

**D.C. Preparatory Academy
701 Edgewood Street N.E.
Washington, D.C. 20017**

NOTICE: REQUEST FOR LEGAL SERVICES

D.C. Preparatory Academy, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide legal services to assist in a tax-exempt bond financing.

Interested individuals or organizations should contact Emily Lawson at 202-832-5700, for more details about requirements. Bids will be due by noon on March 25, 2005.

**D.C. Preparatory Academy
701 Edgewood Street N.E.
Washington, D.C. 20017**

NOTICE: REQUEST FOR PROJECT MANAGEMENT SERVICES

D.C. Preparatory Academy, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide project management services to assist in the transformation of a warehouse into a school building.

Interested individuals or organizations should contact Emily Lawson at 202-832-5700, for more details about requirements. Bids will be due by noon on March 25, 2005.

**BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in **ten (10)** Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed.

**VACANT: 3D07
 4D05
 5C11
 6B11
 8B03, 8C05, 8C06, 8E01, 8E06**

Petition Circulation Period: **Tuesday, March 8, 2005 thru Monday, March 28, 2005**
Petition Challenge Period: **Thursday, March 31, 2005 thru Wednesday, April 6, 2005**

VACANT: 4A05

Petition Circulation Period: **Monday, February 28, 2005 thru Monday, March 21, 2005**
Petition Challenge Period: **Thursday, March 24, 2005 thru Wednesday, March 30, 2005**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N**

For more information, the public may call **727-2525**.

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

**Certification of Filling a Vacancy
In Advisory Neighborhood Commission**

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

**Jill Stern
Single Member District 3D03**

District of Columbia
BOARD OF ELECTIONS AND ETHICS

Monthly Report
of
Voter Registration Statistics
for the period ending
February 28, 2005

Covering Citywide Totals by:

WARD, PRECINCT, and PARTY

One Judiciary Square
441 - 4th Street, NW, Suite 250N
Washington, DC 20001
(202) 727-2525
<http://www.dcboee.org>

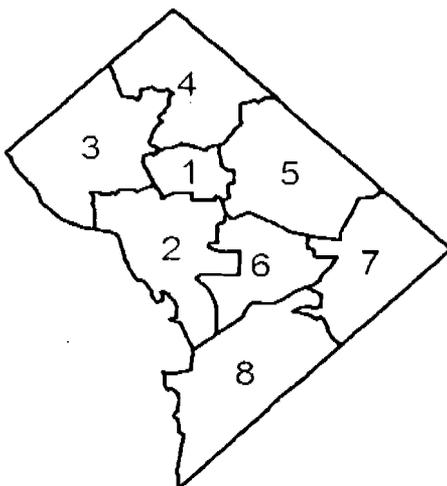
D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE SUMMARY

Party Totals and Percentages by Ward for the period ending February 28, 2005

WARD	DEM	REP	STG	N-P	OTH	TOTALS
1	32,467	2,836	1,076	9,670	276	46,325
2	27,045	5,902	552	9,710	189	43,420
3	31,937	8,613	483	10,089	142	51,264
4	43,611	2,942	669	7,727	217	55,166
5	42,574	2,259	688	6,922	237	52,680
6	37,240	5,008	696	8,137	214	51,295
7	41,085	1,749	560	5,912	168	49,474
8	34,147	1,785	609	5,752	172	42,465
TOTALS	290,106	31,094	5,333	63,919	1,615	392,089
<i>TOTAL Percentage (by party)</i>	74.0%	7.9%	1.4%	16.3%	0.4%	100.0%

Wards



**D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

PRECINCT STATISTICS

Ward 4

For the Period Ending: February 28, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
45	1,953	102	35	337	12	2,439
46	2,683	113	44	474	15	3,329
47	2,260	163	43	560	14	3,040
48	2,531	158	43	446	11	3,189
49	626	38	15	149	4	832
51	2,989	660	40	631	8	4,328
52	1,185	295	8	238	1	1,727
53	1,051	101	21	242	6	1,421
54	1,989	131	37	405	19	2,581
55	2,389	118	34	368	18	2,927
56	2,901	104	39	559	16	3,619
57	2,401	110	34	414	17	2,976
58	2,157	70	36	347	6	2,616
59	2,503	94	31	354	12	2,994
60	1,684	104	34	539	12	2,373
61	1,534	80	21	244	5	1,884
62	3,084	192	39	353	6	3,674
63	2,844	136	70	471	16	3,537
64	2,277	84	19	291	7	2,678
65	2,570	89	26	305	12	3,002
TOTALS	43,611	2,942	669	7,727	217	55,166

**D.C. BOARD OF ELECTIONS AND ETHICS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

PRECINCT STATISTICS

Ward 7

For the Period Ending: February 28, 2005

PRECINCT	DEM	REP	STG	N-P	OTH	TOTALS
80	1,243	53	18	193	8	1,515
92	1,306	63	19	197	9	1,594
93	1,241	65	17	191	6	1,520
94	1,664	75	21	214	6	1,980
95	1,322	42	24	203	2	1,593
96	1,767	76	28	295	4	2,170
97	1,095	42	21	177	1	1,336
98	1,523	57	18	200	10	1,808
99	1,135	47	21	195	5	1,403
100	1,485	65	24	223	7	1,804
101	1,506	49	15	185	7	1,762
102	1,969	82	27	244	9	2,331
103	2,930	125	42	449	13	3,559
104	2,124	105	34	326	13	2,602
105	1,776	80	35	255	5	2,151
106	2,644	102	31	338	7	3,122
107	1,324	66	19	230	2	1,641
108	1,101	51	7	107	5	1,271
109	976	45	12	104	2	1,139
110	3,623	135	40	462	16	4,276
111	1,823	70	28	322	7	2,250
112	1,850	77	24	266	12	2,229
113	1,948	95	18	294	7	2,362
132	1,710	82	17	242	5	2,056
TOTALS	41,085	1,749	560	5,912	168	49,474

**DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD**

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The properties are now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 04-12: Glen Hurst
4933 MacArthur Boulevard, NW (Square 1399, Lot 814)
Designated January 27, 2005

Designation Case No. 04-06: Watergate Complex
2500, 2600, 2650 and 2700 Virginia Avenue and 600 and 700 New Hampshire Avenue, NW
(Square 8, Lots 806, 807, 808, 809, 811 and 812)
Designated February 24, 2005

The Historic Preservation Review Board also provides public notice of its decision to designate the following properties as historic districts in the D.C. Inventory of Historic Sites. These properties will become subject to the Historic Landmark and Historic District Protection Act upon the State Historic Preservation Officer's nomination or notice of intent to nominate the properties to the National Register of Historic Places.

Designation Case No. 05-02: Amendment to Dupont Circle Historic District – boundary extension

The boundaries of the new areas to be added to the District presently include the following addresses:

1401, 1413, 1414, 1415, 1417, 1425, 1509, 1511, 1513, 1515, 1517, 1519, 1521, 1523, 1525, 1527, 1529, 1531, 1533, 1609, 1611, 1613, 1615, 1617, 1619, 1621, 1623, 1625 and 1627 17th

Street, NW;

1200 18th Street, NW;

1225 19th Street, NW;

1318, 1326, 1328, 1330, 1332, 1334, 1336, 1338, 1413, 1414, 1415, 1505, 1507, 1509, 1511 and 1523 22nd Street, NW;

1775 and 2225 N Street, NW;

2109-2125, 2131 and 2147 O Street, NW;

1616, 1623, 1624, 1626, 1633, 1635, 1641, 1718, 1750, 2116, 2118, 2120, 2121, 2122, 2124,

2126, 2128, 2130, 2145, 2147, 2149, 2153, 2155, 2157, 2159, 2161 and 2200 P Street, NW;

1600, 1604, 1608, 1610, 1612, 1614, 1616, 1618, 1620, 1621, 1622, 1624, 1625 and 1633 Q Street, NW;

1225 and 1250 Connecticut Avenue, NW;

1601, 1603, 1605, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618,

1619, 1620, 1621, 1623, 1624, 1625, 1627, 1628, 1629 and 1630 Corcoran Street, NW;

1617, 1619, 1621, 1623, 1625, 1627, 1629, 1630, 1631, 1633 and 2122 Massachusetts Avenue, NW;
1308, 1310, 1316, 1330 and 1816 New Hampshire Avenue, NW;
1615, 1700 and 1741 Rhode Island Avenue, NW; and
2123 Twining Court, NW

also identified by the following lot numbers:

Square 48, Lots 805 and 806;

Square 49, Lots 4, 31, 32, 33, 37, 38, 39, 40 and 44;

Square 67, Lots 34, 35, 36, 46, 47, 48, 56, 58, 62, 809, 810, 830, 835 and 836;

Square 68, Lots 76, 86, 88, 95, 801, 807, 818, and 2014-2028;

Square 97, Lots 816, 2045 and 2341-2365;

Square 139, Lots 810, 816, 817;

Square 152, Lot 186;

Square 157, Lots 865, 867 and 2001;

Square 158, Lot 76;

Square 159, Lots 82, 87 and 855;

Square 179, Lots 19, 20, 21, 24, 25, 26, 64, 65, 66, 67, 71, 72, 73, 73A, 74, 75, 78, 78A, 79, 80, 92, 93, 94, 95, 109, 110, 111, 112A, 112B, 113, 800, 806, 807 and 808;

Square 180, Lots 12, 13, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 88, 89, 810, 813, 814, 814A and 815; and

Square 181, Lots 147, 148, 149, 161, 167, 168, 169, 170, 801, 809, 850, 869 and 871;

Square 181S, Lot 7; and

Square 182N, Lot 1615.

(Note that the addresses and Square/Lot designations may not account fully for the division of properties into condominium or apartment units).

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

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

Application No. 17108 of Folger Park North, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot width and lot area requirements under Section 401, to allow the construction of three flats (two family dwellings) in the CAP/R-4 District at premises 206, 208, and 210 D Street, S.E. (Square 763, Lots 26, 27, and 28).

HEARING DATES: January 27, 2004 and February 24, 2004
DECISION DATE: April 6, 2004

DECISION AND ORDER

This application was submitted on November 7, 2003, by the property owner, Folger Park North, LLC (the applicant or the owner). Following a public hearing, the Board of Zoning Adjustment (the Board) voted to approve the variance.

PRELIMINARY MATTERS

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 6B, 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.

ANC 6B The subject site is located within the jurisdiction of ANC 6B, which is automatically a party to this application. An ANC representative testified at the public hearing in support of the application and indicated that a formal ANC report would be submitted to the Board. However no formal report was received.

Requests for Party Status The Board received requests from nearby property owners at 320 Second Street, SE, 322 Second Street, SE, and 312 Second Street, SE. James Marsh and Mary Ann Snow, the owners of 320 Second Street, and Louise and Larry Smith, the owners of 322 Second Street, were all represented by the firm Robins, Kaplan, Miller & Ciresi. Both sets of property owners were granted party status, with no objection by the applicant. The Board also received a request for party status from Raymond Winter. Mr. Winter's request was filed as Trustee for a trust that owns 312 Second Street and 318 Second Street, SE. The application alleged that the trust would be uniquely affected" by the proposed variance due to "incursion into [the trust] easement", and "[i]ncreased competition for . . . street parking". The Board denied Mr. Winter's request based upon his failure to appear at the public hearing and failure to demonstrate that the trust's property interest would be uniquely affected.

