

## INVITATION TO BID

## The Arts &amp; Technology Academy

## Soliciting Sealed Bids For: Accounting Services

ARTS AND TECHNOLOGY ACADEMY

REQUEST FOR PROPOSAL

FISCAL YEAR 2007 ACCOUNTING SERVICES

Arts and Technology Academy is requesting proposals from qualified firms to provide consulting services regarding the consolidation, maintenance and transition of its accounting procedures and systems from an off-site contractor to its internal operations or provision of all services by the successful bidder from its location off site. Bidders should clearly delineate how they propose to provide the requested services, either by installing systems and procedures at the school for the school to operate, by providing the services directly or a combination of those options. Bidders are free to suggest other alternatives.

## I. Scope of Services Required

Business services including budgeting, accounting, financial reporting, audit interface, and general business consulting to support Arts and Technology Academy Public Charter School's transition away from management by an education management organization, and to support ongoing operations without the management organization

Detailed scope of services

Transition to running the school without education management organization

- Provide ATA a functional chart of accounts designed to capture and illuminate DC public charter schools' key economic drivers, which will form the basis for budgeting, accounting, and reporting July 1, 2006 forward
- Convert ATA's SY06/07 budget to the new chart of accounts in a dynamic budgeting tool that will facilitate 'what-if' and scenario analyses, in addition to synchronizing the 06/07-formatted budget to the new chart of accounts provided by the firm for financial reporting
- Assess the information in the legacy financial system to determine the most cost-effective way to manage and access the information (how and how much to convert)
- Assess prior-year hardcopy records, work with ATA's business manager to create an archival solution
- Develop a transition plan and timeline with ATA's leadership to ensure work processes are in place so ongoing operations (detailed below) can be picked up on July 1, 2006, and to ensure such work processes are efficient and conform with principals of sound financial internal control

Support ongoing operations without educational management company

- Operate and/or install a financial accounting system capable of tracking departmental and fund accounting dimensions in addition to functional attributes
- Each week provide accounting and bookkeeping services as may be needed during the transition from the educational management company including:
  - Full-cycle A/P
  - A/R
  - Deposits and cash reconciliation
  - Grant expense coding, tracking and balance
  - G/L entries as required
  - Filing

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- Semimonthly, process payroll through ADP and record journal entries, as well as manage 403b contributions
- Monthly, provide accounting and reporting services including:
  - Bank reconciliations
  - Asset and depreciation schedule updates and accounting system reconciliation
  - Deferred revenue and prepaid expense recognition
  - Financial statement preparation (budget vs. actual for month and year-to-date; balance sheet; cash flow statement) with performance summary, notes on variances, concerns, and the like for presentation at each month's board meeting, the third Thursday each month
  - Internal audit to be reviewed by the firm partner
  - Balance sheet accounts reconciliation such as receivables, accrued expenses, and unearned revenue
- Quarterly, provide accounting and reporting services including:
  - Financial reports to supplement the school's narrative for federal grant reports
  - Revenue recognition per quarterly federal competitive grant reports (for grants other than NCLB), if any
  - Federal spending schedule update
  - Financial statements in DC PCSB-required format—map and submit quarterly budget vs. actual and balance sheet to the PCSB
  - Quarterly reports to the school's lending institutions as required by financing documents.
  - Create quarterly and final report for Federal title grants (4) and IDEA funds.
- Work with school's leadership to create detailed 5-year budget for SY07/08
- Act as audit interface for ATA's annual audit for SY06/07
  - Work with ATA to provide all items requested on the "prepared by client" list
  - Ensure firm representative is available to auditors to fulfill ad hoc information requests as required
- Perform one-off and scenario analyses to answer critical "what-if" questions raised by business decisions the school will consider throughout the year, particularly with respect to how such decisions will affect ATA's budgeted net income and cash flow. Firm should have tools and capabilities to perform such analyses quickly, and be responsive to ATA's dynamic operating circumstances
- Apply for e-Rate funding on ATA's behalf
- Consult with regard to the selection of new accounting software for the recording of ATA's financial transactions and reporting. Selection services are anticipated to include an assessment of current accounting and reporting requirements, projection of anticipated growth of ATA and the effect on its financial systems, assessment of infrastructure requirements and staffing requirements and assessment of cost requirements.
- Assist with the installation of new accounting software for ATA. Installation services are expected to include an assessment and if necessary, redesign of the chart of accounts, assist with recording accounting and financial transactions for the transition period in the new software, modification and/or redesign of monthly, quarterly and annual reporting as necessary, and testing of the accounting software to ensure compliance with recording and reporting objectives and internal controls.

Qualifications of offeror

Offeror should have experience in the DC Public Charter School industry. And, Offeror should have depth beyond accounting, with some competence in finance and operations.

Minimum contract

Offeror should be willing to enter into a contract for at least one year, and give Arts and Technology Academy PCS renewal options for at least two additional years.

II. Organizational Background

ATA received its charter in the fall of 1999. The school was founded on the basis that children are interested in learning when learning is fun, yet challenging, and that becoming an educated person is a win that is not easily attained, but eagerly sought, while simultaneously building character and strength of mind. With the support and guidance of Mosaica Education, Inc., a leader in education management, ATA has been able to provide an outstanding curriculum for its student body. Over several years, ATA has gained position as a model arts and technology school in northeast Washington, DC. It has been recognized as one of the eight outstanding charter schools in the country by the Department of Education and recently received a High Performing School Incentive Award for academic achievement from the District of Columbia. With steady investment, our curriculum and teaching style remain focused on our goal of becoming a true arts and technology environment and ensuring that the arts and technology are part of all learning, allowing students to understand, firsthand, how pertinent arts and technology is to their future successes.

III. The Organization's Financial Operation

ATA's financial operations are managed by the use of an outside contractor and an in-house business manager. Currently, the outside contractor maintains the general ledger and accounts for all transactions at an off-site location. The business manager interfaces with the outside contractor for processing disbursements, receivables, payroll, recording investment transactions, maintaining adequate insurance coverage, budgeting, and the production of monthly reporting. The business manager also interfaces with the outside contractor and ATA's auditors to provide support to the outside auditors and ensure the timely filing of tax returns, including IRS Form 990. The oversight for these operations is performed by ATA's treasurer.

IV. Firm Qualification and Experience

The proposal should state the following:

- The size of the firm's local office and the size of the local office not-for profit accounting and consulting staff,
- The location from which the work on this engagement is to be performed and the number and nature of the professional staff to be assigned to this engagement, and,
- The experience of the local office serving similar not-for-profit organizations.

The firm should also list its capabilities in other relevant management advisory services such as the conversion of accounting software.

V. Specific Proposal Requirements

All proposals should include the following:

A. Technical Proposal

1. Objective and scope of firm's services
2. Firm's qualifications and experience, responsive to item IV above (national firms should respond with local office qualifications).
3. References for at least three non-profit clients.

4. Description of services approach, including staffing philosophy, responsiveness to requests and service delivery philosophy,
5. Staffing - composition of consulting team and their qualifications.

B. Cost bid and related schedules showing timeline for the performance of services and transition of accounting functions, assessment of new accounting software and required infrastructure and anticipated hours by staff member and assigned areas of responsibility.

#### VI. Evaluation Procedures

- A. Proposals will be evaluated by the Business Manger and the school's Treasurer and ultimately by its Board of Directors according to the requirements of this RFP. Proposals will first be evaluated for technical merit. Proposals which do not meet minimum standards for the technical criteria will be eliminated.
- B. The cost bid should reflect a total all-inclusive maximum price and include all pricing information relative to performing the accounting engagement as described in this RFP. The total all-inclusive maximum price is to contain all direct and indirect costs including all out-of-pocket expenses. The cost bid should include a schedule of professional fees, hours and expenses, as well as a breakdown of out-of-pocket expenses.
- C. Cost will not be the primary factor in awarding this contract. The proposal will be awarded based on the best overall combination of technical merit and price.

#### VII. General Requirements and Deadline

Please direct questions no later than March 31, 2006 to Monica Allen, at the address given below for proposal submission. She may be reached at 202-398-6811.

Proposals should be organized in the order in which the requirements are presented in the Request For Proposal (RFP). In order to be considered for selection, offerors must submit a complete response to this RFP by 5:00 p.m. on April 7, 2006. One (1) original and three (3) copies of each proposal must be submitted to Arts and Technology Academy at the following address:

Arts and Technology Academy  
5300 Blaine Street, NE  
Washington, DC 20019  
ATTN: Monica Allen

The school will review proposals received by the deadline and make a recommendation to the Board of Arts and Technology Academy. A final decision will be made and it is anticipated that the selected firm will be notified during April 2006.

This RFP should not be construed by any respondent as a commitment by Arts and Technology Academy to procure any services from any specific entity, nor to make such purchase in any case. Any and all expenses and costs of any kind incurred by a proposer in connection with responding to this RFP are the sole responsibility of the proposer. Arts and Technology Academy reserves the right:

- To withdraw this solicitation at any time with no financial or other responsibility to any prospective proposer,
- To conduct discussion and negotiations, in its sole discretion, with any proposer or proposers, without notification to any such excluded proposers,
- To accept or reject, in its sole discretion, any or all proposals.

**Copies of the following can be obtained by contacting Monica Allen on 202.398.6811, 202.388.8467 fax or [mjones-allen@dcata.org](mailto:mjones-allen@dcata.org)**

- Fiscal year 2005 audited financial statements
- Quarterly Reports to Financial Institution
- Internal financial statements and reports for the seven months ended January 31, 2006

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

BOARD FOR

THE CONDEMNATION OF INSANITARY BUILDINGS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs, in accordance with section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, as amended, D.C. Code section 1-1504 (1999 Repl.), hereby gives notice that the Board for the Condemnation of Insanitary Buildings' (BCIB) regular meetings will be held on the dates listed below for calendar year 2006, (the second and fourth Wednesday of each month). The meetings will begin at 10:00 a.m. in Room 7100 of 941 North Capitol Street, NW, Washington, D.C. 20002.

2006

January 11th  
January 25th

July 12th  
July 26th

February 8th  
February 22nd

August 9th  
August 23rd

March 8th  
March 22nd

September 13th  
September 27th

April 12th  
April 26th

October 11th  
October 25th

May 10th  
May 24th

November 8th  
November 22nd

June 14th  
June 28th

December 13th  
December 27th

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These regularly scheduled meetings of the BCIB are open to the public. Please call the Building Condemnation Division on (202) 442-4322 or 442-4486 for further information or for changes in this schedule.

MAR 31 2006

**EAGLE ACADEMY PUBLIC CHARTER SCHOOL**

**NOTICE: REQUEST FOR INTEREST IN BIDDING ON  
DESIGN AND/OR RENOVATION OF  
APPROXIMATELY 16,000 SQUARE FEET OF SCHOOL USE SPACE**

The Eagle Academy Public Charter School, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, is soliciting letters of interest from District of Columbia licensed Architects, Developers, and General Contractors for the renovation of approximately 16,000 square feet of school use space in an existing building. Renovation shall include architectural design for re-use of existing space, plumbing, electric, interior construction, and other related items. Letters of Interest shall be received no later than April 7, 2006. Details on design for bidding will be sent no later than April 14, 2006. Details on construction for bidding shall be sent to approved bidders by April 28, 2006. Final bids shall be received no later than 5:00 P.M., May 5, 2006. Letters of Interest should be sent to the listed address, Attention, Cassandra Pinkney, Executive Director..

**EAGLE ACADEMY PUBLIC CHARTER SCHOOL****NOTICE: REQUEST FOR INTEREST IN BIDDING ON  
TEMPORARY MODULAR UNITS  
16 CLASSROOMS PLUS ADMINISTRATIVE UNIT**

The Eagle Academy Public Charter School, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, is soliciting letters of interest from corporations or individuals for the establishment of a temporary building(s) or trailer unit building(s) for 16 classrooms and an administrative unit equal to approximately to double-wide trailers. Classrooms and administrative unit must be delivered in ready-to-use condition and must meet DC code requirements for a certificate of occupancy. Bids shall include the cost of setting-up and removing building, any additional costs for extras; e.g., ramp to enter the building, monthly lease plus annual total, type of heating and cooling in trailers, and specifications of trailer design; e.g., size of classrooms, hallways, number of stalls in boys and girls bathrooms, utility requirements. Proposals with bid information shall be received no later than April 14, 2006 and should be sent to the listed address, Attention, Cassandra Pinkney, Executive Director..

## **EAGLE ACADEMY PUBLIC CHARTER SCHOOL**

### **EARLY CHILDHOOD PROFESSIONAL OPENINGS:**

**Licensed Social Worker**, prefer experience working with ages 3-6. **Teachers** must pass the PRAIXS, prefer B.S. degree in ECH. **Instructional Aides** must have A.A. Please send letter and resume with three letters of reference to Eagle Academy Public Charter School, Attn: T. Jett-Jones, 770 M Street, SE, Washington, DC 20003.

## **EAGLE ACADEMY PUBLIC CHARTER SCHOOL**

### **NOTICE: FOR PROPOSAL TO PROVIDE SPECIAL EDUCATION SERVICES**

Eagle Academy Public Charter School, in accordance with section 2204© of the District of Columbia School Reform Act of 1995, solicits proposals to provide special education services including therapeutic services, evaluation services, I.E.P. services and related services for children ages 3 through 6, ranging from Levels 1 through 4.

Providers must state their credentials, provide appropriate references. No proposal will be considered without fixed prices.

Proposals shall be received no later than 5:00 P.M., June 8, 2006. Proposals should be addressed: Eagle Academy Public Charter School, Attn: Jennifer Jenkins, Business Manager, 770 M Street, SE, Washington, DC 20003.

## **EAGLE ACADEMY PUBLIC CHARTER SCHOOL**

### **NOTICE: FOR PROPOSAL TO CATER SCHOOL BREAKFAST AND LUNCH PROGRAM**

The Eagle Academy Public Charter School in accordance with section 2204© of the District of Columbia School Reform Act of 1995, solicits proposals to provide meals for breakfast, lunch and snack for 130-150 students ages 3, 4, and 5. The meals must meet federal nutrition requirements and all compliance standards of the State Education Office School Breakfast Program, the National School Lunch Program, and the After School Snack Program. Vendor must also provide individualized prepackaged meals and all supplies (i.e. forks, spoons, knives, paper ware, and cabinet for storage of such supplies)

Potential Vendors must state their credentials, providing appropriate licenses and sample menus in accordance with federal nutritional and serving regulations. No proposal will be considered without submitting a completed IFB/Request for the furnishing of meals.

