** An additional 20 percent of the residential portion of the PUD will be dedicated to individuals making between 80 and 120 percent of the Area Median Income ("workforce housing"). There will be no control period for this housing component.

c. **Site Planning:** The PUD optimizes mixed-income, mixed-use, transit-oriented development on one of the largest remaining pieces of undeveloped land in the District, within a half-mile of a Metro Station. The PUD is consistent with the permitted density for the C-3-A and CR Zone Districts. The Applicant will preserve and improve an existing one acre park and will preserve mature trees at the PUD site. Nearly five acres of landscaped park, plaza, and pedestrian space are included in the PUD (Exhibit 34, May 5, 2006 OP Report, p. 4; Exhibit 21, Pre-Hearing Statement, Exhibit B).

d. **Urban Design:** The PUD provides a transit-oriented design that is compatible with the existing townhomes and improves linkages to the Anacostia Waterfront. Its interconnected street network will disperse traffic and ease the pedestrian experience. The buildings, residences, shops, and services will be close together for ease of walking to enable a more efficient use of land and resources. The PUD's heights and densities will buffer and shield the community from the Pepco plant and the trash transfer station. The site plan accommodates higher density, while the form and scale of individual buildings are intended to minimize visual and physical impacts on the existing houses in the Parkside neighborhood: the heights and densities of the buildings will gradually decrease as they get closer to the existing Parkside Townhomes. Finally, the landscaping plan will augment existing street trees and add many new plantings (Exhibit 2, Statement of the Applicant, p. 28).

e. **Effective and Safe Vehicular and Pedestrian Access:** The transit-oriented design elements of the PUD will enable greater transit ridership. Both the existing and the proposed pedestrian bridge tie the Applicant's site to the Metrorail. In addition, the Applicant will donate an easement for the public to access the proposed pedestrian

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bridge. The PUD will also provide a link to the proposed Anacostia Riverwalk (Exhibit 2, Statement of the Applicant, p. 29).

f. Employment and Training: Provided the PUD can secure a lead tenant for the office space, the PUD will provide a substantial number of jobs with its extensive office and retail space. The PUD also presents numerous construction opportunities. The residential space will bring permanent property management positions. Additionally, Marshall Heights Community Development Organization will provide training to first-time homebuyers (Exhibit 21, Pre-hearing Statement, pp. 22, 29).

g. Environmental Benefits: The Applicant will pursue additional due diligence for various green implementation strategies. It has received the Enterprise Green Communities Initiative Grant and has been recognized by the Smart Growth Alliance as a Smart Growth project. As the PUD is proposed, it is eligible for LEED-ND certification. The master plan conserves open space and mature trees to a great extent (Exhibit 21, Pre-hearing Statement, p. 29).

h. Uses of Special Value: The project is transformational for Ward 7. It will be a visible indication of the revitalization of the Ward and will create a northern anchor for the existing downtown of Ward 7. The project will take advantage of its site along a major corridor heading into the District to create a landmark mixed-use, transit-oriented, mixed-income, environmentally-sensitive development. The Applicant also undertook a detailed community planning process and sought the input of a significant portion of the neighboring communities (Exhibit 21, Pre-hearing Statement, p. 30).

35. The PUD is consistent with and fosters numerous goals and policies stated in the elements of the Comprehensive Plan of the National Capital. The project is consistent with the following major themes of the Comprehensive Plan: stabilizing the District's neighborhoods; increasing the quantity and quality of employment opportunities in the District; preserving and promoting natural amenities; respecting and improving the physical character; preserving and ensuring community input; and providing for diversity. (Exhibit 2, Statement of the Applicant pp. 32-35; see also Exhibit 34, May 5, 2006 OP Report, p. 3)

36. The project is consistent with many Major Elements of the Comprehensive Plan (including the Economic Development, Housing, Environmental Protection, Transportation, Urban Design, and Land Use Elements) and fulfills numerous goals and policies of the Ward 7 Plan. (Exhibit 2, Statement of the Applicant, pp. 35 - 45)

37. In response to issues raised by the Commission during the May 15, 2006 public hearing, the Applicant provided more detailed information regarding the affordability control period of its affordable housing on May 22, 2006. (Exhibit 56)

