

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2007

**REQUEST FOR GRANT APPLICATIONS FROM PUBLIC AND PRIVATE
SCHOOLS AND UNIVERSITIES IN THE DISTRICT OF COLUMBIA
TO CONDUCT COMPREHENSIVE ENERGY STUDIES**

The District Department of the Environment (DDOE) Institutional Energy Efficiency Program (IEEP) is requesting grant applications from District of Columbia public and private schools and universities to perform Comprehensive Energy Study in their facilities.

This is a two-year pilot program. In FY 2006 grants were awarded six universities to fund detailed Comprehensive Energy Studies. In fiscal year 2007 there is \$72,000 available for Comprehensive Energy studies. Based on the availability of funds, grants will be awarded to fund the purchase and installation of ECMs identified in the Energy Study report.

The IEEP will be funded and governed by DC Public Service Commission (PSC) Order No. 13475 governing the Reliable Energy Trust Funds (RETF) dated May 20, 2005 and any subsequent PSC orders. This is a matching grant program, with the cost of the energy study being shared by DDOE and the participating institution.

The Request for Grant Applications (RFGA) will be available for pick-up (one per applicant), beginning Friday, November 24, 2006, Monday to Friday from 9:00 a.m. to 4:00 p.m. at:

District Department of the Environment
2000 14th Street NW, Suite 300 East
Washington, DC
20009

The deadline date for submitting applications is Dec 31, 2006. For additional information please contact Ms. Andrea Fough at the District Department of the Environment phone number (202) 673-6750.

Government of the District of Columbia
Anthony A. Williams, Mayor

FRIENDSHIP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****LANDSCAPE ARCHITECT SERVICES**

Interested parties shall respond to this RFP by submitting sealed qualification statements (4 copies, 1 original inclusive) and by addressing the specific proposal requirements, as requested in this RFP in an envelope clearly marked **"RFP – LANDSCAPE ARCHITECT SERVICES FOR FRIENDSHIP PUBLIC CHARTER SCHOOLS"** to:

Mr. Valerie Holmes
Friendship Public Charter Schools
120 Q Street, NE
Washington, DC 20002

By no later than: **5:00 PM on Monday, December 8, 2006.**

FPCS reserves the right to reject any and all qualification statements, to cancel this solicitation, and to waive any informalities or irregularities in procedure.

LSDBE contractors are encouraged to submit proposals

Introduction

FPCS is soliciting proposals from offerors having specific interest and qualifications in the areas identified in this solicitation. Qualification statements and proposals for consideration must contain evidence of the offeror's experience and abilities in the specified area and other disciplines directly related to the proposed work. Other information required by FPCS includes the submission of profiles and resumes of the staff to be assigned to the projects, references, illustrative examples of similar work performed, and any other requested information which will clearly demonstrate the offeror's expertise in the area of this solicitation.

A selection committee will review and evaluate all qualification statements and may request offerors to make oral presentations. The selection committee will rely on the qualification statements in the selection of finalists and, therefore, offerors should emphasize specific information considered pertinent to this solicitation and submit all information requested.

Project Description

The approaches and frontages of the various schools of Friendship Public Charter Schools should be appealing, practical to maintain, and cost-effective. The desire is to incorporate the landscaping into this curb appeal, as well as consider improvements in the signage, to indicate a unique "Friendship" look. This is particularly evident at Chamberlain Elementary, which is located at 1345 Potomac Avenue SE, and will most likely be the first site to be designated for improvements. The project will consist of designing improved landscaping, submitting all suggestions for improvements, as well as actual layouts and plans, including the plants, trees and shrubs which shall be included in the final design. It may also include overseeing the installation of the final and approved plan.

Qualification Statement Requirements

The offeror shall provide the following information organized as follows in their qualification statement:

1. A brief discussion of the firm, its organization, and services offered;
2. Information which demonstrates a history of providing landscaping architect services.
3. References describing similar projects completed by the offeror during the past three (3) years, including the Owner/Client's name, contact person, telephone numbers, project description, project value, and prime contractor's name and address.
4. Proposed team and qualifications and experience of team members; knowledge and experience of team members with education, public school or charter school projects, knowledge and experience of team members with projects in the District of Columbia or surrounding local jurisdictions.
5. Experience and history of the offeror with local building and regulatory requirements, OLBD, LSDBE, and First Source and publicly financed projects. A participation plan for Local and Small Disadvantaged Business Enterprises (LSDBE) shall be required for the successful bidder. For more information on LSDBE certified firms see <http://olbd.dc.gov/>.

Proposal Requirements

Offerors shall submit the following in addition to qualifications:

1. Proposed scope of services
2. Detailed description of proposed development strategy and development issues and anticipated hurdles that the project must deal with to meet the schedule.
3. Proposed Fee and Fee Structure
4. Hourly billing rates for assigned team members
5. Budget hours and cost by day, week, month
6. A proposed unsigned contract, which includes terms, payments and total amount for contract not to exceed.

Company should address the proposal with the above items to:

Catherine Somefun
Comptroller of Schools
Friendship Public Charter Schools
120 Q Street, NE
Washington, DC 20002
Tel. (202) 281-1700
Email: vholmes@friendshipschools.org.

For further information, contact Ms. Valerie Holmes at (202) 281-1722 or e-mail vholmes@friendshipschools.org.

Office of the Secretary of the
District of Columbia

November 9, 2006

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

Banks, Sharon L.	Rpt	3636 16 th St, NW#B914 20010
Butler, Deborah R.	Rpt	Library of Congress 101 Indep Ave, SE 20540
Celia, Ann M.	Rpt	U.S. Small Business Admin 409 3 rd St, SW#7200 20416
Ciminelli, Susan L.	Rpt	Alderson Reporting 1111 14 th St, NW 20005
Clark, Christopher	Rpt	White House F C U 1724 F St, NW 20502
DeLoatch, Felecia G.	Rpt	O'Melveny & Myers 1625 I St, NW 20006
Deni, Lara J.	Rpt	Regional Title 1620 L St, NW#1200 20036
Diaz, Brenda	Rpt	W D C W TV 2121 Wis Ave, NW#350 20007
Feder, Renee	Rpt	Feder Reporting 810 Cap Sq Pl, SW 20024
Felder, II, Thomas W.	Rpt	Law Office 723 8 th St, SE 20009
Freeman, Frances M.	Rpt	Bradford Associates 1050 17 th St, NW#600 20036
Ghee, Vanessa G.	Rpt	Sparks & Silber 3221 M St, NW 20007

Hendrix-Smith, Senta	Rpt	260 37 th Pl, SE 20019
Hogue, Bernice Hughes	Rpt	Vorys Sater et al 1828 L St, NW 20036
Holloway, Beverly	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001
Johnson-Massey, Morgan L.	Rpt	4119 22 nd St, NE 20018
Jones, Jacqueline L.	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001
Kennie, Tracy A.	Rpt	1820 Tubman Rd, SE 20020
McGowan-Washington, Mary	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001
McKnight, Venitta	Rpt	Republic Property Trust 1280 Md Ave, SW 20024
Matthews, Annette B.	Rpt	O A G/Child Support 441 4 th St, NW#550 20001
Morgan, Chawndra	Rpt	O A G/Child Support 441 4 th St, NW#550 20001
Nigusse, Yodit	Rpt	Wachovia 1310 G St, NW 20005
O'Reilly, Elizabeth H.	Rpt	Michael Rinaldi & Co 5028 Wis Ave, NW#302 20016
Petroff, Rosemary S.	Rpt	Ashcraft & Gerel 2000 L St, NW#400 20036
Press, Morton H.	Rpt	Press & Press 2150 Wis Ave, NW#10 20007
Ray, Michael R.	Rpt	Congressional Fed C U F H O B, Rm 196 20026

Redmond, Janet A.	Rpt	H U D 1250 Md Ave, SW#200 20024
Sood, Vikaran	Rpt	SunTrust 3440 Wis Ave, NW 20016
Stillwell, Julia B.	Rpt	Chatel Real Estate 3210 N St, NW 20007
Strickland, Joe W.	Rpt	U.S. House of Reps/Clerk 1718 Longworth Bldg 20515
Tidwell, Claudia L.	Rpt	U.S. Beet Sugar Assn 1156 15 th St, NW#1019 20005
Tillery, Minyon M.	Rpt	Baker Botts 1299 Pa Ave, NW 20004
Tyson, Ronald L.	Rpt	D O H/H R A 825 N C St, NW2ndF1 20002
Vahle, Pamela	Rpt	Navigant Consulting 1801 K St, NW#500 20006
Washington, Loretta	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001
Williams, Bobbie	Rpt	O P M/C R/L A 1900 E St, NW#5H22 20415
Williams, Sylvia	Rpt	O A G/Child Support/Estab 441 4 th St, NW 5thF1 20001
Worley, Renee D.	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001
Wright, LaShonna	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001

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

Application No. 17429 of Friends of St. Patrick's Episcopal Day School, LLC ("FOSP") and the Vestry of St. Patrick's Parish, on behalf of the St. Patrick's Episcopal Church and Day School ("School"), collectively ("FOSP/St. Patrick's" or "Applicant"), pursuant to 11 DCMR § 3104.1 for a special exception to construct a middle and high school campus for 440 students and 100 faculty/staff, under Section 206, and a theoretical lot-subdivision for 18 homes under Section 2516 in the R-1-B Zone District on the Property at 1801 Foxhall Road, N.W. (Lots 825, 826, and 827, Square 1346).

HEARING DATES: February 28, 2006; June 13, 2006

DECISION DATE: July 11, 2006

DECISION AND ORDER

The applicants in this case are the Friends of St. Patrick's Episcopal Day School, LLC ("FOSP") and the Vestry of St. Patrick's Parish, on behalf of the St. Patrick's Episcopal Church and Day School ("School"), collectively ("FOSP/St. Patrick's" or "Applicant"). The FOSP/St. Patrick's filed an application with the Board of Zoning Adjustment ("Board") on September 9, 2005, for a special exception under 11 DCMR § 3104.1 to construct a middle and high school campus for 440 students and 100 faculty/staff, under Section 206, and a theoretical lot-subdivision for 19 single family detached houses under Section 2516, in the R-1-B Zone District, on the Property at 1801 Foxhall Road, N.W. (Lots 825, 826, and 827, Square 1346). The Property abuts National Park Service ("NPS") property on both the eastern boundary (Glover Archbold Park) and the northern boundary (Whitehaven Park).

The Board held a public hearing which began on February 28, 2006, and was continued to, and completed on, June 13, 2006. Following the hearing, at its decision meeting on July 11, 2006, the Board voted 4-0-1 to grant the application for the school special exception, subject to conditions, and separately voted 4-0-1 to grant the application for the Residential Development, subject to conditions.

PRELIMINARY MATTERS

Applicant. The Application was filed jointly by the FOSP and the School. The FOSP, a not-for-profit limited liability corporation, contributed monies and secured debt-capital in order to purchase the Property in 2004 from the Casey Mansion Foundation. FOSP has donated Lot 827 to the School for construction of a middle school and high school. An

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additional gift to the School of Lot 826 is pending, awaiting the formal approval of the Vestry of St. Patrick's Parish and the Diocese.

The School is a co-educational Episcopal day school that was founded in 1956. In 1977, the School moved to its present location at 4700 Whitehaven Parkway, N.W., a campus that is now home to students in nursery school through grade six. Pursuant to BZA Order 16852, the School opened the grades seven and eight program, whose students now attend classes on the MacArthur Campus at 4925 MacArthur Boulevard, N.W.

Application. The original application requested a special exception under 11 DCMR § 3104.1 to construct a middle and high school campus for 440 students and 100 faculty/staff ("School"), under 11 DCMR § 206, on Lot 827 and Lot 826, and a theoretical lot-subdivision for 19 single-family detached dwellings ("Residential Development") under 11 DCMR § 2516, on Lot 825, for Property at 1801 Foxhall Road, N.W. (Lots 825, 826, and 827, Square 1346). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Amended Application. Before the presentation of the Applicant's case at the June 3, 2006 hearing, the Applicant explained that it had amended its application in response to ANC, neighborhood, and government agency concerns, and the Board accepted these amendments. The amendments include changes to the design of both the School and the Residential Development, as well as one design change which affects the whole site – the relocation of all the retaining walls 18 inches into the Property, away from its boundaries with the surrounding parkland.

