DISTRICT OF COLUMBIA REGISTER

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# THE CESAR CHAVEZ PUBLIC CHARTER SCHOOLS FOR PUBLIC POLICY

## NOTICE FOR SOLICITATION OF PROPOSALS TO PROVIDE LITERACHY COACH TRAINING SERVICES

The Cesar Chavez Public Charter Schools for Public Policy, in accordance with section 2204 (c) (1) (A) of the DC School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals to Literacy Coach Training Services for faculty at its two schools. Collectively, the campuses serve 900 students grades 6-12 with approximately 90 faculty members.

The Cesar Chavez Public Charter Schools will receive bids from January 27, 2006 to COB February 10, 2006 Attn: Lisa Drew, 709 12th Street, SE, Washington, D.C. 20003. All necessary forms and a full RFP may be obtained by calling 202-547-3424 ext. 45.

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## OFFICE OF THE CHIEF FINANCIAL OFFICER

## CHANGE IN PERSONS AUTHORIZED TO ENTER INTO INVESTMENTS TRANSACTIONS ON BEHALF OF THE GOVERNEMENT OF THE DISTRICT OF COLUMBIA

Effective immediately this notice constitutes written confirmation of persons authorized to enter into investment transactions and to take transfers from investments accounts on behalf of the Government of the District of Columbia:

**Lasana K. Mack**
Acting Deputy CFO and Treasurer
Office of Finance and Treasury

**Alcindor R. Rosier**
Associate Treasurer
Office of Finance and Treasury

**Gloria Vines**
Cash and Investment Manager
Office of Finance and Treasury

**Denis Clarke**
Special Project Manager
Office of Finance and Treasury

**Joseph Heyward, Jr.**
Investment Officer
Office of Finance and Treasury

This notice supersedes all prior lists. Under no circumstances are investments transactions to be executed by any other employee or official of the Government of the District of Columbia.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Certification of Filling a Vacancy
In Advisory Neighborhood Commission

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 a vacancy has been filled in the following single member district by the individual listed below:

Catherine May
Single Member District 3C08

FRIENDSHIP PUBLIC CHARTER SCHOOL
701 E STREET SE
WASHINGTON, DC 20003

## NOTICE FOR PROPOSALS TO PROVIDE HUMAN RESOURCE SERVICES

The Friendship Public Charter School (FPCS) in accordance with section 2204(c)(1)(A) of the District of Columbia School Reform Act of 1995 (Public Law 104-134) hereby solicits firm credentials and price lists to provide human resource processing, payroll processing, human resource tracking system and health, workman's compensation, life, retirement and other employee benefits.

Please send firm credentials, including list of clients including schools and/or non-profit organizations, qualifications of key staff, and pricing guidelines to Catherine Sanwo, Chief Financial Officer (contact phone: 202-675-2071) by Friday, February 17, 2006 at the above address.

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# DISTRICT OF COLUMBIA HOUSING AUTHORITY
# BOARD OF COMMISSIONERS

1133 NORTH CAPITOL STREET, NORTHEAST
WASHINGTON, D.C. 20002-7599
202-535-1500

## NOTICE OF PUBLIC MEETINGS

THE REGULAR MEETINGS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA HOUSING AUTHORITY ARE HELD IN OPEN SESSION ON THE SECOND WEDNESDAY OF EACH MONTH. THE DATES AND TIMES OF THE MEETINGS FOR THE YEAR 2006 FOLLOWS.

| | | |
|---|---|---|
| January 11, 2006 | **CANCELLED** | 1:00 p.m. |
| February 8, 2006 | | 1:00 p.m. |
| March 8, 2006 | | 1:00 p.m. |
| April 12, 2006 | | 1:00 p.m. |
| May 10, 2006 | | 1:00 p.m. |
| June 14, 2006 | | 1:00 p.m. |
| July 12, 2006 | | 1:00 p.m. |
| August 9, 2006 | | 1:00 p.m. |
| September 13, 2006 | | 1:00 p.m. |
| October 11, 2006 | | 1:00 p.m. |
| November 8, 2006 | | 1:00 p.m. |
| December 13, 2006 | | 1:00 p.m. |

**A copy of the draft agenda for each meeting is posted in the lobby at 1133 North Capitol Street, N.E.**

DEPARTMENT OF HUMAN SERVICES

PUBLIC NOTICE

The District of Columbia Department of Human Services, Early Care and Education Administration, Infants and Toddlers with Disabilities Office, would like the public's input on the State Application for Part C Services as mandated under the Individuals with Disabilities Education Act (IDEA).

Part C of IDEA provides approximately two million dollars ($2,000,000.00) in federal funding for therapeutic and support services for infants and toddlers with developmental delays and disabilities and their families.

We are asking for comments in writing no later than the close of business on March 10, 2006. The Part C application will be available for review beginning February 1, 2006 through April 1, 2006.

You may review a copy of the Part C application at your local public library or by appointment at the Early Care and Education Administration, 717 14th Street, NW, Suite 1200, Washington, DC 20005.

You may contact the office at (202) 727-5371.

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

**Application No. 17403 of Walnut Street LLC, on behalf of 917 M Street LP c/o Philip Abraham**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a special exception from the roof structure enclosing wall equal height requirement under subsection 411.11, a variance from the lot occupancy requirement under section 772, and a variance from the residential recreation space requirement under subsection 773.3, to allow the construction of an apartment building in the C-2-A District at premises 917 M Street, N.W. (Square 368, Lot 900).

**HEARING DATE:** December 20, 2005
**DECISION DATE:** December 20, 2005 (Bench Decision)

## SUMMARY ORDER

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. ANC 2F submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under section 411.11. 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 411.11, 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.

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, 772 and 773.3 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Based upon the record before the Board, and pursuant to 11 DCMR 3125.8, the Board finds that the applicant shall have the following flexibility: 1) to modify the plans approved by the Board to conform to the final plans approved by the Historic Preservation Review Board and staff; 2) to provide between 40 and 49 units in the project, through the consolidation or elimination of units that are shown on the plans submitted to the Board; 3) to decrease the number of parking spaces to the minimum number required by Chapter 21 of 11 DCMR, by elimination of the proposed lower level of the parking garage; and 4) to infill the proposed closed court at the cellar level to create storage rooms. This flexibility is granted only to the extent that the resulting modification is in compliance with the Zoning Regulations.

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.**

**VOTE:** **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann, II, Ruthanne G. Miller and Michael G. Turnbull 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:** JAN 23 2006

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

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

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

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

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

**Application No. 17313 of Edward Ertel and Jennifer Squires,** pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403 and a variance from the nonconforming structure provisions under section 2001.3, to allow an addition to a single family row dwelling in the R-4 District at premises 924 G Street, SE (Square 949, Lot 33).

**HEARING DATE:** April 26, 2005
**DECISION DATES:** May 3, 2005; July 12, 2005 and August 2, 2005

## DECISION AND ORDER

Edward Ertel and Jennifer Squires (the applicant), owner of the subject property, filed this application for variance relief on February 25, 2005 Following a public hearing on April 26, 2005, the Board of Zoning Adjustment (the Board) voted to approve the variances.

## PRELIMINARY MATTERS

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

**The Application** The application requested relief from the lot occupancy provisions under § 403 of the Zoning Regulations and the nonconforming structure provisions under § 2001.3 of the Zoning Regulations. The applicant initially proposed to build a two-story addition that would have resulted in a lot occupancy of 99%. However, the applicant ultimately revised its application, proposing to build a one-story sunroom that would result in a lot occupancy of 92%.

