

**THE CESAR CHAVEZ PUBLIC CHARTER  
SCHOOLS FOR PUBLIC POLICY**

**NOTICE FOR SOLICITATION OF PROPOSALS FOR  
SPECIAL EDUCATION SERVICES**

The Cesar Chavez Public Charter Schools for Public Policy, in accordance with section 2204 (c) (1) (A) of the DC School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals for special education services.

The Cesar Chavez Public Charter Schools will receive bids from June 23, 2006 to COB July 5, 2006 Attn: Lisa Drew, 709 12<sup>th</sup> Street, SE, Washington, D.C. 20003. All necessary forms and a full RFP may be obtained by calling 202-547-3975 ext. 19.

**DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES OF THE OFFICE OF ADMINISTRATIVE  
HEARINGS**

The Commission on Selection and Tenure of Administrative Law Judges (Commission)  
Seeks Comments Regarding the Potential Reappointment of Administrative Law Judges  
James C. Harmon, Jr., E. Savannah Little, and N. Denise Wilson-Taylor.

This is to notify members of the bar and the general public that the Commission has begun review of the qualifications for reappointment of Administrative Law Judges James C. Harmon, Jr., E. Savannah Little, and N. Denise Wilson-Taylor of the District of Columbia Office of Administrative Hearings. Administrative Law Judges Harmon and Wilson-Taylor have filed statements with the Commission requesting reappointment to ten-year terms upon the expiration of their initial two-year terms on October 1, 2006, and Administrative Law Judge Little has filed a statement with the Commission requesting reappointment to a ten-year term upon the expiration of her initial two-year term on October 8, 2006.

Section 3705.21 of Title 6 of the District of Columbia Municipal Regulations (DCMR) provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications applicable to all Administrative Law Judges contained in section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline, and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), section 3703.5 of Title 6 of the DCMR states that “[a]n Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests members of the bar and other attorneys, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Administrative Law Judges Harmon, Little, and Wilson-Taylor which it believes will aid the Commission in deciding whether to reappoint any of these Administrative Law Judges. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any

person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission on or before July 24, 2006 and should be mailed or delivered in a sealed envelope, marked "Confidential – ALJ Reappointments", addressed to:

Commission on Selection and Tenure of Administrative Law Judges  
Office of the Administrative Hearings  
District of Columbia Government  
825 North Capitol Street, NE  
Suite 4150  
Washington, DC 20002-4210

The members of the Commission are:

Honorable Robert R. Rigsby, Chairperson  
Henry W. Lavine  
Peter M. Willner  
Honorable Tyrone T. Butler, *ex officio*  
Honorable Robert J. Spagnoletti, *ex officio*

DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

Certification of Filling a Vacancy  
In Advisory Neighborhood Commission

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

Nan S. Wells  
Single Member District 3D03

**Howard University Middle School of Mathematics and Science**

**REQUEST FOR BIDS**

The Howard University Middle School of Mathematics and Science will receive bids until 5:00 pm Friday June 30, 2006 for the following separate services:

1. Onsite networking, audio/visual, and computer engineering support for 260 users.
2. Building cleaning/maintenance services for a 36,000 sq. ft facility.
3. Unarmed school security services.
4. National School lunch program (breakfast and lunch).

Companies wishing to submit bids for any of the four services may obtain detailed requirements and all necessary forms from:

Ines Moldiz  
Howard University Middle School of Mathematics & Science  
405 Howard University Place NW  
Washington, DC 20059  
(202) 806-7590

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005

NOTICE

GT97-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON  
GAS LIGHT COMPANY FOR AUTHORITY TO AMEND ITS RATE  
SCHEDULES FOR NOS. 3, 3A, AND 6

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its action taken in Order No. 13971, issued on June 14, 2006, extending the deadline for filing comments and reply comments in this matter. The comment period is extended until June 30, 2006 and the reply comment period is extended until July 14, 2006.

2. On April 20, 2006, WGL filed a Revised Tariff Application requesting authority to revise Rate Schedule No. 3 Interruptible Sales Service, Rate Schedule No. 3A Interruptible Delivery Service, Rate Schedule No. 5 Firm Delivery Service Gas Supplier Agreement, and Rate Schedule No. 6 Small Aggregation Pilot.<sup>1</sup> On May 12, 2006, a Notice of Proposed Rulemaking ("NOPR") was published in the D.C. Register inviting the public to comment on WGL's Application.<sup>2</sup> The NOPR stated that all comments must be received within (30) days of the date of publication of the NOPR.<sup>3</sup> Reply comments were due no later than 45 days of the date of the publication of the NOPR.<sup>4</sup>

3. On June 8, 2006, OPC filed a motion requesting an extension of time until Monday, June 20, 2006, and until July 5, 2006, for OPC to file comments and WGL to file reply comments, respectfully.<sup>5</sup> OPC maintains that WGL does not object to its request so long as a similar extension of time is granted for WGL to file reply comments.<sup>6</sup>

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<sup>1</sup> *Gas Tariff 97-3, In the Matter of the Application of Washington Gas Light Company for Authority to Amend its General Service Provisions ("GT97-3")*, Letter to Dorothy Wideman, Commission Secretary, from Keith Townsend, Senior Attorney for Washington Gas Light Company, filed April 20, 2006 ("Application").

<sup>2</sup> 53 D.C. Reg. 4005-4006.

<sup>3</sup> *Id.* at 4006.

<sup>4</sup> *Id.*

<sup>5</sup> *GT97-3, Motion for Extension of Time of the Office of the People's Counsel*, filed June 8, 2006 ("OPC's Motion").

<sup>6</sup> *Id.*

4. After considering OPC's Motion, the Commission has decided to extend the deadline for filing comments and reply comments in this matter. The comment period in a rulemaking is extended by notice in the D.C. Register. In order to allow sufficient time for comment after publication of the notice, we have decided to extend the comment and reply comment periods beyond those requested by OPC. In the event that any party files comments before publication of this notice, that party may either supplement those comments or withdraw and resubmit them by the new deadlines.

Office of the Secretary of the  
District of Columbia

June 9, 2006

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after July 1, 2006.

Allen, Melinda	Rpt	Dept of Transportation 400 7 <sup>th</sup> St, SW 20590
Anderson, Barbara E.	Rpt	Flather & Perkins 888 17 <sup>th</sup> St, NW#508 20006
Bacon, Jennifer	New	Krupin O'Brien 1156 15 <sup>th</sup> St, NW#200 20005
Bannister-Paraoan, Tonya C.	New	1516 Ridge Pl, SE 20020
Beach, Deborah A.	New	Connolly Bove et al 1990 M St, NW#800 20036
Benefield, Lizette R.	New	Session Title Services 1150 Conn Ave, NW#900 20036
Bergman, Sheri	New	Fidelity Investments 1900 K St, NW#110 20006
Berry, Dorothy D.	New	Edgewood Management 201 I St, SW 20024
Bivens, Shame'ka C.	New	C C A/Treatment Facility 1901 E St, SE 20003
Blado, Amber	New	AFL-CIO Investment Trust 1717 K St, NW#810 20036
Bobbio, Jesusa P.	Rpt	Central Business Serv 1634 I St, NW#306 20006

Body, John	New	Sullivan & Cromwell 1701 Pa Ave, NW#800 20006
Bordell, Martin F.	Rpt	Vinson & Elkins 1455 Pa Ave, NW#600 20004
Brewer, Reta	Rpt	Industrial Bank 4812 Ga Ave, NW 20011
Brown, Alexis Y.	New	Champion Title 1133 Conn Ave, NW 20036
Brundage, Rhonda L.	New	C C A/Treatment Facility 1901 E St, SE 20003
Burrell, Lesley Lewis	New	Brawner Company 888 17 <sup>th</sup> St, NW 20006
Campbell, Lorna	New	Wash Hosp Ctr/Rm 2A2Admin 110 Irving St, NW 20010
Cane, Monica	Rpt	B'nai B'rith Internat'l 2020 K St, NW 7thF1 20006
Chapman, Elizabeth	New	Williams & Jensen 1155 21 <sup>st</sup> St, NW#300 20036
Cole, Joalice L.	New	Transportation Research 500 5 <sup>th</sup> St, NW4thF1 20001
Crockett, LaTaulia N.	New	4309 4 <sup>th</sup> St, NW 20011
Crump, Geraline B.	Rpt	Amer Postal Workers Union 1300 L St, NW 20005
Dark, Sharron	New	3672 Hayes St, NE#203 20019
Davis, Barbara J.	Rpt	DOD/ArmyCorps of Engineers 441 G St, NW 20314
Davis, Darnell	New	Sullivan & Cromwell 1701 Pa Ave, NW#800 20006

Davis, Trinita J.	New	C C A 1901 E St, SE 20003
Dickson, Michael	Rpt	McDermott Will & Emery 600 13 <sup>th</sup> St, NW 20005
Dixon, Rhonda E.	New	City First Bank of D.C. 1432 U St, NW 20009
Drenth, Arthur H.	New	Bank Fund Staff F C U 1818 H St, NW 20433
Drew, Richard E.	Rpt	2500 Q St, NW#319 20007
Eagle, Cynthia	New	Answer Title 10 G St, NE#410 20002
Eckstone, Texas Sydney	Rpt	The Reporters 4907 14 <sup>th</sup> St, NW 20011
Edison, Tessasoniquea	New	Answer Title 10 G St, NE#410 20002
Everhart, Esther Marie	New	Wash Hosp Ctr/Stepob 121S 110 Irving St, NW 20010
Faison, Sheldon G.	New	418 Oneida St, NE 20011
Farmer, Felicia	New	CFO/Revenue Analysis 441 4 <sup>th</sup> St, NW#410S 20001
Ferguson, Edna s.	Rpt	Kelley Drye Warren 3050 K St, NW#400 20007
Figueroa, Elizabeth	New	Blumenthal & Shanley 1700 17 <sup>th</sup> St, NW#301 20009
Ford, Kenja	Rpt	The Gallup Organization 901 F St, NW#200 20004
Foreman, Rhae A.	New	Reed Smith 1301 K St, NW#1100ET 20005

Gatto, Charlotte	Rpt	Debevoise & Plimpton 555 13 <sup>th</sup> St, NW#1100E 20004
Geffen, Mildred	New	1330 Mass Ave, NW#519 20005
Giannotti, Nicholas E.	New	Wachovia Bank 2901 M St, NW 20007
Glascoe, Tiana D.	New	Rader Fishman Grauer 1233 20 <sup>th</sup> St, NW#501 20036
Goldring, Thelma B.	Rpt	DOT/Maritime Admin 400 7 <sup>th</sup> St, SW 20590
Hamilton, Terri L.	New	Capital Reporting 1000 Conn Ave, NW#505 20006
Harrington, Lorie	New	Monitoring Force USA 888 17 <sup>th</sup> St, NW#640 20006
Henderson, Carolyn A.	Rpt	Legal Times 1730 M St, NW 20036
Hernandez, Gilbert	New	P N C Bank 1779 Columbia Rd, NW 20009
Hoare, Tracy C.	New	Michael Hoare, P C 1101 14 <sup>th</sup> St, NW#710 20005
Holford, Althea O.	New	Answer Title 10 G St, NE#410 20002
Holland-Burnes, Danette	New	D C Chartered Health 1025 15 <sup>th</sup> St, NW#900 20005
Jackson, Donna I.	New	A F B F 600 Md Ave, SW#800 20024
Jackson, Laurane P.	Rpt	Greater Morning Star Ch 4417 Dix St, NE 20019
Jackson, Pattress C.	New	J M Zell Partners 1900 K St, NW#850 20006

