

JUL 21 2006

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

**NOTICE FOR SOLICITATION OF PROPOSALS TO
PROVIDE LITERACY AND EDUCATIONAL
CONSULTING 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 experts to provide literacy and school consulting services for its two schools. The projects we are seeking consulting expertise on include the training of teachers to serve as student literacy skill coaches, summer school curriculum development and training (with a literacy focus), curriculum alignment with DCPS standards, and the development of professional learning communities for teachers.

The Cesar Chavez Public Charter Schools will receive bids from July 21, 2006 to COB June 28, 2006 Attn: Christy Gill, 709 12th Street, SE, Washington, D.C. 20003. A full RFP may be obtained by calling 202-547-3975 ext. 10.

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

**NOTICE FOR SOLICITATION OF PROPOSALS TO
PROVIDE CONSULTING REGARDING STUDENT
SUPPORT SERVICES**

The Cesar Chavez Public Charter Schools for Public Policy, in accordance with section 2204 (c) (1) (A) of the DC School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals for a consultant to serve as director of student support services for our two campuses.

The Cesar Chavez Public Charter Schools will receive bids from July 21, 2006 to COB July 28, 2006 Attn: Christy Gill, 709 12th Street, SE, Washington, D.C. 20003. A full RFP may be obtained by calling 202-547-3975 ext. 10.

City Collegiate Public Charter School

Request for Proposal

City Collegiate Public Charter School will receive bids until July 21, 2006 at 5:00 p.m. for the delivery of one Apple Mobile Learning Lab with (25) Macbooks, a mobile cart and (3) iMacs. Configuration information and software requirements may be obtained from: Julia Westfall, Director of Financial Services, 3265 S Street, NW, Washington, DC 20015, 202-487-7998 or westfalljf@aol.com.

City Collegiate Public Charter School

Request for Proposal

City Collegiate Public Charter School will receive bids until July 21, 2006 at 5:00 p.m. for the delivery of meals to children enrolled at the school for the 2006-2007 school year with a possible extension of (4) one year renewals. All meals must meet, but are not restricted to, minimum National School Breakfast, Lunch, and Snack meal pattern requirements. Meal pattern requirements and all necessary forms may be obtained from: Julia Westfall, Director of Financial Services, 3265 S Street, NW, Washington, DC 20015, 202-487-7998 or westfalljf@aol.com.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

BOARD FOR

THE CONDEMNATION OF INSANITARY BUILDINGS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs, in accordance with section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, as amended, D.C. Code section 1-1504 (1999 Repl.), hereby gives notice that the Board for the Condemnation of Insanitary Buildings' (BCIB) regular meetings will be held on the dates listed below for calendar year 2006, (the second and fourth Wednesday of each month). The meetings will begin at 10:00 a.m. in Room 7100 of 941 North Capitol Street, NW, Washington, D.C. 20002. These regularly scheduled meetings of the BCIB are open to the public. Please call the Building Condemnation Division on (202) 442-4322 or 442-4486 for further information or for changes in this schedule.

The BCIB is charged with examining the sanitary condition of all buildings in the District of Columbia, determining which buildings are in such insanitary condition as to endanger the health or lives of its occupants or persons living in the vicinity, and issuing orders of condemnation requiring the owners to remedy the insanitary condition. Should the owner fail to remedy the cited conditions, the BCIB shall cause the building to be made habitable, safe and sanitary or razed and removed. The cost of work performed by the District of Columbia Government shall be assessed to the property.

2006

January 11th
January 25th

July 12th
July 26th

February 8th
February 22nd

August 9th
August 23rd

March 8th
March 22nd

September 13th
September 27th

April 12th
April 26th

October 11th
October 25th

May 10th
May 24th

November 8th
November 22nd

June 14th
June 28th

December 13th
December 27th

* * * * *

Education Strengthens Families Public Charter School, Inc.
2333 Ontario Road NW 20009
July 12, 2006

Notice of Request for Proposal

The proposed Education Strengthens Families (ESF) Public Charter School, in compliance with Section 22404 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits proposals for the following services for the school:

Summary scope of services

Business services including budgeting, accounting, financial reporting, audit interface, and general business consulting.

Detailed scope of services

- Operate a financial accounting system capable of tracking departmental and fund accounting dimensions in addition to functional attributes
- Each week, provide accounting and bookkeeping services including:
 - Full-cycle A/P
 - A/R
 - Deposits and cash reconciliation
 - Grant expense coding
 - G/L entries as required
 - Filing
- Semimonthly, process payroll through payroll vendor and record journal entries, as well as manage retirement plan contributions
- Monthly, provide accounting and reporting services including:
 - Bank reconciliations
 - Asset and depreciation schedule updates and accounting system reconciliation
 - Deferred revenue and prepaid expense recognition
 - Internal audit by firm partner
 - Financial statement preparation (budget vs. actuals for month and year-to-date; balance sheet; cash flow statement) with performance summary, notes on variances, concerns, and the like
- Quarterly, provide accounting and reporting services including:
 - Financial reports to supplement the school's narrative for federal grant reports
 - Revenue recognition per quarterly federal competitive grant reports (for grants other than NCLB), if any
 - Federal spending schedule update

- Balance sheet accounts reconciliation such as receivables, accrued expenses, and unearned revenue
- Financial statements in DC PCSB-required format—map and submit quarterly budget vs. actuals and balance sheet to the PCSB
- Work with school's leadership to create detailed 5-year budget for SY07/08
- Act as audit interface for School's annual audit for SY06/07
 - Work with School to provide all items requested on the "prepared by client" list
 - Ensure firm representative is on-site concurrent to auditors to fulfill ad hoc information requests as required

Qualifications of offeror

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

Additional information can be obtained by calling 202-797-7337. Deadline for submissions is July 28, 2005 at 5PM.

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:

Moora Aarons
Single Member District 2B01

**DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
ADMINISTRATION FOR HIV POLICY AND PROGRAMS**

NOTICE OF FUNDING AVAILABILITY #0721-06

**2006 Ryan White Title I
Resistance Testing and Home Health RFA**

The Government of the District of Columbia, Department of Health, Administration for HIV Policy and Programs (AHPP) is soliciting applications from qualified organizations to provide HIV-1 resistance testing, specifically genotypic and phenotypic characterization on specimens collected from specified Ryan White vendors in the Washington DC Eligible Metropolitan Area (EMA). Approximately \$800,000 will be available to fund one provider for resistance testing.

Applicants applying for this service must be located within the Washington DC EMA, which includes Washington, DC, Suburban Maryland, Northern Virginia, and the counties of Berkeley and Jefferson in West Virginia. This organization must be licensed to conduct business within the District of Columbia and be able to provide resistance testing throughout the Washington DC EMA.

AHPP is also soliciting applications from qualified applicants to provide both professional nursing and personal care aide/home health aide services to individuals living with HIV in the District of Columbia. Approximately \$40,000 will be available to fund one provider in this service area.

All awards are based on the availability of funds awarded to the District of Columbia from the Health Resources Services Administration (HRSA).

The Request for Applications (RFA) will be available for pick-up at 64 New York Avenue, NE – Suite 5001 on July 21, 2006 and on the following website www.opgd.dc.gov under District Grants Clearinghouse.

The Request for Application (RFA) submission deadline is no later than 5:00 p.m. on August 21, 2006. All applications will be recorded upon receipt. Applications submitted at or after 5:01 p.m., August 21, 2006, will not be forwarded to the review panel for funding consideration. Any additions or deletions to an application will not be accepted after the deadline of 5:00 p.m. August 21, 2006. A Pre-Application Conference will be held August 3, 2006 from 10:30 a.m. to 12:30 p.m., at the location below.

*64 New York Avenue, NE
Washington, DC 20002
5th Floor Conference Room
Phone: (202) 671-4900
E-mail: Trammell.Walters@dc.gov*

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

**NOTICE OF PROPOSED
REIMBURSEMENT FOR PUBLIC UTILITIES**

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO THE
PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code § 34-912(b)(3) and Chapter 13, Title 15 of the District of Columbia Municipal Regulations ("15 DCMR"), Rules Implementing the Public Utilities Reimbursement Fee Act of 1980, of its intent to assess the Potomac Electric Power Company ("PEPCO") for the Fiscal Year 2006 appropriated budget of the Office of the People's Counsel ("OPC") in not less than thirty (30) days from the date of publication of this Notice of Proposed Reimbursement ("NOPR" or "Notice") in the *D.C. Register*.¹

2. Specifically, D.C. Code § 34-912(b)(3) states, in pertinent part:

[t]he amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the [alternative electric, gas, and telecommunications] providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during such period.

In addition, § 1301.1 of 15 DCMR states:

[e]ach public utility shall be assessed a fraction of the reimbursable budgets of the Commission and of [the] People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.²

3. The Commission determines that \$1,146,954,245.00 were the total 2005 calendar year revenues of all public utilities from utility operations in the District of Columbia that are regulated by the Commission. The Commission further determines that PEPCO's total calendar

¹ D.C. Code § 34-912 (b) (2005 Supp.); *See also*, 15 DCMR § 1300 *et. seq.* (1998).

² 15 DCMR § 1301.1 (1998).

year revenues for calendar year 2005 were \$[PROPRIETARY]. For Fiscal Year 2006, the Mayor proposed and the Council of the District of Columbia approved an appropriated budget of \$4,306,460.00 for OPC.³ Accordingly, based on the formulas in D.C. Code § 34-912(b)(3) and 15 DCMR § 1301.1, the Commission determines that PEPCO's portion of OPC's appropriated budget for FY 2006 is [PROPRIETARY] percent, for a total assessment of \$[PROPRIETARY].

