

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

**Notice of Certification of Vacancies**

The D.C. Board of Elections and Ethics announces that, effective Monday, January 1, 2007 at noon, vacancies will exist in the offices of Ward 4 Member of the Council of the District of Columbia, Ward 7 Member of the Council of the District of Columbia, and District II Member of the Board of Education, which represents Wards 3 and 4. The Board will conduct a Special Election to fill these vacancies on Tuesday, May 1, 2007. For further information, the public may call 727-2525 (TDD: 638-8916) or visit the Board's Web site at [www.dcboee.org](http://www.dcboee.org).

## DEPARTMENT OF HEALTH

NOTICE OF DECERTIFICATION

The Director of the Department of Health, pursuant to the authority set forth in Reorganization Plan No 4 of 1996, hereby gives notice of decertification and removal of one drug from the formulary of the District of Columbia Acquired Immunodeficiency Syndrome Drug Assistance Program (ADAP). The drug that has been decertified and removed from the ADAP formulary is Fortovase (Saquinavir). The drug has been decertified on the recommendation of the HIV/AIDS Drugs Advisory Committee (HADAC) at a meeting held on October 18, 2006, and of a subcommittee meeting on November 15, 2006. The HADAC recommended removal of the drug from the formulary because the drug is no longer being manufactured.

ADAP is designed to assist low income individuals with Acquired Immunodeficiency Syndrome (AIDS) or related illnesses to purchase certain physician-prescribed, life-sustaining drugs that have been approved by the U.S. Food and Drug Administration for the treatment of AIDS and related illnesses. Rules for this Program may be found at 29 DCMR § 2000 *et seq.*

For further information, please contact Christy Pleze-Best, Public Health Analyst AIDS Drug Assistance Program, Administration for HIV Policy and Programs on (202) 671-4978.

**LIGHTHOUSE ACADEMIES, INC.**

**REQUEST FOR PROPOSALS**

Lighthouse Academies is seeking a provider(s) for school transportation services for Lighthouse charter schools located in: Indianapolis, Gary, and East Chicago, IN; Cleveland, OH; Washington, DC. (Additional locations may be added after the response date. The winning contractor will not have an obligation to service the other cities.)

Sealed proposals for the furnishing of school transportation for Lighthouse Academies, Inc. charter schools will be received, until February 16, 2007, 11:00 AM EST.

Lighthouse Academies, Inc.  
1661 Worcester Road, Suite 207  
Framingham, MA 01701  
Attn: Kerri Charron, Director of Purchasing  
508-626-0901 ext. 27

Late Proposals Will Not Be Accepted.

Said Proposals shall be submitted according to the specifications enclosed with the Request for Proposal. Proposals shall be in sealed envelopes marked "Proposal for Pupil Transportation to begin with the 2007-2008 School Year".

Lighthouse Academies, Inc. reserves the right to reject any/all proposals without limitation. Lighthouse Academies, Inc. reserves the right to make said proposals award as it determines to be in the best interest of the corporation and its Partners, Local Lighthouse Charter Schools. Additional copies of the RFP Specification Package may be obtained by calling the number above.

<http://www.lighthouse-academies.org>

**DISTRICT OF COLUMBIA  
SPORTS AND ENTERTAINMENT COMMISSION**

**PUBLIC ANNOUNCEMENT**

**Board of Directors Meeting Schedule for Calendar Year 2007**

The Board of Directors of the District of Columbia Sports and Entertainment Commission hereby announces that it will be meeting on the following dates for calendar year 2007:

January 3, 2007  
February 7, 2007  
March 7, 2007  
April 4, 2007  
May 2, 2007  
June 6, 2007  
July 11, 2007\*  
August 1, 2007  
September 5, 2007  
October 3, 2007  
November 7, 2007  
December 5, 2007

The meetings will be held at **8:30 A.M.** at:

RFK Stadium  
Media Room  
2400 East Capitol Street, S.E.  
Washington, D.C., 20003

\* Rescheduled to the second Wednesday due to the July 4<sup>th</sup> Holiday.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

**Application No. 17383 of The Lab School of Washington**, pursuant to 11 DCMR § 3104.1 for a special exception under § 206 to allow an increase in student enrollment from 310 to 330, an increase in faculty and staff from 95 to 182, a special exception under § 206 to permit the use of nearby property at 4749 Whitehaven Parkway, NW (Square 1374, Lot 840) for administrative offices for the School, and a special exception under § 2116 to locate accessory parking spaces elsewhere than on the lot served, at an existing private school located at premises 4759 Reservoir Road, NW (Square 1372, Lot 25) in the R-1-B zone.

**HEARING DATES:** November 22, 2005, and April 4, 2006  
**DECISION DATES:** March 7, 2006, May 2, 2006, and May 16, 2006

**DECISION AND ORDER**

On June 16, 2005, the Lab School of Washington (the School or the Applicant), filed an application with the Board of Zoning Adjustment (the Board) for special exceptions under Section 206 of the Zoning Regulations asking the Board to authorize an increase in the student enrollment and faculty and staff above the limits established in BZA Order No. 16273. Although the prior order limited student enrollment to 310 students, the School has exceeded that limitation and allowed its student enrollment to grow to 330 students. Similarly, the School has exceeded the cap imposed on faculty and staff by 82 employees. The School has explained that these increases were due to a good faith misunderstanding of the Board's prior order with respect to calculating students and faculty who are at the campus on a part-time basis.

The Applicant also seeks approval to use the property located at 4749 Whitehaven Parkway (the "nearby property") for administrative offices for the School. The nearby property is located at Square 1374, Lot 840, on a record lot that is separate from the rest of the School. Finally, the School requested permission to satisfy a portion of its parking requirement through the use of 43 new angled parking spaces it would construct along Whitehaven Parkway in the public right-of-way.

Following a public hearing, the Board deliberated at its Decision Meetings held on May 2, 2006 and May 16, 2006. At the May 16 Decision Meeting, the Board voted to approve the special exception requests under § 206. The Board did not approve special exception relief for parking pursuant to § 2116. Instead, the Board found that special exception relief for parking would not be necessary provided that 43 angled public parking spaces along Whitehaven Parkway were created as presented to the Board, but not dedicated to the exclusive use of the school. Such spaces would need to be in place within 9 months of the effective date of this Decision and Order.