The major amendments to the application with regard to the School are as follows: (a) redesign of the Foxhall Road northbound right-of-way; to permit two lanes of unimpeded northbound traffic passage at all times, and the addition of a right turn lane northbound at the School entrance, and (b) as a part of the agreements with the parties and other concerned citizens, a revised Operations Plan for the St. Patrick's Middle and High School ("Operations Plan") marked as Exhibit 86 of the record.

The major amendments to the application with regard to the Residential Development are as follows: (a) a decrease in the number of lots for the theoretical lot subdivision from 19 to 18, thus removing a lot in the northeast section of the Property abutting the Glover-Archbold Park to accommodate concerns of the National Park Service, (b) removal of a staircase leading down into Glover-Archbold Park, and (c) revised architectural restrictions for the proposed theoretical lot houses and the matter-of-right houses on Hoban Road ("Architectural Agreements"), marked as Exhibit 87 of the record.

Notice of Application and Notice of Public Hearing. By memoranda dated September 12, 2005, the Office of Zoning ("OZ") advised the D.C. Office of Planning ("OP"), the Zoning Administrator, the District of Columbia Department of Transportation

("DDOT"), the Councilmember for Ward 3, Advisory Neighborhood Commission ("ANC") 3D, the ANC within which the Property is situated, and the Single Member District Commissioner, ANC 3D09, of the application.

Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed the Applicant, the owners of all property within 200 feet of the Property, and ANC 3D, notice of the February 28, 2006 hearing. Notice was also published in the D.C. Register. The School's affidavits of posting and maintenance indicate that three zoning posters were posted beginning on February 8, 2005, in plain view of the public.

Requests for Party Status. ANC 3D was automatically a party in this proceeding. The Board granted party status to: (i) the Colony Hill Neighborhood Association ("CHNA"), which represented the residents of the 41-home adjacent neighborhood located directly south of the Property; (ii) John Forrer, an individual property owner who lives at 1714 Hoban Road N.W., directly south of the proposed Residential Development; and (iii) Camille Comeau and Jay Hebert, individual property owners who live at 1717 Foxhall Road, N.W. Subsequent to the February 28, 2006 hearing, all three parties entered into agreements with the Applicant. Therefore, at the commencement of the June 13, 2006 hearing session, all three parties withdrew as Parties in Opposition and requested to be recognized as Parties in Support of the Application.

Applicant's Case. The Applicant presented testimony and evidence from John Delaney, managing member of the FOSP and former chairman of the School's Board of Trustees; Peter Barrett, Head-of-School; Alan Ward, recognized by the Board as an expert in architecture and land planning, and a principal of Sasaki Associates, the land planners for the Project; Anthony Barnes, recognized by the Board as an expert in architecture, and a principal at Barnes Vanze Architects; Martin Wells of Wells & Associates, recognized by the Board as an expert in transportation and traffic engineering; and Terry Armstrong, the Chief Financial Officer of the St. Patrick's Episcopal Church and the Day School. Their relevant testimony will be reflected in the Findings of Fact that follow.

The Applicant indicated the intent to begin construction of the Residential Development as soon as possible, but stated that the full build-out of the School would likely take longer. Consequently, it asked the BZA to allow the School campus to be built-out in phases over several years.

Government Reports. Office of Planning: By a report dated February 21, 2006, and in testimony at the public hearing, OP recommended approval of both special exceptions requested in the application, subject to a series of conditions derived from community concerns, the Applicant's proposed mitigation measures, and recommendations of the District Department of Transportation. OP proposed a separate list of conditions for the School and for the Residential Development, but testified at the public hearing that the

Applicant's School Operations Plan (Exhibit No. 86), the School's TMP (Exhibit No. 35), and the Architectural Agreements (Exhibit No. 87) effectively incorporate, and in most cases are more stringent than, OP's proposed conditions, thus accomplishing the goals of those conditions.

OP concluded that the proposed School meets the requirements of §§ 206 and 3104. In analyzing the elements of these two sections, OP opined that (1) the number of students and staff, 440 students and 100 faculty/staff, would not be objectionable; (2) noise from the school was not likely to become objectionable to neighboring properties because the buildings will be recessed into the topography, and the School has agreed to limit the nighttime use of the field; (3) the School's TMP would successfully limit its traffic impact on Foxhall Road and the surrounding neighborhood roads; and (4) the 217 on-site parking spaces, 105 more than is required by the Zoning Regulations, will accommodate students, teachers, and visitors to the site.

OP also stated that the Residential Development satisfied the requirements of §§ 2516 and 3104. In particular, OP found that the Residential Development will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will only have a "minimal impact on neighboring properties." OP also opined that the Residential Development will not likely have an adverse effect on the present character and future development of the Colony Hill neighborhood because the Applicant has proffered a set of Architectural Guidelines that are to be included in the Homeowners' Association ("HOA") Guidelines; and is planting additional trees and performing landscaping that will help to create a buffer around the houses in the new Residential Development. OP also addressed the specific requirements of § 2516 and found them to be satisfied.

District Department of Transportation: DDOT, by written reports and testimony at the hearing, determined that the application would not have an adverse traffic or parking impact, provided certain conditions were met by the Applicant. DDOT agreed that the Applicant's traffic analysis was accurate and that the School's campus circulation is adequate, but recommended that the Applicant construct a 6-foot sidewalk adjacent to the eastern side of Foxhall Road. DDOT supported the Applicant's Travel Management Plan and requested that the School implement a carpooling plan and van shuttle service to reduce vehicle trips to the school. DDOT, by its written reports and in testimony, approved the Applicant's proposed changes to Foxhall Road ("Revised Foxhall Road Plan," marked as Exhibit No. 84 of the record). With regard to the Residential Development, DDOT stated that its traffic impact would not be objectionable.

District Department of Health: The Department of Health's Environmental Health Administration, by a memorandum dated February 27, 2006, stated that the Water Quality Division had decided to take jurisdiction over an isolated wetland in the "Southern Swale" of the Property and indicated that the Applicant will be required to

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submit an application for mitigation of this area. Two representatives of the DOH testified at the hearing that: (1) the Applicant had submitted the requested application for mitigation pursuant to its February 27th memorandum and DOH will review and make its decision on this application following a review and recommendation by the United States Army Corps of Engineers ("ACOE"); and (2) that DOH has no concerns about the Applicant's storm water management system, which meets the District of Columbia standards.

National Park Service: David Murphy of NPS testified during the June 13, 2006 hearing that the NPS has no objection to the Applicant's proposed design, but that the NPS: (1) wants to make certain that the parkland downstream from the Property is protected; (2) is interested in the outcome of the wetlands mitigation application; and (3) would like the "Northern Dell" to be preserved as open space. Mr. Murphy indicated that NPS was pleased with the Applicant's decisions to eliminate a lot in the northeast corner of the Property, move all retaining walls 18 inches away from the parks, set back all the houses 30 feet from the parkland, set back the School buildings 50 feet from the parkland, and eliminate a stairway from the Residential Development into the parkland.

U.S. Army Corps of Engineers: On July 8, 2005, the Army Corps of Engineers confirmed that the Property contained no jurisdictional wetlands, although the ACOE did take jurisdiction over an ephemeral stream in the southern portion of the Property, which it found to be a "Waters of the United States." Specifically, the Army Corps of Engineers' Jurisdictional Determination Number 05-02418-11 dated July 8, 2005 stated that the ACOE performed a field inspection with representatives of the District Department of Health Water Quality Division on June 3, 2005 and concluded that, other than the ephemeral stream, "these isolated areas are not subject to Corps' jurisdiction pursuant to Section 404 of the Clean Water Act and Department of the Army authorization is not required for any work in these areas" (see Exhibit No. 21, Tab D).

ANC 3D: On February 16, 2006, the ANC voted 6-1-0, at a regularly scheduled meeting with a quorum present, to recommend approval of the special exception for the School, subject to conditions, and, by a vote of 7-0-0, to recommend approval of the special exception for the Residential Development, also subject to conditions. Later, during a special meeting on May 28, 2006, the ANC voted to request that certain additional conditions be included in any BZA Order. Following the May 28, 2006 ANC vote, the School agreed to include most of the "Additional Conditions" in the St. Patrick's Operations Plan, which is marked in the record as Exhibit No. 86. All of the ANC's proposed conditions have been addressed throughout the course of the proceedings before the Board, and they have all been substantially met.

Parties and Persons in Support of Application. At the hearing, the individuals and organizations granted party status (in opposition) by the Board, (CHNA, John Forrer, and

Camille Comeau and Jay Hebert) testified that they had executed agreements with the Applicant and were now Parties in Support of the Application. CHNA and John Forrer testified that their transition to parties in support was based on the Applicant's and the BZA's adoption of the St. Patrick's Operations Plan and the Architectural Agreements, which are marked as Exhibits Nos. 86 and 87 of the record, and urged their adoption into the BZA Order. Camille Comeau and Jay Hebert also testified that the Applicant's redesign of, and DDOT's support for, the Revised Foxhall Road Plan (Exhibit No. 84) was critical to them.

In addition, the Foxhall Community Citizens' Association ("FCCA") testified as an association in support and stated that it too had executed an agreement with the Applicant. The FCCA also urged the BZA to adopt the St. Patrick's Operations Plan (Exhibit No. 86) into the Final Order. Other neighbors testified as persons in support, and the BZA received many letters of support for the application.

Parties and Persons in Opposition to the Application. There were no parties or persons in opposition to the application that appeared at the public hearing. The record contains letters of opposition to the application, but the concerns cited in those letters are effectively addressed by the Applicants' submissions at the June 13, 2006 hearing and by the conditions of this Order.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The Property consists of 17.3 acres of undeveloped land and is located in an R-1-B zone district at 1801 Foxhall Road (Lots 825, 826, 827, Square 1346). The Property had previously been used as a farm and for a single-family dwelling known as the Brady Estate.
2. The Property is located in Ward 3 and is bordered by Foxhall Road on the west; Whitehaven Park on the north; Glover-Archbold National Park on the east; and Hoban Road and the Colony Hill neighborhood of 41 single-family dwellings on the south. The German Embassy complex is located across Foxhall Road from the Property.
3. The Property has been undeveloped for several years and is highly vegetated. It is improved only with parts of the foundation of the Brady Mansion, a gate and stone driveway, a perimeter fence, and some retaining walls.
4. The topography of the Property consists of moderate, to sharply, rolling terrain with slopes ranging up to 40 percent. There are two prominent knolls on the Property, one near its center, and one on the northern portion of the Property. Generally, the

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Property slopes from a high along Foxhall Road, with an elevation of 240 feet above sea level, toward Glover-Archbold Park, with an elevation of 150 feet, and from the Whitehaven Park down toward Hoban Road. Notwithstanding past uses of the Property, many of the natural contours and slopes still exist.

5. The Property contains two natural drainage areas, the "Northern Dell" located at the north of the Property, which is well-preserved in a natural state, and the more heavily-manipulated "Southern Swale," located near the southern edge of the Property.

6. The Southern Swale contains an ephemeral stream, which the ACOE determined constitutes a "Waters of the United States," and over which it took jurisdiction.

7. Other than the ephemeral stream, the ACOE determined that there are no other areas on the Property which are subject to its jurisdiction.

8. There are many mature trees on the Property, approximately 293 of which are designated as "special" trees under District of Columbia law, with a circumference of 55 inches or greater.

9. To measure the project's environmental impact, the Applicant commissioned an Environment Assessment, included as Exhibit F of the Applicant's Pre-Hearing Statement, marked as Exhibit No. 35 in the Record.

10. The Applicant also commissioned a Phase 1 Archeological Study, included as Exhibit G in the Applicant's Pre-hearing statement, marked as Exhibit No. 35 in the record. The Phase 1 Archeological Study concluded that the Property had been extensively farmed and/or landscaped during the 19th and 20th centuries. Thus, although it appears in a natural, unlandscaped state, the entire Property, but most markedly the Southern Swale, was likely disturbed by farming or landscaping in the past.

11. The Property is also encompassed within the upper reaches of a larger surface drainage area that feeds into an off-site stream that flows northeast into Glover-Archbold Park and drains into Foundry Branch, a minor tributary of the Potomac River.

