

THE ARTS & TECHNOLOGY ACADEMY**INVITATION TO BID****Soliciting Sealed Bids For: Building Envelope Repair****Bid No.: ATA-2008-1BER**

Copies of bidding packages will be available for pick-up beginning Monday, March 31, 2008 between the hours of 9:00 am - 4:00 pm, at the offices of SMISLOVA, KEHNEMUI & ASSOCIATES, P.A. (SKA); CONSULTING STRUCTURAL ENGINEERS located at 6101 Executive Boulevard, Suite 250; Rockville, Maryland 20852 Telephone: (301) 881-1441. The bid package includes all project specifications and bidding instructions including a pre-bid meeting at 10:30 AM on Wednesday, April 2 at the project located at 5300 Blaine Street, NE, Washington, DC 20019. Bids must be delivered to the office of SKA or via electronic mail at HoraceW@skaengineers.com by 4:00 PM April 10, 2008

Electronic copy of this solicitation is not available.

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:

Christine E. Burkhart
Single-Member District 4A06

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: 2D01

Petition Circulation Period: **Monday, March 31, 2008 thru Monday, April 21, 2008**
Petition Challenge Period: **Thursday, April 24, 2008 thru Wednesday, April 30, 2008**

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

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

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

**DISTRICT DEPARTMENT OF THE ENVIRONMENT
NATURAL RESOURCES ADMINISTRATION
WATER QUALITY DIVISION**

Announcement of Comment Period for 2008 303(d) List

Section 303(d) of the federal Clean Water Act and regulations developed by U.S. Environmental Protection Agency (EPA) requires states to identify all waters that do not meet water quality standards even after all pollution controls required by law are in place. Waterbody segments not meeting the appropriate water quality standards are considered to be impaired. The law requires that states place these impaired segments on a list referred to as the 303(d) List (2008 List). Development of Total Maximum Daily Loads (TMDLs) for the waterbodies on the List may be required.

A draft 303(d) List for the District of Columbia has been prepared. Commencing on March 31, 2008, copies of the 2008 List will be on file and may be inspected at the Martin Luther King, Jr. Library, 901 G St., NW, Washington, DC 20001 during normal business hours. In addition, the document can be downloaded at the following website address <http://ddoe.dc.gov> under the Information section at the Public Notices bullet.

The **comment period for the List is March 31, 2008 to April 30, 2008**. Persons wishing to comment on the 2008 List are invited to submit written comments, by mail, to:

District Department of the Environment
Natural Resources Administration
Water Quality Division
Attention 2008 303(d) List
51 N Street, N.E., 5th Floor
Washington, D.C. 20002

Such written comments are to be received on or before April 30, 2008 at 4 pm.

Following the 30 day comment period, the Water Quality Division will consider the comments received to finalize the list. The final list will be sent to the EPA for review and approval.

HYDE LEADERSHIP PUBLIC CHARTER SCHOOL**Request for Proposals: Roof Repair**

The Hyde Leadership Public Charter School is accepting bids to replace the existing roof on its facility at 101 T Street, NE, Washington, D.C. RFP documents and bid specifications may be obtained by contacting Ken Grant, Chief Operating Officer, at 202-551-0830 or by emailing kgrant@hydedc.org. Prospective bidders should contact Mr. Grant to arrange site visits. Bids must be marked **ATTN: Business Office** and received not later than close of business April 25, 2008. The contract will be awarded to the qualified bidder with the most points in the evaluation criteria.

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

**Judicial Tenure Commission Begins Review Of
Judge Russell F. Canan**

This is to notify members of the bar and the general public that the Commission has begun inquiries into the qualifications of Judge Russell F. Canan of the Superior Court of the District of Columbia. Judge Canan is a declared candidate for reappointment as an Associate Judge upon the expiration of his term on August 8, 2008.

Under the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 796 (1973), §443(c) as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §12(1) provides in part as follows:

"...If a declaration (of candidacy) is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written statement of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia Court."

The Commission hereby requests members of the bar, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Judge Canan which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting material shall be kept confidential unless expressly authorized by the person submitting the information.

another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia Court."

The Commission hereby requests members of the bar, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Judge Canan which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting material shall be kept confidential unless expressly authorized by the person submitting the information.

All communications shall be mailed or delivered by **May 1, 2008**, and addressed to:

District of Columbia Commission on Judicial
Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
Fax: (202) 727-9718

The members of the Commission are:

William P. Lightfoot, Esq., Chairperson
Hon. Gladys Kessler, Vice Chairperson
Gary C. Dennis, M.D.
Noel J. Francisco, Esq.
Shirley A. Higuchi, Esq.
Ronald Richardson
Claudia A. Withers, Esq.

BY: /s/ William P. Lightfoot
Chairperson

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PARKS AND RECREATION**

NOTICE OF APPLICATION

Notice is hereby given that, pursuant to the authority set forth in § 9a D.C. Law 3-30; D.C. Official Code § 8-1808.01 (2006 Supp.), dated December 7, 2007, that the District Department of Parks and Recreation is reviewing an application for a dog exercise area adjacent to Newark Community Gardens on 39th Street, NW (Reservation 351L).

The proposed application seeks to install and operate a 1,100 square-foot off-leash dog exercise area adjacent to Newark Community Gardens. The proposed site is located in between the tennis courts and 39th Street. Interested parties wishing to review the application can review the application in-person at the District Department of Parks and Recreation headquarters at 3149 16th Street, NW, 1st floor.

Interested persons may submit written comments within thirty (30) days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the issues in dispute or support surrounding the implementation of a dog park. All relevant comments will be considered in reviewing the dog park application. **Written comments postmarked after April 29, 2008 will not be accepted.**

Address written comments to:

Bridget Stesney
Planning Officer
Office of Planning & Capital Projects
District Department of Parks and Recreation
3149 16th Street, NW
Washington, DC 20009

For more information, please call (202) 673-7647.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE

FORMAL CASE NO. 1050, IN THE MATTER OF THE INVESTIGATION OF IMPLEMENTATION OF INTERCONNECTION STANDARDS IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission") issued a Notice of Proposed Rulemaking ("NOPR"), on the "District of Columbia Small Generator Interconnection Rules" ("DCSGIR"), published in the *D.C. Register* on February 8, 2008.¹ The NOPR invited the public to submit comments by March 10, 2008, and reply comments by March 25, 2008.