4. The Commission's normal practice has been to include the revenues of alternative providers in our total calendar year revenue calculations and to use these numbers as a basis for assessing alternative providers in accordance with D.C. Code § 34-912(b)(1) and (b)(2). However, on March 9, 2006, the Court of Appeals of the District of Columbia ruled in *Washington Gas Energy Services, Inc v. District of Columbia Public Service Commission* that the Commission had "committed fatal procedural errors in promulgating the formula through which the assessments for alternative providers were made," that violated the prohibition against engaging in retroactive rulemaking without express legislative authority.⁴ Thus, the Court concluded that the Commission could not assess alternative providers for the operating budget of the Commission and OPC without having valid rules in place to do so. The Court also left open the question of whether the Commission could establish rules in a fiscal year and assess companies that same fiscal year without violating the prohibition against retroactive rulemaking.⁵

5. The Commission published a Notice of Emergency and Proposed Rulemaking on January 21, 2005, soliciting comments on a proposed assessment formula for alternative providers.⁶ Numerous comments and replies were received from interested persons suggesting alternative methods for assessments. The Commission considered the feasibility of these methods in light of our statutory and regulatory functions and the ability of our agency to administer the assessment methods. Subsequently, the Commission issued a Notice of Final Rulemaking ("NOFR") on May 9, 2006, taking final action that became effective upon the date of publication in the *D.C. Register*.⁷ In light of the Court's ruling and comments on retroactive rulemaking, the Commission has decided to give notice of our intent to assess only the three public utilities for OPC's operating budget for FY 2006 to ensure that a budget shortfall does not prevent OPC from serving the District's ratepayers, businesses, and citizens.

³ See the "Fiscal Year 2006 Budget Request Act of 2005," P.L. 109-115, approved June 2, 2005.

⁴ *Washington Gas Energy Services, Inc., v. District of Columbia Public Service Commission*, Nos. 05-AA-155 and 05-AA-315, March 6, 2006.

⁵ Due to the slippage of some of the dates in the rules, the Commission's assessment rules for competitive suppliers are forward-looking and will become effective in FY 2007.

⁶ See Rulemaking at 52 *D.C. Register* 584, rel. January 21, 2005. By Order No. 12505, dated February 10, 2005, the Commission extended the comment period on the NOEPR. On February 18, 2005, the Commission issued a Notice of Extension of Comment Period on the NOPR, which reflected the extension previously granted in Order No. 12505. 52 *D.C. Register* 1674, rel. February 18, 2005. In addition, the Commission amended the NOPR on May 13, 2005, to reflect the changes in the law which requires us to assess alternative gas suppliers for our operating budget. 52 *D.C. Register* 4618, rel May 13, 2005.

⁷ 53 *D.C. Register* 4141-4144 (May 19, 2006). On June 9, 2006 and June 12, 2006 respectively, PEPCO Energy Services and Washington Gas Energy Services filed requests for reconsideration of the Commission's rulemaking and Order. On July 10, 2006, the Commission tolled the time for issuing a decision an additional 30 days.

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6. This NOPR is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Seventh Floor, East Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the NOPR are available upon request, at a per-page reproduction cost. Comments on the NOPR must be made in writing to Ms. Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Once the comment period expires, the Commission will take final action.⁸

⁸ Once the comment period expires, the Commission intends to assess the three public utilities on before the end of Fiscal Year 2006.

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

**NOTICE OF PROPOSED
REIMBURSEMENT FOR PUBLIC UTILITIES**

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO THE
PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code § 34-912(b)(3) and Chapter 13, Title 15 of the District of Columbia Municipal Regulations ("15 DCMR"), Rules Implementing the Public Utilities Reimbursement Fee Act of 1980, of its intent to assess Verizon Washington, DC, Inc. ("Verizon") for the Fiscal Year 2006 appropriated budget of the Office of the People's Counsel ("OPC") in not less than thirty (30) days from the date of publication of this Notice of Proposed Reimbursement ("NOPR" or "Notice") in the *D.C. Register*.¹

2. Specifically, D.C. Code § 34-912(b)(3) states, in pertinent part:

[t]he amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the [alternative electric, gas, and telecommunications] providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during such period.

In addition, § 1301.1 of 15 DCMR states:

[e]ach public utility shall be assessed a fraction of the reimbursable budgets of the Commission and of [the] People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.²

3. The Commission determines that \$1,146,954,245.00 were the total 2005 calendar year revenues of all public utilities from utility operations in the District of Columbia that are regulated by the Commission. The Commission further determines that Verizon's total calendar

¹ D.C. Code § 34-912 (b) (2005 Supp.); *See also*, 15 DCMR § 1300 *et. seq.* (1998).

² 15 DCMR § 1301.1 (1998).

year revenues for calendar year 2005 were \$[PROPRIETARY]. For Fiscal Year 2006, the Mayor proposed and the Council of the District of Columbia approved an appropriated budget of \$4,306,460.00 for OPC.³ Accordingly, based on the formulas in D.C. Code § 34-912(b)(3) and 15 DCMR § 1301.1, the Commission determines that Verizon's portion of OPC's appropriated budget for FY 2006 is [PROPRIETARY] percent, for a total assessment of \$[PROPRIETARY].

4. The Commission's normal practice has been to include the revenues of alternative providers in our total calendar year revenue calculations and to use these numbers as a basis for assessing alternative providers in accordance with D.C. Code § 34-912(b)(1) and (b)(2). However, on March 9, 2006, the Court of Appeals of the District of Columbia ruled in *Washington Gas Energy Services, Inc v. District of Columbia Public Service Commission* that the Commission had "committed fatal procedural errors in promulgating the formula through which the assessments for alternative providers were made," that violated the prohibition against engaging in retroactive rulemaking without express legislative authority.⁴ Thus, the Court concluded that the Commission could not assess alternative providers for the operating budget of the Commission and OPC without having valid rules in place to do so. The Court also left open the question of whether the Commission could establish rules in a fiscal year and assess companies that same fiscal year without violating the prohibition against retroactive rulemaking.⁵

5. The Commission published a Notice of Emergency and Proposed Rulemaking on January 21, 2005, soliciting comments on a proposed assessment formula for alternative providers.⁶ Numerous comments and replies were received from interested persons suggesting alternative methods for assessments. The Commission considered the feasibility of these methods in light of our statutory and regulatory functions and the ability of our agency to administer the assessment methods. Subsequently, the Commission issued a Notice of Final Rulemaking ("NOFR") on May 9, 2006, taking final action that became effective upon the date of publication in the *D.C. Register*.⁷ In light of the Court's ruling and comments on retroactive rulemaking, the Commission has decided to give notice of our intent to assess only the three public utilities for OPC's operating budget for FY 2006 to ensure that a budget shortfall does not prevent OPC from serving the District's ratepayers, businesses, and citizens.

³ See the "Fiscal Year 2006 Budget Request Act of 2005," P.L. 109-115, approved June 2, 2005.

⁴ *Washington Gas Energy Services, Inc., v. District of Columbia Public Service Commission*, Nos. 05-AA-155 and 05-AA-315, March 6, 2006.

⁵ Due to the slippage of some of the dates in the rules, the Commission's assessment rules for competitive suppliers are forward-looking and will become effective in FY 2007.

⁶ See Rulemaking at 52 *D.C. Register* 584, rel. January 21, 2005. By Order No. 12505, dated February 10, 2005, the Commission extended the comment period on the NOEPR. On February 18, 2005, the Commission issued a Notice of Extension of Comment Period on the NOPR, which reflected the extension previously granted in Order No. 12505. 52 *D.C. Register* 1674, rel. February 18, 2005. In addition, the Commission amended the NOPR on May 13, 2005, to reflect the changes in the law which requires us to assess alternative gas suppliers for our operating budget. 52 *D.C. Register* 4618, rel. May 13, 2005.

⁷ 53 *D.C. Register* 4141-4144 (May 19, 2006). On June 9, 2006 and June 12, 2006 respectively, PEPSCO Energy Services and Washington Gas Energy Services filed requests for reconsideration of the Commission's rulemaking and Order. On July 10, 2006, the Commission tolled the time for issuing a decision an additional 30 days.

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6. This NOPR is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Seventh Floor, East Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the NOPR are available upon request, at a per-page reproduction cost. Comments on the NOPR must be made in writing to Ms. Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Once the comment period expires, the Commission will take final action.⁸

⁸ Once the comment period expires, the Commission intends to assess the three public utilities on before the end of Fiscal Year 2006.

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

**NOTICE OF PROPOSED
REIMBURSEMENT FOR PUBLIC UTILITIES**

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO THE
PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code § 34-912(b)(3) and Chapter 13, Title 15 of the District of Columbia Municipal Regulations ("15 DCMR"), Rules Implementing the Public Utilities Reimbursement Fee Act of 1980, of its intent to assess the Washington Gas Light Company ("WGL") for the Fiscal Year 2006 appropriated budget of the Commission in not less than thirty (30) days from the date of publication of this Notice of Proposed Reimbursement ("NOPR" or "Notice") in the *D.C. Register*.¹

2. Specifically, D.C. Code § 34-912(b)(3) states, in pertinent part:

[t]he amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the [alternative electric, gas, and telecommunications] providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during such period.

In addition, § 1301.1 of 15 DCMR states:

[e]ach public utility shall be assessed a fraction of the reimbursable budgets of the Commission and of [the] People's Counsel equal to the ratio of that utility's calendar year gross revenues to the sum of the calendar year gross revenues of all public utilities. Calendar year gross revenues are those revenues earned during the preceding calendar year by each public utility from utility operations in the District that are regulated by the Commission.²

3. The Commission determines that \$1,146,954,245.00 were the total 2005 calendar year revenues of all public utilities from utility operations in the District of Columbia that are regulated by the Commission. The Commission further determines that WGL's total calendar

¹ D.C. Code § 34-912 (b) (2005 Supp.); *See also*, 15 DCMR § 1300 *et. seq.* (1998).

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year revenues for calendar year 2005 were \$[PROPRIETARY]. For Fiscal Year 2006, the Mayor proposed and the Council of the District of Columbia approved an appropriated budget of \$4,306,460.00 for OPC.³ Accordingly, based on the formulas in D.C. Code § 34-912(b)(3) and 15 DCMR § 1301.1, the Commission determines that WGL's portion of OPC's appropriated budget for FY 2006 is [PROPRIETARY] percent, for a total assessment of \$[PROPRIETARY].