**Notice of Public Hearing** The Director of the Office of Zoning provided notice of the hearing in accordance with 11 DCMR 3113.13. Pursuant to § 3113.14 and 3113.15, 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 6B** The subject site is located within the jurisdiction of ANC 6B, which is automatically a party to this application. In its report dated April 25, 2005, ANC 6B indicated that at a regularly scheduled monthly meeting with a quorum present, it voted that it had "no objections" to the variance application.

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

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**Persons in Support** The Board received one letter in support from a neighboring property owner. It also received a petition in support that had been signed by several neighboring property owners (Exhibit 21).

**Persons in Opposition** The Board received a letter in opposition from the Capitol Hill Restoration Society, stating that the application did not meet the variance test (Exhibit 22). In addition, the Board heard testimony to this effect from Gary Peterson, Chair of the Society's Zoning Committee.

**Government Reports**

**OP Report** OP reviewed Applicant's initial variance application and prepared a report recommending denial of the variance request (Exhibit 20). OP concluded in its report that there was no exceptional situation that led to a practical difficulty in meeting the zoning requirements. OP further concluded that expanding the non-conforming lot would be contrary to 11 DCMR 2001.3 and therefore would impair "the intent and integrity of the zoning regulations".

**HPRB Staff Report** The proposed project was reviewed by staff to the Historic Preservation Review Board (HPRB), and the report was submitted by the applicant (appended to applicant's Exhibit 29). The report noted that staff had no objection to the concept of an addition, but "directed" the applicant to modify the design of the two-story addition to retain a "reasonable amount of open space in the rear yard".

## FINDINGS OF FACT

**The Site and Surrounding Area**

1. The subject property is located at 924 G Street, SE at the northwest corner of the intersection of 10th and G Streets. The property and properties in all directions are zoned R-4 and are in the Capitol Hill Historic District.

2. The property consists of a two-story, brick, semi-detached row house that fronts on G Street, and a two-story, brick, semi-detached carriage house that fronts on 10th Street. The two structures are separated by an approximately 16-foot deep open court yard that is enclosed by a brick wall at the sidewalk. Both structures are contributing to the historic district. The carriage house is currently used as a rental unit.

3. The corner lot on which the property is located is only about 1,452 square feet in size, and is significantly smaller and shallower than the 1,800 square feet lots that are generally required in the R-4 zone.

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4. The comparatively small structures provide insufficient living quarters for the applicant's family; and the applicant is constrained in building an addition by both the size of the site and the configuration of the two structures.

5. Without demolishing the existing structures or adding a third-story addition to the main building (both which the applicant contends would be precluded in the historic district) the courtyard is the only buildable area on the lot.

**The Proposed Addition**

6. The applicant proposes to add on to the row house by filling in the existing courtyard with a one level sun room. (See revised plans at Exhibit 30).

7. Because the sun room would increase the lot occupancy from 76% to 92% (beyond the 60% lot occupancy permitted under the Zoning Regulations), the applicant requires a variance from § 403 of the Regulations.

8. Because the existing property is already non-conforming for rear yard and minimum lot dimensions, as well as lot occupancy, the applicant would be enlarging an already non-conforming structure and requires relief under § 2001.3 of the Regulations.

9. The Board credits and adopts the finding made by HPRB staff that an enclosed sun room addition would be compatible with the row house (Exhibit 29).

10. Many other corner lots in the neighborhood are at 100% lot occupancy. As a result, increasing the lot occupancy to 92% would not be out of character with the neighborhood.

11. There was no evidence that the sun room addition would have any adverse impacts on neighboring property owners.

**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 variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the non-conforming structure provisions under § 2001.3 to allow a one-story sun room addition to a single family dwelling not meeting the lot occupancy, rear yard or minimum lot size requirements. Pursuant to D.C. Official Code § 6-641.07(g)(3)(2001) and 11 DCMR § 3103.2, the Board may grant a variance upon a finding that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter exceptional practical difficulties or undue hardship 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. An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to "undue hardship," which is required for a use variance. *Palmer v. Board of Zoning Adjustment,* 287 A2d. 535, 541 (D.C. 1972).

Uniqueness

In determining uniqueness, the Court of Appeals has instructed that the uniqueness need not inhere in the land, but may be found in the structures on the land. *See, Capitol Hill Restoration Society v. BZA*, 534 A.2d at 942. (1987; *Monaco v. BZA,* 407 A2d 1091 (D.C. 1979); *Clerics of St. Viator, Inc. v. BZA,* 320 A2d 291 (D.C.1974.). Moreover, the uniqueness may arise from a confluence of factors. See, *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In *Gilmartin* the Court found that the particular location of a carriage house in relation to the property boundaries and easements on the land created a unique confluence of factors that created the need for the variance. In that case the applicants sought a variance from parking requirements in order to convert their carriage house to a single family residence. The Court determined that the location of the easements and the improvement on the property precluded a portion of the property from parking and that this condition, in essence, made the topography of the property unique, made it unlikely that other properties would be affected in the same way and led to the application for the variances.

As in *Gilmartin*, there is in this case a confluence of factors arising from the configuration of the two structures and other constraints on the property that lead this applicant to seek variance relief. The property is a small corner lot with any expansion limited by the two existing structures separated by open space. Both structures are contributing in an historic district. Further, the property is land locked with a blank wall abutting the property. The unique configuration of the existing structures on the property in an historic district together with the other physical constraints on the property lead to practical difficulties in expanding the property to meet the family's needs. No evidence was presented that other properties in the Capitol Hill District share this combination of characteristics, and it is these characteristics that have required the applicant to seek the variance relief.

Practical Difficulties

While there is no governing definition of what constitutes "practical difficulties," the Court of Appeals has provided the following guidance: First, the applicant must show that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties of complying with the regulations are unique to the particular property or arise out of the unique conditions of the property. *Gilmartin* at 1170. *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A2d 1231 (1979). "[The second] requirement insures relief for problems peculiarly related to the applicant's

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land or structure, and not shared by other property in the neighborhood, thus avoiding a *de facto* amendment of zoning laws." *Russell,* at 1235 , *citing* 3 ANDERSON, AMERICAN LAW OF ZONING § 14.55, at 32 (1968); 3 RATHKOPF, THE LAW OF ZONING AND PLANNING ch. 45, § 2 (4th ed. 1978).

In this case, the unique physical constraints of the existing structures on the property, compounded by the fact that the structures are contributing structures in an historic district leave no viable options for expansion other than on the open space between the two structures, requiring variance relief. Applicant's other options for expansion on this small lot would require either demolition of one of the contributing structures or the addition of a third story to the main structure. Applicant represented that these options would be precluded by the historic preservation limitations. While there is no evidence of HPRB denial of these options, it is noteworthy that the Office of Planning did not oppose the variance on grounds that these or any other alternatives for expansion existed. Even if these were not precluded by HPRB, demolition of a contributing structure (the carriage house) or the addition of a third story to the main house on a street of two-story row houses are both extreme alternatives with unnecessary detrimental consequences – loss of an historic structure or a building out of character with the other houses on the street.

Accordingly, in light of the unique conditions at the property, the only area in which the applicants can expand to accommodate their family needs is the open space between the existing structures, requiring variance relief.