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GOVERNMENT REPORTS

38. The Office of Planning ("OP"), in its report dated May 5, 2006 and its supplemental report dated May 11, 2006 and through its testimony at the public hearing, recommended approval of the PUD, provided that a revised and updated traffic impact analysis regarding the adequacy of pedestrian and vehicular access to the site would be undertaken prior to second-stage approval of each phase of the PUD. OP believed that resolution, with relevant District agencies, of vehicular and pedestrian access was necessary for the adequate functioning of new development, which would also be of benefit to existing area residents, schools, and businesses. OP was supportive of the redevelopment project and found it generally consistent with the Comprehensive Plan and with the zoning for the area. (Exhibit 34, May 5, 2006 OP Report, p. 8). OP was particularly supportive of the Applicant's proposal to meet, and serve as the prototype for, the new LEED-ND standards. (Exhibit 40, May 11, 2006 OP Report, p. 1)

39. The District Department of Transportation ("DDOT") submitted a report dated May 5, 2006 that supported the PUD. DDOT examined the proposal in terms of trip generation and level of service calculations at the critical intersections leading to and from the proposed project. DDOT agreed with the Applicant's capacity analysis and the level of service calculation at the pertinent intersections in the vicinity of the project. DDOT supported increased housing production, office, and retail uses at the site. It further noted that the amount of parking provided with the PUD would be adequate to meet the parking needs of the development and to minimize parking spillover into the neighborhood residential and business area. (Exhibit 40, pp. 2-3)

40. The District Department of Health noted in its report that a portion of the development was located in a flood hazard zone. At the hearing on May 15, 2006, the Commission heard testimony from the Applicant's civil engineer that their analysis did not indicate any flood plain problems at the PUD Site. The Applicant agreed to review this issue further.

41. In its May 1, 2006 report, the Department of Employment Services recommended that the Applicant enter into the First Source Agreement prior to Zoning Commission proposed action.

42. The DC Water and Sewer Authority ("DC WASA") submitted a report to the Office of Planning on May 3, 2006. DC WASA noted that the PUD would have a significant impact on water demands, existing sanitary sewers, and existing stormwater sewers in the area. DC WASA will review the project plans that the Applicant submits for permits.

43. The Anacostia Waterfront Corporation ("AWC") submitted a letter in support of the application dated April 20, 2006. AWC stated that the project "will bring much needed housing, employment opportunities, services and amenities to a long underserved part of the

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city.” AWC supported the project, including important infrastructure improvements like the pedestrian bridge. (Exhibit 28)

44. Stanley Jackson, the Deputy Mayor for Planning Economic Development, submitted a letter in support of the project on February 14, 2006. Mr. Jackson stated that the Executive Office of the Mayor supported full funding of the design, construction, and operation of the pedestrian bridge. Mr. Jackson envisioned that the PUD would present an opportunity to reconnect the Parkside neighborhood and downtown Ward 7. (Exhibit 20)

45. Vincent Gray, Councilmember for Ward 7, submitted a letter dated October 2, 2005 in support of the PUD. Councilmember Gray stated that the PUD was consistent with established policies of encouraging development near Metro stations and in historically distressed areas. (Exhibit 12)

46. The District of Columbia Housing Authority submitted a letter in support of the PUD dated September 28, 2005. The Authority noted that the PUD was consistent with the Mayor’s New Communities Initiative to create large-scale mixed-income communities in distressed areas of the city. The Authority was impressed with the Applicant’s inclusive planning process to build consensus for the proposal within the community. (Exhibit 15)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

47. Advisory Neighborhood Commission (“ANC”) 7D unanimously adopted a resolution in support of the project at a regularly scheduled and publicly noticed meeting on April 11, 2006. The ANC, in its written resolution dated April 13, 2006, noted that the PUD presented a “great opportunity for the neighborhood.” It further acknowledged the Applicant presented to the ANC on three different occasions and made a “strong effort to conduct an inclusive community planning process.” The ANC “strongly supports the project because it represents a critical piece of the ongoing revitalization of Ward 7.” (Exhibit 35)