4. The Commission's normal practice has been to include the revenues of alternative providers in our total calendar year revenue calculations and to use these numbers as a basis for assessing alternative providers in accordance with D.C. Code § 34-912(b)(1) and (b)(2). However, on March 9, 2006, the Court of Appeals of the District of Columbia ruled in *Washington Gas Energy Services, Inc v. District of Columbia Public Service Commission* that the Commission had "committed fatal procedural errors in promulgating the formula through which the assessments for alternative providers were made," that violated the prohibition against engaging in retroactive rulemaking without express legislative authority.⁴ Thus, the Court concluded that the Commission could not assess alternative providers for the operating budget of the Commission and OPC without having valid rules in place to do so. The Court also left open the question of whether the Commission could establish rules in a fiscal year and assess companies that same fiscal year without violating the prohibition against retroactive rulemaking.⁵

5. The Commission published a Notice of Emergency and Proposed Rulemaking on January 21, 2005, soliciting comments on a proposed assessment formula for alternative providers.⁶ Numerous comments and replies were received from interested persons suggesting alternative methods for assessments. The Commission considered the feasibility of these methods in light of our statutory and regulatory functions and the ability of our agency to administer the assessment methods. Subsequently, the Commission issued a Notice of Final Rulemaking ("NOFR") on May 9, 2006, taking final action that became effective upon the date of publication in the *D.C. Register*.⁷ In light of the Court's ruling and comments on retroactive rulemaking, the Commission has decided to give notice of our intent to assess only the three

³ See the "Fiscal Year 2006 Budget Request Act of 2005," P.L. 109-115, approved June 2, 2005.

⁴ *Washington Gas Energy Services, Inc., v. District of Columbia Public Service Commission*, Nos. 05-AA-155 and 05-AA-315, March 6, 2006.

⁵ Due to the slippage of some of the dates in the rules, the Commission's assessment rules for competitive suppliers are forward-looking and will become effective in FY 2007.

⁶ See Rulemaking at 52 *D.C. Register* 584, rel. January 21, 2005. By Order No. 12505, dated February 10, 2005, the Commission extended the comment period on the NOEPR. On February 18, 2005, the Commission issued a Notice of Extension of Comment Period on the NOPR, which reflected the extension previously granted in Order No. 12505. 52 *D.C. Register* 1674, rel. February 18, 2005. In addition, the Commission amended the NOPR on May 13, 2005, to reflect the changes in the law which requires us to assess alternative gas suppliers for our operating budget. 52 *D.C. Register* 4618, rel May 13, 2005.

⁷ 53 *D.C. Register* 4141-4144 (May 19, 2006). On June 9, 2006 and June 12, 2006 respectively, PEPCO Energy Services and Washington Gas Energy Services filed requests for reconsideration of the Commission's rulemaking and Order. On July 10, 2006, the Commission tolled the time for issuing a decision an additional 30 days.

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public utilities for OPC's operating budget for FY 2006 to ensure that a budget shortfall does not prevent OPC from serving the District's ratepayers, businesses, and citizens.

6. This NOPR is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Seventh Floor, East Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the NOPR are available upon request, at a per-page reproduction cost. Comments on the NOPR must be made in writing to Ms. Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Once the comment period expires, the Commission will take final action.⁸

⁸ Once the comment period expires, the Commission intends to assess the three public utilities on before the end of Fiscal Year 2006.

Office of the Secretary of the
District of Columbia

July 7, 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 August 1, 2006.

Adetunji, Abiola	New	CitiBank 5250 MacA Blvd, NW 20016
Amaya, Isis	New	CitiBank 1749 ½ Columbia Rd, NW 20009
Apt, Benjamin L.	New	2824 14 th St, NE 20017
Artabane, Lynn	Rpt	Pension Benefit Guaranty 1200 K St, NW#340 20005
Baber-Alston, Denette L.	New	White House F C U 1745 Pa Ave, NW#203 20006
Banbor, Milosz	New	PCRM Foundation 5100 Wis Ave, NW#400 20016
Battle, Sandra G.	New	C W Capital 700 12 th St, NW#700 20005
Bean, Linda	New	3319 12 th St, NE 20017
Billips, Barbara J.	New	Credit Union Natl Assoc 601 Pa Ave, NW 20004
Bishop, Thalia Y.	New	Chevy Chase Bank 210 Mich Ave, NE 20017
Bolling, Ronald Jay	New	IntelligentTransportion 1100 17 th St, NW#1200 20036

Brennan, Claire M.	New	LeBoeuf Lamb et al 1875 Conn Ave, NW#1200 20009
Brockington, Paulette R.	New	American Chemical Society 1155 16 th St, NW 20036
Brooks, Linda	New	D C Law Students/Court 806 7 th St, NW 20001
Brown, Nicole S.	New	Kass Mitek & Kass 1050 17 th St, NW#1100 20036
Buchanan, Elizabeth	New	A A C U 1818 R St, NW 20009
Buckley, David W.	Rpt	Deso & Buckley 1828 L St, NW#660 20036
Burke, Ruby	New	W M A T A 600 5 th St, NW 20001
B.-Williams, Ella M.	New	1209 30 th St, SE#4 20019
Cabelka, Meredith	New	Millennium Challenge 875 15 th St, NW 20005
Callahan, Patrick M.	Rpt	CitiGroup 1101 Pa Ave, NW#1000 20004
Carter, Chizuko	Rpt	Washington Times 3600 N Y Ave, NE 20002
Chatman, Anita L.	New	Northrop Grumman 716 Sicard St, SE 20388
Clune, Perry Rachel	New	Wachovia 5201 MacA Blvd, NW 20016
Collier, Bernadine	Rpt	Presidential Bank 1660 K St, NW 20006
Cottrell, Dana D.	New	Dantech Corporation 1700 Verbena St, NW 20012

Cusick, Dennis	New	1301 U St, NW#429 20009
Cutler, Paul R.	Rpt	Pro-Typists 1012 14 th St, NW#307 20005
Dias, Magdalena	New	Y M C A 1112 16 th St, NW7thF1 20036
Dobson, Diana	New	D F I 1717 Pa Ave, NW#1300 20006
Dongmo, Augustin	New	SunTrust 1445 N Y Ave, NW 20005
Dozier, Donnee' L.	New	Bristol Properties 4660 MLK Ave, SW 20032
Easterbrooks, Erin A.	New	Elder&Disability Law Ctr 1800 M St, NW#300N 20036
Fagan, Patricia	Rpt	Pension Benefit Guaranty 1200 K St, NW 20005
Farrington, Yosia D.	New	SoundExchange 1330 Conn Ave, NW#330 20036
Fuentes, Marilyn	New	CitiBank 1749 ½ Columbia Rd, NW20009
Gee, Sharon C.	New	3001 Veazey Terr, NW#1024 20008
Giddens, David	New	Wachovia Bank 600 Md Ave, SW 20024
Gier, Renee	Rpt	700 7 th St, SW#520 20024
Grant, Rennie	Rpt	SmithGroup 1850 K St, NW#250 20006
Greigg, Patricia Anne	Rpt	Grossberg Yochelson et al 2000 L St, NW#675 20036

Hall, Sylvia B.	New	2304 14 th St, NE 20018
Hargrove, Andrea	Rpt	Federal Reserve System 20 th & C Sts, NW 20551
Harrell, Wanda C.	New	Johnson Madigan et al 1300 Conn Ave, NW#600 20036
Harrod, LaWanna A.	New	White & Case 701 13 th St, NW#600 20005
Hession, Sherry B.	New	B A C 1776 I St, NW 5th Fl 20006
Hill, Robin L.	New	D I A/bldg Serv Branch 200 MacDill Blvd 20340
Isaacs, Odelia L.	Rpt	NFL Players' Assoc 2021 L St, NW 20036
Ishmon, Phoenix C.	Rpt	C C A/Treatment Facility 1901 E St, SE 20003
Jackson, Delores R.	New	Dept of Mental Health 2700 MLK Ave, SE 20032
Kakwera, Lydia	New	Chasen & Chasen 5225 Wis Ave, NW#500 20015
Klatt, Ellen P.	New	C W Capital 700 12 th St, NW 20005
Koustenis, Marietta	New	Capital Reporting 1000 Conn Ave, NW#505 20006
Krivonak, Leanne M.	Rpt	Olender Reporting 1522 K St, NW#720 20005
Kroll, C. Kelly	Rpt	Cohen Mohr 1055 ThomJeff St, NW 20007
Laager, Maryanne	New	Amer Continental Group 900 19 th St, NW#800 20006

Lee, Ethel	Rpt	DOC/Central Detention 1901 D St, SE 20003
Leonard, J. David	New	Citiwide Title 2808 Douglas St, NE 20018
Love, Dorothy E.	New	Mintz Levin Cohn et al 701 Pa Ave, NW 20004
Lynch, Colleen M.	Rpt	H O R/Official Reporters LHOB#1718 20515
McAllister, Tonishia	New	Salter & Company 1629 K St, NW#300 20006
Mandell, Alda L.	Rpt	L A D Reporting 1100 Conn Ave, NW#850 20036
Maraan, Lilibeth	New	State Dept F C U 4 th & P Sts, SW 20319
Marcelin, Denise P.	New	Levine Blaszak et al 2001 L St, NW#900 20036
Messenger, Nancy S.	Rpt	Grove Jaskiewicz Cobert 1730 M St, NW#400 20036
Miller, Earlene N.	New	SunTrust 1445 N Y Ave, NW 20005
Monfort, Ronald R.	Rpt	Mayflower Hotel 1127 Conn Ave, NW 20036
Nails, Rashanda J.	New	1325 Savannah St, NE#5 20032
Nixon, Valerie L.	New	Jenner & Block 601 13 th St, NW 20005
O'Neil, Misty	New	Karp Frosh Lapidus et al 1133 Conn Ave, NW#250 20036
Oni, Olubunmi	Rpt	J C Inc. 6411 Chillum Pl, NW 20012