Persons in Support/Opposition The applicant submitted a "petition" in support of the application, signed by numerous individuals who "live, socialize, work, or own investment property" in the immediate area (Exhibit 37). The Capitol Hill Restoration Society submitted a letter in opposition to the variance (Exhibit 36). The chair of its "Zoning Committee", Gary

Peterson, also testified at the public hearing. Mr. Peterson asserted that the application did not meet the variance test because: (1) there is nothing unique about the property, (2) any practical difficulty was self-created because the applicant could have created and developed two conforming lots instead of three substandard lots, and (3) the proposed variance would be detrimental to the zone plan and public good.

Government Reports

OP OP submitted a report stating that, if the Board determined the three lot subdivision was "valid", the variance should be granted (Exhibit 33). During testimony at the public hearing, however, OP's representative stated that it did not have a position on whether the property was "unique" due to its zoning history.

Historic Preservation Review Board (HPRB) HPRB Staff issued a report recommending that the Review Board support the "overall scale and massing" of the projects and issue specific detailed directives (Tab H appended to Exhibit 42).

Department of Housing and Community Development (DHCD) DHCD issued a report supporting the zoning application, noting that the scale and width of the townhouses is the same as many townhouses in the neighborhood.

Other Government Agencies Other government agencies submitted comments to OP indicating either support, or that there were no concerns regarding the project. (See OP Report, Section XI "Other Agency Comments", detailing comments from the Metropolitan Police Department, the Fire and Emergency Medical Services Department, the Department of Transportation, the Department of Health, and the Water and Sewer Agency).

FINDINGS OF FACT

The Property and Surrounding Area

1. The subject property consists of three record lots, numbered 26, 27, and 28, in Square 763, located at 206 D Street, SE, 208 D Street, SE, and 210 D Street, SE, respectively.
2. Each of the three lots is improved with new homes that, as of the date of application, were partially constructed by the applicant. The homes are three levels, two family flats with fully finished English basements and off-street parking.
3. The property is zoned R-4 and is in the CAP (Capitol Interest Overlay District1). The R-4 zone permits one family dwellings, row houses and flats, such as those

¹ The CAP Overlay was established "to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction, in a manner consistent with the goals and mandates of the United States Congress. . ." § 1200.1 DCMR.

constructed by the applicant. Although the CAP Overlay provides for restrictions on use, height and bulk of buildings, the homes constructed by the applicant conform to the Overlay provisions. The property is also in the Capitol Hill Historic District, resulting in HPRB review of the proposed development.

4. Square 763 is bounded by D Street, SE to the south, 3rd Street, SE to the east, C Street, SE to the north, and 2nd Street, SE to the west. Folger Park is directly to the south of the square, and the Library of Congress Madison Building is to the northwest. The square is predominantly developed with 2 to 3 story row houses, but also includes a 6-story apartment building facing C Street, SE, and a sport club and an American Legion building along D Street.

The Requested Variances

5. The lot size and width of each of the three lots meet none of the minimum requirements under section 401 of the Zoning Regulations. Lots 27 and 28 (208 and 210 D Street, SE) are 271 square feet shy of the 1,800 square feet minimum lot size requirement, and Lot 26 (206 D Street, SE) is 353 square feet shy of the 1,800 square feet minimum lot size requirement. The width of all three lots is 16 feet -- 2 feet shy of the 18 feet minimum width that is required in the zone.

Subdivision and Zoning History

6. Maps from the early 1900's indicate that the property was subdivided into three tax lots, and developed with a row house on each lot (See, OP Report, p. 2).
7. The Sanborn Maps indicate that on or about 1928, there were three residential homes on the three lots (Exhibit 9).
8. In 1942, PEPCO applied for a building permit to construct a one story and basement substation, and the structure was constructed on or about 1943 (See, OP Report, p. 2, and Exhibit 10, Surveyor's Plat, indicating a structure straddling three recorded tax lots bearing numbers 800, 801, and 802). At some point, possibly during the 1980s, use of the PEPCO substation was discontinued, but the structure remained in place until it was purchased by the applicant.
9. On or about 2001, the applicant identified the subject property and entered into discussions with PEPCO to purchase it.
10. On or about June, 2002, the applicant met with zoning officials at the Department of Consumer and Regulatory Affairs (DCRA). The zoning officials advised that the lots were buildable as a matter of right, notwithstanding their substandard width and size.
11. On or about November 13, 2002, DCRA issued a permit to raze the PEPCO substation.

12. On or about November 20, 2002, the applicant was notified by DCRA that the project required approval by the Historic Preservation Review Board (HPRB). The HPRB staff prepared a "Staff Report and Recommendation" for the February 27, 2003 HPRB meeting (Tab H appended to Exhibit 42). According to the Report, HPRB staff was advised by the Zoning Administrator at DCRA that the proposed development could proceed as of right.
13. On or about May 23, 2003, DCRA issued foundation permits for each of the three proposed row houses.
14. On or about August 25, 2003, DCRA issued building permits for each of the three proposed row houses.
15. While the building permit application was being processed, the Applicant applied to create three records lot in the same area of the tax lots.
16. Consistent with DCRA's interpretation that the substandard tax lots were buildable, the three 800 tax lots were converted to record lots (26-27-28) as part of the subdivision process (See Exhibit 2, Plat for Building Permit issued by the DC Office of the Surveyor, certified as in compliance with Zoning Regulations, July 22, 2003).
17. There is no evidence that the applicant made any misrepresentations to zoning officials during the building permit or subdivision process. Nor is there any evidence that the applicant attempted to subvert the building permit or subdivision process by filing "piecemeal" applications.

The Construction and Stop Work Orders

18. The PEPCO substation was razed during June, 2003 and construction on the row house foundations began on or about July 1, 2003. Construction continued after the building permits were issued on August 25, 2003.
19. On or about September 2, 2003, DCRA issued a stop work order based upon an "invalid raze permit". The applicant met with DCRA officials to confirm the validity of the raze permit, and the stop work order was lifted on or about September 5, 2003.
20. DCRA issued a second stop work order on or about September 15, 2003, shortly after some neighboring property owners appealed DCRA's issuance of the building permits to this Board. Although the stop work order did not cite any code violation, DCRA later issued a letter stating that the proposed development did not comply with the minimum lot area and lot width requirements contained in § 401 of the Zoning Regulations.

21. At the time the second stop work order was issued, the applicant had spent approximately 1.2 million dollars on the project. The Board credits the applicant's testimony that it would have faced bankruptcy and/or litigation from creditors were it to have abandoned the project at that juncture.
22. On or about October 30, 2003, the applicant and DCRA entered into an agreement that provided for DCRA's lifting of the stop work order in return for the applicant's agreement to indemnify DCRA for any construction related damages, and to seek variances from this Board from the minimum lot area and width requirements.
23. The Board considers the agreement to constitute the zoning memorandum required for the variance application form and an admission by DCRA that the three record lots were invalidly created.
24. At the time of the public hearing the applicant had spent approximately 2.4 million dollars on the project.

Compatibility with the Surrounding Area

25. The area in which the subject property is located is predominantly residential in character. The three flats under construction are consistent with the surrounding row houses, in terms of lot size and width. For instance, the town homes across the street from the subject property are also 16 feet wide. A survey of row houses one block in any direction of the subject property indicates 56 row houses with a lot width less than 18 feet, and 40 row houses with a width less than 16 feet (Tab J appended to Exhibit 42).

CONCLUSIONS OF LAW

As stated above, the applicant, without conceding that an error was made by DCRA, seeks a variance from the minimum lot requirements and minimum width requirements of the Zoning Regulations. The Board is authorized to grant an area variance from the strict application of the zoning regulations in order to relieve difficulties where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "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 in this case, therefore, had to make three showings: (1) uniqueness of the property, (2) that such uniqueness results in "practical difficulty" to it, and (3) that the granting of the variance would not impair the public good or the intent and integrity of the zone plan and regulations.

The property is unique because of its zoning history

As the Board noted in *Application of William T. and Norma G. Byrd*, BZA Application No. 16989, 50 DCR 8932 (2003), when evaluating a variance request, the Board's review is not limited to the physical conditions of the property:

In determining uniqueness the Board is directed to look at the property, including the physical land and the structures thereon, but it can also consider "subsequent events extraneous to the land." *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978); *Capitol Hill Restoration Society v. Board of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987). The Court of Appeals has opined that the Board must be able to consider such events in order "to weigh more fully the equities in an individual case." *National Black Child Development Institute v. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). See also, *Downtown Cluster of Congregations v. Board of Zoning Adjustment*, 675 A.2d 484 (D.C. 1996) (market conditions); *French v. Board of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995) (previous chancery use); *Tyler v. Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992) (economic factors); *Gilmartin v. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (easement); *United Unions v. Board of Zoning Adjustment*, 554 A.2d 313, 317-318 (D.C. 1989) (historic preservation requirements); *National Black Child Development Institute v. Board of Zoning Adjustment*, 483 A.2d 687 (D.C. 1984) (changes in zoning regulations); *Capitol Hill Restoration Society v. Zoning Commission*, 380 A.2d 174 (D.C. 1977) (private restrictive covenant); *Clerics of St. Viator v. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) (societal changes).

Id. at 8936.

The Board finds, here, that the applicant has established a unique "zoning history" based upon the pre-1958 tax lots, the 2003 subdivision into three record lots, and the fact that zoning officials implicitly or explicitly approved the subdivision and as-of-right development on seven different occasions (Findings of Fact 5-18). Furthermore, the Board finds that the facts in this case are strikingly similar to the facts of a Court of Appeals decision which upheld this Board's grant of a variance.

In *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978), a building permit was issued for construction of a single family dwelling on a substandard lot. The house was never built and the property was sold. The purchaser, relying upon the past approvals, applied for a building permit to construct a single family home. The application was denied due to the substandard lot. The BZA held that these circumstances constituted a unique "zoning history" that necessitated an area variance. The variance was challenged on appeal, in part, on the ground that the property's "zoning history" did not amount to an "extraordinary or exceptional situation or condition" for variance purposes. The Court disagreed with this argument, citing the fact that both subdivisions and building permits are subject to review and must be in accordance with the zoning regulations. *Id.* at 1235. Therefore, the Court noted that

– by virtue of the approvals during the subdivision and permit process -- the zoning authorities had implicitly determined three times that the lot width complied with the zoning regulations *Id.* at 1238.