No Substantial Detriment

Relaxing the lot occupancy requirements and nonconforming structure requirements in this case will not result in substantial detriment to the public good or the zone plan. The proposed sun room will provide additional residential living space and is consistent with the intent and purposes of the R-4 zone district. Thus, it will not result in substantial detriment to the zone plan. Nor will the sun room addition result in any detriment to the public good. As explained above, the addition will be compatible with the existing row house and the neighborhood, and will have no adverse impacts on neighboring property owners.

The Board is required under D.C. Official Code § 1-309(d)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. As noted, the ANC did not object to the application and therefore had no issues or concerns.

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. The Board does not find OP's advice to be persuasive for the following reasons: OP asserted that there was nothing unique about the property that necessitates a variance. It reasoned that each

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of the characteristics of the property individually could be found in other properties- i.e., it is not the only property that has a carriage house or has contributing buildings in an historic district. OP did not take into consideration the "confluence" of the factors that together cause this property to be unique. Nor does the Board agree with OP's assessment relating to practical difficulty. OP stated that the expansion of a small residential structure may be justified only when the exceptional condition is a small lot. That narrow view is not supported in the law. Rather, the Board's consideration of practical difficulties is broad. The Court of Appeals stated on this point: "We repeat the observation we made in *Palmer, supra*, 287 A.2d at 542, that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." See, *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 942 (D.C. 1979) (this court defers to BZA's determination of the practical difficulties so long as the requisite findings of fact are made.) As discussed previously, the existence of the two structures and other noted conditions have the effect of shrinking the usable area of this lot, thereby causing practical difficulty. Finally, OP argued that expanding non-conforming lot occupancy is prohibited under § 2001.3(a) and therefore granting a variance in this case would *per se* be detrimental to the zone plan. OP did not find that the expansion actually had a detrimental impact on the neighborhood or the zone plan. Again, the Board finds that this interpretation is not supported in the law. The Zoning Act authorizes variance relief from the strict application of any and all zoning regulations. Therefore, the Board applies the same variance analysis to this regulation as to any other regulation. Accordingly, there is no detriment to the zone plan by granting the relief in this case.

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

**VOTE:** **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann, II to approve; Curtis L. Etherly, Jr. to approve by absentee ballot; the Zoning Commission member, not hearing the case, not voting)

Vote taken on August 2, 2005.

**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:** JAN 23 2006

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

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

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

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

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

**Application No. 17321 of Darcy E. Flynn**, pursuant to 11 DCMR § 3103.2, for variances from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirements under section 405, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new single-family detached dwelling in the R-2 District at premises 1000 block (south side) of Taussig Place, N.E. (Square 3890, Lot 117).

**HEARING DATE:** May 17, 2005
**DECISION DATE:** June 7, 2005

## DECISION AND ORDER

This self-certified application was submitted March 11, 2005 by the owner of the property that is the subject of the application, Darcy Flynn ("Applicant"). The application requested variances from lot area, lot width, lot occupancy, rear yard, side yard, and off-street parking requirements to allow construction of a new single-family detached dwelling in the R-2 District at 1041 Taussig Place, N.E. (Square 3890, Lot 117).

Following a hearing on May 17, 2005 and a public meeting on June 7, 2005, the Board voted 5-0-0 to deny the application.

## PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated March 15, 2005, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 5, Advisory Neighborhood Commission ("ANC") 5A, and Single Member District/ANC 5A05. Pursuant to 11 DCMR § 3113.13, on March 22, 2005 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 5A, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 25, 2005 (52 DCR 3097) and April 1, 2005 (52 DCR 3237).

**Party Status**. Parties in this proceeding were the Applicant and ANC 5A.

**Applicant's Case**. The Applicant, represented by Jacob Abbott, stated that the requested variances were needed to allow construction of a single-family dwelling, consistent with others in the neighborhood, on a narrow, shallow lot. The Applicant asserted that the variances would not have any adverse impact on the neighborhood with regard to traffic,

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noise, lighting, or other conditions because the proposed use and configuration of the dwelling would be consistent with houses already located on the same block. With respect to parking, the Applicant stated that a parking space on the subject property would be difficult to access because of the narrowness of the alley. The Applicant asserted that ample on-street parking was available on the block.

**Government Reports**. By memorandum dated May 10, 2005, the Office of Planning ("OP") recommended approval of the requested variances. According to OP, the variances would not be a detriment to the public good and the resulting new house would be in character with the other dwellings on the same block. According to OP, the subject property is a substandard lot too narrow and shallow to meet zoning requirements, and strict application of the Zoning Regulations would result in practical difficulties to the Applicant. The Office of Planning also stated that the requested variances would not cause substantial detriment to the public good or impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map, noting that the Applicant intended to develop the property for single-family residential use and that the planned dwelling would not negatively impact traffic, noise, or light.

**ANC Report**. By report submitted May 27, 2005, ANC 5A opposed the application. At a public meeting on May 25, 2005, with a quorum present, the ANC voted 9-0 to recommend denial of the requested variances, stating that the subject property, a substandard lot, was unsuitable for construction of the proposed single-family detached dwelling.

According to the ANC, other houses on the same block did not exceed allowable lot occupancy, and the neighboring property to the west of the subject property would be adversely impacted by the Applicant's planned modular dwelling with respect to privacy, noise, light, air, and use. ANC 5A asserted that the specific dwelling proposed by the Applicant would be incompatible with the subject property in light of the need for several variances. ANC 5A contended that a dwelling could be built on the subject property that would meet zoning requirements with respect to lot occupancy, rear yard, and side yards, and that the Applicant's choice of modular home was not an appropriate design for the site but "an unnecessary limitation" fashioned by the Applicant.

ANC 5A also opposed the requested parking variance, stating that the subject property had access from the alley, and that most dwellings on the block have garages or parking pads. According to the ANC, on-street parking is adequate in the vicinity of the subject property during the day, but is scarce at night.

Persons in Support of the Application. The Board received approximately 14 letters indicating support for the application from owners of property within 200 feet of the subject property.

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Persons in Opposition to the Application. The Board received a letter and heard testimony from four persons in opposition to the application. The persons in opposition alleged that the Applicant had failed to present the application to ANC 5A, made errors in the application, and failed to satisfy the requirements for a grant of variances.

## FINDINGS OF FACT

### The Subject Property

1. The subject property is located at 1041 Taussig Place, N.E. (Square 3890, Lot 117), on the south side of Taussig Place in Ward 5. The property is currently undeveloped except for a dilapidated garage structure at the rear of the lot, which the Applicant proposed to remove. A 15-foot public alley provides access to the rear of the lot.

2. The subject property is a rectangular lot, 57.5 long and 39 feet wide, and has a lot area of 2,242.5 square feet.

3. The subject property is zoned R-2, which requires a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet. The subject property is nonconforming with respect to lot area and lot width.

4. The area surrounding the subject property is residential, developed primarily with single-family detached dwellings and some semi-detached dwellings. Several institutional uses are located nearby, including Providence Hospital, Howard University School of Dentistry, the Hospital for Sick Children, and Catholic University.

5. The Comprehensive Plan Generalized Land Use Map designates the subject property in the low-density residential land use category.

### The Applicant's Project

6. The Applicant proposes to construct a two-story single-family detached dwelling on the subject property. The dwelling would be 24 feet wide and 28 feet long, not including wooden porches at both the front and rear of the house. Each porch would be 24 feet wide and six feet deep.