Ortega, Johanna M.	New	SunTrust 1800 Columbia Rd,NW 20009
Paprocki, Michelle	New	Stonewall Title 1050 17 th St,NW#600 20036
Perkins, Brenda	New	U S Grains Council 1400 K St,NW#1200 20005
Pooler, Craig D.	New	C D P Properties 68 Galveston Pl,NW#B 20032
Price, Tanya M.	New	W M A T A 600 5 th St,NW 20001
Richmond, Jeanette C.	New	W M A T A 600 5 th St,NW 20001
Robinson, Angela R.	New	Fried Frank et al 1001 Pa Ave,NW#800 20004
Robinson, Billie J.	New	Alston & Bird 601 Pa Ave,NW 20004
Rudd, Dorothy	New	Groom Law Group 1701 Pa Ave,NW#1200 20006
Schmitt, Catherine	Rpt	Monarch Title 1015 31 st St,NW#300 20007
Shaalán, Saida A.	Rpt	F E R C 888 First St,NE 20426
Smith, Aprele	New	Levine Blaszak et al 2001 L St,NW#900 20036
Smith, Lord Catherine	New	Textron 1101 Pa Ave,NW#400 20004
Stevens, Mary F.	Rpt	O'Melveny & Myers 1625 I St,NW 20006

Stewart, Sorina B.	New	Ka Po'e Hana 1717 R I Ave, NW 20036
Sullivan, Mark F.	New	W M A T A/Gen Counsel 600 5 th St, NW 20001
Sun, Jane	New	SunTrust 1100 G St, NW 20005
Tangney, Patrick J.	New	Stewart Title Group 11 Dup Cir, NW#750 20036
Tanouye, Kathryn P.	New	Law Off/Virginia McArthur 1101 17 th St, NW#820 20036
Tayag, Karina	New	CitiBank 600 Pa Ave, SE 20003
Teferi, Genet	New	Nelson Mullins et al 101 Const Ave, NW 20001
Thomas, Sarah	New	L'Enfant Trust 1526 N H Ave, NW 20036
Thorn, Jelena A.	New	Jackson & Campbell 1120 20 th St, NW#300S 20036
Towns, Melvinia	New	Georgetown Univ Law Ctr 600 N J Ave, NW 20001
Turnipseed, Anita R.	New	State Dept F C U 4 th & P Sts, SW 20319
Vincent, Thomas	Rpt	1200 Varnum St, NE 20017
Waller, Jr., Daniel	New	NASA Fed Credit Union 500 5 th St, NW 20001
Wester, Sharon A.	New	White & Case 701 13 th St, NW#600 20005
Westray, Kim	Rpt	O'Melveny & Myers 1625 I St, NW 20006

Willis-Holman, Beverly S.Rpt Dept of State - L/EX
2201 C St, NW#5519 20520

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STATE EDUCATION AGENCY
UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FUNDING AVAILABILITY

Adult and Family Literacy Services Grant

The District of Columbia State Education Agency (SEA) is soliciting grant applications from qualified applicants to provide educational opportunities to adults that will improve their literacy skills and enable them to function more effectively as citizens, parents, and workers. Services funded under this grant must be provided to District of Columbia residents age 16 and older. The services are intended to:

- Enable adults to acquire basic literacy and educational skills, which will equip them to better fulfill responsibilities as parents/family members, citizens/community members and workers;
- Provide these adults with sufficient basic education to enable them to benefit from job training and employment opportunities, and to enable them to more fully enjoy the benefits and responsibilities of citizenship; and
- Enable adults who so desire to continue their education to at least the level of completion of secondary school.

Private, non-profit organizations that operate in the District of Columbia are encouraged to apply. The SEA will fund at least 15 grants in the range of \$75,000 - \$100,000, with an average grant amount of \$80,000.

The Request for Applications (RFA) will be released July 21, 2006 and the deadline for submission is September 5, 2006 at 5:00 pm. The RFA can be downloaded from the Executive Office of The Mayor, Office of Partnerships and Grants Development website at <http://opgd.dc.gov>, under "District Grants Clearinghouse". The RFA may also be obtained at the University of the District of Columbia, State Education Agency, 4340 Connecticut Avenue, NW, Room 302, Washington, DC 20008. Questions about obtaining the RFA may be directed to Keith Watson by e-mail at kwatson@kairosmgt.com.

Applicants are encouraged but not required to submit a notification of intent to apply for this grant by August 22, 2006 to Keith Watson by e-mail at kwatson@kairosmgt.com or by fax at (202) 318-5638. Applicants are also encouraged to attend a pre-application conference, the time, date, and location of which are included in the RFA.

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

Appeal No. 17086 of the Sheridan Kalorama Neighborhood Council, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of Karen Edwards, General Counsel, Department of Consumer and Regulatory Affairs, allowing the transfer of the Jordanian Chancery to the Yemeni Chancery without the approval of the Foreign Missions Board of Zoning Adjustment. The D/R-1-B zoned subject premise is located at 2319 Wyoming Avenue, N.W. (Square 2522, Lot 4).

HEARING DATES: January 13, 2004 and February 17, 2004

DECISION DATE: April 6, 2004

ORDER

PRELIMINARY MATTERS

In 2001, the Republic of Yemen purchased the property at 2319 Wyoming Avenue, N.W. ("the subject property") from the Hashemite Kingdom of Jordan to be used as a chancery and an embassy. In September 2002, the Department of Consumer and Regulatory Affairs ("DCRA") issued a certificate of occupancy to the Republic of Yemen, thus sanctioning the transfer of the chancery/embassy use from Jordan to Yemen. Appellant Sheridan Kalorama Neighborhood Council ("Appellant") disputed with DCRA the validity of the transfer. In October 2002 and early 2003, DCRA issued building permits to the Yemeni chancery for interior and exterior renovations on the property. On April 8, 2003, Councilmember Jack Evans, on behalf of the Appellant, wrote to DCRA, disputing its ability to allow the transfer of the chancery use. In a responsive letter dated July 14, 2003, the General Counsel for DCRA upheld the validity of the transfer.

On September 12, 2003, the Appellant filed this appeal with the Board of Zoning Adjustment ("BZA" or "Board") alleging error in DCRA's July 14, 2003 decision¹ to allow the transfer of the Jordanian chancery to the Yemeni chancery. Appellant contended that DCRA did not have authority to allow the transfer, but that, pursuant to the Zoning Regulations, the transfer had to go before the Board of Zoning Adjustment as constituted under the Foreign Missions Act.²

¹Although Appellant stylizes this action as an appeal of the decision of DCRA's General Counsel, it is really an appeal of DCRA's decision, as manifested by the issuance of the certificate of occupancy in September 2002, to allow the transfer of the chancery use from Jordan to Yemen as a matter-of-right. The July 14, 2003 letter from DCRA's General Counsel is a confirmation of DCRA's decision.

²When performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery, the BZA has a slightly different composition. See, § 206(i)(2) of the Foreign Missions Act (sometimes referred to herein as the "FMA"), codified at D.C. Official Code § 6-1306(i)(2) (2001). For ease of reference, the BZA refers to itself in these circumstances as the Foreign Missions Board of Zoning Adjustment, or

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The BZA heard the appeal on January 17, 2004 and February 17, 2004. The Appellant and DCRA, as appellee, participated in the hearing. The Office of Foreign Missions of the United States Department of State ("DOS") participated in the appeal as an intervenor supportive of DCRA's actions.

At its April 16, 2004 public decision meeting, the BZA denied the appeal by a vote of 4-1-0.

FINDINGS OF FACT

The Subject Property and the Transfer of Use

1. The subject property is located in Square 2522, Lot 4, at address 2319 Wyoming Avenue, N.W.
2. The subject property is located in a D/R-1-B zoning district, therefore, it is located within the Mixed Use Diplomatic (D) Overlay District ("D Overlay" or "Diplomatic Overlay"), as well as within the low-density residential R-1-B district.
3. The Royal Hashemite Kingdom of Jordan took possession of the subject property on December 2, 1958, and has since continuously occupied it as a chancery and embassy.
4. The Republic of Yemen purchased the subject property from Jordan in October of 2001 for use as a chancery and embassy.
5. DCRA issued a certificate of occupancy to the Republic of Yemen in September 2002, thereby sanctioning the transfer of the chancery/embassy use from Jordan to Yemen.
6. The transfer of use was not presented to the BZA for its determination whether or not to disapprove the transaction.
7. The chancery building is not being expanded in any way and nothing new is being constructed on or added to the property.

Relevant Foreign Mission Act Provisions and Zoning Regulations

8. The Foreign Missions Act permits chanceries as a matter of right in any area that is zoned commercial, industrial waterfront, or mixed-use. FMA § 4306(b)(1); D.C. Official Code § 6-1306(b)(1) (2001).

"FMBZA." (The FMA is found at Title II of the Department of State, International Communications Agency, and Board for International Broadcasting appropriations authorizations, Pub. L. No. 97-241, 96 Stat. 273, 282, 290 (1982), and is codified at both D.C. Official Code § 6-1301 *et seq.* and 22 USC § 4301, *et seq.*)

9. The FMA establishes two categories of chanceries that may be located or expanded subject to the disapproval of the BZA. The first is chanceries in areas zoned medium-high and high-density residential. The second is chanceries in any other areas "determined on the basis of existing uses, which includes office or institutional uses." FMA § 4306(b)(2); D.C. Official Code § 6-1306(b)(2) (2001).

10. The Zoning Commission established The D Overlay in 1983 (Order No. 400) in order to implement the above-referenced section of the FMA. As to the first category of chanceries, the D Overlay was mapped to include all areas zoned medium-high and high-density residential (*i.e.* R-5-D and R-5-E). For the second category, the Zoning Commission included areas zoned R-1 through R-5-C districts which included a certain percentage of existing institutional uses. 11 DCMR §1000.