JUN 23 2006

James, Kirsten K.V.	New	626 Ingraham St,NW 20011
Johnson, Jessica D.	New	Mintz Levin Cohn et al 701 Pa Ave,NW#900 20004
Johnson, Stephanie D.	New	B B & T 1909 K St,NW 20006
Jones, Melody P.	Rpt	Radio Free Europe 1201 Conn Ave,NW 20036
Kamara, Zainab A.	New	Wachovia Bank 1447 P St,NW 20005
Kaufman, Beth	New	North American Title 471 H St,NW 20001
King, Shirley A.	Rpt	Dow Lohnes 1200 N H Ave,NW#800 20036
Kleyle, Karen M.	New	A A R P 650 F St,NW 20004
Kona, Janice N.	Rpt	Neighborhood Legal Serv 701 4 <sup>th</sup> St,NW 20001
Kunkle, Deborha L.	Rpt	Dow Lohnes 1200 N H Ave,NW#800 20036
Leake, Trinetta S.	New	B B & T 1909 K St,NW 20006
Lethbridge, Marion C.	New	Sibley Memorial Hospital 5255 Loughboro Rd,NW 20016
Lewis, Todd	New	5505 Conn Ave,NW#350 20015
Liverman, Thierry J.	Rpt	Chatel Real Estate 3210 N St,NW 20007
Lugo, Noemi	Rpt	Admin Office/U S Courts 1ColumbusCir,NE#7-290 20544

McBride, Camille R.	New	Law Office 1717 K St, NW#600 20036
McDaniel, Kathy E.	Rpt	Akridge 601 13 <sup>th</sup> St, NW#300N 20005
McDowell, Tanya A.	New	3426 21 <sup>st</sup> St, SE 20020
Madagu, Bridget	New	P N C Bank 1919 Pa Ave, NW 20006
Mann, Kiranjit K.	New	Reading Is Fundamental 1825 Conn Ave, NW#400 20009
Martial, Yanis	New	uKnow 1301 Conn Ave, NW#800 20036
Melecio, Beatrice W.	Rpt	Greenberg Traurig 800 Conn Ave, NW#500 20006
Miles, Tammie D.	Rpt	316 Decatur St, NW 20011
Miller, Denise	New	Answer Title 10 G St, NE#410 20002
Mitchell, Jennifer L.	New	Potomac Development Corp 900 2 <sup>nd</sup> St, NE#114 20002
Moasser, Mahmoud	New	Arent Fox 1050 Conn Ave, NW 20036
Mobley, Joyce A.	New	B B & T 1909 K St, NW 20006
Mozeleski, Caroline	New	Law Off/Quinn O'Connell 5100 Wis Ave, NW#514 20016
Murray, Deborah Sue	New	Air Transport Association 1301 Pa Ave, NW#1100 20004
O'Connell, William M.	New	Law Off/Quinn O'Connell 5100 Wis Ave, NW#514 20016

Odlum, Melanie Alice	New	NARAL Pro-Choice America 1156 15 <sup>th</sup> St, NW 20005
Osborn, Rena L.	New	Ballard Spahr et al 601 13 <sup>th</sup> St, NW#1000S 20005
Osorio-Monzon, Brenda	New	Kuder Smollar Friedman 1925 K St, NW#200 20006
Pantz, Nimrode	New	2500 Q St, NW#539 20007
Pearson, Curtis	New	1347 I St, NE 20002
Pettiford, Arthur T.	Rpt	U S Park Police 1100 Ohio Dr, SW#182 20024
Phelan, Brian P.	Rpt	Conlon Frantz et al 1818 N St, NW 20036
Philpot, Theresa	New	Justice Fed Credit Union 500 1 <sup>st</sup> St, NW 20534
Preston, Yvonne	Rpt	Blinded Veterans' Assoc 477 H St, NW 20001
Proctor, Lisa M.	Rpt	Campaign/TobaccoFree Kids 1400 I St, NW#1200 20005
Raymond, Bradley G.	New	Wachovia Bank 1300 Conn Ave, NW 20036
Revell, Vinita C.	New	G W University Hospital 901 23 <sup>rd</sup> St, NW 20037
Reynoso, Ruth J.	New	3636 16 <sup>th</sup> St, NW #B466 20010
Robinson, Dena R.	Rpt	G W Univ Med Ctr 2300 I St, NW 20037
Roeung, Thar	New	Katten Muchin Rosenman 1025 ThJeff St, NW#700 20007

Schneider, Juliet	Rpt	Mallios & O'Brien 2600 Va Ave, NW#1112 20037
Schwartz, Philip M.	Rpt	Carr Morris Graeff 1120 G St, NW#930 20005
Slutsky, Peter	New	C R E W 11 Dupont Circle, NW 20036
Smith, Lawrence E.	Rpt	OAG/Child Support Serv 441 4 <sup>th</sup> St, NW 20001
Snesko, Brandon	New	1322 Maryland Ave, NE 20002
Steiner, Naomi Seligman	New	C R E W 11 Dupont Circle, NW 20036
Taylor, Karen M.	New	EYA Urban Properties 1104 17 <sup>th</sup> St, NW 20036
Thayer, Sandra L.	Rpt	Stein Mitchell Mezines 1100 Conn Ave, NW 20036
Thomas, Christopher G.	New	Kellogg Huber et al 1615 M St, NW#400 20036
Thomas-Dyer, Pearl E.	New	1301 Trinidad Ave, NE 20002
Torrance, Kimberly L.	New	Krupin O'Brien 1156 15 <sup>th</sup> St, NW 20005
Tyler, Candace	New	Dickinson Wright 1901 L St, NW#800 20036
Venson, Millicent R.	New	First Home Care 1012 14 <sup>th</sup> St, NW#1400 20005
Weatherford, Rebecca L.	Rpt	Prudential Relocation 1325 G St, NW#600 20005
Whiteley, Malynda D.	Rpt	L A D Reporting 1100 Conn Ave, NW#850 20036

Wright, Gailya	New	Bodzin & Golub 1156 15 <sup>th</sup> St, NW 20005
Wright, Rosella D.	New	B B & T 1909 K St, NW 20006
Yates, Stephanie W.	Rpt	DOJ/Tax Division 601 D St, NW 20004
Zandieh, Sohail Ethan	New	Bank Fund Staff F C U 1818 H St, NW 20433

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

**Appeal No. 17310 of Deidre O. Stancioff** 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 Nos. B461964, B467431, B468744 and B477090<sup>1</sup>, allowing an addition to a single-family dwelling, allegedly in violation of lot occupancy and side yard requirements of the Zoning Regulations in the R-3 District at premises 1812 35<sup>th</sup> Street, NW (Square 1296, Lot 802).

**HEARING DATES:** September 20, 2005, October 25, 2005  
**DECISION DATES:** November 8, 2005

**DECISION AND ORDER**

This appeal was filed with the Board of Zoning Adjustment (the Board) challenging DCRA decisions to approve building permits allowing an addition to a single family dwelling at 1812 35<sup>th</sup> Street, NW. The property owner moved to dismiss the appeal as untimely, but the Board found that the appeal had been timely filed. Following a public hearing on the merits of the appeal, the Board voted to grant the appeal.

**PRELIMINARY MATTERS**

**Notice of Appeal and Notice of Public Hearing**

The Office of Zoning scheduled a hearing on the appeal for September 20, 2005. In accordance with 11 DCMR § 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, ANC 2E (the ANC for the area within which the subject property is located), the property owner, and DCRA.

**Parties**

The Appellant in this case is Deidre O. Stancioff (the Appellant). The Appellant was represented by Laurie Horvitz, Esq., of Finkelstein and Horvitz, PC. The owner of the subject property, 1812 35<sup>th</sup> Street Associates LLC (the Owner), was represented by George Keys, Esq., of Jordan & Keys, LLP. As the property owner, 35<sup>th</sup> Street Associates LLC is automatically a party under 11 DCMR § 3199.<sup>2</sup> DCRA was represented by Stephanie Ferguson, Esq.

**Persons/Entities in Support of the Appeal**

The ANC wrote in support of the appeal (Exhibit 31), and its representative, Charles Eason, appeared in support of the appeal.

<sup>1</sup>This permit was not part of the original filing, but was added as an amendment to the appeal and superseded the earlier permits.

<sup>2</sup>The Owner also moved to intervene in the proceeding; however, the Board found that such relief was not necessary in view of its automatic party status.

**Preliminary Matters**

Prior to the public hearing, the Owner filed a motion to dismiss the appeal as untimely. DCRA joined in the motion and Appellant and the ANC opposed it. After oral argument by the parties on September 20, 2005, the Board voted to deny the motion to dismiss. On October 25, 2005, the Board granted Appellant's motion to amend the appeal to include revised Building Permit No. B477090 (the revised permit) and a hearing was held on the merits of the appeal.

**FINDINGS OF FACT**

**The Property**

1. The subject property is an existing single-family dwelling located at 1812 35<sup>th</sup> Street, NW (Lot 801, Square 1296) in the R-3 zone. The property is improved with a one and one-half story masonry dwelling that was built around 1910.
2. The lot of only 2,400 square feet, on which the dwelling is situated, is nonconforming. It does not meet the minimum lot size requirements in the Zoning Regulations, but was improved prior to May 12, 1958 when the Regulations took effect. *See*, 11 DCMR § 401.3.
3. The original dwelling was a small structure which occupied approximately 31% of the lot and was within allowable lot occupancy limitations. *See*, 11 DCMR § 403. As originally developed, the property had a nonconforming side yard of approximately 2.5 feet on one side. *See*, 11 DCMR 405.9. The other side of the dwelling extends to the side lot line.

**The Appellant**

4. The Appellant owns and resides at the adjacent property to the north located at 1814 35<sup>th</sup> Street. Her property abuts the lot line wall at the subject dwelling.