The opposing neighbors argue that the facts of this case are distinguishable from *DeAzcarate* because here the applicant, not DCRA, played a significant role in creating the substandard lots. The Board disagrees. To be sure, the applicant played a role in creating the substandard lots. But the evidence indicates that DCRA determined through the subdivision and permit process on seven different occasions that the lots were buildable. (See, Findings of Fact 9, 12 -17). The Board finds that, under these unique circumstances, it was reasonable for the applicant to rely on the informal advice and formal determinations from DCRA, particularly DCRA's zoning certification of the surveyor's plat that subdivided the property into record lots. Moreover, the Board is not persuaded by the opposition's claim that the applicant misrepresented the facts to DCRA or that the applicant acted in bad faith during the subdivision and permit process.

The unique subdivision and zoning history results in practical difficulty for the owner

Because DCRA's actions led the applicant to believe that the lots were buildable, the applicant commenced construction at the property. By the time it learned that DCRA had reversed its position that the lots were buildable, it had already spent 1.2 million dollars. At this juncture, strict compliance with the Zoning Regulations would have required a complete redesign of the project, which would have likely resulted in dire financial consequences for the applicant. The Board finds that these circumstances constitute practical difficulties.

The Capitol Hill Restoration Society argues that the *DeAzcarate* finding of practical difficulty is distinguishable because the subsequent purchaser had constructed two homes on adjacent conforming lots, making it impossible to make the substandard lot conforming. Here, the Society argues, the applicant knew of a "problem" when the property was still vacant, so that there was no physical or ownership impediment to subdividing the property into two conforming lots, presumably in sufficient time to have corrected it without a variance and without encountering any "practical difficulty". Again, the Board does not agree with this position. The evidence in the record does not support a finding that the Applicant knew that there was a problem with the property prior to the issuance of the second stop work order. By that time, building on two lots was not an economically feasible option. Thus, though the practical difficulties faced by the applicant may differ in kind from those confronting property owners in *DeAzcarate*, they are at least equal in magnitude.

The variances will not result in detriment to the zone plan or the public good

There is no evidence that the requested variances will result in detriment to the zone plan or the public good. Both HPRB and OP state that the three row houses are compatible with the surrounding area in terms of massing and design. In addition, the 16 foot wide buildings -- though non-conforming -- are typical in the surrounding area. Finally, the Board believes that far from being a detriment to the public good, the requested variances will result in an improvement to the public good. The three row houses will not only provide housing that is in harmony with

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. 17149 of Sidwell Friends School, pursuant to 11 DCMR § 3104, for a special exception under § 206 to allow additions to an existing private school and to increase enrollment from 780 to 850 students, and for a special exception under § 411 for roof structures, in the R-1-B and C-2-A Districts at premises 3825 Wisconsin Avenue, N.W. (Square 1825, Lots 816).

HEARING DATES: June 15, 2004, June 22, 2004, and June 29, 2004
DECISION DATE: October 5, 2004

DECISION AND ORDER

This application was submitted February 13, 2004 by the Sidwell Friends School, the owner of the property that is the subject of the application. Following a public hearing, the Board voted 4-0-1 on October 5, 2004 to grant the application subject to conditions.

Procedural Matters

Application. The Sidwell Friends School ("Sidwell" or "Applicant") filed an application pursuant to 11 DCMR § 3104 for a special exception under 11 DCMR § 206 to construct additions and enhancements to an existing private school and to increase enrollment from 780 to 825 students in the R-1-B zone¹ at 3825 Wisconsin Avenue, N.W. The application was subsequently amended to request an increase in maximum enrollment to 850 students and to seek an additional special exception, under § 411.11, for a certain aspects of the roof structures on a proposed addition to the existing middle school building. The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated February 18, 2004, the Office of Zoning sent notice of the application to the Office of Planning; the Department of Transportation ("DDOT"); the Councilmember for Ward 3; Advisory Neighborhood Commission ("ANC") 3C, the ANC for the area within which the subject property is located; and the single-member district ANC 3C06.

The Board originally scheduled a public hearing on the application for May 11, 2004. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on February 26, 2004 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 3C. Notice was also published in the D.C. Register (51 *D.C.R.* 2386). The hearing was postponed, at the request of the Applicant in conjunction with ANCs 3C and 3F, until June 15, 2004. Notice of the rescheduled hearing was published in the D.C. Register (51 *D.C.R.* 3425).

Requests for Party Status. ANC 3C was automatically a party in this proceeding. ANC 3F, whose boundaries abut the subject property, was also granted party status. The Board denied a request for party status in opposition submitted by Milos Bajcetic, who did not attend the hearing. The Board also denied an untimely request for party status submitted by Thomas Hertz,

¹ A small portion of the subject property is zoned C-2-A.

who subsequently testified as a person in support of the application on issues relating to construction management.

Applicant's Case. The Applicant provided testimony and evidence from Lane Heard, a member of Sidwell's board of trustees; an architect, Stephen Kieran of Kieran Timberlake Associates; a traffic expert, Martin Wells of Wells & Associates; and Michael Saxenian, the Applicant's assistant head of school and chief financial officer.

According to the Applicant, an assessment of its facility needs demonstrated a need for updated and expanded facilities to support Sidwell's educational programs. Accordingly, the Applicant proposed to expand the existing private school use at the subject property through various enhancements to the site, including the construction of some new buildings as well as additions to and renovation of existing buildings ("the Project"). The Applicant also sought an increase in maximum enrollment from 780 to 850 students in grades 5 through 12, while maintaining the current cap on faculty and staff at 190 employees. Elements of the Project include:

- (a) renovation and expansion of the existing Zavitz Middle School building;
- (b) construction of a new below-grade parking garage, to be built under a playing field, to enhance vehicular circulation and increase the number of parking spaces available on the subject property;
- (c) expansion of athletic facilities, including construction of a new gymnasium, to provide additional court and fitness space for physical education and athletics and to integrate locker rooms and bathrooms with gym spaces;
- (d) construction of a new Quaker meeting house to provide an appropriate place for worship and a gathering place for academic functions;
- (e) renovation of approximately 16,500 square feet of the lower level of the existing Kenworthy Gymnasium for conversion to arts teaching space;
- (f) partial renovation of the existing Kogod Arts Center to improve instructional space;
- (g) relocation of two tennis courts from the front of the subject property, along Wisconsin Avenue, to the northeast corner, and removal of three other tennis courts to allow access to the new parking structure;
- (h) installation of new lighting, including fixtures designed to provide adequate light while minimizing emission of light in undesirable directions;
- (i) improved landscaping on the subject property, particularly on the edges; and

- (j) application of environmentally sensitive, sustainable "green" design to the subject property.

The Applicant indicated an intent to work on the Project without interruption until its completion, but requested approval of the application in two phases "as a fall back position if ... construction must be halted between the projects" due to fundraising, financing, or other extraordinary circumstances. The Applicant estimated that the first phase would be completed in less than two years after approval, and that the second phase – begun within five years after the completion of Phase I – would be completed within nine years of approval.

Government Reports. By reports dated May 8, 2004 and June 29, 2004 and through testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application subject to certain conditions. OP concluded that the requested special exceptions, allowing the proposed construction and an increase in enrollment, would not be objectionable due to noise, traffic, or other conditions.

With respect to enrollment, OP recommended an initial increase to a maximum of 800 students in conjunction with the Applicant's implementation of a traffic management plan ("TMP"), and subsequent increases to 825 students and then 850 depending on, among other things, completion of the new parking garage and compliance with any conditions of approval of the requested special exception. OP also recommended that the Applicant should be required to provide (i) documentary evidence annually to the Board, the Zoning Administrator, and DDOT demonstrating its enrollment figures and compliance with the terms and conditions of the Board's order, including the TMP, and (ii) an annual report to ANC 3C and ANC 3F indicating the current levels of enrollment and staffing, and certifying compliance with the Board's Order.

The District Department of Transportation submitted comments on the Applicant's proposal by reports dated June 1, 2004, July 12, 2004, and September 1, 2004. DDOT supported the construction of a parking garage on the subject property, because the additional parking spaces would reduce the school-related impact on the supply of parking on neighborhood streets in the vicinity of the subject property. Noting the close proximity of Metrobus and Metrorail access, DDOT strongly encouraged the Applicant to reduce vehicle travel to and from the subject property by increasing the use of mass transit by both students and employees and by achieving a higher vehicle occupancy rate.

ANC Reports. At a regularly scheduled public meeting, held May 17, 2004 with a quorum present, ANC 3C voted unanimously (8-0) to pass a resolution conceptually supporting the application, with a number of recommendations. The resolution stated, among other things, that a large proportion of Sidwell students drive to school and park on neighborhood streets, few students use public transportation, and "the current condition of 37th Street during drop-off and pick-up periods is congested and hazardous, even though Sidwell has altered its pick-up time so as to avoid coinciding with the pick-up of Hearst Elementary School children." Citing a construction management agreement reached with the Applicant, ANC 3C supported the Applicant's proposed project while "strongly recommend[ing]" conditions of approval including that:

- (i) student and staff parking should be restricted entirely to the subject property;
- (ii) any significant changes to the site plan as presented to ANC 3C and the Historic Preservation Review Board should be subject to review by ANC 3C prior to consideration by the Board;
- (iii) the middle school addition (facing 37th Street) should be indented to the west to give a visual break in the length of the building and to provide a greater chance of survival for the mature trees in public space;
- (iv) the landscaping plan for 37th Street and along the north border of the subject property should include numerous tall evergreens to shield views of the proposed building from the street and immediate neighborhood;
- (v) the proposed new below-grade parking garage should provide a minimum of 300 code-compliant parking spaces;
- (vi) all buses used by Sidwell or visitors to the private school should be parked on the subject property;
- (vii) the drop-off and pick-up of students on 37th Street should be restricted to 5th and 6th graders after the new parking garage is built;
- (viii) the Applicant should provide an annual report to ANC 3C and ANC 3F indicating enrollment and number of staff, and certifying compliance with the Board's order approving the application;
- (ix) the Applicant should hold quarterly meetings open to the neighborhood, with a copy of minutes of the meetings sent to ANC 3C and ANC 3F;
- (x) the Applicant should not be permitted to increase enrollment over 800 students until the garage is built, all student and staff parking is contained on the subject property, and the traffic management plan is implemented, while ANC 3C would recommend approval of a new application requesting an enrollment increase to 825 if parking and traffic conditions improved; and
- (xi) the Applicant should be required to seek separate approval of any increase in enrollment above 825 students or in the staff cap, and only after the traffic management plan had been implemented successfully for one year.

At a special public meeting, held June 7, 2004 with a quorum present, ANC 3C voted unanimously (7-0) to pass a resolution indicating that the ANC's support for the application was conditioned on implementation of the Applicant's construction management plan.

By letter dated August 10, 2004, ANC 3C stated that the Zoning Regulations require that no order of the Board authorizing the construction of a building can be valid for more than two years unless the applicant files plans for the purposes of securing a building permit within that two-year period, and that construction approved in the permit granted pursuant to the Zoning Regulations must start within six month of its issuance or the permit will expire. Noting that the Board can waive those provisions for good cause shown, ANC 3C stated that a waiver in this case would prejudice the ANC and the community because the Applicant's proposed Phase II was presently "too conceptual to reliably determine that there will be no objectionable impacts to the adjoining and nearby property owners."