2. On March 10, 2008, Maryland-DC-Virginia Solar Energy Industries Association ("MDV-SEIA") filed a request for an extension of time to file written comments.² MDV-SEIA's motion requests that the Commission extend the time until March 31, 2008, to file written comments to the proposed DCSGIR. MDV-SEIA's Motion was accompanied by comments on the DCSGIR. However, MDV-SEIA states that the depth of the technical issues presented by the DCSGIR requires significant analysis.³ Thus, MDV-SEIA is requesting the additional time to submit a more thorough and in-depth set of comments, and to contribute more expertise on the issues concerning the DCSGIR.⁴

3. In this proceeding, the Commission has proposed a comprehensive set of regulations and procedures regarding interconnection of small generators to the distribution system in the District of Columbia. In order to afford ample opportunity for comments, we are granting MDV-SEIA's request and extending the comment period. The period for filing reply comments will be extended as well. The deadline for filing comments is extended to March 31, 2008, and the deadline for filing reply comments is extended to April 15, 2008.

¹ 55 *D.C. Reg.* 1332-1361 (February 8, 2008).

² *Formal Case No. 1050, In The Matter Of The Investigation Of Implementation Of Interconnection Standards In The District Of Columbia ("F.C. 1050")* MDV-SEIA's Motion for Enlargement of Time ("MDV-SEIA's Motion") filed March 10, 2008.

³ *F.C. 1050*, MDV-SEIA's Motion filed March 10, 2008.

⁴ *F.C. 1050*, MDV-SEIA's Motion filed March 10, 2008.

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

Application No. 17537-A of Victor Tabbs, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to construct an addition that would convert a row dwelling into a flat not meeting the percentage of lot occupancy in the R-4 district at premises 740 13th Street, S.E. (Square 1045, Lot 97).

HEARING DATES: November 21, 2006 and December 12, 2006

DECISION DATE: January 23, 2007

RECONSIDERATION DATES: September 4, 2007, October 2, 2007, October 23, 2007,
November 20, 2007

ORDER DENYING RECONSIDERATION

By order dated July 27, 2007, the Board approved an application submitted July 11, 2006 by Victor Tabbs ("Applicant") for a special exception under § 223 of the Zoning Regulations to allow construction of a three-story-plus-cellar addition to a single-family dwelling in the R-4 district at 740 13th Street, S.E. (Square 1045, Lot 97). Parties in the proceeding were the Applicant and Advisory Neighborhood Commission ("ANC") 6B, which opposed the application due to concerns that the addition would adversely affect the light, air, and privacy of neighboring property owners.

On August 6, 2007, ANC 6B submitted a motion for reconsideration of the Board's decision and for an immediate stay of the order. The motion reiterated the ANC's opposition to approval of the special exception requested by the Applicant, arguing that the Board incorrectly decided that the proposed addition would not exceed the maximum permitted number of stories and thus did not require a variance, and that the proposed addition would not impair the light, use, privacy, and enjoyment of the adjacent properties. According to the ANC, a shadow study included with the motion demonstrated that the proposed addition would cause a "major detriment" to the neighboring properties.

On September 4, 2007, the Applicant submitted a response in opposition to the motion for reconsideration. The Applicant disputed the accuracy of the ANC's shadow study, and asserted that the Board's decision to grant the requested special exception had been correct.

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At a public meeting on September 4, 2007, the Board granted the motion for reconsideration in part. The Board declined to stay the effectiveness of its Order or to reconsider its decision with respect to the ANC's allegation that a variance was required, but scheduled a public hearing on the limited issue of whether the shadow study submitted by the ANC demonstrated that the proposed addition would cause adverse impacts to neighboring properties with respect to light and air.

At the limited public hearing, held on October 2, 2007, the Board heard testimony from the ANC and from the Applicant. By memorandum dated November 6, 2007, submitted in response to a request for information from the Board, the Office of Planning ("OP") reiterated its recommendation of approval of the application. After reviewing the additional submissions by the ANC, OP continued to believe that the addition would not "unduly affect the light or air available" to the abutting property or "compromise the privacy of use and enjoyment of neighboring properties."

CONCLUSIONS OF LAW

The ANC submitted a timely request for reconsideration of the Board's order in this proceeding. A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. 11 DCMR § 3126.4.

The Board was not persuaded that the motion and additional evidence submitted by ANC 6B provided sufficient grounds to cause the Board to reconsider its decision to grant the special exception requested by the Applicant. The Board credits the recommendation of the Office of Planning in concluding that the proposed addition, without the parapet originally proposed by the Applicant, will not unduly affect the light, air, and privacy available to neighboring properties.

Pursuant to 11 DCMR § 223.4, in this Order the Board adopts the conditions recommended by the Office of Planning in its supplemental report, concerning the elimination of a parapet and two nonconforming courts initially proposed by the Applicant, to ensure that the addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent properties.

Accordingly, it is therefore **ORDERED** that the motion for reconsideration is **DENIED** and the application for a special exception under § 223, to construct a three-story addition not meeting lot occupancy requirements in the R-4 district at 740 13th Street, S.E. (Square 1045, Lot 97), is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The addition shall be constructed without a parapet.
2. The addition shall be constructed to the property lines on both sides of the subject property so as to eliminate any courts potentially created by the exterior walls of the addition.

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VOTE: 3-1-1 (Curtis L. Etherly, Jr., Gregory N. Jeffries, and Shane L. Dettman voting in favor; Ruthanne G. Miller opposed; one Board member not participating, not voting).

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 10 2008

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.

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

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

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

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

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

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

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

HEARING DATE: May 15, 2007
DECISION DATE: June 5, 2007

CORRECTED SUMMARY ORDER

Note: This order corrects BZA Order No. 17608, by indicating below that the application is approved subject to the landscape and building plans shown as Exhibit Nos. 8 and 28, in the record.

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. ANC 7C did not submit a report in this application. The Office of Planning (OP) submitted a report in support of the application. The Department of Transportation submitted a report having no objection to the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 353. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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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. 8 & 28 – Plans) be **GRANTED**.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: June 8, 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,

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

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

Application No. 17609 of First Baptist Church, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy provisions under section 403, and a variance from the nonconforming structure provisions under subsection 2001.3,¹ to allow the construction of an addition to an existing church in the R-4 District at premises 710 Randolph Street, N.W. (Square 3131, Lots 41 & 823).

HEARING DATE: May 15, 2007

DECISION DATE: July 3, 2007

DECISION AND ORDER

First Baptist Church, Inc. (the applicant or the Church), the owner of the subject property, filed this application for variance relief on January 8, 2007. Following a public hearing on May 15, 2007, the Board of Zoning Adjustment (the Board) voted to approve the requested relief.

PRELIMINARY MATTERS

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 5).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 4C, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 19).

ANC 4C The subject site is located within the jurisdiction of ANC 4C, which is

¹ Initially, the applicant also sought relief from the limitation on the number of stories under § 400, and a variance from the court requirements under § 406. However, the request for relief under these sections was withdrawn after the applicant determined this relief was not required (Exhibit 27).