**The Permits and Construction History**

5. The Owner purchased the property in 2003, after a fire had destroyed the interior of the original dwelling.
6. On or about April 23, 2004, the Owner filed an application with DCRA for a building permit to repair the dwelling. The proposed work was described as “[a]lteration and [r]epair” to the existing single-family dwelling (Exhibit 6).
7. On or about May 19, 2004, DCRA issued Building Permit No. B461964 to “repair the fire damage” at the property (Exhibit 7).
8. On or about August 12, 2004, the Owner filed an application with DCRA for a building permit to expand the dwelling. The proposed work was described as both an “alteration and repair” and an “addition” to the dwelling. The “addition” was further described as an “[e]xpansion as per enclosed plans” (Exhibit 6).
9. During DCRA's zoning review of this application, notations were made stating that the proposed addition could not be allowed. DCRA prepared a “Plan Correction List” dated October

5, 2004 stating that the proposed addition would result in a lot occupancy that exceeded the maximum 40% allowed in the zone. The document stated:

“Existing structure has a non-conforming side yard, proposed addition over existing footprint cannot be allowed. Structure is a semi-detached dwelling and the max lot occupancy is 40%. You need to modify proposed work to bring into compliance or seek relief thru the BZA to build proposed work. Reroute decision to Zoning for action.” (Exhibit 8)

10. On October 16, 2004, DCRA again noted the problem with lot occupancy, stating that “the proposed lot occupancy is 44%” because the nonconforming side yard must be included in the calculations (Exhibit 8).

11. Notwithstanding these notations, on or about November 5, 2004, DCRA issued Building Permit No. B467431 allowing for an addition “per [the] enclosed plans” (the addition permit). It specifically allowed for “one room and [a] bathroom on [the] existing basement,” a “family room” on the “existing first floor,” a “bath” and “stairs” on the existing “2<sup>nd</sup> floor,” and a new “third floor with two bedrooms and a [a] bathroom” (Exhibit 7).

12. The owner posted the addition permit in the front window of the dwelling on or about November 5, 2004.

13. Construction on the addition began on or about November 15, 2004, and was largely completed before the public hearing on this appeal. The resulting three-story renovated dwelling expanded twenty-seven and one-half feet further into the rear yard.

14. The Owner showed building plans to the Appellant before the first addition permit was issued in early November, 2004. However, these plans did not have accurate dimensions from which lot occupancy could have been ascertained. The parties also discussed changing the foundation wall from cinder block to reinforced concrete prior to the issuance of the foundation permit in late December, 2004.

15. Appellant had difficulty obtaining the building plans that were filed with DCRA in connection with the addition permit. The plans were unavailable at DCRA for a protracted period of time and, when available, did not show the dimensions that were necessary to calculate the lot occupancy.

16. Appellant made inquiries (by telephone and e-mail) to DCRA about the permit and construction activity after construction began in November, 2004. The exact date of each of these inquiries is not clear from the record, except there is evidence of e-mail communications with DCRA beginning on January 5, 2005.

17. Appellant filed a lawsuit against the Owner in D.C. Superior Court on or about December 20, 2004. In that lawsuit she sought a temporary restraining order and preliminary injunction against the Owner’s construction activity, alleging damage from excavation at the property. Appellant reviewed DCRA’s permit file in connection with this lawsuit but the file lacked

sufficient information to permit her to determine whether or not a lot occupancy violation had occurred.

18. On or about December 29, 2004, the Owner applied for and obtained a revised building permit that changed the foundation materials from cinderblock to poured concrete. (See, Building Permit No. 468744, Exhibit 7) (the foundation permit).

19. DCRA issued the November 5, 2004, addition permit based upon the structure's classification as a row dwelling, a dwelling without side yards that is permitted as-of-right in the R-3 zone. Initially, DCRA found that "introduction of a trellis structure" converted the semi-detached dwelling to a row dwelling on the rationale that the trellis eliminated the side yard (See, DCRA letter to ANC of March 21, 2005, Exhibit 30, Tab 2).

20. Appellant challenged the agency's review and urged DCRA to consider the structure as a semi-detached dwelling instead of a row dwelling. She claimed in communications with DCRA that the structure could not be considered a row dwelling under the Regulations because it had a side yard. As such, she claimed, the dwelling with addition exceeded the maximum lot occupancy allowed for semi-detached dwellings in the R-3 zone.<sup>3</sup>

21. Appellant urged DCRA to revoke the addition permit (Exhibit 30, Tab 2), and filed this appeal on February 22, 2005 (Exhibit 1).

22. Attempting to resolve these irreconcilable positions, DCRA suggested that the Owner obtain zoning relief for the addition under § 223 of the Zoning Regulations (Exhibit 30, Tab 2). Relief under this provision allows an addition to a single-family residence where the addition results in (among other things) excessive lot occupancy. DCRA referred the Owner to this Board for special exception relief on March 2, 2005, noting that the lot occupancy of the dwelling with addition was 43.75% (Exhibit 4). The Owner filed the application for relief on March 21, 2005 (BZA Application No. 17327). However, in a separate Decision and Order dated September 13, 2005, this Board denied the Owner's application.<sup>4</sup>

23. On or about September 2, 2005, DCRA issued Building Permit No. B477090 to revise the addition permit (the revised permit). This revised permit approved a "revision to permit # B467431" (the addition permit) and allowed the Owner to "extend [the] roof overhang on one wall to [the] property line" (Attachment to Exhibit 35).<sup>5</sup> DCRA stated that, because the overhang extended to the lot line, the structure could be classified as a row dwelling for zoning purposes.

24. On February 8, 2005, Appellant's counsel met with DCRA's Zoning Administrator. At that meeting Appellant learned for the first time of the Plan Correction List and of a possible lot occupancy violation.

<sup>3</sup> The maximum lot occupancy for semi-detached dwellings is only 40% in the R-3 zone, as compared to 60% for row dwellings in the same zone.

<sup>4</sup> The application was denied because it failed to meet the criteria for relief under § 223.2(c) of the Regulations. However, that determination does not bear upon the issues presented in this appeal.

<sup>5</sup> As explained above, the appeal was amended to include a challenge to this permit as well as the earlier permits.

25. Appellant filed this appeal on February 22, 2005, approximately 109 days after the addition permit was issued on November 5, 2004, and 14 days after learning of the possible lot occupancy violation,

### CONCLUSIONS OF LAW

#### The Motion to Dismiss.

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 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. 11 DCMR § 3112.2(a). This 60-day time limit may be extended, however, if the appellant shows 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.” 11 DCMR 3112.2(d).

The Board finds that the addition permit, issued on November 5, 2004, reflects the first decision relating to the alleged zoning errors; i.e., approval of an addition which resulted in excessive lot occupancy and violation of the side yard requirements. That permit authorized an addition with a trellis connection to the side lot line... The second decision relating to the same zoning error is the revised permit, issued September 2, 2005, authorizing construction of the addition with an eave, instead of the trellis, that projects to the side lot line.

Appellants filed this appeal February 22, 2005, 109 days after the issuance of the addition permit and more than 6 months before the issuance of the revised permit. Thus the Owner and DCRA argued that Appellant was both too late and too early in filing this appeal. The Board finds to the contrary.

With respect to the addition permit, it is undisputed that Appellant knew of its issuance as of the date it was issued, November 5, 2004. Accordingly, absent exceptional circumstances beyond Appellant’s control, to be timely, the appeal was required to have been filed by January 2, 2005. The Board finds such exceptional circumstances in this case.

The record is full that Appellant made diligent efforts with both the owner and DCRA to determine the nature and extent of the construction at the neighboring property. Despite the availability of other information concerning the construction, it was not until February 8, 2005, when DCRA’s Zoning Administrator shared the Plan Correction List with Appellant’s counsel that Appellant learned of a possible lot occupancy violation. Prior to this time Appellant had no notice nor should she have known from any other available information that the zoning error alleged in this appeal may have occurred. She filed her appeal February 22, 2005, just 14 days later. Therefore, the Board concludes that while Appellant did not file an appeal within 60 days of the issuance of the addition permit of which she had knowledge, there were exceptional circumstances outside of the Appellant’s control that impaired her ability to file a timely, good

faith appeal at that time – that being that Appellant did not have access to information that would have put her on notice of the alleged violation prior to February 8, 2005, despite her diligent efforts to obtain information related to the neighboring construction.

To extend the 60 –day time limit, the Board must also find that the extension will not prejudice any of the parties to the appeal. There was no argument that DCRA was prejudiced in any way by this extension. Nor was the Owner prejudiced by an extension of time. While construction had been substantially completed by the time this appeal was filed, the Owner chose to proceed with construction while he was aware of potential lot occupancy problems. The facts show that the Owner knew of these problems as early as October 5, 2004, when the Plan Correction List was issued. Moreover, the Owner did not wait for the 60 day appeal period to run before beginning construction. The Owner started construction on or about November 15, 2005, 10 days after the addition permit was issued. While he was within his rights to do so, he proceeded at his peril.

Accordingly, because the Appellant has satisfied the criteria in § 3112.2, the Board finds that the appeal was timely filed.

Finally, with respect to the revised permit, the Board finds that it was proper for the Appellant to amend her initial appeal to include the revised permit because the zoning error alleged is the same as that alleged in the initial appeal. As the revised permit was issued September 2, 2005, and Appellant moved to amend the appeal on October 11, 2005, Appellant appealed the permit within the 60-day time period.

Accordingly, the Board grants Appellant's motion to amend the appeal and denies Owner's motion to dismiss based on timeliness.

### **The Merits of the Appeal**

#### **The Positions of the Parties**

The Appellant maintains that the permits approving an addition to this dwelling were issued in error. She argues that neither a "trellis" (approved in the addition permit) nor an "overhang" (approved in the revised addition permit) changes the structure from a "semi-detached dwelling" to a "row dwelling". Appellant also claims that a roof overhang to the side lot line constitutes a projection that unlawfully extends into the side yard of the property. The Owner and DCRA contend that the last revised permit approving an "overhang" or "eave" was correctly issued.<sup>6</sup> They claim that approval was correctly based upon the structure's classification under the Zoning Regulations as a "row dwelling," a dwelling without side yards that is permitted as-of-right in the R-3 zone. *See*, 11 DCMR § 320.3(b). They contend that an "overhang" or "eave" which extends from the roof to the lot line eliminates the existing side yard, thereby creating a "row dwelling."

#### **The Appeal is Granted**

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<sup>6</sup>The proposed overhang in the revised addition permit replaced the trellis in the November, 2004 addition permit.

JUN 23 2006

The Board concludes that the addition permits of November 5, 2004 and September 2, 2005 were issued in error. The dwelling with the addition is not a row dwelling under the Zoning Regulations. It is a "semi-detached one-family dwelling." The term "row dwelling" is defined in the Zoning Regulations as "a one-family dwelling having no side yards" See, 11 DCMR 199.1. As explained above, one side of the property has a lot line wall. The other side of the property has a side yard, albeit a small nonconforming one. Had DCRA properly considered the structure as a semi-detached dwelling, it would have found that the maximum lot occupancy limitation – 40% -- had been exceeded.

The Owner and DCRA contend that the proposed "eave" or "overhang" transforms the structure into a row dwelling because it extends to the lot line and eliminates the small but existing side yard. The Board finds to the contrary for the following reasons:

First, a roof overhang is not part of the dwelling structure. DCRA concedes that the proposed overhang is merely a continuation of the roof and provides no living space or functional purpose. As such, it would be unreasonable to conclude that the overhang alters the zoning classification.