Proposals shall be received no later than 5:00 P.M., Friday, June 8, 2006. Proposals should be sent to, Eagle Academy Public Charter School, ATTN: Jennifer Jenkins, Business Manager, 770 M Street, SE, Washington, DC 20003.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS

Final Notice of Polling Place Relocation

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The Board of Elections and Ethics hereby gives public notice, in accordance with D.C. Official Code §1-309.10, of final action taken on March 8, 2006 at a special scheduled board meeting in relocating Precinct #109, Ward 7 Polling Place.

The public is advised that the voting area for Precinct #109 will be changed from:

**Ryland Methodist Church  
3200 S Street, S.E.  
Fellowship Hall**

and moved to:

**Randle-Highlands Elementary School  
1650 30<sup>th</sup> Street, S.E.  
Gymnasium**

The precinct change will provide adequate space to accommodate voters on election day. Further, the precinct is accessible and will accommodate voters with disabilities. **This action will be effective beginning with the upcoming September 12, 2006, Primary Election.** The Board will individually notify all registered voters in the precinct of this change.

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

BOARD OF ELECTIONS AND ETHICS

NOTICE OF PUBLIC HEARING  
RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE

The Board of Elections and Ethics shall consider in a public hearing whether the proposed "Video Lottery Terminal Initiative of 2006" is a proper subject matter for initiative, at the regular Board meeting on Wednesday April 5, 2006 at 10:30a.m., One Judiciary Square, 441 4<sup>th</sup> Street, N.W., Suite 280, Washington D.C. 20001.

The Board requests that written memoranda be submitted for the record no later than 9:00a.m., Wednesday, April 5, 2006 to the Board of Elections and Ethics, General Counsel's Office, One Judiciary Square, 441 4<sup>th</sup> Street., Suite 270, Washington, D.C. 20001.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number and name of the organization represented (if any) by calling the General Counsel's office at 727-2194 no later than 9:00a.m., Wednesday, April 5, 2006.

The Short Title, Summary Statement and Legislative Text of the proposed initiative reads as follows:

**SHORT TITLE**

"VIDEO LOTTERY TERMINAL INITIATIVE OF 2006"

**SUMMARY STATEMENT**

This initiative, if passed, will:

- expand the lottery by allowing "Video Lottery Terminals" ("VLTs"), which are very similar to slot machines, in the District of Columbia;
- provide a fee of 25% of the net revenue from each VLT to the District;
- establish the initial VLT facility at a small site in the Anacostia section of Ward Eight targeted for redevelopment.

**LEGISLATIVE TEXT**

To amend the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia by adding new sections authorizing the licensing of video lottery terminals and recommending that revenues accruing to the District from the operation of video lottery terminals be distributed equally to a District of Columbia Public Schools Fund, a District of Columbia Senior Citizens Prescription

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Drug Benefits Fund, and the General Fund of the District of Columbia.

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Lottery Expansion Initiative Act of 2006".

Sec. 2. Findings and Purposes.

The people of the District of Columbia recognize and declare as follows:

- (1) The District needs to create more jobs to address unemployment and to generate additional revenue to address areas of special concern to the residents of the District of Columbia. These areas of special concern are (A) programs to benefit the District of Columbia public schools by providing for the improvement of the educational content, physical condition, vocational programs, security, and general well-being of the District's schools, and (B) programs to aid District senior citizens in obtaining needed prescription medications, especially since such medications are often not provided under currently available Medicare or Medicaid programs. The District is strongly urged to create special purpose funds to support programs in these areas;
- (2) The District would be best served if the needed revenue were generated by a new, self-sustaining program rather than through the imposition of additional taxes or fees on the incomes of District residents and District businesses;
- (3) The District of Columbia Lottery has, since its inception, been a positive example of such a self-sustaining revenue generation program by providing needed revenues for the District through sales and fees on licensed lottery transactions;
- (4) Based on this example, the people of the District of Columbia have chosen to enact the "Lottery Expansion Initiative Act of 2006" to create a new source of lottery revenue by expanding the permissible forms of playing the District of Columbia Lottery to include the playing of lottery games, including but not limited to "scratch-off" cards in electronic form, through Video Lottery Terminals ("VLTs");
- (5) In order to regulate, control, and limit the operation of VLTs, and as set forth herein, (A) only entities licensed by the District of Columbia Lottery and Charitable Games Board (the "Board," as defined below) will operate VLTs, (B) such operations may only occur in facilities specifically designated for VLT operations, (C) the location of the initial VLT Facility is specifically restricted by this Law, (D) the Board has licensing authority to allow additional VLT facilities, and (E) any such expansion may occur only after such expansion is proposed by the Board and approved by a two-thirds majority of the members of the Council of the District of Columbia;
- (6) In order to ensure that the operation of VLTs provides ample revenues to accomplish the purposes of this Law, and as set forth herein, a usage fee will be charged against each licensed operator of VLTs in an amount of 25% of the Net VLT Proceeds (defined

below), as set forth herein;

(7) In order to ensure that the majority of the revenues produced from VLT operations are used for the pressing needs identified by the people of the District in this Law, it is the strong recommendation of the people of the District of Columbia that there be established a "District of Columbia Public Schools Fund" and a "District of Columbia Senior Citizens Prescription Drug Benefits Fund". It is the strong recommendation of the people of the District of Columbia that the VLT Fee Revenue shall be allocated in the following manner: 33 1/3% percent to a District of Columbia Public Schools Fund, 33 1/3% percent to a District of Columbia Senior Citizens Prescription Drug Benefits Fund; and 33 1/3% percent to the General Fund of the District of Columbia as general purpose revenue funds.

### Sec. 3. Statement of law.

The Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3172; D.C. Official Code .§ 3-1301 et seq.) is amended by adding, at the end, the following new sections to be codified as D.C. Official Code §§ 3-1350 through 3-1369:

#### § 3-1350. DEFINITIONS

The following definitions apply to all provisions in Sections § 3-1351 through § 3-1369 of this act.

- (1) "Board" shall mean the District of Columbia Lottery and Charitable Games Control Board, created pursuant to D.C. Official Code § 3-1301 or, pursuant to Section 207 of Public Law 104-8 and Section 2302 of Public Law 108-11, the Chief Financial Officer of the District of Columbia.
- (2) "Certification Company" means Gaming Laboratories, Inc., a company that performs testing and certification of VLTs, or any similar company, which performs testing, and certification of VLTs and which (i) is not affiliated with any Licensee or any Principal of any Licensee and (ii) is authorized by the Board or by any State to perform testing and certification of VLTs or similar devices.
- (3) "Designated VLT Site" shall mean a site, including the Initial Designated VLT Site, authorized for the conduct of VLT Operations by a Licensee under a License issued by the Board pursuant to the "Lottery Expansion Initiative Act of 2006".
- (4) "Electronic cards" means cards that employ an affixed magnetic storage medium and/or a "smart card" and/or cards containing an integrated circuit chip, but excludes credit cards issued by any Person other than a Licensee.
- (5) "Eligible Applicant" means a Person who meets the requirements imposed in this chapter for obtaining a License to acquire, own, maintain, and operate VLTs within the

District of Columbia.

- (6) "Executive Director" shall mean the Executive Director of the Board, as appointed pursuant to D.C. Official Code § 3-1303.
- (7) "Initial Designated VLT Site" shall mean an approximately 9,000 square foot area consisting of lots 5, 812, and 813 in square 5770 of Ward Eight that is targeted for redevelopment by the Anacostia Economic Development Corporation, and any adjoining parcels brought under common control with any Licensee under the Temporary Initial License or Initial License issued by the Board pursuant to the "Lottery Expansion Initiative Act of 2006".
- (8) "Initial License" means the License issued to an Eligible Applicant by the Board pursuant to section 1354 of the "Lottery Expansion Initiative Act of 2006".
- (9) "License" means the authorization issued to an Eligible Applicant by the Board pursuant to the provisions of the "Lottery Expansion Initiative Act of 2006" to: (A) acquire (by purchase, lease or otherwise) and own VLTs certified by a Certification Company, and (B) install, maintain and operate VLTs and conduct VLT Operations at a Designated VLT Site.
- (10) "Licensee" means an Eligible Applicant issued a License by the Board in accordance with the "Lottery Expansion Initiative Act of 2006".
- (11) "Manufacturer" means any Person (A) who or which manufactures, fabricates, assembles and/or programs VLTs including parts or portions thereof (collectively "VLT Equipment"), (B) whose VLT Equipment is certified by a Certification Company, (C) who either (i) has applied for and been issued a Permit by the Board to sell, lease or otherwise provide VLT Equipment to Licensees or Permittees, or (ii) has been, and is currently licensed in any State to sell, lease or otherwise provide VLT Equipment to Persons authorized to conduct VLT Operations in such other State, and (D) who is not a Licensee.
- (12) "Maximum Permissible Designated VLT Sites" shall mean the maximum number of Designated VLT Sites for which the Board may issue a License. The Maximum Permissible Designated VLT Sites shall be set in accordance with section 1355 of the Lottery Expansion Initiative Act of 2006".
- (13) "Net VLT Proceeds" means the total of all cash and property received by a Licensee from VLT Operations minus the amount of the Payout.
- (14) "Payout" means premiums, merchandise, prizes, promotional complementaries or anything of value provided via a voucher and/or Electronic Card, which the player of a VLT may be entitled to receive as a result of the playing of the VLT.
- (15) "Permit" means any authorization (other than a License) issued to a Manufacturer,

supplier, Service Technician or any person (other than a Licensee) by the Board under the provisions of the "Lottery Expansion Initiative Act of 2006" to participate in VLT Operations and/or the provision, repair, maintenance and servicing of VLTs and related equipment and supplies.

(16) "Permittee" means a Person (other than a Licensee) issued a Permit by the Board under the provisions of the "Lottery Expansion Initiative Act of 2006".

(17) "Person(s)" means individuals, partnerships, limited liability companies, corporations and other legal entities and associations.

(18) "Principal" means any Person who (A) holds or controls directly or indirectly ten (10%) percent or more ownership or economic interest in an applicant for, or holder of a License or Permit, or (B) receives ten (10%) percent or more revenue interest in the form of a commission, finder's fee, loan fee or interest, or any other compensation arising out of or relating to VLT Operations; provided, however, that no bank, regulated mutual fund, insurance company, or other regulated financial institution ("Financial Institution") shall be deemed a Principal under the "Lottery Expansion Initiative Act of 2006" so long as (A) the Financial Institution holds its interests in an applicant for, or holder of, a License or Permit for investment purposes only, and (B) the Financial Institution does not own a majority of the equity of the applicant for, or holder of, a License or Permit.

(19) "Service technician" means any Person (other than a Licensee or Manufacturer and/or their respective employees) who (A) is trained by a Manufacturer, Distributor, other qualified entity, or has been certified in a training program approved by the Board, to perform one or more of the following functions with respect to a VLT: (i) clearing paper or money jams, (ii) changing paper contained within the VLT, (iii) retrieving money from a VLT, or (iv) performing any repairs, parts replacements, maintenance, cleaning, and other servicing to VLTs, and (B) holds a Permit issued by the Board under the provisions of the "Lottery Expansion Initiative Act of 2006" to perform those functions for a Licensee or Permittee.

(20) "Temporary Initial License" shall mean a License issued pursuant to section 1355 of the "Lottery Expansion Initiative Act of 2006".

(21) "VLT" means a lottery machine that performs only the following functions: (A) accepts paper or coin currency or vouchers to enable a player to participate in one or more games; (B) dispenses, at the player's request, (i) an amount of coins equal to the player's credit balance, (ii) a token, voucher and/or Electronic Card that has physically or electronically imprinted upon it the game identifier and the player's credit balance, or (iii) some combination thereof, (C) shows on a video screen, reels or other electronic display, rather than on a paper ticket, the results of each game played; (D) shows on a video screen or other electronic display, in an area separate from the game results, the player's credit balance; (E) houses a game platform that is connected to a central system; (F) contains within the common central system pools of lottery game tickets and (i) such pools are defined by game type, denomination, and the amount bet, (ii) each pool,

regardless of where its electronic tickets are assigned, has its own hold or par, and (iii) a player plays against other players through the VLT and its designated pool; and (G) is monitored and controlled by a central computer system which maintains the integrity of the operations of the individual VLT.

(22) "VLT Operations" means the use, operation, offering, or conduct of VLT gaming by a Licensee in accordance with the provisions of the "Lottery Expansion Initiative Act of 2006".

(23) "VLT Usage Fees" means those fees owed by Licensees under section 1358 of the "Lottery Expansion Initiative Act of 2006".

#### § 3-1351 MANAGEMENT OF VLT FEE REVENUE.

All funds, fees, fines, or other revenues collected by the Board with respect to the licensing, operation, administration, or regulation of VLTs, including but not limited to all VLT Usage Fees collected pursuant to section 1358 of the "Lottery Expansion Initiative Act of 2006" (the "VLT Fee Revenue") shall be accounted for and managed in accordance with the applicable laws and regulations of the District of Columbia.

#### § 3-1352 PROHIBITION ON UNAUTHORIZED ACTIVITIES WITH RESPECT TO VLTs

(a) No Person shall acquire, own, operate, provide, distribute, repair or maintain VLTs and/or conduct VLT Operations unless and until such Person shall be issued a License or Permit, including a Temporary Initial License or Initial License, to engage in such activity, by the Board under the provisions of the "Lottery Expansion Initiative Act of 2006", or be exempt from permitting as provided in the "Lottery Expansion Initiative Act of 2006".

(b) Notwithstanding subsection (a) of this section, any natural person who is an employee of a non-natural Person that has obtained a License or Permit may, so long as he or she is acting within the scope of his or her employment for said non-natural Person, acquire, operate, provide, distribute, repair or maintain VLTs and/or conduct VLT Operations to the extent authorized in any License or Permit issued to said nonnatural Person.

#### § 3-1353 LICENSING FOR OPERATION OF VLTs AND CONDUCT OF VLT OPERATIONS; TEMPORARY INITIAL LICENSE

(a) Beginning forty-five (45) days following the effective date of this section, and no earlier, the Board shall begin accepting applications for the Temporary Initial License to conduct VLT Operations.