PERSONS IN SUPPORT

48. Numerous members of the community presented testimony in support of the application, including Greg Rhett, President, Eastland Gardens Civic Association; John Bailey, Smart Growth Alliance; Howard Ways, Anacostia Waterfront Corporation; Trelane Patrick, Parkside Townhome Owner/Resident; Cheryl Cort, Washington Regional Network for Livable Communities; Shirley Lawson, President, Mayfair Mansions 2005 Tenant Association, Inc.; and Irasema Salcido, Cesar Chavez School. (Exhibit 51)

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49. Numerous members of the community wrote letters in support of the application, which were accepted into the record. (Exhibits 28-32, 35-39)

50. The Smart Growth Alliance submitted a letter, dated January 13, 2006, stating its support for the project. The Alliance stated that the PUD would add tremendously to Ward 7 generally and the Minnesota Avenue neighborhood specifically by adding market-rate and affordable housing units as well as much-needed retail opportunities. The Alliance found the affordable housing component of the project was "quite impressive and far beyond the industry standard, especially at Metro stations." (Exhibit 19)

51. A representative of the Neval Thomas Elementary School submitted a letter in support of the PUD dated October 11, 2005. The letter noted that the PUD would benefit the school by increasing the pool of students, by developing a vacant site and completing the neighborhood, and by increasing the possibility for upgrading the school. (Exhibit 17)

52. A representative of GreenHOME, an organization dedicated to making affordable housing green, submitted a letter in support of the PUD dated October 11, 2005. The GreenHOME letter stated that the PUD was critical to the revitalization of Ward 7 and appropriate for an underutilized site located in the vicinity of a Metro station. (Exhibit 16)

53. A representative of Paradise at Parkside Apartments submitted a letter, dated October 4, 2005, expressing its support for the PUD. The letter acknowledged the Applicant's effort to gain their support during the PUD process. The Apartments believed that it will benefit from affordable homeownership opportunities, the retail, access to the Anacostia River, and improved access to the Metro station. (Exhibit 13)

54. Mayfair Mansions 2005 Tenant Association, Inc. submitted a letter in support of the PUD, dated October 4, 2005. Mayfair believed that development of the vacant site would benefit the entire community. (Exhibit 14)

PARTY IN OPPOSITION

55. The president of Parkside Townhomes Condominium, Inc., a party in opposition to the application, presented a written statement and testimony at the May 15, 2006 public hearing, stating that the PUD would have an adverse impact on parking and traffic in the area. (Exhibit 33)

PERSONS IN OPPOSITION

56. Rita and Mary Jackson testified in opposition to the PUD. They shared concerns regarding the location of the PUD adjacent to the Pepco plant. (Exhibit 42)

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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.

2. Under the PUD process, the Zoning Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards.

3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will 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 in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the large amount of affordable and workforce housing provided in this project is a significant amenity that will be available to District residents, including police officers and school teachers. The Commission believes that the design and site planning of the project promotes smart growth and encourages use of public transportation.

6. The Commission finds that the density of the PUD is appropriately dispersed on the PUD site as it shields obnoxious neighboring uses and appropriately relates to existing townhomes.

7. 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.

8. Approval of the first-stage PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the following themes: stabilizing the District's neighborhoods, increasing the quantity and quality of employment opportunities in the District, preserving and promoting natural amenities, respecting and improving the physical

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character, preserving and ensuring community input, providing for diversity, and promoting enhanced public safety.

9. The Commission believes that the proposed PUD-related rezoning of the Property to the C-3-A and CR Districts is appropriate given the superior features of the PUD project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.

10. The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create adverse traffic or parking impacts on the surrounding community.

11. In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission concurs with ANC 7D's letter expressing support of the application.

12. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04 (2001)), to give great weight to OP recommendations. The Commission concurs with OP's view that first-stage approval should be granted, conditioned upon a requirement that a revised and updated traffic impact analysis be submitted prior to second-stage approval of each phase of the PUD.

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

14. 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 first-stage review of a planned unit development and related Zoning Map amendment from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts for the Property, as shall be stated with greater specificity in any order granting final PUD approval. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant shall submit, with the application for second-stage approval of the PUD, an application for rezoning the PUD site from R-5-A and C-2-B to C-3-A and CR that specifies the proposed rezoning by square and lot.

2. The first-stage PUD is approved in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 21, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order.

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3. The second-stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 2, 21, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order and shall include all public benefits described in Findings of Fact 32 through 34.