With respect to the Applicant's request for a special exception under § 411 for roof structures on its proposed middle school addition, ANC 3C contends that the Applicant has not addressed "what specific difficulties make compliance unreasonable or prohibitively expensive." ANC 3C did not take a position on the special exception related to roof structures, but questioned whether further explanation was needed before the Board could conclude that the Applicant should not be required to comply with setback requirements. ANC 3C further opined that the Applicant's proposed roof structure design should be redrafted to comply with the single-enclosure requirement of § 411.3.

At a public meeting on June 2, 2004 with a quorum present, ANC 3F unanimously voted (4-0-0) to approve a resolution stating that the ANC strongly supported construction of the Applicant's proposed new parking garage and had no objection to the requested special exception pertaining to rooftop structures on the middle school addition, the addition of arts teaching spaces in the lower level of the Kenworthy Gym, renovation of the Kogod Arts Center, green landscape and design, and an increase in the maximum enrollment from 780 to 800 students. ANC 3F recommended approval of the application subject to numerous conditions:

- (i) the first phase of construction must include the two-level garage with 307 zoning-compliant parking spaces, and the Applicant must also maintain five spaces on the subject property for bus parking and 16 spaces near the Zartman House for visitor/guest parking;
- (ii) all students, faculty, and staff must be required to park on the subject property;
- (iii) all student, faculty, and staff cars must be registered with the school, with Sidwell providing stickers to the drivers, and no students would be permitted to park in restricted or unrestricted parking spaces on residential streets;
- (iv) the Applicant must develop a traffic management plan that includes monitoring the neighborhood for violators of the requirements for parking on the subject property and sanctions for such violations;
- (v) the Applicant must adopt a transportation management plan, including MetroChek, carpooling, and shuttle buses from its Bethesda campus and local

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Metro stops, and demonstrate that it can reduce vehicular traffic to the subject property by 15 percent;

- (vi) enrollment must be capped at 800 students until completion of the garage, with no enrollment increase until the Applicant has demonstrated for one school year that all students, teachers, faculty, and visitors are parking on the subject property;
- (vii) all student drop-offs and pick-ups, including 5th and 6th grade students, must be on the school grounds and not on 37th Street or any neighborhood residential street;
- (viii) the Applicant must change the main entrance to the expanded middle school from 37th Street to the courtyard on the Wisconsin Avenue side of the building so that it faces the center of campus in order to discourage pick-ups and drop-offs from 37th Street and surrounding streets;
- (ix) the lighted tennis courts to be used in the evenings must be located away from the Washington Home and placed on the Wisconsin Avenue side of the subject property;
- (x) the Applicant must adopt a construction management plan in consultation with impacted institutions, residential neighbors, and ANC 3C and ANC 3F;
- (xi) the Applicant must adopt a detailed landscaping plan showing type, size, and location of trees to be planted in order to screen the middle school, new gym, and new tennis courts from homes on Tilden, Upton, and 37th Streets and from residents of the Washington Home, and the plan must be accepted in writing by ANC 3C, ANC 3F, and the Washington Home;
- (xii) the Applicant must adopt a strong tree protection plan for existing trees on the Washington Home property, including a tall hedge by the proposed tennis courts, with a commitment to replace in kind any tree damaged in construction;
- (xiii) the Applicant must hold quarterly meetings open to all residents of the community, with a high-ranking Sidwell representative in attendance; post minutes of the meeting on the Sidwell website; and forward a copy of the minutes to ANC 3C and ANC 3F;
- (xiv) the Applicant must provide a monthly written calendar of school events, indicating the anticipated number of attendees, to residents within a 400-foot radius of the subject property, on its website, and to ANC 3F by email; and
- (xv) the Applicant must provide ANC 3F, on a yearly basis, a report certifying that it is in compliance with the Board's order.

By letter dated August 10, 2004, ANC 3F stated its view that the Applicant had not "shown any extraordinary condition or hardship that would justify multiple roof structures." ANC 3F objected to four roof structures visible to the nearby residential neighborhood. With regard to the Applicant's phasing plan, ANC 3F concurred with ANC 3C, and suggested that consideration of construction beyond Phase I should be postponed until the Applicant's plans were more definite.

Person in Support. Four persons testified in support of the application, stating generally that the resulting environmental and traffic improvements will benefit the surrounding neighborhoods.

Persons in Opposition. The Board received several letters and heard testimony from nine persons opposed to or having concerns about the application. They generally cited adverse traffic and parking impacts of the existing private school use, especially pertaining to student drop-offs on 37th Street and parking by students on residential streets in the vicinity of the school, and expressed concerns about Applicant's master plan for its campus; enrollment, including alleged noncompliance with previously adopted enrollment caps; the height of the middle school building and its visual impact on nearby single-family residences; landscaping of school grounds; and construction issues, including the Applicant's phasing plan.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. Sidwell Friends School, a private, coeducational Quaker school for students in pre-kindergarten through twelfth grade, was founded in 1883 and has been located at the subject property since 1937. The middle and upper school (grades 5 through 12) are located at the subject property; the lower school is located in Bethesda, Maryland.
2. The subject property, 3825 Wisconsin Avenue, N.W. (Square 1825, Lot 816), is a single lot with an area of approximately 15 acres. The subject property, an irregularly shaped parcel located in the Tenleytown neighborhood of Ward 3, is bounded by Wisconsin Avenue to the west, Quebec Street to the south, 37th Street to the east, and commercial and institutional buildings to the north. The subject property slopes rather steeply from west to east (*i.e.* from Wisconsin Avenue toward 37th Street). The Applicant testified that the front of the property is the side facing Wisconsin Avenue.
3. The subject property is zoned R-1-B, except for a small portion along Wisconsin Avenue, currently used as an athletic field, that is zoned C-2-A. The Application concerns primarily the portion of the subject property zoned R-1-B, although most of the below-grade parking garage will be located in the C-2-A zone.
4. The subject property currently contains several buildings and facilities devoted to the private school use, including the Earl G. Harrison Jr. Upper School Building, the Zavitz Middle School Building, Kogod Center for the Arts, Richard Walter Goldman Memorial

Library, Zartman House (administrative building), Sensner Building (maintenance, security, information technology, and school store), Wannan and Kenworthy Gymnasiums, three athletic fields, eight tennis courts, and a six-lane track.

5. The Zartman House, also known as The Highlands, is a historic landmark listed both in the District of Columbia inventory and the National Register of Historic Places. On April 22, 2004, the Historic Preservation Review Board adopted a staff report recommending support for the Applicant's "Master Plan" for the subject property and encouraging consideration of "more compatible locations" for the proposed meeting house at a greater distance from the Zartman House.
6. Properties to the north of the subject property include the Federal National Mortgage Association ("Fannie Mae"), the Friendship Station Post Office Building, and the Washington Home. Phoebe Hearst Elementary School and the Hearst Recreation Center are located across 37th Street to the east. Three single-family residences and a building occupied by the American Academy of Child and Adolescent Psychiatry are located across Quebec Street south of the subject property. An office building housing the national headquarters of Fannie Mae and the McLean Gardens residential complex are located cross Wisconsin Avenue, west of the subject property.

The Proposed Private School Use

7. The Applicant presently employs 169 faculty and staff at the subject property, and proposed to retain the existing employee cap of 190. (*See* Application No. 16139; order dated August 16, 1996).
8. The additions and modifications to the subject property that comprise the Applicant's Project will utilize "green" architecture and sustainable design intended to create an environmentally friendly campus. The Applicant indicated an intent to seek a "Platinum" LEED certification – the highest environmental certification standard recognized by the U.S. Green Building Council – for the middle school building. The other new buildings and additions are expected to be certifiable at least to the level of "Silver" on the LEED scale. The Applicant's "green" strategies for the Project include the treatment, management, and reuse of storm water; the minimization of pavement and use of reflective roof surfaces to reduce the surface heat gain; the use of trees for shading and local plant species to minimize maintenance, water use, and chemical inputs; the optimization of building orientation to control heating and cooling loads; the efficient use of water; the use of natural and mechanically assisted ventilation, an efficient building envelope, and a central utility plant; the reuse of existing buildings; and the use of recycled, rapidly renewable, and locally manufactured materials.
9. Most of the perimeter of the subject property will be unaffected by the Project except for improvements to the landscaping. The Applicant proposes to plant vegetation that will unify the site and better define its edge with a green boundary, and indicated an intent to retain mature trees to the extent possible.

10. The Applicant entered into an agreement with the Washington Home that requires the Applicant to install and maintain landscaping in the area between the property line adjacent to the middle school building addition and the Washington Home's parking lot, and to install additional landscaping on the southern edge of the Washington Home property. The Applicant also agreed not to light two tennis courts at the northern edge of the subject property, or to allow their use after 9 p.m.
11. The proposed new parking structure will be constructed below the existing athletic field at the front of the subject property along Wisconsin Avenue. The structure will include reconstruction of the athletic field at approximately the same level and will provide 307 covered parking spaces in two below-grade levels, with approximately 6,300 square feet of building and grounds facilities below the athletic field at the northern end.
12. The existing middle school building is three stories and contains approximately 33,000 square feet of floor area. The Applicant's proposed addition will also have three stories and will add approximately 35,000 square feet to the building built around a new courtyard. The building, including the new addition, will conform to the maximum height of 40 feet permitted under the Zoning Regulations as measured from the middle elevation of the front of the building (on the courtyard side).
13. The proposed new gymnasium – a three-story building approximately 40 feet tall, with 33,000 square feet of floor area – will be located parallel to the Applicant's common property line with the Washington Home. The gymnasium, which will replace a surface parking lot, will be located approximately 25 feet from the Applicant's property line, and approximately 44 feet from the Washington Home's "back-of-the-house" facilities.
14. The proposed new Quaker meeting house will be a building of one and a half stories, and 10,000 square feet, located south of the Zartman House.
15. The new buildings proposed as part of the Applicant's Project will be accessory buildings devoted to the expanded private school use of the subject property.
16. The Applicant requested approval of the application in two phases. Phase I, which would begin immediately upon approval, would encompass construction of the new parking garage and the middle school addition, followed by renovation of the existing middle school building. Phase II, which would begin within five years of the completion of the first phase, would encompass construction of the Quaker meeting house and the new gymnasium, followed by renovation of the Kenworthy Gymnasium and Kogod Arts Center.
17. With the cooperation of the ANCs, the Applicant devised and agreed to implement a construction management plan intended to mitigate adverse impacts on the surrounding residential neighborhood during construction of the Project. Because the agreement does

not pertain to the operations of the school, but to activities related to its construction, the agreement is not being incorporated into this order.

Noise Impacts

18. The Applicant stated that the noise generated by private school use of the subject property, while already low, would likely be reduced due to improvements made as part of the Project. Most academic and extracurricular activities will take place inside, and some physical education activities will occur inside the new gymnasium facilities.
19. The Board credits the testimony of the Office of Planning that external noise would be reduced by the Applicant's proposed Project, which will increase the indoor space available for academic and extracurricular activities. In addition, the interior courtyard formed by the modifications to the middle school will create an outdoor play area located away from the Washington Home and the closest residences on Tilden Street, with any noise impacts buffered by the expanded buildings on the subject property.
20. Based on the above findings, the Board concludes that the requested special exception will not create adverse noise impacts on neighboring property.