(b) Any Person applying for the Temporary Initial License under subsection (a) of this section shall complete and submit the form of application, which is, as of the effective

date of this section, promulgated by the Board as the application for obtaining a license to become a lottery sales agent pursuant to D.C. Official Code § 3-1315. In addition, any Person applying for the Temporary Initial License under subsection (a) of this section shall submit the following:

- (1) A sworn affidavit that the Person and, if applicable, all Principals are, at the time of application, not disqualified from being a Licensee (or Principal of a Licensee) pursuant to the provisions of section 1362 of the "Lottery Expansion Initiative Act of 2006"; and
- (2) Documentation demonstrating that the Person owns and has the right to possess more than 50% of, is the lessee of and has the right to possess more than 50% of, or has the contractual right to acquire and possess more than 50% of or be the lessee of and possess more than 50% of property that is eligible to become the Initial Designated VLT Site.

An application for the Temporary Initial License shall be deemed complete if it includes all of the documents required under this section. The Board is required to accept any application that is deemed complete under this subsection.

(c) The Board shall grant the Temporary Initial License to the Person who, on the earliest date following the effective date of the "Lottery Expansion Initiative Act of 2006", meets the following criteria: (1) the Person submits an application that is deemed complete pursuant to subsection (b) of this section, and (2) the Person has demonstrated that the Person owns and has the right to possess more than 50% of, is the lessee of and has the right to possess more than 50% of, or has the contractual right to acquire and possess more than 50% of, or be the lessee of and possess more than 50% of property that is eligible to become the Initial Designated VLT Site. The Board shall issue a decision granting or denying a Person's application for the Temporary Initial License within fourteen (14) days of the Board's receipt of the application.

(d) Any Person whose application has been denied pursuant to subsection (c) of this section may, within thirty (30) days of the denial of that application, appeal the Board's decision to deny the application to the Superior Court of the District of Columbia.

(f) The Person awarded a Temporary Initial License (the "Temporary Initial Licensee") shall have all the rights of any Licensee under this chapter; provided, however, that the Temporary Initial License shall expire on the earliest of (1) the granting by the Board of an Initial License to the Temporary Initial Licensee pursuant to section 1354(c) of this chapter, or (2) the denial by the Board of an application by the Temporary Initial Licensee for the Initial License pursuant to section 1354(d) or 1354(e) and the expiration of all appeals of that denial pursuant to section 1354(g) of the "Lottery Expansion Initiative Act of 2006".

#### § 3-1354 LICENSING FOR OPERATION OF VLTs AND CONDUCT OF VLT OPERATIONS; INITIAL LICENSE

(a) Within 180 days of the Board's granting of a Temporary Initial License, the Board

shall create and publish regulations setting forth a procedure by which Persons may apply for the Initial License (the "Initial Application Regulations"). The content of the Initial Application Regulations are within the discretion of the Board, except that Initial Application Regulations must require the Person applying for the License ("Initial License Applicant") to provide the following information:

(1) Information demonstrating that the Initial License Applicant owns and has the right to possess more than 50% of, is the lessee of and has the right to possess more than 50% of, or has the contractual right to acquire and possess more than 50% of, or be the lessee of and possess more than 50% of property that is eligible to become the Initial Designated VLT Site;

(2) Information sufficient to allow the Board to determine whether the Initial License Applicant is "suitable" pursuant to sections 1361 and 1362 of the "Lottery Expansion Initiative Act of 2006"; and

(3) If the Initial License Applicant is a non-natural person, a list of all employees, officers, and Principals of the Initial License Applicant.

(b) Within (90) days following the Board's publication of the Initial Application Regulations, the Temporary Initial Licensee may submit an application for the Initial License in accordance with the Initial Application Regulations.

(c) If the Temporary Initial Licensee submits an application for the Initial License pursuant to subsection (b) of this section, the Board shall determine within ninety (90) days of the date of said application whether to immediately grant the Initial License to the Temporary Initial Licensee. The Board shall award the Initial License to the Temporary Initial Licensee if it determines that: (1) the Temporary Initial Licensee is an Eligible Applicant, (2) the Temporary Initial Licensee (A) owns and has the right to possess more than 50% of or (B) is the lessee of and has the right to possess more than 50% of property eligible to be the Initial Designated VLT Site, and (3) the Board has found, after investigation, that (A) the License Application is complete, and (B) the Temporary Initial Licensee is suitable, according to the provisions of section 1361 and 1362 of the "Lottery Expansion Initiative Act of 2006".

(d) If, after the expiration of this ninety (90) day period, the Board determines that the Temporary Initial Licensee does not meet the criteria of subsection (c) of this section, but that such criteria could be satisfied by the Temporary Initial Licensee by taking feasible and reasonable corrective measures, including but not limited to a transfer of interests held by one or more Principals of the Temporary Initial Licensee, the Board shall postpone its decision on the application of the Temporary Initial Licensee and issue a written statement to the Temporary Initial Licensee setting forth the corrective measures that need to be taken by the Temporary Initial Licensee in order for the Board to grant the Initial License. Otherwise, if, after the expiration of the ninety (90) day period, the Board determines that the Temporary Initial Licensee does not meet the criteria of subsection (c) of this section, the Board shall issue a decision denying the application of the

## Temporary Initial Licensee

(e) If the Board postpones its decision and requests corrective measures pursuant to subsection (d) above, the Board shall allow the Temporary Initial Licensee 180 days to take the measures set forth by the Board. After the expiration of this period, the Board shall grant the Initial License to the Temporary Initial Licensee if it determines (1) the corrective measures required by the Board have been taken, and (2) after completion of the corrective measures, the Temporary Initial Licensee has met the criteria for the Initial License under subsection (c) of this section. Otherwise, the Board shall issue a decision denying the Temporary Initial License.

(f) If the Board denies the application of the Temporary Initial Licensee pursuant to subsection (d) or subsection (e) of this section and all appeals of that denial pursuant to subsection (g) of this section have been exhausted, or if the Temporary Initial Licensee does not apply for the Initial License within the time period set forth in subsection (c) of this section, the Board shall then accept further applications for the Initial License. The Board shall, on a rolling basis, evaluate each application for the Initial License made under this subsection and award the Initial License to the first Person who has submitted a complete application for the Initial License and whom the Board determines meets the criteria set forth in subsection (c) of this section.

(g) Any Person whose application has been denied pursuant to this section may, within thirty (30) days of the denial of that application, appeal the Board's decision to deny the application to the Superior Court of the District of Columbia.

§ 3-1355 LICENSING FOR OPERATION OF VLTs AND CONDUCT OF VLT OPERATIONS; SUBSEQUENT LICENSES

(a) The Board may, at any time adopt and approve a proposal to expand the Maximum Permissible Designated VLT Sites and to accept applications for additional License(s) to conduct VLT Operations for each newly permitted Designated VLT Area ("Expansion Proposal"). The Board shall include in any Expansion Proposal a specific description of the property in which the Designated VLT Site(s) for the additional License(s) granted under the Expansion Proposal shall be located in the event that the Expansion Proposal becomes effective under this section.

(b) Immediately after the adoption and approval of an Expansion Proposal by the Board under subsection (a) of this section, the Expansion Proposal shall be submitted to the Council of the District of Columbia ("Council") for approval. If a two-thirds majority of the members of the Council votes in favor of the proposal, the Expansion Proposal shall take effect and the Maximum Permissible Designated VLT Sites shall be expanded as set forth in the Expansion Proposal.

(c) Within ninety (90) days of the approval of an Expansion Proposal by the Council, the Board shall create and publish regulations setting forth a procedure by which Persons may apply for a License to conduct VLT Operations at one or more of the newly

permitted Designated VLT Sites (the "Expansion License Application Regulations"). The content of the Expansion License Application Regulations are within the discretion of the Board, except that the Expansion License Application Regulations must require each Person applying for the License ("Expansion License Applicant") to provide the following information:

(1) Information demonstrating that the Expansion License Applicant owns and has the right to possess more than 50% of, is the lessee of and has the right to possess more than 50% of, or has the contractual right to acquire and possess more than 50% of, or be the lessee of and possess more than 50% of property that is eligible to become a Designated VLT Site under the Expansion Proposal;

(2) Information sufficient to allow the Board to determine whether the Expansion License Applicant is "suitable" pursuant to sections 1361 and 1362 of the "Lottery Expansion Initiative Act of 2006"; and

(3) If the Expansion License Applicant is a non-natural person, a list of all employees, officers, and Principals of the Expansion License Applicant.

(d) Immediately following the Board's publication of the Expansion License Application Regulations (the "Expansion Application Period"), the Board shall accept applications for Licenses in accordance with the Expansion License Application Regulations.

(e) The Board shall award the Licenses permitted under the Expansion Proposal to the Person(s) who have submitted a complete application for the Expansion License Application on the earliest date and who have met the following criteria: (1) the Person is an Eligible Applicant, (2) the Person owns and has the right to possess more than 50% of, is the lessee of and has the right to possess more than 50% of, or has the contractual right to acquire and possess more than 50% of, or be the lessee of and possess more than 50% of property that is eligible to become a Designated VLT Site under the Expansion Proposal, and (3) the Board has found, after investigation, that (i) the License Application is complete and (ii) the Eligible Applicant is suitable, according to the provisions of section 1361 and 1362 of the "Lottery Expansion Initiative Act of 2006".

(f) Any Person whose application has been denied pursuant to this section may, within thirty (30) days of the denial of that application, appeal the Board's decision to deny the application to the Superior Court of the District of Columbia.

#### § 3-1356 AUTHORITY GRANTED LICENSEE; CONDITIONS

Any License (including the Temporary Initial License and the Initial License) shall entitle the Licensee to acquire (by purchase, lease or otherwise), own, install, operate, repair and maintain VLTs certified by a Certification Company and to conduct VLT Operations, subject to the requirements of this chapter and Rules and Regulations adopted, from time to time, by the Board pursuant to the authority granted herein, and specifically subject to

the following requirements and restrictions:

- (1) The Licensee may only conduct VLT Operations at a Designated VLT Site; provided, however, that the Licensee may conduct auxiliary services, including but not limited to the provision of parking facilities, food service, or lodging service, on land adjacent to or within reasonable distance of the Designated VLT Site;
- (2) The Licensee operating such Designated VLT Site shall:
  - (A) Provide, at no cost or expense to the Board, sufficient space and facilities at the Designated VLT Site for the installation and operation of the central computer required pursuant to section 1350(21) of this chapter and the staff of the Board engaged to operate such central computer; and
  - (B) Furnish and install the central computer and software; the cost of which central computer and software ("Central Computer Cost") shall be paid by the Licensee.
- (3) The Licensee shall maintain continuous suitability for the operation of VLT Operations, under the provisions of sections 1363 and 1364 of the "Lottery Expansion Initiative Act of 2006";
- (4) The Licensee shall grant the Board the right of inspection of all VLTs, all VLT related Equipment, and all of the Licensee's books and records, and shall permit the Board (including the Director and/or any agent thereof) unrestricted access to the Designated VLT Site;
- (5) The Licensee shall pay all VLT Usage Fees owed to the Board as required pursuant to section 1358 of the "Lottery Expansion Initiative Act of 2006".

#### § 3-1357 REQUIREMENTS FOR VIDEO LOTTERY TERMINALS.

No VLT shall be installed and/or operated in the District of Columbia by a Licensee or otherwise unless such VLT shall:

- (1) Be of a class of VLTs which either (A) have been certified by a Certification Company and are in compliance with the provisions of the "Lottery Expansion Initiative Act of 2006" and the Rules and Regulations adopted, from time to time, by the Board under the authority granted in the "Lottery Expansion Initiative Act of 2006", or (B) are manufactured or assembled by a Manufacturer;
- (2) Have a serial number or other identification number permanently affixed thereto by the Manufacturer;
- (3) Be connected to a central computer; which central computer must be located on the premises of a Designated VLT Site but shall be owned and operated by the District of Columbia, maintained as directed by the Board, and accessible at all time by the Board or

its designee;

(4) Be capable of being continuously monitored, polled and read by the central computer; and

(5) Contain an erasable, programmable, read-only memory chip ("EPROM") approved by the Certification Company, which will be paid for by the Licensee and will be owned by the District of Columbia, containing proprietary data, software and firmware required to operate and to secure the operation of the VLT.

#### § 3-1358 VLT USAGE FEE

The Board shall collect an annual VLT Usage Fee from each Licensee of twentyfive (25%) percent of the Net VLT Proceeds received by that Licensee from VLT Operations. The VLT Usage Fee shall be: (1) paid daily in arrears; and (2) paid and disbursed in accordance with the applicable laws and regulations of the District of Columbia.

#### § 3-1359 PERMITS FOR MANUFACTURE, DISTRIBUTION, SERVICE, REPAIR, OR MAINTENANCE OF VLTs.

(a) The Board shall create and, from time to time, amend a form which shall be completed and submitted by any Person seeking a Permit from the Board to manufacture, distribute, service, repair, or perform maintenance on VLTs in the District of Columbia ("Permit Application"). The Board in its discretion shall determine the content of the Permit Application.

(b) The Board shall issue the appropriate Permit to the applicant upon (1) receipt by the Board of an application for a Permit submitted by a Manufacturer or Service Technician ("Permit Application"), as the case may be, and (2) a finding by the Board, after investigation, that (A) the Permit Application is complete, and (B) the applicant is suitable, according to sections 1361 and 1362 of the "Lottery Expansion Initiative Act of 2006". The Board must grant or deny any Permit Application within ninety (90) days of the date the Permit Application is received by the Board.

(c) The Permit shall entitle the Permittee to engage in the activity described in the Permit Application and the Permit subject to the requirements of the "Lottery Expansion Initiative Act of 2006" and rules and regulations adopted, from time to time, by the Board pursuant to the authority granted herein. Each Permit issued shall require, as a condition to the Permittee conducting the permitted activity, that the Permittee maintain continuous suitability.

(d) Any Person whose Permit Application has been denied pursuant to this section may, within thirty (30) days of the denial of that application, appeal the Board's decision to deny the application to the Superior Court of the District of Columbia.

## § 3-1360 TERM OF LICENSES AND PERMITS; RENEWAL; TRANSFER

(a) All Licenses and Permits shall be issued for a period of five years and shall be renewed for succeeding five-year periods upon the submission by the Licensee or Permittee of a completed, sworn application ("Renewal Application"). Provided that the Licensee or Permittee shall file a completed Renewal Application prior to expiration of its current License or Permit, the term of its current License or Permit shall be deemed extended until the later of the disposition by the Board of such Renewal Application and any judicial review of such disposition.