4. In accordance with the plans and materials noted above, the approved PUD shall consist of approximately 1,500–2,000 dwelling units, 500,000–750,000 square feet of office space, 30,000–50,000 square feet of retail, with approximately 2,400 total parking spaces. The entire project will include approximately 3,003,000 square feet of gross floor area resulting in an overall density of approximately 4.44 FAR. The total lot occupancy of the PUD will be approximately 62.4 percent. The maximum height of the PUD will be 110 feet, which will be reserved solely for the buildings located in the center portion of Parcel 12 fronting Kenilworth Avenue. The heights for the remaining buildings shall not exceed 90 feet and must scale down to lesser heights around the existing townhomes, as depicted in the Applicant's plans.

5. If the Applicant cannot secure a lead tenant for the office use, it may use that portion of the development envelope for an additional 500,000–750,000 square feet of residential space.

6. The PUD will reserve 20 percent of the total residential component as units affordable to households having an income not exceeding 80 percent of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). Those reserved as affordable rental units will remain affordable for at least 30 years; the affordability restriction for the affordable for-sale housing shall be consistent with the terms required by the public subsidy the homebuyer uses to provide gap financing.

7. The PUD will reserve 20 percent of the total residential component for workforce housing targeted to households that have an income between 80 and 120 percent of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size).

8. The Applicant shall submit, as part of the second-stage application, landscape plans, detailed architectural plans, and elevations indicating the design treatment of each building.

9. The Applicant shall submit, as part of a second-stage application, an analysis of the potential for providing access to the PUD Site from Benning Road.

10. The Applicant shall submit, as part of a second-stage application, a detailed traffic study that will (a) address the adequacy of pedestrian and vehicular access to the PUD Site, including an analysis of the DDOT recommendation with respect to pedestrian access; (b) address traffic conditions pertaining to Kenilworth Avenue, particularly in light of the transportation initiatives identified by DDOT as planned or underway in the vicinity, such as the

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Kenilworth Avenue Corridor study; and (c) analyze the traffic impacts of the PUD in light of other new developments and uses in the vicinity, such as the Cesar Chavez Public Charter School.

11. The Applicant shall submit, as part of a second-stage application, materials addressing (a) the design and anticipated use of the pedestrian retail plaza at the center of the PUD Site, including whether it should be open to slow-speed vehicular traffic, and (b) potential cooperation with Pepco to provide adequate landscaping to buffer the Pepco site from the PUD Site.

12. The Applicant shall specify, in its second-stage application, the period of affordability applicable to the for-sale affordable units.

13. The first-stage approval is valid for a period of one year, within which time a second-stage application shall be filed. If the second-stage application is for less than the entire development described in this Order, no subsequent second-stage application may be filed after three (3) years from date of approval of the partial second-stage. It is within the Zoning Commission's discretion to extend these periods.

14. Given the size of the PUD, the Applicant may file the second-stage application in phases for one or more of the buildings.

15. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the act will not be tolerated. Violators will be subject to disciplinary action.

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

The Zoning Commission at its public meeting held on June 12, 2006, **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve).

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The Order was **ADOPTED** by the Zoning Commission at its public meeting on September 11, 2006 by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt).

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

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 27, 2007

Plat for Building Permit of SQUARE 5041 LOT 806-809, 811, 812, 814, 815
817, 818, 820 & 822

Scale: 1 inch = 60 feet

Recorded in A & T Book Page 3757-W

Receipt No. 06788

Furnished to: P W S P

[Signature]
Surveyor, D.C.

By: D.J.M. *[Signature]*

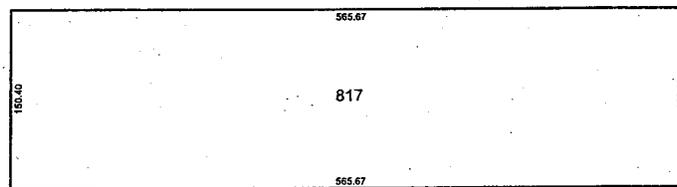
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly placed; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and placed, and agree with plans accompanying the application; that the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