Traffic Impacts

21. Wisconsin Avenue is a six-lane principal arterial street. The peak traffic period on Wisconsin Avenue in the vicinity of the subject property is in the evening between 5:15 and 6:15. Quebec and 37th Streets are local streets.
22. Sidwell Friends School is located about a half-mile south of the Tenleytown-AU Metrorail station and is served by four Wisconsin Avenue Metrobus lines. Metrobus stops are located on both sides of Wisconsin Avenue directly in front of the subject property.
23. The existing vehicular circulation on the subject property has an entrance from and exit onto Wisconsin Avenue, with a circular driveway in front of the Zartman House. A second driveway, located at the northwest corner of the subject property south of the office building occupied by Fannie Mae, exits north of the office building near the post office building. Most of the parking available on the subject property is located on the north side of the site.
24. Student pick-ups and drop-offs currently take place in the parking area at the northern end of the subject property, on the driveway in front of the Zartman Building, and on the west side of 37th Street.
25. Student drop-offs at the subject property peak in the morning at approximately 7:15, when approximately 1,041 trips occur. Approximately 453 trips are made during the

afternoon peak of 3:15 to 4:15. (Each student drop-off or pick-up constitutes two trips – one trip to and one trip from the subject property.)

26. The Board credits the testimony of the Applicant's traffic expert that an increase in enrollment from 800 to 850 students could be expected to increase the number of trips during peak period by approximately six percent, or 64 additional trips during the morning peak period and 27 additional trips during the afternoon peak period.
27. Currently, traffic to the subject property constitutes approximately nine percent of traffic on Wisconsin Avenue in the vicinity of the subject property during both the morning and afternoon peak periods. The Board credits the testimony of the Applicant's traffic expert that the requested increase in enrollment would cause school-related traffic on Wisconsin Avenue to increase to 15 percent during the morning peak and 11 percent during the afternoon peak period.
28. Currently, traffic related to Sidwell constitutes approximately half of traffic on 37th Street in the vicinity of the subject property during the morning peak period and approximately 35 percent during the afternoon peak period. The Board credits the testimony of the Applicant's traffic expert that school-related traffic on 37th Street would decrease to approximately 25 percent during the morning peak and 12 percent during the afternoon peak period due to the changes in traffic circulation proposed by the Applicant.
29. The Project calls for a new one-way vehicular circulation that will enter the subject property from the signalized intersection of Wisconsin Avenue and Rodman Street, with a 22-foot-wide access road to the exit back onto Wisconsin Avenue at a signalized intersection.
30. Construction of the new parking garage and the reconfiguration of the driveway on the subject property will almost double the space available for queues of vehicles for student drop-offs and pick-ups. The Project will provide 60 on-site queuing spaces for student drop-offs and pick-ups in two lanes on the ground level of the parking structure beneath the athletic field. Currently approximately 17 queuing spaces are available on the subject property. The additional queuing space on the subject property will lessen school-related traffic congestion on Wisconsin Avenue
31. Sidwell recently moved its afternoon dismissal time to 3:30, and prohibited student pick-ups before 3:30, to lessen school-related traffic congestion on 37th Street by avoiding the need for student pickups at the same time as Hearst Elementary School. In addition, the Applicant recently limited student drop-offs and pick-ups on 37th Street to vehicles containing a 5th or 6th grader.
32. The Board credits the testimony of the Applicant's traffic expert that Wisconsin Avenue and the drop-off lane integral to the new parking garage would not have sufficient capacity to accommodate all student drop-offs at the subject property, but that some of the traffic burden should be shared by 37th Street. The Board also notes that DDOT did

not oppose the limited drop-off and pick-up of 5th and 6th graders on 37th Street, N.W. due to the location of the middle school directly adjacent to the 37th Street curb. The Board credits DDOT's conclusion that limiting drop-off and pick-up to 5th and 6th graders would reduce current school-related traffic on 37th Street even with the increase in maximum enrollment to 850.

33. The Applicant has recently implemented a traffic management plan ("TMP") to mitigate the impact of school-related traffic in the vicinity of the subject property. Pursuant to the TMP:
- (a) Eligibility for Metrochek and school transit subsidy programs was expanded to students living in Maryland and Virginia as well as the District of Columbia to encourage use of public transportation.
 - (b) The shuttle-bus service operating to the subject property from the lower-school location in Bethesda was modified to include a stop at the Tenleytown-AU Metrorail station to pick up students.
 - (c) A traffic control officer is stationed on 37th Street to assist with school-related traffic.
 - (d) Visitor buses are parked on the subject property.
 - (e) Compliance with Sidwell's traffic policies was made a requirement included in each student's enrollment contract.
34. Currently, approximately 124 students (27 percent) drive to school. Under the Applicant's proposed enrollment increase, the junior and senior classes would be increased by approximately 14 students, of whom four might be expected to drive to school.
35. The Board concludes that approval of the Applicant's Project will not create adverse traffic impacts. School-related traffic congestion will diminish on streets in the vicinity of the subject property: on 37th Street as a result of the limit on student drop-offs and pick-ups to only those vehicles with 5th or 6th graders; and on Wisconsin Avenue due to the reconfigured traffic circulation, greater queuing area for student drop-offs and pick-ups on the subject property, and access to and from the subject property at signalized intersections. Implementation of the Applicant's traffic management plan will further mitigate the impact of school-related traffic in the vicinity of the subject property.

Adequate Parking

36. The Applicant currently provides 192 parking spaces on the subject property. The Board previously directed Sidwell to provide 145 parking spaces to serve the private school use on the subject property. (Application No. 12945, order dated August 7, 1979).

37. The proposed new two-level, below-grade parking garage will provide 307 parking spaces, raising the number of parking spaces on the subject property to 323.
38. The Applicant is proposing to retain the current maximum of 190 employees at the subject property. After completion of the Project, the largest assembly space on the subject property will be the new athletic facility, with a capacity of 616. Therefore, the Applicant's parking requirement under chapter 21 of the Zoning Regulations will be 189 spaces (two parking spaces for every three employees and one space for every 10 seats in the largest assembly space).
39. Currently, the peak morning occupancy utilizes 133 parking spaces (69 percent of all spaces on the subject property), while the peak afternoon occupancy utilizes 161 spaces (84 percent). However, students who drive to school currently are not permitted to park on the subject property during school hours. Approximately 124 students currently drive to school and park on neighborhood streets.
40. Curb parking on Wisconsin Avenue in the vicinity of the subject property is restricted to holders of residential parking permits on school days and during peak periods. On the west (Sidwell) side of 37th Street, parking is prohibited in front of the middle school but unrestricted in other areas. On the east side of 37th Street, in front of Hearst Elementary School, parking is limited to 15 minutes during school drop-off and pick-up times. Parking is unrestricted on the north side of Quebec Street, at the southern edge of the subject property, but restricted on the south side of Quebec Street and the north side of Upton Street near the subject property.
41. The Applicant proposes to implement a parking policy that will permit students to park on the subject property and prohibit their parking on those residential streets in the vicinity of the school where parking is restricted to holders of residential parking permits. To ensure compliance, the Applicant will register student vehicles and require them to display a sticker or other form of identification so that any violations can be reported to the school. The dean of Sidwell's upper school will monitor student compliance and respond to any community complaints. The means of identification will indicate the telephone number of a 24-hour hotline provided by Sidwell to receive complaints.
42. The Board credits DDOT's testimony that the overflow parking of school-related vehicles on neighborhood streets in the vicinity of the subject property will be insignificant after completion of the Project due to the addition of the new parking garage coupled with an expected increase in mass transit usage. The additional parking spaces available on the subject property and the prohibition on student parking on streets with restricted parking will also reduce any adverse impacts associated with overflow parking.
43. The Board finds that the proposed expansion of the private school use is not likely to become objectionable to adjoining and nearby property because of parking, and that the Applicant's proposal – which provides for construction of a new underground garage as

well as new parking policies applicable to students – will provide for ample parking space to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Number of Students

44. Sidwell Friends School is currently authorized to enroll a maximum of 780 students. (See Application No. 16139; order dated August 16, 1996) However, the Applicant's actual student population is 800.
45. The Applicant proposed to increase its authorized student enrollment initially to 825 students, and to 850 one year after completion of the new parking garage.
46. With respect to enrollment, OP recommended:
 - (a) an increase to a maximum of 800 students in conjunction with the Applicant's implementation of a traffic management plan;
 - (b) an increase to a maximum of 825 students one year after issuance of a certificate of occupancy for the new parking garage, subject to the Applicant's submission to the Zoning Administrator of evidence of compliance with the conditions of approval of the requested special exception, including the traffic management plan, and DDOT's submission of evidence to the Zoning Administrator that the garage is working successfully; and
 - (c) an increase to a maximum of 850 students six years after issuance of the certificate of occupancy for the new parking structure, subject to the Applicant's submission to the Zoning Administrator of evidence of compliance with the conditions of approval of the requested special exception, including the TMP, and DDOT's submission of evidence to the Zoning Administrator that the TMP is operating successfully.
47. ANC 3C recommended a maximum enrollment of 800 students initially, with a possible increase to 825 dependent on traffic and parking conditions; ANC 3C opposed consideration of an increase in enrollment above 825 until after one year's successful implementation of the traffic management plan. ANC 3F also recommended an initial increase in enrollment to a maximum of 800, with no additional increase until the Applicant had demonstrated that "all students, teachers, faculty, [and] visitors are parking on campus for one school year."
48. The Board finds that no objectionable conditions are likely to result from an increase in enrollment to 800 students initially and to 850 following completion of the new parking garage, with the related changes in traffic circulation, creation of a large area for student drop-offs and pick-ups, and increased availability of parking – including parking for student – on the subject property. The Board concludes that the proposed new parking

garage and attendant operational changes would mitigate any adverse impacts of the relatively small increase in enrollment requested by the Applicant.