11. Section 1001.1 provides that "[A] chancery shall be a permitted use in the Diplomatic Overlay, subject to disapproval by the Board of Zoning Adjustment, based on the criteria in this section."

12. The FMA provides that the continuing use of a chancery by a foreign mission is not subject to approval by the BZA provided the chancery was used by a foreign mission on October 1, 1982. See FMA § 4306(h); D.C. Official Code § 6-1306(h).

13. On February 23, 1990, the Zoning Commission promulgated 11 DCMR § 201.1(m), which "grandfathered in," as *limited* matter-of-right uses, all chanceries existing on September 22, 1978 in R-1 through R-5-C districts, but not within the D Overlay. These are limited matter-of-right uses because their use is specifically conditioned in the regulations. Of particular relevance to this appeal is the provision which limits the matter-of-right continued use of the chancery to the government lawfully occupying the chancery on February 23, 1990. See, 11 DCMR § 201.1(m)(1).

CONCLUSIONS OF LAW

Procedural Issues

Composition of the Board

The DOS moved to dismiss this appeal on the basis that it could only be heard by the BZA as constituted under the FMA, *i.e.*, the representative from the Zoning Commission must be the Commissioner representing the National Park Service and the BZA member representing the National Capital Planning Commission must be its Director. The Appellant, however, countered that since the FMA does not address the procedures for third party appeals of administrative zoning decisions related to foreign missions, such appeals remain subject to the provisions of the Zoning Act of 1938, which authorizes

such appeals to be heard and decided by the regular BZA membership. The Board agrees with the Appellant.

Section 8 of the 1938 Zoning Act established the Board of Zoning Adjustment and authorized it "to hear and decide appeals where it is alleged ... that there is error in any order, requirement, decision, determination, or refusal made by ... any ... administrative officer or body in the carrying out or enforcement" of the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1) (2001). While the FMA describes the procedures to be followed and standards to be utilized for applications and appeals filed by a foreign mission itself, it does not expressly address third-party appeals of zoning decisions involving chanceries. *See*, FMA § 206; D.C. Official Code § 6-1306 (2001).

To infer that the FMA intended to also have its procedures apply to third party appeals would constructively repeal one of the most important remedial provisions of the Zoning Act. Such a result would be judicially disfavored; instead the Board must attempt to harmonize the FMA and the Zoning Act. *See, e.g., Morton v. Mancari*, 417 U.S. 535, 551 (1974) ("When there are two acts upon the same subject, the rule is to give effect to both if possible." (citation omitted)); *Brown v. CONRAIL*, 717 A.2d 309, 312 (D.C. 1998). The Board thus concludes that the FMA does not apply to appeals brought by aggrieved third-parties alleging errors in administrative zoning decisions that pertain to a chancery use.³ That being the case, the BZA's composition and its standard of review remain those set forth in section 8 of the Zoning Act for the purposes of hearing and deciding this appeal.

Mootness

The DOS also moved to dismiss the appeal on grounds of mootness. Based on its interpretation of § 4306(h)(2) of the FMA (D.C. Official Code § 6-1306(h)(2) (2001)), the DOS contends that it does not matter whether or not DCRA was correct in issuing the certificate of occupancy, because the chancery use on this site, whether by Jordan or Yemen, does not require one. The Board finds that the DOS's contention is not an issue of mootness, but a legal argument as to why the appeal should be denied. The real question here, which is not moot, is not whether a certificate of occupancy is required, but whether § 201.1(m) of the Zoning Regulations disallows the matter of right transfer of a lawfully established chancery use in the D Overlay from one government to another and whether the transfer is subject to the disapproval of the BZA pursuant to 11 DCMR §1000 where the chancery has been in continual use as a chancery by a foreign mission since October 1, 1982. For the reasons explained below, the Board holds that the transfer of the chancery use is a matter of right not subject to the disapproval of the BZA.

³This holding is limited to third party appeals, and is therefore not inconsistent with the suggestion made in the District of Columbia Court of Appeals' decision in *Embassy of the People's Republic of Benin v. D.C. BZA*, 534A.2d 310, 321 (D.C. 1987), that appeals by a foreign mission are governed by the FMA.

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The Merits of the Appeal

Appellant contends that the transfer of the chancery use cannot proceed as a matter of right, but is subject to disapproval by the BZA. Appellant bases this contention on its interpretation of § 201.1(m) of the Zoning Regulations, which states, in pertinent part:

201.1 The following uses shall be permitted as a matter of right in R-1 Districts:

...

(m) Chancery existing on September 22, 1978; provided, that the following requirements are met:

- (1) After February 23, 1990, the continued use of the chancery shall be limited to the government that lawfully occupied the chancery on that date.

The Appellant interprets this provision to mean that if the chancery is located in the D Overlay, any transfer of the use is subject to the disapproval of the BZA, based on the criteria in that section. The Board finds that 201.1 does not apply to the facts in this case, but rather that this chancery is governed by Chapter 10 of the Zoning Regulations. The Board concludes that § 201.1(m) of the Zoning Regulations only applies to those chanceries located in an R-1 through R-5-C zone district that are *not* also mapped in the D Overlay. Chapter 10 of the Zoning Regulations governs chanceries in the D Overlay. 11 DCMR §1001.1. While 11 DCMR §1001.1 subjects chancery use to disapproval by the BZA, §4306 (h) of the FMA sets forth a grandfathering exception to 11 DCMR §1001.1, specifically excluding from review those chanceries that have been continuously used as a chancery by a foreign mission since October 1, 1982. Section 4306(h) of the FMA (D.C. Official Code § 6-1306(h)) states, in pertinent part:

“Approval of Board of Zoning Adjustment or Zoning Commission not required

...

- (2) for continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on October 1, 1982.”

Further, it should be noted that Subsection 1002.1 of that Chapter provides that application to the BZA must be made in order to “locate, replace, or expand a chancery ...in the D Overlay District.” That provision does not include a transfer of ownership or use from one chancery to another. Because the chancery at issue is located in the D Overlay, it is subject to Chapter 10 of the Zoning Regulations. Because it was used continuously as a chancery since 1958, it is exempt from review under Chapter 10. Finally, the transfer of the chancery from one country to another was not subject to BZA review because such transfers are not encompassed in the BZA’s review authority under Chapter 10.

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

Appeal No. 17329 of Georgetown Residence Alliance, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of the Department of Consumer and Regulatory Affairs (DCRA) for failure to enforce the Zoning Regulations and from the issuance of Building Permit No. B-468701 for a roof hatch and mechanical access door at 1531 31st Street, N.W. in the R-3 zone (Square 1269, Lot 294).

HEARING DATE: July 12, 2005

DECISION DATE: July 12, 2005

DECISION AND ORDER

This appeal was filed with the Board of Zoning Adjustment (the Board) on March 25, 2005, challenging DCRA's issuance of a building permit allowing the construction of a roof hatch and mechanical access door at the premises, and also challenging DCRA's alleged failure to enforce the Zoning Regulations. Prior to the public hearing, the property owner moved to dismiss the appeal, claiming that it had been untimely filed. After hearing argument and reviewing the written submissions of the parties, the Board dismissed the appeal, finding that the appeal was untimely filed as to the building permit, and that the Board lacked subject matter jurisdiction to review other alleged errors.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Public Hearing

The Office of Zoning scheduled a hearing on the appeal for July 12, 2005. In accordance with 11 DCMR § 3113.4, the Office of Zoning mailed notice of the hearing to the Appellant, the property owner, and DCRA.

Parties

The Appellant in this case is the Georgetown Residence Alliance (the Appellant or the Alliance), a not-for-profit civic association represented by Don Crockett. The owner of the subject property is Reid Dunn, who was represented by Holland & Knight LLP, Mary Carolyn Brown, Esq. As the property owner, Mr. Dunn is automatically a party under 11 DCMR § 3199. Appellee DCRA was represented by Lisa Bell, Esq.

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FINDINGS OF FACT**Background**

1. The subject property is located at 1531 31st Street, NW in the R-3 zone. Originally a single-family home, the building was converted into a four-unit apartment house prior to the enactment of the Zoning Regulations. Although the R-3 district permits only single-family dwellings and flats, the apartment house use is a lawfully existing non-conforming use.
2. Beginning on or about September, 2004, the current property owner proposed changes at the property for the purpose of converting the apartment house to a condominium. Several proposed changes were reviewed by the Old Georgetown Board of the US Commission on Fine Arts and monitored by the Alliance, including changes to the rooftop. The building permit issued by DCRA on or about May 17, 2004 provided only for renovation work to the building's interior, not the rooftop or any other portions of the exterior. The permit was not entered in the administrative record and there was disagreement about the exact date it was issued. However, both parties referred to the permit during the hearing and concurred that it was issued prior to November, 2004 when construction began.
3. Shortly after construction began, the Alliance initiated a series of communications with the DC Historic Preservation Office (HPO), the Historic Preservation Review Board (HPRB)¹, and the Zoning Administrator of DCRA, complaining that construction was proceeding illegally. The Alliance complained that the owner had unlawfully removed part of a large ornamental turret that occupied part of the roof space, and was about to construct an unauthorized roof deck.
4. HPO and DCRA both inspected the site, and determined that construction -- including the partial removal of the turret -- had occurred without the necessary building permits. The HPO inspected the site and issued a stop work order on or about November 16, 2004, and DCRA inspected the site and issued a stop work order on or about December 27, 2004. According to an e-mail from the Zoning Administrator to Mr. Crockett, DCRA's stop work order was issued because the rooftop work went beyond the interior renovations allowed by the building permit. The e-mail also stated that Board approval would be required before the owner could expand the non-conforming use and construct

¹ The District of Columbia Historic Preservation Review Board advises the State Historic Preservation Officer. The Historic Preservation Office is part of the Office of Planning and serves as staff to the State Historic Preservation Officer and the Historic Preservation Review Board.