12. DOH has decided to take jurisdiction over an isolated wetland located in the highly manipulated Southern Swale and has requested that the Applicant file a Wetlands Application to the D.C. DOH and ACOE for mitigation of the impact on this isolated wetland. The Applicant filed the Wetlands Application on May 10, 2006.

The Applicant's Proposed Project

13. The Applicant proposes to divide the Property into three separate parcels, each with a different use.

14. One parcel will be used for a new private middle and high school, one will remain undeveloped, and one will be developed with multiple single-family dwellings.
15. The northwest corner of the Property, currently Lot 827, consisting of 7.72 acres, will be developed with a new middle school and high school, with attendant accessory buildings, such as a gymnasium, and a playing field.
16. The playing field is to be located to the south of the school campus and runs lengthwise parallel to Foxhall Road. It is bordered by a tree buffer between it and the new single-family dwellings to be built to its south and east.
17. Beginning as a strip to the north of the playing field, widening as it curves to the east and north, and ending at Whitehaven Park, is the second parcel, known as the "Northern Dell." It is currently Lot 826, consists of 1.53 acres, and will remain undeveloped except for a pedestrian path. The Dell will remain under the School's control.
18. The third and last parcel, consisting of 8.05 acres, currently Lot 825, occupies a strip of the Property south of the playing field and, essentially the eastern half of the Property, ending at Hoban Road to the south and Glover-Archbold Park to the east.
19. Lot 825 is to be subdivided into 27 lots for single-family dwellings, nine of which will front Hoban Road and are matter-of-right for zoning purposes. The remaining 18 lots will be theoretical lots for zoning purposes, and will be serviced by an internal private road.

The Proposed Private School Use

20. St. Patrick's Episcopal Day School, a co-educational Episcopal Day School, was founded in 1956. Currently, St. Patrick's educates students in grades nursery through eight and is located at 4700 Whitehaven Parkway and 4925 MacArthur Boulevard, NW.
21. The new middle and high school will have a total enrollment of 440 students in grades seven through twelve and 100 faculty and staff.
22. The School campus will be constructed on the northern portion of the Property so as to be closest to the existing elementary school on Whitehaven Parkway.
23. The School will be constructed as two separate campus quadrangles, one for the high school and one for the middle school. In addition to the academic quadrangles, the campus will include separate accessory buildings/uses – a(n) administrative building, gymnasium, athletic field, and school theater/auditorium – as well as a 170-car underground parking structure.

24. The buildings are designed to be tucked into the Property's topography to limit the School's visual impact. The campus as a whole will be integrated within the Property and will have significant green set asides including a campus green area. The School buildings will be set back 50 feet from Whitehaven Park and will include stepped, planted retaining wall/bank areas.

25. The School campus is designed to meet and/or exceed the zoning requirements of the R-1-B zone district. Specifically, the buildings will not exceed 40 feet in height and they will have side and rear yard setbacks substantially in excess of those required. The total lot occupancy of the School site will be 19.3 %, and a total of 217 parking spaces are being provided, in excess of the 112 parking spaces required by the Zoning Regulations. See, respectively, 11 DCMR §§ 400.1, 405.9, 404.1, 403.2, 206.3, and 2101.1.

26. As will be discussed in greater detail in Finding of Fact Nos. 32 and 33, the School has adopted an Operations Plan, marked as Exhibit No. 86, and attached hereto as an addendum to this Order, which the School must fully implement and comply with as a condition of this Order. The Plan addresses various aspects of the School's operations, both day-to-day, such as traffic and parking, use of the playing field, and deliveries, and more out-of-the-ordinary operations, such as use of the School's facilities for "events" outside the normal school routine.

27. Highlights of the Operations Plan include: (1) a cap on the number of in-bound morning peak hour trips to the School at 146 trips, (2) all parking on-site, (3) limits on the use of the athletic field, including no lights for nighttime athletic use, (4) a limitation on the number of events (not related to School operations) with more than 50 participants, (5) a closed campus, and (6) no summer camp or adult education programs or classes.

28. The School has also adopted a "Six Point Travel Management Plan" ("TMP"), marked as Exhibit No. 35, Attachment I, and attached hereto as an addendum to this Order, which the School must fully implement and comply with as a condition of this Order. The Plan will be discuss in greater detail in Finding of Fact 46, but essentially it sets forth six initiatives to alleviate any potential traffic or parking impacts which the School's operations would otherwise have: (1) carpool initiative, (2) shuttle bus service plan, (3) parking solutions plan, (4) student driving initiative and controls, (5) walk/bicycle initiative, and (6) staggered arrival and dismissal time plan.

A. Noise Impacts

29. Due to the School's relative isolation, bordered to the north by Whitehaven Park, to the east and south largely by the undeveloped Northern Dell, and to the west by Foxhall Road, no excessive noise is likely to spill beyond the campus boundaries.

30. The School buildings are 640 feet from the existing neighbors to the south, 350 feet from a single neighbor to the north, and more than 250 feet from the German ambassador's residence across Foxhall Road.

31. The School buildings and playing fields are tucked into the topography, further reducing any noise impact from the School.

32. As noted in Finding of Fact No. 26, the School has submitted the St. Patrick's Operations Plan, attached hereto, which establishes policies and specific constraints to assure that the School's operations will not create an adverse noise impact on neighboring properties.

33. The Operations Plan includes the following limitations with respect to athletic events:

- (a) Games, practices, and other organized uses will not be scheduled to start on the athletic field after 5:30 p.m. and practices and other organized uses of the field (except for games) will conclude at the earlier of dusk or 7:00 p.m.;
- (b) Games, practices, and other organized uses will not be regularly scheduled on Sundays and will not be held on Sundays unless required by the School's athletic league for make-up games or unless on an emergency basis;
- (c) Sound systems or any amplified sound on or near the field will not be permitted, although a temporary amplification system may be used for special events no more than three times per year; and
- (d) The athletic field may not be rented or use outside individuals or groups.

34. With respect to non-athletic events, the Operation Plan provides that, within any given year, the School may hold no more than:

- (a) Ten "major" non-athletic events, all of which must conclude by either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday) except for a limited number of late evening events;
- (b) Five events per year that are not directly related to the business or activities of either the middle school or the high school and for which the number of attendees is expected to exceed 50, but none of these events may be held on the athletic field;
- (c) Five events during the summer that conclude after 7:00 p.m. and for which the number of attendees is expected to exceed 50 and any such events may be held indoors or outdoors, but will not be held on the athletic field;
- (d) Six indoor (non-athletic) evening events per year that conclude after either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday); and

- (e) Four outdoor (non-athletic) evening events that conclude after 8:00 p.m. which will conclude by either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday). Only two of these four events may conclude after either 10:00 p.m. (Sunday through Thursday) or 11:00 p.m. (Friday and Saturday) and these events will not be held on the athletic field.

B. Traffic Impacts

- 35. Foxhall Road, at this location, is a four lane arterial road, which carries a high volume of commuter and local traffic.
- 36. The Applicant is working with DDOT to improve the Foxhall Road right-of-way in the vicinity of the School to avoid adverse traffic impacts from the existence of the School. The Applicant will provide a full-movement, signalized intersection on Foxhall Road at the School's entrance. This intersection will feature a demand-activated traffic signal, approximately 700 feet south of Whitehaven Parkway and 1100 feet north of Reservoir Road.
- 37. The Applicant, working with DDOT, will also add a dedicated southbound left-turn lane on Foxhall Road leading to the School's entrance, enabling the two existing southbound lanes to remain as unimpeded through lanes.
- 38. The Applicant, working with DDOT, will also add a right-turn lane on Foxhall Road leading to the School's entrance, enabling the two existing northbound lanes to remain as unimpeded through lanes.
- 39. The Applicant, working with DDOT, will construct a six-foot sidewalk along Foxhall Road to ensure easy pedestrian access to the School and to permit students to safely walk from the existing lower school campus to the proposed middle and high school campus.
- 40. The School campus includes an internal circulation system with a 1,175-foot two lane loop road, operated counterclockwise, that will accept vehicles entering the site from Foxhall Road, and on which all student drop-offs and pick-ups will occur.
- 41. The School's loading requirements will also be serviced on-site on the loop road and attendant areas, used as needed.
- 42. The campus' internal road system provides queuing space for 47 cars in one lane, and 94 cars in both lanes. The projected demand for queuing spaces is 24 cars; therefore, the design more than adequately addresses the need for on-site vehicular queuing.

43. The School will generate 262 vehicle trips during its morning peak hour, but has agreed to "cap" in-bound morning peak hour trips to 146 to mitigate any effect on morning rush-hour traffic.

44. The School will generate 175 vehicle trips during its afternoon peak hour, and 189 vehicle trips during the peak p.m. commuter hour, but the Board credits the testimony of DDOT and the Applicant's traffic expert that these peak-hour increases will be kept within reasonable limits by the installation of the new left-turn lane and signal and by the implementation of the Traffic Management Plan.

45. The School has submitted the TMP attached hereto, which establishes policies and specific constraints to assure that the School's operations will not create an adverse impact on traffic and parking in the neighborhood. The TMP includes the following measures:

- (a) A carpool initiative with a goal of achieving an average vehicle occupancy of 1.75. The carpool program will be closely monitored, and incentives, such as an "express lane" for cars with high vehicle occupancies, may be implemented;
- (b) A shuttle bus service between the School and appropriate locations, such as Metro stations; the School is also exploring the possibility of a joint shuttle bus service with other neighborhood institution. The School will provide the number of shuttle buses necessary to operate the program;
- (c) The School will provide a total of 217 parking spaces on-site and will create, implement, and enforce a strict set of guidelines relating to student drivers and where they are permitted to park;
- (d) A student driving plan mandating that student drivers must apply for permission to drive to the School, must park on campus, must carpool, and must park in designated spaces. Students will not be permitted to drive off-campus for lunch;
- (e) A walk/bicycle initiative to encourage students to arrive at School other than by car, including requiring any student whose sibling is dropped off at the School's Whitehaven campus to walk to the Foxhall campus; and
- (f) A staggered arrival and dismissal time plan, with at least a 20-minute difference between the middle and upper school start and dismissal times and a requirement that faculty report before 7:30 a.m.

46. The TMP will be part of the enrollment contract between the School and the students' families and compliance with it will be required for continued enrollment at the School.

47. The School will observe and monitor on-site traffic, driveway use, queuing, parking, and arrival and dismissal of students, and any students violating parking policies

will be subject to revocation of driving privileges or eventual suspension or expulsion from the School.

48. The Board credits DDOT's oral testimony at the public hearing and its reports dated February 24, 2006 and June 9, 2006, in which it stated that implementation of School's access and circulation plan, its TMP, and the Revised Foxhall Road Plan (Exhibit No. 84) will ensure that the School will not create any adverse impact due to traffic.

C. *Parking*

49. For middle schools, the Zoning Regulations require two parking spaces for every three faculty and other employees. For high schools, the requirement is two spaces for every three faculty and other employees plus one space for each 20 classroom seats, or one space for each 10 seats in the largest gym, auditorium, or area useable for public assembly, whichever is greater. 11 DCMR § 2101.1.

50. As a private school use, the School is also required to have "ample" parking, 11 DCMR 206.

51. The Zoning Regulations therefore require that a minimum of 112 parking spaces be provided by the School. The School is providing a total of 217 on-site parking spaces, 170 underground spaces and 47 above-ground spaces.

52. In the event more parking is required, perhaps it will be provided on the Whitehaven campus. If parking need exceeds even this capacity, the School will arrange for satellite parking and shuttle buses.

53. The School will also carefully monitor all parking on the campus and is attempting to prevent any off-campus or street parking by anyone involved with the School to avoid any impact on the neighborhood.

D. *Other Potentially Objectionable Conditions*

54. The Applicant will take several precautions to avoid any immediate objectionable impact on the surrounding parkland, including moving all the retaining walls at the perimeter of the Property 18 inches inside the property line and away from the parkland, and removing a staircase that was originally planned to descend to Glover Archbold Park. The maximum height of the retaining walls will also be capped at five feet and if the grade requires a higher wall, a planted slope bank and second retaining wall further away will be constructed.

55. The Applicant will plant evergreen and deciduous trees to screen the school buildings and the playing field from Foxhall Road.