**PRELIMINARY MATTERS**

**Self-Certification** The zoning relief requested in this application is self-certified pursuant to 11

DCMR § 3113.2 (Exhibit 5).

**Notice of Public Hearing** Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the Applicant, all entities owning property within 200 feet of the Applicant's site, the Advisory Neighborhood Commission (ANC) 3D, and the Office of Planning (OP). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 24).

**ANC 3D** The subject site is located within the area served by Advisory Neighborhood Commission 3D (the ANC), which is automatically a party to this application. The ANC filed a report indicating that at regular public meetings on September 7, October 5, and November 2, 2005, with a quorum present, it met to consider the requested relief. The ANC voted to "maintain the present student cap of 310", "increase the faculty and staff from 95 to 150 based on the current number of on-site parking spaces available", "oppose the request [to provide parking in the] public space", and support the use of nearby property for administrative offices (See, Exhibit 26, and Exhibits 27 and 30 noting a correction in the ANC vote). At a subsequent meeting on March 16, 2005, the ANC discussed the Department of Transportation's report and the School's Traffic Management Plan (TMP). Although the ANC voted to endorse the TMP, it also recommended "the formation of a timely implementation schedule for the stated parking and transportation management goals, and a meaningful enforcement and reporting mechanism for the TMP." (Exhibit 74). The ANC representative, Alma Gates, testified at the April 4, 2006 hearing and also submitted her testimony in writing (Exhibit 78). In its final report, the ANC recommended that the Board set benchmarks and/or goals to measure the success of the School's TMP. In particular, the ANC recommended that the number of vehicle trips generated by the School be reduced over time (Exhibit 83).

**Office of Planning (OP) Report** OP filed a report supporting the request for the administrative offices, and night school operations, but opposing the request for an increase in enrollment and faculty/staff at the School (Exhibit 31). OP also requested additional information regarding the School's proposal to build angled parking spaces (Exhibit 31). In its supplemental report, OP reiterated its position that the School should reduce its student enrollment by attrition by the end of the 2008 academic year (from 330 to 310), and also recommended that a faculty increase from 94 to 182 should be only temporary, ending in 2009. (Exhibit 67) OP's representative testified that the enrollment and faculty increases had led to adverse impacts on neighborhood streets due to increased traffic and overflow parking on neighborhood streets.

**Department of Transportation (DDOT) Report** DDOT initially indicated that the proposed parking spaces were acceptable from a technical standpoint, but later wrote that it did not support the Applicant's proposal for spaces in the public right-of-way (Exhibits 28 and 63). DDOT also offered to assist the Applicant in developing a revised TMP (Exhibit 63). Prior to the Board's Decision Meeting in March, 2006, DDOT submitted a report noting that the School's parking demand far exceeded the available supply, and that the School needed to mitigate the use of parking in the neighborhood through the use of transit, van shuttle services, and carpools (Exhibit 71). Ken Laden, a representative of DDOT, testified before the Board and noted his objection to public space being dedicated to a private use. He supported the creation of the

angled parking spaces, provided they were available to the public and not dedicated to the exclusive use of the school. He also acknowledged that the demand for parking in the area where the angled spaces are proposed to be located is largely limited to employees and visitors to the Lab School and Our Lady of Victory School.

**Requests for Party Status.** ANC 3D was automatically a party to this proceeding. The Board received a request for party status from the Reverend Milton Jordan, Pastor of Our Lady of Victory Church, located across Whitehaven Parkway from the property and across from the proposed angled parking spaces (Exhibit 29). The Board granted Reverend Jordan's request for party status, and the Reverend testified at the public hearing regarding safety concerns at the Church school. However, by letter dated February 20, 2006, Reverend Jordan withdrew his opposition to the Application, and wrote that his concerns had been addressed by the Applicant (appended to Applicant's Exhibit 66).

**Persons in Opposition to the Application** The Board received letters in opposition to the application from neighboring property owners Vicki Hicks, Katie Harvey, and Brendan Reilly (Exhibits 32 and 21). The letters in opposition asserted generally that the proposed enrollment and faculty/staff increase would create objectionable traffic and parking conditions in the neighborhood. Ms. Hicks, who wrote one of the letters, testified at the public hearing, and stated that the traffic situation in the neighborhood is objectionable, and that the granting of the application would result in more traffic. She also stated that the proposed angled spaces would encourage more traffic in the neighborhood.

**Persons in Support of the Application** The Board also received several letters in support of the application (Exhibits 33-48, and 65). The letters generally cited the excellent education that the School offers and the many benefits the School provides to its neighbors. In addition, the letters stated that the new sidewalk proposed in conjunction with the angled spaces would greatly increase pedestrian safety on Whitehaven Parkway. A nearby homeowner, Anne Davis, testified in support of the application, asserting that the proposed angled spaces and sidewalk would be an amenity for the neighborhood.

**Applicant's Case** Sally Smith, the Founder and Director of the School, testified on behalf of the Applicant, as did Peter Braun, Director of Operations for the School. The Applicant also presented testimony and evidence from experts in civil engineering (Allyn Kilsheimer of KCE Structural Engineers) and traffic management (Martin Wells of Wells & Associates) (See, Exhibit 73, TMP appended to Exhibit 66, and revised TMP appended to Exhibit 76).

**Closing of the Record** The Board conducted a public hearing on November 22, 2005, but kept the record open to receive several submissions, including supplemental reports by OP and DDOT, and an ANC response to the Applicant's oral motion to strike the ANC report. The Board set the matter for a Decision Meeting on March 7, 2006. Prior to that meeting, the Board received several submissions, including, most significantly, a report from DDOT. Because that report raised additional questions regarding traffic and parking issues, the Board re-opened the record to accept all of the submissions and to conduct an additional hearing. The hearing was limited to the traffic and parking issues, in particular, those issues raised by the TMP and DDOT

reports. The hearing was conducted on April 4, 2006, and the record was held open until April 25, 2006, to allow proposed Findings of Fact and Conclusions of Law from all the parties. A Decision Meeting was held on May 2, 2006, and again on May 16, 2006.