Roof structures

49. The Applicant requested a special exception under § 411.11 for certain aspects of the roof structures on the proposed middle school addition and renovation. According to the Applicant, the requested roof structure relief would allow Sidwell to optimize the design of the middle school building and to place a new stairway in the most appropriate position so as to maximize the amount of classroom and academic space in the building. The requested relief would permit:
- (a) a new staircase to access the roof that would not be set back from the building perimeter but placed so as to provide rooftop access for maintenance and observation of rooftop equipment and structures without interfering with classroom layout or daylighting and natural ventilation objectives;
 - (b) separate enclosures for equipment and structures, where three separate shafts are needed so that natural ventilation penthouses can be located between classrooms to ventilate each classroom effectively, and three cooling tower components, required to correspond to modular equipment in the central plant, would be aligned with the ventilation penthouses to provide space for skylights, because a single enclosure would create the appearance of a much larger rooftop structure and would negatively impact both the rooftop vegetation and the effectiveness of the skylight; and
 - (c) cooling towers that will be 15 feet, six inches high and set back 12 feet from the face of the north building wall, where the size of the cooling tower equipment is fixed by design loads and manufacturers' standards, and a single unit is impractical because of the modular approach to the central plant equipment and because clearances are required around the cooling towers to permit necessary air circulation.
50. The Board finds that the requested special exception pertaining to roof structures on the proposed middle school addition and renovation satisfy the requirements for relief pursuant to § 411.11. Full compliance with the requirements of § 411 would be unreasonable, unduly restrictive, and impracticable to the Applicant because of operating difficulties, such as the impact on classroom space, and other conditions, such as the commitment to pursue LEED certification. Approval of the requested special exception would not impair the intent or purpose of the Zoning Regulations or affect the light and air of adjacent buildings.

Harmony with Zoning

51. The purposes of the R-1 district include to stabilize and protect quiet residential areas developed with one-family detached dwellings, and to promote a suitable environment

for family life. 11 DCMR §§ 200.1-200.2. The R-1-B zone provides for districts of higher density than the R-1-A zone. 11 DCMR § 200.3.

52. The new buildings and additions planned as part of the Applicant's Project conform to requirements of the R-1-B district with respect to lot occupancy, height, bulk, and side and rear yards. Building height, as measured from the front of the property, will not exceed 40 feet. As a result of the proposed new construction, the lot occupancy on the subject property will increase from 13 percent to 19 percent.
53. The Board finds that the requested special exceptions – with respect to the Project that will expand the existing private school use and increase enrollment, and with respect to the roof structures on the middle school addition and renovation – will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1. The Applicant seeks special exceptions pursuant to 11 DCMR § 3104.1 to construct new buildings and additions to existing buildings in an expansion of an existing private school use under the conditions specified in § 206, with an increase in enrollment from 780 to 850 students in grades 5 through 12, and for approval of certain roof structures pursuant to § 411.11, in the R-1-B district at 3825 Wisconsin Avenue, N.W. (Square 1825, Lot 816).

In accordance with § 206, a private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. 11 DCMR § 206.2. Ample parking space must be provided "to accommodate the students, teachers, and visitors likely to come to the site by automobile." 11 DCMR § 206.3. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of the Zoning Regulations and Map. 11 DCMR § 3104.1.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 3C and ANC 3F, the Board concludes that the proposed roof structures and the proposed expansion of the existing private school use, as conditioned by the Board, can be located at the subject property so that they are not likely to become objectionable to adjoining and nearby property. The Board has imposed conditions in this order in response to the Applicant's proposal, recommendations of OP, and concerns raised by ANC 3C and ANC 3F.

The Applicant seeks the Board's approval to operate at its current level of enrollment, which is twenty students higher than now authorized, and to increase this number by an additional fifty students once the new parking facility is in place. With respect to the ratification of its current enrollment, the Board notes that the record indicates that there have been some adverse impacts felt within the adjacent neighborhood, which may be at least partially attributed to the current unauthorized level of operation. Nevertheless, the Board finds that Applicant's newly implemented traffic management plan addresses those adverse impacts, particularly those related to traffic and parking of school-related vehicles.

With respect to the request to increase enrollment from 800 to 850, the subject property is a large site with ample space for the proposed new buildings and additions as well as the requested increase in enrollment. The Applicant's Project and traffic management plan will also aid in mitigating adverse impacts potentially arising from the expansion of this private school use. In addition, the new parking garage will greatly increase Sidwell's supply of parking on the subject property. In any event, the increase in enrollment is not likely to create a substantial increase in demand for parking attendant to the private school use. Indeed, the traffic impacts on nearby streets will likely be diminished as a result of the Applicant's proposal, especially due to the increased supply of parking, reconfiguration of traffic circulation, and implementation of the transportation management plan. Similarly, the Applicant's proposed roof structures satisfy the requirements of § 411 and will not create adverse impacts on the use of neighboring property.

Additional Relief. In light of the Board's finding that the proposed new buildings included in the Applicant's Project will be accessory buildings devoted to an expansion of the existing the private school use on the subject property, the Applicant was not required to seek either a special exception under § 2516 to permit two or more principal buildings on a single lot or a variance from § 3202.3, concerning multiple structures on a single lot of record.² The Board rejects the Applicant's argument that § 2516 is inapplicable to a private school use because of its legislative history. Section 2516 "applies to construction on a lot that is located in, or within twenty-five feet (25 ft.) of, a Residence District." 11 DCMR § 2516.2. The subject property is a lot zoned R-1-B and therefore located in a Residence district. Nothing in § 2516 limits its relevance only to residential developments, or exempts private schools (or any other use) located in a Residence district from its application. By statute, the Board lacks authority to amend any regulation, and would be exercising powers reserved to the Zoning Commission if it exempted any particular use from a regulation whose scope was not limited by the Zoning Commission. *Spring Valley Wesley Height Citizens Association v. D.C. Board of Zoning Adjustment*, 644 A.2d 434, 436 (D.C. 1994). The Board may interpret the meaning of the Zoning Regulations when their meaning is ambiguous or open-ended, but § 2516.2 is not ambiguous or open-ended so as to require interpretation. *Draude v. D.C. Board of Zoning Adjustment*, 527 A.2d 1242, 1247 (D.C. 1987). Rather, the interpretation favored by the Applicant would greatly change the plain meaning of the regulation.

² The Board makes no findings with respect to whether the proposed accessory buildings comply with all applicable requirements of the Zoning Regulations. The self-certified application requested only two special exceptions, and thus the Board's inquiry was limited to the proposed expansion of the private school use and to the proposed roof structures. See, e.g. the Board's order in Application No. 16974 (July 29, 2004).

Phasing. Generally, no order of the Board authorizing the erection or alteration of a structure is valid for a period longer than two years unless, within that period, the plans for the erection or alteration are filed for the purposes of securing a building permit. 11 DCMR § 3130.1. The erection or alteration approved in the permit must be started within six months after the date of the issuance of the permit, and must proceed to completion in accordance with its terms. 11 DCMR § 3130.3. If the work is not started within the six-month period, the permit will expire and will not be renewed. *Id.* However, those provisions may be waived by the Board, for good cause shown, when, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. 11 DCMR § 3100.5.

The Board finds good cause for a waiver of the two-year requirement with respect to this application. The Applicant undertook a long-term study of its facilities needs and proposed a large undertaking comprising numerous components in a single integrated Project. In approving the requested phasing plan, the Board credits the Applicant's statement of intent to work on the Project without interruption until its completion, but notes that latitude may be needed in case construction must be halted temporarily due to fundraising, financing, or other extraordinary circumstances. The Board does not agree with the ANCs that the proposed Phase II is too conceptual or that its approval should be deferred. The Applicant has enumerated all changes to the existing private school use that will be undertaken as part of the Project, and the Board has found that the proposed expansion of the existing private school use, as conditioned in this Order, will be consistent with the requirements of § 206 and § 3104 of the Zoning Regulations.

ANCs' issues and concerns. The Board accorded the ANCs the "great weight" to which they are entitled. In doing so, the Board fully credited the unique vantage point that ANC 3C and ANC 3F hold with respect to the impact of the proposed expansion of the existing private school use on the ANCs' constituents. The Applicant proposed several conditions, which the Board adopts in this Order, addressing concerns raised by the ANCs, particularly with respect to school-related traffic and parking. With respect to enrollment, the Board was not persuaded by the ANCs that approval of the Applicant's request for a maximum of 850 students would create adverse impacts on the use of neighboring property, given that the increase will not become effective until after completion of the parking garage and the reconfigured traffic circulation on the subject property, which will mitigate any adverse traffic and parking impacts associated with the larger enrollment. The Board declined to adopt other recommendations suggested by the ANCs as unnecessary or outside the scope of the Board's jurisdiction.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The Project shall be constructed in accordance with the plans prepared by Kieran Timberlake Associates LLP Architects and marked in the record as Exhibits No. 29 and 32.

2. The Applicant shall fully implement and comply with the Transportation Management Plan (Exhibit H to the Applicant's pre-hearing submission of May 14, 2004), marked in the record as Exhibit No. 29.
3. The maximum enrollment shall be 800 students. The Applicant may increase enrollment to a maximum of 850 students, in grades 5 through 12, no sooner than one year after issuance of a certificate of occupancy for the new parking garage, provided that the Applicant first submits evidence of its compliance with this Order to the Zoning Administrator. The Applicant shall also seek comments from DDOT regarding the operation of the parking garage for submission to the Zoning Administrator.
4. The maximum number of faculty and staff shall be 190.
5. Once the new parking garage is operational, the Applicant shall ensure that only vehicles containing a 5th or 6th grader will drop off or pick up students on 37th Street.
6. At the beginning of each school year, but in no event later than October 5, the Applicant shall provide the Board, the Zoning Administrator, and DDOT documentary evidence to demonstrate its enrollment figures and compliance with the terms and conditions of this Order, including the transportation management plan.
7. The Applicant shall provide an annual report to ANC 3C and ANC 3F, due no later than December 31, indicating enrollment and staff levels, and certifying their compliance with this Order.
8. The Applicant may construct the Project in two phases. The first phase (Phase I), including the new below-grade parking garage and the middle school addition and renovation, shall commence within two years of the issuance of this Order. The second phase (Phase II), encompassing the remainder of the Project, shall be started within seven years of the issuance of this Order.

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II, and Kevin L. Hildebrand voting to approve with conditions; Ruthanne G. Miller not voting, having recused herself)

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: MAR 04 2005

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 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. 17218 of Tonya Harris, TON, Inc., pursuant to 11 DCMR § 3103.2, a variance from the number of stories and building height requirements under § 400, and pursuant to 11 DCMR § 3104.1, a special exception under § 223, to allow a rear addition to an existing flat (two family dwelling), not meeting the lot occupancy requirements (§ 403), in the R-4 District at premises 906 T Street, N.W. (Square 362, Lot 233).

HEARING DATES: October 12, 2004, November 16, 2004
DECISION DATE: December 7, 2004

DECISION AND ORDER

This application was filed on July 15, 2004 by the owner of the property that is the subject of this application, Tonya Harris ("Applicant"). The Applicant was directed by the Zoning Administrator ("ZA") of the Department of Consumer and Regulatory Affairs ("DCRA") to file for relief with the Board of Zoning Adjustment ("Board" or "BZA") after the ZA reviewed her plans for conversion of a single family row dwelling into a flat. The application requests special exception relief pursuant to 11 DCMR § 223 to permit a lot occupancy greater than that permitted in the R-4 district. The application also requests variance relief from 11 DCMR § 400 to permit a height and number of stories greater than that permitted in the R-4 district.

The Board held a public hearing on the application on October 12, 2004, at which certain preliminary matters were dispensed with. The hearing was continued to, and completed on, November 16, 2004. At a public meeting on December 7, 2004, the Board voted 4-1-0 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated July 16, 2004, the Office of Zoning ("OZ") gave notice of the application to the Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the subject property is located, Single Member District 1B-02, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register* and, on July 30, 2004, mailed notices to the Applicant, ANC 1B, and all owners of property within 200 feet of the subject property providing notice of the hearing.

