

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

**Application No. 17122-A of the Freedom Forum, Inc.**, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under §411, and pursuant to 11 DCMR § 3103.2, for a variance from the width of court requirements under §776.1, a variance from the arcade requirements under §1701.2 and a variance from the street wall requirements under §1701.3 to permit the development of a mixed use building including the Newseum, retail, an apartment house and offices in the DD/C-4 District at premises 555 Pennsylvania Avenue, N.W. (Square 491, lot 34)

**HEARING DATE:** March 9, 2004

**DECISION DATE:** March 9, 2004 (Bench Decision)

**DISPOSITION:** By Order No. 17122, dated March 16, 2004, the Board granted Application No. 17122 by a vote of 5-0-0 (Geoffrey H. Griffis, David A. Zaidain, Curtis L. Etherly, Jr., Ruthanne G. Miller and John G. Parsons to approve)

**MODIFICATION ORDER**

By letter dated November 16, 2004, the Applicant submitted a request that the Board modify the approved plans in the subject application. The Applicant requested that the Board approve the reconfiguration of the roof structures on the residential portion of the building to reduce the number from three to two and to reduce the setback on the south or interior side of the roof.

**THE WAIVER REQUEST**

As part of its filing, the Applicant requested a waiver from the six month limitation for filing requests for modification of plans with the Board, as set forth in §3129.3 of the Zoning Regulations. The Board granted the application in March of 2004, less than eight months prior to the filing of the requested modification. The full evolution of permit drawings brought to light only within the last few weeks the need to revise the size and layout of the roof structures. The six month period for seeking a modification is out of consonance with the two year period provided in §3130 for filing an application for a building permit. The Board granted the waiver of the six month filing requirement to consider the requested modification, finding good cause and no prejudice to any party.

**THE MODIFICATION**

In the application, the Board granted three variances and special exception relief pursuant to §411.11 for roof structure setbacks and for multiple roof structures. The building is designed as a complex and integrated series of "bars." The apartment house is in the northernmost bar adjacent and parallel to C Street. There were three separate roof structures proposed for the residential bar, which did not meet the setback requirements on the south side, adjacent to an interior wall of the building.

The proposed modification would make two changes to the roof structure on the residential bar. None of the variance relief granted is affected by the proposed modification. The three roof structures would be consolidated into two, by filling in the eleven foot, six inch gap between the middle and east roof structures. The roof structures would be extended to the south, so that there would be no setback adjacent to the southern interior wall, rather than the five foot, eight inch setback which was provided on the original plan.

The setbacks of the roof structures from the north, east and west edges of the roof remain as proposed on the original plans. At twenty-five feet, nine inches, forty feet, four inches and thirty feet, three inches, respectively, the setbacks far exceed the minimum of 1:1. The height of the roof structures has not changed. The third bar of the Newseum is higher than the top of the roof structures on the residential bar, blocking the view of the residential roof structures from the south and providing a backdrop for any potential view from the north, so that there would be no change in the appearance of the mass of the roof structures or of the outline of the roof structures against the sky.

The design of the north facing side of the third bar is such that, even with the roof structures moved to the interior edge of the roof on the south, there would be no view of the residential roof structures from inside the building. The lower floors of the Newseum have no windows facing north and the only windows in the upper floors of the office space in the third bar are located above eye level such that the angle of sight would be over the roof structures.

The overall FAR of the roof structures increases by a very minimal amount, from 0.070 FAR to 0.086 FAR. That increase is almost imperceptible. The decrease in the number of roof structures from three to two goes more in the direction of conformity with the Regulations, even though the overall mass on the roof is slightly increased.

### DECISION

The Board concludes that the requested modifications are minor and are within the requirements of §3129, as "minor modification[s] that do not change the material facts the Board relied upon in approving the application." After reviewing the request for modification and the supporting materials, the Board determined that the request should be granted.

Accordingly, it is therefore hereby **ORDERED** that the motion for waiver of the rules to consider the request is granted and that the motion for modification of plans, as shown on Exhibit No.33 of the record is **GRANTED**.

**DATE OF DECISION:** December 7, 2004

**VOTE:** 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller and John G. Parsons to approve, David A. Zaidain, not present, not voting)

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** DEC 15 2004

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

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF

ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17137-A of 1515 15<sup>th</sup> Street, LLC, Jacob A. Kamerow, Trustee & Edith Kaplan, Trustee**, pursuant to 11 DCMR §3101.2, for a variance from the lot occupancy requirements under section 772, a variance from the area requirements pertaining to residential recreation space under section 773 and a variance from the loading requirements under section 2201, to construct a seven story residential building with ground floor and below grade retail and service uses in the Arts/C-3-A District at premises 1515 15<sup>th</sup> Street, N.W. (Square 209, Lot 100 (also known as A&T Lots 919-921)).

**HEARING DATE:** April 13, 2004

**DECISION DATE:** April 13, 2004 (Bench Decision)

**DISPOSITION:** By Order No. 17137, dated June 4, 2004, the Board granted Application No. 17137 by a vote of 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Anthony J. Hood, to approve; Curtis L. Etherly, Jr., not present, not voting).

**MODIFICATION ORDER**

By letter dated November 15, 2004, the Applicant submitted a request that the Board modify the approved plans in the subject application. The Applicant requested that the Board approve the reconfiguration of the parking spaces, a reduction in the number of residential units and an expansion in the amount of retail, service, arts, entertainment and office uses. The Applicant's request to modify the Order was filed timely pursuant to §3129.3 of the Zoning Regulations. Parties consist of the Office of Planning (OP) and Advisory Neighborhood Commission (ANC) 2F. Both parties submitted reports in support of the Applicant's request for modification, Exhibits No. 38 and 40, respectively.

**THE MODIFICATION**

The proposed modification of plans would make changes to the layout of the parking spaces and the number of parking levels. None of the variance relief granted is affected by this proposed modification. The layout of the parking levels has been revised to eliminate a large number of spaces in vault areas because of the prohibitive cost of relocating a 24-inch WASA sewer line that is located under P Street. As a result, a partial 4<sup>th</sup> level of parking below grade has been added to the project and far fewer spaces are proposed to be located in vault areas.