### **FINDINGS OF FACT**

#### **Background**

1. The School is a private school for children with special needs in grades kindergarten through twelve.
2. It has been located at the property since the School acquired it in 1982, and currently enrolls 330 students.
3. The School also offers educational programs for adults, and currently enrolls about 60 learning-disabled adult students during the evenings. The "night school" teaches essential life skills such as reading, writing, spelling, and basic math. Classes meet only on Tuesdays and Thursdays, for a total of only 24 evenings per semester, and are held between 5:50 and 9:30 p.m. Class size is limited to five students.
4. The Applicant proposes to continue its night school use, which it asserts is a reasonable accessory use to the private school use.
5. In 1992, the Board approved the private school use in BZA Order No. 15642, granting the School's application to add additional property to the School and to convert a single-family home into administrative offices.
6. The private school use of the property was most recently approved in 1997 in BZA Order No. 16273, when the Board approved a maximum student enrollment of 310 students (Condition no. 1) and a faculty/staff cap of 95 (Condition no. 2).
7. Notwithstanding these limitations, the School currently enrolls 330 students and employs 182 faculty and staff, including teachers (of which 78 are full-time), administrative employees, speech therapists, occupational therapists, and physical therapists.
8. The number of employees at the school at the same time between the hours of 7:00 a.m. and 4:00 p.m. varies, but ranges between 170 and 179 employees.

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

9. The property is located in the R-1-B zone district near the intersection of Whitehaven Parkway and Reservoir Road. It has frontage on both streets and consists of approximately 163,567 square feet of land area located at premises 4759 Reservoir Road, NW (Square 1372, Lot 25).

10. The property is improved with a prominent administration building known as the "castle", a gymnasium, a carriage house, an arts building, two classroom buildings, and two houses. There is also a protected wetlands on site.

11. There are currently 87 parking spaces located at the property, but the property can accommodate 107 cars with stacked parking.

12. The School also owns the nearby property located at 4749 Whitehaven Parkway, NW (Square 1374, Lot 840) (the nearby property). The nearby property is located across Whitehaven Parkway from the subject property, contains 5,003 square feet of land area, and is improved with a single-family home.

13. The surrounding area is characterized by a mixture of residential and institutional uses. The property abuts St. Patrick's Episcopal Day School to the east and Fire Engine House No. 29 to the west. Both sides of Reservoir Road, which is located south and east of the property, are devoted primarily to use as single-family homes. The Embassy of the Federal Republic of Germany and an underground reservoir are located further east of the property. St. Patrick's Episcopal Day School's gymnasium, The George Washington University Mount Vernon campus, and Our Lady of Victory Church and School are located across Whitehaven Parkway from the School.

### Traffic

14. The transportation firm of Wells & Associates studied the traffic of the area in which the property is located and conducted a "Traffic Impact Analysis" (the traffic study) of the conditions of the School (Exhibit 25, Tab H).

15. Because the school has already increased its enrollment and staff to the level for which approval is sought, the traffic study attempted to extrapolate the extent to which the increases have already impacted neighborhood traffic.

16. According to the traffic study, traffic is heavy at the intersection of MacArthur Boulevard and Whitehaven Parkway, the location where the School is located. However, this is attributable primarily to commuter traffic.

17. The traffic study shows that the additional faculty and staff have not adversely affected traffic patterns in the vicinity of the site nor had an adverse impact on the road network. The traffic study measured the traffic with the School's additional enrollment and faculty/staff (330 students and 182 faculty/staff) and compared traffic that would result from enrollment and faculty/staff cap actually authorized (310 students and 95 faculty/staff). According to the study, the additional students and faculty/staff have caused some delay at the intersection of MacArthur Boulevard and Whitehaven Parkway – but only a two second delay – during the AM peak hour. The additional students and faculty/staff have had virtually no effect on traffic during the PM traffic.

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18. Anthony McElwee, of the Metropolitan Police Department, testified that he performed a survey of traffic on Whitehaven Parkway at the request of the ANC, and found that Whitehaven Parkway is heavily traveled during peak hours. He also found that parents stop and park their cars while picking up and dropping off students, and that children frequently cross Whitehaven Parkway.

### Parking

19. As a private school use, the School is required to have "ample" parking, but not less than that required in Chapter 21 of the Regulations. 11 DCMR 206. Based on 182 employees and the School's assembly space, the School is required to have 130 parking spaces pursuant to the parking schedule set forth at 11 DCMR 2101.<sup>1</sup>

20. Pursuant to 11 DCMR 2108 the Board is authorized to reduce the number of parking spaces required under 11 DCMR 2101 by up to 25% upon consideration of the factors set forth therein, including the availability of parking in the neighborhood.

21. A 25 % reduction pursuant to 11 DCMR 2101 would thereby require the School to provide 98 spaces on site.

22. As stated in Finding of Fact No. 9, there are currently 87 parking spaces that meet the technical requirements under the Zoning Regulations, but the School can accommodate a total of 107 cars within its property, including unmarked spaces and stacked parking.

23. The School cannot locate additional parking spaces on site because of the existence of wetlands on its property as well as existing improvements.

24. According to the traffic study, the School's current parking demand is for 175 parking spaces. The school intends to reduce that demand to 130 parking spaces through the use of car pooling and a free shuttle service in accordance with its TMP.

25. The Applicant's long term parking solution is to either construct a garage or acquire off-site spaces, and the School plans to acquire additional property for this purpose. However, it will take approximately five years for the School to locate and acquire an appropriate site or to raise the funds for the garage.

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<sup>1</sup> Because many of the employees are part-time and not all at the school at the same time, the parking requirement may actually be less than that amount. See, 11 DCMR 2118.3. The School stated at the hearing that the number of employees at the school at the same time between the hours of 7:00 a.m. and 4:00 p.m. varies, but ranges between 170 and 179 employees, less than the 182 figure used to calculate the required parking. The Board need not resolve whether fewer spaces are required because the difference in numbers is not significant enough to affect the Board's analysis in this case.

26. In the interim, the School has developed a Traffic Management Plan ("TMP") that offers solutions to parking and traffic concerns. (Attachment to Exhibit 66).

27. The TMP posits that the School's weekday parking demand currently exceeds the School's on-site parking supply. The stated goal of the TMP is to "bring peak weekday parking demand and supply into balance by "(1) increasing parking supply and (2) decreasing overall parking demand".

28. The TMP proposes measures to increase parking supply through re-striping existing spaces to gain more spaces, and providing stacked parking spaces.

29. The TMP proposes measures to reduce peak parking demands through increased use of public transportation, carpools, school bus service, bicycles, car sharing, and limitations on high school drivers.