(b) Licenses and Permits shall not be transferable without the prior approval of the Board upon joint application of the transferor and transferee.

(c) Prior to the consummation of a transfer of a License or Permit pursuant to subsection (b) of this section, the following must occur: (1) the proposed transferee ("Proposed Transferee") shall file a completed and sworn License Application or Permit Application, as the case may be, and (2) the Board shall promptly conduct a suitability investigation of the Proposed Transferee and promptly advise the Proposed Transferee and the proposed transferor of the results thereof. If the Board finds that the Proposed Transferee is suitable, the Board shall promptly issue its written approval of the proposed transfer as provided for in subsection (b) of this section. A determination by the Board that a Proposed Transferee is not suitable shall have no effect on the status or continuity of a License or Permit to the suitability of a Licensee or Permittee provided the proposed transfer is not consummated. The Proposed Transferee shall reimburse the Board for all costs and expenses incurred by the Board in connection with any such suitability investigation.

## § 3-1361 SUITABILITY GENERALLY.

(a) Other than applicants for the Temporary Initial License, no applicant shall be granted a License or Permit under the provisions of the "Lottery Expansion Initiative Act of 2006" unless the applicant has demonstrated to the Board that the applicant is a "suitable" recipient of the License or Permit for which the applicant has applied.

(b) For purposes of the "Lottery Expansion Initiative Act of 2006", an applicant for a License or Permit is "suitable" and/or has met "suitability" standards if the applicant has satisfied the requirements established by the "Lottery Expansion Initiative Act of 2006", including the requirement that the applicant:

- (1) Has satisfied the suitability standards provided in section 1362 of the "Lottery Expansion Initiative Act of 2006";
- (2) Is capable, by virtue of training, education, business experience and/or a combination of the same, of conducting the activity for which the License or Permit is sought;
- (3) If a Licensee, has demonstrated that the applicant has, or can acquire from others,

sufficient funds to renovate and/or construct a facility on a Designated VLT Site; acquire and install VLTs and related VLT Equipment and commence and continue VLT Operations; and

(4) If a non-natural Person, has demonstrated that the applicant's Principals are suitable.

(c) Except as otherwise provided herein, a Person (1) whose application for a License or Permit has been denied, (2) whose License or Permit has been issued subject to a condition, (3) whose License or Permit has been suspended or revoked, (4) against whom a fine has been levied by the Board, or (5) who has been determined by the Board (prior to a hearing) to be "unsuitable", shall have the right to a hearing before the Board with respect to any such denial, condition, suspension, revocation, levy or determination; and such findings, decision and hearing shall be conducted in accordance with the D.C. Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), including any right to judicial review following such hearing.

#### § 3-1362 SUITABILITY STANDARDS, DISQUALIFICATION AND DIVESTITURE.

(a) For the purposes of the "Lottery Expansion Initiative Act of 2006", an applicant for a License, Permit or approval is "suitable" if the applicant:

(1) Is a Person of good character, honesty, and integrity;

(2) Has not been convicted of, or entered a plea resulting in conviction of: (A) Any offense punishable by imprisonment of more than one year; (B) Theft or attempted theft, or illegal possession of stolen property; (D) Any offense involving fraud or attempted fraud; or (D) Illegal gambling as defined by the laws or ordinances of any municipality, any parish or county, any state, or of the United States;

(3) Is a person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a present threat to the public interest of the District of Columbia or to the effective regulation and control of VLT Operations or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in connection with VLT Operations and the business and financial affairs of the applicant incident thereto;

(4) Is capable of conducting and likely to conduct the activities for which the applicant has requested licensing, permitting or approval in accordance with the provisions of this chapter and/or the rules and regulations adopted, from time to time, by the Board; and

(5) Is not disqualified pursuant to the provisions of subsection (b) of this section and, if the applicant is a non-natural Person, has demonstrated to the Board that it has adopted and employs adequate hiring and screening procedures to ensure that no current or future employee of the applicant would be disqualified under subsections (b)(1) or (b)(2) of this section.

(b) The Board shall have the right to deny, suspend, condition, or revoke a License or Permit of any applicant for a License or Permit upon a specific finding by the Board that the applicant is 'unsuitable' on the basis of the following criteria:

(1) The applicant has been convicted of, or entered a plea resulting in conviction of: (a) Any offense punishable by imprisonment of more than one year; (b) Theft or attempted theft, or illegal possession of stolen property; (c) Any offense involving fraud or attempted fraud; or (d) Illegal gambling as defined by the laws or ordinances of any municipality, any parish or county, any state, or of the United States;

(2) There is a current prosecution or pending criminal charge against the applicant in any federal or state jurisdiction for an offense described in subsection (b)(1) of this section;

(3) The applicant is not current in filing all applicable personal income tax returns and in the payment of all income taxes, penalties and interest owed to the District of Columbia or the federal government, excluding items currently being disputed by the applicant; or

(4) The repeated failure by the applicant to provide information and documentation reasonably requested by the Board in order to determine suitability as defined in this chapter; provided however that such failure shall not be considered by the Board during the period of any judicial challenge by the applicant with respect to the information requested and/or the confidentiality to be afforded to the same by the Board.

(c) Any Person whose License or Permit has been revoked or who has been found "unsuitable" in the District of Columbia is not eligible to obtain any License or Permit pursuant to the provisions of the "Lottery Expansion Initiative Act of 2006" for a period of one (1) year from the date the revocation or finding of unsuitability becomes final beyond right of judicial review.

(d) In the event of a current criminal prosecution of an offense as provided in subsection (b)(2) of this section, the Board, where applicable, shall have the discretion to defer a determination' on an applicant's suitability pending the outcome of the proceedings provided that if a decision is deferred pending such outcome the Board, where applicable, may take such action as is necessary to protect the public interest.

(e) If the Board finds that a Principal of a Licensee or Permittee or its parent entity is not suitable, and if as a result, the Licensee or Permittee is no longer entitled to engage in the activity licensed or permitted, then and in that event the Board shall, subject to the exercise of the Principal's hearing and review rights under this chapter, propose action necessary to protect the public interest. Where possible, in lieu of an order of revocation or suspension of a License or Permit, the Board shall issue an order of disqualification naming the unsuitable Principal and declaring that such Principal may not, except as provided in subsection (f) of this section, (1) directly or indirectly exercise significant influence over the Licensee or Permittee; (2) directly or indirectly receive dividends or interest on securities of the Licensee or Permittee; (3) directly or indirectly receive remuneration or other economic benefit from the Licensee or Permittee; or (4) continue

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owning or holding, directly or indirectly, securities of the Licensee or Permittee or remain as a manager, officer, director, or partner of the Licensee or Permittee.

(f) Commensurate with the issuance of an order of disqualification under subsection (e) of this section, the Board shall issue an order declaring that such disqualified Principal shall, within thirty (30) days of the disqualifying order, transfer all securities of the Licensee or Permittee owned by the Principal to the trustee of a blind trust as to which the trustee shall be appointed or approved by the Board, which approval shall not be unreasonably withheld or delayed. The trustee of the blind trust shall have the sole and exclusive rights to exercise any right conferred by or incidental to the securities so transferred to and held in the blind trust, except that upon receipt of instruction from the Principal beneficiary, the trustee shall sell so much of the securities of the Licensee or Permittee held in the blind trust as instructed and remit the net proceeds of the sale to the Principal beneficiary together with any dividends, interest, remuneration or other economic benefit associated therewith.

#### § 3-1363 PERMISSION TO AWARD LICENSES TO PERSONS TO CONDUCT BUSINESS PRIMARILY AS VLT OPERATORS

Notwithstanding the provisions of D.C. Official Code § 3-1315, the Board may issue a License or Permit or renew a License or Permit to persons whose primary business is to conduct VLT Operations or to perform services related to VLT Operations. The fact that a Person's primary business is to conduct VLT Operations or to perform services related to VLT Operations shall not be a valid basis for the Board to deny any License or Permit or any renewal of a License or Permit.

#### § 3-1364 POWERS AND DUTIES OF THE BOARD RELATIVE TO VLT OPERATIONS.

(a) In addition to those powers granted the Board elsewhere in the "Lottery Expansion Initiative Act of 2006", with respect to VLT Operations, the Board shall adopt all rules and regulations (collectively "Rules and Regulations") necessary to implement, administer, and regulate VLTs and VLT Operations as authorized in the "Lottery Expansion Initiative Act of 2006".

(b) Such Rules and Regulations shall include:

(1) Designation of any technical qualifications (other than suitability as provided for in the "Lottery Expansion Initiative Act of 2006") which must be possessed by a Manufacturer, Distributor or Service Technician in order to be eligible to receive and retain a Permit;

(2) Procedures for the counting, collection and deposit of Net VLT Proceeds into a Licensee's restricted bank account subject to a sweep by the Board for the VLT Usage Fee;

- (3) Methods and rules permitting VLTs to be linked for the offering of progressive payouts;
  - (4) Procedures for (A) the accumulation and provision by Licensees and Permittees of specified records, data, information and reports, including financial and income records and reports (collectively "Financial and Operation Materials") and (B) the retention of Financial and Operational Materials by past and present Licensees and Permittees, necessary to enable the Board to properly implement and enforce the provisions of this chapter;
  - (5) Requirements establishing minimum physical security standards to be observed in Designated VLT Sites;
  - (6) Requirements establishing standards of maintenance of VLTs and related VLT Equipment; and
  - (7) Provisions for the revocation and/or suspension of Licenses and Permits, upon post issuance findings of "unsuitability," subject to the rights of Licensees, Permittees and Principals under section 1363 of the "Lottery Expansion Initiative Act of 2006".
- (c) The Board may:
- (1) Conduct any reasonable investigation which the Board determines necessary to fulfill its responsibilities under the provisions of the "Lottery Expansion Initiative Act of 2006";
  - (2) Inspect and examine all premises in which Designated VLT Sites are situated and/or where VLTs are manufactured, sold, or repaired;
  - (3) Inspect VLTs and related VLT Equipment and supplies;
  - (4) Summarily seize and remove VLTs and related VLT Equipment and supplies from any location where such VLTs and/or VLT Equipment and supplies are not or have not been approved, operated, or maintained pursuant to the "Lottery Expansion Initiative Act of 2006" and/or the owners or operators thereof do not hold valid Licenses and/or Permits required by the "Lottery Expansion Initiative Act of 2006";
  - (5) Deny, revoke, condition, or suspend the License or Permit of any Person who knowingly violates any provision of this chapter or any of the Rules or Regulations adopted pursuant to the authority granted in the "Lottery Expansion Initiative Act of 2006";
  - (6) Take steps necessary to collect fees owed to the Board or the Lottery Fund, including commencing and prosecuting appropriate legal actions; and
  - (7) Delegate to the Executive Director and/or cause the Executive Director to perform or exercise any or all of the rights and duties of the Board set forth in subsections (c)(1),

(c)(2), (c)(3), (c)(4), and (c)(6).

§ 3-1365 EXECUTIVE DIRECTOR; POWERS AND DUTIES. The Executive Director shall, upon and subject to the direction of the Board:

- (1) Conduct an investigation of any applicant, Licensee, or Permittee for "suitability" and/or violations of the Rules and Regulations and undertake any other investigation, inspection or enforcement action if such investigation, inspection, or action is reasonably necessary to the thorough and efficient implementation of this chapter;
- (2) Establish, maintain, and operate the mechanism and equipment necessary to conduct polling, monitoring or reading of VLTs and VLT Operations;
- (3) Examine VLTs and related VLT Equipment and/or records related thereto and to VLT Gaming Operations;
- (4) Report to the Board any violation of law or Rules or Regulations discovered by the Director; and
- (5) Engage, train, supervise and direct such staff, as the Executive Director and the Board shall deem necessary or appropriate to enable the Executive Director to perform his duties and obligations under this chapter.

§ 3-1366 GAMING DEVICE LIMITATIONS.

Except as otherwise provided by law, no gaming devices other than VLTs shall be present and/or installed and/or operated in any Designated VLT Site.

§ 3-1367 PROHIBITED RELATIONSHIPS.

(a) In addition to any other relationship prohibited by the "Lottery Expansion Initiative Act of 2006", no person employed by or performing any function on behalf of the Board or the Director may:

- (1) Be an officer, director, owner, or employee of any Person holding a License or Permit issued by the Board; and
  - (2) Have or hold any interest, direct or indirect, in, or engage in any commercial transaction or enter into any business relationship with, any Person holding a License or Permit issued by the Board;
- (b) No elected public official shall engage in any business activity with a Licensee or Permittee except as a patron. As used in this subsection, the term "business activity" shall specifically include but not be limited to contracts: (1) for the sale or purchase of goods, merchandise, and services; (2) to provide or receive legal services, advertising, public relations, or any other business or personal services; (3) for the listing, purchase,

or sale of immovable property or options or other rights relating thereto; and (4) modifying ownership or possessory interests in stocks, bonds, securities, or any financial instruments.

(c) No Person permitted by the Board as a Manufacturer or Distributor may participate in the design, development, ownership, sale, lease, license or operation of any computer program, firmware, software, or any other mechanism that is or may be used for the polling or reading of VLTs or VLT Operations.

(d) No Person may be an owner, investor, employee, or contractor engaged in any VLT operations if such Person has been convicted of, or entered a plea resulting in conviction of: (1) Any offense punishable by imprisonment of more than one year; (2) Theft or attempted theft, or illegal possession of stolen property; (3) Any offense involving fraud or attempted fraud; or (4) Illegal gambling as defined by the laws or ordinances of any municipality, any parish or county, any state, or of the United States; or if there is a current prosecution or pending criminal charge against such Person in any federal or state jurisdiction for an offense described in this subsection.

#### § 3-1368 PROHIBITION OF MINORS

(a) No Licensee, Permittee or any agent or employee of either, shall allow a person under the age of twenty-one to play or operate a VLT.

(b) Each Licensee shall report and remit to the Director quarterly in arrears all winnings withheld from customers who are determined to be under the age of twenty-one.