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automatically a party to this application. In its report dated May 14, 2007, ANC 4C indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to oppose the application. The ANC cited the following concerns about the project: "increased parking problems, environmental concerns, the potential for vermin (rodent) infestation stemming from construction threats to the architectural integrity of the block and the potential for structural damage to adjacent property" The ANC also submitted the minutes from its May, 2007 meeting (Exhibit 32). ANC Commissioner Timothy Jones appeared on behalf of the ANC at the public hearing.

Requests for Party Status There were no requests for party status.

Persons in Support The adjacent property owner, Mae Frances Phillips (Ms. Phillips), testified in support of the application. She stated that the applicant had made changes to the project at her request, and she was satisfied that she would not be adversely impacted if the application were granted.

Persons in Opposition The Board received letters in opposition from three neighboring property owners (Exhibits 28, 29 and 30), and a fourth letter requesting that the Board review specific issues such as the project's architectural impact, impacts on traffic patterns and parking requirements, and impacts on noise levels (Exhibit 22).

Government Reports

OP Report OP reviewed the variance application and prepared a report recommending denial of the variance request (Exhibit 25). OP concluded that the property did not meet the test for a variance because, although the shape of the lot could be viewed as an exceptional condition, this factor does not result in any practical difficulty to the Church. OP's representative, Steven Mordfin, testified at the public hearing, adding that the Church is able to use the property without the expansion, and the density created by the project would negatively impact the zone plan.

Closing of the Record Pursuant to § 3117.12, the Board closed the record at the end of the public hearing, except to allow copies of minutes from the ANC meeting, and submissions concerning the project's impact on the retaining wall at the adjacent property.

Post-Hearing Submissions After finding good cause and no prejudice to any party², the Board accepted an additional filing from the applicant, a letter to the adjacent property

² Section 3100.5 of the Regulations allows the Board to waive a provision of the Regulations for good cause shown if the waiver will not prejudice the rights of any party.

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owner, Ms. Phillips (Exhibit 34). The letter stated that the Church would: (a) replace the retaining wall on Ms. Phillips' property, (b) repair any damage to her home relating to construction activity, and (c) compensate Ms. Phillips for her inconvenience by landscaping her rear yard and providing new patio furniture. However, the impacts of construction are irrelevant to the Board's consideration of a variance.

FINDINGS OF FACT**The Site and Surrounding Area**

1. The property consists of two adjacent lots at Square 3131, Lot 823 and Lot 41. Both lots are zoned R-4.
2. The existing church building is located on Lot 823. It is a structure built in 1926 and is non-conforming, in that its lot occupancy is greater than the 60% now permitted in the R-4 zone. *See*, § 403.2. (Exhibits 24, 25).
3. An end unit row dwelling is located on Lot 41. The row dwelling was constructed in 1913, is owned by the First Baptist Church, and is used for church related activities. (Applicant's Statement, Exhibit 24, and OP Report, Exhibit 25)
4. A fifteen to twenty foot wide public alley dead-ends within the square and provides rear service to the site.
5. All surrounding properties are located within the R-4 zone district.
6. To the east and southwest of the property are two and one-half story row dwellings. To the north, across Randolph Street, is a single family detached dwelling. To the northwest, and also across the street, is a building owned by the Church that is operated as the First Baptist Church Senior Citizens Center. The building houses a senior citizens center and some religious education classes for the Church. To the west, across New Hampshire Avenue, is a public park. (Exhibit 25)

The Church Programs

7. The property is owned by First Baptist Church, Inc., a religious institution incorporated under the laws of the District of Columbia. The Church has been in existence for 143 years and has 900 members. In addition to worship services and religious education, the Church conducts various social service programs such as a child development program, a senior citizens daycare program, financial planning seminars,

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health and wellness seminars, legal aid workshops for seniors, AA meetings, computer training classes, HIV – AIDS awareness programs, and a scouting program. With the exception of the senior citizens daycare and some religious school classes, these programs are conducted at the site. (Exhibits 4, 24)

8. The Church needs additional space to maintain its current level of activity, which has grown over the years. The Church building activities are carried out in cramped quarters or in multi-use areas. Also, there is inadequate space at the Church building for children's religious education classes. These classes are now held at the building across the street, requiring children to cross a busy thoroughfare. Finally, there is no means for persons with disabilities to access the sanctuary, administrative offices, or classes. (Exhibits 24, 25). All of these problems can be resolved by the expansion of the Church building as described below.

The Project

9. The proposal is to expand the Church to the lot next door, consolidating the two existing lots into one lot. The Church proposes to demolish the adjacent row dwelling and replace it with a three-story addition to the Church. The addition would house church offices, storage and mechanical rooms, bathrooms, classrooms and multi-purpose rooms, and would enable the religious school classes across the street to be brought into the main Church structure. The addition would also house an elevator to provide access for persons with disabilities. (Exhibit 24)

10. The Church filed similar applications with the Board in BZA Case No. 15164 in 1989, and BZA Case No. 17150 in 2004. In the first case, the Board granted a special exception and variance. However, the project was not built due to financial reasons. In the second case, the application was withdrawn on January 27, 2005 because of significant opposition and Board concerns. As a result of this past opposition, the massing of the current project was scaled back. (Exhibit 24)

The Zoning Relief

11. The church building, when expanded, will cover 78% of the new consolidated lot. Because the maximum lot occupancy in the R-4 zone is 60%³, the Church requires a variance from the lot occupancy requirements under § 403.2 of the Regulations.

12. A building smaller than the one proposed would be inadequate to meet the Church's current needs. Given the existing operation of its public service programs, the Board

³ See, 11 DCMR 403.2

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finds that the proposed addition is no larger than what is needed to relieve the overcrowding at the building. As noted by the Church's architect, "[the building is] as large as it has to be to accommodate the program and it's not the most efficient building in the world..." (T. p. 247).

13. Because the Church proposes to enlarge the existing non-conforming building in a manner that will result in a lot occupancy which exceeds the maximum permitted in the zone, the Church also requires a variance under § 2001.3 of the Regulations.

The Impact of the Proposed Addition

14. The Board finds that the proposed addition will not adversely affect the traffic or parking conditions in the neighborhood. No new programmatic activities will take place in the expanded facility; the additional space or rooms will merely allow the Church to more efficiently and effectively accommodate the activities they are currently housing within the two existing lots. (See, for example, Applicant's Statement, Exhibit 24, and testimony of Reverend Tucker, T. p. 215) The single largest use of the property will remain the sanctuary. As no increase in capacity is proposed for the sanctuary, there should not be an increase in traffic or parking problems following construction. (See, testimony of OP representative, Steven Mordfin, T. p. 271) Moreover, there is no requirement for additional parking since the sanctuary is not being expanded. See, § 2101 of the Regulations. Nonetheless, the Church represents that it will continue to work with the community and the DC Department of Transportation to devise appropriate programs and improvements to further lessen any traffic or parking impact from church activities. (Exhibit 24)

15. The Board finds that the proposed addition will not deprive neighboring property owners of light and air. The addition was designed to minimize the loss of light for neighboring residential properties to the east. The upper floor was redesigned -- nearly one third of the floor was removed -- so that the addition would not appreciably block more light than the existing row dwelling does. (Exhibit 24)

16. The Board finds that the privacy of neighbors will not be unduly compromised as a result of the project. The addition will have only a few windows. The windows will be placed above eye level, so as to allow light in the Church but prevent anyone in the Church from looking into the neighbors' rear yards. (Exhibit 24)

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3)(2001), to grant

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variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the lot occupancy requirements under § 403 and the non-conforming structure provisions under § 2001.3 to allow an addition to an existing church building.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id* at 1170.