Requests for Party Status. ANC 1B was automatically a party to this proceeding. Mr. Chuck Baxter, a neighbor, and the Westminster Neighborhood Association, represented by Mr. Lynn Johnson, both applied for party status. The Board granted party status to the Westminster Neighborhood Association, a 501 (C) 3 non-profit organization whose mission is to preserve and improve the aesthetics and living conditions in the geographical area in which the property is located.. The Board denied party status to Mr. Baxter upon finding that his property would not

be impacted in a unique or significantly different manner from his neighbors and that his interests could be adequately represented by the Westminister Neighborhood Association.

Applicant's Case. The Applicant appeared with her attorney and testified in her own behalf. The Applicant explained that she received a building permit from DCRA on September 19, 2001, based on a surveyor's plat and drawings clearly showing the full extent of the construction and renovation proposed. Due to changes in the plans, a second building permit was issued by DCRA on April 8, 2002, also based on a full set of amended plans. On July 3, 2002, DCRA issued a stop work order, stating that the Applicant was doing work not shown on her plans. The issuer of the stop work order, however, was unaware of the changes to the plans and the second permit sanctioning them. When he was so informed, the stop work order was lifted. Sometime after the stop work order was lifted, the Applicant testified that she received phone calls from the ZA, who had received complaints from her neighbors about the extent of her construction. After re-reviewing the plans, the ZA referred the Applicant to the Board for the relief requested here.

After explaining the history of her situation, the Applicant and her attorney explained how the application met the tests for special exception and variance relief.

Government Reports. By memorandum dated September 28, 2004, OP recommended approval of the special exception relief, but recommended against approval of the variance relief. OP opined that variance relief should not be granted because the extraordinary or exceptional situation or condition claimed by the Applicant to satisfy the first prong of the variance test did not arise out of a physical condition of the property itself. OP further stated that granting the extra height and story would substantially impair the intent and integrity of the Zoning Regulations. OP, however, also stated that the extra height and story would not significantly affect the use and enjoyment of neighboring properties and its determination about the impairment of the Zoning Regulations appears to stem from its concern that granting this variance "could open the door for similar relief requests in the future."

ANC Report. By letter dated November 6, 2004, ANC 1B indicated that, at a regularly-scheduled and properly noticed meeting on November 4, 2004, at which a quorum was present, the ANC voted 7-1-1 to support both the special exception and variance relief requested in the application.

FINDINGS OF FACT

The subject property and the surrounding area

1. The property that is the subject of this application ("subject property") is located in an R-4 zone district at 906 T Street, N.W., in Square 362, Lot 233.
2. Properties to the east, west, and south of the subject property are zoned R-4 and properties in the neighborhood to the north are zoned C-M-1. The immediate area consists mainly of moderate density residential uses.

3. The lot is 1803.25 square feet in size and is improved with a 4-story plus basement single-family dwelling, which, though it is built in row-dwelling style, is detached on both sides.
4. The Applicant has renovated the dwelling, constructed an addition, and converted it to a flat, or two-family dwelling, which is permitted as a matter-of-right in the R-4 zone district. *See*, 11 DCMR § 330.5(b).
5. The dwelling, with the inclusion of a rear brick enclosure covering a wrought-iron fire escape leading to the third floor, occupies approximately 64.6% of the lot.
6. R-4 zoning permits only a 60% lot occupancy, but § 223 permits a 70% lot occupancy as a special exception. *See*, 11 DCMR § 403.2.
7. The dwelling is 41.75 feet high and has four stories.
8. R-4 zoning permits only a 40-foot height and three stories. *See*, 11 DCMR § 400.1.

Zoning history

9. Applicant submitted her first building permit plans to DCRA on July 25, 2001 and the first building permit for the project was issued on September 19, 2001.
10. The first permit authorized general demolition, construction and renovation. This permit does not specify a height, but does specify three floors and states that the dwelling was "to be occupied as detached row house with basement unit." Exhibit No. 35.
11. After modifying her renovation plans, the Applicant applied for a second permit, which was issued on April 8, 2002. This permit does not specify a height, but does specify that the dwelling is to be used as a "2 family flat" with "three [stories] plus basement and loft." Exhibit No. 35.
12. The plans submitted to DCRA for the second permit showed the fourth story and increase in height over 40 feet, as well as the rear fire escape enclosure.
13. Both sets of building permit documents and plans, those for the first permit issued, and those for the second, were approved by DCRA.
14. The Historic Preservation Office also approved both sets of plans – the first set in July, 2001, and the second set in February, 2002.
15. In July 2002, after construction was well underway, a DCRA inspector issued a Stop-Work Order for the subject property. The Stop-Work Order stated that there had been a "[m]isrepresentation of facts on which permit application and plan approval was

- based. Construction of an additional story without zoning approval....” Exhibit No. 40.
16. The Stop-Work Order, however, was based on the original plans and the original permit. Apparently, the inspector who issued it was unaware of the second permit. When the Applicant showed him the second permit, he verified it and immediately lifted the Stop-Work Order.
 17. Once the Stop-Work Order was lifted, construction continued, with final close-ins obtained in September, 2002.
 18. In October, 2002, when the renovation was under roof and nearly complete, the Applicant received telephone calls from DCRA and the OZ Compliance Review Specialist citing complaints from the neighbors about the construction on the subject property. The ZA informed the Applicant that, after re-reviewing the plans, the building was determined to be out of compliance with the zoning regulations and that she would have to appear before the Board for relief.
 19. Sometime after she was informed that she would need to appear before the BZA, the Applicant began to run out of money, causing delays in her activities with regard to the subject property. By June, 2003, she had obtained all the closing permits on the subject property, apparently hoping to re-finance it.
 20. Also in June, 2003, the Chief of the Zoning Review Branch in DCRA sent the Applicant a letter setting forth the special exception and variance relief she needed to request from the Board. Exhibit No. 6.
 21. In late 2003 or early 2004, the Applicant obtained more funds and finally completed the construction on March 15, 2004.
 22. Finally, in April, 2004, the Applicant retained counsel and this application was filed on July 15, 2004.

The requested relief

23. The building on the subject property exceeds the maximum height allowed in the R-4 zone district by one story, but only by 1.75 feet of actual height.
24. The fourth story is set back from both the front and back of the dwelling, and therefore does not run the length of the house from front to back. It is minimally intrusive on the view from the street, and is partially blocked by the conically-shaped roof of the third story which rises immediately in front of it.

25. The Applicant cannot remove the top story of the building to create three stories with a mezzanine or loft space because this loft space would be looking into two bathrooms on the floor below.
26. The Applicant cannot remove the top 1.75 feet of the building because interior structural members and the HVAC and sprinklers systems are all located within the top two feet of the building.
27. The Applicant would also encounter a serious financial hardship in removing either the fourth story or the top 1.75 feet of the building.
28. The building on the subject property exceeds the maximum lot occupancy in the R-4 zone district by 83 square feet or 4.6%.
29. The overage in lot occupancy is caused by the rear addition of a brick structure enclosing a wrought-iron fire escape leading to the third floor. The enclosing structure extends approximately eight feet, seven inches from the rear of the original building.
30. The structure enclosing the fire escape does not extend to the roof of the building, is not visible from the street, and has no windows facing neighboring properties.
31. This fire escape was required by the D.C. Fire Marshall in order to provide a second means of egress from the dwelling unit that occupies the upper stories of the building.
32. There is a 15-foot alley immediately to the west of the subject property and beyond the alley is a comparable building with 3 stories and a basement.
33. Although the building on the subject property is built to the property line to the east, because there is no attached row house, there is an open gap of approximately 10 feet between the building and the next row house to the east.
34. As the building on the subject property extends toward the rear, its east wall borders the rear property line, and therefore, the rear yards, of the dwellings on 9th Street, which are set perpendicularly to the subject building.
35. The subject property has a rear yard of approximately 31.41 feet and beyond that is a rear alley of 15 feet. Including these lengths, and the length of the rear yard of the nearest adjacent building to the south, the building on the subject property is approximately 65 feet from this nearest adjacent building to the south.
36. No burdensome traffic, noise, light or other offensive activity will result from the extra 1.75 feet of height or the extra 4.6% of lot occupancy requested by the Applicant.

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CONCLUSIONS OF LAW

The Special Exception

The Board is authorized to grant special exceptions where, in its judgment, the relief will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1, D.C. Official Code §6-641.07(g)(2) (2001). Each special exception permitted, however, must also meet all the conditions enumerated in the particular section pertaining to it. In this case, the Applicant had to meet the requirements of both § 3104 and § 223 of the Zoning Regulations.

The Applicant is requesting a special exception from the lot occupancy requirements in the R-4 zone district to permit the retention of the brick structure enclosing a wrought-iron fire escape stair at the rear of the property. The fire escape itself was mandated by the D.C. Fire Marshall and is therefore necessary. The brick structure is not large and does not extend to the full height of the building. It is not visible from the street and leaves open almost 32 feet of rear yard behind the building. The structure has no windows facing neighboring properties and has no effect on the use and enjoyment of neighboring properties. The structure abuts the alley to the west and the rear yards of properties fronting on 9th Street to the east. It is not situated particularly closely to any other building and will not unduly affect the light and air available to any nearby building.

The Board concludes that granting the special exception is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The rear fire escape enclosure adds a small addition to the footprint of the flat, an otherwise matter-of-right use. It does not impair the purpose and intent of the Zoning Regulations and was erroneously permitted by DCRA. In fact, the brick enclosure may be more attractive and in keeping with the nature of the building and the residential neighborhood than the open wrought-iron stairway would be.

The Variance

The Applicant also requests an area variance to permit a greater number of stories and a greater height than is permitted in the R-4 zone district. The Board is authorized to grant a variance 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 topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "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.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the greater showing of "undue hardship," which applies in use variance cases. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the

Applicant, and that the granting of the variance would not impair the public good or the intent and integrity of the zone plan and regulations.

In determining uniqueness the Board is directed to look at the property, including the physical land and the structures thereon, but it can also consider "subsequent events extraneous to the land." *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978); *Capitol Hill Restoration Society v. Board of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987). The Court of Appeals has opined that the Board must be able to consider such events in order "to weigh more fully the equities in an individual case." *National Black Development Institute v. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984). See also, *Downtown Cluster of Congregations v. Board of Zoning Adjustment*, 675 A.2d 484 (D.C. 1996) (market conditions); *French v. Board of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995) (previous chancery use); *Tyler v. Board of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992) (economic factors); *Gilmartin v. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990) (easement); *United Unions v. Board of Zoning Adjustment*, 554 A.2d 313, 317-318 (D.C. 1989) (historic preservation requirements); *National Black Child Development Institute v. Board of Zoning Adjustment*, 483 A.2d 687 (D.C. 1984) (changes in zoning regulations); *Capitol Hill Restoration Society v. Zoning Commission*, 380 A.2d 174 (D.C. 1977) (private restrictive covenant); *Clerics of St. Viator v. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) (societal changes).