(c) The Board may fine and/or revoke and/or suspend the License or Permit of any Person, who is found by the Board to have willfully committed a violation of this section, provided, however, that if the Licensee affected by a revocation or suspension made under this section, the Licensee shall be entitled to an administrative hearing before the Board pursuant to section 1363(c) of the "Lottery Expansion Initiative Act of 2006", and, if the affected Licensee chooses to exercise that right, the revocation or suspension shall not take effect until the conclusion of the hearing held pursuant to section 1363(c).

#### §3-1369 UNAUTHORIZED VIDEO LOTTERY TERMINALS; SKIMMING OF VIDEO LOTTERY TERMINAL PROCEEDS; PENALTIES.

(a) Except as otherwise permitted by law, any Person who possesses or operates a VLT without holding a current valid License or Permit required by the "Lottery Expansion Initiative Act of 2006" or at any location other than a Designated VLT Site shall be subject to a fine of not more than ten thousand dollars (\$10,000) per violation.

(b) Any Person who intentionally excludes, or takes any action in an attempt to exclude anything of value from the deposit, counting, collection, or computation of revenues derived from VLT Operations shall be subject to a fine of not more than ten thousand dollars (\$10,000) per violation, in addition to any other criminal penalties which may be

imposed pursuant to any other provision of the District of Columbia Official Code.

(c) Any VLT used or offered for play in violation of the provisions of the "Lottery Expansion Initiative Act of 2006", except as otherwise permitted by law, shall be considered a gambling device for purposes of D.C. Official Code § 22-1704.

Sec. 4. Effective date.

This act shall take effect after a 30-day period of Congressional review as provided in section 602(c) of the Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(1)).

**FRIENDSHIP PUBLIC CHARTER SCHOOL**  
**REQUEST FOR PROPOSALS**  
**COMPUTER & NETWORK MAINTENANCE**

Interested parties shall respond to this RFP by submitting (4 copies, 1 original inclusive) sealed qualification statements and by addressing the specific proposal requirements as requested in this RFP in an envelope clearly marked "RFP—COMPUTER & NETWORK MAINTENANCE TO FRIENDSHIP PUBLIC CHARTER SCHOOL" to:

Ms. Valerie Holmes  
Finance Office  
Friendship Public Charter School (FPCS)  
701 E Street SE  
Washington, DC 20003

By no later than **4:00 PM on Thursday April 13, 2006.**

**Introduction**

Friendship Public Charter School (FPCS) is a multi-campus public charter school operating in the District of Columbia. FPCS is seeking a firm to maintain a network of 30-50 workstations and servers, supporting FPCS administrative systems for FPCS headquarters as well as web-based e-mail for headquarters and selected employees on the five campuses.

FPCS is soliciting proposals and qualification statements from interested parties having specific interest and qualifications in the areas identified in this solicitation. A selection committee will review and evaluate all qualification statements and proposals and may request that the bidders make oral presentations by phone or in person and or provide additional information. The selection committee will rely on the qualification statements and proposals in selection of finalists and, therefore, bidders should emphasize specific information considered pertinent to this solicitation and submit all information requested.

**Project Scope**

**PROVIDE COMPUTER & NETWORK MAINTENANCE SERVICES TO FRIENDSHIP PUBLIC CHARTER SCHOOL—900 PENNSYLVANIA AVENUE SE, WASHINGTON**, including the specific services listed in section 3 of the proposal requirements section of this RFP in order to maintain the workstations, company e-mail and servers of Friendship Public School headquarters. The headquarters servers also support web-based e-mail for about 140 teachers and staff in the five FPCS school campuses.

**Proposal Requirements**

Proposals shall include, at a minimum, the following information organized as follows in a qualification statement:

1. A brief discussion of the company/firm, its organization, and services offered;
2. Information that demonstrates a history of network administration for non-profits.
3. Description of capability to provide the following network administration services:
  - a. Maintain servers in up status
  - b. Provide daily backup to servers and critical applications. Maintain the ability to fully restore servers if required.

- c. Perform systems administration duties remotely for MS Exchange server with 140+ users.
  - d. Provide email anti-virus and anti-spam filtration for MS Exchange server using open-source technology.
  - e. Monitor server CPU utilization, disk capacity, and bandwidth usage.
  - f. Perform necessary upgrades, updates, and patches.
  - g. Install and maintain security systems, firewalls, anti-virus and spyware protection systems. Perform security audits as needed. Monitor systems for intrusion detection.
  - h. Install and integrate new servers as needed
  - i. Maintain a set of 30-50 workstations. Respond within 24 hours to workstation malfunction
  - j. Purchase, for reimbursement, new servers and workstations on behalf of FPCS.
  - k. Configure new workstations as needed.
  - l. Configure servers and workstations in a new location within the contract year.
  - m. Provide programming, as necessary, to web-based database systems.
  - n. Provide troubleshooting advice to FPCS campus technology staffs
  - o. Participate in technology planning
4. Resume(s) for the proposed staff members to be included on the project team, including descriptions of prior work experience for each, and a list of any certifications and licenses.
  5. Three client references, including at least one non-profit client (contact names and phone numbers).
  6. Proposed contract with fee structure, projected hours and projected expenses.

Network maintenance firms must meet the following qualifications:

1. At least seven years in providing computer and network maintenance.

Applicants should respond to:

Catherine Somefun  
Chief Financial Officer  
Friendship Public Charter School  
701 E Street SE  
Washington, DC 20003

For further information, contact Ms. Valerie Holmes at 202-675-6935.

**PUBLIC NOTICE**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
ENVIRONMENTAL HEALTH ADMINISTRATION  
BUREAU OF ENVIRONMENTAL QUALITY  
WATER QUALITY DIVISION  
51 N STREET, N.E., 5<sup>th</sup> Floor  
WASHINGTON, D.C. 20002**

Section 303(d) of the federal Clean Water Act and regulations developed by U.S. Environmental Protection Agency (EPA) require states to identify all waters that do not meet water quality standards even after all pollution controls required by law are in place. Waterbodies not meeting the appropriate water quality standards are considered to be impaired. The law requires that states place these impaired segments on a list referred to as the 303(d) List (2006 List). Development of Total Maximum Daily Loads (TMDLs) for the waterbodies on the List may be required.

The District of Columbia Water Quality Division has prepared a draft 2006 303(d) List. Copies of the 2006 List are on file and may be inspected at the Martin Luther King, Jr. Library, 901 G St., NW, Washington, DC 20001, during normal business hours. In addition, the document can be obtained by emailing Ms. Lucretia Brown at [lucretia.brown@dc.gov](mailto:lucretia.brown@dc.gov).

The comment period for the list is from March 24, 2006 to April 24, 2006. Persons wishing to comment on the 2006 List are invited to submit written comments, by mail, to the above address, attention 2006 CWA Section 303(d) List. Such written comments are to be received on or before April 24, 2006 at 4:00 pm.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF HUMAN SERVICES

**PUBLIC NOTICE OF FUNDING AVAILABILITY**

**OUT-OF-SCHOOL TIME PROGRAM**

The District of Columbia Department of Human Services (DHS), Early Care and Education Administration (formerly the Office of Early Childhood Development (OECD)) seeks applications from qualified community-based and faith-based organizations to provide out-of-school time programs to children through 18 years of age. The target populations for the out-of-school time program are: (1) Children from Limited English Proficient Asian and African Newcomer Communities; and (2) Children from Limited English Proficient Latino Newcomer Community.

The total amount of funds available for all grants is \$1,800,000. The funds are made available through local funds, Child Care and Development Fund Block Grant and the Temporary Assistance to Needy Families (TANF) from the U.S. Department of Health and Human Services, Administration for Children, Youth and Families. The grant awards shall be for a period not to exceed one year from the date of the award. A separate grant application is required for each of the following grant areas:

**1. Out-of-School Time Services for Children from Limited English Proficient Asian and African Newcomer Communities**

DHS/ECEA seeks to fund multiple grant awards.

**2. Out-of-School Time Services for Children from Limited English Proficient Latino Newcomer Community**

DHS/ECEA seeks to fund multiple grant awards.

The Request for Application (RFA) will be released on Monday, April 7, 2006. The RFA may be obtained from the Office of Partnerships and Grants Development website at [www.opgd.dc.gov](http://www.opgd.dc.gov), under "District Grants Clearinghouse," or from Ms. Priscilla Burnett at the DHS Office of Grants Management, 64 New York Avenue, N.E., Sixth Floor, Washington, DC 20002.

**The Pre-Application Conference will be held on Friday, April 14, 2006, 10:00 AM to 1:00 PM, at the Martin Luther King, Jr. Memorial Library, at 901 G Street, NW, Auditorium A-5, Washington, DC. For preparation purposes, interested parties planning to attend are requested to R.S.V.P. to Priscilla L. Burnett, Program Assistant at (202) 671-4407 or via e-mail to [priscilla.burnett@dc.gov](mailto:priscilla.burnett@dc.gov).**

**The deadline for response to this RFA is 3:30 p.m. on Friday, May 19, 2006.**

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE TO THE PUBLIC

NOTICE OF CHANGE OF LOCATION & DATE OF  
DCPL BOARD OF LIBRARY TRUSTEES MEETING

Notice is hereby given that the regularly scheduled District of Columbia Public Library ("DCPL") Board of Library Trustees Meeting of Wednesday, April 12, 2006 has been rescheduled to Wednesday, April 19, 2006 at 6:00 p.m. This meeting will be held at the Juanita E. Thornton/Shepherd Park Branch located at 7420 Georgia Ave., N.W., Washington, D.C. 20012. The telephone number for the Juanita E. Thornton/Shepherd Park Branch is (202) 541-6025 if there are any questions.

**DISTRICT DEPARTMENT OF TRANSPORTATION (DDOT)****Availability of Environmental Assessment and Public Meeting for Improvements to L'Enfant Promenade and Benjamin Banneker Park**

DDOT, in association with the Federal Highway Administration Eastern Federal Lands Highway Division (FHWA EFLHD), has completed the preparation of an Environmental Assessment (EA) to evaluate alternatives to rehabilitate **L'Enfant Promenade (10<sup>th</sup> Street SW) and Benjamin Banneker Park** roadway and sidewalks, from Independence Avenue to Maine Avenue. The EA evaluates urban design and engineering alternatives that create a more attractive and engaging street setting and improve the connectivity between the Promenade and surrounding areas.

All members of the community are invited to attend a public meeting on **April 10, 2006** to review the alternatives evaluated. This meeting will provide a forum for residents of the surrounding neighborhoods, Promenade tenants and employees, and other users of the Promenade to review and comment on the transportation and related improvements proposed by DDOT and FHWA.

**Southwest Neighborhood Library  
Basement Meeting Room  
900 Wesley Place, SW  
(off of park at 3rd and K Streets, SW)  
Washington, DC  
Monday April 10, 2006  
4:00 P.M. – 7:00 P.M.**

Southwest Neighborhood Library is accessible by Metrorail (L'Enfant Plaza station) and Metrobus. If you require special assistance to attend and participate in this meeting, please call (202) 671-2234 one week in advance of the meeting (by April 3, 2006).

The environmental assessment (EA) of the L'Enfant Promenade and Banneker Park improvement alternatives will be available at the meeting and will also be made available on the following web sites:  
<http://www.ddot.dc.gov/ddot/site/default.asp> (see Transportation Plans / Studies)  
<http://www.efl.fhwa.dot.gov/planning/planning.htm>

Written comments or questions about the EA may be submitted at the meeting or sent directly to Mr. Jack Van Dop, FHWA, 21400 Ridgetop Circle, Sterling, VA 20166-6511, fax (703) 404-6217 or email [jack.j.vandop@fhwa.dot.gov](mailto:jack.j.vandop@fhwa.dot.gov) at any time prior to or following the meeting but no later than May 10, 2006.

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

**Appeal No. 17285 of Patrick J. Carome**, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator of the Department of Consumer and Regulatory Affairs. Appellant alleges that the Zoning Administrator erred by issuing a Building Permit (No. B460927, dated April 23, 2004) allowing the construction of a masonry retaining wall serving a single-family dwelling. Appellant contends that the retaining wall violates the Zoning Regulations, including the side yard requirements (§ 405), rear yard requirements (§ 404), and structures in open space requirements (§ 2503). The subject premise is located within the Wesley Heights Overlay/R-1-A District and is located at 4825 Dexter Terrace, N.W. (Square 1381, Lot 806).

**HEARING DATES:** March 1, 2005, March 15, 2005, April 5, 2005, May 10, 2005,  
and May 24, 2005

**DECISION DATE:** July 5, 2005

**ORDER**

**PRELIMINARY MATTERS**

On December 13, 2004, Appellant Patrick J. Carome ("Appellant") filed an appeal of the decision of the Department of Consumer and Regulatory Affairs ("DCRA" or "Appellee") to issue building permit No. B460927 ("permit") to property owners Frank and Constandina Economides ("property owners") to construct a "retaining wall" on the property that is the subject of this appeal ("subject property"). The permit, issued on April 23, 2004,<sup>1</sup> permitted the property owners to "Construct new retaining wall around rear yard as per plans. Entirely on owner's land." Exhibit No. 21C, Attachment No. 52. The Appellant claims that the retaining wall constructed as a result of the permit is much more than a retaining wall, and, when taken together with all its parts, is actually an impermissible platform structure occupying the rear and side yard of the subject property.

The Board heard the appeal at a hearing held on March 1, 2005, and continued on March 15, 2005, April 5, 2005, May 10, 2005, and May 24, 2005. The Appellant and DCRA participated in the hearing, as well as Advisory Neighborhood Commission ("ANC") 3D, the property owners, and the National Park Service, all three of whom participated as intervenors.

At its July 5, 2005 public meeting, by a vote of 4-1-0, the Board upheld the appeal.

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<sup>1</sup>On September 5, 2002, the property owners had been issued an earlier permit by DCRA permitting them to "Fill rear yard and regrade rear yard." Exhibit No. 31, Attachment B. This permit, although relevant to the facts of this appeal, is not the subject of the appeal.