As to the first prong, the Board finds that the Church's programmatic needs and its historical commitment to remain at the site, constitute an exceptional condition at the property. As set forth above, the Church has remained on this site for 143 years, but finds that it can no longer effectively carry out its religious and social programs without the expansion requested.

Finding an exceptional condition in the Church's programmatic needs is consistent with decisional law. In *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091 (1979), the Court of Appeals upheld use and area variances needed to allow the expansion of the Capitol Hill offices of the Republican National Committee. Among other things, the *Monaco* decision held that the needs of a non-profit group to expand its facilities may constitute the extraordinary and exceptional situation needed to satisfy the first prong. The Court specifically held that:

when a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same area of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible "other extraordinary and exceptional situation or condition of a particular piece of property.

Id., at 1100.

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A little more than a decade later, the Court of Appeals applied this principle in *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949 (1990), which affirmed, following a remand,⁴ the BZA's grant of a variance to the George Washington University to permit the expansion of a medical office building to an adjacent property. The expansion was needed to eliminate over crowding in the original building and to consolidate various ambulatory care services that existed in other University building scattered throughout the District.

Applying these principles here, the Church public service programs have outgrown the capacity of its current space. In addition, an increasing number of the Church's membership have disabilities and cannot access the church facilities. The proposed expansion is the only means by which such accessibility can be accomplished. In addition, the property on which the addition is to be built is already used by the Church to carry out several of its functions. Thus, as in *Monaco* and *Draude*, the Church's proven need to expand its facilities onto property already utilized by it for Church purposes constitutes an exceptional condition and therefore satisfies the first prong of the test.

As to practical difficulty, the Court of Appeals explained how the test may be applied to a non-profit, such as the Church.

The need to expand does not, however, automatically exempt a public service organization from all zoning requirements. Where a public service organization applies for an area variance in accordance with *Monaco*, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.

Draude v. District of Columbia Bd. of Zoning Adjustment, 527 A.2d 1242, 1256 (DC 1979)

Such a showing was made here, *see*, Finding of Fact 12. While the property has been put to use without the addition, the facilities have been overcrowded. Furthermore, under *Monaco* the Board may be more flexible when it assesses a non-profit organization than when it assesses a business enterprise. 407 A.2d at 1098. The Church asserts that it cannot expand as necessary to fulfill its mission and still comply with the Regulations. The Board has no cause to second-guess this assertion and finds that the second prong of the variance test has been satisfied.

⁴ The Court of Appeals remanded the case because the Board initially failed to explain how this exceptional circumstance resulted in a practical difficulty to the applicant. *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242 (D.C. 1987)

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Turning to the third prong of the variance test, the Board concludes that the expansion will not result in substantial detriment to the public good. The scaled back design allows more light and air for the residential neighbors, and the window placement is configured to protect the privacy of neighboring property owners. Because no new programs will be added, the expansion should not result in any increase in traffic or parking. Nor will the expansion substantially impair the intent, purpose, and integrity of the zone plan. As explained above, the design of the addition has been scaled back and addresses the Board's previous concerns with massing.

The Board is required under D.C. Official Code § 1-309.10(d)(3)(A)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. As noted, the ANC opposed the application, stating it was concerned about "increased parking problems, environmental concerns, the potential for vermin (rodent) infestation stemming from construction threats to the architectural integrity of the block and the potential for structural damage to adjacent property"

Regarding the first concern, the Board does not agree that the proposed addition will affect parking in the neighborhood. As explained above, because no new programs are planned, no increase in traffic or parking is likely. What is more, no additional parking will be required as a result of the expansion of the church because its parking requirement is based upon the seating capacity of its main sanctuary, which will not be increasing. Nor will the expansion substantially impair the intent, purpose, and integrity of the zone plan. The design of the addition has been scaled back and addresses the Board's previous concerns with massing. Also, the proposed addition will in no way expand the sanctuary or increase church membership. The addition is only to accommodate existing church programs. Finally, as also noted above, the Church represents that it will work with the appropriate District agencies should any parking or traffic problems arise.

The ANC's other concerns relate to construction and are not entitled to great weight. The DC Court of Appeals has held that the written recommendations of the ANC are entitled to "great weight" only to the extent that they address issues and concerns that are legally relevant. *Bakers Local Union No. 118 v. DC BZA*, 437 A.2d 176 (D.C. 1981). In other words, the "ANC concerns must 'relate to...the statutory criteria for granting [the zoning relief requested]'" (quoting *Friendship Neighborhood Coalition v. DC BZA*, 403 A.2d 291 (D.C. 1979)). Nothing in the Zoning Regulations relates to construction safeguards. Nonetheless, the Church did address the ANC's concerns in this regard. The Church made a commitment to protect neighboring property owners during the construction process (Ex. 27), and also addressed concerns relating to the adjacent neighbor's retaining wall. (Exhibit 34).

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In reviewing a variance application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. However, the Board does not find OP's advice to be persuasive. OP asserts there is nothing exceptional about the property other than the shape of its lot, from which no practical difficulties arise. However, as explained above, the 'exceptional' circumstance in this case is not found in the shape or size of the land, but in the Church's need to expand in order fulfill its mission, an exceptional condition which drives the need to exceed lot occupancy requirements, even after the two lots are combined into one.

Nor does the Board agree with OP's assessment that the addition will do substantial detriment to the public good and substantially impair the intent, purpose, and integrity of the zone plan for the same reasons as indicated in the Board's ANC great weight discussion. OP states that the addition will not be consistent with the preservation of row house neighborhoods in the R-4 zone. For the reasons stated in the Board's discussion of the third prong the variance test, the Board does not agree that the scaled back version of the addition will appear to be massive, or that it will result in "substantial detriment" to the public good.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow zoning relief from the requirements under § 403 and § 2001.3 pertaining to lot occupancy and non-conforming structures to allow the construction of the proposed addition.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud and John A. Mann II to grant, Curtis L. Etherly, Jr. being necessarily absent; and no Zoning Commission member having participated)

Vote taken on July 10, 2007

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

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

FINAL DATE OF ORDER: MAR 12 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT

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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 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.