Date: _____

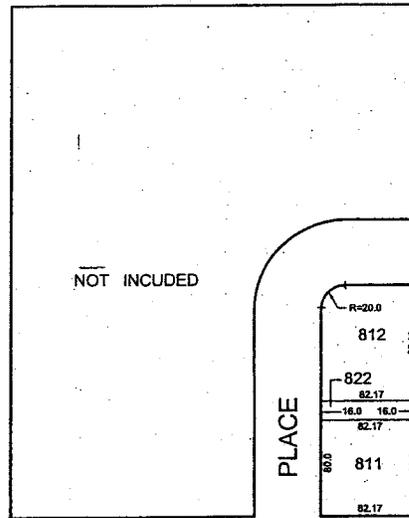
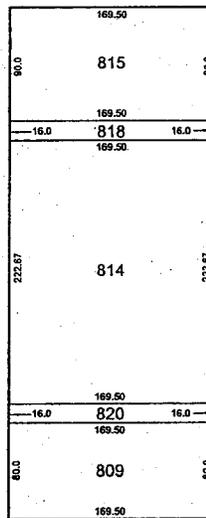
(Signature of owner or his authorized agent)

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

ANACOSTIA AVENUE, N.E.



BARNES STREET

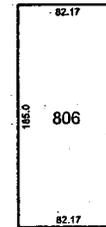
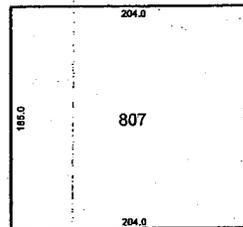
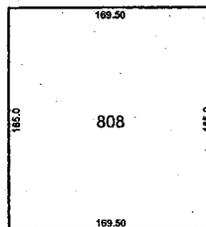


FOOTE STREET, N.E.

DELANO ROOSEVELT PLACE

GRANT PLACE, N.E.

PARKSIDE PLACE



KENILWORTH TERRACE, N.E.

RECORDED

D.C. OFFICE OF RECORDING

2007 APR 13 5:11:29 PM

SO-06788(2007)

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 27, 2007

Plat for Building Permit of SQUARE 5005 LOTS 14-25 & 801-813

Scale: 1 inch = 100 feet Recorded in Book 117 Page 7 (LOTS 14-25)
Book AAT Page 3179-P (LOTS 801-813)

Receipt No. 06789

Furnished to: PWSP

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

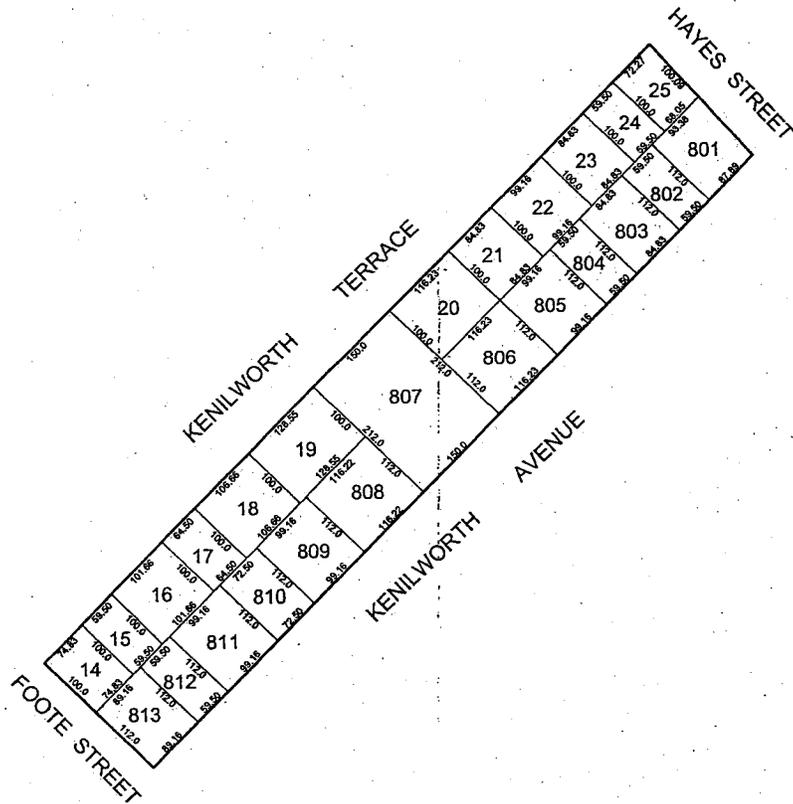
Date: _____

[Signature]
Surveyor, D.C.