Second, the Board finds that the proposed eave would unlawfully project into the required side yard. The terms "eave" and "overhang" are not defined in the Zoning Regulations. However, the term "eave" is found within the section prohibiting projections into required open spaces. Section 2502.2 limits projection into any required yard for a distance of 2 feet. Because the side yard here is 2.5 feet and the eave reaches to the lot line, the eave necessarily projects over the yard for more than 2 feet.

The Board acknowledges that it is possible to convert a semi-detached dwelling into a row dwelling with an addition that extends to the side lot line. However, that is not the situation at hand. Permitting a small roof overhang to transform this structure into a row dwelling would only circumvent the limits on lot occupancy and allowable projections.

Accordingly, the Board concludes that the Zoning Administrator erred in issuing the revised permit and the addition permit, because they authorized construction in violation of the lot occupancy limitation for a semi-detached dwelling. Therefore, the appeal should be granted.

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 § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give great weight, the Board must articulate with particularity and precision why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns. In this appeal, the ANC concurred with the views advanced by the Appellant. For the reasons stated above, the Board finds this advice persuasive.

Therefore, for the reasons stated above, it is hereby **ORDERED** that:

- a. The motion to dismiss the appeal as untimely is **DENIED**

**VOTE: 3-2-0** (Ruthanne Miller, John A. Mann II and Kevin Hildebrand in support of the motion; Geoffrey H. Griffis and Curtis Etherly, Jr. opposed to the motion)

Vote taken on September 20, 2005

b. The motion to amend the appeal is **GRANTED BY CONSENSUS**

**Granted on October 25, 2005**

c. The motion to grant the appeal is approved and the appeal is hereby **GRANTED**.

**VOTE: 5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr. and John A. Mann II to grant; Kevin Hildebrand to grant by absentee ballot)

Vote taken on November 8, 2005

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

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

**FINAL DATE OF ORDER: JUN 13 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.

SG

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

**Application No. 17395 of Jemal's Citadel LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements under section 774, a variance from the nonconforming structure requirements under subsection 2001.1, a variance from the requirement to provide a loading berth that is 55 feet deep under subsections 2201.1 and 2201.6, to allow the establishment of a mixed-use project including a grocery store and general offices in an RC/C-2-B zone district at the premises 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

**HEARING DATE:** November 29, 2005

**DECISION DATE:** January 10, 2006

**DECISION AND ORDER**

This self-certified application was submitted July 1, 2005 by Jemal's Citadel LLC ("Applicant"), the owner of the property that is the subject of the application. The application requested area variances from requirements applicable to the rear yard, loading berths, and enlargement of a nonconforming structure to allow the redevelopment of an existing building in a mixed-use project that will include a grocery store, retail or service uses, and general offices in the Reed-Cooke/C-2-B zone at 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

Following a hearing on November 29, 2005 and a public meeting on January 10, 2006, the Board voted 5-0-0 to grant the application subject to conditions.

**PRELIMINARY MATTERS:**

Notice of Application and Notice of Hearing. By memoranda dated July 1, 2005, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 1, Advisory Neighborhood Commission ("ANC") 1C, and Single Member District/ANC 1C07. Pursuant to 11 DCMR § 3113.13, on September 2, 2005 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 1C, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on September 9, 2005 (52 DCR 8391).

**Party Status.** In addition to the Applicant, ANC 1C was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to a group comprising the Reed Cooke Neighborhood Association, whose membership includes residents surrounding the Citadel building, represented by Simi Batra, and residents living near the subject property in the 1600 block of Kalorama Road or the 2300 block of 17<sup>th</sup> Street, including Darrell Allison, Natalie Buda, Maureen Gallagher, A.W. Greenfield, Heather Higginbottom, Catherine Pugh, Mark Rasmussen, Sharon Saydah, and Daniel Sepulveda. The Board declined to waive its rules to consider an untimely request for party status made by Campbell Johnson on behalf of the

Dorchester Tenants Association, an organization of tenants of a 394-unit apartment building located just north of the subject property.<sup>1</sup>

**Applicant's Case.** The Applicant presented evidence and testimony from witnesses including Donald H. Deutsch, Jr., of Faison Enterprises, Inc., the project developer and an expert in infill development; Phil Esocoff, an expert in architecture; Lindsley Williams, an expert in land planning; Frederick E. Gorove and Dan VanPelt, experts in traffic and parking; and John Hutchens, vice president of operations for Harris Teeter, the expected tenant of the grocery store to be located at the subject property. The Applicant described plans to redevelop the subject property, known as the "Citadel," and indicated that area variances were sought for two discrete components of the redevelopment. According to the Applicant, the variances were necessary to permit the location of an elevator core along one wall of the existing nonconforming building and to permit a loading berth of less than the required size.

**Government Reports.** By memorandum dated November 22, 2005, the Office of Planning ("OP") recommended approval of the requested variances, subject to certain conditions. Noting that the Applicant's project involved "reusing an existing building that was not built to today's standards" and the presence of "challenges that may affect the residents that need to be overcome," OP concluded that the redevelopment project would complement the Reed-Cooke neighborhood by providing commercial uses that would serve the existing neighborhood.

By memorandum dated December 29, 2005, the District Department of Transportation ("DDOT") indicated its general agreement with the Applicant's proposed use of the loading docks and curbside loading zones. DDOT also indicated its intent to coordinate with the Applicant and the affected ANC regarding a proposed rulemaking to establish one-way street patterns on 17<sup>th</sup> Street and Kalorama Road, as well as modifications to curbside regulations, as described in the Applicant's truck management plan. DDOT plans to monitor truck operations at the subject property and make any additional adjustments necessary to improve safety and provide adequate traffic circulation.

**ANC Report.** By report submitted November 21, 2005, Advisory Neighborhood Commission 1C indicated its conditional support for the Applicant's proposal. A resolution in support of the application, with conditions, was approved by ANC 1C by a vote of 5-2 at a public meeting held November 2, 2005.

The ANC noted that the subject property is in the midst of an already dense residential area where several new multi-unit residential developments have been completed recently or are currently under construction, and that the streets on which the Citadel building fronts are narrow, with one travel lane in each direction and curbside parking on both sides. ANC 1C expressed "concern that the truck delivery and loading operations associated with a full-service supermarket exceeding 35,000 square feet in size will greatly disturb the peace, order and quiet

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<sup>1</sup> An untimely request for party status in opposition made by Campbell Johnson on behalf of the Urban Housing Alliance, a community-based nonprofit organization addressing the displacement of low- and moderate-income residents, was withdrawn.

of not only the immediate neighbors but the entire Reed-Cooke section of the neighborhood.” ANC IC recommended approval of the requested variances, but only as modified or conditioned by specific terms set forth in the ANC’s resolution, particularly those concerning truck deliveries to the subject property.

**Persons in Support of the Application.** The Board received numerous letters in support of the application, including several from residents living near the subject property. The letters commented favorably on the reuse of the Citadel building and the addition of a grocery store to the neighborhood, and asserted that no adverse impacts would result from approval of the application.

**Party in Opposition to the Application.** The party in opposition presented testimony from Simi Batra on behalf of the Reed Cooke Neighborhood Association, and from neighborhood residents Peter Lyden, Maureen Gallagher, and Jeff Wilkes. The party in opposition argued generally that the application should be denied as inconsistent with the purpose of the Reed-Cooke overlay to protect the existing residential neighborhood, noting the already high level of new development in the vicinity in recent years, the size and intensity of the proposed grocery store use, and traffic congestion, parking, and pedestrian safety conditions that would be exacerbated by the truck traffic generated by a grocery store at the subject property.

**Persons in Opposition to the Application.** Two persons spoke in opposition to the application, citing the lack of a comprehensive review of development in the neighborhood; the large scale and intensity of the proposed grocery store use relative to the small scale of the surrounding residential buildings; and pedestrian safety, parking, and traffic concerns, including adverse impacts on neighboring residents that would be caused by the headlights and brake lights of vehicles using the parking garage at the subject property.

#### **FINDINGS OF FACT:**

##### **The Subject Property and Surrounding Area**

1. The subject property is located at 1631 Kalorama Road, N.W., at the northeast corner of the intersection of Kalorama Road and 17<sup>th</sup> Street (Square 2572, Lot 36). The irregularly shaped lot has an area of 42,490 square feet.
2. The site is improved with a cast-concrete domed structure approximately 55 feet high. The building is currently vacant and was formerly devoted to a variety of uses, including roller skating rink, gasoline service station, warehouse, sound stage, public hall, restaurant, and night club.
3. The building has two levels of underground parking accessed from Kalorama Road and a loading area accessed from 17<sup>th</sup> Street. Pedestrian access to the building is via Kalorama Road.

JUN 23 2006

4. The existing building, constructed in 1947, occupies 95.7 percent of the lot. The open areas on the subject property are located along its Kalorama Street frontage. The subject property is a corner lot and is not separated from adjacent properties by any public alley or right of way. The front of the property is along 17<sup>th</sup> Street.
5. Streets in the vicinity of the subject property are narrow, with a curb-to-curb distance of 30 feet in some locations; operate in both directions; and permit parking on both sides of the street. Kalorama Road and 17<sup>th</sup> Street intersect at the subject property at an angle significantly less than 90 degrees.
6. Kalorama Road in the vicinity of the subject property currently carries approximately 1,500 vehicles per day, including a heavy volume of truck traffic.
7. The Reed-Cooke neighborhood in the vicinity of the subject property has predominantly two- and three-story rowhouses interspersed with high-, medium-, and low-rise apartment buildings, old warehouses, offices, and neighborhood-serving retail uses. A 10-story apartment building and surface parking lot are located in the area abutting the subject property to the north and east; to the south, across Kalorama Road, are two-story rowhouses and a new four-story building with ground-floor office and an arts center. The area is currently undergoing revitalization, with many old commercial and warehouse buildings being replaced or renovated to accommodate rental and condominium apartments. A number of buildings undergoing renovation and conversion from warehouse to residential uses are located along 17<sup>th</sup> Street to the north of the subject property. Properties in the immediate vicinity of the subject property are zoned R-5-B, R-5-D, and RC/C-2-B.

#### **Applicant's Project**

8. The Applicant intends to redevelop the existing building on the subject property into a mixed-use building containing a full-service grocery store occupying 35,070 square feet on the main floor, and 7,458 square feet of retail or service use on existing floors in the building. The Applicant also intends to insert a new floor between the main floor and the roof to accommodate 23,868 square feet of general office use.
9. The proposed redevelopment will provide a total of 126 parking spaces – 58 spaces consistent with zoning requirements and 68 additional spaces that do not meet dimensional requirements – in the existing underground parking garage accessed from Kalorama Road.

#### **Requested Variances**

10. The Applicant plans to add a new floor for office space above the main floor of the building, and to install an elevator and stairs to provide access to the new floor. The Applicant proposed to place the elevator core along the east wall of the building, because the elevator tower will fit more efficiently against the outside wall. Insertion

JUN 23 2006

of the elevator core without encroaching in the rear yard area would disrupt the layout of the parking spaces in the below-grade garage and result in a loss of 10 spaces.