56. To manage storm water and runoff during rain and snow events, the Applicant will incorporate 24-hour extended detention of the one-year storm into the proposed detention vaults. This method is "state-of-the-art" in protecting against downstream erosion and has recently been adopted into the storm water standards of both Maryland and Virginia. The storm water management system adopted by the Applicant will provide detention for the two- and 15-year storms and storm water quality management as required by the District of Columbia. The storm water management system will limit discharge rates to two cubic feet per second ("CFS") at each of the four proposed storm water facilities for the one-, two-, and 15-year storm events, but not for larger events. Existing, pre-development, storm water flows for larger storm events also exceed two CFS.

57. Storm water fall-out will be directed into the Northern Dell, but the School's storm water management system also incorporates a special overflow mechanism that, in the case of an extreme storm event, will share the overflow between both the Northern Dell and the Southern Swale drainage systems. There are also two smaller storm water release locations, one in the northeast of the Property, and one in the southwest corner.

58. The storm water management facilities will have sand, cartridge, or similar filters to filter out suspended solids and consideration will be given to using natural features, such as plunge pools, bio-retention areas, and natural grasses, to enhance filtering capabilities.

59. A system of pedestrian paths through the School site will use, at least in some portions, porous paving materials, further enhancing storm water control and management.

60. The Applicant has adopted a tree preservation plan and intends to save at least 50% of the healthy special tree candidates and to plant many other new trees on the site. A Special Tree removal permit must be obtained for each special tree to be removed.

61. The Applicant will retain the Northern Dell as undeveloped, open space with no fence between it and Whitehaven Park. The School's landscape plan includes three open space areas – a nature amphitheatre, a large campus green, and a smaller courtyard. The landscape design also preserves valuable viewsheds.

62. The School will have a closed campus, with no students driving or walking off campus, except for emergencies or scheduled appointments.

E. Harmony with the Zoning Regulations and Map

63. The Comprehensive Plan Generalized Land Use Map designates the site as low-density residential and many residential neighborhoods include institutional uses, such as schools.

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64. The Board credits the report and testimony of OP, which stated specifically that "the [School] proposal fulfills the intent of the Zoning Regulations."

The Residential Development/Theoretical Lot Subdivision

65. The Applicant is proposing to subdivide the remainder of the Property into 27 lots, each to contain a single-family dwelling.

66. The lots will vary in size, but all will meet the minimum lot size and lot width required for this R-1-B zone district. See, 11 DCMR §401.3. The minimum lot width will be 50 feet and the lot sizes will be between 7,800 square feet and 20,780 square feet, with an average size of 10,363 square feet.

67. Nine of the lots will be matter-of-right lots for zoning purposes, with street frontage on Hoban Road and vehicular access provided by a rear alley.

68. The other 18 lots will be theoretical lots for zoning purposes, and will be created pursuant to 11 DCMR § 2516. An internal, private road to be constructed by the Applicant will provide street frontage and access to these 18 lots.

69. All of the single-family dwellings to be constructed on these 27 lots will meet all the dimensional requirements of the R-1-B zone district. Each will have a maximum of 40% lot occupancy, a maximum height of 40 feet and three stories, a rear yard of (at least) 25 feet and side yards of (at least) eight feet. See, 11 DCMR §§ 400.1, 403.2, 404.1, 405.9, and 2516.9.

70. As required by § 2516.5(b), the theoretical lots are also designed to leave an (at least) 25-foot front yard (front porticos excepted). Although not required of the matter-of-right lots on Hoban Road, the Applicant is setting back the dwellings on those lots (at least) 25 feet from Hoban Road (front porticos excepted).

71. The internal, private access road is a loop road and is a northward extension of existing 45th Street, N.W., which currently ends at Hoban Road. No part of the area to be used for the loop road is part of any of the theoretical lots or their yards. See, 11 DCMR § 2516.6(a).

72. The internal loop road will have sidewalks on one side to provide a safer, more "walkable" neighborhood.

73. For most of its length, the internal loop road is 28 feet wide, with two 10-foot travel lanes and one eight-foot parking lane. In some areas, however, the road narrows to 22 feet (within a 25-foot right-of-way), with two 11 foot travel lanes and no parking lane.

74. The Zoning Regulations require that the loop road be 25-feet wide for its entire length (11 DCMR § 2516.6(b)), and that if there is only one entrance or exit from the internal loop road to roads outside the theoretical subdivision, a turning area of not less than 60 feet in diameter must be provided. 11 DCMR § 2516.6(c). Section 2516.6(d), however, permits the Board to modify these requirements if the modification will not have an adverse effect on the present character and future development of the neighborhood. The Board must specifically consider building spacing and parking requirements.

75. The Board finds that even at 22 feet at some points, the internal loop road adequately provides safe access to the theoretical lots and that the reduced width is necessary due to the topography of the site and the preservation of trees.

76. Even with a somewhat reduced road width, the building spacing leaves ample open space between and around the single-family dwellings, and there is still sufficient room for parking in the parking lanes provided in the wider portions of the road, in the garages provided with the dwellings, and, if necessary, in the driveways also provided.

77. There is only one entrance/exit from the internal loop road to outside the theoretical lots – at the intersection of Hoban Road and 45th Street, N.W. There is no turning area provided, however, the fact that the road is designed as a loop obviates the need for a turning area, which would be necessary if the single access roadway ended in a cul-de-sac.

78. The Board credits OP's testimony that "the modification from cul-de-sac to loop road is preferable" and that "the proposed loop road will not affect the future development of the area and the lots are above the area requirements and appropriate parking for each house is provided."

79. The development of 27 single-family dwellings is not overly dense for the neighborhood and each dwelling will provide off-street parking.

80. The Development will generate between approximately 17 and 28 peak hour trips, less than one every two minutes, therefore, no objectionable increase in local traffic or street parking on currently-existing roadways is anticipated.

81. Vehicular access to all the new dwellings, including those fronting on Hoban Road, will be from the interior of the site, either directly off the internal loop road or from an alley system connecting to the loop road. Therefore, no curb cuts will need to be made along Hoban Road and traffic will not be hindered by vehicles entering or exiting driveways onto Hoban Road.

82. The combined traffic from the School and the Residential Development will have a minimal impact on Foxhall Road because it will only increase northbound peak hour traffic on Foxhall as little as five, but not more than 14%, and it will only increase southbound peak hour traffic by between one and four per cent.

83. In terms of delays, the combined traffic would add about 12 seconds of delay for vehicles entering the Foxhall/Whitehaven intersection at the a.m. peak hour and no measurable delay during the p.m. peak hour. At the intersection of Foxhall and Reservoir, 3-8 seconds of delay would be experienced.

84. In order to ensure that the Residential Development does not have an adverse effect on the present character and future development of the neighborhood, the Applicant has agreed to implement, three documents containing restrictions and constraints on various aspects of the Residential Development.

85. These three documents, called the Architectural Agreements, marked as Exhibit No. 87, and attached hereto as an addendum to this Order, must be fully implemented and complied with by the Applicant as a condition of this Order.

86. The first of the Architectural Agreements sets forth guidelines, covenants, conditions, and restrictions applicable to all the dwellings in the Development. The guidelines cover general site and building elements, such as fences, retaining walls, leadwalks and steps, mailboxes, fenestration, chimneys, stoops, and porches and porticos. Examples of the covenants, conditions and restrictions are also set forth, and are those that are generally applicable to residential developments with homeowners' associations, such as no billboards or signs may be displayed, trash must be regularly removed, and no noxious or offensive activities can be carried on. The last part of the first Agreement sets forth a simplified set of architectural restrictions to apply only to the new dwellings fronting on Hoban Road.

87. The second of the Architectural Agreements sets out, in great detail, specific architectural restrictions relating to the initial construction of the dwellings fronting on Hoban Road. These restrictions control many aspects of the appearance of the dwellings, including the percentage of the façade which must be fenestrated, the size and orientation of window openings, the materials to be used to cover the exterior walls, and whether or not shutters will be used.

88. The last of the Architectural Agreements explains how the Applicant and the builder(s) will comply with, and enforce, the Hoban Road restrictions, including an explanation of dispute resolution mechanisms to be used if a dispute arises with the neighborhood, specifically with the Colony Hill Neighborhood Association.

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89. The Applicant will plant many new trees throughout the Residential Development and has designed the Development, including the internal loop road, so as to save as many existing trees as possible.

90. The Residential Development will include three pocket parks, two of which feature important, mature trees, and one of which contains an ephemeral stream. The ACOE took jurisdiction over a 400-foot stretch of the stream and the Applicant is preserving a 25-foot buffer around it.

91. The design of the Development has also been altered from its original in order to enhance protection of adjoining parkland. Specifically, to achieve this goal, the number of dwellings to be constructed was reduced by one and the Applicant has designed the project to create appropriate and attractive park edge conditions. All the dwellings are set back 30 feet from the parkland and a staircase planned to descend to the Glover-Archbold Park was removed. All retaining walls were moved 18 inches back from the parkland and their maximum height will be capped at five feet. If the grade change requires a higher wall, a planted slope bank and second retaining wall further away will be constructed.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104 and § 206 (Private Schools and Staff Residences) with respect to the School, and had to meet the requirements of both § 3104 and § 2516 (Exceptions to Building Lot Control, *i.e.*, Theoretical Lot Subdivisions) with respect to the Residential Development.

The School Special Exception

Section 206.2 of the Zoning Regulations mandates that the School be located so as not to become objectionable to surrounding properties due to noise, traffic, number of students, or other objectionable conditions. 11 DCMR § 206.2. Section 206.3 states that ample parking must be provided, but not less than that required by Chapter 21, to accommodate students, teachers, and visitors. 11 DCMR § 206.3. Similarly, § 3104 stipulates that the special exception use not tend to affect adversely neighboring properties, and further, that it be in harmony with the Zoning Regulations and Map.

The Board finds that the School use will not adversely affect, or be objectionable to, the surrounding properties. The School buildings will be situated within the topography so as not to cause any particular visible or audible (noise) impact on the surrounding neighborhood. To further mitigate any such impacts, the Applicant has agreed to be bound by an Operations Plan, controlling various aspects of the School's use, particularly the use of the athletic field. To alleviate any potential impacts on local traffic, the School is both implementing a strict Travel Management Plan and is working with DDOT, and paying for, improvements to Foxhall Road and its intersection with the School's entrance.

The size of the School, at 440 students and 100 faculty members, is manageable on the site and within the community. The enrollment maximum permits all the School's current elementary students to remain enrolled at the School while allowing for some natural expansion at grades seven and nine as is the practice at many schools. The School will be providing ample on-site parking, and significantly more than is required by Chapter 21. The 217 spaces provided will be more than sufficient to accommodate the needs of students, teachers, and visitors. Parking is also addressed in the TMP and the Applicant has been sensitive to the needs of the community regarding parking, as well as student drop-offs and pick-ups.

The Applicant has also worked with the neighborhood and the National Park Service to strike a balance between the needs of development and the preservation of the most valuable natural resources of the Property and the adjoining parkland.

The Applicant's proposal for the School is in harmony with the purpose and intent of the Zoning Regulations and Map. The School buildings will be constructed within all the dimensional requirements of the R-1-B zone district and the use is consistent with the designation of low-density residential on the Comprehensive Land Use Map, particularly at its location at the confluence of two larger streets – Whitehaven Parkway and Foxhall Road.

The Applicant has requested that it be permitted to construct the various School buildings in phases, over a multi-year period. This Order is conditioned to allow the Applicant to do so.

The Residential Development Special Exception

Section 2516 permits the construction of two or more principal buildings on a single subdivided lot in a residence zone, including private schools. The Applicant intends to subdivide Lot 825 into 27 individual lots and construct a new single-family dwelling on each one. In order to be permitted to do this, the Applicant must meet certain provisions set forth in § 2516. As set forth in the Findings of Fact and briefly discussed below, the

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Applicant's proposed Residential Development meets all the applicable provisions of § 2516, as well as the requirements of § 3104.

Each of the new dwellings will meet all the dimensional requirements of the R-1-B zone district and/or the special requirements of § 2516, and each will provide an off-street parking space. Each of the dwellings will have street frontage, either on Hoban Road or on an internal, private loop road. No part of the road will also comprise a part of any of the theoretical lots or yards. Although the road will not be 25 feet wide for its entire length and there is no turning area provided, which are requirements of § 2516.6(b) and (c), respectively, the Board is permitted to modify these requirements pursuant to § 2516.6(d).