The category of "events extraneous to the land" has been broadly interpreted by the Court of Appeals. Under the category of "events extraneous to the land" fall events which have a more direct connection to the property in question and arise out of the "zoning history" of the property. The Court of Appeals has held that this zoning history "can be taken into account in the uniqueness facet of the variance test" because "those past actions [of government officials] are the critical factors" which have helped to cause the "present predicament." *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 and 1098 (D.C. 1979). See also, *Beins v. Board of Zoning Adjustment*, 572 A.2d 122, 129 (D.C. 1990).

In the instant case, the Applicant claims that her "present predicament" was caused largely by DCRA, and to a lesser extent by the Historic Preservation Office, both of which approved her plans. DCRA issued the second permit based on plans plainly showing the extra height, the fourth story, and the rear fire escape enclosure. When the DCRA inspector issued the Stop-Work Order for these specific problems, DCRA was, essentially, given a second chance to correct its error, which it failed to do, leaving the Applicant to complete the subject building in violation of the Zoning Regulations.

In *Monaco*, use and area variances were upheld based almost entirely on events extraneous to the land, including, most importantly, "past actions of zoning authorities" which, in that case, amounted to no more than "the zoning authorities' informal assurances." *Id.* at 1097 & 1101. In the instant case, there was much more than "informal assurances." There was the issuance of a building permit and the affirmative revocation of a Stop-Work Order based on that permit. The Applicant was entitled to, and did, rely on these actions of DCRA in completing her project. The Board concludes that the zoning history constitutes the uniqueness necessary to satisfy the first prong of the variance test.

BZA APPLICATION NO. 17218

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The Applicant has now built her building and would encounter serious practical difficulties in trying to remove the extra story and/or the extra height in order to bring the building into compliance with the Zoning Regulations. If the top story or the extra 1.75 feet of height were removed, not only would the Applicant be forced to expend funds in demolishing part of what was just built, but many of the internal systems in the building, such as the HVAC and the sprinkler systems, would have to be re-configured, costing more labor and more money. Neither removal of the extra story nor removal of the extra height is economically or structurally practical. The Board therefore concludes that strict application of the Zoning Regulations would result in exceptional practical difficulties to the Applicant.

The 1.75 feet of extra height does not change the matter-of-right use of this residential building. It does not cause any adverse impact on the surrounding neighborhood, in which there are several other buildings of equal or possibly greater height. Nor does it pose any detriment to the public good. The Board concludes that granting the height variance requested here does not substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

“Great Weight” to the ANC’s and OP’s recommendations

The Board is required to give “great weight” to the 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). ANC 1B recommended approval of both the special exception and the variance and the Board agrees with this recommendation.

OP recommended approval of the special exception, but denial of the variance. OP’s recommendation of denial, however, was based partly on the fact that the Applicant’s claimed uniqueness did not arise out of the property itself. The Board finds that this is too narrow an interpretation of the first prong of the variance test, as explained by the many Court of Appeals cases cited earlier. OP also based its recommendation of denial on its determination that granting the variance substantially impairs the intent of the zone plan and “could open the door for similar relief requests in the future.” The Board is not persuaded that the zone plan is impaired and reiterates that its decisions are made on a case-by-case basis. Therefore, granting a variance here does not lead to the granting of any other variances. Each variance request must meet the 3-pronged test and is decided on its own facts.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 from the lot occupancy requirements of § 403 applicable to the R-4 zone district and for a variance from the story and height requirements of § 400 applicable to the R-4 district. It is therefore **ORDERED** that the application is **GRANTED**.

VOTE: 4-1-0

(Geoffrey H. Griffis, Curtis L. Etherly, Jr.,
John A. Mann, II, and Ruthanne G. Miller,
to grant; Kevin L. Hildebrand, to deny.)

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

BZA APPLICATION NO. 17218
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Each concurring Board member has approved the issuance of this Order granting the application.

FINAL DATE OF ORDER: MAR 04 2005

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. 17280 of Newcomb Day Care Center, pursuant to 11 DCMR § 3104.1, for a special exception to expand an existing child development center from 29 to 70 children, and 14 staff, under section 205, in the R-5-A District at premises 541 Newcomb Street, S.E. (Square 5985, Lot 818).

HEARING DATE: February 8, 2005

DECISION DATE: March 1, 2005

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) 8C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8C, which is automatically a party to this application. ANC 8C submitted a letter in support of the. The Office of Planning (OP) submitted a report in conditional support of the application. The Department of Transportation submitted a report having no objection to 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 205. 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 and 205, that the requested relief can be granted 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** subject to the following **CONDITIONS**:

1. Approval shall be for **THREE (3) YEARS**.
2. The days and hours of operation shall be Monday through Friday, between 7:00 AM and 6:00 PM.
3. Enrollment shall be limited to a maximum of 70 children between the ages of 6 weeks and 5 years old, and 14 staff persons.
3. One on-site parking space shall be maintained at the rear of the property.
4. All outdoor activities shall take place under staff supervision.
5. Outdoor playtimes shall begin no earlier than 9:00 AM.
6. The trash storage and parking areas shall be properly maintained and kept free of trash and debris.

VOTE: 4-0-1 (Curtis L. Etherly, Jr., Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II to approve, the Zoning Commission member not hearing the case, 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: March 4, 2005

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

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

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PURSUANT TO 11 DCMR § 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. 17282 of DAG Real Estate Holding Company, LLC, pursuant to 11 § 3104.1 for a special exception to enlarge a gasoline service station/mini-mart store under sections 726.1 and 2302, and a special exception to establish a fast-food restaurant in an adjoining structure under subsection 733.1, in the C-2-A District at premises 3101-3103 Rhode Island Avenue, N.E., (Square 4308, Lot 45).

HEARING DATE: February 8, 2005
DECISION DATE: March 1, 2005

SUMMARY ORDER

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) 5A, 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 5A. ANC 5A, which is automatically a party to this application, provided testimony by its Chairperson, Joseph Bowser, and a written report in support of the application. ANC 5A additionally provided a copy of the Amended Voluntary Agreement entered into between ANC 5A and Eyob (Joe) Mamo, managing member of the applicant entity. The Amended Voluntary Agreement, dated February 3, 2005, supersedes the Voluntary Agreement of March 26, 1999, between Mr. Mamo and the 5A-11 Commissioner at that time. The Board recognizes the Amended Voluntary Agreement as a binding and enforceable commitment by the applicant to take specified actions to address ANC 5A concerns. The Board gives great weight to the ANC 5A testimony and written report.

The OP submitted a written report making no recommendation on the application, pending receipt of a revised and expanded site and landscaping plan from the applicant. After receiving and reviewing the revised and expanded plan, the OP recommended approval of the application through testimony at the hearing.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 726, 733, and 2302. Three witnesses appeared at the public hearing in opposition to the application. Raymond W. Poles, Arthur Jones, and Raymond Blake testified that they reside in the 3100 block of Newton Street N.E., adjacent to the applicant's site, and they are concerned that the applicant's establishment may have an adverse effect on their neighborhood. In accordance with the Board's instructions, the opponents timely filed a memorandum proposing conditions for inclusion in the Board order. The applicant timely filed a response and an alternative proposal of conditions. The Board has considered both proposals.

Based upon the record before the Board, and having given great weight to the OP and ANC 5A reports and testimony in this case, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 726, 733, and 2302, 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 this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The gasoline service station, mini-mart store, and fast-food restaurant and/or other retail businesses located in the adjoining structure shall be protected by an electronic surveillance system composed of from 12 to 16 television cameras mounted at strategic locations to assure full and continuous visual monitoring of the interior and exterior premises, including the portion of the public alley that lies to the rear of the property. Television monitors will be placed inside the establishment for monitoring by employees. Videotapes or digital or other electronic images recorded by the surveillance system will be maintained for 30 days, or for any longer period that may be requested or required by law enforcement authorities or other government officials.
2. The exterior premises shall be fully lighted at a sufficient foot candle level to assure proper operation of the electronic surveillance system and covered in such a way that rocks and other similar missiles cannot extinguish them. Six lights will be mounted on the exterior surfaces of the building, and additional lights will be mounted on seven poles, each approximately 13 feet in height, along the perimeter of the property.
3. The electronic surveillance system and lighting shall be in operation and maintained in good working order from the outset of operations and throughout the life of the establishment. Lighting will be reviewed at least weekly for repairs as needed.
4. Trees, shrubbery, and flowers shall be planted and maintained on the premises in accordance with the applicant's site and landscaping plan provided to the Board on February 8, 2005, and in consultation with the 5A-11 Commissioner and residential neighbors. Plantings at the rear of the property will be low-growing to avoid providing cover for disorderly or criminal activities. Plantings will be chosen and properly maintained to enhance the attractiveness of the premises, but without obscuring the view of the electronic surveillance cameras.
5. Employee training shall be provided to instruct on site personnel in proper and appropriate responses to criminal activities on the premises and in the vicinity including, but not limited to calling for police assistance upon observing any such activity.
6. The property shall be cleaned daily with trash hauled away on a regular basis. Trash that accumulates daily shall be deposited in trash bins that are located in unobtrusive enclosed locations on the premises and away from public view.
7. The refuse dumpster enclosure on the premises shall be reconstructed in accordance with the requirements of 11 DCMR § 733.4.

8. A brick wall shall be constructed in accordance with specifications set forth at 11 DCMR § 733.3 along the north-south portion of the rear lot line, perpendicular to Newton Street, that is not covered by the east-west rear wall of the building.
9. The rear wall of the adjoining structure shall be painted in a color compatible with the brick exterior of the rear wall of the gasoline service station building.

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 (Ruthanne G. Miller, Geoffrey H. Griffis, John A. Mann II and Curtis L. Etherly, Jr. to approve, the Zoning Commission member 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: MAR 08 2005

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. 17289 of Third Baptist Church, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception to establish a private school (15 students and 3 staff) under section 206, in the R-4 District at premises 1544 5th Street, N.W. (Square 478, Lot 811).

HEARING DATE: March 8, 2005
DECISION DATE: March 8, 2005 (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) 2C, 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 2C. The Board received a letter in support of the application from ANC 2C.

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 206, and a variance under 11 DCMR § 3103.2 from the strict application of the requirements of § 2101.1.

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 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 206, 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 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 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. Approval shall be for a period of **FIVE (5) YEARS**.
2. The total number of students, enrolled and on-site at anyone time, shall be 15.
3. The maximum number of employees shall be three (3).
4. The school shall be established for grades 4th through 8th.
5. The hours of operation shall be 7 a.m. to 6 p.m., Monday through Friday.

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

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: MAR 09 2005

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS

THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

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

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001).....	\$16.00
3	DCMR ELECTIONS & ETHICS (JUNE 1998)	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995).....	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002).....	\$26.00
6A	DCMR POLICE PERSONNEL (MAY 1988).....	\$8.00
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