7. The rear yard would be 12.5 feet deep. The R-2 zone requires a rear yard of at least 20 feet. 11 DCMR § 404.

8. The property would have side yards 7.5 feet wide on both sides of the house. One side would contain a landing (4 by 8 feet) providing access to a side entrance to

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the dwelling. The R-2 zone requires side yards with a minimum width of 8 feet. 11 DCMR § 405.

9. Lot occupancy after construction of the dwelling would be 42.8 percent. The R-2 zone permits a maximum lot occupancy of 40 percent. 11 DCMR § 403.

10. The Applicant does not propose to provide any off-street parking on the subject property. The Zoning Regulations require one off-street parking space for each dwelling. 11 DCMR § 2101.1.

11. The Applicant's need to construct a house 24 feet wide was the result of the model of a factory-built house selected by the Applicant. The Applicant stated that conversion of the model to a narrower dwelling, so that the side yards would meet minimum zoning requirements, would create additional costs, and that the inclusion of front and rear porches, thereby increasing lot occupancy, would enhance the dwelling and make it similar to some other houses on the same block.

## CONCLUSIONS OF LAW

The Applicant requests variances from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirement under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirement under section 405, and a variance from the off-street parking requirement under subsection 2101.1, to allow the construction of a new single-family detached dwelling. The Board is authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation 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. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

The subject property does not meet zoning requirements with respect to lot width or lot area. The width of the subject lot is one foot less than the prescribed minimum lot width, but its lot area is only 56 percent of the minimum lot area required in the R-2 zone. The lot's dimensions, which predate the current zoning requirements, give rise to an exceptional situation or condition of the property.

However, the Board is not persuaded that the strict application of the zoning regulations would result in exceptional practical difficulties to the Applicant. Rather, most of the variances requested by the Applicant – that is, variances from rear yard, side yard, and

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parking requirements – arise from the Applicant's choice of a particular design of modular dwelling. The Applicant did not persuasively explain why the use of a pre-engineered modular house was necessary, or why the design of the proposed dwelling could not be adapted to meet matter-of-right requirements applicable to the subject property.

The Board notes that the Office of Planning recommended approval of the application, but finds that OP did not offer persuasive advice with respect to how any practical difficulties faced by the Applicant in constructing a single-family dwelling on the subject property would result from the strict application of the zoning regulations rather than from the Applicant's choice of modular home. The Board disagrees with ANC 5-A's contention that variance relief should be denied because the lot area of the subject property is less than that specified in Section 401.2. The Zoning Act authorizes variance relief from the strict application of any and all zoning regulations. Therefore, the Board applies the same variance analysis to this regulation as to any other regulation. The Board agrees with the ANC, however, for the reasons set forth above, that variance relief should be denied because the Applicant failed to show the practical difficulty of building a structure in compliance with the rear yard, side yard and parking regulations.

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 5A, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the application for variances to allow construction of a single-family detached dwelling in the R-2 zone at 1041 Taussig Place, N.E.

Accordingly, it is therefore **ORDERED** that the application is **DENIED**.

**VOTE:** **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Carol J. Mitten and John A. Mann, II to deny).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
Each concurring Board member approved the issuance of this order.

**FINAL DATE OF ORDER:** JAN 23 2006

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. 17409 of Gonzaga College High School**, pursuant to 11 DCMR § 3104.1, for a special exception to increase the student enrollment from 900 to 980, and to increase the faculty and staff level from 110 to 120 persons under section 206, in the C-2-A and R-4 Districts at premises 19 I Street, N.W. (Square 622, Lots 90 and 840).

**HEARING DATE:** January 24, 2006
**DECISION DATE:** January 24, 2006 (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) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under section 206. 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 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.**

**VOTE:** **3-0-2** (Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann, II to approve; Curtis L. Etherly, Jr. and Carol J. Mitten not present, not voting)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** JAN 26 2006

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

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

**Application No. 17440 of D.C. Water and Sewer Authority**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception to allow the construction of a new pumping station and related facilities under section 207 (Utilities), in the R-2 District at premises 1801 Minnesota Avenue, S.E. (Square 5616, Lot 800).

**HEARING DATE:** January 24, 2006
**DECISION DATE:** January 24, 2006 (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) 8A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. ANC 8A did not submit a report or appear at the hearing to participate in this application. However, 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 a special exception under section 207. 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 207, 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.

Based upon the record before the Board and having given great weight to the Office of Planning report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2101.1 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

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

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** JAN 26 2006

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

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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.

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**ZONING COMMISSION NOTICE OF FILING**
**Case No. 03-03B**
**(PUD Modification to Capitol Gateway Estates)**
**January 25, 2006**

**THIS CASE IS OF INTEREST TO ANCs 7C & 7E**

On December 16, 2005, the Office of Zoning received an application from DCHA and A&R/THC LLC (the "applicant") for approval of a modification to a previously approved PUD for property known as the Capitol Gateway Estates. The application was supplemented and completed with additional filings made on January 11 and 20, 2006.

The property that is the subject of this application consists of Square 5246, Lots 50-56, 66-78; Square 5279, Lot 53; Square 5280, Lots 99-114, 118-204; and Square 5281, Lots 36-92, 96-98, 101-139 and straddles the northeast and southeast quadrants of Washington, D.C. (Ward 7). The requested modification to the approved PUD consists of replacing the Community Building with twelve (12) townhouses This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

**ZONING COMMISSION NOTICE OF FILING**
**Case No. 06-01**
**(Consolidated PUD & Related Map Amendment –**
**Square 776, Lots 9, 25-31, 51-53, 800, and 821)**
**January 12, 2006**

**THIS CASE IS OF INTEREST TO ANC 6C**

On January 6, 2006, the Office of Zoning received an application from Steuart Investment Company and Steuart-H Street LLC (collectively, the "applicant") for approval of a consolidated PUD and related map amendment for the above-referenced property.

The applicant is requesting from the Zoning Commission approval of a consolidated PUD and related map amendment from C-2-A to C-2-B for property located in the northeast quadrant of the District and known as Square.

The property that is the subject of this application consists of Square 776, Lots 9, 25-31, 51-53, 800, and 821 in Northeast Washington, D.C. (Ward 6) and is located between 3rd, 4th, H and Eye Streets, N.E. The property is currently zoned C-2-A and C-2-B.

The applicant proposes to construct a mixed-use development having a combined gross floor area of approximately 306,724 square feet, and three levels of underground parking. Approximately 246,703 square feet will be residential providing between 210-250 dwelling units and 60,021 square feet will be devoted to a grocery store and neighborhood serving retail and service uses. The project will have an approximate FAR of 5.04 and a maximum height of ninety feet with substantial setbacks at the sixty-nine foot level on all street fronts. The project will provide 376 parking spaces. In addition, the applicant seeks a related map amendment to the C-2-B District for Lots 25-31 in Square 776. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

**ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**
**Z.C. ORDER NO. 05-14A**
**Z.C. Case No. 05-14**
**(*Sua Sponte* Review of Board of Zoning Adjustment Case No. 17302)**
**September 15, 2005**

This Order arises from the Zoning Commission's *sua sponte* review of the decision by the Board of Zoning Adjustment ("BZA") to grant the application of Non-Profit Community Development Corporation of D.C., Inc. ("NPCDC") for a variance from the height limitations of 11 DCMR § 770.1. For the reasons discussed below, the Zoning Commission vacates as moot the BZA's Summary Order granting Application No. 17302.

## STATEMENT OF FACTS

1. NPCDC applied to the BZA for a height variance to allow it to construct a new 7-story mixed-use building at the premises located at 2750 14th Street, N.W. (Square 2667, Lot 849). The application was assigned BZA Application No. 17302.