The proposed modification of plans would reduce the number of residential units. None of the variance relief granted is affected by this proposed modification. To accommodate (i) the health club operator, who proposes to offer a day spa at the street level on 15<sup>th</sup> Street and requires that a larger area be devoted to ground floor spa uses and (ii) Metropolis Development Company's desire for office space in the building, five (5) ground floor residential units are to be converted into retail and office space. In addition, to respond to changing market conditions, a number of residential units have been reconfigured or consolidated.

The proposed modification of plans would increase the area devoted to retail, service, arts, entertainment and office uses. None of the variance relief granted is affected by this proposed modification. The amount of retail, service, entertainment and related space (including the health club) has increased as a result of the conversion of five (5) residential units into ground floor day spa space. In addition, 2,310 square feet of retail space has been converted into office space for the use of Metropolis Development Company which, through an affiliate, is the developer of the subject project.

### DECISION

The Board concludes that the requested plan modifications are minor and are within the requirements of §3129, as "minor modification[s] that do not change the material facts the Board relied upon in approving the application." After reviewing the request for modification and the supporting materials, including a letter of support from ANC 2F and a memorandum of support from OP, the Board has determined that the request should be granted.

Accordingly, it is therefore hereby **ORDERED** that the motion for minor modification of plans, as shown on Exhibit No. 37 of the record, is **GRANTED**.

**DATE OF DECISION:** December 7, 2004

**VOTE:** 3-0-2 (Geoffrey H. Griffis, Ruthanne G. Miller and John Mann II to approve; Anthony J. Hood and Curtis L. Etherly, Jr., not present, not voting).

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** DEC 16 2004

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

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

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17148 of Marshall Heights Development Organization**, pursuant to 11 DCMR § 3103.2, for a variance from the side yard requirements under § 405 to allow the construction of a single-family detached dwelling at premises 3034 Clinton Street, N.E. (Square 4319, Lot 72) in the R-4 zone.

**HEARING DATE:** April 20, 2004, May 18, 2004  
**DECISION DATE:** May 25, 2004

**DECISION AND ORDER**

**Preliminary Matters**

The Marshall Heights Community Development Organization, Inc. (Marshall Heights), filed this application for variance relief with the Board of Zoning Adjustment (the Board) on February 3, 2004. Marshall Heights is the authorized agent for the owner of the subject premises. For the reasons stated below, the Board finds that the applicant failed to meet the elements for an area variance. The application is therefore denied.

**Notice of Public Hearing** The Board scheduled a public hearing for April 20, 2004. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, owners of all property within 200 feet of the subject premises, the Advisory Neighborhood Commission (ANC) 5A, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 34).

**Self-Certification** The zoning relief requested (side yards of five feet on the south and one foot on the north) was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibits 1 and 6). After the first day of public hearing, the applicant amended its application to reduce the amount of the variance to provide for a minimum side yard of four feet (Exhibits 30-32).

**OP Report** OP reviewed the variance application and prepared an initial report (Exhibit 24) and a supplemental report (Exhibit 35). In its initial report, OP recommended approval so long as the applicant provided side yards of at least four feet. Because the applicant revised its plans and application to provide four feet side yards, OP recommended approval of the variance in its supplemental report.

**ANC Report** In its report dated March 30, 2004, ANC 5A indicated that it had voted to oppose the variance at a regularly scheduled monthly meeting where a quorum had been

present (Exhibit 22). The ANC did not provide any specific reason in the report for its opposition. However, it submitted an additional report responding to the applicant's amended application. In this report (dated May 10, 2004) the ANC stated that -- even with four feet side yards -- the neighboring property owner would not have sufficient privacy (Exhibit 36).

**Requests for Party Status** The Board received a request for party status from neighboring property owner, Eric Wiggins (3032 Clinton Street, N.E., Exhibit 28). Although Mr. Wiggins testified at the April 20, 2004 public hearing, he did not appear at the continued hearing on May 18, 2004, when his request for party status was considered by the Board.<sup>1</sup> Because Mr. Wiggins was not present at that time and could not participate fully as a party, his request for party status was denied. However, the testimony and evidence that he submitted was considered in opposition to the application (see below).

**Persons in Opposition to the Application** In addition to Mr. Wiggins, four other nearby property owners testified in opposition to the application: Paula Nickens, Tama Gillis, Fannie Tate, and Susan Finnegan. Each asserted, among other things, that the requested variance would negatively impact on the privacy of adjacent property owners.

**Closing of the Record** After the first day of public hearing on April 20, 2004, the Board continued the hearing to May 18, 2004 and left the record open for submission of the amended application, responses from the ANC, and Mr. Wiggins' request for party status. After the May 18, 2004 public hearing, the record was closed and the matter was set for a decision meeting on May 25, 2004.

**Decision Meeting** The Board voted to deny the variance application at the May 25, 2004 Decision Meeting.

### **FINDINGS OF FACT**

1. The subject property was awarded to Marshall Heights through the District of Columbia's "Home Again Initiative" program (Home Again). This program was created by the District in 2002 to create homeownership opportunities for persons ranging in income. Vacant and abandoned properties, like the subject property, were purchased in "bundles" by prequalified developers who were to develop and sell the homes.
2. Marshall Heights purchased the subject property as part of a "bundle" of properties, but has an option to return the property to the District and build elsewhere.

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<sup>1</sup> Mr. Wiggins filed his party status request after the first day of public hearing.

3. Marshall Heights proposes to build a single family affordable home, placing the dwelling at the front of the lot so that it fronts on Clinton Street and blends with the streetscape. It would have a four foot side yard instead of the required eight feet side yard.
4. The subject property is located on an odd "flag shaped" lot (Exhibit 2). It is extremely narrow at the front (the Clinton Street side), and becomes significantly wider at the rear of the property.
5. The rear portion of the lot has a steep topography and is at least partially wooded. As a result, it would be difficult and expensive to excavate and build in the rear.
6. Dwellings in the area are placed in varying locations on the lots and have varying appearances. At least two other nearby lots have homes placed in the rear portion of the lots. Although these lots too were wooded, they were cleared for construction.
7. The Board finds that the proposed four foot side yard would interfere with the privacy of the adjacent property owner, Eric Wiggins.

### CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. The applicant here seeks relief from the requirement under § 405 of the Regulations that it maintain an eight foot side yard setback, so as to permit it to have a four foot side yard.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

The applicant has failed to establish that it has met the three-prong test for a variance

While the applicant has satisfied the first two prongs of the variance test, he has not satisfied the third prong of the test. As stated at the outset, the applicant must satisfy all three prongs test for area variances in order for relief to be granted.