30. The TMP also addresses typical weekday arrival and dismissal, evening, and event traffic management.

31. If the TMP is successfully implemented, the AM peak hour vehicle trips will be reduced from 196 to 165 (Exhibit 82).

#### Angled Parking on Whitehaven Parkway

32. The School initially proposed as a solution to its parking needs the construction of 43 angled parking spaces along Whitehaven Parkway, a public right-of-way, that would be dedicated exclusively to the School. The School proposed to lease these spaces from the District of Columbia and sought special exception relief under § 2116.

33. The school designed a parking plan for the angled spaces that complies with the provisions of Chapter 23 of the Zoning Regulations, and will be paved in accordance with DDOT requirements. Two of the parking spaces will be handicapped-accessible. There will be no structures or lighting related to the parking spaces.

34. The parking design has met with DDOT's approval, but not the dedication of the spaces to exclusive use by the School. The plan is subject to final approval by the Public Space Committee.

35. Construction of the 43 spaces will replace 17 existing spaces, resulting in a net increase of 26 public parking spaces.

36. The demand for parking in the area where the angled spaces are proposed to be located is largely limited to employees and visitors to the Lab School and Our Lady of Victory School.

37. The 107 parking spaces on site, together with the 26 additional parking spaces that would be created by the construction of the angled parking, would provide ample parking to meet the parking demand for 130 spaces set forth in the TMP.

38. Pursuant to its TMP, if the School does not demonstrate a balance between supply and demand within 30 days after the beginning of the school year in the fall of 2007, the School will be required to lease additional off-site spaces to meet the excess demand.

**Other Objectionable Conditions**

39. The additional faculty and staff (reflecting current employment) do not cause objectionable noise and have little effect on neighboring properties. The faculty and staff generally work inside the School buildings and, as a result, cause no adverse noise impacts. Most of the School's immediate neighbors are institutional uses, and the School's buildings are well-buffered from nearby residential properties. Likewise, the increase in student enrollment (20 additional students) has had little impact on neighboring properties.

**Impact of Administrative Office Building**

40. The proposed building will house administrative functions that are integral to the private school use. These functions are an essential adjunct to the educational mission of the School.

41. The proposed building will be extremely close in proximity to the existing School buildings – it will be located only 120 feet away and will be separated only by Whitehaven Parkway. Approximately 15 of the existing school employees will use the building on a regular basis, and the building will have a negligible impact on traffic.

**CONCLUSIONS OF LAW**

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-524(g)(2)), to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 to allow an increase in its student enrollment and faculty and staff, and for approval for administrative offices at a nearby property. It also sought permission to locate accessory parking elsewhere than on the lot of the buildings the spaces are intended to serve. 11 DCMR § 2116.5.

The Board may grant a special exception where, in its judgment, two general tests are met, and the special conditions for the particular exception are met. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map." 11 DCMR § 3104.1.

Under Section 206.1 of the Zoning Regulations, the Board may permit the use of private schools subject to the provisions set forth in 206.2 and 206.3:

206.2 - The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

This application is similar to *Application No. 17081 of St. Patrick's Episcopal Day School*, 51 DCR. 10277 (2004) with respect to its request for an increase in faculty and staff. Like the Lab School, the Applicant in that case was requesting the Board to ratify an unauthorized increase in staff that had grown in large part with part-time employees. In both cases, there was confusion as to how to count these employees. In that case, as here the Board found that "the increase requested ...[would] not result in an actual increase, but rather [would] modify the Board's condition to comport with reality", 51 DCR 10882. In granting that application, the Board noted that "the Applicant has admitted its error, is not seeking to add more faculty or staff, and has demonstrated that the increase, although unauthorized, did not result in adverse impacts." *Id.* The Board makes the same findings with respect to this application. The School has been operating at the site since 1982. Since that time, the School has operated without significant objectionable impacts on neighboring properties from noise, traffic, or number of students. While the evidence in the record shows that there has been some increase in traffic in the neighborhood, that increase is minor and primarily attributable to commuter traffic (Findings of Fact 15 and 16). Furthermore, the TMP, upon which this Order is conditioned, will insure that any traffic impacts will be mitigated. The Board is persuaded that, even with the additional students and employees, the School will continue to have only minimal impact on the noise and traffic conditions in the area. The primary objectionable impact has been on parking in the neighborhood. The Board finds that the objectionable parking impacts will be mitigated by the additional parking that will be provided as set forth below and by the decrease in the demand from parking resulting from the School's TMP.

206.3 – Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Based upon the School's figure of 182 employees, under the parking schedule set forth in 11 DCMR 2101, the School is required to provide 130 spaces on site. The Board finds that a reduction in this requirement is justified, reducing that number to 107 spaces on site, including unmarked spaces and stacked parking.<sup>2</sup> This reduction is less than the 25% authorized under Section 2108.3 which in this case would allow a reduction in the required number of spaces to 98. In making this determination the Board has considered the following factors set forth in Subsection 2108.3:

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<sup>2</sup> While the Applicant has only 87 parking spaces that meet the technical specifications of the regulations, the Board concludes that the words in Section 206, "but not less than that required in Chapter 21," modifying the phrase "ample parking," applies to the number of spaces required on site by the parking schedule. Accordingly, the Board applies the special exception standards in its evaluation of other parking space criteria.

- (a) Nature and location of the structure;
- (b) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
- (c) Amount of traffic congestion existing or that the building or structure can reasonably be expected to use the proposed building or structure at one time;
- (d) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the building or structure is in use; and
- (e) Proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area or a ride-sharing program approved by the D.C. Department of Transportation.

The Board finds that because of the topography of the site, including the presence of wetlands and existing improvements, the School cannot provide any more than the 107 on-site parking spaces. However, the Board finds that these 107 on-site spaces will provide ample parking for students, teachers and visitors provided that the 43 angled parking spaces are constructed on Whitehaven Parkway as presented to the Board. The 107 on-site spaces together with the 26 additional public parking spaces that will be created in the neighborhood with the construction of the angled parking will net a total of 133 parking spaces for an estimated demand of 130 spaces. Although, the School will not have exclusive control over the angled parking, the record reflects that that parking is primarily accessible to the Lab School and Our Lady of Victory and would primarily serve the School's population. Use of these spaces by the School will diminish parking by the School on neighboring streets. Finally, the School's extensive TMP contains various mechanisms, including the use of shuttle buses and public transportation, and monitoring to bring into balance the parking supply and demand. Taken together, the increase in parking availability for both the School and the general public and the decrease in parking demand allow the Board to conclude that 107 on-site parking spaces are ample.