11. The Zoning Regulations require a grocery store of the size proposed by the Applicant to provide two loading berths, one 55 feet deep and the other 30 feet deep, as well as one 20-foot service delivery space. 11 DCMR § 2201.1 The Applicant proposes to provide two loading berths, each 41 feet, 2 inches deep, and accessed from 17<sup>th</sup> Street, as well as a 60-foot service delivery space within a curbside loading zone immediately south of the loading dock along 17<sup>th</sup> Street. The loading area will also enclose a compactor and container used to store compacted trash until it is picked up.
12. The Applicant also requested an area variance to allow an addition to a nonconforming structure devoted to a conforming use. The planned enlargement will not affect the height or lot occupancy of the existing building, increase any nonconforming aspect of the building, or create any new nonconformity.
13. The property is an irregularly shaped lot that is developed with a building originally designed as an armory. The building has many internal structures that do not readily accommodate modern uses. One of the existing loading berths is smaller than that required under the Zoning Regulations, and the existing nonconforming rear yard restricts additions in that area.
14. Strict application of the Zoning Regulations to the subject property would require that the stair tower and elevator shafts be located within the building limits, instead of along an outside wall, and would result in a reduction of the amount of parking available at the subject property. Enlargement of the loading area would also result in the loss of some parking spaces, and would eliminate space the Applicant plans to use for equipment and goods in short-term holding.
15. The Applicant testified that the grocery store operating at the subject property did not anticipate any deliveries by trucks requiring a 55-foot loading dock, and had agreed to limit deliveries – from the grocery store’s own trucks as well as vendors’ trucks – to trucks not longer than 40 feet. Accordingly, the larger loading berth is not necessary to Applicant’s operations. The shorter trucks can be accommodated in the planned loading area, will lessen the need for on-street loading and unloading, and will be better able to navigate the neighborhood streets into the loading area.
16. The grocery store expects five deliveries per day using 40-foot trucks, with 30 to 35 additional truck trips per day generated by approximately 50 direct-store delivery vendors serving the grocery store; the anticipated number of deliveries would be the same whether the trucks were 40 feet or 55 feet long. Deliveries will be scheduled and managed by the grocery store’s loading dock manager and by a third party. The grocery store will permit deliveries between 7:00 a.m. and 4:00 p.m. daily, while the

JUN 23 2006

loading dock will be open between 8:00 a.m. and 3:00 p.m. Deliveries made when the loading dock is not open will utilize the 60-foot curbside delivery zone.

17. The Office of Planning recommended approval of the requested variances with the following conditions:
- (i) The Applicant will work with the District Department of Transportation to finalize a truck management plan prior to issuance of a certificate of occupancy;
  - (ii) The remainder of the space in the dome should not be converted to usable space;
  - (iii) The grocery store will refuse deliveries in trucks exceeding 40 feet in length;
  - (iv) The overhead loading dock doors will be equipped with sound-proofing and sound-dampening technologies;
  - (v) The overhead door will be closed except when vehicles enter or exit and an exterior sign denoting such shall be provided; and
  - (vi) Deliveries in the loading dock side door will be limited to those things that can be accommodated on hand carts.
18. ANC 1C recommended approval of the requested variances provided that all delivery trucks capable of being unloaded in an available loading berth would be directed into that loading berth by grocery store personnel rather than being unloaded from the street, and subject to the following conditions:
- (i) The grocery store at the subject property will refuse deliveries from trucks exceeding 40 feet in length;
  - (ii) The Applicant and the grocery store will propose to DDOT that the loading zone be limited to vehicles not exceeding 40 feet in length;
  - (iii) The grocery store will limit the number of truck deliveries to approximately 20 on weekdays, approximately 10 on Saturdays, and newspapers only on Sundays;
  - (iv) The grocery store will accept deliveries solely within the 17<sup>th</sup> Street loading dock or on its side door, never through Kalorama Road pedestrian or vehicular entrances;
  - (v) Hours for the 17<sup>th</sup> Street loading zone will be limited to 7 a.m. to 4 p.m. Monday through Friday and 7 a.m. to 3 p.m. on Saturday;
  - (vi) The grocery store will establish a formal truck management plan, for grocery deliveries as well as waste removal, as the grocery store approaches full operation;

- (vii) Hours for the overhead door to operate at the loading dock will be limited to 8 a.m. to 3 p.m. Monday through Friday and 8 a.m. to 2 p.m. on Saturday, and the overhead loading dock doors will be equipped with the sound-proofing and sound-dampening technologies contemplated by the Applicant's planned unit development plans;<sup>2</sup>
- (viii) The overhead door will be closed except when vehicles enter or exit, and the grocery store will, at minimum, provide an exterior sign denoting such;
- (ix) Hours for the loading dock side door will be accessible only 7 a.m. to 4 p.m. Monday through Friday, 8 a.m. to 2 p.m. on Saturday, and for newspapers only on Sunday;
- (x) There will be a dock manager on duty whenever exterior unloading is underway or vehicles are moving in or out of the dock area as well as from 6:30 a.m. to 9 a.m. on schooldays;
- (xi) Deliveries in the loading dock side door will be limited to hand carts only, goods not to exceed 42 inches wide;
- (xii) The Applicant and the grocery store will propose to DDOT changes in regulations to local streets that could channel or restrict routes of delivery vehicles or hours they could be present within limits that loading dock and loading zones provide, emergencies excepted, including the changes advocated by ANC 1C (adoption of certain one-way street options and installation of a traffic signal at the intersection of 16<sup>th</sup> Street and Kalorama Road);
- (xiii) Trash compactor in the loading dock will operate weekdays only, 9 a.m. to 3 p.m.;
- (xiv) Plastics and recyclables will be stored in loading area or within emptied trailers to return to North Carolina and the grocery store's recycling center;
- (xv) The grocery store will implement an exterminating plan that will include a contract for full preventative services and aggressive monitoring to ensure no problem areas.

19. The Applicant supported a DDOT-approved truck management plan as well as measures by DDOT to change regulations of local streets in the vicinity of the subject property that could channel or restrict routes of delivery trucks or the hours the trucks could be present within limits provided by the loading dock, loading zones. Such measures

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<sup>2</sup> The Applicant previously submitted an application to the Zoning Commission for a planned unit development involving the subject property. That application, Zoning Commission Case No. 04-30, was withdrawn.

could include making Kalorama Road one-way westbound from 16<sup>th</sup> to 17<sup>th</sup> Street, and making 17<sup>th</sup> Street one-way northbound from Kalorama Road to Columbia Road.

20. The Applicant proposed conditions that would govern aspects of the use of the subject property, particularly with respect to deliveries at the loading berths. The Applicant's proposed conditions were based in large part on the conditions proposed by OP and ANC 1C, with certain modifications. As discussed below, the Board finds that most of the Applicant's proposed conditions are reasonable and appropriate as a means to ensure that approval of the requested variance relief will not result in substantial detriment to the public good, and accordingly adopts those conditions in this Order.

### Harmony with Zone Plan

21. The subject property is located within the Reed-Cooke overlay district and is zoned RC/C-2-B. The C-2-B district is designed to serve commercial and residential functions similar to the C-2-A district (*i.e.* facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core), but with high-density residential and mixed uses. 11 DCMR § 720.2, 720.6.
22. The purposes of the Reed Cooke overlay are (a) to implement the objectives of the Reed-Cooke Special Treatment Area by protecting current housing in the area and providing for the development of new housing, maintaining heights and densities at appropriate levels, and encouraging small-scale business development that will not adversely affect the residential community; (b) to ensure that new nonresidential uses serve the local community by providing retail goods, personal services, and other activities that contribute to the satisfaction of unmet social, service, and employment needs in the Reed-Cooke and Adams-Morgan community; and (c) to protect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts. 11 DCMR § 1400.2.
23. A grocery store, retail or service establishment, and office use are permitted as a matter of right in the C-2-B zone. 11 DCMR §§ 701.4(l), 701.6(c), 721.1. None of the proposed uses are prohibited within the Reed-Cooke overlay district pursuant to § 1401.1.
24. Zoning requirements applicable to the site include a maximum permitted height of 40 feet, maximum lot occupancy of 80 percent, and a minimum rear yard of 15 feet. 11 DCMR §§ 1402.1, 772.1, 774.1. The existing building on the subject property is nonconforming with respect to height, lot occupancy, and rear yard.
25. The Board credits the testimony of the Office of Planning that the Applicant's proposed development is not contrary to the purpose of the Reed-Cooke overlay for nonresidential development. Approval of the requested variances will permit redevelopment of a vacant building into a mixed-use project containing a grocery store, which will be beneficial and will serve an unmet need in the neighborhood.

26. The Generalized Land Use Map categorizes the subject property as moderate-density residential. The Board credits the testimony of the Office of Planning that residential use of the existing building on the subject property is unlikely.
27. The Board also credits OP's testimony that the Applicant's proposal will be consistent with applicable Comprehensive Plan policies because the redevelopment of the building will maintain its existing height and will increase its density to a level appropriate for the area. The proposed uses will complement the neighborhood, as the project will provide commercial uses that will serve the existing neighborhood.

### CONCLUSIONS OF LAW

The Applicant seeks variance relief from the rear yard requirements under § 774, from the nonconforming structure requirements under § 2001.1, from the requirement to provide a loading berth that is 55 feet deep under §§ 2201.1 and 2201.6, to allow the redevelopment and reuse of an existing nonconforming building in the RC/C-2-B zone district. The Board is authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

Based on the above findings of fact, and having given great weight to the Office of Planning and to the issues and concerns of the affected ANC, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted. The Board finds that the Applicant has met the variance test as follows:

#### Uniqueness or Exceptional Conditions

The size and shape of the existing building on the subject property and the configuration of its existing loading area and garage levels are unique and impose numerous exceptional situations in the adaptive reuse of the property. The property is an irregularly shaped lot with an existing building originally designed as an armory. The building has many internal structures that do not readily accommodate modern uses. One of the existing loading berths is smaller than that required under the Zoning Regulations, and the existing nonconforming rear yard restricts additions in that area.

#### Practical Difficulties to the Applicant from the Strict Application of the Zoning Regulations

JUN 23 2008

Strict application of the zoning regulations would require that the stair tower and elevator shafts be located with the building limits, instead of along an outside wall, and would thereby reduce the amount of parking available at the subject property. Enlargement of the loading area would also result in the loss of some parking spaces, and would eliminate space the Applicant plans to use for equipment and goods in short-term holding.

No Substantial Detriment to the Public Good or Impairment of the Zone Plan

Approval of the requested variances will not cause substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan.

The Applicant's planned elevator tower will not diminish the present rear yard, or affect the lot occupancy or height of the existing building. The Applicant's planned loading facilities are sufficient for the grocery store use, and, as conditioned, will not create adverse impacts on the use of neighboring properties. Approval of the variances will avoid the loss of existing parking spaces within the building, thereby avoiding an increase in demand for on-street parking. Finally, approval of the area variances will not impair the intent or integrity of the Zone Plan as it maintains the existing height of the building, and the density is appropriate for the area. Its use as a grocery store is a matter of right and will serve the existing neighborhood.