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a roof deck (Exhibit 2, Appellant's Statement in Support of their Appeal, Appendix I at 18).

5. The owner promptly applied to DCRA for a permit to allow him to construct rooftop access. The revised plans submitted with the application showed a proposed roof hatch but no roof deck (Exhibit 2, Appendix I at 18). DCRA lifted the December 27 stop work order and issued Building Permit No. 468701 (the access permit) on December 28, 2004. The access permit is the subject of this appeal. It allowed the owner to construct a roof hatch and a mechanical access door at the rear of the rooftop turret (Attachment to Exhibit 11). It did not authorize a roof deck.

6. On December 29, 2004, The Zoning Administrator notified the Appellant by e-mail that DCRA's stop work order had been lifted and the access permit had been issued.

7. The Appellant continued to communicate with the HPO, HPRB, and DCRA after the access permit was issued, and requested that the rooftop turret be restored to its original condition. Appellant's own submissions show written communications dated January 24, 25, and 26 of 2005 (Exhibit 2, Appendix I at 10, 21, 24, and 26). During the hearing of this matter, Appellant also referred to his "constant communication" with District agencies (See, for instance, T., p. 111). Although Appellant stated in these written communications that the turret had been "demolished", HPO and DCRA disagreed, stating that a portion of the turret was altered to allow for mechanical access to the roof (Exhibit 2, Appendix I at 31).

The Appeal

8. The appeal was filed on March 25, 2005 alleging that DCRA "refuse[d] to enforce the Zoning Regulations and Zoning Laws against the unlawful and un-permitted extension and expansion of the non-conforming apartment house use" at the premises (Exhibit 1).

9. In an undated statement submitted April 8, 2005, the Appellant alleged that on or about December 28, 2004, DCRA improperly issued Building Permit No. B468701 (the access permit) allowing the owner to construct a roof hatch and mechanical access door at the premises (Exhibit 11).

10. During the public hearing, the Appellant alleged that the appeal stemmed from: (a) the owner's unlawful rooftop demolition and construction work without a permit (T. p. 104, 120), (b) the HPRB's failure to order that the roof be restored to its original condition, and (c) the issuance of the access permit that allegedly improperly authorized the rooftop expansion of a non-conforming use.

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The Motion to Dismiss

11. Prior to the public hearing, the owner filed a motion to dismiss the appeal, contending that the appeal of the access permit was untimely. The owner also claims that DCRA's issuance of the access permit is the only administrative decision which can be appealed to this Board.

12. As stated above, Appellant's view of the appeal is broader. He contends that the appeal was timely filed because it was filed when "it was clear no one would do anything" (T. p. 166). Appellant cites the 3 letters he sent to the HPRB chair asking him "to look into the situation and take action" (T. p. 110), with copies to "everyone involved", including the Zoning Administrator and Timothy Dennee of the HPO (T. 112). Appellant also claims that his appeal was timely because it was filed "about a month after, or less than a month after" Mr. Dennee failed to respond to his last letter (T. p. 166), and because Mr. Dennee's office and the HPRB office is each a "subsidiary" office of DCRA (T. p. 112).

13. Given the Appellant's close scrutiny of the project, the Board is persuaded that the Appellant knew about the access permit on or about the date it was issued, on December 28, 2004, but at least by December 29, 2004 after the e-mail communication from the Zoning Administrator.

14. Appellant filed this appeal on March 25, 2005, approximately 87 days after the access permit was issued. Although Appellant may have been frustrated in his dealings with DCRA, there is no evidence that DCRA's actions substantially impaired Appellant's ability to file an appeal.

CONCLUSIONS OF LAW

The Appellant did not clearly identify the error that was being complained of in this appeal. After extensive exploration of Appellant's concerns at the hearing, the Board determined that Appellant was appealing the access permit and the DCRA and HPRB decisions not to require the property owner to restore the rooftop turret to its original condition. For the reasons discussed below, the Board concludes that it lacks jurisdiction over the claim related to the access permit because the appeal of its issuance was not timely filed, and it lacks subject matter jurisdiction over the enforcement claim because the alleged violations did not involve zoning regulations. The reasons for these conclusions follow.

The Appeal of the Access Permit was Untimely

The Board's Rules of Practice and Procedure (11 DCMR, Chapter 31) require that all appeals be filed within 60 days after 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 only 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).

As stated in the Findings of Fact, the access permit was issued on December 28, 2004, and Appellant knew about this approval when the permit was issued, or shortly thereafter on December 29, 2004, when it was notified by the Zoning Administrator. Thus, under section 3112.2(a) of the Regulations, the appeal should have been filed within 60 days after that date, or on or about February 27, 2005. Instead, the appeal was filed on March 25, 2005, approximately 86 days after the Appellant was charged with notice of the decision complained of. During this 86 day period, Appellant pursued other avenues to resolve its dispute and engaged in extensive communications with the Zoning Administrator and HPO staff. However, a party who chooses to engage in negotiations or other ways to resolve a dispute does not thereby extend its time for filing an appeal. *Waste Management of Maryland, Inc. v. DC Board of Zoning Adjustment*, 775 A.2d 1117 (D.C. 2001); *Woodley Park Community Ass'n v District of Columbia Board of Zoning Adjustment*, 490 A.2d 628 (D.C. 1985).

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). This appeal, filed March 25, 2005, was untimely filed as to the access permit and the Board, therefore, lacks jurisdiction to hear it.

The Board Lacks Subject Matter Jurisdiction Over The Other Alleged Errors

As to the other issue raised by the appeal, the claimed refusal of DCRA and HPRB to enforce the Zoning Regulations, the Board lacks subject matter jurisdiction because no violations of the Zoning Regulations are alleged.

The Appellant is essentially claiming that DCRA should have required the turret to be restored because the rooftop work was performed without a building permit, as is required by section 10 of the Zoning Act of 1938, codified at D.C. Official Code § 6-

641.08 (2001). Similarly the Appellant contends that HPRB or the HPO should have ordered restoration, presumably based upon section 5 of the Historic Landmark and Historic District Protection Act of 1978 ("Historic Preservation Act"), codified at D.C. Official Code § 6-1104, which requires review by the Mayor before all or part of a historic landmark or contributing building is demolished.

Neither of these requirements may be found in the Zoning Regulations. Yet, the Board's jurisdiction is limited to hearing and deciding appeals "where it is alleged by the appellant that there is error in any order, requirement, decision², determination, or refusal made by any ... administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to the Zoning Act. D.C. Official Code § 6-641.07 (f) (2001). With respect to the lack of a building permit, this Board has twice held in the context of Civil Infraction Act appeals that its jurisdiction does not extend to violations of the Zoning Act that are not also included in the Zoning Regulations, such as the requirement for a building permit. *Appeal of Peter Choharis*, BZA No. 03-0001, 51 DCR 8210 (2004); *Appeal of William Robinson*, BZA No. 04-0001 52 DCR 3677 (2005). The requirement for the Mayor to review applications to demolish historic or contributing buildings is not even in the Zoning Act, but in an entirely different law.

The Board has no jurisdiction to hear complaints over the alleged inaction of District officials in enforcing the Zoning Act, the Historic Preservation Act, or any other statutory or regulatory provisions other than those contained the Zoning Regulations. Since Appellant does not claim that any zoning regulation was violated, the alleged lack of enforcement cannot be addressed by this Board.

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

1. The motion to dismiss the appeal of the building permit as untimely is **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II and Anthony J. Hood, in favor of the motion; Curtis L. Etherly, Jr. being necessarily absent)

Vote taken on July 12, 2005

² To the extent that the Appellant was also appealing the construction and demolition activities of the property owner, as opposed to the decisions made by District officials with respect to those activities, the Board also has no jurisdiction. The Zoning Act limits the Board's appellate jurisdiction to actions taken by District officials in carrying out and enforcing the Zoning Regulations, not to actions taken by private citizens.

2. The motion to dismiss the appeal on the ground that it lacks subject matter jurisdiction is **GRANTED** with respect to the alleged failure to enforce by DCRA and the HPRB/HPO

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II and Anthony J. Hood in favor of the motion; Curtis L. Etherly, Jr. being necessarily absent)

Vote taken on July 12, 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: JUL 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.

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

Application No. 17166 of Dinesh Sharma and Murali Nadipelli, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and width requirements under section 401, a variance from the lot occupancy requirements under section 403, and a variance from the floor area ratio requirement under § 1203.3 to allow the construction of a two-unit building in the CAP/R-4 zone district at premises 430 3rd Street, N.E. (Square 755, Lot 835).

HEARING DATE: June 29, 2004 and July 13, 2004
DECISION DATE: September 14, 2004

DECISION AND ORDER

This self-certified application was submitted March 15, 2004 by Dinesh Sharma and Murali Nadipelli ("Applicant"), the owners of the property that is the subject of the application. The application, as subsequently amended, requested area variances from requirements applicable to lot area, lot width, and lot occupancy to allow the construction of a two-unit residential building on a vacant lot in the Capitol Interest (CAP) overlay/R-4 zone at 430 3rd Street, N.E. (Square 755, Lot 835).¹ Based on the testimony of the Office of Planning, the Board found that a variance from floor area ratio ("FAR") requirements under § 1203.3 was also necessary for the Applicant's proposed building.

Following a hearing on June 29 and July 13, 2004 and a public meeting on September 14, 2004, the Board voted 5-0-0 to grant the application with respect to variances from lot width and lot area requirements, and to deny the application with respect to variances from lot occupancy and floor area ratio requirements.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated March 16, 2004, the Office of Zoning provided notice of the application to the Office of Planning, the District Department of Transportation, the Councilmember for Ward 6, Advisory Neighborhood Commission ("ANC") 6C, and Single Member District/ANC 6C08. Pursuant to 11 DCMR § 3113.13, on March 19, 2004 the Office of Zoning mailed letters

¹ The application originally requested, pursuant to 11 DCMR § 3103.2, a variance from the lot area and width requirements under § 401, a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, a variance from the off-street parking requirements under § 2101.1, and a variance from the use provisions under § 330.5 to allow the construction of a four-unit apartment building at the subject property.

or memoranda providing notice of the hearing to the Applicant, the Councilmember for Ward 6, Single Member District/ANC 6C08, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 26, 2004 (51 DCR 3265).