Modification of the street width and turning area requirements necessitates that the Board consider whether such modification is likely to have an adverse effect on the present character and future development of the neighborhood, taking into account the spacing of buildings and the availability of parking. The Residential Development was designed to provide ample open space around the dwellings, with trees and other landscaping. The parking provided along the loop road, in the garages, and in the driveways, as necessary, is sufficient to meet the needs of residents, guests and service/deliverymen. The loop road is two-way and circles the development, providing easy ingress and egress. Because it is a *loop* road, and does not end in a cul-de-sac, as is often the case in theoretical lot developments, there is no need for a turning area. The Board concludes that the street width and turning area modifications are not likely to have an adverse effect on the present character or future development of the neighborhood.

Pursuant to § 2516.9, the entire Residential Development must meet the same standard – no likely adverse effect on the present character and future development of the neighborhood. Similarly, § 3104.1 mandates that the Development must not tend to affect adversely the use of neighboring property and that it must be in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concludes that these requirements are clearly met by this application. The Development is consistent with the type of development envisioned in an R-1-B zone district. In fact, with lot sizes substantially larger than required by the Zoning Regulations, the density of the Development is significantly less than that permitted. There is no evidence that the Development will likely have any adverse effect on the neighborhood or on the use of neighboring property.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and

concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The School Special Exception

ANC 3D recommended conditional approval of the School special exception. The Board agrees with the ANC's recommendation of approval. The ANC's recommendation included conditions regarding noise, traffic, parking, enrollment, and environmental protection. Although each of the ANC's requested conditions may not be met to the degree to which the ANC would perhaps like, the Board concludes that all of the ANC's concerns are adequately recognized, addressed, and dealt with in the conditions to this Order and by the provisions of the Applicant's Operations and Travel Management Plans. The Office of Planning likewise recommended conditional approval of the School special exception and the Board likewise agrees with this recommendation. OP recommended a list of 11 conditions, addressing various aspects of the School's operations. The Board concludes that all of OP's concerns are adequately recognized, addressed, and dealt with in the conditions to this Order and by the provisions of the Applicant's Operations and Travel Management Plans.

The Residential Development Special Exception

The ANC recommended conditional approval of the Residential Development special exception. The Board agrees with the ANC's recommendation of approval. The ANC's conditions included implementation and recordation of the Architectural Agreements, as well as conditions dealing with traffic and environmental issues. The Board concludes that the ANC's concerns have been adequately recognized, addressed, and dealt with by the Applicant and by the conditions to this Order. The ANC's proffered conditions concerning environmental issues are more detailed than the Board feels is necessary, but overall, the Board concludes that even these detailed conditions have been met substantially by the Applicant and the conditions to this Order.

The Office of Planning also recommended conditional approval of the Residential Development special exception. The Board, again, agrees with this recommendation of approval. OP recommended 13 conditions, all of which, the Board concludes, have been adequately addressed and substantially met by the Applicant and the conditions to this Order.

One of OP's recommendations merits a brief mention here. OP encouraged the Applicant to use pervious materials on the driveways in the Residential Development. The Board credits the testimony of the Applicant's architect that due to the large gradient changes, the low impermeability of the soil on the Property, and the high failure rate when traversed by heavy vehicles, the use of pervious materials on the driveways and roadways

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is not practical or advisable. Moreover, the Environmental Protection Agency recommends against the use of porous materials for this type of property. *See*, Exhibit No. 91.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to an application for a special exception pursuant to §§ 3104 and 206 to construct a middle and high school campus, and with respect to an application for a special exception pursuant to §§ 3104 and 2516 to construct a residential development of 27 new single-family dwellings, including an 18-lot theoretical lot subdivision. **THEREFORE**, it is hereby **ORDERED** that the application for a special exception for a private school for Lots 826 and 827 in Square 1346 is **GRANTED**, **SUBJECT** to the following **CONDITIONS, NUMBERED 1 THROUGH 14**, which are applicable to **Lots 826 and 827 only**:

1. The School shall be constructed in accordance with the plans prepared by Macris, Hendricks and Glascock, P.A. dated June 8, 2006 and marked in the record as Exhibit 94.
2. The School shall be constructed in accordance with the Illustrative Plans prepared by Barnes Vanze Architects, Inc. and marked in the record as Exhibits Nos. 93 and 96.
3. The maximum student enrollment shall be 440 students.
4. The maximum number of faculty and staff shall be 100.
5. The Northern Dell, Lot 826, shall remain as open space.
6. With the consent and approval of DDOT, the School shall implement, or cause to be implemented, all the changes to the Foxhall Road right-of-way shown on the Revised Foxhall Road Plan (Exhibit No. 84) including the southbound left turn lane, northbound right turn lane, two northbound through lanes and traffic signal.
7. The School shall fully implement and comply with the St. Patrick's Operations Plan, marked in the record as Exhibit No. 86.
8. The School shall fully implement and comply with the 1801 Foxhall Road Six-Point Travel Management Plan ("TMP"), which is Exhibit I to the Applicant's Pre-Hearing Submission, marked in the record as Exhibit No. 35.
9. The School shall submit its final St. Patrick's Travel Management Plan to DDOT and ANC 3D prior to the opening of the 1801 Foxhall Road campus;

10. With the consent and approval of DDOT, the School shall construct a six-foot sidewalk along Foxhall Road pursuant to DDOT recommendations and approval.
11. The School shall provide an annual report of the TMP, including a report on the inbound peak hour traffic count, to the DDOT and ANC 3D.
12. The School shall construct its stormwater management system in accordance with the Conceptual Storm Drain and SWM Plan, marked as Exhibit 94. The School's stormwater detention facilities will be designed in accordance with the District's requirements for storm water management and, in addition, will provide 24 hour extended detention of the one year storm. Further, discharge rates from these facilities will not exceed two cubic feet per second for one-, two-, and 15-year storm events.
13. The School shall conform to the Illustrative Parkland Edge Conditions restrictions, marked in the record as Exhibit No. 93.
14. The School may be constructed in phases over the course of seven years.

FURTHER, it is hereby **ORDERED** that the application for the special exception for a theoretical lot subdivision for Lot 825, Square 1346 is **GRANTED**, subject to the following **CONDITIONS, NUMBERED 1 THROUGH 6**, which are applicable to **Lot 825 only**:

1. The Residential Development shall be constructed in accordance with the plans prepared by Macris, Hendricks and Glascock, P.A. dated June 8, 2006 and marked in the record as Exhibit No. 94.
2. The design of the Residential Development shall be constructed in accordance with the Illustrative Plans prepared by Barnes Vanze Architects, Inc. and marked in the record as Exhibit No. 96.
3. The Applicant shall fully implement and comply with the Architectural Agreements, marked in the record as Exhibit No. 87.
4. The Applicant shall construct its stormwater management system in accordance with the Conceptual Storm Drain and SWM Plan, marked as Exhibit No. 94. The Residential Development's stormwater detention facilities will be designed in accordance with the District's requirements for stormwater management and, in addition, will provide 24 hour extended detention of the one year storm. Further,

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discharge rates from these facilities will not exceed two cubic feet per second for one-, two-, and 15-year storm events.

5. The Residential Development shall be constructed in accordance with the Illustrative Tree Preservation Plan marked in the record as Exhibit No. 96.
6. The Residential Development shall generally conform to the Illustrative Parkland Edge Conditions restrictions marked in the record as Exhibit No. 93.

**VOTE ON THE SCHOOL
SPECIAL EXCEPTION: 4-0-1**

(Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II, and John G. Parsons to grant; Ruthanne G. Miller abstaining, not having participated in deliberations.)

**VOTE ON THE RESIDENTIAL
DEVELOPMENT SPECIAL
EXCEPTION: 4-0-1**

(Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II, and John G. Parsons to grant; Ruthanne G. Miller abstaining, not having participated in deliberations.)

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

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

NOV 16 2006

FINAL DATE OF ORDER: _____

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

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

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING

BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

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

Appeal No. 17468A of Endalkachew Tesfaye, pursuant to 11 DCMR §§ 3100 and 3101, from a decision by the Zoning Administrator to deny the issuance of a Certificate of Occupancy for a 6 unit apartment building. The subject property is located in the R-4 District at premises 1124 E Street, N.E. (Square 984, Lot 44).

HEARING DATE: June 27, 2006

DECISION DATE: July 11, 2006

DECISION AND ORDER

This case is derived from BZA Appeal No. 1768 an earlier appeal involving the renovation of an apartment house located at 1124 E St., N.E. (the "Project"). In the earlier appeal, ANC 6A claimed that electrical, fire, mechanical and plumbing permits were wrongfully issued for the Project, on grounds that the Project violated the minimum lot area requirement for apartment houses converted from another structure in the R-4 Zone District as stated in § 401.3, and several parking requirements. Endalkachew Tesfaye, as the owner of the property, was automatically a party in that appeal. Mr. Tesfaye, through counsel, argued that the appeal was untimely, that it was barred by the doctrine of collateral estoppel and that the issuance of the permits was in accordance with the zoning regulations.

After ANC 6A filed its appeal, but prior to the scheduled hearing, the Zoning Administrator refused to issue a Certificate of Occupancy for the Project on the basis of noncompliance with § 401.3. The refusal was not based on the parking space deficiencies also alleged in the ANC appeal.

On May 9, 2006, counsel for Mr. Tesfaye filed a "cross-appeal" of the Zoning Administrator's decision to deny the Certificate of Occupancy, claiming that the ZA's reliance on § 401.3 was erroneous. Since the ZA's decision was not based on the alleged parking violations, Mr. Tesfaye did not allege error on that basis. The same pleading also requested the Board to dismiss the ANC appeal as untimely.

At its public meeting of May 16, 2006, the Board dismissed the ANC appeal on grounds of untimeliness,¹ accepted the filing of the "cross-appeal" as a new proceeding ("the appeal"), and scheduled a hearing on the appeal for June 27, 2006. In scheduling the hearing, the Board specifically allowed sufficient time for the ANC representative to bring the cross appeal for consideration at a publicly noticed ANC meeting and time for

¹The written order for BZA Appeal No. 17468 will follow the issuance of this order.

the ANC to file a pre-hearing brief.² Since the instant appeal did not concern the adequacy of the parking spaces provided, the dismissal of the ANC appeal removed that issue from the Board's consideration.

At the public decision meeting held on July 11, 2006, the Board voted to grant the appeal. The factual and legal bases for the Board's decision follow.

PRELIMINARY AND PROCEDURAL MATTERS

Parties. The parties to this proceeding are Endalkachew Tesfaye, the Department of Consumer and Regulatory Affairs ("DCRA") and Advisory Neighborhood Commission 6A ("ANC"). Mr. Tesfaye is the appellant. DCRA is the appellee. The ANC is an automatic party.

Notice of Hearing. As the cross-appeal was the outgrowth of the appeal, the Board determined that strict compliance with the hearing notice requirements of 11 DCMR § 3112.14 was not necessary for this appeal.² Notice of hearing for the earlier appeal was provided to the parties. The Office of Zoning advertised the hearing notice in the *D.C. Register* at 53 D.C. Reg. 2183 (March 24, 2006). At its decision meeting for the earlier appeal held May 16, 2006, the Board provided notice to the parties, and the public in attendance, that it would hold a hearing on the new appeal on June 27, 2006. As stated above, the hearing was scheduled at a date that provided the ANC sufficient time to consider the cross-appeal at a publicly noticed ANC meeting. Finally, the Office of Zoning posted notice of the appeal on its schedule on the Office of Zoning website.

Motion for Continuance. DCRA sought a continuance of the June 27, 2006 hearing because its witness, Zoning Administrator Bill Crews, originally requested by the Board to appear at the hearing, was unavailable on that date. Despite the ANC's preference that DCRA provide the Zoning Administrator as its witness, the Board determined that the Deputy Zoning Administrator, who was available to testify on behalf of the Zoning Administrator's office was qualified to address the issues in the case, and that further delay would not be in the interest of any of the parties. DCRA did not object to proceeding in that manner. Accordingly, the Board, by consensus, denied the request.