First prong There is no doubt that the property is unique because of its shape and topography. As stated in the Findings of Fact, the lot is a very unusual flag shaped lot with steep topography (paragraphs 4 and 5).

Second prong There is also no doubt that the applicant would encounter practical difficulty were the side yard setbacks strictly applied. The Board is persuaded that it would be difficult and costly to build in the rear of the lot – where zoning relief would not be needed – due to the steep topography and existing woods (Finding of Fact 5). Although the Board finds the rear lot is buildable (and nearby property owners have built toward the rear), the cost of building at the rear of this site would probably impact on the applicant's ability to develop an affordable housing unit.

Third prong Notwithstanding the above, the applicant has not met the third part of the variance test. Based upon the record, the Board is persuaded that the requested variance would result in substantial detriment to the public good and the zone plan. First and foremost, the Board finds that the proposed dwelling with four foot side yards would interfere with the privacy of the adjacent property owner, Eric Wiggins. Second, the Board finds that the proposed dwelling, placed at the front of the lot, would be out of character with the neighborhood. Although Marshall Heights claims that the placement of the dwelling at the front of the lot would result in a uniform and harmonious streetscape, the Board disagrees. Because the front of the lot is too narrow to accommodate the required side yards on either side of the dwelling, the placement of the dwelling in the front location would be out of character with the rest of the homes that have substantial separation and are sighted on the lot to accommodate at least one, if not both side yards.

The Board is required under D.C. Official Code § 1-309(d) (2001) to give “great weight” to the issues and concerns raised in the recommendations of the affected ANC. The Board has carefully considered the issues and concerns raised in the ANC's report. The ANC asserted that it opposed the variance application because it would impact on the privacy of the adjacent property owner and be out of character with the surrounding neighborhood. For the reasons stated above, the Board finds the ANC's reasoning to be persuasive.

The Board is also required under D.C. Official Code § 6-623.04 (2001) to give “great weight” to OP recommendations. The Board concurs with the Office of Planning in supporting the goals of the Marshall Heights Community Development Organization in its attempt to implement the Mayor's Home Again Initiative in this case. That program is designed to “encourage the maintenance of existing housing stock and, where

appropriate, the new construction of detached...housing.” (Emphasis added. OP Report at Page 4). The Board, however, finds that this location is not appropriate in light of the above stated adverse impacts on the privacy of the neighboring property and on the character of the surrounding neighborhood.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the motion to deny the variance is granted.

**VOTE: 3-0-2** (Geoffrey H. Griffis, Ruthanne G. Miller, and John A. Mann II, to deny the variance application, Curtis L. Etherly, Jr. having been necessarily absent, and Anthony J. Hood having recused himself)

Vote taken on May 25, 2004

**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: DEC 15 2004**

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 DEMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL. SG/rsn

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

**Application No. 17178 of Potter's House Church**, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under subsection 771.2, to construct a two-story rear addition to an existing multi-use (restaurant/retail/arts & crafts) commercial building in the C-2-B District at premises 1656, 1658, and 1660 Columbia Road, N.W. (Square 2579, Lot 801).

**HEARING DATE:** December 7, 2004

**DECISION DATE:** December 7, 2004 (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. ANC 1C submitted a letter in support of the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. 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 and 771.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of

fact and conclusions of law. 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, Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr. and John G. Parsons 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 14, 2004

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

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

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

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

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

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

**Application No. 17188 of Deborah Miles**, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirement under section 403, and a variance from the alley set-back requirement under subsection 2300.2(b), to construct an accessory garage serving a single-family row dwelling in the CAP/R-4 District at premises 409 Third Street, N.E. (Square 780, Lot 26).

**HEARING DATE:** July 13, 2004  
**DECISION DATE:** September 9, 2004

**DECISION AND ORDER**

This application was submitted February 24, 2004 by Deborah Miles, also known as Deborah Miles Dominique ("Applicant"), the owner of the property that is the subject of this application ("subject property"). In a letter dated November 3, 2003, the Applicant had been advised by the Chief of the Zoning Review Branch of the D.C. Department of Consumer and Regulatory Affairs ("DCRA") that she needed to appear before the Board of Zoning Adjustment ("Board " or "BZA") for variance relief. DCRA advised the Applicant that she needed relief from 5 provisions of the Zoning Regulations in order to carry out her plans of constructing an addition to her dwelling and a garage in its rear yard.

Between her receipt of the letter from DCRA citing the necessary relief and her filing of this application with the Board, the Applicant revised her plans and decided not to construct an addition to her dwelling. Therefore, the amount of relief requested was reduced and applied only to the construction of the garage. This change was memorialized in a May 4, 2004 memorandum to the Board from the staff of the Office of Zoning ("OZ").

The Board held a public hearing on the application on July 13, 2004. After the hearing, the record was left open to receive further information from the Applicant and the D.C. Office of Planning ("OP"). This information was submitted, and the Board, at a September 9, 2004 decision meeting, decided to deny the application by a vote of 4-0-1.

**PRELIMINARY MATTERS:**

Notice of Application and Notice of Hearing. By memorandum dated May 4, 2004, the Office of Zoning sent notice of the filing of the application to the District Department of Transportation ("DDOT"), OP, the Councilmember for Ward 6, Advisory Neighborhood Commission ("ANC") 6C, and the Single Member District ANC member for ANC 6A08. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*

and mailed letters to the Applicant, ANC 6C, and all owners of property within 200 feet of the subject property notifying them of the hearing date.

Requests for Party Status. There were no requests for party status in this case.

Applicant's Case. Due to illness, the Applicant herself could not attend the hearing, but her husband and her architect put on her case before the Board. The architect, Ms. Patrick, noted that the Applicant needed 3 variances – a variance from the maximum lot occupancy allowed by § 403, a variance from the requirement of § 2300.2(b) that an accessory building be set back at least 12 feet from the centerline of an adjacent alley, and a variance from § 404 to permit a rear yard of less than 20 feet in length. She explained that the lot is unique because it abuts a large private parking lot at the rear and the Applicant has security concerns arising out of the use of this parking lot. She also stated that the lot is too small to be able to add a garage while staying within the parameters of the Zoning Regulations.