The Board credited the unique vantage point held by the ANC with respect to the effect of the requested variances on its constituents. However, where the ANC's proposed conditions differed from the Applicant's proposed conditions, the Board was persuaded that the Applicant's parameters were needed for operational purposes for the planned grocery store – a use permitted as a matter of right in the RC/C-2-B zone – and was not persuaded that the more stringent measures recommended by the ANC were necessary to avoid detriment to the public good arising from the requested variances.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for variances from § 774, concerning the rear yard requirement; § 2001.1, concerning requirements for enlargement of a nonconforming structure; and §§ 2201.1 and 2201.6, concerning the requirement to provide a loading berth that is 55 feet deep. Accordingly, it is therefore **ORDERED** that the application is **GRANTED** subject to **CONDITIONS**:

1. Uses receiving goods shall refuse deliveries from trucks exceeding 40 feet in length.<sup>3</sup>
2. Uses receiving goods through the enclosed loading area shall limit the number of deliveries to 40 on weekdays, 40 on Saturdays, and 15 on Sundays. (This condition shall not apply to deliveries of newspapers.)

<sup>3</sup> For purposes of the conditions, the terms "truck" and "vehicle" both mean a motor vehicle as well as a combination of a motor vehicle towing any other vehicle, including a trailer or container.

3. Uses other than office uses shall accept deliveries solely within the 17<sup>th</sup> Street loading dock or its side door, or from the 17<sup>th</sup> Street loading zone, never through the Kalorama Road pedestrian or vehicular entrances. (This condition shall not apply to routine drop-offs and pick-ups by the Postal Service, FedEx, UPS, or similar services.)
4. Hours for the 17<sup>th</sup> Street loading zone shall be limited to 7:00 a.m. to 4:00 p.m., Monday through Friday, and 7:00 a.m. to 4:00 p.m. on Saturdays. After 8:00 a.m. on these days the dock manager shall direct vehicles delivering goods flowing through the enclosed loading area to do so inside that area, rather than from the 17<sup>th</sup> Street loading zone, if this would not disrupt other deliveries underway or scheduled.
5. No certificate of occupancy shall be issued until after the District Department of Transportation has approved a truck management plan.
6. Hours for the overhead door to operate at the loading dock shall be limited to 8:00 a.m. to 4:00 p.m., Monday through Friday, 8:00 a.m. to 4:00 p.m. on Saturdays, and 10:00 a.m. to 2 p.m. on Sundays, along with up to three more openings and closings after those hours but ending prior to 9:00 p.m. each day.
7. The overhead loading dock doors shall be equipped with sound-proofing and sound-dampening technologies that shall be maintained in good and operable condition.
8. Overhead doors shall be closed except when vehicles enter or exit unless the overhead door would otherwise need to operate again within the following 15 minutes; an exterior sign denoting such shall be provided.
9. The loading dock side door shall be accessible for delivery of goods only 7:00 a.m. to 4:00 p.m., Monday through Saturday, and, on Sundays, for newspapers only.
10. There shall be a dock manager on duty whenever exterior unloading is underway for goods flowing through the enclosed loading area, or vehicles are moving in or out of the dock area, as well as from 6:30 a.m. to 9:00 a.m. on school days.
11. Deliveries to the loading dock side door will be limited to hand carts and dollies only, goods not to exceed what can pass through a door that is no more than 48 inches wide.
12. Compacted waste from the grocery store use shall be stored in a container located within the enclosed loading area whose contents shall be collected only weekdays between 9:00 a.m. and 3:00 p.m.; or on Saturdays 10:00 a.m. to 2:00 p.m. if needed, but only during weekends with a Friday or Monday holiday.

JUN 23 2006

13. Plastics and recyclables from the grocery store use shall be stored in the loading area or within emptied trailers prior to transport to a recycling center.
14. An extermination plan shall be put into effect to include full preventative services and aggressive monitoring to ensure no problem areas develop.
15. The area under the dome identified as "unoccupiable" shall not be converted to useable space.

**VOTE:** 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Gregory Jeffries (by absentee vote) to grant the application subject to conditions).

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

Each concurring Board member approved the issuance of this order.

**FINAL DATE OF ORDER:** JUN 12 2006

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

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

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

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

JUN 23 2006

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.

MN

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

**Application No. 17405 of MacArthur Laverock, L.L.C., on behalf of Cathie E. and Philip C. Guzzetta**, pursuant to 11 DCMR § 3104.1, for a special exception to permit an addition to a single-family detached dwelling under § 223, not meeting the rear yard requirements (§ 404) in the R-5-A District at premise 4598 Laverock Place, N.W. (Square 1356, Lot 36).

**HEARING DATE:** December 13, 2005  
**DECISION DATE:** January 10, 2006

**DECISION AND ORDER**

This application was filed on July 29, 2005 by MacArthur Laverock, L.L.C., on behalf of Cathie E. and Philip C. Guzzetta (collectively "Applicant"), respectively the builder and owners of the property that is the subject of this application ("subject property"). The application requests a special exception to retain an already-constructed second-story rear deck, which was apparently constructed encroaching into the Applicant's required rear yard due to a misunderstanding of the Zoning Regulations and the permitting process. In Case No.17193, the Board of Zoning Adjustment ("Board" or "BZA") recently granted the Applicant a variance to reduce its rear yard from the required 20 feet to 12 feet. With the addition of the second-story deck, the rear yard is further reduced to 4 feet, and therefore, the Applicant requests a special exception pursuant to § 223 to retain the deck.

The Board held and completed a hearing on the application on December 13, 2005, but kept the record open for a further submission from the Applicant, setting a decision date for January 10, 2006. On that date, at a public meeting, the Board voted 5-0-0 to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated August 1, 2005, the Office of Zoning ("OZ") gave notice of the application to the District of Columbia Office of Planning ("OP"), the District of Columbia Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3D, the ANC within which the subject property is located, Single Member District 3D08, and the Council Member for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and on September 27, 2005, mailed notice of the hearing to the Applicant, ANC 3D, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 3D, automatically a party in this proceeding, was opposed to the granting of the special exception. There were no other requests for party status.

Applicant's Case. The Applicant addressed the history of the subject property, including the recent granting of the rear yard variance, the special exception tests, and the question of the

planting of an evergreen buffer. Mrs. Guzzetta testified on behalf of the Applicant and stated that, when purchasing the dwelling, she was unaware of any violation of the Zoning Regulations, and that the rear deck on her dwelling does not affect the air, light, or privacy of her neighbors.

Government Reports. The Office of Planning submitted a report to the Board dated December 13, 2005, which, although late, was accepted by the Board. OP recommended approval of the application, opining that it readily met all the special exception criteria.

ANC Report. ANC 3D submitted a report to the Board dated November 29, 2005. The ANC recommended denial of the special exception and removal of the second-story deck for the following reasons: (1) the plans submitted in the variance case (No. 17193) and the plans built are not the same, contrary to 11 DCMR § 3125.8, (2) the encroachment of the deck into the rear yard exceeds the variance approved in Order No. 17193, (3) no additional relief was sought prior to building the deck, (4) the agreed-upon evergreen buffer at the rear lot line was not installed, but was substituted with a wooden fence instead, (5) there is no proven hardship in this case, and (6) "granting a four foot rear yard setback would establish a precedent that would render rear yards meaningless" and would substantially impair the intent and integrity of the Zoning Regulations and Map.

Persons in Support or Opposition. There were several letters in support of the application from the adjacent neighbors, who would presumably be most affected by the deck on the subject property.

## FINDINGS OF FACT

### The subject property and the background of the application.

1. The subject property is located at 4598 Laverock Place, N.W., in Square 1356, Lot 36. The property is split-zoned, with approximately 93% of it, including the dwelling located on it, within an R-5-A zone district, and approximately 7% of it within an R-1-B zone district.
2. The surrounding area is developed with a variety of residential uses, including row dwellings, single-family detached dwellings, semi-detached dwellings, and apartment houses.
3. Immediately behind, and abutting the rear property line of the subject property, are the grounds of Riverside Hospital, a psychiatric facility and residential treatment center, which provides "comprehensive behavioral healthcare" to its patients.
4. The subject property is improved with a recently-constructed single-family detached dwelling, which was constructed pursuant to a rear yard variance granted by Board Order No. 17193 in 2004. The variance permitted a rear yard of 12 feet, as opposed to the required 20 feet. *See*, 11 DCMR § 404.

5. The rear yard variance was requested to allow the dwelling on the subject property to be further set back from the Laverock Place frontage. This was done at the request of the Canal View Homeowners' Association, in order to bring the front of the dwelling in line with other dwellings fronting on Laverock Place, a private street. The further set back was also desirable because the first four feet within the property line along Laverock Place are taken up by the curb and sidewalk.
6. The dwelling was one of 3 new dwellings constructed simultaneously. The other 2 new dwellings included matter-of-right rear decks.
7. Following construction of the dwelling on the subject property in accordance with the variance granted and, apparently, due to a misunderstanding of the Zoning Regulations and the permitting process, an 8 by 16 foot second-story rear deck was added, which is approximately 10 feet above the rear grade of the property.
8. After construction of the dwelling and addition of the rear deck, the Guzzettas purchased the dwelling, unaware that the construction of the rear deck was not in accordance with the Zoning Regulations.
9. The rear deck projects into the 12-foot rear yard permitted by the variance, further reducing it to 4 feet, and necessitating this special exception application. See, 11 DCMR § 199.1, definition of "Yard" and § 2502.1.
10. Plans approved by Order No. 17193 showed "an evergreen buffer" to be planted between the subject rear yard and the grounds of Riverside Hospital. Instead of this buffer, the builder installed a sight-tight wooden fence.<sup>1</sup>
11. The hospital welcomed the buffer, but opposed its planting on any part of its property. Due to the nature of its business, it needs to have clear lines of sight to all of its property at all times.<sup>2</sup>
12. The property line between Riverside Hospital's grounds and the subject rear yard is now demarcated by both the wooden fence at the rear property line of the subject property, and a tall, chain-link fence which surrounds the Hospital's grounds and is set into its property by several feet. In between these two fences is an open, grassy area several feet in width.

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<sup>1</sup>The planting of the evergreen buffer was shown on the plans approved by Order No. 17193, but was not included as a condition in that Order.

<sup>2</sup>The hospital states that the buffer cannot be constructed (*i.e.*, planted) on its property, but the Applicant contends that the hospital's concerns go even further. According to the Applicant, the hospital does not want any of the canopy branches extending onto its property, further inhibiting the Applicant's ability to provide the evergreen buffer.