² Subsection 3100.5 provides:

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The standard for waiver is easily met here, since the parties and lot area issue were the same in both appeals, full notice was given as to the earlier appeal, and the Board announced the hearing date in the presence of the parties and the members of the public in attendance at the decision meeting for the ANC appeal

Motion to Exclude Testimony and Strike Report of Toyed Bello from the Record. In support of his appeal, Mr. Tesfaye offered former Zoning Administrator Toye Bello as an expert witness and sought to submit a report authored by Mr. Bello into evidence. DCRA moved to exclude the testimony and strike the report. DCRA claimed that allowing Mr. Bello's testimony and report into the record violated the Board's rule prohibiting former District employees from representing other persons before the Board in matters in which they had substantial responsibility while employed by the District. 11 DCMR § 3106.6. The Board denied DCRA's motion because Mr. Bello's report and testimony would not constitute representation. Mr. Bello served only as an expert witness, and Mr. Tesfaye was represented in this appeal by separate legal counsel.

FINDINGS OF FACT

1. The property is located at 1124 E Street, N.E. (Square 984, Lot 44) ("Subject Property").
2. The Subject Property is zoned R-4 and has a lot area of 1,710 square feet.
3. The Subject Property has been used as a 3-unit apartment house since at least 1951 and had a certificate of occupancy for an apartment house use on May, 12 1958, the effective date of the current version of the Zoning Regulations.
4. The matter of right provisions for the R-4 District do not permit new apartment houses, but allow, "the conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by... [§] 401.3." 11 DCMR § 330.5 (c).
5. Subsection 401.3 lists, for each residence zone, lot area requirements by structure type.
6. For the R-4 District, § 401.3 lists separate requirements for row dwellings and flats, single-family semi-detached dwellings, and "conversion to apartment house."
7. The lot area requirement for a structure converted to apartment house is 900 feet per unit.
8. On February 2, 2005, the Department of Consumer and Regulatory Affairs issued Building Permit B469531 to the appellant.
9. Building Permit B469531 authorized, "[i]nterior renovation and new electrical mechanical and plumbing" for an apartment house with 6 units and 2 parking spaces.

10. Prior to the issuance of the building permit, the subject property had 570 square feet of lot area for each of its 3 units.
11. As a result of the completed renovations, the subject property had 285 square feet of lot area for each of its 6 units.
12. On February 26, 2006, Mr. Tesfaye applied for a Certificate of Occupancy for the completed Project.
13. In a letter dated March 22, 2006, the Zoning Administrator disapproved Mr. Tesfaye's application for a Certificate of Occupancy on grounds that the renovations violated § 401.3 of the Zoning Regulations. The Zoning Administrator determined that the apartment house was a nonconforming use and stated in relevant part:

11 DCMR Section 2000.3 requires that all uses and structures incompatible with permitted uses or structures shall be regulated strictly and permitted only under rigid controls. 11 DCMR Section 401.3 requires that in an R-4 [D]istrict, existing buildings can be used as apartment buildings only if the lot size allows 900 square feet per unit. In order for you to expand the number of units to 6, you would need a minimum lot size of 5,400 square feet.

CONCLUSIONS OF LAW

An appeal may be taken by any person aggrieved by, or District agency affected by, any decision of a District official in the administration or enforcement of the Zoning Regulations. Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799); D.C. Official Code § 6-641.07(f) (2001 ed.),

The Zoning Administrator denied issuance of the Certificate of Occupancy because the Project did not conform to the minimum lot area requirements of §401.3 of the Zoning Regulations. Subsection 401.3 establishes the minimum lot dimensions for properties in residence districts by type of structure permitted. As to the R-4 Districts, the regulation provides:

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-4		
Row dwelling and flat	1,800	18
One-family semi- detached dwelling	3,000	30

Conversion to
apartment house

900/apartment or
bachelor apartment

None prescribed

The Appellant alleged that the Zoning Administrator erred in denying the certificate of occupancy on two grounds:

- 1) §401 is not applicable to the facts in this matter; and 2) DCRA is barred from denying the certificate of occupancy on grounds of the equitable doctrine of collateral estoppel.

Because this Board finds that the Zoning Administrator erred in applying §401 to the facts of this case, it is not necessary for the Board to reach the issue of collateral estoppel.

In essence, the Zoning Administrator read too broadly the words in §401.3. As set forth specifically in the above chart, in an R-4 District, the 900 square foot rule applies to *conversions* to apartment buildings, not to all "existing buildings" to be used as apartment buildings. For there to have been a conversion to an apartment building, the existing building must have been something other than an apartment building.

The evidence produced in the record shows that the building is and has been an apartment house since at least 1951, and had a certificate of occupancy for use as an apartment house prior to the enactment of the Zoning Regulations. Accordingly, there was no conversion to an apartment house and the lot area restrictions of §401.3 do not apply.

This interpretation is directly in accord with Zoning Commission Order 211 (March 9, 1978), which amended the lot area requirement for the R-4 district to apply not only to conversions from single family dwellings or flats, but also to buildings which are multiple dwellings; as an example, the Zoning Commission cited rooming houses to apartments. The Zoning Commission made this change because it noted that under the previous regulation the 900 square foot of lot area was not being applied for a change from one type of multiple dwelling to another. The Zoning Commission found that the existing regulations, as written, were being interpreted correctly and therefore changed the regulations to capture conversions from multiple dwellings to apartment houses³

³ See BZA decision *Appeal of Martin Lobel*, BZA Order No. 12434 (Dec. 5, 1977) decided three months earlier, to which the Zoning Commission appears to allude. In that case the Board upheld the conversion of a rooming house, constructed prior to May 12, 1958, into an apartment house in the R-4 District, notwithstanding its noncompliance with the lot area restriction. The Board concluded that "the subject matter of the appeal was not a "conversion' to a multiple dwelling, but a change of use of a multiple dwelling to a different type of multiple dwelling." BZA Order No. 12434 at 6. The regulation appears to have been amended to address this situation,

Based on the above and on the logical reading of the words on their face, the Board concludes that for there to be a *conversion* to an apartment house, and for §401.3 to thereby apply, the existing building must be something other than an apartment house. The facts of this case definitively show that the existing building is and has been an apartment house since before the enactment of the Zoning Regulations. Accordingly, the Zoning Administrator erred in his application of §401.3 to the facts in this case and in thereby denying the certificate of occupancy.

Great Weight to ANC 6A

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (3)(A)), to give "great weight" to the issues and concerns raised by the affected ANC. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's written issues and concerns. *Neighbors United for a Safer Community v. District of Columbia Board of Zoning Adjustment*, 647 A2d. 793, 798 (D.C. 1994).

ANC 6A did not submit a report for the Board's consideration for this appeal, but did submit a written statement in its dismissed appeal. Given the unusual procedural aspect of this case, the Board will treat that statement as though it were ANC 6A's written report for this appeal and address those concerns that relate specifically to the cross-appeal.

In its statement, the ANC 6A argued that the Project was a conversion to either a multiple dwelling or to an apartment house, and must therefore comply with minimum lot area requirements set forth in §330.5(c) and §401.3. Both these provisions address conversion to an apartment house. As set forth above, the Board has found that no conversion to an apartment house occurred because the building has been an apartment house since at least 1951 and continues to be one. Accordingly, these provisions are not applicable to the facts in this case. As the rationale for the Zoning Administrator's denial of the certificate of occupancy was §401.3, the Board need not address the remainder of the ANC's concerns set forth in its statement.

Conclusion

For the reasons stated above, the Board concludes that the Zoning Administrator erred in denying the Certificate of Occupancy in this case.

NOV 24 2006

It is therefore **ORDERED** that the appeal is **GRANTED**:

VOTE: **4-1-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John A. Mann II to grant the appeal, Carol J. Mitten to deny the appeal by absentee ballot).

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: **NOV 15 2006**

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

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

Application No. 17512-A of KC Enterprises, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under section 401, and a variance from the side yard requirements under section 405, to construct a new semi-detached dwelling in the R-2 District at premises east side of the 300 block of 58th Street, N.E. (Square 5264, Lot 22).

HEARING DATE:	September 19, 2006
DECISION DATE:	October 3, 2006
DECISION DATE ON MOTION FOR RECONSIDERATION:	November 14, 2006

DISMISSAL ORDER

Board of Zoning Adjustment Application No. 17512 was filed with the Office of Zoning (OZ) on April 7, 2006. The Board provided proper and timely notice of the September 19, 2006 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7C, 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 7C. The full ANC did not participate in the application. The ANC single member district Commissioner for 7C-05 submitted a letter in opposition to the application. The OP submitted a report in support of the application. No parties appeared in opposition to the application. On October 3, 2006, the Board, at a regularly scheduled public meeting, voted to approve the application. Consequently, the Board issued its decision order in this matter, with a final date of October 4, 2006. On October 13, 2006, the OZ received a Motion for Reconsideration of the Board's decision order. The motion was filed by Albert and Melissa Muhammad. The motion was served on the Applicant, OP and ANC 7C. The Board, at its November 14, 2006, public meeting, deliberated on the motion for reconsideration. The Board determined that the makers of the motion were not parties to the original application as is procedurally required under 11 DCMR subsection 3126.2. As such the Muhammad's did not have standing in this application.

In light of the foregoing, the Board hereby **ORDERS** that the **MOTION FOR RECONSIDERATION** be **DISMISSED** as the makers of the motion lacked standing.

VOTE (17512): 3-2-0 (John A. Mann II, Curtis L. Etherly, Jr. and Geoffrey H. Griffis to approve; Ruthanne G. Miller and Anthony J. Hood opposed to the motion).

VOTE TO DISMISS REQUEST FOR RECONSIDERATION (17512-A):

4-0-1 (Ruthanne G. Miller, John A. Mann II, Geoffrey H. Griffis and Anthony J. Hood to dismiss, Curtis L. Etherly, Jr. 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: November 17, 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. rsn

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

Appeal No. 17335 of Kalorama Citizen's Association, pursuant to 11 DCMR § 3100 from the administrative decision by the Department of Consumer and Regulatory Affairs to issue Building Permit No. B46999, dated March 2, 2005, allowing the construction of a roof deck and railing on a 5 unit apartment building located at 1819 Belmont Street, N.W. in the R-5-D Zone District (Square 2551, Lot 45).

Hearing Date: October 18, 2005
Decision Date: November 15, 2005

ORDER

INTRODUCTION

The Kalorama Citizens Association ("KCA" or "Appellant") filed this appeal with the Board of Zoning Adjustment ("Board") challenging the decision of the Director of the Department of Consumer and Regulatory Affairs ("DCRA") to issue Building Permit No. B46999, dated March 2, 2005, to Montrose, L.L.C. ("Montrose").

This appeal follows KCA's earlier appeal, BZA No. 17109, of DCRA's decision to issue Building Permit Nos. B455571 and B455876 for the same building. The Board issued its final order in BZA No. 17109 on November 8, 2005, and published the order at 52 *D.C. Reg.* 10220 (November 18, 2005) (*Kalorama I*). In its final order in BZA No. 17109, the Board ruled that DCRA erred in issuing the building permits because the building's roof deck rose to a height that exceeded the maximum height permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code §§ 601.01 to 601.09 (2001)) (the "Height Act").

Montrose modified the design of the roof deck so that the deck itself is below the Height Act limit, but, in order to meet the requirements of the building code, included a safety railing that rose above the maximum height permitted.

The Appellant alleged that DCRA erred in not counting the railing's height against the Height Act limitations. Appellant also contended that the roof deck was intended for human occupancy, which is not permitted for structures allowed to exceed the Height Act's limit. For the reasons stated below, the Board finds both contentions without merit and denies the appeal.

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PRELIMINARY AND PROCEDURAL MATTERS

Parties. The parties to the proceeding are the KCA, Advisory Neighborhood Commission 1C ("ANC"), DCRA, and Montrose. The ANC was an automatic party pursuant to 11 DCMR §3199.1. By consensus, the Board granted Montrose's request for intervenor status pursuant to 11 DCMR § 3112.15.

Notice of Hearing. The Office of Zoning provided notice of the hearing on the appeal to the parties. The Office of Zoning advertised the hearing notice in the D.C. Register at 52 D.C. Reg. 6959 (July 29, 2005).