Government Reports. By report dated July 6, 2004, OP recommended denial of the variance relief requested. OP opined that the Applicant required variances from 3 provisions of the Zoning Regulations – a variance from the maximum lot occupancy, a variance from the alley setback requirement, and a variance from the 30% maximum rear yard coverage for accessory buildings set forth in § 2500.3. The OP report stated that the presence of an internal commercial parking lot in the center of the Square was a unique circumstance, but that there was no exceptional condition of the subject property for purposes of granting a variance. The OP report also stated that granting the variances would be contrary to the intent of the Zoning Regulations and Map. In its report, OP quoted an e-mail communication from DDOT expressing concern about the ability of large vehicles, such as trash trucks, to maneuver in the alley, and asking if the Applicant's proposed garage could be set back 2 to 3 feet from the edge of the alley. There was, however, no separate report filed by DDOT.

At the hearing, OP stated that it had also received e-mail comments from the Fire Department which stated that the Department had no concerns with the Applicant's proposal, provided all fire codes were complied with.

OP filed a Supplemental Report dated July 20, 2004 explaining its review of a series of old and current maps which included the subject property. OP continued to conclude that, even if in the past there had been a structure in the subject property's rear yard, rebuilding such a nonconforming structure would be contrary to the intent of the Zoning Regulations and Map and that, therefore, the application still failed to meet the variance test.

ANC Report. By letter dated June 21, 2004, the chairman of ANC 6A indicated that at a properly noticed meeting on June 9, 2004, ANC 6C voted 5-2 (with 5 members constituting a quorum) to support the application.

Persons in Opposition. By letter dated June 21, 2004, the Capitol Hill Restoration Society informed the Board that it had considered the application at a meeting held on June 10, 2004, and had voted unanimously to oppose it. The Stanton Park Neighborhood Association, by letter dated July 12, 2004, also wrote to oppose the application.

## FINDINGS OF FACT

1. The subject property is located in an R-4 zone district, in Square 780, Lot 26, at address 409 Third Street, N.E. It is one of a series of 13 lots fronting on Third Street within Square 780, each of which is improved with a row dwelling.
2. Square 780 is bounded by Third Street, N.E. to the west, Fourth Street, N.E. to the east, D Street, N.E. to the south, and E Street, N.E. to the north.
3. The subject property is a non-conforming lot, 16.5 feet wide and 80 feet deep, and is developed with a single-family row dwelling constructed prior to the enactment of the Zoning Regulations in 1958.
4. The subject property is a level, regularly-shaped, rectangular lot.
5. At its rear, the subject property abuts the west side of a 15-foot wide alley. Parking for the row dwelling is provided in the rear yard on a concrete pad accommodating two cars and accessed from the alley.
6. The Applicant proposes to construct a new 10-foot high detached garage over the location of the existing concrete parking pad.
7. The row dwelling has a lot occupancy of 65% and construction of the proposed garage would increase the lot occupancy to approximately 89%.
8. The proposed garage would cover 96.7% of the required rear yard space and would reduce the rear yard from the required depth of 20 feet to 14 feet.
9. The proposed garage would be located at the rear lot line and would not be set back from the alley at all.
10. Abutting the alley on its east side, and therefore behind the Applicant's row dwelling and the dwellings adjacent to it, is a large, square, open paved area used as a private (pay for use) parking area.

11. The private parking area occupies the center of the Square and is internal, with no street frontage. It is surrounded by alleys on all 4 sides, which form its perimeter. The rear lot lines of most of the lots in the Square abut these alleys.
12. The internal parking area is accessed by alleys perpendicular to its perimeter alleys. Two of these perpendicular alleys lead from Third Street, N.E., one from Fourth Street, N.E., and one from E Street, N.E.
13. At least 12, and possibly all, of the 13 lots facing Third Street, of which the subject property is one, appear to have the same 80 foot lot length and 16.5 foot lot width as the subject property. The lots within Square 780, but on the opposite side of the central parking area and fronting onto Fourth Street, are of a similar size.
14. At various times in the past, and as late as 1991, the subject property had an accessory structure in its rear, presumably a garage, a portion of one wall of which still remains. However, in 1991, it appears that 7 other lots of the 13 lots facing Third Street also had rear accessory structures, most of which appear to have been razed by 2002.
15. Of the similarly-sized and situated Square 780 lots fronting on Fourth Street, it appears that 9 lots had, in 1991, rear accessory structures, most of which appear to have been razed by 2002.

## CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographic conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any Zoning Regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can only 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." *Id.* The Applicant is applying for area variances and so must make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Therefore, in order to be granted any variance, let alone 3 or 4 variances, the Applicant must show an exceptional condition or "uniqueness" of the property, practical difficulties in

complying with the Zoning Regulations arising out of this uniqueness, and no detriment to the public good or impairment of the zone plan.

The Board concludes that the Applicant failed to show any exceptional situation or condition of the subject property to support the granting of variance relief. The property is a regularly-shaped, level, rectangular parcel. It has no distinguishing topographic features, has street and alley access, and provides parking for two vehicles. It is true that the Applicant's lot is nonconforming as to lot area and width and her structure as to lot occupancy, but there are other such nonconforming structures and lots in the neighborhood. Ownership of a nonconforming structure on a nonconforming lot cannot constitute the necessary uniqueness for variance purposes. Such nonconformities, rather than being unique to any particular structure or lot, are features common to many properties within the District.

The Applicant also claims that the existence of the internal commercial parking lot in the center of the Square, onto the perimeter alley of which her property abuts, makes her property unique. The internal parking lot, however, takes up the entire central portion of the Square. It is therefore similarly abutted by approximately 41 other lots, all of which would be similarly impacted by its existence. The Board concludes that even if the presence of this internal parking lot makes Square 780 unusual, it does not constitute an exceptional condition or situation of the subject property.

The Applicant stresses that she needs to construct the proposed garage for security reasons because of the use of the parking lot by various persons, but these security concerns would presumably be shared by the owners of the other 41 lots, and potentially by all the property owners in the Square. Granting variances to the Applicant could result in similar demands from other property owners in the Square, approval of which would "in effect be amending the Zoning Regulations," something which the Board is powerless to do. *See, Palmer* at 539.

The Board is sympathetic to the Applicant's desire to re-construct a rear garage for security reasons. Notwithstanding its understanding of the Applicant's situation, however, the Board must make its decision based on the application of the Zoning Regulations, specifically the 3 prongs of the variance test. Having found no extraordinary or exceptional condition of the subject property, and that therefore, the application does not meet the first prong of the test, the Board need not address the second and third prongs.