SG

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

Application No. 17613 of Sonja Sweek, pursuant to 11 DCMR § 3104.1, for a special exception under § 205 to establish a child development center (68 children and 21 staff) and for variances from parking requirements under § 2101.1 and from the prohibition against enlarging a nonconforming building under § 2001.3 so as to construct a third floor addition to the existing building in the R-4 zone district at the premises 1359 C Street, S.E. (Square S-1039, Lot 801).¹

HEARING DATE: May 22, 2007
DECISION DATE: July 3, 2007

DECISION AND ORDER

This application was submitted January 11, 2007 by Sonja Sweek ("Applicant"), the owner of the property that is the subject of the application. By memorandum dated September 29, 2006, the Office of the Zoning Administrator indicated that the Applicant's request for a certificate of occupancy to use the subject property as a child development center was disapproved due to the need for Board approval of a special exception under § 205 of the Zoning Regulations. As finally amended, the application requested a special exception under § 205 to establish a child development center for 68 children and 21 staff members, as well as variance relief from parking requirements under § 2101.1 and from the prohibition under § 2001.3 against enlarging a nonconforming building. This area variance was requested to allow the construction of a third-floor addition to the existing building on the subject property in the R-4 zone district at 1359 C Street, S.E. (Square S1039, Lot 801).

Following a public hearing and public meeting, the Board voted on July 3, 2007 to deny the application.

¹ The application originally requested only a special exception under § 205 to establish a child development center at the subject property for 100 children and 18 staff members. At the public hearing, the Applicant was permitted to amend the application to seek, in addition, variances from § 2101.1, concerning parking requirements, and from § 2001.3, concerning the enlargement of a nonconforming building. At the hearing, the Applicant also revised the application to reflect that the maximum enrollment at the proposed child development center would be 68 children, with 21 staff members.

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PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated January 16, 2007, the Office of Zoning provided notice of the application to the Office of Planning; the Department of Transportation; the Department of Health; the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6B, the ANC within which the subject property is located; and Single Member District/ANC 6BF06. Pursuant to 11 DCMR § 3113.13, on March 5, 2007 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 6B, and owners of property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on March 16, 2007 (54 DCR 2336).

Party Status. In addition to the Applicant, ANC 6B was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to a group of residents living near the subject property known as the C Street Opponents. This party encompassed an individual, Frank Kulbaski, and two groups, Neighbors of the 14th and C Street S.E. Block and the Kentucky Courts Condominium Association Board, that had requested party status separately. The C Street Opponents were represented by Frank Kulbaski, a resident of Kentucky Courts, located at 1352 C Street, S.E.

Applicant's Case. The Applicant described the proposed child development center use of the subject property, asserting that the addition of a third floor to the existing building was needed to allow for a higher enrollment, which was necessary to make the business economically viable. The planned third-floor addition would be set back from the existing building so as to occupy approximately 60 percent of the lot size. The maximum height of the building with the addition would be approximately 38 feet.

As proposed, the child development center would operate from 7:00 a.m. to 7:00 p.m., Monday through Friday. Upon enrolling a child in the child development center, parents would be required to sign a "traffic agreement" indicating their agreement to the Applicant's drop-off and pick-up procedures. The Applicant indicated that employees of the child development center would assist in the drop-off of children from vehicles arriving at the subject property on 14th Street. Deliveries would also be made from 14th Street.

The Applicant estimated that half of the children would be dropped off at the subject property by car; the remainder would arrive from the nearby neighborhood on foot. There would be no outdoor play area at the subject property, but the children attending

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the child development center would be taken daily to parks in the vicinity, supervised by the center's staff.

In 2006 the Applicant entered into a use agreement with an elementary school across the street from the subject property that would allow the staff of the child development center to use six parking spaces in the school's parking lot on weekdays. The use agreement had an initial term of one year, and was renewable. The Applicant planned to offer a transit subsidy to employees to encourage the use of public transportation to the subject property, which was located three blocks from the Potomac Avenue Metrorail station and in the vicinity of Metrobus routes.

In a supplemental filing dated June 8, 2007, the Applicant asserted that the requested variances should be granted because (i) the scale and historically commercial or mixed use of the building represented an exceptional condition; (ii) hardship would otherwise result, given the cost of refurbishing the decrepit building and the need for a third-floor addition to increase the capacity of the child development center and make it a viable business, since much of the first floor of the building would be devoted to code-compliant egress and life safety measures; and (iii) the increase in building height as a result of the addition would not make the building incompatible with the heights of other buildings in the vicinity, including the adjacent Kentucky Courts condominiums and the elementary school. With regard to parking, the Applicant noted that the subject property had never provided any off-street parking spaces.

Government Reports. By memorandum dated May 9, 2007, the Office of Planning ("OP") indicated that a child development center at the proposed location would be in harmony with the general purpose and intent of the Zoning Regulations and Map, but recommended a reduction in the maximum enrollment of 100 children originally proposed by the Applicant before approval of the requested special exception.² According to OP, the application had "the potential to meet the requirements of § 205," but the enrollment of 100 children at the subject property would result in "an unacceptable level of impact" on the surrounding community.

By supplemental report dated June 18, 2007, the Office of Planning indicated that the proposed reduction in the number of children enrolled at the child development center from 100 to 68 was sufficient to alleviate OP's concerns, provided that drop-offs and pick-ups would be limited to the 14th Street frontage and managed during peak hours by employees of the child development center. OP concluded that approval of the requested

² The report also indicated OP's belief that the Applicant's proposal required variance relief from § 2101.1 with respect to parking and from § 2001.3 to enlarge the nonconforming building on the subject property.

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special exception would not cause undue negative impacts on the surrounding community.

OP also recommended approval of the parking variance, stating that the subject property was subject to an exceptional condition in that "there is no ability to provide extra parking on the site," and that the practical difficulty associated with the inability to provide parking would apply to any future use in the building. However, OP was "unable to find sufficient reason to recommend in favor of a variance" necessary to add a third floor to the building, because the Applicant's claim of practical difficulty was based on an economic rationale related to the proposed child development center and because the building had been previously devoted to residential use as an apartment house.

By memorandum dated May 18, 2007, the District Department of Transportation ("DDOT") indicated no objection to the application for approval of a child development center with 100 children and 18 staff at the subject property. DDOT noted that the Applicant anticipated that "a large percentage" of children using the child development center would "reside in the immediate area" and would be dropped off by parents walking to the site, and that the Applicant would have staff available to supervise drop-off activities for those arriving by car. DDOT concluded that the proposed child development center would not create objectionable or dangerous traffic conditions or significantly affect the available supply of on-street parking.