**FINDINGS OF FACT**

1. The property that is the subject of this appeal is located at 4825 Dexter Terrace, N.W. ("subject property") in an R-1-A zoning district and within the Wesley Heights Overlay District.
2. The subject property is a 25,811-square-foot lot and is improved with a large, single-family dwelling, which the property owners were having constructed at the time of the hearing. Exhibit No. 21B, Attachment No. 26.
3. The subject dwelling is required to have an 8-foot side yard and a 25-foot rear yard open to the sky from the ground up, with no intervening buildings or structures, other than those specifically permitted by the Zoning Regulations. *See*, 11 DCMR §§ 405.9 and 404.1 and § 199.1, definition of "Yard."
4. The rear boundary of the subject property abuts Wesley Heights Park, which is owned and maintained by the United States National Park Service. a
5. The rear yard of the dwelling on the subject property in its natural state sloped steeply downward away from the dwelling.
6. In order to create a more useable rear yard, the property owners applied for, and were issued, on September 5, 2002, a permit to regrade and fill the rear yard. Permit No. B 422839, Exhibit No. 21C, Attachment No. 57.
7. At some point in 2003, the property owners decided to extend the fill and grading to the rear property line. Because of the steep slope at the boundary of the rear yard, and the large amount of fill dirt required to build up the slope to a level surface, a perimeter retaining wall was needed.
8. The property owners filed an application for a permit to allow construction of a retaining wall around the rear yard. The permit application documents included plans and information detailing that the wall would be of mesa block construction and up to 30 feet in height. The application documents did not indicate that fill dirt and layers of geofabric would be trucked in and compacted against the mesa blocks. Exhibit No. 21C, Attachment No. 51.
9. On April 23, 2004, DCRA issued permit No. B460927 to the property owners. The permit stated that the owners were permitted to "Construct new retaining wall around rear yard as per plans. Entirely on owner's land." Exhibit No. 21C, Attachment No. 52.
10. Construction of the mesa block wall began in June of 2004 and was completed in late October, 2004.
11. Construction of the retaining wall was monitored daily by Specialized Engineering, an engineering firm hired by the property owners. Specialized Engineering observed and inspected the construction and performed materials testing.
12. In a letter dated December 15, 2004, Specialized Engineering provided a final verification letter to the property owners stating that fill placement and compaction, foundation design bearing capacity, and geogrid lengths were "in substantial compliance with the plans and specifications." Exhibit No. 31, Attachment J. These plans and specifications had previously been approved by DCRA.
13. At DCRA's request, the property owners also had a D.C. registered professional engineer sign and seal a structural certification form certifying that the retaining wall was constructed in compliance with the BOCA Basic National Building Code, 1990,

as amended by the D.C. Construction Codes Supplement of 1992. Exhibit No. 31, Attachments K and L.

Characteristics of the Retaining Wall

14. The retaining wall was constructed in four sections surrounding the rear yard. The four sections total approximately 370 feet in length and the longest individual section is approximately 180 feet long. Exhibit No. 21C, Attachment 51 (depiction of site).
15. The retaining wall supports an artificially-elevated flat surface which is approximately 14,975 square feet in area. Exhibit No. 21D, March 15, 2005 Transcript at 205.
16. The retaining wall is constructed of mesa blocks and ranges in height from less than one foot to approximately 30 feet. Exhibit No. 21C, Attachment No. 51.
17. The mesa block wall was constructed at the bottom of the downward slope of the subject property's rear yard before the fill dirt was placed against it; therefore for some period of time at least a portion of the mesa block wall was essentially a freestanding wall, standing with no earth against it.
18. Approximately 6,000 cubic yards of fill dirt were brought to the subject property and compacted against the mesa block wall. Exhibit No. 21B, Attachment No. 24, March 15, 2005 Transcript at 198-199, May 10, 2005 Transcript at 311-312, and 436.
19. Mesa block construction of this size requires that sheets of synthetic geogrid fabric be layered horizontally within the fill dirt compacted against the wall.
20. The fill dirt which the retaining wall is withholding contains approximately 20 geogrid sheets layered within it, varying in size from 10.5 to 27 feet long. Exhibit No. 21B, Attachment No. 23 (two pages entitled, "Retaining Wall Elevation").
21. The mesa blocks which comprise the wall itself are made of Portland Cement and are placed on top of each other, with the outer blocks of each course set back slightly from the façade, creating a tapered, or angled, wall and a minimally stepped appearance.
22. Once the retaining wall and the compacted fill dirt were in place, the rear yard of the subject property became an artificially elevated surface, with no slope, extending back from the rear of the dwelling to the top of the mesa block wall.
23. The new grade of the artificially elevated surface is anywhere from less than one foot to approximately 30 feet above the original grade, creating, at its highest point, a drop of approximately 30 feet to the grades of adjacent properties.

Impacts of the Retaining Wall

24. "Retaining Wall" is not defined in the Zoning Regulations, but is defined by Webster's Third New International Dictionary (1986) as follows: "a wall built to resist lateral pressure other than wind pressure; esp.: one to prevent an earth slide." See, 11 DCMR § 199.2(g).
25. Structure is defined by the Zoning Regulations, as "anything constructed, ... the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground." 11 DCMR § 199.1, definition of "Structure".
26. Both a "retaining wall" and a "platform" are specifically listed as examples of structures by the Zoning Regulations. 11 DCMR § 199.1, definition of "Structure".
27. Although no structure above 4 feet from the grade is permitted to occupy a yard, the Zoning Regulations carve out an exception to this prohibition in that a retaining wall,

- with no specified height limit, may occupy a yard if it is constructed in accordance with the D.C. Building Code. 11 DCMR §§ 2503.2 and 2503.3.
28. The Board finds that the retaining wall in the rear yard of the subject property is more than just the four vertical mesa block facades surrounding that yard. The walls support an artificially elevated surface which together comprise a structure much greater than merely a "retaining wall."
  29. The structure thus created in the rear yard includes all of its components -- the mesa block wall, the geogrids which are placed against it, and the "retained" fill dirt.
  30. The purpose of the elevated platform structure in the rear yard is not to "resist lateral pressure," but rather to provide an artificially created surface for leisure activities. The structure in the rear yard occupies approximately 14,975 square feet of the 25,811-square foot lot, or more than the 30% of the lot permitted to be occupied in the Wesley Heights Overlay. *See*, 11 DCMR § 1543.2.
  31. The majority of the structure is over 4 feet above grade and it occupies almost 100% of the rear yard, and more than the 50% of the yard permitted to be occupied by the Zoning Regulations. 11 DCMR § 199.1, definition of "Yard" and 11 DCMR § 2503.2.
  32. A portion of the mesa block wall and the elevated platform structure, at least part of which appears to be more than four feet above grade, extends into the northern side yard of the subject dwelling. *See*, 11 DCMR § 2503.2.
  33. The elevated platform structure looms over adjacent properties, negatively affecting the air and light available to them. *See*, 11 DCMR § 1541.3(c).

## CONCLUSIONS OF LAW

### The Appeal was Timely

The intervening property owners moved to dismiss the appeal as untimely. The District of Columbia Court of Appeals has held that "[t]he timely filing of an appeal with the Board is mandatory and jurisdictional." *Mendelson v. D. C. Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994). The Board's Rules of Practice and Procedure (11 DCMR, Chapter 31) require that all appeals be filed within 60 days of the date the person filing the appeal had notice or knew of the decision complained of, or reasonably should have had notice or known of the decision complained of, whichever is earlier. 11DCMR § 3112.2(a). This 60-day time limit may be extended only if the appellant shows that: (1) there are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and (2) the extension of time will not prejudice the parties to the appeal. 11DCMR § 3112.2(d).

The "decision" at issue in this case<sup>2</sup> is the permit for the retaining wall, which was issued on April 23, 2004. This appeal was filed on December 13, 2004, approximately eight months later.

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<sup>2</sup>There was much discussion of when the elevated platform structure was "under roof" because § 3112.2 (b)(1) states that "[n]o appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof." It was never made clear to the Board's satisfaction whether or not this appeal was filed within this 10-day period. The Board, however, concludes that the elevated platform structure did not have a "roof" as that term is meant in § 3112.2(b)(1). Structures do not necessarily have to have roofs, but a structure that does

Because of the length of the 8-month delay before the appeal was filed, the Board reviewed much evidence, both written and oral, to determine the issue of timeliness.

The Appellant contends that he did not know, and reasonably could not have known, of the decision complained of until, at the earliest, shortly after October 13, 2004, the date on which his wife visited the DCRA office and learned of the permit for the retaining wall. He further claims, that his wife did not inform him of her trip to DCRA until some time later. October 13, 2004 is precisely 60 days before the appeal was filed on December 13, 2004. The Appellant claims that he could not actually see the mesa block wall until sometime in later October or November, 2004, due to the thick foliage on the trees in Wesley Heights Park, which stand between his property and the subject property.

The intervenor property owners counter that since sometime in 2002, the community has been aware of, and even monitoring, construction activity on the subject property, and that, therefore, the Appellant reasonably should have known of the construction of the retaining wall, and that a permit had been issued to allow it. The old dwelling on the subject property was apparently razed sometime in late 2002, and between then and the filing of this appeal, various construction activities were taking place on the subject property.

While the permit for the retaining wall was issued in April, 2004, it is not reasonable to conclude that appellant had or should have had knowledge of this decision prior to the beginning of construction. Intervenor property owner's general claim that "the community" was aware of construction activity on the property since 2002, cannot suffice to impute knowledge of the specific decision regarding the retaining wall permit to appellant, particularly, without evidence demonstrating that the information was in the public domain where appellant should have learned of it. Construction began in June 2004 and continued throughout the summer and early autumn, ending in late October. This is precisely the time of year when sights and sounds are most obscured by foliage and there is a thick growth of trees in Wesley Heights Park, impeding the Appellant's view of the subject property's rear yard. Construction of the mesa block wall and the associated platform structure was not visible from the street; therefore, no matter how much construction activity was occurring with regard to the dwelling, the Board finds it reasonable that the Appellant was unaware of the construction in the rear yard until mid- to late October, 2004.

Based on the above, the Board concludes that the December 13, 2004, filing of the appeal was within 60 days of when the Appellant knew or reasonably should have known, of the existence of the permit for the retaining wall and was, therefore, timely. Accordingly, the Board denies the motion to dismiss the appeal for untimeliness.

#### The Appellant is Aggrieved

Intervenor property owners also moved to dismiss for lack of standing. The Zoning Regulations, at § 3112.2, state that "[a]ny person aggrieved by an order, requirement, decision, determination,

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have a roof is a building, according to § 199.1 of the Zoning Regulations. See, § 199.1, definitions of "Structure" and "Building." There was no claim that the elevated platform structure is a building and the Board concludes that § 3112.2(b)(1) is inapplicable here.

or refusal made by an administrative officer or body, ... in the administration or enforcement of the Zoning Regulations, may file a timely appeal with the Board.” See, D.C. Official Code § 6-641.07(f) (2001). This language parrots similar language in the 1938 Zoning Act, 52 Stat. 799, and establishes a standard somewhat more lenient than that of traditional “standing” in a court cases.

The Appellant claims aggrievement in that the retaining wall and elevated platform structure constructed on the subject property negatively impact the air and light to nearby properties and specifically, have negatively impacted his view, and diminished his use and enjoyment of Wesley Heights Park. The Board concludes that these claims are sufficient to establish the necessary aggrievement of the Appellant and therefore denies the motion to dismiss for lack of standing.

#### Merits of the Appeal

The Appellant contends that the “retaining wall” in the subject property’s rear yard is much more than a traditional retaining wall. He contends that, taken together with all its components, it is actually an artificially elevated platform structure occupying the rear and side yards of the subject property in violation of several Zoning Regulations.<sup>3</sup>

First, the Appellant contends that the structure runs afoul of the requirement that no structure may occupy more than 50% of a yard. See, 11 DCMR § 199.1, definition of “Yard.” Second, he contends that the structure, at more than four feet above grade, is not permitted in the rear yard, (whether or not occupying less than 50% of the yard) and, correlatively, that the structure does not fall within the exception to the over four-foot prohibition carved out for retaining walls, because it is not a “retaining wall.” See, 11 DCMR §§ 2503.2 and 2503.3. Third, Appellant alleges that the structure in the rear yard occupies more than 30% of the total square footage of the lot, in violation of § 1543.2, which sets a maximum of 30% lot occupancy for any structure in the Wesley Heights Overlay. Fourth, Appellant argues that the dimensions and impact of the structure are antithetical to the purposes of the Wesley Height Overlay. See, 11 DCMR § 1541.3(c).<sup>4</sup>

DCRA’s Zoning Administrator (“ZA”) appears to have focused his analysis on the mesa block perimeter wall, but counters that all three components – the mesa block wall, the geogrid sheets, and the fill dirt – still equal only a retaining wall, and nothing more than a retaining wall. In issuing the permit for the retaining wall, he relied on 11 DCMR § 2503.3, which states that a

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<sup>3</sup>Appellant also alleges that the mesa block wall and/or associated platform structure encroach on federal parkland, have caused environmental damage, and contain unsuitable fill dirt. None of these allegations involve violations of the Zoning Regulations, and they therefore fall outside of the jurisdiction of this Board.

<sup>4</sup>The Appellant also repeatedly contended that the mesa block wall, even if considered only a “retaining wall” and not a greater structure, was not constructed according to the D.C. Building Code, See, 11 DCMR § 2503.3, and therefore violates the Zoning Regulations. Section 2503.3, however, only applies to fences and retaining walls. Because the Board herein concludes that the elevated platform structure is not a retaining wall, § 2503.3 does not apply, and therefore allegations of Building Code violations do not come into play.

“retaining wall constructed in accordance with the D.C. Building Code may occupy any yard required under the provisions of this title.” Section 2503.3 is, in fact, an exception to § 2503.2, which prohibits structures more than four feet above grade to occupy any required yards. Section 2503.3 puts no height limit on the retaining walls it permits in such yards. Further, the ZA stated that the retaining wall has a 0% lot occupancy (*See*, April 5, 2005 Transcript at 146-147) because it is not a building and lot occupancy calculations apply only to “building area.” *See*, 11 DCMR § 199.1, definitions of “Percentage of Lot Occupancy” and “Building Area.”

The Board concludes that the amalgam of the mesa block wall, the geogrid sheets, and the compacted fill dirt creates a structure which is more than a mere “retaining wall.” *See*, May 10, 2005 Transcript at 365, 457-459, 461, and 510-511. It creates an artificially elevated platform structure. This platform structure is up to 30 feet high, and occupies more than 50% of the subject property’s rear yard,<sup>5</sup> and part of its northern side yard, in violation of § 2503.2 and the definition of “Yard” in § 199.1 of the Zoning Regulations. The artificially-elevated platform does not “resist lateral pressure” and the mesa block wall itself was not built in order to resist such pressure and prevent an earth slide. Instead, the wall was built and such lateral pressure was supplied afterward by voluntarily compacting a voluminous amount of fill dirt against it. The purpose of the wall itself was not to prevent an earth slide, but to shore up the artificially-elevated platform which serves the Appellant as a new level surface on which to engage in leisure activities.