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. ANC 6C supported the application, but did not address the

uniqueness requirement, except to point out that many other neighborhood properties share some of the nonconformities suffered by the subject property. This, in the Board's view, argues against granting of the application. OP did not support the granting of the variances and the Board agrees with its recommendation that the application be denied for failure to meet the variance test.

For the reasons stated above, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the application for a variance from the lot occupancy requirement under § 403, and a variance from the alley set-back requirement under subsection 2300.2(b), to construct an accessory garage serving a single-family row dwelling.<sup>1</sup> Accordingly, it is therefore **ORDERED** that the application is **DENIED**.

**VOTE:**                    **4-0-1**                    (Geoffrey H. Griffis, John A. Mann, II,  
Ruthanne G. Miller, and Curtis L. Etherly,  
to deny the application. No Zoning  
Commission Member participated in the case.)

**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 21 2004

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."

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<sup>1</sup>These were the two variances that were advertised. The Board has concluded that the first prong of the variance test was not met and no variances can be granted. Therefore, the question of whether variances from the § 404 rear yard requirement and the § 2500.3 rear yard coverage requirement should also have been requested or advertised is moot.

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

**Application No. 17197 of 1600 Fourteenth Street Limited Partnership**, pursuant to 11 DCMR § 3103.2 for a variance from the requirement to provide residential recreation space under § 773, and pursuant to 11 DCMR § 3104, a special exception to reduce the requirement to dedicate at least 50% of the ground floor to arts, retail, and service uses under §1901.1<sup>1</sup> at the premises to be known as 1401 Q Street, N.W. (Square 208, record lot 139).

**HEARING DATE:** July 20, 2004  
**DECISION DATE:** September 14, 2004

**DECISION AND ORDER**

The application was submitted on or about May 13, 2004 by 1600 Fourteenth Street Partnership (the applicant). The applicant was represented by Douglas J. Patton of the law firm of Holland & Knight, LLP. Following a hearing on July 20, 2004, the Board of Zoning Adjustment (the Board) voted to approve the variance and special exception.

**PRELIMINARY MATTERS**

Self-Certification The zoning relief requested in this case was self-certified, pursuant to § 3113.2 (Exhibit 2).

The application The applicant seeks a variance to reduce the requirement under § 773 that a minimum of 15% of the gross floor area at the project be dedicated to residential recreation space. The applicant also seeks a special exception under §1901.1 to reduce the requirement that a minimum of 50% of the ground floor be dedicated to arts, retail and service uses.

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) 2F, 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 22).

ANC 2F The subject site is located within the area served by Advisory Neighborhood Commission 2F, which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on July 7, 2004, with a quorum present, the ANC unanimously voted to approve the applicant's amended application for variance and special exception relief. The ANC stated that it supported the reduction of residential recreation space

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<sup>1</sup> The original application and filings requested additional zoning relief that was either withdrawn or amended. The captioned relief is what remains before the Board.

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(from 15% to about 6%), in part, to “avoid an undesirable increase in height of the roof structure, which [would] be visible from the street and detract from the historic district”. The ANC also stated that the slight reduction in ground floor retail and service uses – from 50% to 46.9% -- was a “negligible deviation” that should be allowed.

Request for Party Status The Board received a request for party status from 20 neighboring property owners, most of whom reside on Q Street, who requested to participate as one joint party. Party status was granted based upon the individuals’ proximity to the site, and the participating party was designated the “Q Street Group”. The Q Street Group was represented by Andrea Ferster, Esq., Andrea Doughty, and Bonn Macy. The Q Street Group opposed the residential recreation space variance, but did not oppose the special exception request.

Other Persons in Support/Opposition The Reverend Vernon Shannon, pastor of the church located across from the site testified in support of the project. No other persons appeared at the hearing in support or in opposition to the application. However, the Board received letters in support of the residential recreation variance from two neighboring property owners (Exhibits 27 and 28).

OP Report OP’s report indicated that the application meets the test for both the variance and the special exception. In addition, Travis Parker, the OP representative who prepared the report, testified at the public hearing in support of the application.

The Applicant’s Case The applicant introduced three witnesses: Fred Bahrami, Principal for Fourteenth Street; Bill Bonstra, of Bonstra and Associates, Architects; and Lindsley Williams, a land use, planning and zoning consultant affiliated for this case with the law firm of Holland & Knight LLP. The Board qualified Mr. Bonstra and Mr. Williams as experts in their respective fields. It also qualified Ms. Emily Eig, a potential rebuttal witness for the Applicant, as an expert in the field of historic preservation and architectural history.

## FINDINGS OF FACT

### The Property

1. The subject property is located at 1401 Q Street, N.W, at the northwestern corner of Fourteenth and Q Streets (Square 208, Lot 139). The site is zoned Uptown Arts – Mixed Use Overlay/C-3-A and is also within the Greater Fourteenth Street Historic District.
2. The lot is currently unimproved and is used as a parking lot that is operated by the applicant. The portion of the lot fronting Q Street is approximately 120 feet wide. The portion of the lot fronting Fourteenth Street is approximately 79 feet wide, and is relatively narrow.

### The Proposed Project

3. The applicant proposes to construct a seven story apartment building containing up to 30 apartment units. There would be approximately 39,950 gross square feet of residential use in the proposed apartment building.

4. The applicant proposes to set aside 46.9 % of the building's gross floor area on its ground level to retail and service uses. The retail uses will be located entirely on the Fourteenth Street frontage of the building, and will not change the residential character at the Q Street frontage.
5. The applicant proposes to provide nearly six percent (5.99 %) of the building's gross floor area in residential use for active and passive recreation by the residents of the building and their guests, corresponding to a total of approximately 2,373 square feet. This space would be comprised of an interior party room and an outdoor courtyard, and a green area with benches and landscaping near the parking areas. Slightly more than half of the provided recreational space will be outdoors. The applicant also proposes to provide private balconies for approximately two-thirds of the apartment units, and contends that the balconies will mitigate any effects stemming from the recreational space reduction.
6. The Historic Preservation Review Board (HBRB) approved conceptual design of the project at its meeting in May, 2004, and directed the applicant to ensure that the uppermost occupied floor (the seventh) would be set back from the Fourteenth and Q Street frontages as well as from the western and northern sides of the building's mass.