JUN 23 2006

13. ANC 3D filed a letter of complaint of non-compliance with Order No. 17193 with the Office of Zoning claiming that the rear deck improperly infringed on the already-diminished rear yard and that no evergreen buffer had been planted.
14. The Office of Zoning sent a letter to the Applicant stating that, in order to come into full compliance with Order No. 17193, the evergreen buffer had to be installed, and the rear deck either had to be removed or the Applicant had to apply to the Board for relief to retain it.

The special exception relief.

15. The lot occupancy of the subject dwelling, including the rear deck, is 29%, well below the 70% permitted by 11 DCMR § 223.
16. The deck is a roofless, open air structure with approximately 128 square feet of floor space. It projects from approximately the center of the rear of the subject dwelling.
17. The deck is attached to the rear of the dwelling and supported underneath by two tall and narrow wooden supports. Other than these supports, the area beneath the deck is open.
18. The deck projects to within approximately 4 feet of the fence at the rear line of the subject property, which is itself several feet away from the chain-link fence surrounding the Riverside Hospital grounds.
19. The hospital building itself is approximately 105 feet away from the deck.
20. The deck is located approximately 80 feet from the nearest dwelling to the southeast and approximately 60 feet from the nearest dwelling to the southwest, which is also screened by a row of tall trees and thickly planted vegetation.
21. The Guzzettas sometimes use a detachable bamboo screen on the deck to protect their privacy and that of their neighbors.
22. The deck is not visible from Laverock Place and is only minimally visible from MacArthur Boulevard.
23. The deck is in harmony with the subject dwelling and with other dwellings in the neighborhood, at least some of which have similar decks.
24. The builder installed the wooden fence at the rear property line of the subject property to meet the intent of the original agreement to install an evergreen buffer. This was apparently because of the lack of space on the subject property to plant such a buffer without encroaching on the hospital's property.

25. The fence is attractive and harmonizes with the subject dwelling, as well as with the neighboring dwelling, behind which it continues.

### CONCLUSIONS OF LAW

The Board is authorized by § 8 of the 1938 Zoning Act (52 Stat. 797, 800; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions, as provided in the Zoning Regulations, where, in its judgment, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Regulations and Maps. *See*, 11 DCMR § 3104.1. Certain special exception applications must also meet the conditions enumerated in the particular section pertaining to them. In this case, the application had to meet both the requirements of § 3104.1 and § 223 of the Zoning Regulations.

The Board concludes that this application meets all the requirements of both § 3104.1 and § 223. The rear deck in question is part of the residential use of the dwelling and does not introduce any incompatible use to the area. The deck is small and relatively unobtrusive and is not visible from the street on which the dwelling fronts. It projects over the subject rear yard, but is approximately 60 feet from the nearest building. Therefore, it has little or no effect on the light, air, or privacy of use and enjoyment of neighboring properties. In fact, the owners of these nearby properties are all in support of the application. The deck is an attractive addition to the dwelling and is in harmony with the general purpose and intent of the Zoning Regulations and Maps.

The owner of the land on which Riverside Hospital is situated originally requested a buffer between its property and the subject property. The hospital, however, although it welcomed the installation of an evergreen buffer, did not seek or require it, and, in fact, was concerned that such a buffer might actually impede its ability to properly observe its property at all times. There was nothing in the record of this proceeding from either the hospital or the owner of the underlying property stating concerns with loss of privacy due to the Applicant's home or the rear deck.

The Board concludes that it is unnecessary to install an evergreen buffer. The wooden fence which was installed in its stead is attractive and blends with the rear of the subject property and that of its neighbor. There appears to be insufficient space to allow for the planting of the originally-intended buffer, and the Board concludes that the existing situation – with the wooden fence, the open grassy area, and the chain-link fence – provides a sufficient partition between the subject property and the hospital grounds.

The Board is required to give “great weight” to both the issues and concerns raised by the affected ANC and to the recommendation of the Office of Planning. *See*, D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their

JUN 23 2006

views persuasive. The Office of Planning recommended granting the application, finding that it met all the special exception requirements, and the Board agrees.

The ANC, however, recommended denial of the application for five reasons. The Board disagrees with the ANC's reasoning and recommendation. The ANC's first three reasons were that the dwelling, with its rear deck addition, was not built according to the plans approved by Order No. 17193, that the encroachment of the deck into the rear yard exceeds the distance approved in the variance granted in Order No. 17193, and that no relief was sought to permit this additional encroachment. With respect to these three issues, the Board agrees with the Applicant that the ANC is focusing on "enforcement issues" and not on the special exception criteria that need to be addressed in this case.

These three reasons, however, set forth the very problems that the Applicant is now attempting to remedy by coming before the Board and requesting the appropriate relief. Indeed, the Applicant was told to do so by the Office of Zoning. *See*, Finding of Fact No. 14.

The ANC's fourth reason in support of its recommendation of denial is that the evergreen buffer was not installed. This argument also goes to compliance with the previous order. However, to the extent that it addresses the privacy factor of the special exception test, the Board finds that an attractive wooden fence has been installed that meets any privacy concerns in this case. The record indicates that there may not be enough space to allow the installation of a planted evergreen buffer and that the property most affected by the lack of the evergreen buffer – Riverside Hospital – is not seeking such a buffer or raising any privacy concerns related to this application.

The ANC's fifth reason is that there is no proven hardship in this case. Hardship, however, is not an element of a special exception analysis, therefore none has to be proved. The provisions of § 223 focus on the prevention of adverse impacts on nearby properties and do not require the showing of a practical difficulty or an undue hardship, as would be necessary in a variance analysis.

Finally, the ANC expressed concern that granting this special exception would set precedent and "render rear yard setbacks meaningless." This concern appears to be related to the ANC's view that the builder overbuilt this site in general. The ANC suggests that granting the special exception may lead to a lesser standard for rear yard set backs for other homes and thereby result in future overcrowding. The decision in this case does not set a precedent for rear yard setbacks generally. It simply addresses the criteria of the special exception test as set forth in § 223 and finds that they have been met. Each application before the Board is decided on its own facts pursuant to the standards set forth in the regulations. If the applicant meets the special exception criteria, the Board ordinarily must grant the application. *See, e.g., First Baptist Church of Washington v. D.C. Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981).

JUN 23 2006

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof for a special exception to permit an addition to a single-family detached dwelling under §223. Accordingly, it is therefore **ORDERED** that the application be **GRANTED**.

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

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

Each concurring Board member approved the issuance of this order.

**FINAL DATE OF ORDER:** JUN 14 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. 17475-A of Jemal's Giant LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the residential recreation space requirements under section 773, a variance from the side yard requirement under section 775 and pursuant to 11 DCMR 3104.1, for a special exception from the requirement that rooftop elements be placed in one enclosure under section 411, to allow the construction of a new 297 unit apartment building in the C-2-A District at premises 3460 14<sup>th</sup> Street, N.W. and 1439 Newton Street, N.W. (Square 2678, Lots 706, 832, and part of Lots 705 and 707).

*Note: The Applicant amended the application to include variance relief under section 775 and special exception relief under section 411 as indicated in the revised heading above.*

**HEARING DATE:** May 23, 2006  
**DECISION DATE:** May 23, 2006 (Bench Decision)

**CORRECTED SUMMARY ORDER\***

\* This order corrects BZA Order No. 17475, by changing the approved number of apartment units from 220 to 297, in the caption of the application shown above.

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. ANC 1A submitted a report in support of the application, however the report did not meet the requirements of §3115, entitling it to great weight. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under section 411. 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.

JUN 23 2006

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board and having given great weight to the Office of Planning report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, (772, 773 and 775) that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

**VOTE:** 5-0-0 (Geoffrey H. Griffis, 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.

**FINAL DATE OF ORDER:** June 14, 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

JUN 23 2006

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.

TWR

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

**Application No. 17480 of MissionFirst Development**, as amended, pursuant to 11 DCMR -§ 3104.1, for a special exception under the minimum lot area and minimum lot width requirements under section 401.3, to allow the construction of eight (8) semi-detached dwellings in the R-5-A District at premises 4675 H Street, S.E., 5001 and 5007 Benning Road, S.E. (Square 5362, Lots 193, 194 and 195).

*NOTE: At the hearing, the Board determined that because the property is located in the R-5-A District, the proper relief for the application is a special exception under 401.3, rather than area variance relief. Therefore, the Applicant amended the application at the public hearing as indicated in the heading above.*

**HEARING DATE:** May 23, 2006

**DECISION DATE:** June 6, 2006

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under section 401. 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 401, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and



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. 17489 of Phillip H. Bishop**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of an eight (8) unit apartment building under section 353, in the R-5-A District at premises 320 61<sup>st</sup> Street, N.E. (Square 5266, Lot 51).

**HEARING DATE:** May 2, 2006  
**DECISION DATE:** May 16, 2006

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR'S OFFICE**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. ANC 7C submitted a report in opposition to the application. After participating in the hearing proceedings, the ANC spokesperson stated at the hearing that 90% of the ANC concerns had been addressed. The Office of Planning (OP) submitted a report in support of the application. The Department of Consumer and Regulatory Affairs 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 353.

Based upon the record before the Board and having given great weight to the OP and ANC positions the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concluded at the decision meeting that the landscape and lighting plan (Exhibit 38) submitted by the Applicant addressed most, if not all of the concerns raised by the ANC at the hearing. These concerns included issues related to grading, retaining wall placement, trash enclosure, lighting, parking and landscaping. Accordingly a decision by the Board to grant this application would not be adverse to any party. The Board further concludes

JUN 23 2006

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

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

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

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** June 15, 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,

JUN 23 2006

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

**ZONING COMMISSION ORDER NO. 06-03**  
**Z.C. Case No. 06-03**  
**(100 M Street, S.E., LLC – 100 M Street, S.E.)**  
**May 25, 2006**

**CASE NO. 06-03 (Capitol Gateway Overlay District Review within Square 743-N, Lots 58-61, 63-66, 801-805, 813, part of lot 822, and a portion of a public alley to be closed – 100 M Street, S.E.)** arising from the application from 100 M St. SE, LLC (the “Applicant”), on behalf of Square 743, Inc., et al, owners of the property.

The Applicant sought review and approval of new development along M Street, S.E., pursuant to the Capitol Gateway Overlay District provisions set forth in § 1604. In addition, the Applicant sought special exception approval, pursuant to 11 DCMR § 1604.9 for (a) special exception relief from the rear yard requirements set forth in § 774 and (b) variance relief from certain court requirements of § 776.

**Note:** The application was initially filed February 1, 2006, and a hearing was scheduled to take place April 6, 2006, seeking approval for overall design and relief from rear yard requirements. Subsequently, the Applicant determined relief would also be needed from the court requirements and amended the application to include this issue. The initial hearing was rescheduled to May 25, 2006, covering the entire scope of the issues noted above.

**HEARING DATE:** May 25, 2006

**DECISION DATE:** May 25, 2006 (Bench Decision)

**SUMMARY ORDER**

**Self-Certified:**

The zoning review requested in this case was self-certified as were the elements of zoning relief requested, the latter pursuant to 11 DCMR §§ 1604.9 and 3113.2.