2. On April 12, 2005, the BZA held a hearing on the variance application. At the conclusion of the hearing, the BZA voted to approve the Application No. 17302, and issued a summary order that same day ("Summary Order"). The Summary Order granted the applicant an area variance to construct a building that exceeds the maximum height permitted by 11 DCMR § 770.1. The Summary Order became effective on April 22, 2005, pursuant to 11 DCMR § 3125.9.

3. At a special public meeting on April 29, 2005, the Zoning Commission initiated a *sua sponte* review of the BZA decision within ten (10) days of being advised of the issuance of the Summary Order, as authorized by 11 DCMR § 3128, and stayed the Summary Order.

4. At its May 9, 2005 public meeting, the Zoning Commission offered NPCDC the choice of either: (a) submitting a brief explaining why the Commission should not reverse or modify the BZA's decision to grant the variance or (b) submitting a PUD application seeking the same zoning relief granted through the BZA's Summary Order. The Commission indicated that if NPCDC chose to submit a PUD application, it would suspend its review of the BZA's decision.

5. On May 16, 2005, NPCDC submitted a PUD application in lieu of a brief.

6. NCPDC's PUD application requested approval of a building that included a mix of market rate and affordable housing, a childcare center, and ground floor retail space. The zoning

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flexibility sought was relief from the 65-foot height limitation of the C-2-B zone district to construct 74.25-foot tall building.

7. The Zoning Commission took final action to approve the PUD application, including the zoning flexibility sought, at a special public meeting held July 25, 2005.

8. At its regularly scheduled public meeting held September 15, 2005, the Commission voted to vacate as moot the BZA Summary Order by a vote of **5-0-0** (Carol J. Mitten, Kevin L. Hildebrand, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to vacate).

## CONCLUSIONS OF LAW

The Zoning Commission in its *sua sponte* review of a BZA decision or order, may affirm, modify, reverse, or remand the case back to the BZA for reconsideration, rehearing, or other action pursuant to instructions from the Commission. 11 DCMR § 3128.4.

A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *In re Dom. L. S.*, 722 A.2d 343, 348 (D.C. 1993). When a subsequent decision supersedes an order granting zoning relief, it is appropriate to vacate the earlier order. *Interdonato v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1000, 1002 (D.C. 1981).

The Zoning Commission granted the same zoning flexibility through the PUD that the BZA granted to NPCDC through the Summary Order. Therefore, the issues in the variance proceeding are no longer "live." The Commission therefore vacates as moot the BZA's decision to grant the variance.

## DECISION

Accordingly, it is hereby **ORDERED** that the BZA Summary Order issued in BZA Application No. 17302 is **VACATED**.

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**
**ZONING COMMISSION ORDER NO. 05-22**
**Z.C. Case No. 05-22**
**Consolidated Planned Unit Development – Level 2 Development, LLC**
**14th Street, N.W. Between Florida Avenue and Belmont Street**
**January 9, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission")held a public hearing on December 5, 2005, to consider an application from Level 2 Development, LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD"). The application was filed on behalf and with the consent of L2CP, LLC and Comcast of Florida, LP, a District of Columbia limited partnership, formerly known as District Cablevision Limited Partnership, the owners of the property that is the subject of the application. The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

## FINDINGS OF FACT

### The Applications, Parties and Hearing

1. On July 11, 2005, the Applicant filed an application with the Zoning Commission for consolidated review and approval of a PUD for the property located on Lot 119 and a portion of Lot 122 in Square 2868, on the east side of 14th Street, N.W., between Florida Avenue and Belmont Street in Washington, D.C. (the "PUD Site"). Subsequently, as part of the prehearing statement filed with the Zoning Commission on September 26, 2005, the PUD Site was amended to include all of Lots 119 and 122, for a total site area of 34,357 square feet.

2. At its public meeting held September 15, 2005, the Zoning Commission voted to schedule a public hearing on the application. At the meeting, the Zoning Commission requested that the Applicant provide additional information relating to the project's compliance with the Height Act of 1910, the proposed loading areas and alley improvements, the project's relationship to the surrounding residential development, and the building design.

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3. On September 26, 2005, the Applicant filed a prehearing statement with the Zoning Commission that included the information requested by the Zoning Commission and additional information on the application requested by the Office of Planning pertaining to the proposed off-site affordable housing amenity, the monetary contributions to neighborhood organizations, the building design and roof plans, the removal of the satellite dishes from the southern portion of the PUD Site, and the incorporation of "green" building practices.

4. After proper notice, the Zoning Commission held a hearing on the application on December 5, 2005. The parties to the case were the Applicant; Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the PUD Site is located; and the Sankofa Tenants' Association (the "Association"), the beneficiary of the off-site affordable housing amenity proposed by the Applicant.

5. The record contains the following letters in support of the project: a letter dated June 6, 2005, from ANC 1B; a letter dated June 30, 2005, from Jim Graham, Councilmember for Ward 1; a letter dated June 30, 2005, from the Meridian Hill Neighborhood Association ("MHNA"); a letter dated September 20, 2005 from the Cardozo Shaw Neighborhood Association ("CSNA"); a letter dated November 14, 2005, from the South Columbia Heights Neighborhood Association.

6. There were no parties or persons in opposition to the PUD.

7. At its duly noticed meeting held June 2, 2005, ANC 1B voted unanimously for a resolution in support of the PUD application and negotiations with Comcast for the removal of the satellite dishes and antennas on the southern portion of the PUD Site.

8. At its duly noticed meeting held November 3, 2005, ANC 1B voted unanimously to support the PUD provided that the public amenity package not be changed due to economic forces placed on the developer.

9. At its June meeting, the MHNA voted unanimously to support the proposal for the PUD.

10. ANC 1B submitted a report and testified as a party in support of the application at the hearing, and noted that the application has twice been considered by the ANC.

11. At the hearing, the Applicant submitted into the record modified sheets A05, A06, A08, A09, and A12 to the PUD plan, dated December 5, 2005, providing additional details of the Roof Plan.

12. At the hearing, Ms. Sheila Royster, President of the Sankofa Tenants' Association, testified as a party in support of the PUD. Ms. Royster stated that the $1 million contribution to the Association proposed by the Applicant would assist the Association in acquiring the Cresthill Apartment building. She emphasized that the ultimate objective of the members of the Association is ownership of their respective units.

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13. At its meeting held December 5, 2005, the Zoning Commission took proposed action by a vote of 5-0-0 (moved by Chairman Carol J. Mitten, seconded by Commissioner Gregory N. Jeffries) to approve the application, subject to the Applicant providing the Zoning Commission with the following:

    a. detailed information on the equipment that will be attached to the rooftop antenna tower and where the equipment will be located on the tower;

    b. revised drawings of sheets S03.1, S03.2, S03.3, and S03.4 of the PUD plan, depicting truck and automobile circulation; and

    c. availability of signage from the Department of Transportation directing drivers on Florida Avenue not to block alley on the east side of the PUD Site.

    Additionally, the Applicant agreed that no logos or advertising would be permitted on the antenna tower or satellite dishes proposed on the building rooftop.

14. The information requested by the Zoning Commission in Paragraph 13 above was submitted by the Applicant, and is marked as Exhibit 34 of the record.

15. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated December 30, 2005, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

16. The Zoning Commission took final action to approve the application on January 9, 2006 by a vote of 5-0-0.

**The PUD Project**

Overview

17. The PUD is a mixed-use development of residential, retail, and service uses. It will consist of a nine-story building containing 160 to 195 condominium units, a portion of which will be devoted to affordable housing; 33,517 square feet of retail and service uses, of which 13,903 square feet will be counted toward gross floor area; and an underground parking garage with 151 parking spaces. The development will have an aggregate floor area ratio ("FAR") of 6.0. The PUD development plan includes the removal of the satellite dishes and antenna tower existing on the Comcast site located at 14th Street and Florida Avenue, N.W. and replacing them with less obtrusive equipment on the roof of the new building. The Applicant requested the Commission's approval of the PUD pursuant to § 2405.3 of 11 DCMR.

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Site Description

18. The PUD Site is located on the east side of 14th Street between Florida Avenue and Belmont Street; a public alley abuts the site on the east. The PUD Site consists of approximately 34,357 square feet of land area in Lots 119 and 122 in Square 2868. Lot 119 is currently improved with an automobile repair shop and warehouse, and Lot 122 is currently improved with a Comcast equipment building, an antenna tower, and satellite dishes. The PUD Site is located in the C-2-B District.

19. The area surrounding the PUD Site is primarily designated medium-density residential on the District of Columbia Comprehensive Plan Generalized Land Use Map, with moderate-density residential to the east along 13th Street. The area is characterized by a mix of residential and commercial uses as well as a mix of newly constructed, refurbished, and older structures. On the west side of 14th Street, across from the PUD Site, are a private parking lot and a strip shopping center. The Wardman Court Apartments (formerly known as Clifton Towers) are located immediately north of the PUD Site, and rowhouses are located to the east. South of the PUD Site, across Florida Avenue, is the Greater U Street Historic District, which contains a mix of residential, retail, and commercial uses.

20. The Flats at Union Row, a comparable mixed-use PUD is under construction to the south of the PUD Site on the east side of 14th Street between V and W Streets. It will have approximately 280 apartment units and 24,000 square feet of retail. The Ellington, on U Street between 13th Street, N.W. and 14th Street, N.W. has approximately 186 dwelling units and 24,000 square feet of retail. The PUD Site and the surrounding area are well-served by public transportation, including Metrobus lines and the U Street-Cardozo Metrorail Station.

Project Design and Components

21. The PUD is envisioned as a future anchor of the U Street Corridor. The design of the building is informed by its 14th Street location – by both the physical characteristics of 14th Street (the north, northeast bend of the axis, and the elevation change) and its historical heritage (automotive dealerships and services and a vibrant commercial corridor). As such, the PUD is designed to act, symbolically speaking, as a portal, facilitating several transitions: a transition between the past commercial vibrancy and the future urban active life, a transition between downtown and uptown, and a transition between the abandonment and disillusions of the 1960's and 1970's to the new urban renaissance. Through its strong presence, the PUD will help invigorate the pedestrian traffic in the area and correct the visual deficiencies of the Comcast site.

22. At the street level, the base of the building is designed to ground the project and to connect it to the commercial past of the area. It will have a robust look, featuring large masonry piers and beams and glass storefront infills. The masonry piers will establish a relation to the predominantly brick buildings in the neighborhood.

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23. To help the building integrate into its surroundings, the residential mass will be subdivided into several volumes, each clad in ceramic panels or brick, with metal panels and window walls. Also, the upper two (2) floors of the building will be set back on the east, west, and south façades and will be treated with more glass than the lower floors. The residential feel of the project will be enhanced by the multitude of bay windows on the west and east façade and the availability of balconies for most of the condominium units.

24. Due to the elevation and directional change of 14th Street near the PUD Site, the site is exposed to distinctive vistas from downtown and upper 14th Street. The building design emphasizes these vistas by setting the subdivided building planes at different angles; thus, offering a variety of unique facades depending on the position of the viewer. This design element offers a dynamic viewing experience.

25. Extending nine stories, the PUD will include residential, retail, and service uses. The retail program is proposed to include 13,903 square feet on the ground floor of the building and between 15,000 and 19,000 square feet for a health club on the first and second levels of the underground parking garage. The parking garage will consist of, at a minimum, two and one-half (2.5) levels of parking. The top eight (8) stories of the building will house approximately 160 to 195 condominium units totaling approximately 173,765 square feet. (The number of condominium units will depend on market demands within the specified range. However, regardless of the number of units, the overall square footage of residential use will remain at approximately 173,765 square feet.) Also, in the alternative to the retail program described above, as noted on the plan for the project, there will be approximately 11,400 square feet of retail on the ground floor and approximately 3,021 square feet of retail on the first floor. In this case, the building would not include a health club and the parking garage would be limited to two (2) levels. The ground floor of the building will be accessible from 14th Street near Florida Avenue, and the first floor will be accessible from 14th Street near Belmont Street. The service area for the PUD will have one loading berth that is fifty-five (55) feet deep, two (2) loading platforms that are thirty (30) feet deep, and one service/delivery loading space that is twenty (20) feet deep. The service area and underground parking garage will be accessible from the public alley on the eastern boundary of the PUD Site. Most of the alley will be widened from fifteen (15) feet to twenty (20) feet in order to better accommodate this vehicular traffic.

**Matter of Right Development Under Existing Zoning**

26. The PUD Site is located in the C-2-B District, which is designated to serve commercial and residential functions, but with high-density residential and mixed uses.

27. The maximum building height permitted in the C-2-B District is sixty-five (65) feet. The maximum permitted FAR is 3.5, of which up to 1.5 FAR may be for commercial use.

**Development Incentives and Flexibility**

28. The Applicant requested the following areas of flexibility from the Zoning Regulations:

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a. Roof Structure Requirements: Section 411.5 of the Zoning Regulations requires that the enclosing walls from the roof level be of equal height. The Applicant proposed to have a roof that varies in height in order to minimize the bulk and visual appearance of the extensive rooftop mechanical/equipment penthouse enclosure.

b. Residential Recreation Space: Pursuant to § 773.3 of the Zoning Regulations, buildings located in the C-2-B District containing a residential use, other than a one-family dwelling, flat, or hotel, must have an area equal to fifteen percent (15%) of the gross floor area dedicated for residential use as residential recreation space. The recreation space for the PUD is approximately six and one-half percent (6.5%) of the gross floor area, augmented by additional outdoor recreation space in the form of private terraces and balconies.

c. Roof Top Antenna: The Applicant proposed an antenna tower on the roof of the building, which is not permitted in the project as a matter of right under the Zoning Regulations. The antenna and the attached dishes and equipment would be as shown on the plans marked as Exhibit 28 and would replace the existing 140-foot tower and cable dishes located on the southern portion of the PUD Site at 14th Street and Florida Avenue. While not meeting the normal requirements of the Regulations, the proposed antenna and equipment would be less visibly intrusive than the existing condition.