#### The Residential Recreation Requirements

7. At the ground floor level, the applicant is constrained from meeting the residential recreation requirements because at least half of that area, specifically the area fronting along Fourteenth Street, must be set aside for those uses "preferred" by the Arts overlay, namely a range of retail, service, and arts-related uses.
8. Another constraint is the narrowness of the lot, which drives the location of the core building functions and parking. The narrow lot requires that parking be placed in a spiral around the outside of the building, resulting in a central location for core building functions such as the lobby entrance to the building, the mail receiving area, the fire control room, the central core of elevators and stairs, and other utilitarian functions. Accordingly, there is limited remaining interior space for residential recreation within the building's first floor.
9. The applicant is also constrained from providing roof deck recreational space due to height limitations imposed in the Arts Overlay and HBRB's design directives.
10. The applicant is particularly constrained from providing outdoor recreational space. Apart from two small areaways that serve and abut planned apartments, the balance of the building's land area is dedicated to the access driveway or the footprint building itself. Thus, there is no additional land at ground level that could be used for "outdoor" recreation space.
11. There are existing public recreational spaces in the immediate vicinity: elementary and junior high school playgrounds and fields, a skateboard park, and a basketball court.

#### The Ground Floor Retail/Service Requirements

12. The proposed retail uses will further the purpose of the retail/service requirement in the Arts Overlay District, namely: to keep a solid retail frontage along the Fourteenth and U Street corridors.

13. The 3% reduction (from 50% to 47%) in required retail/service uses is negligible.

### CONCLUSIONS OF LAW

#### The Residential Recreation Space Variance

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief to reduce the 15% required amount of residential recreation space to approximately 6%.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

Applying this test to the requested relief, the Board agrees with OP that a combination of factors necessitates the reduction in residential recreation space; *i.e.*, the relatively narrow lot and limited options for providing parking and building core functions, the minimal amount of available ground floor space due to the retail requirements in the Arts Overlay, and the building height and design limitations in both the Overlay and Historic District. The Board also finds that the proposed residential space is consistent with the intent and purposes of the Arts/C-3-A District and will not result in substantial detriment to the zone plan. Nor will the amount of proposed recreational space result in substantial detriment to the public good.

The Q Street Group asserts that the applicant has not met the variance test. It argues, first, that the property is not unique. It claims that since the land is vacant and rectangular, it is inherently commonplace, neither unique nor exceptional. While the property is rectangular, vacant and flat, the Board does not agree that these facts immediately disqualify the property from meeting the "uniqueness" test. As stated in the *Gilmartin* case, "a confluence of factors can establish uniqueness..." for purposes of approving a variance. As explained above, the uniqueness of this site derives not just from its overall narrowness but from the confluence of accompanying requirements for retail uses and building core functions, setbacks required by zoning for roof structures and intermediate setbacks required by HPRB at the top (7<sup>th</sup> floor) of the building. These factors converge to create a "unique" set of circumstances arising from the land and the rules and standards applied to it.

The Q Street Group also maintains that a reduction in the residential recreation space will result in a detriment to the public good, claiming that existing public recreational resources are inadequate. Q Street argued that the nearby recreation areas were conducive only to children, not adults, that they were poorly maintained, and were too far from the site. The Board does not necessarily agree that the nearby public recreation is inadequate. But even if it were to agree, this factor is not legally relevant. The Zoning Regulations do not require specific types of recreation or that the recreation be attractive to targeted populations. The Board concludes that the nearby recreational opportunities will mitigate any potential detriment to the public good, as will the private balconies that are proposed throughout two-thirds of the building.

#### The Retail/Service Use Special Exception

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations, in particular the standards contained in § 3104. This applicant seeks a special exception to reduce the required ground floor retail space from 50% to 47%. This application meets the standards in § 3104. The Board agrees with OP that the special exception use will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties.

In addition to meeting the general standards for special exception approval under § 3104, the applicant has demonstrated that it meets the criteria under § 1906.1 for relief from the standards in Chapter 19 of the Zoning Regulations:

Section 1906.1(a) requires that the uses will advance the purposes of the Arts Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience or general welfare of persons in the area. As stated by OP and in the Findings of Fact, a 3% reduction in retail will not undermine the purpose of the Overlay, and the proposed retail uses will only benefit the area and advance the purpose of the Overlay.

Section 1906.1(b) requires a showing of exceptional circumstances that make strict compliance difficult or impossible, or that the development provides alternative public benefits. The project will provide an alternative public benefit in that it will serve as a residential buffer for the Q Street properties in addition to supporting a public presence on the Fourteenth Street side of building.

Section 1906.1(c) requires a showing that the architectural design concept of the project will enhance the urban design features of the immediate vicinity, and that it be reviewed by HPRB if in an historic district. Here, the proposed design was reviewed and conceptually approved by HPRB. HPRB found the design, as revised, to be compatible with the Historic District and the surrounding area.

Section 1906.1(d) requires a showing that vehicular access and egress is located and designed to be efficient and safe. Here, the vehicular access for the project is from the public alley to the west. OP finds, and the Board agrees, that this access point is the least intrusive to the neighborhood and will not create any dangerous traffic or pedestrian conditions.

The Board is required under D.C. Official Code § 1-309(d)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In reviewing a variance and special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees with the advice received from the ANC and the OP.

Therefore, for the reasons stated, the Board concludes that both a variance to reduce the requirement to provide residential recreation space from 15% to 6% under § 773, and a special exception to reduce the percentage of the ground floor used for arts, retail, and service uses from 50% to 47% under § 901.1 are hereby **GRANTED**.

**VOTE:**            **4-0-1**            (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann, II, and Anthony J. Hood (by absentee ballot); Curtis L. Etherly, Jr., not voting, not having participated in the case)

**BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT.**

Each concurring Board member has approved the issuance of this Order:

**FINAL DATE OF ORDER:** DEC 21 2004

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

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND

THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17231 of Teofilo Ayala**, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 771, to allow the use of an existing building (all floors) to a restaurant in the C-2-A District at premises 3568 14<sup>th</sup> Street, N.W. (Square 2688, Lot 22).

**HEARING DATE(S):** November 9, 2004, December 14, 2004

**DECISION DATE:** December 14, 2004

**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) 1A, 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 1A. ANC 1A did not participate in the application. The OP submitted a report in opposition to the application. On November 9, 2004, the Board, by unanimous consent denied a request for party status from Rose Schneider (1414 Perry Place, NW), and Luis Rosales (1417 Parkwood Place, NW.).