Party Status. In addition to the Applicant, ANC 6C was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant presented evidence and testimony describing plans to construct a two-unit residential building on the subject property, and indicated that the requested variances were necessary because the property could not otherwise be developed. According to the Applicant, the subject property was unique due to its small, narrow size, and practical difficulties would arise with respect to the economic feasibility of constructing a new building consistent with zoning requirements.

Government Reports. By memorandum dated June 1, 2004, the Office of Planning ("OP") recommended denial of the original application. According to OP, the Applicant's proposal would also require variance relief from height, area, and bulk requirements applicant in the CAP overlay district under § 1203.3.

By supplemental report dated June 22, 2004 addressing the amended application, the Office of Planning recommended approval of the requested variance relief from lot width and lot area requirements, but denial of the requested variance from the maximum lot occupancy so as to permit a lot occupancy of 75 percent. OP again noted that the Applicant's proposal required a variance under § 1203.3 to increase the floor area ratio from 1.8 to 2.25, and recommended denial of the FAR variance.

ANC Report. By letter dated May 19, 2004, Advisory Neighborhood Commission 6C indicated that, at a regular monthly meeting on May 12, 2004 with a quorum present, the ANC passed a motion in opposition to the use, lot occupancy, and parking variances requested by the Applicant. The ANC's opposition was based on "the unsubstantiated economic hardship claims for the use variance; the negative impact of scarce parking in this location; and the impact on adjacent properties of higher lot occupancy." ANC 6C supported the request for variances from minimum lot area and lot width requirements "in the event that the granting of these 2 variances would result in the construction of only a two-unit, two-story apartment building."

Persons in Opposition to the Application. The Board received four letters in opposition to the original application from residents and owners of property in the 400 block of 3rd Street, N.E., citing a shortage of on-street parking and asserting that construction of a four-unit apartment building at the subject property would be "ill-advised" and would adversely affect the light, air, and privacy of nearby residences. The

Capitol Hill Restoration Society submitted a letter indicating its support for “only those area variances needed for matter-of-right use of this lot as a single-family residence or flats” and its opposition to the requested variance from the maximum lot occupancy requirement, citing the lack of practical difficulty arising from compliance with the requirement and the absence of information about the impact on neighboring properties of the Applicant’s plan to increase the length of the proposed building by 15 feet. The Stanton Park Neighborhood Association also submitted a letter opposing the requested use, lot occupancy, and parking variances, but supporting variance relief from “requirements for minimum lot width and lot area, in that it is necessary for the construction of a 1- or 2-family dwelling.”

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 430 3rd Street, N.E., on the west side of 3rd Street between E Street and Massachusetts Avenue (Square 755, Lot 835).
2. The subject property is a narrow, rectangular lot bounded by 3rd Street on the east, a public alley on the west, and multifamily buildings on the north and south. The alley is 25 feet wide and dead-ends into the rear of the subject property.
3. The subject property is currently unimproved, but previously contained a one-story row dwelling of approximately 605 square feet that was demolished in December 2002.
4. Properties in the vicinity of the subject property provide a mixture of residential, office, and retail uses. The office and retail uses are located primarily along Massachusetts Avenue, while nearby residential buildings include two-story row dwellings and small apartment buildings. The subject property and nearby parcels are zoned CAP/R-4. Other properties in the same square – those fronting on Massachusetts Avenue and 2nd Street are zoned CAP/C-2-A. The subject property and vicinity are located within the Capitol Hill historic district.

Applicant’s Project

5. The Applicant proposed to build a new building that would contain two dwelling units. The three-story with cellar building would extend approximately 78 feet. One parking space would be located at the rear of the property, accessible from the public alley.

Requested Variances

6. Zoning requirements for a row dwelling or flat in the R-4 zone include a minimum lot width of 18 feet and a minimum lot area of 1,800 square feet. 11 DCMR §

401.3. The subject property is 14 feet wide and 98 feet long, and has an area of 1,372 square feet.

7. The subject property was created by a subdivision that predates the Zoning Regulations. Because neighboring properties are improved and are under separate ownership, the subject property cannot be combined with another lot to achieve the required minimum lot width and area.
8. Row dwelling and flats are uses permitted as a matter of right in the R-4 zone. Use of the subject property for a row dwelling or flat would require the smallest variance from the area and width requirements applicable in the R-4 zone, which are larger for other permitted uses.
9. The Board finds the nonconforming width and lot area of the subject property constitute an extraordinary or exceptional situation or condition of the subject property such that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as owner of the subject property, because no matter-of-right use could be constructed at the subject property without variance relief from lot width and area requirements.
10. The maximum lot occupancy permitted in the R-4 zone is 60 percent for a row dwelling or flat (and 40 percent for most other structures). 11 DCMR § 403.2. The Applicant requested variance relief to permit a lot occupancy of 75 percent.
11. The Applicant did not indicate the extraordinary or exceptional situation or condition of the subject property such that the strict application of the relevant lot occupancy requirement would result in peculiar and exceptional practical difficulties to the Applicant as owner of the subject property.
12. The maximum permitted FAR on the subject property is 1.8. 11 DCMR § 1203.3. The Applicant's proposed three-story building with a lot occupancy of 75 percent would result in a FAR of 2.25.
13. The Applicant did not indicate the extraordinary or exceptional situation or condition of the subject property such that the strict application of the maximum FAR requirement would result in peculiar and exceptional practical difficulties to the Applicant as owner of the subject property.

Harmony with Zone Plan

14. The subject property is located within the Capitol Interest overlay district and is zoned CAP/R-4. The R-4 district is "designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or

more families.” 11 DCMR § 330.1. The R-4 district is not intended to “be an apartment house district as contemplated under the General Residence (R-5) Districts.” 11 DCMR § 330.3.

15. The Capitol Interest (CAP) overlay district was established “to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction....” 11 DCMR § 1200.1.
16. The Board concurs with the testimony of the Office of Planning that the requested variances pertaining to minimum lot width and area can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Variances from lot width and lot area requirements are necessary to allow construction of a row dwelling or flat, uses that are permitted as a matter of right on the subject property.

CONCLUSIONS OF LAW

The Applicant seeks variance relief from the lot area and lot width requirements under § 401, the lot occupancy requirements under § 403, and the floor area ratio requirements under § 1203.3 to allow the construction of a two-unit building in the Capitol Interest (CAP) overlay/R-4 zone at 430 3rd Street, N.E. (Square 755, Lot 835). 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 with respect to the requested variances from lot area and lot width requirements under § 401, but not with respect to the requested variances from the lot occupancy requirement under § 403 or the floor area ratio requirement under § 1203.3. Accordingly, it is therefore **ORDERED** that the application is **GRANTED** in part and **DENIED** in part.

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

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relating to lot width and lot area but to deny variances relating to lot occupancy and to floor area ratio).

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

Each concurring Board member approved the issuance of this order.

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FINAL DATE OF ORDER: _____

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17419 of Bradford Deel, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a rear deck addition to an existing single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the rear yard requirements (§ 404) in the R-1-B District at premises 5528 MacArthur Boulevard. (Square 1445, Lot 64).

HEARING DATE: January 10, 2006
DECISION DATE: January 17, 2006

DECISION AND ORDER

Bradford Deel, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on August 23, 2005 for a special exception under § 223 to construct a rear deck addition where the addition will not conform to the minimum rear yard requirements of § 404 of the Zoning Regulations¹. Following a hearing on January 10, 2006, the Board voted to approve the special exception.

Preliminary Matters

Agent The owner authorized his architect, Michael Alan Finn, to act as his agent in connection with the application (Exhibit 16).

Zoning Referral The special exception application was referred to the Board by the Zoning Review Branch of the DC Department of Consumer and Regulatory Affairs (DCRA) (Exhibit 2).

Notice of Public Hearing Pursuant to 11 DCMR 3113.13, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 3D, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 27). The property was posted on January 9, 2006, one day before the public hearing scheduled on January 10, 2006. Although section 3113.14 of the Regulations requires that the property be posted at least 15 days in advance of the hearing, the Board waived this requirement after finding that community members and the ANC had received actual notice of the pending application.

ANC Report In its report dated December 21, 2005, ANC 3D indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the special exception (Exhibit 23). It cited the following reasons: (a) the proposed deck will infringe upon the privacy of an adjacent property owner; (b) the proposed deck is larger than others in the

¹ The original application also requested lot occupancy relief under § 403 of the Regulations. However, as will be explained in the Findings of Fact, the owner reduced the size of the proposed deck and eliminated the need for this relief.

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neighborhood and not in keeping with the character of the area; (c) the proposed deck will negatively impact on the alley and neighboring back yard views; and (d) the proposed deck will effect drainage from an infiltration trench at the rear yard at the property. The ANC urged that, at a minimum, the Board should seek review by the District Department of Health relating to alleged adverse impacts on the storm water management system. Rachel Thompson testified on behalf of the ANC at the public hearing and submitted a copy of her testimony in writing (Exhibit 29).

Request for Party Status ANC 3D was automatically a party to this proceeding. The Board received a request for party status from Michael Leaveck, owner of the adjacent property located at 5304 Macomb Street (Exhibit 22). Because Mr. Leaveck failed to appear at the public hearing and because the reasons for his opposition were also voiced by the ANC and other neighbors, the Board denied Mr. Leaveck's request for party status. However, the substance of his request for party status was accepted as a statement in opposition to the application.