**Public Benefits and Amenities**

29. The following benefits and amenities will be created as a result of the PUD:

a. Housing and Affordable Housing. The single greatest benefit to the area, and the District as a whole, is the creation of new housing and home-ownership opportunities consistent with the goals of the Zoning Regulations, the Comprehensive Plan and the Mayor's housing initiative. The Applicant proposes to devote an area equal to fifteen percent (15%) of the density gained through the PUD process (versus the development permitted as a matter of right in the C-2-B District), or approximately 11,729 square feet, as affordable housing. Of that, approximately 6,000 square feet will create units in the project available to those persons whose income does not exceed eighty percent (80%) of the "area median income" as that term is defined by the U.S. Department of Housing and Urban Development. Those units will reflect the market-rate units within the project in terms of size and distribution throughout the building. In lieu of constructing the additional 5,729 square feet of affordable housing on site, the Applicant will contribute $1 million to the Sankofa Tenants' Association for the acquisition of the Cresthill Apartments, a 48-unit apartment house with over 50,000 square feet of gross floor area, located within one-half block of the PUD Site at 1430 Belmont Street. The Association is working with Jubilee Housing, Inc., the management agent for the Cresthill Apartments, and Reuben McCornack, an affordable housing development consultant, on a strategy to acquire the apartment

building, convert it to a cooperative, and rehabilitate and maintain the 48 apartment units within the building as affordable housing.

b. Building Design and Site Planning. The high quality of design in the development of the architecture for the project exceeds that of most matter-of-right projects. The base of the building, with its neighborhood-oriented retail and service uses, will stimulate pedestrian traffic while reflecting on the historical heritage of 14th Street. In addition, the elimination of the satellite dishes and antenna tower from the Comcast site and the screening of the remaining Comcast equipment building through a solid screen wall will significantly improve the urban landscape and create an environment that complements the character of 14th Street and the U Street Corridor. The provision of rooftop private and publicly accessible terrace space will be a positive amenity to residents.

c. "Green" Building Practices. The PUD will include an irrigation system for on-site rainwater, and will include approximately 2,000 square feet of "green" roof on the mechanical penthouse roof.

d. Transportation Features. The PUD incorporates several measures that mitigate adverse traffic impacts. First, it will contain ground-floor retail and service uses, reducing the need for residents to drive for basic neighborhood services. Second, residents will be within walking distance of the 14th and U Street Corridor, which offers a number of services and commercial uses, including stores, restaurants, and entertainment establishments. Third, the PUD Site is well served by public transportation, including Metrobus lines and the U Street-Cardozo Metrorail Station. Fourth, in order to improve traffic circulation to and from the PUD Site, the project has been designed to eliminate the existing curb cuts on 14th Street and Belmont Street and to limit vehicular ingress and egress to the public alley east of the PUD Site. Fifth, in order to better accommodate this vehicular traffic and improve circulation, most of the abutting alley will be widened from fifteen (15 feet to twenty (20) feet. Finally, the PUD will include an underground parking garage that contains a minimum of 151 parking spaces, in excess of the number required under the Zoning Regulations, so that residents and users of the project will not have to compete for on-street parking spaces. Of those parking spaces, at least two (2) will be reserved for a "Zip Car" or "Flex Car" car sharing programs for residents.

e. Employment and Training Opportunities. In order to further the District of Columbia's policies relating to the creation of employment opportunities, the Applicant will enter into a Memorandum of Understanding with the Office of Local Business Development. Under the terms of the Memorandum, the Applicant shall commit to make a bona-fide effort to utilize local, small, or disadvantaged business enterprises certified by the District of Columbia Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation in the contracted development costs in connection with the development of the Project. The Applicant will also enter

into a First Source Agreement with the Department of Employment Services ("DOES") ensuring cooperation with DOES for employee recruitment for jobs created by the PUD with the objective that fifty-one percent (51%) of the employees hired in connection with the development of the project are District of Columbia residents.

f. Monetary Contributions to Neighborhood Organizations. As part of the amenities and benefits package offered in connection with the application, the Applicant committed $40,000 to assist the following neighborhood programs and initiatives:

Parent Association of the Boys & Girls Club of Greater Washington ($20,000) Education, field trips, educational materials, and supplies for high school members at the Mary and Daniel Loughram Clubhouse #10.

The Children's Studio School at 13 Street and V Street, N.W.. ($10,000) Full day School of Arts as Education, Early Light and After 4 Studios, City as Studio, Urban Arts Complex, Evening Studios, Weekend Studios, Honoring and Transforming the Intimate Cultural Traditions of Washington Families, Epicenter Stories, and internships at the Children's Studio School.

Meridian Hill Neighborhood Association. ($5,000) Scholarship fund for students at Cardozo High School, neighborhood clean-up, social events, welcome packages for new neighbors, and education forums.

Cardozo Shaw Neighborhood Association. ($5,000) Initiatives resolving historic district boundaries, renovation of the Harrison Recreation Center, and on-going neighborhood outreach.

**Compliance with the Comprehensive Plan**

30. The project is not inconsistent with the Comprehensive Plan as follows:

a. The Generalized Land Use Map for the District of Columbia. The proposed development is consistent with the Generalized Land Use Map, which designates the PUD Site as mixed-use medium-density commercial and medium-density residential.

b. Stabilizing and Improving the District's Neighborhoods. The PUD will assist in stabilizing and improving the Columbia Heights neighborhood by replacing the existing uses on the PUD Site with a well-designed mixed-use project that will bring new residents into the area and provide new retail services for the new and existing residents.

c. Reaffirming and Strengthening the District's Role as an Economic Hub. The Comprehensive Plan encourages making maximum use of the District's location

at the center of the region's radial Metrorail and commuter rail system. The PUD furthers this objective, because it brings residential, retail, and service uses in close proximity to the U Street-Cardozo Metrorail Station. Additional commuter services are available through the Metrobus lines that serve the PUD Site and the surrounding area.

31. The PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

a. Economic Development. The District places a high priority on the generation of new and productive uses of currently underused commercially and industrially zoned lands. 10 DCMR § 200.10. The policies in support of the economic development objectives for Ward 1 include: (a) supporting the development of the U Street Corridor and U Street-Cardozo Metrorail Station areas; (b) promoting compliance by private sector employers with equal employment opportunity and affirmative action requirements as well as maximize involvement of private sector employees in the training and job placement programs; and (c) ensuring commercial and service establishments necessary to neighborhood residents. 10 DCMR § 1202.1 (a), (b), (i), (m), (n).

The PUD supports the foregoing. First, the development would be a significant improvement over the automobile repair shop, antenna tower, and satellite dishes that are currently on the PUD Site and dramatically improve the aesthetics of the area while creating new housing opportunities and neighborhood retail uses to serve the residents, businesses, and offices in the area. Second, it will support the continued development of the U Street Corridor and U Street-Cardozo Metrorail Station areas by generating new residents that will utilize the businesses, services, and public amenities in these areas. Third, the Applicant will enter into a Memorandum of Understanding with the Office of Local Business Development to utilize local, small, or disadvantaged business enterprises certified by the District of Columbia Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation in the contracted development costs in connection with the development of the Project, and the Applicant will enter into a First Source Agreement with DOES ensuring cooperation with DOES for employee recruitment for jobs created by the PUD and ensuring that fifty-one percent (51%) of the employees hired in connection with the development of the project are District of Columbia residents.

b. Housing. Housing is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. 10 DCMR § 300.4. The Ward 1 Housing element emphasizes the necessity for housing located close to services needed for urban living. 10 DCMR § 1204.1. The first principle is supported by the PUD's proximity to the U Street-Cardozo

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Metrorail Station and the 14th and U Street corridor, which includes a myriad of neighborhood uses and public amenities. The latter principle is supported by the Applicant's commitment to reserve a portion of the project as affordable housing and its $1 million contribution to the Association for the acquisition of the Cresthill Apartments.

c. Transportation. A major policy for transportation in Ward 1 is supporting land-use arrangements that simplify and economize transportation services in the ward, including mixed-use zones that permit the co-development of residential and non-residential uses. Additional development is specifically encouraged in the area of the U Street-Cardozo Metrorail Station. 10 DCMR § 1214.1(a). Also, the Comprehensive Plan recognizes that the existing supply of parking spaces is inadequate in commercial and residential areas and encourages the development of parking facilities that will not adversely impact residential communities or parkland. 10 DCMR § 1215.1(g). The PUD supports these objectives by including a mix of residential, retail, and service uses intended to serve the building residents and positively impacts the area around the U Street-Cardozo Metrorail Station, while providing hundreds of potential new users for the station. Also, it will provide an underground parking garage that exceeds the requirements of the Zoning Regulations.