The platform structure is more than just the mesa block perimeter walls, and it does not fit within the exception for retaining walls carved out by § 2503.3 and relied on by the Z.A. Section 2503.3, then numbered § 7602.22, was enacted in 1977 with the publication of Zoning Commission Order No. 148, dated February 2, 1977. Exhibit No. 47. The Order contains no definition of “retaining wall,” nor any discussion to illuminate the Commission’s intent when permitting retaining walls as an exception to the prohibition of structures higher than four feet in required yards. In commenting on the final language of § 2503.3, however, both the Municipal Planning Office and the National Capital Planning Commission (“NCPC”) stated that “the thrust of the changes [*i.e.*, § 2503.3 and related changes] is to allow *low* structures, fences, and stairs in yards as a matter-of-right with a restriction on occupancy to insure that at least 50 percent of a yard is left open.” (Emphasis added.) *See*, Exhibit No. 47, November 17, 1976 Letter from Municipal Planning Office and January 13, 1977 NCPC Executive Director’s Recommendation.

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<sup>5</sup>The parties to the appeal spent much time debating the correct method of measuring the *required* “rear yard.” Three methods were proffered. All three methods extended the full width of the property, from side lot line to side lot line. The difference arose in where the length measurement was begun. The Z.A. asserted that his measurement of a “rear yard” began at the rear most portion of the structure on a property and extended the required number of feet toward the rear lot line (here, that would be 25 feet) and ended at a line parallel to the rear lot line. The Appellant argues that the length measurement of the rear yard must begin at the rear lot line and extend the required 25 feet toward the rear of the structure, ending at a line parallel to the rear lot line. The third measurement method discussed would include all land area between the rear of the structure and the rear lot line. The Board need not determine which of these methods is correct, as, no matter which method is chosen, portions of the elevated platform structure higher than four feet above grade occupy more than the permissible 50% of the subject property’s rear yard. Under all three methods, the platform structure occupies more than 94% of the rear yard. Exhibit No. 87, Attachment C-6. Under the first method outlined above, approximately 63.5 % of the rear yard is occupied by portions of the platform structure more than six feet high. Exhibit No. 87, Attachment C-7. Under the second method, approximately 94.6% of the required rear yard is so occupied, and under the third method, approximately 82.1% is so occupied. Exhibit No. 87, Attachment C-7.

The Board concludes, however, that the platform structure certainly is not "low" and is patently more than a retaining wall, and that the exception for retaining walls stated in § 2503.3 was not intended to include a structure of this magnitude. The elevated platform structure is more than four feet above grade and is not merely a "retaining wall," therefore it is not permitted within a rear or side yard, and DCRA erred in issuing Permit No. B460927 allowing its construction.

The subject property is within the Wesley Heights Overlay, which the Zoning Commission established to "preserve and enhance the low density character of Wesley Heights," including its natural, open, and treed nature. See, Zoning Commission Order No. 718, July 13, 1992, establishing and mapping the Wesley Heights Overlay. One way the Commission chose to do this was to prohibit any *structure* within the Overlay from occupying in excess of 30% of its lot (with certain exceptions not relevant here.) 11 DCMR § 1543.2.

Section 1543.2 sets forth the most restrictive lot occupancy requirement in the whole of the Zoning Regulations. First, its 30% maximum is lower than that permitted in any other zone district. Second, unlike lot occupancy maxima in other zone districts, § 1543.2 applies to all "structures" not only to all "buildings." In all other zone districts, the lot occupancy is calculated based on the "building area" and therefore lot occupancy includes only the area taken up by a building and any accessory buildings. See, 11 DCMR § 199.1, Definition of "Percentage of Lot Occupancy" and "Building Area." Section 1543.2 makes the Wesley Heights Overlay's lot occupancy maximum more restrictive by including within lot occupancy not only the area taken up by a building and any accessory buildings, but also by any other structures on the lot. The Overlay's more restrictive lot occupancy provision governs in this case. See, 11 DCMR § 1542.3.<sup>6</sup>

Because the Board has already concluded that the elevated platform is a structure greater than a retaining wall, it must be included in the lot occupancy calculation for the subject property. The property has a lot area of approximately 25,811 square feet, therefore any structure occupying over 7,743.3 square feet would violate § 1543.2 by occupying more than the permitted 30% of the lot. The elevated platform structure is approximately 14,975 square feet in area, well over the permitted 30% of the total lot area of 25,811 square feet.

For the reasons stated above, the Board concludes that the Appellant has met his burden of proof, demonstrating that DCRA erred in issuing Building Permit No. B460927 allowing the property owners to construct a structure in the rear yard and side yards of the subject property, which, at more than four feet above grade, occupies more than 50% of the rear yard in violation of 11 DCMR §2503.2, occupies more than 30% of the total square footage of the lot in violation of 11 DCMR §1543.2, and is antithetical to the purposes and goals of the Wesley Heights Overlay set forth at 11 DCMR §1541. Therefore, it is hereby **ORDERED** that this appeal is **GRANTED**.

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<sup>6</sup>Section 1542.3 states that if there is a conflict between the Overlay and the underlying zoning, the Overlay provisions govern. It is not completely clear that there is a conflict here, however. Although the definitions of "Percentage of Lot Occupancy" and "Building Area" indicate a conflict in that they consider only the area of "buildings" when calculating lot occupancy, § 403.2, the lot occupancy provision for the underlying R-1-A zone district, uses the word "structure," and not "building." It states that "[n]o structure ... shall occupy its lot in excess of the percentage of lot occupancy set forth in the following table." This wording appears to comport with the language of the lot occupancy provision of the Wesley Heights Overlay -- § 1543.2.

BZA APPEAL NO. 17285

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VOTE: 4-1-0 (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Kevin Hildebrand to grant; Geoffrey H. Griffis to deny)

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

FINAL DATE OF ORDER: MAR 24 2006

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

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

**Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer** pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. B465646 dated September 9, 2004, Building Permit No. B468513 dated December 17, 2004, and Certificate of Occupancy CO9912 dated June 10, 2005 for the conversion and occupancy of an existing 3 unit apartment building to a 7 unit condominium, allegedly in violation of use and lot occupancy requirements of the Zoning Regulations in the R-4 zone, at premises 1636 Irving Street, NW (Square 2591, Lot 203).

**HEARING DATES:** September 13, 2005 and September 20, 2005  
**DECISION DATE:** September 27, 2005

**DECISION AND ORDER**

This appeal was filed with the Board of Zoning Adjustment (the Board) on August 5, 2005 challenging DCRA's decisions to approve building permits dated September 9, 2004 and December 17, 2004, and a certificate of occupancy dated June 10, 2005. In response to a motion to dismiss filed by the property owner, the Board scheduled a hearing as to whether the appeal was untimely. At a special public meeting held September 27, 2005, the Board concluded that the administrative decision complained of was the grant of the second building permit (issued December 17, 2004) approving the proposed conversion of a three unit apartment building to a seven unit condominium and that the appeal from that decision was untimely filed. The Board therefore concluded it had no jurisdiction over the appeal and voted to grant the property owner's motion to dismiss. A full discussion of the facts and law that support this conclusion follows.

**PRELIMINARY MATTERS**

**Notice of Public Hearing**

The Office of Zoning scheduled a hearing on the motion to dismiss for September 13, 2005. In accordance with 11 DCMR § 3113.13, the Office of Zoning mailed notice of the hearing to the Appellants, ANC 1D (the ANC in which the subject property, is located), the property owner, and DCRA.

**Parties**

The Appellants in this case are Paul Basken and Joshua Meyer. Appellants represented themselves during the Board proceedings, but were initially represented by the law firm of Kass, Mitek & Kass, PLLC.

The Madera Condominium Association, Inc. ("Madera") and 1636 Irving Street, LLC, the respective owner and developer of the subject property, were represented by the law firm of Holland & Knight. As the property owner, Madera was automatically a party under 11 DCMR § 3106.2 and will hereafter be referred to as the Owner.

**ANC**

ANC 1-D, as the affected ANC, was automatically a party in this Appeal. In a Resolution dated September 6, 2005, ANC 1-D voted to oppose the motion to dismiss filed by the property owner. The Resolution was submitted to the Board on September 12, 2005, following a regularly scheduled monthly meeting with a quorum present (Exhibit 18). Among other things, the ANC contends that a "hearing is necessary" to resolve the issues involved in the appeal.

**FINDINGS OF FACT****The Property**

1. The building is located at 1636 Irving Street, NW in the R-4 zone and was constructed prior to 1958.
2. The Owner obtained Building Permit No. B465646 on or about September 9, 2004, authorizing a three- story rear addition to an existing three- unit apartment building. It also provided for the interior remodeling of the existing three- unit apartment building into a four - unit apartment building.
3. The Owner obtained Building Permit No. B468513 (the revised permit) on or about December 17, 2004, authorizing the construction of seven apartment units at the property. The permit stated "Revision to 465646 – converting 3 units apt. into 7 units. Revision of interior for previously approved addition *subject to zoning approval of number of units in zone*" (emphasis supplied).
4. The revised permit was the first and only DCRA administrative decision that authorized the conversion of the existing structure into a 7-unit apartment use.
5. Appellants "repeatedly telephoned DCRA officials during the construction process, expressing concerns about all of [the] apparent zoning violations at the [property]"

(Exhibit 8, Appellants' Statement on Appeal, p. 6), and continued to complain to city officials even after the units were put up for sale, *Id.* at p. 2).

6. The converted building was under roof on or about January 15, 2005.
7. In a letter dated May 26, 2005, DCRA Director Patrick Canavan indicated to ANC 1-D that a zoning review error was made when DCRA issued the building permits, but that DCRA would nevertheless issue the certificate of occupancy. The letter also indicated that ANC 1-D had the right to appeal to the Board the Director's decision to issue the certificate of occupancy (Exhibit 4, Motion to Dismiss, Attachment. B).
8. On May 27, 2005, Mr. Basken e-mailed this letter to Mr. Meyer and others and requested in the e-mail that the ANC and the Mount Pleasant Historical Society file a "fee-free" appeal to the Board (Motion to Dismiss, Attachment C).
9. Appellants engaged in ongoing negotiations with the Owner and Developer between June 8, 2005 and July 30, 2005. (See e-mails appended to Exhibit 17, Response to Motion to Dismiss.)
10. In the above-referenced e-mails, the Appellants refer to the construction as "in violation of the zoning law;" they refer to the "zoning dispute" between the parties; and they submit draft settlement proposals to resolve the dispute.
11. DCRA issued Certificate of Occupancy CO9912 (the C of O) for the building on or about June 10, 2005.
12. On or about July 21, 2005, Mr. Basken e-mailed Frederic Press, Esq., a Maryland attorney who represented the Owner, and expressed concern about "wait[ing] past the date[s] of a legally allowable appeal to the [Board]".
13. Mr. Press responded by email the next day and stated, among other things, that the Appellants had until August 10, 2005 to file their appeal. Appellants' counsel, Brian Kass, was "copied" on this e-mail as well as the other e-mails between Mr. Basken and Mr. Press.
14. August 10, 2005 was the 61<sup>st</sup> day after the C of O was issued.
15. The ANC decided at a public meeting on July 22, 2005 not to appeal the decision to issue the certificate of occupancy.
16. Appellants filed this appeal on August 5, 2005, 231 days after the revised permit was issued, 70 days after they became aware of DCRA's May 26, 2005, letter, and 56 days after the C of O was issued.

## CONCLUSIONS OF LAW

### Merits

Appellants have appealed two building permits and a certificate of occupancy on grounds that they unlawfully allowed for the expansion of four rental properties into a seven-unit condominium complex in violation of certain zoning regulations, including 11 DCMR § 401.3. Subsection 330.5 (c) of the Zoning Regulations allows, within an R-4 District, the conversion of a pre-1958 building to an apartment house. Subsection 401.3 provides that such converted structures must have a minimum lot area of 900 square feet for each apartment. Appellants contend that the Owner's lot is too small to allow for seven apartments of this size. Accordingly, Appellants assert that the permit was based upon an erroneous zoning determination.

### Motion to Dismiss

The owner and developer filed a motion to dismiss the appeal for lack of jurisdiction on grounds of timeliness. Accordingly, the Board was bound to consider the jurisdictional question first, prior to consideration of the merits. The District of Columbia Court of Appeals has held that "[t]he timely filing of an appeal with the Board is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The rules governing the timely filing of an appeal before the Board are set forth in 11 DCMR § 3112.2. Subsection 3112.2(a) provides that an appeal must be filed within sixty (60) days from the date the person filing the appeal had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. Because this appeal involves the erection of a building, § 3112.2 (b) also applies. That provision states that no appeal shall be filed later than 10 days after the structure or part thereof in question is under roof.<sup>1</sup> However, § 3112.2(c) provides that notwithstanding § 3112.2(a) and (b), an appellant shall have a minimum of sixty (60) days from the date of the administrative decision complained of in which to file an appeal. Finally, § 3112.2 (d) provides that the Board may extend the 60 - day time limit only if the appellant demonstrates that: (1) There are exceptional circumstances that are outside the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and (2) The extension of time will not prejudice the parties to the appeal.

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

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<sup>1</sup> The subsection goes on to define "under roof as "the stage of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place".

question in this motion to dismiss is the Board's determination of the error being alleged and the decision in which that error was made.

Appellants clearly identified in their appeal the error complained of as "the decision that the existing structure....be allowed to expand from four rental properties into a seven-unit condominium complex.... Developer 1636 Irving St. LLC. received building permits for seven units "subject to zoning approval of number of units in zone" (B468513) and later, certificate of occupancy for seven units." Accordingly, the error complained of - that the existing structure....be allowed to expand from four rental properties into a seven-unit condominium complex - was made in the issuance of the referenced permit, i.e. the revised permit, issued December 17, 2004.