Other Persons in Opposition The Board also received a letter in opposition from Caroline Quandt, a neighboring property owner who wrote on her own behalf and on behalf of four other neighboring property owners, including Mr. Leaveck. Ms. Quandt's submission also contained photographs of properties in the neighborhood and a copy of a "Declaration of Easement" which granted the District access to the infiltration trench at the property (Exhibit 30).

Government Reports

OP Report OP reviewed the special exception application and prepared a written report recommending approval of the application (Exhibit 25). In addition, Maxine Brown-Roberts, the OP representative who prepared the report, testified at the public hearing in support of the application.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a single-family detached dwelling located at 5528 MacArthur Boulevard, NW (Square 1445, Lot 64) on an "L-shaped" lot in the R-1-B zone.
2. It is located near the intersection of Massachusetts Avenue and Macomb Street in the Palisades area. The area is generally developed with single-family homes (Exhibits 6, 25). The rear of the dwelling faces a public alley that is approximately 15 feet wide (Exhibit 4).

The Proposal and the Requested Relief

3. The applicant proposes to build an uncovered deck at the rear of the dwelling that will be approximately ten feet above grade and will have a three-foot high railing (Exhibit 25).

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4. The original proposal was for a deck that was 1,470 square feet in size. It would have resulted in a total lot occupancy of 47% and a rear yard of only five feet (Exhibit 2, Notes and Computations sheet).

5. In response to objections from the ANC, the applicant met with OP and prepared revised plans to reduce the size of the deck (T., p. 165). As revised, the proposed deck will be 636 square feet in size and will result in a total lot occupancy of 34% and a rear yard of 13 feet (Exhibits 24, 25).

6. Section 403 of the Zoning Regulations allows a maximum lot occupancy of 40% in the R-1-B zone. Because the deck, as revised, will result in a total lot occupancy of only 34%, the special exception relief for lot occupancy is not required (Exhibits 24, 25).

7. Section 404 of the Zoning Regulations requires a minimum rear yard of twenty-five feet in the R-1-B zone. Because the revised deck will result in a rear yard of only 13 feet, the proposed addition will not comply with applicable area requirements under § 404. Therefore, the applicant still requires relief from the rear yard requirements.

The Impact of the Deck

8. With his application, the owner submitted elevation plans, a site plan and survey, and photographs showing views from Macomb Street, Macarthur Boulevard and the public alley (Exhibits 7, 3, and 5).

9. The Board credits and adopts OP's finding that the proposed deck will not compromise the light and air available to neighboring properties (Exhibit 25). This finding is based upon the following facts:

(a) The dwelling to the west of the property fronts on Macomb Street. Because the proposed deck will be setback six feet from the side of the Macomb Street house, it will not look directly into its yard. The Macomb Street house has a deck that is approximately ten feet above grade, and is enclosed by fencing that is over six feet high. The area below the Macomb Street deck is enclosed. The Macomb Street house will be screened by evergreen trees -- over six feet high -- the applicant proposes to plant along the eastern property line.

(b) The proposed deck will not cast any shadows on the dwelling to the east of the property or affect its available air.

10. The Board credits and adopts OP's finding that the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the proposed deck (Exhibit 25). This finding is based upon the following facts:

(a) The house to the east has an open back yard -- it does not have a deck or fencing -- and will be visible from the proposed deck. However, this property will be adequately screened by the evergreen trees referenced in the previous finding of fact. Also, the proposed deck will be setback six feet from the side of the house to the east, and therefore, will not look directly into its yard.

(b) The house to the west of the site is perpendicular to the subject dwelling and, therefore, only a portion of the deck will be visible.

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(c) The houses to the south, across the alley, are between 75 and 100 feet away from the edge of the proposed deck. In addition, these properties have large trees in their rear yards that will provide privacy, particularly in the warmer months when the deck will be in use.

11. The Board credits and adopts OP's finding that the proposed deck and original dwelling will not visually intrude upon the character, scale or pattern of homes along the street frontage (Exhibit 25). This finding is based upon the following facts:

(a) The proposed deck will not be visible from either MacArthur Boulevard or Macomb Street.

(b) The proposed deck will be visible from the alley at the rear of the house. However, it will be compatible with the surrounding area to the rear. The proposed deck will be of wood construction and will be painted to match the color of the house. Therefore, it will be similar in character and scale to decks on other houses along the alley because of its size, material and location.

12. The owner and ANC agree that the District has a stormwater management easement granting access to a portion of the owner's property where an infiltration trench is located.² The ANC maintains that there are drainage problems at the property and that the proposed deck will intensify these problems. The ANC also maintains that the proposed deck violates the terms of the easement.

13. The applicant's structural engineer examined the plans for the proposed deck and prepared a report (See, Report of Neubauer Consulting Engineers, appended to Exhibit 25). According to this report, the footings for the proposed deck can be arranged to avoid disruption of the storm water facilities at the property. The applicant's architect testified that the proposed deck will not negatively impact the stormwater filtration and runoff at the property. The Board credits the engineer's report and the testimony from the architect that the proposed deck will not adversely affect the infiltration trench at the property.

14. The Board received no persuasive evidence that the proposed deck will result in the intensification of any drainage problems that may exist at the property.

CONCLUSIONS OF LAW

The Special Exception

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § 223 and 3104.1 to construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the rear yard requirements of § 404.

² As explained at the outset, the Board also received a copy of a document purporting to govern the easement (See, Exhibit 30)

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood.

Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

The "special conditions" for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the yard requirement, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

223.2(a) The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. As stated in the Findings of Fact, the proposed deck will not significantly affect light and air at neighboring properties (See, Findings of Fact 8 and 9).

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The privacy of use and enjoyment of neighboring properties will not be significantly affected by the proposed deck. Visibility from the deck will be limited and neighboring properties will be adequately screened from view. (See, Findings of Fact 8 and 10).

223.2(c). The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The proposed deck will cause no visual intrusion as viewed from the street. As set forth above, the proposed deck will not be visible from MacArthur Boulevard or Macomb Street, and will be visible only from the alley to the rear of the property. Moreover, the evidence indicates that there are similar decks in the neighborhood and the proposed deck will be compatible with the character of the neighborhood (Findings of Fact 8 and 11).

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-1-B zone (Finding of Fact 1). The proposed deck, as revised, will increase the lot occupancy, but only to 34%. (Finding of Fact 5). Therefore, this condition will be met.

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The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board does not find the ANC's advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the rear yard requirements an R-1-B zone.

Therefore, for the reasons stated above, the application for a special exception is granted.

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis L Etherly, Jr., Ruthanne G. Miller and John A. Mann II in favor of the motion to grant; John Parsons opposed to the motion by absentee ballot)

Vote taken on January 17, 2006

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: JUL 11 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

JUL 21 2006

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. 17459 of DC Hampton LLC, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirements under section 773, to allow the construction of a 27 unit multiple dwelling in the Arts/C-3-A District at premises 1446-1454 Church Street, N.W. (Square 209, Lots 911 and 917).

NOTE: Upon advice from the Office of the Zoning Administrator, the Applicant amended the application to request variance relief from the parking requirement. However, the Applicant indicated its view that the relief was not necessary. The Board concurred that relief from subsection 2101.1 (Off-Street Parking Requirements) was unnecessary.

HEARING DATE: May 2, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2F. The ANC submitted a report recommending that the Board approve the residential recreation space relief and deny the off-street parking relief. The OP submitted a report recommending that the Board approve the residential recreation space relief and denial the off-street parking relief.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the variance from the residential recreation space requirements. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the evidence of record, and upon the Board's own previous rulings, the Board finds that a parking variance is not required in this instance. The record

contains evidence that the subject site includes a historically significant building that is certified as contributing to the character of the Greater 14th Street Historic District. Section 2100.5 of the Zoning Regulations states that "no additional parking spaces shall be required for a historic landmark or a building ... located in a historic district that is certified ... as contributing to the character of that historic district." The record in this case contains citations to many decisions of this Board finding and concluding that Section 2100.5 operates to waive the requirement for additional parking spaces for new construction in such instances. This has been a long-standing consistent interpretation by this Board, as well as by the Office of the Zoning Administrator, since Section 2100.5 was enacted by the Zoning Commission in 1985. The Office of the Zoning Administrator has recently called this interpretation into question. The Board finds that its prior reasoning is sound, and that there is no reason to reverse this long-standing interpretation. Indeed it is the Board, and not the Zoning Administrator, which has the final administrative authority to interpret the Zoning Regulations. *Murray v. D.C Bd. of Zoning Adjustment*, 572 A.2d 1055, 1058 (D.C. 1990).

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

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

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

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

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

JUL 07 2006

FINAL DATE OF ORDER: _____

JUL 21 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.

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

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

Application No. 17492 of Jeff B. Speck and Samuel Hankins, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under section 403, and a variance from the off-street parking requirements under subsection 2101.1, to construct a single-family row dwelling in the R-5-B District at premises 2241 and 2243 10th Street, N.W. (Square 357, Lots 94 and 95).

HEARING DATE: June 27, 2006, July 11, 2006
DECISION DATE: July 11, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1B, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1B. The ANC submitted a report in support of the application. The OP also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2, 402, 403 and 2101.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 402, 403 and 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

VOTE: 4-0-1 (Geoffrey H. Griffis, Gregory N. Jeffries, Curtis L. Etherly, Jr. and Ruthanne G. Miller to approve; John A. Mann II not present not voting).

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

FINAL DATE OF ORDER: JUL 13 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.

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,

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

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

Application No. 17498 of Robert and Ida May Mantel, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403), rear yard requirements (section 404), and open court requirements (section 406), the R-4 District at premises 1116 East Capitol Street, N.E. (Square 988, Lot 72).

HEARING DATE(S): July 11, 2006
DECISION DATE: July 11, 2006 (Bench Decision)

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) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

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

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

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

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller and Gregory N. Jeffries to approve; John A. Mann II 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: JUL 13 2006

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

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

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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