By supplemental report dated June 28, 2007, DDOT reiterated its lack of objection to the Applicant's proposal. According to DDOT, the reduction in planned enrollment from 100 to 68 children and the Applicant's proposed drop-off and pick-up procedures would "improve the operations of the center and overall safety."

ANC Report. At a regularly scheduled and properly noticed meeting on May 8, 2007, with a quorum present, ANC 6B voted 9-1-0 to oppose the Applicant's request for a special exception to establish a child development center with 100 children and 18 staff at the subject property, "without prejudice to a future application." By letter dated May 30, 2007, the ANC indicated its belief that the requested special exception failed to meet zoning requirements because (i) the proposed child development center would cause adverse traffic impacts for area residents that would not be mitigated by the Applicant's proposed traffic plan; (ii) the Applicant's lease of six parking spaces at a nearby elementary school would be insufficient for staff and visitors of the child development center; and (iii) the proposed child development center would be located in close proximity to similar facilities – an elementary school, which was expected to increase its enrollment due to program changes in the near future, and another child development

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center – that already generated “considerable traffic” in the vicinity of the subject property.

Party in Opposition to the Application. The C Street Opponents contended that the requested special exception – whether for 100 or 68 children, with 18 or 21 staff – would violate § 205.3, in that the proposed child development center would create objectionable traffic conditions and unsafe conditions for picking up and dropping off children, particularly with respect to the lack of a loading zone on 14th Street and the likelihood that vehicles dropping off or picking up children at the site would obstruct access by emergency vehicles, block the driveway to the Kentucky Courts condominiums, and interfere with the bicycle lane on 14th Street. The C Street Opponents also asserted that the proposed child development center would increase demand for a limited number of on-street parking spaces, especially in light of the proximity of the elementary school and another child development center a block from the subject property, and objected that the Applicant’s use agreement allowing staff parking at the elementary school could be canceled after 30 days notice at the convenience of the school system.

In a response to the Applicant’s supplemental submission, filed June 25, 2007, the C Street Opponents objected to the Board’s consideration of variance relief for the Applicant, arguing that the Applicant had not filed applications for variances or paid filing fees for variance applications, and that no public notice was given indicating the need for variance relief. According to the C Street Opponents, some persons “not oppose[d] to the establishment of a child development center of a reasonable size would oppose the addition of a third story to the building” if they knew of the need for variance relief. The C Street Opponents also objected to their lack of opportunity to cross-examine the Applicant and the Office of Planning on their post-hearing submissions, especially with respect to OP’s recommendation of approval of the requested parking variance, and to the ANC’s lack of opportunity to participate in the decision regarding whether the variances should be granted.

The C Street Opponents argued that the variance needed to add a third story to the building should not be granted because (i) the Applicant had not shown that the subject property was not subject to an exceptional condition, because the lot was rectangular and not exceptionally narrow or shallow, and most neighboring properties were also improved with two-story buildings; (ii) the Applicant’s ability to increase the profitability of the proposed child development center was insufficient to establish that a practical difficulty would arise from the denial of a variance permitting construction of a third-floor addition; and (iii) a third-story addition would harm the public good and the zone plan by permitting a child development center at a level of enrollment that would adversely affect safety, traffic, and parking in the neighborhood and would create undue

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noise. The C Street Opponents also argued that the requested parking variance should be denied, asserting that the subject property was not unique in its inability to provide off-street parking, and that the parking arrangement negotiated by the Applicant with the elementary school was not an adequate substitute, in part because cancellation of the agreement "could result in as many as 21 staff members with nowhere to park except on the street, thereby presenting an extreme burden on the neighborhood."

Persons in Support of the Application. The Board heard testimony or received letters in support of the application from several persons living in the vicinity of the subject property, who principally cited the need for day care for children living in the neighborhood.

Persons in Opposition to the Application. The Board also heard testimony or received letters in opposition to the application from several persons living in the vicinity of the subject property. The persons in opposition generally asserted that the Applicant's planned child development center would have a potential adverse impact on the residential character of the neighborhood and would create objectionable conditions arising from the proposed enrollment of 100 children, especially with respect to traffic and parking impacts associated with vehicles dropping off or picking up children at the subject property and with respect to potential hazardous conditions involving emergency vehicles and a bicycle lane along 14th Street. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society, which stated that the proposed child development center would create objectionable traffic and parking conditions as well as unsafe situations associated with travel to and from off-site play areas, and would adversely affect the neighborhood due to the cumulative effects of child development centers and elementary schools in the vicinity.

FINDINGS OF FACT**The Subject Property and Surrounding Area**

1. The subject property is located at 1359 C Street, S.E., at the southwest corner of the intersection of 14th and C Streets, S.E. (Square S-1039, Lot 801) and is zoned R-4.
2. The site is improved with a two-story building built in 1908, twelve years before the establishment of zoning in the District of Columbia. It is currently configured as four apartments. The building historically has also contained some commercial uses on the ground floor.

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3. The building on the subject property is nonconforming in that the site has a lot occupancy of more than 90 percent, where 40 percent is permitted as a matter of right for a child development use. *See* 11 DCMR § 403.2. The subject property has no area that could be used to provide off-street parking spaces.
4. The subject property is located in a triangular parcel defined by 14th Street, C Street, and Kentucky Avenue. The building is 25 feet wide along the C Street frontage and 75 feet long along the 14th Street frontage. The building is attached to the building on the adjoining property to the west on C Street, and has a side yard on the east side facing 14th Street. The building has entrances on both 14th and C Streets.
5. Much of the area in the vicinity of the subject property is developed with two-story single-family row dwellings. A public elementary school is located across 14th Street from the subject property. A fire station is located nearby, at 1520 C Street, S.E.
6. The Kentucky Courts condominium, containing 38 residences, is located across C Street from the subject property. The driveway to the condominium's parking lot is located on the north side of C Street near the intersection with 14th Street.
7. On-street parking in the vicinity of the subject property is subject to residential parking restrictions. Street parking is limited to two hours between 7 a.m. and 8:30 p.m. from Monday through Friday, except for holders of Zone 6 permits. Parking is permitted on both sides of 14th Street in the vicinity of the subject property.
8. A portion of 14th Street, including the frontage along the subject property, has been designated a bicycle lane.

Applicant's Proposal

9. The Applicant proposed to operate a child development center at the subject property for children ages six weeks to eight years. The maximum enrollment would be 68 children, including up to 13 infants (ages six weeks to two and half years). The child development center would have a staff of 21 persons.
10. The Applicant proposed to construct a new third story on the existing building, primarily so as to increase the number of children who could attend the child development center. (The floor area of the child development center is one factor

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in determining its maximum enrollment.) The addition would also provide an indoor play area for children attending the child development center. The exterior of the building would otherwise remain unchanged, except for the replacement of fire stairs at the rear of the building.