Applying the rules set forth in § 3112.2, the time limit for filing an appeal of this decision is determined as follows: This project was under roof on January 15, 2005. Pursuant to § 3112.2(b) (1) an appeal should have been filed by January 25, 2005. However, because this date is less than 60 days from when the revised permit was issued (December 17, 2004), pursuant to § 3112.2 (c) the last date for a timely appeal was February 15, 2005. Finally, the Board may extend this deadline pursuant to § 3112.(d) upon a finding of exceptional circumstances beyond appellants' control impairing their ability to file a timely appeal, provided the extension of time will not prejudice a party to the case. Appellants argue that the language - "subject to zoning approval of number of units in zone" on the building permit was confusing and reasonably led the appellants to the conclusion that the decision was not final.

Even if the Board were to find that Appellants' confusion was both reasonable and an extenuating circumstance beyond their control that impaired their ability to file an appeal that circumstance ended on May 26, 2005, when the Director of DCRA in a letter to ANC 1-D specifically admitted to a "zoning review error". Appellants had actual knowledge of that letter as indicated by Mr. Basken's e-mail of May 27, 2005 to Mr. Meyer, Council member Jim Graham and others, requesting that the ANC and the Mount Pleasant Historical Society file a "fee-free" appeal to the Board. Accordingly, there can be no doubt that by May 27, 2005, Applicants knew that it was time to appeal.

The question then becomes what amount of time should be allowed for an appeal to be filed after the extenuating circumstances end. Subsection 3112.2 is silent on this issue, but certainly the rule could not be reasonably interpreted as permitting more than the 60 days permitted in the absence of a reasonable basis for delay. The Board therefore concludes the deadline for filing this appeal was 60 days from when the appellants had notice or knowledge of the decision complained of. That date is July 26, 2005, 60 days from May 27, 2005. (D.C. 2001).

The Board finds that as of May 27, 2005, there were no exceptional circumstances outside of appellants' control that could not have been reasonably anticipated and

substantially impaired the appellants' ability to file an appeal to the Board.<sup>2</sup> On May 27<sup>th</sup> DCRA disclosed that – despite the zoning error-- the C of O would be issued. At that point, Appellants, who since the time of permit issuance had all the information needed to file an appeal (including now a confession of error), also now knew that it was time to do so. Instead they waited 70 additional days to file this appeal. There are no exceptional circumstances that would excuse this further delay.

During this 70-day period, Appellants pursued other avenues to resolve their dispute and even sought to have the ANC appeal in their place. Appellants may very well have wished to avoid the difficulty and expense of prosecuting an appeal. However, a party who chooses to engage in negotiations or other ways to resolve a dispute does not thereby extend its time for filing an appeal. *Waste Management, supra.*; *Woodley Park Community Ass'n v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628 (D.C. 1985). The Board need “not countenance delay in taking an appeal when it is merely convenient for an appellant to defer in making that decision. *Waste Management, supra.*

Nor may exceptional circumstances be found in DCRA's statement that the C of O may be appealed or Mr. Press's statement that Appellant had until August 10<sup>th</sup> to do so. Neither statement constituted exceptional circumstances that impaired appellants' ability to file the appeal. The Appellants were represented by counsel who were not hindered from researching beyond these statements and determining the deadlines for filing a timely appeal. Accordingly, Applicants' August 5, 2005 filing of the appeal was untimely.

Finally, Appellants contend that the C of O, issued on June 10, 2005, is the decision being appealed and therefore the appeal is timely. They maintain that DCRA's letter of May 26, 2005 invited them to appeal the C of O and, at a minimum, created “uncertainty” regarding their appeal rights (Response to Motion to Dismiss, p. 3.)

The Board finds to the contrary. DCRA made no additional zoning decisions when it issued the C of O. Rather, the issuance of the C of O reflects only an administrative judgment of what was fair and equitable in light of the zoning error that had been made.<sup>3</sup> The only decision that can be associated with the zoning error

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<sup>2</sup> Because the appeal is being dismissed, and the condominium may remain in place, the Board need not reach the issue of whether there was any prejudice to the Owner as a result of any extension of the time to appeal... Nevertheless, the Board notes that the Owner was on notice that Appellants had serious concerns about the legality of the conversion and knew that an appeal was being considered.

<sup>3</sup> The Appellants did not appeal the validity of that determination. The Board therefore expresses no view with respect to the validity of that decision or even whether the issuance of this C of O was “based in whole or in part upon any zoning regulation”, D.C. Official Code § 6-641.07 (d).

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complained of (the inadequate lot size) is the revised permit and therefore that is the only decision that can be appealed on that ground.

Moreover, Appellants' argument does not give effect to § 3112.2 (b) (1) and (c), which bars an appeal of a decision involving "the erection, construction, reconstruction, conversion, or alteration of a structure or part thereof", if the appeal is "filed more than ten days after a structure is "under roof" or "sixty (60) days from the date of the administrative decision complained" whichever is the last to occur. Even if Appellants correctly characterize the building permit as representing an incomplete decision, it clearly involved and authorized the construction complained of here. And indeed the construction proceeded under the revised permit and the project was under roof approximately a month later. To permit an appeal to be filed based upon events that occur more than ten days after a structure becomes "under roof" is contrary to the Zoning Commission's "intent in paragraph (b) ... to establish a firm deadline beyond which no appeal could be filed". Order No. 0201, Case No. 02-0, (50 DCR 1200 (February 7, 2003.))

ANC

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. ANC 1-D voted to oppose the Motion to Dismiss, but stated only that it wanted the Board to consider the merits of the appeal. As stated in this Decision and Order, because the appeal was untimely filed, the Board lacks jurisdiction to do so.

For reasons discussed above, the Board must grant the motion to dismiss the appeal. It is hereby **ORDERED** that the motion to dismiss the appeal as untimely is **GRANTED**.

Vote taken on September 27, 2005

**VOTE: 5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr.,  
John A. Mann II and Kevin Hildebrand in support of the motion)

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

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

**FINAL DATE OF ORDER:** MAR 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

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§ 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. 17382-A of the Republic of the Sultanate of Oman**, pursuant to 11 DCMR § 1002, to permit the expansion of a chancery for the Embassy of the Sultanate of Oman to house the Military Attaché and the Cultural Attaché, in the D/R-1-B and R-1-B Districts, at premises 2535 Belmont Road, N.W. (Square 2501, Lots 6-8, 15-19, and 805).

**REVISED<sup>1</sup> NOTICE OF FINAL RULEMAKING  
and  
DETERMINATION AND ORDER**

The Board of Zoning Adjustment ("Board"), pursuant to the authority set forth in the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306), Chapter 10 of the Zoning Regulations of the District of Columbia, 11 DCMR, and § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption of its determination not to disapprove the application of the Republic of the Sultanate of Oman ("Applicant") for the expansion of the Embassy of Oman's chancery at premises 2535 Belmont Road, N.W. (Square 2501, Lots 6-8, 15-19, and 805).

On June 14, 2005, the Applicant filed a chancery application with the Board. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State certifying that the Applicant had complied with § 205 of the Foreign Missions Act ("FMA") (22 U.S.C. § 4305) and that the application could be submitted to the Board.

Notice of the filing of the application and notice of the proposed rulemaking were published in the *D.C. Register* on June 24, 2005 (52 DCR 6075 and 52 DCR 6216, respectively). In accordance with the Zoning Regulations, the Board provided written notice to the public more than 40 days in advance of the public hearing. 11 DCMR §§ 3113.13 and 3134.9(c). Therefore, in compliance with the D.C. Administrative Procedure Act (D.C. Official Code §§ 2-501, *et seq.*), the Board also provided more than thirty days' written notice to the public.

On June 15, 2005, the Office of Zoning ("OZ") provided notice of the filing of the application to the Director of the District of Columbia Historic Preservation Review Board, the State Historic Preservation Officer, the U.S. Department of State, the D.C. Council Member for Ward 2, Advisory Neighborhood Commission ("ANC") 2D, the ANC within which the subject property is located, the Single Member District member for District 2D01, and the District of Columbia Office of Planning ("OP"), who notified the District Department of Transportation ("DDOT"). The Office of Zoning subsequently scheduled a public hearing on the application for October 11, 2005, and mailed a copy of the notice of hearing to the Applicant, ANC 2D, and all property

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<sup>1</sup>The Notice of Final Rulemaking and Determination and Order for Application No. 17382 of the Republic of the Sultanate of Oman, dated November 25, 2005, was published in the *D.C. Register* on December 2, 2005, at 52 DCR 10568. At the request of the Applicant, the Notice of Final Rulemaking was modified, resulting in this Revised Notice.

owners within 200 feet of the subject property. Notice of hearing was also published in the *D.C. Register* on July 22, 2005 (52 DCR 6823) and posted in the Office of Zoning. In addition, on September 22, 2005, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

The property that is the subject of the application is located at 2535 Belmont Road, N.W. in the Sheridan-Kalorama historic district and adjacent to the federal parkland known as Rock Creek Park. The property is split-zoned, with the larger western portion in a D/R-1-B district and the smaller eastern portion in an R-1-B district. The property is improved with a three-story building originally constructed as a residence, but used as a chancery for many years. The property has been owned and occupied by the chancery of the Embassy of the Sultanate of Oman for over nineteen years, and before that was owned and occupied by the chancery of the Embassy of France. A second one-story building on the property was originally used as a squash court, but over the years, has been used for storage, office and/or residential uses.

The Applicant proposes to expand its chancery with a new three-story building, which will be connected to the existing building by a below grade multipurpose room, and an above-ground patio on the roof of the multi-purpose room. The roof/patio of the multipurpose room will be between the first floors of the existing and the new building and will be landscaped. The one-story former squash court building will be demolished. The lot occupancy of the existing and new buildings will be 15%, and the rear yard, at 42 feet, and the side yard, at 55 feet from the new construction, are more than adequate. The Applicant proposes to provide thirty-four parking spaces on the subject property and four spaces along the street frontage of the chancery are designated for its use. An additional ten spaces can be made available on the property and/or are available with the use of valet parking. In toto, the chancery will be able to provide 37% more parking than required and sufficient parking for the 30 employees who will be working on the property after the construction is completed.

Because of the split-zoning of the property, the Applicant has requested permission, pursuant to § 2514, to extend the application of the provisions of the D Overlay approximately 9 feet into the R-1-B district. Without the extension of the application of the D Overlay, the size of the Applicant's proposed chancery expansion would be reduced by 9 feet.

The record closed on October 11, 2005, at the conclusion of the public hearing on the application. A neighbor had submitted a request for postponement of the hearing, which was denied by the Board. The Department of State, the Office of Planning, and the District Department of Transportation all submitted favorable reports on the application. ANC 2D did not submit a report nor testify at the hearing with regard to the application.

At the conclusion of the October 11, 2005 public hearing, the Board voted not to disapprove the application for the following reasons:

First, as recommended by the Secretary of State and the Office of Planning, favorable action on the application will fulfill the international obligation of the United States to facilitate the

acquisition of adequate and secure facilities by the Sultanate of Oman for its diplomatic mission in the Nation's Capital.

Second, although the Historic Preservation Office did not submit a report concerning the application, the Applicant has met with the staff of the Historic Preservation Office and has worked with that office to devise a plan which meets its concerns. Under the Foreign Missions Act, the Board has final authority to determine historic preservation compliance. The Applicant has designed the new building in accordance with the District's Historic Preservation Design Guidelines to ensure its compatibility with the character of both the existing building, which will not be changed, and the surrounding historic district. The existing main building is a contributing building to the character of the historic district, but is not a landmark. The existing one-story former squash court building has lost its historic integrity, and demolition of that building is appropriate. The Applicant has documented the former squash court building in accordance with the standards of the Historic American Building Survey. The new building and the demolition of the former squash court will substantially comply with District of Columbia and federal regulations governing historic preservation.

Third, the Applicant is providing adequate off-street parking and the Secretary of State has determined that there are no special security requirements relating to such parking.

Fourth, after consultation with federal agencies authorized to perform protective services, the Secretary of State has determined that the subject property and the area are capable of being adequately protected.

Fifth, the Director of the Office of Planning, on behalf of the Mayor of the District of Columbia, has determined that favorable action on this application is in the municipal interest and is generally consistent with the Comprehensive Plan for the National Capital and the Zoning Regulations.

Sixth, the Secretary of State has determined that a favorable decision on this application will serve the federal interest, particularly as the Government of the Sultanate of Oman has consistently been supportive of the United States Embassy in its diplomatic property needs. In addition, the new building will be substantially screened from view from Rock Creek Park. The Applicant will landscape the property as shown on Exhibit No. 37, except the eleven plants indicated will be arbor vitae (*thuya occidentalis*), six to eight feet high. Neither the design of the building, including the height and exterior appearance and features, nor the landscaping, will have an adverse impact on Rock Creek Park.

Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment constituted in accordance with the Foreign Missions Act taken at its public hearing on October 11, 2005, not to disapprove the application: 5-0-0 (Geoffrey H. Griffis, Patricia Gallagher, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John G. Parsons, to not disapprove).

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VOTE: 5-0-0 (Geoffrey H. Griffis, Patricia E. Gallagher, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John G. Parsons, not to disapprove.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: MAR 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 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. 17433 of Access Housing, Inc.**, as amended, pursuant to 11 DCMR § 3104.1, for a special exception under section 334 to establish a community service center on the ground floor at premises 820 Chesapeake Street, S.E. (Square 6160, Lot 89) and a special exception under section 358 to establish a community residence facility (for 43 residents) in the R-5-A District at premises and 838-840-842 Chesapeake Street, S.E. (Square 6160, Lot 872).

*Note: The application was originally advertised for special exception relief under section 360 for an emergency shelter. The application was subsequently amended to request special exception relief under section 334 for a community service center. The relief under section 358 for a community residence facility remained unchanged.*

**HEARING DATE:** March 21, 2006  
**DECISION DATE:** March 21, 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) 8E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8E, which is automatically a party to this application. ANC 8E submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions under sections 334 and 358. 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, 334 and 358, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The

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

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED SUBJECT** to the **CONDITION** that all areas to be used for parking shall be surfaced and striped.

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

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

Each concurring member approved the issuance of this order.

**MAR 24 2006**

**FINAL DATE OF ORDER:** \_\_\_\_\_

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

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

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

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

THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

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

**Application No. 17451 of Richard E. Cytowic**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a second story addition above an existing attached garage serving a single-family detached dwelling under section 223, not meeting the rear yard requirements (section 404), in the R-1-B District at premises 4720 Blagden Terrace, N.W. (Square 2656, Lot 36).

**HEARING DATE:** March 21, 2006  
**DECISION DATE:** March 21, 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) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted 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

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

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

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** March 21, 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.

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