While the School initially sought a special exception for use of the angled parking as accessory parking pursuant to 2116 to count towards its required 130 spaces, DDOT as well as the ANC opposed the dedication of public space to private use. Accordingly, in granting the Application, the Board does not grant this special exception. Instead, the Board finds that with the construction of the 43 angled spaces that will be available to the general public there will be ample parking for the School.

Finally, the School has presented its parking solutions as temporary; that it is seeking to acquire additional property for a new garage. Accordingly, as set forth in the conditions, the Board is imposing a five-year term on this order in light of the changes expected to occur in that time period.

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Night School Use

An "accessory use" is defined under the Zoning Regulations as "a use customarily incidental and subordinate to the principal use, and located on the same lot as the principal use". 11 DCMR 199. The Board concurs with the Applicant that the night school, as it is currently operated, is a reasonable accessory use to the School (Findings of Fact 3 and 14).

Administrative Office Building

As stated above, the proposed building will house administrative functions which can be reasonably characterized as an extension of the principal school use. As such, the administrative offices will not serve as an accessory "use", but the proposed building is an accessory "building". Thus, the Board considered whether approval of the structure would run afoul of § 2500.1 of the Zoning Regulations. Section 2500.1 allows an "accessory building", but only if it is "located on the same lot with the use or building to which it is accessory". Here, the proposed office building will be located directly across the street from the School. As the School has purchased the property, the building is located on the School's property, but on a lot and square that is separate from the main campus of the School.

This fact notwithstanding, the Board has never read this section to require that accessory buildings for school uses be located on the same record lot. The District of Columbia Court of Appeals has affirmed the Board's broad reading of this requirement to apply to a School's property in general, not to a specific record lot and square.

The Court of Appeals' discussion, though with respect to accessory uses, in *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003) is specifically on point to the question presented in this case. The Court stated as follows:

The GRA argues nevertheless that this particular child care center is not an accessory use because it fails the "same lot" test set forth in the zoning regulations. See 11 DCMR § 199 ("a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use"); *Hilton Hotels*, supra note 13, 363 A.2d at 671 (facility not on same lot is not an accessory use). Specifically, because Poulton Hall stands on lot 835, in a residential neighborhood and not on Georgetown's main campus, which bears a different lot number in the District of Columbia land records (it is directly across the street), the GRA claims it cannot be deemed an accessory use to the University. This argument is unavailing. Both the Acting Zoning Administrator and the BZA interpreted "lot" in this context to mean the entire University, not just the record lot, for the purpose of its consideration as an accessory use. We uphold the BZA's ruling on this issue, since it is consistent with both the zoning regulations and our case law. See 11 DCMR § 199 ("A lot may or may not be the land so recorded on the records of the Surveyor of the District of Columbia"); *Citizens Coalition*, 619 A.2d at 955 (holding that, because the proposed power plant was on a remote part of the University campus, the "same lot" requirement for accessory uses was satisfied);

see also *Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment*, 802 A.2d 359, 366 (D.C. 2002) (distinguishing between "lot" and "lot of record").

In accordance with the past BZA and Court of Appeals decisions referenced above, § 2500.1 does not preclude the location of the administrative building across the street from the main campus. Further, in light of the limited use of this building -15 employees performing administrative functions - and its location next to other institutional uses, the Board finds that there will be no likely adverse impact from the proposed location of the offices.

#### OP's Issues and Concerns

The Board is required, under D.C. Code § 6-623.04, to give "great weight" to OP recommendations. In its report, OP stated that neither student enrollment nor faculty/staff should be increased as was requested. However, the Board finds that neither OP's report nor its testimony during the hearing, identified specific, quantifiable impacts that would justify limiting the enrollment or faculty and staff. The School has demonstrated that the additional 20 students have had little effect on noise and traffic and is likely to continue to have minimal impact. Thus, the Board does not find OP's recommendations regarding an enrollment staff cap to be persuasive. The Board has given great weight to OP's concerns about the impact on parking in the neighborhood from the additional staff and is persuaded that the additional parking and the implementation of the School's TMP will redress the parking problems. The Board also has been persuaded by OP's (and DDOT's) policy concerns with respect to the dedication of public parking to private uses and has accordingly, declined to grant special exception relief for that purpose.

#### The ANC Issues and Concerns

The Board is also required, under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; now codified at D.C. Code § 1-309.10, to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, articulating specific findings and conclusions with respect to each of the ANC's issues and concerns.

In order for the ANC to be granted great weight, it must comply with the provisions set forth in 11 DCMR 3115.1 and the statute referenced above. Such provisions include proper notice, and the holding of a public meeting. During the hearing, the Applicant made an oral motion to strike the ANC Report on grounds that the ANC had conducted its deliberation in private. The Board interprets this motion as a motion to deny the ANC great weight in this case. In a written response, the ANC explained that it did not conduct any substantive deliberations regarding the issues in this case in private. The Board is persuaded that the ANC's actions did not rise to the level of denying the ANC its great weight and accordingly addresses its issues and concerns as follows:

1. Student Enrollment and Faculty /Staff Increases

For the reasons already set forth, the Board finds that the student and faculty / staff increases are not likely to have an adverse impact on neighboring properties because of the additional parking that will be provided and because of the extensive mechanisms in the School's TMP to redress parking and traffic concerns.

2. Angled Parking on Whitehaven Parkway

The Board was persuaded by the ANC's and DDOT's concerns regarding the exclusive dedication of public parking spaces for private use. However, the Board does not agree that the parking spaces on Whitehaven Parkway will encourage future staff growth, or that fire trucks will have difficulty traversing the right-of-way. The Board finds that the provision of the angled parking that will benefit the public. The design as presented to the Board not only will add parking spaces to the neighborhood, but also will add sidewalks, and improve the safety and aesthetics of the area.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof and grants the School Special Exception Relief under § 206 **SUBJECT** to the following **CONDITIONS**<sup>3</sup>:

1. The maximum enrollment shall be 330 students.
2. The maximum number of faculty, staff, and administrative personnel, including part-time employees, shall be 182.
3. Within 30 days of the beginning of each academic year, the School shall provide to ANC 3D a report indicating current student enrollment and the number of faculty/staff.
4. The School shall fully implement and comply with the Plan A of the Traffic Management Plan (TMP) (Exhibit 66).
5. Within 45 days of each traffic monitoring survey required by the TMP, the School shall provide to DDOT and ANC 3D a report indicating its compliance with the TMP. Compliance with the TMP will be measured by the School's progress in reducing its AM traffic generation rate from 196 to 165, as described in its Traffic Study (Exhibit 25, Tab H) and its letter of May 5, 2006 (Exhibit 82) and by its balancing of its parking supply with its parking demand.