**Office of Planning Report**

32. By report dated November 25, 2005, the Office of Planning ("OP") recommended approval of the PUD application. This recommendation was based on its findings that the Application was supported by the ANC and numerous community groups and would generally be consistent with or further important Comprehensive Plan objectives related to housing, urban design, and land use within Ward 1. The report states that the PUD is generally consistent with zoning for the area, and the proposed amenity package is appropriate to the amount of density being gained through the PUD process.

**Other Government Agency Reports**

33. By email, the Metropolitan Police Department noted that "With sufficient underground parking in the building, (MPD) foresees no adverse public safety issues with this proposed building plan."

34. Also by email, the Department of Parks and Recreation noted that there is no District park property in the immediate vicinity of this development that will be impacted. Provision of some public green space as part of the package would be supported, as this area and areas due east and north have very little open space. OP noted that the Applicant is providing private and publicly accessible open space on the rooftop for residents, as well as green roof and streetscape landscaping.

35. By letter, the Department of Employment Services noted that the Applicant has agreed to enter into a First Source Agreement with DOES to ensure that District residents receive fifty-one percent (51%) of the new jobs created by this project, and recommended that

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the Applicant execute this agreement prior to the Zoning Commission taking proposed actions.

36. By email, the Watershed Protection Division (WPD) of the Department of Health noted among its comments that "the WPD concurs with one of the OP's suggestions requesting the Applicant to further investigate the feasibility of incorporating 'green building' practices in their design."

37. By report dated November 29, 2005, the District Department of Transportation ("DDOT") concluded that the transportation network can accommodate the proposed project without creating dangerous or objectionable traffic conditions. As such, DDOT had no objections to the project.

## CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

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

4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD, as approved by the Commission, including its approval pursuant to § 2405.3, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and neighborhood-serving retail uses for this project are appropriate for the PUD Site. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The project benefits and amenities, particularly the provision of housing, affordable housing, and neighborhood-serving retail, are reasonable for the development proposed on the PUD Site.

8. Approval of the PUD is appropriate, because the proposed development is consistent with the present character of the area.

9. Approval of this PUD is not inconsistent with the Comprehensive Plan.

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

11. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

## DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development for the PUD Site located on the east side of 14th Street, N.W., between Florida Avenue and Belmont Street, in Square 2868, Lot 119 and Lot 122. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by SK&I Architects, entitled "14th Street & Florida Avenue, NW – A Planned Unit Development," dated December 21, 2005, marked as Exhibit 34 in the record (the "Plans"), except as modified by the guidelines, conditions, and standards herein.

2. The project shall be a residential and retail development constructed to a maximum height of ninety (90) feet and a density of 6.0 FAR. Approximately 173,765 square feet of the gross floor area of the project shall be devoted to residential use, with 160 to 195 condominium units, and approximately 13,903 square feet of the gross floor area shall be devoted to retail use.

3. Of the residential gross floor area for the project, a minimum of approximately 6,000 square feet shall be devoted to affordable housing for residents with an income that is no greater than eighty percent (80%) of the area median income.

4. The PUD shall include a minimum of 151 parking spaces with a minimum of 15 spaces devoted to the retail uses. Further, at least two (2) of the parking spaces shall be reserved for use by a car-sharing service, such as Zip Car or Flex Car.

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5. Prior to the issuance of certificate of occupancy for any unit within the PUD, the Applicant shall make a monetary contribution of $1 million to the Sankofa Tenants' Association, and shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the Cresthill Apartment building at 1430 Belmont Street, N.W., to affordable housing for not fewer than 25 years from the date that the property is acquired by the Association. In the event that said covenant is not recorded at the time the Applicant requests issuance of a certificate of occupancy, in addition to the provision in Condition No. 3 above, the Applicant shall reserve a minimum of 5,729 square feet of the residential area on the PUD Site for persons whose income does not exceed eighty percent (80%) of the area median income.

6. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of $20,000 to the Parent Association of the Boys & Girls Club of Greater Washington.

7. Prior to this issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of $10,000 to The Children's Studio.

8. Prior to this issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of $5,000 to the Meridian Hill Neighborhood Association.

9. Prior to this issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of $5,000 to the Cardozo Shaw Neighborhood Association.

10. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development. The Applicant shall abide by the terms of the Memorandum of Understanding in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project.

11. No logos, advertisements, or similar markings shall be permitted on the antenna tower, satellite dishes, or any cable equipment located on the rooftop of the building.

12. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant shall abide by the terms of the agreement in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD.

13. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct on and use the PUD Site in accordance with this Order or amendment thereof by the Zoning Commission.

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14. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

15. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1.

16. Pursuant to the Human Rights Act of 1977, D.C. Code § 1-2531 (1991), the Applicant is required to comply fully with the provisions of the Act, and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Division of DCRA to approve permits if the applicants fail to comply with any provision of the Human Rights Act.

On December 5, 2005, the Zoning Commission approved the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve)

The Order was adopted by the Zoning Commission at its public meeting on January 9, 2006, by a vote of 5-0-0 (John G. Parsons, Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve).

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

## OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
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|---|---|---|---|
| 1 | DCMR | MAYOR AND EXECUTIVE AGENCIES (JUNE 2001) | $16.00 |
| 3 | DCMR | ELECTIONS & ETHICS (JUNE 1998) | $20.00 |
| 4 | DCMR | HUMAN RIGHTS (MARCH 1995) | $13.00 |
| 5 | DCMR | BOARD OF EDUCATION (DECEMBER 2002) | $26.00 |
| 6A | DCMR | POLICE PERSONNEL (MAY 1988) | $8.00 |
| 7 | DCMR | EMPLOYMENT BENEFITS (JANUARY 1986) | $8.00 |
| 8 | DCMR | UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988) | $8.00 |
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| 11 | DCMR | ZONING (FEBRUARY 2003) | $35.00 |
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| 19 | DCMR | AMUSEMENTS, PARKS & RECREATION (JUNE 2001) | $26.00 |
| 20 | DCMR | ENVIRONMENT - CHAPTERS 1-39 (FEBRUARY 1997) | $20.00 |
| 20 | DCMR | ENVIRONMENT - CHAPTERS 40-70 (FEBRUARY 1997) | $26.00 |
| 21 | DCMR | WATER & SANITATION (FEBRUARY 1998) | $20.00 |
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| 23 | DCMR | ALCOHOLIC BEVERAGES (AUGUST 2004) | $10.00 |
| 24 | DCMR | PUBLIC SPACE & SAFETY (DECEMBER 1996) | $20.00 |
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| 26 | DCMR | INSURANCE (FEBRUARY 1985) | $9.00 |
| 27 | DCMR | CONTRACTS AND PROCUREMENT (JULY 1988) | $22.00 |
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| 29 | DCMR | PUBLIC WELFARE (MAY 1987) | $8.00 |
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