By: D.M. *[Signature]*

(Signature of owner or his authorized agent)

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



RECORDED
D.C. OFFICE OF THE SURVEYOR
2007 APR 13 10 29 AM

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 27, 2007

Plat for Building Permit of SQUARE 5056 LOTS 806, 809, 810, 814, 821

Scale: 1 inch = 40 feet

Recorded in A&T Book Page 3757-X

Receipt No. 06790

Furnished to: P W S P

[Signature]
Surveyor, D.C.

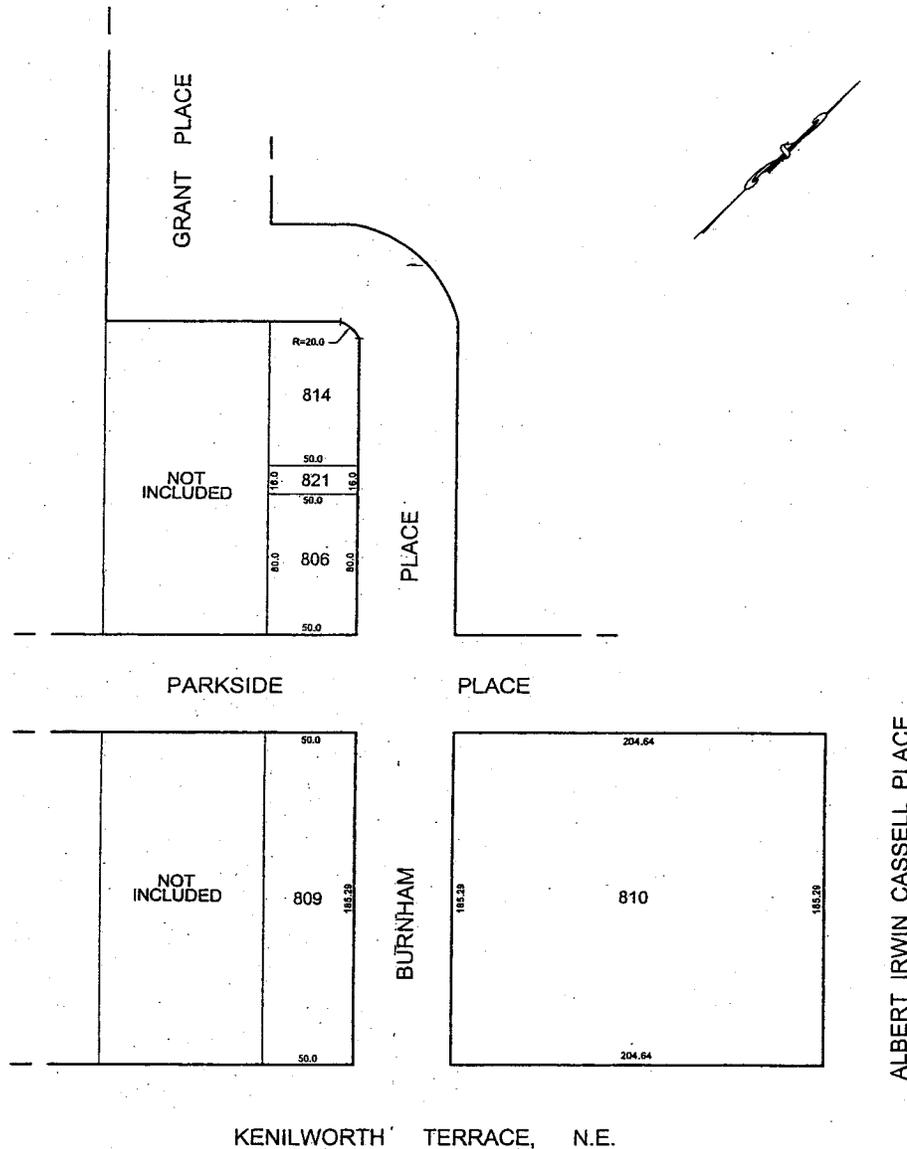
By: D.M. *[Signature]*

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

Date: _____

(Signature of owner or his authorized agent)

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



SO-06790(2007)

3397

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