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<sup>3</sup> The conditions set forth herein supersede all other conditions set forth in previous orders relating to this School.

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6. Forty-three (43) new angled parking spaces must be in place along Whitehaven Parkway within 9 months of the effective date of this order for the School to be in compliance with § 206.3's requirement of ample parking. These spaces must be consistent with the plans prepared by VIKA Engineers (Exhibit 9), and with the provisions of Chapter 23 of the Zoning Regulations. There will be no structures or lighting relating to the parking spaces and the area will be paved in accordance with DDOT requirements.
7. This approval is limited to a **FIVE YEAR TERM** from the effective date of this Decision and Order.

**VOTE:** 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, and Carol J. Mitten, all in favor of the motion)

VOTE TAKEN ON MAY 16, 2006

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

**DEC 12 2006**

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

PURSUANT TO 11 DCMR 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6."

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 § 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.

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.

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

**Application No. 17501 of Cynthia Jones on behalf of Jones & Araque, L.L.C.,** pursuant to 11 DCMR § 3104.1, for a special exception to establish a fast food restaurant under § 733, in the C-2-A district at premise 605 2<sup>nd</sup> Street, N.E. (Square 753, Lot 94).

**HEARING DATE:** July 25, 2006  
**DECISION DATE:** September 19, 2006

**DECISION AND ORDER**

This application was submitted on March 16, 2006 by Cynthia Jones ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The application, submitted on behalf of Jones & Araque, L.L.C., requests a special exception to operate a fast food restaurant in a C-2-A zone district, pursuant to § 733 of the Zoning Regulations.

The Board of Zoning Adjustment ("Board") held and completed a hearing on the application on July 25, 2006, but kept the record open to receive further information. After receipt of this information, a decision meeting was held on September 19, 2006, at which the Board voted 4-0-1 to grant the application.

**DECISION AND ORDER**

Notice of Application and Notice of Hearing. By memoranda dated March 17, 2006, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the subject property is located, and the Single Member District member for 6C05. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and mailed such notice to the Applicant, ANC 6C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 6C was automatically a party to the application. There were no requests for party status from individuals.

Applicant's Case. Mr. Jones, with the help of Mr. Araque, testified as to the nature of the restaurant operation and how it complies with the Zoning Regulations.

Government Reports. The Office of Planning filed a report with the Board on July 18, 2006. In the report, OP recommended approval of the application subject to conditions, provided certain outstanding issues were addressed and explained. OP recommended the following conditions to help mitigate any potential adverse impacts: (1) opaque gates on the trash bin enclosure, with a notation to this effect on the plans, (2) exterior lighting that

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is directed downward and does not exceed 100 watts, 1420 to 1750 lumens, and (3) increased frequency of trash collection to three times a week. The issues on which OP requested further clarification were the number of employees and whether any employee transportation management plan was proposed, and how deliveries would be accommodated without blocking 2<sup>nd</sup> Street.

The District Department of Transportation filed a report with the Board dated August 11, 2006 stating that it had no objection to the proposed restaurant and that "traffic generation and the impact to the surrounding traffic network are expected to be minimal." DDOT recommended using the alley for deliveries, but also indicated a willingness to assign appropriate curb space on 2<sup>nd</sup> Street for a loading zone if the Applicant so desired. DDOT further recommended limiting deliveries to between 8:00 a.m. and 12 noon, and delivery truck size to "standard size box trucks."

ANC Report. The ANC filed two reports with the Board, the first dated June 20, 2006, and the second dated September 14, 2006. Both reports resulted from properly noticed meetings with quorums present. In the first report, the ANC, by a divided vote of 3-2-2, stated its opposition to the application based on the testimony of nearby residents about the potential deleterious effects of the restaurant use. At the time of this first ANC report, there was no DDOT report in the record. After the hearing, the Board requested input from DDOT, and invited the ANC to take a second look at the project, factoring in any opinion and recommendations made by DDOT. This "second look" resulted in the second ANC report, which states that the ANC unanimously voted to support alley deliveries, but does not appear to alter the ANC's original opposition to the application as a whole.

There was no ANC representative present at the hearing, and so no testimony on behalf of ANC 6C as a whole. Two Single Member District representatives testified, one from ANC 6C-05, the Single Member District wherein the subject property is located, and one from ANC6C-08, an abutting Single Member District. The representative from 6C-05 testified in favor of the project and the representative from 6C-08 testified in opposition.

**FINDINGS OF FACT**The property and the surrounding area

1. The subject property is zoned C-2-A and is located at 605 2<sup>nd</sup> Street, N.E. in the Capitol Hill neighborhood, near the corner of 2<sup>nd</sup> and F Streets, N.E., in Square 753, Lot 94.
2. Second Street, N.E. is a two-way street with unrestricted parking on the side

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opposite the subject property and residential parking on the side of the subject property.

3. On the other side of 2<sup>nd</sup> Street is a C-M-3 zone district.
4. The subject property is located approximately one block to the east of Union Station and is surrounded, in the immediate neighborhood, by various residential and commercial uses, including a new office building across 2<sup>nd</sup> Street where the U.S. Securities and Exchange Commission is located, and the Thurgood Marshall Judicial Center, at the southwest corner of 2<sup>nd</sup> and F Streets, N.E.
5. The property is 701 square feet in area and is improved with a 2-story with basement single-family row dwelling.
6. The basement is at-grade at the rear, and has a rear door, and is currently accessible from the front by a stairway leading down into an open area. Entry to the first floor is accomplished by the placement of a wooden catwalk over this open area.
7. The front façade of the building is flush with the front property line, and the rear of the property abuts a 10-foot wide public alley which widens to 25 feet behind the immediately adjacent row dwelling to the north.
8. The subject row dwelling is one of a strip of seven row dwellings, at least two of which now house commercial uses.