11. Another child development center is currently in operation on 15th Street less than 1,000 feet from the subject property.
12. The Zoning Regulations require the proposed child development center to provide four parking spaces; that is, five spaces for 18 staff members, with a credit of one space based on the prior use of the building as four apartment units requiring one parking space.
13. In late 2006 the Applicant entered into a use agreement with the elementary school across the street from the subject property that would allow the staff of the child development center to use six parking spaces in the school's parking lot between 7:00 a.m. and 8:00 p.m., Monday through Friday. The use agreement had an initial term of April 2, 2007 to March 31, 2008, and was renewable unless the principal of the school had an objection to the arrangement. The use agreement could be canceled after 30 days notice at the convenience of the school system.

Harmony with Zone Plan

14. The subject property and surrounding area are zoned R-4. The R-4 district is designed to include areas developed primarily with row dwellings, where a substantial number of dwellings have been converted into dwellings for two or more families. 11 DCMR § 330.1. The primary purpose of the R-4 district is the stabilization of remaining one-family dwellings. 11 DCMR § 330.2.
15. The uses permitted in the R-4 district as a matter of right include a child development center, provided that the center is limited to no more than 16 individuals. 11 DCMR § 330.5 (d).
16. Except in the case of certain public recreation and community centers, an enlargement or addition may be made to a nonconforming structure only when the structure conforms to percentage of lot occupancy requirements. 11 DCMR § 2001.3(a).

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CONCLUSIONS OF LAW

The Applicant seeks a special exception under § 205 to establish a child development center for 68 children and 21 staff members, a variance from parking requirements under § 2101.1, and an area variance from the prohibition against enlarging a nonconforming building under § 2001.3 to allow construction of a third-floor addition to the existing building on the subject property in the R-4 zone district at 1359 C Street, S.E. (Square S1039, Lot 801). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. *See* 11 DCMR § 3103.2.

As a preliminary matter, the Board finds no merit in the arguments by the C Street Opponents that the Board should not consider variance relief for the Applicant. The Applicant amended the application at the hearing to include variance relief after OP noted that such relief may be necessary. All parties, including the ANC, had an adequate opportunity to address the variance requests at the public hearing and in post-hearing submissions.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 6B, the Board concludes that the Applicant has not satisfied the requirements for variance relief relating either to parking or the enlargement of the nonconforming structure. The Board is unable to find, based on evidence in the record, that the subject property faces any "exceptional topographical conditions or other extraordinary or exceptional situation or condition" or that practical difficulties will result to the Applicant in this case due to the strict application of the Zoning Regulations.

The Board was not persuaded by the Applicant's assertion that the subject property is subject to an exceptional condition or circumstance due to its scale or to the historically commercial or mixed use of the building. Neither factor gives rise to a finding that the subject property faces an extraordinary or exceptional situation or condition. The scale of the two-story building on the subject property is consistent with the two-story row dwellings that predominate in the immediate neighborhood, which also contains a

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relatively large multi-family building, the Kentucky Courts condominium, and institutional buildings, including the elementary school across the street. The Board was also not persuaded that the scale or former commercial use of part of the building on the subject property were unusual or exceptional circumstances that would warrant the requested variance relief.

Nor was the Board persuaded, based on evidence in the record, that the strict application of the Zoning Regulations would result in peculiar or exceptional practical difficulties to the Applicant. As noted by the Office of Planning, the Applicant's claim of practical difficulty was based on an economic rationale related to the proposed child development center. The Applicant's perceived need for an enlargement to the nonconforming building was based on the Applicant's projected feasibility of the proposed child development center use, which the Applicant claimed could not succeed as a viable business with fewer than 68 children. While the Applicant submitted some financial information, the Board was not persuaded that a smaller child development center, not requiring a third-floor addition, was not possible. The Board was also not persuaded that any practical difficulty would result from the strict application of the prohibition against enlarging the nonconforming building on the subject property, particularly since the building has recently been devoted to residential use as an apartment house.

The Board concludes that the Applicant did not satisfy the first two prongs of the three-prong test for variance relief with respect to either the request for a variance from parking requirements under § 2101.1 or for a variance from the prohibition against enlarging a nonconforming building under § 2001.3 to allow construction of a third-floor addition. In light of this decision, the Board declines to address the third prong, pertaining to the potential for substantial detriment to the public good or impairment of the intent, purpose, and integrity of the zone plan, or the merits of the Applicant's request for a special exception under § 205, since the Applicant indicated that the third-floor addition was an essential component of the proposed child development center.

For the reasons stated above, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for a special exception under § 205 to establish a child development center for 68 children and 21 staff or the requests for variance relief from parking requirements under § 2101.1 and from the prohibition against enlarging a nonconforming building under § 2001.3 to allow construction of a third-floor addition to the existing building on the subject property in the R-4 zone district at 1359 C Street, S.E. (Square S1039, Lot 801). Accordingly, it is therefore **ORDERED** that the application, as finally amended, is **DENIED**.

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VOTE: 3-0-2 (Ruthanne G. Miller, Curtis L. Etherly, Jr., and John A. Mann II voting to deny; Marc D. Loud and John G. Parsons not present, not voting)

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 13 2008**

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

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

Application No. 17700-A of Jewish Primary Day School of the Nation's Capital, Inc., pursuant to 11 DCMR § 3104.1, and 3103.2, for a variance to allow stacked parking spaces under subsection 2117.4, and a special exception to allow an increase in the number of students from 225 to 275, and an increase in the number of faculty from 42 to 56, and the use of a portion of the lot for play area serving an existing private school under section 206 (352), in the R-1-B and R-5-A Districts at premises 6045 16th Street, N.W. (Square 2726, Lot 824).

HEARING DATE: December 18, 2007
DECISION DATES: January 15, 2008 and March 11, 2008
DATE OF FINAL ORDER: February 19, 2008

CORRECTED SUMMARY ORDER

On February 27, 2008, the Applicant filed a request to correct a language error in Condition No. 6 of the final summary order in Application No. 17700. The Applicant maintains that the description of the change in grade between the proposed play area and the adjacent property is erroneously stated as 10 feet. The Applicant maintains that the grade change should be approximately four feet, as reflected in the approved plans. Therefore the Applicant requests that the Order be corrected.

In filing the subject request, the Applicant must to meet Subsection 3129.3 which requires that the motion be filed "not later than six months after the date of the final order...". This motion was filed only eight days after the issuance of the final order dated February 19, 2008. Therefore, the Board concludes that this provision has been met.

The Board also determines that the Applicant has met Subsection 3129.4, requiring that all requests be "served on all other parties..." to give them an opportunity to file a response with the Board. In this case, ANC 4A, the only party of record, was served; however the ANC did not file written comments on the motion.