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 prove under 11 DCMR §§ 3103.2 and 771, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. 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:** 4-0-1 (Geoffrey H. Griffis, John A. Mann II, Ruthanne G. Miller, and Kevin L. Hildebrand to approve. 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:** December 16, 2004

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

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

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

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

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

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

**Application No. 17233 of York Van Nixon, IV**, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, and variance from the nonconforming structure provisions under subsection 2001.3, and pursuant to 11 DCMR § 3104.1 a special exception from the roof structure provisions under subsection 400.7, to allow a third floor addition to a single-family row dwelling in the R-5-B District at premises 2237 10<sup>th</sup> Street, N.W. (Square 357, Lot 92).

Note: The Board amended the application to require variance relief from section 402 (FAR), and subsection 2001.3 (nonconforming structure) and special exception relief from section 400.7 (roof structure).

**HEARING DATE:** November 16, 2004  
**DECISION DATE:** November 16, 2004 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 1B, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 1B. ANC 1B submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1 and 400.7, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 402 and 2001.3.

No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party. The Board closed the record at the conclusion of the hearing. Based upon the

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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 proof pursuant to 11 DCMR § 3104.1, for a special exception under section 400.7, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 402 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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. It is therefore **ORDERED** that the application is **GRANTED**.

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 appropriate in this case.

**VOTE: 4-1-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and John A. Mann II to approve , Carol J. Mitten opposed to the motion).

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

Each concurring member has approved the issuance of this Order.

**FINAL DATE OF ORDER:** December 20, 2004

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.

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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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17237 of Conrest Associates LP on behalf of The Leland Stanford Junior University**, pursuant to 11 DCMR § 3104.1, for a special exception under sections 1302 and 1304 from the requirement that 50% of the gross floor area of the ground level of a building within a neighborhood commercial overlay District be dedicated to a specified retail and service uses, and pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirements under section 773, a variance from the court area and width requirement under section 776, and a variance from the nonconforming structure requirements under subsection 2001.3, to allow the construction of a three-story addition and passageway connection between academic buildings in the WP/C-2-B District at premises 2655 Connecticut Avenue, N.W. (Square 2204, Lot 834).

**HEARING DATE:** November 23, 2004  
**DECISION DATE:** December 7, 2004

**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 the Applicant, Advisory Neighborhood Commission (ANC) 3C, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 3C. ANC 3C submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 1302 and 1304, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 773, 776 and 2001.3.

No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under sections 1302 and 1304, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 773, 776 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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. It is therefore **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall operate and maintain an art gallery that will also be available as meeting space of approx. 25 percent of the ground floor (approx. 740 s.f.) in the area labeled on the plans as "Exitway/Lobby/Art Display Space", Exhibit 31.
2. The art gallery shall be open to the public a minimum of 175 hours per month (including week days and weekend days) except during the last two weeks in December when the University is closed for its winter break. During the referenced 175 hours, the art gallery shall be open to the public from 12 noon through 7 p.m., a minimum of four days per week, and from 11 a.m. until 8 p.m., on at least three weekends per month.
3. The art gallery shall be lighted until at least 9 p.m., six days per week, so that it is readily visible from the sidewalk on the east side of Connecticut Avenue.
4. The art exhibits in the art gallery shall be rotated no less than four times per year, in conjunction with the Stanford University quarter system. In addition, the Applicant shall make the artwork available for sale to the general public. Furthermore, Stanford shall sell items that are reflective of its mission and purposes from a display case, shelving units for other area that is consistent with the use of the ground floor for art gallery and meeting purposes and not in violation of building code egress and other requirements.

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 appropriate in this case.

**VOTE: 4-0-1** (Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr., and John G. Parsons to approve, Geoffrey H. Griffis not voting, not having heard the case).

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

Each concurring member has approved the issuance of this Order.

**FINAL DATE OF ORDER:** December 14, 2004

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

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

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE

§ 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17240 of FSP-Arkansas LLC**, pursuant to 11 DCMR § 3104.1, for a special exception to use an alley lot as a thirty (30) space parking lot under section 333; and subsection 2507.6, in the R-4 District at premises rear of square bounded by 14<sup>th</sup> Street, N.W., Varnum Street, N.W., Arkansas Avenue, N.W., 15<sup>th</sup> Street, N.W. and Webster Street, N.W. (Square 2699, Lot 64).

**HEARING DATE:** November 23, 2004

**DECISION DATE:** December 7, 2004

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C submitted a letter in support of the application. The Office of Planning (OP) submitted a report in conditional support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under sections 333 and 2507.6. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 333 and 2507.6, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

1. The Applicant shall develop the property in accordance with the site plan (Exhibit 31). Ten trees as shown on the site plan shall be planted and maintained. All plantings shall be maintained in a healthy and growing condition.
2. No more than 16 parking spaces shall be constructed on the site.
3. The green space shall remain open and well maintained.
4. Bollards or similar design restraints shall be installed and maintained around the green space to prevent vehicles from trespassing.

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

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 14, 2004

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

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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.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17247 of Michael and Marion Usher**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a one-story rear addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403), and the nonconforming structure provisions (subsection 2001.3), in the D/DC/R-5-B District at premises 2021 Hillyer Place, N.W. (Square 93, Lot 105).

**HEARING DATE:** December 7, 2004

**DECISION DATE:** December 7, 2004 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a resolution in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the

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

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

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 14, 2004

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

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

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

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

DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17248 of Scott and Diana Gold**, pursuant to 11 DCMR § 3104.1, for a special exception to construct a one-story rear addition to an existing single-family detached dwelling under section 223, not meeting the side yard requirements under section 405, in the R-1-B District at premises 3722 McKinley Street, N.W. (Square 1867, Lot 86).

**HEARING DATE:** December 7, 2004

**DECISION DATE:** December 7, 2004 (Bench Decision)

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3/4G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3/4G, which is automatically a party to this application. ANC 3/4G submitted a resolution in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied

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

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

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 14, 2004

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

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

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

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

ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17252 of AmeriDream Amber Overlook LLC et al**, pursuant to 11 DCMR § 3104.1, for special exceptions for a new residential development under section 353, and for multiple buildings to be considered a single building under section 410, to construct a residential development containing 76 row dwellings, flats, and multi-family dwellings in the R-5-A District at premises 4922-4930 Call Place, S.E., 4914-4927 C Street, S.E. and 301 and 305 50<sup>th</sup> Street, S.E. (Square 5336, Lots 1, 27, 28, 29, 30, 31, 32, 33, 34, 35, 2001-2015).