The proposed project

9. The Applicant plans to gut and redesign the interior of the subject building to accommodate a fast food restaurant use, but will not make any exterior addition to the building.
10. The façade of the building will be mostly maintained, but certain structural alterations are planned. A larger entryway will have to be fitted at the front entrance and the two first floor windows will be altered to serve as entryways. The width and head of the original windows will, however, be retained, reducing the visual significance of this alteration.
11. In the front public space, the existing catwalk will be refurbished, a new wooden patio constructed to provide outdoor seating, and a masonry or wooden planter with low vegetation placed along the sidewalk.

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12. A rear exit stairway from the first floor leading to the rear yard will also be installed.
13. The restaurant will be a café/delicatessen-style establishment serving breakfast, lunch, and dinner and providing Wi-Fi services 7 days a week, with daily hours from 7:00 a.m. to 10:00 p.m.
14. The restaurant will have no more than five employees on the premise at any one time and the employees will be required to use public transportation on a regular basis.
15. The restaurant will have indoor seating on the second floor for approximately 15 patrons and outdoor seating for approximately 16.
16. The restaurant will receive at least one delivery each day and all deliveries will be made by vehicles no larger than standard size box trucks.
17. All deliveries by trucks will be made in the rear alley, between 8:00 a.m. and 12:00 noon.
18. The building, with the proposed fast food restaurant use, will continue to exist within the dimensional parameters mandated by the Zoning Regulations, except that the building is already nonconforming as to lot occupancy. Its lot occupancy, 63.1%, will not change due to the proposed project,<sup>1</sup> but is already greater than the maximum 60% permitted in the C-2-A zone district. See, 11 DCMR § 772.1.

Compliance with applicable special exception requirements of §§ 733 and 3104

19. The nearest residential zone district is approximately 53 feet from the subject property.
20. There will be a trash dumpster located in the rear yard of the property which will be enclosed by brick walls at least 6 feet in height. The entrance to the dumpster enclosure will be wood plank and will face the alley.
21. Trash will be collected a minimum of three times a week, and more often, if needed.

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<sup>1</sup>No relief is needed due to the building's existing nonconforming status because the modifications proposed to the subject building are "structural alterations" permitted by 11 DCMR § 2001.2. Nor will the addition of the rear exit stairway increase the lot occupancy because the stairway does not "extend above the level of the main floor of the main building" (See, 11 DCMR § 199.1, definition of "Building Area") and because it is permitted to occupy the rear yard pursuant to 11 DCMR § 2503.4

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22. The restaurant will not include a drive-through.
23. There will be no customer entrances in the rear or side of the building. The only customer entrances will be located in the front of the building, facing, and opening into, the C-2-A-zoned area.
24. Low-level lighting (approximately 1420 to 1750 lumens) will be installed in the front and rear of the building for use during evening and day-break hours, but will be cast downward so as not to shine into neighboring windows.
25. All of the customer activity associated with the restaurant will take place in front along the commercially-zoned street and any litter or debris left here, or in the rear yard, will be picked up on a regular basis during business hours.
26. There will be no unacceptable noise produced by the restaurant use, as no amplified sound is planned.
27. Because the building floor area will be less than 3,000 square feet, the Zoning Regulations do not require off-street parking spaces for the restaurant, but one is being provided in the rear yard for the use of employees. *See*, 11 DCMR § 2101.1.
28. Most, if not all of the patrons of the restaurant are expected to walk to the building from nearby offices and the surrounding neighborhood.
29. The restaurant will generate little or no traffic, and likely not more than would be generated by a residential use.
30. Deliveries will be handled in the rear alley in order not to cause congestion on 2<sup>nd</sup>, or other nearby streets.
31. Trash collection will also take place in the alley, and, if necessary, the trash hauling service workers will roll the trash bins from the rear yard, through the alley, to the trash truck.
32. The proposed restaurant use will service the day-time population of nearby office and other commercial buildings, and will serve local residents during evening and weekend hours.

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## CONCLUSIONS OF LAW

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 section pertaining to them. In this case, the Applicant had to meet both the requirements of § 733 and § 3104.1 of the Zoning Regulations.

Section 733 of the Zoning Regulations permits a "fast food restaurant" as a special exception in a C-2-A zone if certain enumerated criteria are met. The proposed restaurant use will be a "café/delicatessen-style" establishment, and therefore, although it is not a traditional franchised "fast food restaurant," it falls under this category of uses for zoning purposes. *See*, 11 DCMR § 199.1, definitions of "Restaurant" and "Restaurant, fast food."

The application complies with all the applicable criteria of § 733. It is located approximately 53 feet from the nearest residential zone district and is separated therefrom by an alley. *See*, 11 DCMR § 733.2. The trash dumpster will be properly enclosed pursuant to § 733.4's mandates of a 3-sided brick enclosure, a minimum of 6 feet high, with an opaque gate. The enclosure will face the alley. There will be no drive-through service, nor will any customer entrances be located in the rear or side of the building. *See*, 11 DCMR §§ 733.5 and 733.6. Section 733.8 states that the restaurant use must provide sufficient parking, but not less than required by the Zoning Regulations. The proposed use has no parking requirement in the Regulations, but one space is being provided at the rear, for the use of the employees. Most, if not all, of the patrons of the restaurant will walk to it. Deliveries will be accommodated in the rear alley, as will trash pick-up, to avoid causing congestion on nearby streets. The delivery and trash hauling aspects of the use would be the most likely to have a negative impact on local traffic, and the Board is satisfied that the conditions imposed by this Order will mitigate, or even eliminate, any such impact.

Section 733.7, similarly to § 3104.1, seeks to ensure that the restaurant will not be objectionable to, nor adversely affect the use of, neighboring properties. The restaurant use will operate from 7:00 a.m. to 10:00 p.m., 7 days a week. Given the delicatessen-style nature of the proposed restaurant, these are reasonable hours, and will provide a commercial establishment available to office workers during working hours, and available to the local residents during evening and weekend hours. There should be no excessive noise, sounds, or odors emanating from the restaurant, and this Order implements a condition of a minimum of three-times-a-week trash pick-up, to ensure no

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trash build-up. The lighting on the exterior of the building will be low-level and directed downward so as not to impinge on the neighbors.