Finally, the Board determined that, pursuant to Subsection 3129.7 of the Zoning Regulations, the motion in this case would be limited to a "minor change" that "does not

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change the material facts" relied on by the Board in making its decision. Accordingly, the Board granted the motion to correct **Condition No. 6** as reflected in bold and underlined below. In all other respects the final summary order remains the same.

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) 4A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4A, which is automatically a party to this application. ANC 4A submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under sections 206 and 352. 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 206, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2, 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 11 DCMR § 2117.4 of the Zoning Regulations, and that relief from this provision 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

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conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the following CONDITIONS:**

1. Enrollment shall not exceed 275 students.
2. Faculty and staff combined shall not exceed 56.
3. No more than 65 students shall be permitted at one time on the play area adjacent to the residential property on the southern property line (play area).
4. Use of the play area as part of the School's program shall be limited Monday through Friday to the hours of 10:00 am – 2:30 pm and 3:30pm – 4:30 pm.
5. The School shall publish its programmed use of the play area for both the School and the summer camp.
6. The play area shall be set back 15 feet from the south property line and landscaped in accordance with the attached landscaping plan (Exhibit 40(B)) that includes an open lawn, a **4-foot** grade change between the play area and the adjacent property, and a buffer of evergreen trees between the play area and the adjacent property.
7. No permanent play equipment will be permitted on the play area.
8. The School shall implement and maintain a transportation demand management program that maintains a trip generation level 10% lower than what existed at the time of the filing of this Application. Applicant shall identify clearly these figures on a yearly basis in its transportation demand management program which shall be available to the ANC and the community upon request.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman and Curtis L. Etherly, Jr. to approve; no other Board members participating)

MOTION TO CORRECT THE ORDER

VOTE: **4-0-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud and Shane L. Dettman to approve the motion; no other Board members participating)

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

Each concurring member approved the issuance of this order.

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FINAL DATE OF ORDER: MAR 13 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

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

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

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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. 17703 of Sidwell Friends School, pursuant to 11 DCMR §3104.1, for a special exception under §206 for additions to a private school and a child development center under §205 on the school's campus in the R-1-B and C-2-A Zone Districts at premises 3825 Wisconsin Avenue, NW (Square 1825, Lot 816).

HEARING DATE: January 22, 2008
DECISION DATE: March 4, 2008

SUMMARY ORDER

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, by mail to Advisory Neighborhood Commission ("ANC") 3C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3F, whose boundary is immediately adjacent to the subject property, filed a timely petition to the Board to be recognized as a party. The Board granted ANC 3F party status. ANC 3C and ANC 3F submitted reports 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 which are necessary to establish the case pursuant to §3104.1, for special exceptions under §205 and §206 of the Zoning Regulations. No parties or persons 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 reports of OP, ANC 3C and ANC 3F, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR §3104.1 and §§ 205 and 206, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning

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Regulations and Map. The Board further concludes that granting the special exceptions will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the Order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is, therefore, **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Project shall be constructed in accordance with the plans prepared by Kieran Timberlake Associates LLP and Cannon Design and marked in the record as Exhibits No. 11 and 29 of the Record provided that the elevation of the athletic field adjacent to 37th Street shall not exceed its current elevation by more than two (2) feet as shown on the plans in Exhibits No. 11 and 29.
2. The maximum enrollment shall be 850 students.
3. The maximum number of faculty and staff shall be 190 for school purposes, and the Applicant may employ an additional six (6) staff members for the child development center pursuant to Condition No. 4.
4. The child development center enrollment shall not exceed sixteen (16) children and six (6) staff members.
5. The Applicant shall continue to fully implement and comply with the Transportation Management Plan as required by the BZA Order in BZA Application No. 17149.
6. The Applicant shall ensure that only vehicles containing a 5th or 6th grader will drop off or pick up students on 37th Street.
7. The Applicant will direct all users of the athletic facilities to park in the garage at no charge.
8. The Applicant shall provide an annual report to ANC 3C and ANC 3F, due no later than December 31, providing documentary evidence that demonstrates its compliance with enrollment and staff levels and other terms and conditions of this

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Order, including the transportation management plan, and certifying that it is in compliance with this order.

VOTE: 5-0-0 (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Shane L. Dettman and Anthony J. Hood to approve).

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

Each concurring member approved the issuance of this Order.

FINAL DATE OF ORDER: MAR 10 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

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

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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.

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

Application No. 17722 of New Beginnings Cooperative, pursuant to 11 DCMR § 3103.2, for a variance from the story limitation requirements under section 400, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from court requirements under section 406, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow an additional story to an existing apartment building on the existing footprint in the R-4 District at premises 2922 Sherman Avenue, N.W. (Square 2852, Lot 804).

HEARING DATE: February 26, 2008
DECISION DATE: March 11, 2008

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1A, the Office of Planning (OP) and to owners of property within 200 feet of the site. The OP submitted a report and testified at the public hearing in opposition to the application. ANC 1A05 Commissioner Anne Theisen submitted a letter in support of the application. The full ANC did not file a report in this case.

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 OP report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 400, 403, 404, 406 and 2101.1, that there exists an

exceptional or extraordinary situation or condition related to the property that creates an undue hardship 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

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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. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application (pursuant to Exhibit 8 – Plans) be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud, Mary O. Walker and Shane L. Dettman to approve. The Zoning Commission member not present, not voting)

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

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

FINAL DATE OF ORDER: MAR 12 2008

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.

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.

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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. rsn

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

Application No. 17731 of Barbara Chambers Children's Center, pursuant to 11 DCMR § 3104.1, for a special exception to allow the continued operation of an existing child development center under section 205, in the R-5-B District at premises 1470 Irving Street, N.W. (Square 2672, Lot 881).

HEARING DATE: March 11, 2008
DECISION DATE: March 11, 2008 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. ANC 1A did not participate in the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 205. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

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1. The hours of operation shall be from 7:00 a.m. to 10:00 p.m., with all persons off of the site including the parking lot by 10:30 p.m.
2. The number of enrolled children shall not exceed 150.
3. The number of staff shall not exceed 31.
4. Outdoor activities shall be supervised and conclude by 8:00 p.m.
5. Trash shall be kept on-site and collected three times a week, and the property shall be kept free of debris.
6. Staff shall monitor the dropping off and picking up of the children.
7. The parking lot shall be lighted from sunset to sunrise.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: MAR 13 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE

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REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

Application No. 17732 of Nancy McKeon, pursuant to 11 DCMR § 3104.1, for a special exception to allow a second floor rear addition to an existing one-family row dwelling under section 223, not meeting the open court requirements under section 406, in the R-3 District at premises 3422 N Street, N.W. (Square 1221, Lot 95).

HEARING DATE: March 11, 2008
DECISION DATE: March 11, 2008 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E did not participate in the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

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

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: MAR 12 2008

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

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

BZA APPLICATION NO. 17732

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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

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