**HEARING DATE:** December 14, 2004  
**DECISION DATE:** December 14, 2004 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. The ANC 7E Chairperson submitted a letter in support of the application. The ANC letter did not meet the requirements entitling it to receive great weight under section 3115. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under sections 353 and 410. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 353 and 410, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

1. The demising wall construction shall include sound attenuation insulation. The demising wall assembly shall not be less than 50 STC (sound transmission class). Floor ceiling assemblies shall have not less than 55-59 STC.
2. "The Green" shall be constructed in accordance with the site landscape plan, as shown on Exhibit No. 32. The project shall be constructed to include but not limited to a green space (The Green), which will be terraced and landscaped with seasonal vegetation (annuals and perennials), a low garden wall, and shade trees.
3. The parking lot shall be constructed in accordance with the parking plan and landscape plan, as shown in Exhibit No. 27 to include but not limited to:
  - a. The sidewalks adjacent to the parking areas shall be setback from the edge of the parking spaces and the intervening area shall be covered with grass, to eliminate the need for wheel stops.
  - b. The easternmost compact parking space shall be relocated to another area of the site, to improve access to the garages adjacent thereto.
  - c. Landscaping shall be increased along the interior sidewalks on both sides of the parking lots and foundation plantings shall be placed at the buildings facing the parking lots.
  - d. Trees shall be planted at equal intervals around the buildings facing the parking lots.
  - e. Downward directed lighting fixtures shall be located around the parking lots, as shown on the plan marked as Exhibit 33 of the record.

**VOTE:**      **4-0-1**      (Geoffrey H. Griffis, Curtis L. Etherly Jr., John A. Mann II and Ruthanne G. Miller to approve, the Zoning Commission member not present, not voting).

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 15, 2004

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 § 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.

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

TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17253 of D.C. Fire and EMS Department**, pursuant to 11 DCMR § 3103.2, for a variance from the side yard requirements under section 405, a variance from the limitation on the number of buildings that can occupy a single lot requirements under subsection 3202.3, and a variance to allow a reduction of the number of parking spaces under sections 2101 and 2108, to allow the modernization (including renovation of an existing building and the construction of a new building) of an existing fire and EMS station in the R-3 District at premises 2101 14<sup>th</sup> Street, S.E. (Square 5781, Lot 847).

Note: The Board amended the application to require relief from section 405 (side yard), sections 2101 and 2108 (reduction in number of parking spaces) and subsection 3202.3 (limitation on the number buildings on a single lot).

**HEARING DATE:** December 14, 2004  
**DECISION DATE:** December 14, 2004 (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) 8A, 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 8A. ANC 8A did not participate in the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. 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, 405, 2101, 2108 and 3202.3, that there exists an exceptional or extraordinary situation or condition related to the property

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that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. 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:**        4-0-1        (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Kevin L. Hildebrand to approve, 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:** December 15, 2004

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

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS

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AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17255 of 3DG Delta LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to construct a flat (two-family dwelling) in the C-2-A District at premises 3313 11<sup>th</sup> Street, N.W. (Square 2841, Lot 44).

**HEARING DATE:** December 14, 2004

**DECISION DATE:** December 14, 2004 (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) 1A, 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 1A. ANC 1A submitted a report in support of the application. The Board considered the views of ANC 1A; however, the ANC report was not given great weight, not meeting the requirements of section 3115. The Board denied the two requests for party status from Flora Bravo, 1035 Lamont St., NW and Sally Tyler, 1033 Lamont St., NW.

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 and 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. 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., and Kevin L. Hildebrand 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 15, 2004

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

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

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

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

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

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

**Application No. 17256 of Pilgrim A.M.E. Church**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a church program use in an existing church under section 216, and pursuant to 11 DCMR § 3103.2, a variance from the lot occupancy requirements under section 403, and a variance from the rear yard requirements under section 404, to construct a two story addition at the rear of the church in the R-4 District at premises 612 17<sup>th</sup> Street, N.E. (Square 4540, Lot 289).

**HEARING DATE:** December 21, 2004

**DECISION DATE:** December 21, 2004 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 6A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 6A. The Board received a report in support of the application from the ANC 6A. The report did not receive great weight, not meeting the requirements of 11 DCMR § 3115.1.

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 special exception pursuant to 11 DCMR §§ 3104.1 and 216, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 403 and 404.

No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party. The Board closed the record at the conclusion of the hearing. 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 proof

BZA APPLICATION NO. 17256

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pursuant to 11 DCMR § 3104.1, for a special exception under section 216, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 403 and 404, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested 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. It is therefore **ORDERED** that the application is **GRANTED** with the following **CONDITION**:

The special exception is approved for **THREE (3) YEARS**.

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 appropriate in this case.

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

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

Each concurring member has approved the issuance of this Order.

**FINAL DATE OF ORDER:** December 21, 2004

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 § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE

BZA APPLICATION NO. 17256

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**GROUND'S 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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUND'S FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

**Application No. 17257 of Thomas W. Baughman**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear deck addition to an existing single-family dwelling under section 223, not meeting the rear yard (section 404) and court width (section 406) requirements in the R-4 District at premises 1774 Hobart Street, N.W. (Square 2588, Lot 127).

**HEARING DATE:** December 21, 2004

**DECISION DATE:** December 21, 2004 (Bench Decision)

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1D, which is automatically a party to this application. ANC 1D submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied

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

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

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 21, 2004

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

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

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

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

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

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

**Application No. 17258 of Michael G. Pfeifer**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a rear addition to an existing single-family detached dwelling under section 223, not meeting the side yard requirements (section 405), in the R-1-B District at premises 3246 Quesada Street, N.W. (Square 2021, Lot 34).

**HEARING DATE:** December 21, 2004  
**DECISION DATE:** December 21, 2004 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3/4G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3/4G, which is automatically a party to this application. ANC 3/4G submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied

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by findings of fact and conclusions of 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. and Anthony J. Hood to approve).

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** December 21, 2004

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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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**NOTICE OF FINAL RULEMAKING**

**and**

**ORDER NO.**

**Z.C. Case No. Case No. 96-3/89-1**

**(Text and Map Amendments – 11 DCMR)**

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

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