The property that is the subject of this application consists of approximately 26,400 square feet of land area and is located at 100 M Street, S.E. The property is bounded to the east by a public alley, to the south by M Street, S.E., to the west by 1<sup>st</sup> Street, S.E., and to the north by adjacent

property. The property is currently vacant and is zoned CG/C-3-C, a district in which office uses are permitted as a matter-of-right within the Capitol Gateway Overlay.

The Applicant proposes to redevelop the property with a new twelve-story office building with ground floor retail. Four levels of below-grade parking will be provided. The floor area ratio ("FAR") of the property will be 10.0 FAR. The building height will measure no more than 130 feet. Vehicular access to required parking will be provided from 1<sup>st</sup> Street, S.E.

The Commission 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") 6D, the Office of Planning ("OP"), and to owners of property within 200 feet of the site. The site that is the subject of the application is located within the jurisdiction of ANC 6D. ANC 6D provided a letter of support for the project to the Commission. OP submitted a report and testified at the hearing in support of the application.

As required by 11 DCMR § 1604, the Commission required the Applicant to satisfy the burden of proving the elements that are necessary to approve the overall project under § 1604; establish the case for relief from rear yard requirements under §§ 774, 1604.9, and 3104; and satisfy the requirements for variance relief from court requirements pursuant to §§ 776, 1604.9, and 3103.

A representative of the Anacostia Waterfront Corporation ("AWC"), whose jurisdiction includes the land in this case, offered testimony on the Applicant's consultation with it during the time leading up to the hearing, noting the improvements made as the design was refined and the Applicant's commitment to dedicate substantial ground floor area to "preferred" retail uses.

No persons or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party. Based upon the record before the Commission, having given great weight to the views of the ANC, having considered the testimony of AWC, and having considered the report and testimony OP provided in this case, the Commission concludes that the applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1604, 774, 776, 3103, and 3104, including the specific standards relating to exceptional or extraordinary situation related to the property that creates a practical difficulty for the owner to comply with the court requirements of the Zoning Regulations when the relief sought for that can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3000.8, the Commission has determined to waive the requirement of 11 DCMR § 3028.8, that the Order be accompanied by findings of fact and conclusions of law. The waiver will not affect the rights of any party and is not prohibited by law.

JUN 23 2006

It is, therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-1-0 (Gregory N. Jeffries, Anthony J. Hood, Carol J. Mitten, and Michael G. Turnbull to approve; John Parsons, opposed)

**BY ORDER OF THE D.C. ZONING COMMISSION**

**Each concurring member approved the issuance of this Order.**

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

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE 10 DAYS AFTER IT BECOMES FINAL.

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

**DISTRICT OF COLUMBIA REGISTER**

**Z.C. ORDER NO. 06-03**

**Z.C. CASE NO. 06-03**

**PAGE 4**

**JUN 23 2006**

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 THAT 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.

**ZONING COMMISSION ORDER NO. 06-16**  
**Z.C. Case No. 06-16**  
**(Gallaudet University-Sorenson Language and Communication Center)**  
**May 22, 2006**

Application No. 06-16 of Gallaudet University (the "Applicant"), pursuant to 11 DCMR §§ 210 and 3035, for special exception review and approval of further processing in accordance with its approved Facilities Master Plan, 2002-2012, (Z.C. Order No. 03-02) for construction of the Sorenson Language and Communication Center within the Gallaudet University Campus, which is bounded generally by Florida Avenue, NE to the south; West Virginia Avenue, NE to the east; Mount Olivet Road, NE and Corcoran Street, NE to the north; and Brentwood Parkway and 5<sup>th</sup> and 6<sup>th</sup> Streets, NE to the west, at premises 800 Florida Avenue, NE (Parcel 141, Lot 69; Parcel 129, Lots 103 and 112; and Square 3591, Lot 4). In accordance with 11 DCMR §§ 210 and 3035, this case has been heard by the District of Columbia Zoning Commission (the "Commission") under the rules of the Board of Zoning Adjustment, at Chapter 31 of 11 DCMR.

**HEARING DATE:** May 22, 2006  
**DECISION DATE:** May 22, 2006 (Bench Decision)

**SUMMARY ORDER**

The Commission provided proper and timely notice of public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 5B, and to owners of property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning for review and report.

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

The subject property is located within the jurisdiction of ANC 5B. ANC 5B, which is automatically a party to the application, submitted a written statement in support of the application.

The D.C. Office of Planning submitted a written report and testified in support of the application. The District Department of Transportation submitted a written memorandum indicating no objection to the application.

**JUN 23 2006**

As directed by 11 DCMR § 3119.2, the Commission required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under 11 DCMR § 210. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.

Based upon the record before the Commission, the Commission concludes that the Applicant has met the burden of proof, under 11 DCMR §§ 3104.1 and 210, and that the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map, and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application be GRANTED.

Pursuant to 11 DCMR § 3100.5, the Commission has determined to waive the requirement of 11 DCMR § 3125.3 that the Order of the Commission be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

**VOTE: 5-0-0** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Gregory N. Jeffries, and Michael G. Turnbull to approve.)

**BY ORDER OF THE D.C. ZONING COMMISSION**

**Each concurring member approved the issuance of this Order.**

**FINAL DATE OF ORDER:**           JUN 15 2006          

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

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.

**DISTRICT OF COLUMBIA REGISTER**

Z.C. ORDER NO. 06-16

Z.C. CASE NO. 06-16

PAGE 3

JUN 23 2006

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE "ACT") THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, 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 THAT 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.

JUN 23 2006

**ZONING COMMISSION NOTICE OF FILING**  
**Case No. 06-28**  
**(Consolidated PUD & Related Map Amendment –**  
**Square 3846, Lots 74, 854, 855, 857 and 858)**  
**June 15, 2006**

**THIS CASE IS OF INTEREST TO ANC 5B**

On June 9, 2006, the Office of Zoning received an application from Douglas Development Corporation (the “applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 3846, Lots 74, 854, 855, 857 and 858 in Northeast Washington, D.C. (Ward 5) and is located on the north, south, and west sides of Channing Place, N.E. The property is currently zoned C-M-2.

The applicant proposes a mixed-use development consisting of approximately 461,049 square feet of gross floor area for residential, retail and office uses, and parking. The buildings on the south side of Channing Place will be retained, and an addition of approximately 99,688 square feet will be added. The existing building with the addition will contain approximately 70-90 dwelling units and approximately 56,219 square feet of office space. The building on the north side of Channing Place will be razed, and a new building of approximately 225,203 square feet is proposed which could contain approximately 170-190 dwelling units, approximately 6,827 square feet of retail, and approximately 87 parking spaces. A parking garage is proposed for the vacant parcel on the west side of Channing Place, which will provide approximately 194 parking spaces. The project would have an aggregate floor area of approximately 461,049 and an FAR of 4.56 with a maximum height of 80 feet. In addition, the applicant seeks a related map amendment to the C-2-C District. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

JUN 23 2006

**ZONING COMMISSION NOTICE OF FILING**  
**Case No. 06-29**  
**(Consolidated PUD & Related Map Amendment – Square 72, Lot 74)**  
**June 15, 2006**

**THIS CASE IS OF INTEREST TO ANC 2A**

On June 9, 2006, the Office of Zoning received an application from WB/NV Center City Hotel Holdings, LLC (the “applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 72, Lot 74 in Northwest Washington, D.C. (Ward 2) and is located at 1143 New Hampshire Avenue, N.W. The property is currently zoned R-5-E.

The applicant proposes a major upgrade, renovation and reconfiguration of an existing hotel and the construction of an additional two levels above the existing footprint of the hotel. The resulting structure will contain approximately 217,684 square feet of gross floor area. The total density with the proposed addition is 6.97 FAR. The building height will be 110 feet and the application will provide a total of 142 parking spaces. In addition, the applicant seeks a related map amendment to the C-3-C District. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

**OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES  
PUBLICATIONS PRICE LIST**

**DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)**

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001).....	\$16.00
3	DCMR ELECTIONS & ETHICS (JUNE 1998) .....	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995).....	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002).....	\$26.00
6A	DCMR POLICE PERSONNEL (MAY 1988).....	\$8.00
7	DCMR EMPLOYMENT BENEFITS (JANUARY 1986).....	\$8.00
8	DCMR UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988).....	\$8.00
9	DCMR TAXATION & ASSESSMENTS (APRIL 1998).....	\$20.00
10	DCMR DISTRICT'S COMPREHENSIVE PLAN (PART 1, FEBRUARY 1999).....	\$33.00
10	DCMR PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*.....	\$26.00
11	DCMR ZONING (FEBRUARY 2003) .....	\$35.00
12	DCMR CONSTRUCTION CODES SUPPLEMENT (2003) .....	\$25.00
13B	DCMR BOILER & PRESSURE VESSEL CODE (MAY 1984).....	\$7.00
14	DCMR HOUSING (DECEMBER 2004) .....	\$25.00
15	DCMR PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998).....	\$20.00
16	DCMR CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRACTIONS (JULY 1998) W/DECEMBER 1998 SUPPLEMENT .....	\$20.00
17	DCMR BUSINESS, OCCUPATIONS & PROFESSIONS (MAY 1990).....	\$26.00
18	DCMR VEHICLES & TRAFFIC (APRIL 1995) w/1997 SUPPLEMENT*.....	\$26.00
19	DCMR AMUSEMENTS, PARKS & RECREATION (JUNE 2001) .....	\$26.00
20	DCMR ENVIRONMENT - CHAPTERS 1-39 (FEBRUARY 1997) .....	\$20.00
20	DCMR ENVIRONMENT - CHAPTERS 40-70 (FEBRUARY 1997) .....	\$26.00
21	DCMR WATER & SANITATION (FEBRUARY 1998).....	\$20.00
22	DCMR PUBLIC HEALTH & MEDICINE (AUGUST 1986).....	\$26.00
22	DCMR HEALTH CARE & COMMUNITY RESIDENCE FACILITIES SUPPLEMENT (AUGUST 1986 - FEBRUARY 1995) .....	\$13.00
23	DCMR ALCOHOLIC BEVERAGES (AUGUST 2004).....	\$10.00
24	DCMR PUBLIC SPACE & SAFETY (DECEMBER 1996) .....	\$20.00
25	DCMR FOOD AND FOOD OPERATIONS (AUGUST 2003).....	\$20.00
26	DCMR INSURANCE (FEBRUARY 1985).....	\$9.00
27	DCMR CONTRACTS AND PROCUREMENT (JULY 1988).....	\$22.00
28	DCMR CORRECTIONS, COURTS & CRIMINAL JUSTICE (AUGUST 2004).....	\$10.00
29	DCMR PUBLIC WELFARE (MAY 1987).....	\$8.00
30	DCMR LOTTERY AND CHARITABLE GAMES (MARCH 1997) .....	\$20.00
31	DCMR TAXICABS & PUBLIC VEHICLES FOR HIRE (JULY 2004) .....	\$16.00

**Publications Price List (Continued)**

**OTHER PUBLICATIONS**

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