Section 3104.1 also mandates that a special exception be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The proposed restaurant is in harmony with the C-2-A zone district in which it is located. It is near office buildings, and both commercial and residential uses. Just across 2<sup>nd</sup> Street, N.E. is a minimally-restrictive C-M-3 zone district. The proposed restaurant is not too intense a use for the building that will house it, nor for the surrounding area. It will fit in with the neighborhood and will provide a neighborhood-serving restaurant that will help enliven the streetscape. The restaurant is envisioned as a neighborhood gathering place that will be a part of the community.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by 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. OP recommended approval of the application, if certain issues were resolved. The Board agrees with OP's recommendation and concludes that OP's noted issues have been accommodated.

The ANC opposed the granting of the application because of the possibility of negative effects on the neighborhood, but it also voted in favor of deliveries being made in the alley. The Board agrees with the ANC's decision as to alley deliveries, but disagrees with the ANC's opposition to the application. The Board finds that any potential negative effects on the neighborhood will be mitigated by the manner in which the Applicant has committed to operate, as set forth in the Findings of Fact, and by the conditions imposed in this Order.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception to establish a fast food restaurant pursuant to § 733 of the Zoning Regulations. Accordingly, it is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The building shall be altered pursuant to the plans in the record, including the revised plans, at Exhibit No. 31, Attachment No. 3.
2. Any exterior lighting on the building shall be cast downward.
3. Trash shall be picked up a minimum of three (3) times a week.

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4. All loading and deliveries shall be made in the rear alley. However, if DDOT recommends at a future date the assignment of a loading and delivery space/zone in front of the building and both the Applicant and the ANC agree to that alternative location, then the Applicant may conduct loading and delivery in that location without returning to the Board for modification of this Order.
5. Trucks servicing the Applicant's business shall be no larger than standard size box trucks.
6. All truck deliveries shall take place between the hours of 8:00 a.m. and 12:00 noon.
7. Deliveries by personal vehicles, smaller than standard size box trucks, are not subject to condition number 6 above and shall be made using the rear parking space.

**VOTE:** 4-0-1 (Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr. and Michael G. Turnbull to grant; Geoffrey H. Griffis, not present not participating)

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

**FINAL DATE OF ORDER:** DEC 14 2006

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

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

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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.

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

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

**HEARING DATE:** November 29, 2005

**DECISION DATE:** January 10, 2006

**FINAL ORDER DATE:** June 12, 2006

**RECONSIDERATION**

**DECISION DATE:** July 11, 2006

**ORDER DENYING RECONSIDERATION**

By order issued June 12, 2006, the Board granted approval, subject to conditions, of an application submitted July 1, 2005 by Jemal's Citadel LLC ("Applicant"), the owner of the property that is the subject of the application. The self-certified application requested area variances from requirements applicable to the rear yard, loading berths, and enlargement of a nonconforming structure to allow the redevelopment of an existing building in a mixed-use project that will include a grocery store, retail or service uses, and general offices in the Reed-Cooke/C-2-B zone at 1631 Kalorama Road, N.W. (Square 2572, Lot 36).

Parties in this proceeding are the Applicant, Advisory Neighborhood Commission 1C, and a group comprising the Reed Cooke Neighborhood Association, whose membership includes residents surrounding the Citadel building, and residents living near the subject property in the 1600 block of Kalorama Road or the 2300 block of 17<sup>th</sup> Street.

On June 26, 2006, the Reed Cooke Neighborhood Association ("RCNA") submitted a motion for reconsideration of the order approving the application. According to RCNA, the order improperly failed to address an issue raised by RCNA concerning the Applicant's plans "to use the subject premises for sales of alcoholic beverages for off-premises consumption," a use that is prohibited in the Reed-Cooke overlay zone.

In a response submitted June 30, 2006, the Applicant argued that RCNA had not provided any new evidence that could not have been presented at the public hearing but had

acknowledged that the question of sales of alcoholic beverages for off-premises consumption was "repeatedly raised" at the hearing. The Applicant urged denial of RCNA's motion for reconsideration for failure to meet the standard set forth in § 3126.6 of the Zoning Regulations.

**CONCLUSIONS OF LAW**

The Board is not persuaded that its final decision to approve the application with conditions was in error. As noted by RCNA in its motion, the Applicant's request for variances did not include a request for relief from the prohibition against off-premises alcoholic beverage sales applicable in the Reed Cooke overlay zone. See 11 DCMR § 1401.1(b). Thus, notwithstanding RCNA's assertions at the public hearing, the potential for off-premises alcoholic beverages sales was not an issue in this proceeding. The order granting the requested zoning relief – area variances related to rear yard, nonconforming structure, and loading requirements – did not also grant a variance from the prohibition against off-premises alcoholic beverage sales set forth in § 1401.1(b); no such relief was sought by the Applicant or considered by the Board.

Accordingly, it is therefore ORDERED that the motion for reconsideration is DENIED.

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

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

Each concurring Board member approved the issuance of this order.

**FINAL DATE OF ORDER:** DEC 14 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. 17545 of Jubilee Housing, Inc**, pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio requirements under section 771, and the nonconforming structure provisions under subsection 2001.3, to allow the renovation of an apartment building in the C-2-A District at premises 2233 18<sup>th</sup> Street, N.W. (Square 2560, Lot 863).

**HEARING DATE:** December 12, 2006  
**DECISION DATE:** December 12, 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) 1C, 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 1C. The ANC submitted a letter 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, 771 and 2001.3, 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, Curtis L. Etherly, Jr., John A. Mann II, Ruthanne G. Miller, and Gregory N. Jeffries 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:** December 12, 2006

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

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

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

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**NOTICE OF SPECIAL PUBLIC MEETING**

The Zoning Commission of the District of Columbia, in accordance with § 3005 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has scheduled a Special Meeting for Wednesday, January 17, 2007, at 7:30 P.M., to consider various items.

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

12-Month Schedule of Monthly Meeting Dates

The Zoning Commission of the District of Columbia, in accordance with subsection 3005.1 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has scheduled the following meetings. Meetings are held in Suite 220 South of 441 4<sup>th</sup> Street, N.W., #1 Judiciary Square, beginning at 6:30 p.m.

The dates of the Regular Monthly Meetings for the following year of the Zoning Commission of the District of Columbia are as follows:

January 8, 2007

February 12, 2007

March 12, 2007

April 9, 2007

May 14, 2007

June 11, 2007

July 9, 2007

August 13, 2007\* (subject to cancellation)

September 10, 2007

October 15, 2007

November 19, 2007

December 10, 2007

\*There are no hearings held in the month of August.

Please note that these dates are subject to change.

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

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