FINDINGS OF FACT

1. The property that is the subject of this appeal ("Subject Property") is located at 1819 Belmont Road, N.W., Washington D.C. in the R-5-D zone district.
2. The Subject Property is improved with a multiple story townhouse.
3. Montrose owned the Subject Property at the time the building permit was issued, but has since sold all units to individual purchasers. Nevertheless it has warranty obligations to those purchasers that the building was constructed in accordance with applicable laws and regulations. The warranty obligations extend for two years after the sale of the units.
4. The width of the 1800 block of Belmont Road, N.W., measured from building line to building line, is 80 feet.
5. The maximum height permitted for the Subject Property under the Height Act is 70 feet.
6. On February 25, 2005, Montrose LLC applied for a building permit to "amend and revise permit B 44921, to revise framed deck as shown on original permit drawing to a patio surface on the surface of the existing roof."
7. On March 2, 2005, DCRA issued Building Permit 46999 to Montrose LLC.
8. Permit 46999 authorized construction of a roof deck directly on the surface of the roof of the building. The drawings show the roof deck a "min. of ½" below 70' 0" Height." The railing is shown extending approximately three feet above the 70 foot limit. The drawings do not indicate a precise height for the railing.

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9. The railing was required by the Building Code of the District of Columbia, which mandates that roof decks have safety railings no less than 34 inches and no more than 38 inches high.¹

10. Zoning Administrators have historically permitted safety railings above the height limit for rooftop pools and decks.

CONCLUSIONS OF LAW

An appeal may be taken by a person aggrieved by any decision of a District official or District agency in the administration and enforcement of the Zoning Regulations, including the issuance of a building permit. D.C. Official Code § 6-641.07(f); 11 DCMR § 3112.2. Appellant alleges that DCRA erred in issuing building permit B 46999 because it authorized a structure that violated the Height Act. The Board concluded in *Kalorama I* that it has jurisdiction to hear appeals regarding alleged violations of the Height Act.

Standing of Montrose to Intervene

Montrose was a party to the previous appeal involving the Subject Property, BZA No. 17109, and requested status as an intervenor in this proceeding. Subsection 11 DCMR § 3112.15 authorizes the Board to allow persons with a specific right or interest that will be affected by the action to intervene in an appeal.

Montrose was the developer and prior owner of the building, held the permit that is the subject of the appeal, owned the building at the time the permits were issued, and has continuing obligations to the current owners of the property to warrant that the building was constructed in accordance with the permits and the applicable laws and regulations. The Board therefore concludes that Montrose has a sufficient interest that will be affected by the action, and grants Montrose intervenor status.

Merits of the Appeal

1. Height of the Safety Railing

The first issue is whether the safety railing attached to the roof deck violates the height limitation of the Height Act.

It is undisputed that because the 1800 block of Belmont Street is 80 feet wide, the maximum building height permitted is 70 feet. Permit 46999 approves a roof deck that is

¹ Section 1003.2.12 of the International Building Code (2000 edition) adopted, with some modifications, as the building code for the District by Notice of Final Rulemaking, 51 D.C. Reg. 292 (January 9, 2004).

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½ inch below the 70 foot height limit, but with a safety railing that, if counted, would increase the building's height to approximately 73 feet in violation of the Height Act. For the reasons discussed below, the Board concludes that safety railings should not be counted against the height of a building.

The Height Act was enacted in 1910. The Height Act at D.C. Official Code §6-601.05 (h) enumerates certain structures that may be erected above the limits of the Height Act. Safety railings are not included in that list. However, resolution of the issue does not end there. Because the Height Act, enacted almost 100 years ago, did not anticipate roof decks with safety railings, it is necessary to look at the history and intent of the Act. As this Board noted in *Kalorama I*, the Height Act has been construed to include structures not specifically enumerated in §6-601.05 (h) provided that such construction is within the intent and spirit of the Act. See *Kalorama I*, n.3at 11, in which the Board cited the 1953 Opinion of Vernon E. West, Corporation Counsel, D.C., July 27, 1953, that the phrase, "penthouses over elevator shafts" set forth in D.C. Official Code §6-601.05 (h) may be construed to include penthouses over stairways.

In this case the Board finds that §6-601.05 (h) may be construed to include safety rails because the interpretation is consistent with the spirit and intent of the Act, as well as the treatment of safety rails under other sections of the Zoning Regulations.

The Zoning Commission acknowledged that safety rails would be permitted as an exception to the height limits, in Zoning Commission Order 46, 33 D.C. Reg. 3975 (July 4, 1986), which amended the penthouse and roof structure rules. The Commission, in discussing the Office of Planning's recommendations regarding how roof areas could be improved in appearance, noted the following:

The Office of Planning indicated that the typical roof and penthouse could be improved in appearance by allowing greater flexibility in the choice of materials and/or by encouraging the introduction of landscaping and other decorative elements on the roof. Temporary restaurants, scenic overlooks, exercise facilities or employee lunch areas would bring users to the roof. The necessary railing, *which would be permitted an exception to the height limit*, could be designed as an architectural embellishment in helping to provide a visual cap to the building." *Id.* at 2-3 (emphasis added).

An interpretation exempting safety railings from the Height Act is consistent with the Act's concern about safety and its exemption of structures that may be viewed and treated as embellishments. Further, it is consistent with the Zoning Regulations which do not calculate railings in

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the measurement of height.² Finally, it is consistent with a history of rulings by Zoning Administrators that permitted safety railing above the height limit for rooftop pools and decks.

The Zoning Regulations and the Height Act should, whenever possible, be interpreted and administered in a consistent manner. The Board concludes that DCRA has reasonably done so in this case.

2. Use of the Roof Deck for Human Occupancy

Appellant contends the roof deck violates the provision of the Height Act that governs structures granted height waivers. Specifically, the Appellant relies upon section 5 of the Height Act (D.C. Official Code § 6-601.05(h), which provides, in part, that “no floor or compartment [of a structure granted a height waiver] shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed.”

Appellant’s argument is flawed in two respects.

First, the cited provision does not apply to this structure since, as just discussed, no countable portion of it exceeds the 70 foot limit imposed by the Height Act.

Second, even if the provision did apply, the use of an open roof deck does not constitute “human occupancy,” because it is unenclosed space. Human occupancy requires more than the mere ability to access the space. Since at least 1953, the Zoning Administrator has considered only *enclosed* space to be space used for human occupancy. This interpretation is supported by a 1953 Corporation Counsel Opinion, which concluded that “the prohibition of ‘human occupancy’ in the last section of section 4 of the Act of June 1, 1910 was intended by the Congress to prevent the use of enclosed space above the height limit for residential, office or business purposes....” Opinion of Vernon E. West, Corporation Counsel, *supra* at 4. The Board concurs with this interpretation and concludes that the deck was not intended for human occupancy within the meaning of the Height Act.

Based on the foregoing, the Board denies the appeal in its entirety.

² See 11 DCMR 2503.2 which states in pertinent part, “Any railing required by the D.C. Building Code, Title 12 DCMR, shall not be calculated in the measurement of this height.” While, this provision is within the section entitled “Structures in Open Spaces,” the record reflects that D.C. Zoning Administrators have historically applied this interpretation to railings in general.

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

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

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: NOV 16 2006

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

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

Appeal No. 17414 of Geraldine Rebach and Jeffrey Schonberger, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (DCRA) to issue a building permit (B456380, dated October 30, 2003) authorizing the construction of a two-story detached garage. Appellant alleges that DCRA erred by allowing the permit for said construction to be issued in violation of 11 DCMR §§ 199, 404, and 2500.5. The subject property is located in the R-1-B District at premises 5362 27th Street, N.W. (Square 2292, Lot 27).

HEARING DATE: February 21, 2006
DECISION DATE: February 21, 2006

ORDER

PRELIMINARY MATTERS

On August 9, 2005, Jeffrey Schonberger filed this appeal on his own behalf and on behalf of his neighbor, Geraldine Rebach, collectively, "Appellants." The Appellants challenge DCRA's authorization of construction of a detached two-story garage behind the dwelling at 5362 27th Street, N.W. (Square 2292, Lot 27) ("subject property") by the property owners, Mathew and Amy Epstein. The Appellants take issue with both the use and placement of the garage structure, claiming primarily that its location violates applicable rear yard provisions of the Zoning Regulations.

The Board heard and decided the appeal on February 21, 2006. After considerable testimony and argument, the Board deliberated and voted 5-0-0 to deny the appeal.

FINDINGS OF FACT

Background

1. The subject property is located at address 5362 27th Street, N.W., in Square 2292, Lot 27, within an R-1-B zone district.
2. In 2003, 27th Street, L.L.C., an entity controlled by Zuckerman Brothers, a builder, purchased the then-vacant land underlying what is now Lot 27 in order to build a new home on it.
3. Lot 27 is a rectangle, 50 feet wide and approximately 172 feet long, and abuts a 15-foot wide public alley at the rear.

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4. On October, 30, 2003, DCRA issued Permit No. B456380 (the "first permit"), authorizing the construction of a single-family dwelling, a detached garage, and site retaining walls on the subject property.
5. The documents submitted to DCRA in support of Permit No. B456380 included a plat showing a 2-story garage and a statement that the garage height would be 20 feet, but neither the height nor the number of stories was specified on the permit itself. *See*, Exhibit No. 22, Attachments Nos. 1 & 9 and Exhibit No. 24, Attachment A.
6. Zuckerman Brothers apparently intended to construct a 2-story garage, but after receiving objections to the second story from the neighbors, abandoned the idea and decided to construct a single-story garage on the subject property instead.
7. The dwelling and the detached single-story garage on Lot 27 were completed in 2004 and were purchased in the summer of 2005 by Michael and Amy Epstein, as trustees of the Michael Sears Trust ("property owners").
8. The property owners decided to add a second story onto the garage, and on July 11, 2005, commenced the construction of the second story, apparently under the auspices of Permit No. B456380, a copy of which was posted on the subject property.
9. At least one, and possibly two, stop work orders were issued to the property owners because there were neither original stamped construction plans nor an original permit posted on site. It is unclear whether the stop work orders were enforced.
10. On August 8, 2005, the Appellants filed this appeal of the issuance of the first permit, claiming that the second garage story violated the Zoning Regulations.
11. Two days after this appeal was filed, on August 10, 2005, DCRA issued Permit No. B476241, to "complete" construction of the garage, *i.e.*, to add the second story. Permit No. B476241 (the "second permit") stated that it was a "revision to Permit No. B456380 to reflect new ownership and complete construction in accordance with approved plans." Exhibit No. 22, Attachment No. 8.
12. The garage roof was demolished and the second garage story was completed in the fall of 2005.
13. The Appellants learned of the issuance of the second permit in late November or December, 2005, and, on February 6, 2006, filed an amendment to include the second permit in this appeal.

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The Property

14. The dwelling on the subject property has a rear yard of approximately 72 feet, which extends from the rear of the dwelling to the public alley running behind the property.

15. The detached, two-story, private garage on the subject property is an allowable accessory building in this R-1-B district, and its second story is permitted as long as it is being used for the sleeping or living quarters of domestic employees of the family occupying the main dwelling. 11 DCMR § 2500.5.

16. The Appellants plan to house a domestic employee, the nanny to their children, in the second story above the garage.

17. The two-story garage on the subject property is located behind the main dwelling.

18. The two-story garage is 26.05 feet long and is set back 8 feet from the alley. There is approximately 38 feet of open space between the rear of the dwelling and the closest wall of the garage, leaving an open and unobstructed required rear yard of more than 25 feet.

19. Because the alley is 15 feet wide, and the garage is set back 8 feet from its edge, the garage is set back approximately 15.5 feet from the center line of the alley.

20. The garage is 20 feet high, and a 20-foot height for a two-story accessory building is permitted in an R-1-B district. 11 DCMR § 2500.6.

21. The two-story garage has side setbacks of at least 8 feet on both sides, satisfying the requirement of 11 DCMR § 2300.2(a) that a private accessory garage be removed from the side lot lines a distance equal to the side yard required in the zone district where it is located.

22. The area of the first story of the garage is approximately 572 square feet, below the maximum of 900 square feet permitted for a private garage. *See*, 11 DCMR § 199.1, definition of "Garage, private."

23. The second garage story is placed precisely above the footprint of the first story and is also approximately 572 square feet in area.

24. The first story of the garage provides a parking space for the motor vehicle(s) of the property owners.

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25. The garage is located approximately 17 feet from the single-story garage on adjacent lot number 26 and approximately 20 feet from the opposite side lot line.

26. The garage is located a distance of at least 48 feet from the Appellants' homes -- 23 feet (the 8-foot alley setback and the 15-foot alley width), plus the length of the Appellants' rear yards, presumably a minimum of 25 feet, as required.

CONCLUSIONS OF LAW*Timeliness*

An appeal to the Board must be filed within 60 days of the date the person appealing knew or should have known of the decision complained of. 11 DCMR § 3112.2(a). The Board may, however, extend the 60-day period for unforeseeable exceptional circumstances outside the appellant's control which impaired his ability to file the appeal if the parties will not be prejudiced by such extension. 11 DCMR § 3112.2(d).

In this case, there were, in effect, two "decisions complained of." The first was the issuance of Permit No. B456380, authorizing the construction of the dwelling and the 20-foot garage, and the second was the issuance of Permit No. B476241, revising the first permit to allow the "completion" of the construction of the garage. The first permit was issued on October 30, 2003, and the second on August 10, 2005. As to the first permit, the 60-day window for filing an appeal would have run on December 30, 2003. As to the second permit, the 60-day window would have run on October 10, 2005. The appeal was filed on August 8, 2005.¹

Clearly, the appeal was not filed within 60 days of the issuance of the first permit. The Board finds, however, that there were exceptional circumstances outside the Appellants' control which impaired their ability to file this appeal within the required 60 days. The permit authorizing a 20-foot (*i.e.*, possibly two-story) garage was issued on October 30, 2003, but the property owners did not commence construction of the second story until July 11, 2005, almost two years after the first permit was issued. Appellants, voiced concerns over the possibility of a second story to the builder as soon as they learned of the permit, and he represented that he would not build the second story, only the first. Once the builder had completed construction of the dwelling and one-story garage on the subject property, there was no reason for the Appellants to believe that a second story

¹Ironically, the appeal was actually filed two days before the issuance of the second permit, but the Appellants did not request that the appeal be amended to include it until more than 60 days after its issuance. It is unclear whether the request to amend occurred more than 60 days after the Appellants knew of the second permit's issuance. The second permit, however, was a "revision" of the first, not an outright new permit. The Board therefore concludes that the "decision complained of" and appealed is the issuance of the first permit and that the question of timeliness goes back to that permit's issuance.

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would be added onto the garage. The actions of the builder and the completion of the garage at one story constitute the circumstances required by § 3112.2(d). The Board finds that, at this point, the Appellants would not have had any reason to file an appeal and could not have anticipated that a second story would ever be added to the garage.

Even if the Appellants knew, within 60 days of its issuance, that the first permit had been issued, due to the intervening exceptional circumstances, the earliest they knew or could have known that the new owners were adding a second story to what was a completed single-story garage structure was on or around July 11, 2005. Accordingly, there were unanticipated exceptional circumstances outside the Appellants' control which prevented them from filing this appeal within 60 days of the issuance of the first permit.

In light of the fact that the appeal was filed 2 days prior to the issuance of the revised permit, the Board finds that the other parties will not be prejudiced by this extension. The Board therefore concludes that this appeal was timely filed.

The Merits of the Appeal

The Appellants make several arguments on appeal, but their primary contention is that the Zoning Administrator erred in not requiring the garage on the subject property to have a 25-foot rear yard. They claim that, pursuant to 11 DCMR § 404.1, because the garage is a "structure," it must itself have a required rear yard of 25 feet in this R-1-B District. The Board, however, reading §404.1 in the context of the other applicable Zoning Regulations, concludes that this accessory garage building does not require its own rear yard.

Section § 404.1 must be read harmoniously with the other Zoning Regulations that come into play here. Section 404 is a generally-applicable section setting forth the required rear yards for all residence districts. Section 204, however, applies specifically to accessory buildings in R-1 districts, and subjects such buildings to the provisions of Chapter 23. Chapter 23 is *specifically* devoted to "garages, carports, parking lots and gasoline service stations," and therefore its provisions are controlling. *See*, 11 DCMR § 3102.3. Section 2300.2(a) states that a private garage that is an accessory building in a residence district "[m]ay be located ... within a rear yard." Nowhere in § 2300 does it say that an accessory garage building must have its own rear yard, and, in fact, it would be difficult to determine where this rear yard would be located. The definition of rear yard states that it is the "yard between the rear line of a building or other structure and the rear lot line." 11 DCMR § 199.1, definition of "Yard, rear." The rear line of the property-owners' garage faces the rear wall of the dwelling, but if one continues further through the lot, one does not encounter the rear lot line, as is necessary to demarcate the rear yard. Instead, one encounters the front lot line, abutting the street.

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Requiring an accessory garage to have a rear yard between it and the rear lot line does not make sense because the front of the garage faces the rear lot line. This would actually be a "front yard" and the Zoning Regulations do not require front yards in any zone district. A 25-foot yard between the garage and the rear lot line is also counter to § 2300.2(b), which states that a private garage abutting an alley must be set back at least twelve feet from the center line of the alley. If the garage is permitted to be set back a minimum of twelve feet from the center line of the alley, it follows that it need not be set back a minimum of 25 feet from the edge of the alley to create a "rear yard." The point of situating a garage abutting an alley is to create easy alley access. It would make no sense to require the garage to have a rear/front yard of 25 feet between it and the alley, necessitating a paved driveway of 25 feet to reach the alley.

Section 2500, dealing specifically with accessory buildings, is also applicable here. Section § 2500.2 states, with some exceptions not relevant here, that an accessory building may be located "*only in a rear yard.*" (Emphasis added.) In the case of a two-story accessory garage, § 2500.6 states that a two-story accessory building may not be located in the *required* rear yard. Therefore, although a one-story garage may be located in a required rear yard, *i.e.*, within 25 feet of the rear of a dwelling in an R-1-B district,² a two-story garage may not be located within this 25-foot area. The practical effect of this regulation is to create a 25-foot open buffer area between a dwelling and its two-story accessory building. The Board reads the buffer area to constitute the required rear yard of the dwelling, not a required rear yard for the accessory garage.

The property owners' garage is not located within this required 25-foot rear yard area, but is located approximately 38 feet away from the rear wall of the dwelling. Therefore, the garage in question here is properly located in the rear yard, but is also properly not located within the *required* rear yard.³ Although the garage is a "structure," the Board concludes that it does not require its own rear yard under § 404.1.

The Appellants also complain about several other aspects of the size and use of the garage. They contend that the definition of "Garage, private," at 11 DCMR § 199.1 limits the total gross floor area of a two-story accessory garage to 900 square feet. Although neither this definition nor § 2500 is entirely clear on this point, the Board interprets this requirement to apply to the first floor of the garage, or the part that is normally used to store a vehicle. Sections 2500.5 and 2500.6 set forth certain area requirements which come into play when a second garage story is added, but no maximum square footage is mandated for the second story. All garages in all zones other

²The Board agrees with the Zoning Administrator that a "rear yard" begins at the rear wall of a building and runs to the rear lot line. See, Board Order No. 16696 (Application of Craig and Ann Goodman), Finding of Fact No. 17.

³Because the garage is not located in the *required* rear yard, it cannot violate 11 DCMR § 2500.3, another Zoning Regulation which, at the hearing, was discussed as having been possibly violated here.

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than R-1-A and R-1-B are limited to one story. The Board concludes that the regulations permit a greater square footage allowance in the R-1-A and R-1-B zones because the addition of a second story is permitted, necessitating an increase in square footage. It would be unreasonable to read the Zoning Regulations to permit a one-story garage at 900 square feet and to constrain a two-story garage to the same square footage maximum.

Appellants question whether the garage was removed a proper distance from the subject property's side lot lines. Section 2300.2(a) mandates that a private garage must be "removed from the side lot line a distance equal to the required side yard." The required side yard in this R-1-B district is 8 feet. 11 DCMR § 405.9. The garage is 8.5 feet from the side lot line dividing Lot 27 from Lot 26 and is substantially more than 8 feet from the other side lot line. The Board finds no problem here.

The Appellants also argue that the open space between the rear of the dwelling and the rear of the garage is a court, and not a yard. They base this argument on their interpretation of the definition of "court" in 11 DCMR § 199.1. The definition states that a court is : "an unoccupied space, not a court niche, open to the sky, on the same lot with a building, which is bounded on two (2) or more sides by the exterior walls of the building or by two (2) or more exterior walls, lot lines, or yards." The Appellants interpret this to mean that the area between the dwelling and the garage is a court because it is bounded by the two side lot lines and two exterior walls, *i.e.*, the two rear exterior walls of the dwelling and the garage. The Zoning Administrator disagreed and stated that the definition of court, in its reference to two exterior walls, means *two or more exterior walls of the same building*, and therefore that the open area in question is a rear yard. The Board agrees with the Zoning Administrator's interpretation and notes that the first clause of the definition of court specifies "the exterior walls of *the* building," (emphasis added) lending strength to the "same building" interpretation. The Board concludes that the area between the rear of the dwelling and the garage is the rear yard of the dwelling.

The second garage story is permitted if it is to be used for the sleeping or living quarters of a domestic employee of the main dwelling. 11 DCMR § 2500.5. At the hearing the property owners proffered that such would be the case. Any deviation from this use would be a question of compliance and enforcement beyond the purview of this Board.

Finally, the Appellants stated general concerns about negative impacts on the light, air, and privacy of neighbors due to the existence of the two-story garage. *See*, 11 DCMR § 2500.9. (An accessory building shall not obstruct light and ventilation.) The garage is located at a substantial distance from the Appellants' homes and is properly set back from the alley and the side lot lines. *See*, Findings of Fact Nos. 28, 20, and 22, respectively. The Zoning Commission, in the Zoning Regulations themselves, set forth the minimum area requirements for the R-1-B zone and for the height, bulk, massing, and placement of

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two-story accessory buildings therein. These minimum requirements ensure adequate light and ventilation for surrounding properties. All these requirements are met by the garage that is the subject of this appeal; therefore, the Board concludes that it does not obstruct light or ventilation.

For the reasons stated above, the Board concludes that the Appellant did not meet its burden of demonstrating that DCRA erred in issuing Building Permit No. B445380, and its revision, Building Permit No. B476241, and in consequently allowing the construction of a two-story accessory garage on the subject property. Therefore, it is hereby **ORDERED** that this appeal be **DENIED**.

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

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

NOV 16 2006**FINAL DATE OF ORDER:** _____

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

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

Application No. 17511 of Carnell Bolden, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under section 401, and a variance from the side yard requirements under section 405, to construct a new semi-detached dwelling in the R-2 District at premises 5371 Hayes Street, N.E. (Square 5209, Lot 30).

HEARING DATE: September 19, 2006, October 17, 2006
DECISION DATE: November 14, 2006 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7C, 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 7C. The ANC did not participate in the application. The OP submitted a report in support to 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. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 401 and 405, 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: 5-0-0 (Geoffrey H. Griffis, John A. Mann II, Ruthanne G. Miller, Curtis L. Etherly, Jr. (Absentee ballot) and Michael G. Turnbull (absentee ballot) to approve).

NOV 24 2006

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: NOV 15 2006

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

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

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

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

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

Application No. 17525 of Braxton Hotel and Condominium LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy provisions under section 403, a variance from the rear yard requirements under section 404, a variance from the court requirements under section 406, and variances from the nonconforming structure and use provisions under subsections 2001.3 and 2002.5, to allow the enlargement of an existing hotel or transient rooming house to an inn in the R-5-E District at premises 1440 Rhode Island Avenue, N.W. (Square 211, Lot 839).

HEARING DATE: October 17, 2006
DECISION DATE: November 14, 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) 7C, 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 7C. The ANC submitted a report in support of the application. The OP submitted a report in support to 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. 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, 403, 404, 406, 2001.3 and 2002.5, 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: 5-0-0 (Geoffrey H. Griffis, John A. Mann II, Ruthanne G. Miller, Curtis L. Etherly, Jr. (Absentee ballot) and Michael G. Turnbull (absentee ballot) to approve).

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: November 16, 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.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. rsn

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