

*******CORRECTION*********EXECUTIVE OFFICE OF THE MAYOR
Serve DC****PUBLIC NOTICE****NOTICE OF FUNDING AVAILABILITY****DISTRICT OF COLUMBIA
COMMISSION ON NATIONAL AND COMMUNITY SERVICE**

Engaging Youth in "Exploring the Past, Present and Future of their Neighborhoods"

K-12 Learn and Serve America Community-Based Grants

Summary: Serve DC announces the availability of K-12 Learn and Serve Community-Based funds for grants up to \$20,000. Awards will be made for eligible organizations to support high-quality service-learning projects. Learn and Serve America creates opportunities for youth to serve and help their communities through volunteerism. Proposed projects will allow youth an opportunity to explore the past, present and future of their neighborhoods while serving their communities. Applicants will be encouraged to develop service-learning programs that give youth an opportunity to canvass and map their own communities; research the histories of their neighborhoods; identify community assets and needs in order to develop service learning projects; and find the people, organizations and systems that make their communities stronger such as DC city leaders and various government offices.

Criteria for eligible applicants: Eligible applicants are local nonprofits, community and faith-based organizations and local units of government that may provide after-school programming in collaboration with local schools for Community-Based projects. All projects must operate a program within the District of Columbia. Projects that operate in designated Hot Spots will receive extra points toward their application's total score. For Hot Spot locations, please visit www.serve.dc.gov

An organization described in Section 501 (c) (4) of the Internal Revenue Code, 26 U.S.C. 501 (c) (4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.**

All eligible applicants must meet all of the applicable requirements contained in the application guidelines and instructions. The Request for Application (RFA) will be released on March 28, 2005 at 9:00 a.m. **The deadline for submission is May 4, 2005 at 5:00 pm.**

The schedule for technical assistance sessions is as follows: April 12, 2005 and April 20, 2005. All interested applicants are required to register and attend one of the technical assistance sessions. Please prepare by reading the RFA carefully. To RSVP for a training session, contact Christy Venable, National Service Program Officer, at 202-727-7925. Technical Assistance sessions will be posted on our website at www.serve.dc.gov.

The DC Commission on National and Community Service anticipates awarding grants up to \$20,000 for Community-Based grants. The actual number and dollar amount of the awards will depend on the number of approved applications received.

Applications can be obtained from 441 4th Street NW, Suite 1040S, Washington, DC 20001 or downloaded and printed from our website at www.serve.dc.gov. For additional information please contact Rebecca Stewart, Learn and Serve Program Officer, at 202-727-7925.

MaryAnn Miller

MaryAnn Miller, Interim Executive Director
Serve DC

*****CORRECTION*****

EXECUTIVE OFFICE OF THE MAYOR
Serve DC

PUBLIC NOTICE

NOTICE OF FUNDING AVAILABILITY

DISTRICT OF COLUMBIA
COMMISSION ON NATIONAL AND COMMUNITY SERVICE

“Safe Schools, Safe Students” in the District of Columbia

K-12 Learn and Serve America School-Based Grants

Summary: Serve DC announces the availability of K-12 Learn and Serve School-Based funds for the **Safe Schools, Safe Students Initiative for grants up to \$50,000**. Awards will be made to organizations addressing school security concerns through the active participation of students in District of Columbia middle schools/junior high or high schools. Learn and Serve America creates opportunities for youth to serve their communities through volunteerism while increasing their academic achievement in one or more academic subjects. The initiative will support a wide range of program activities that fall under the rubric of school-based crisis planning that includes 1) mitigation/prevention, 2) preparedness, 3) response, and 4) recovery. Applicants may be eligible for funding if they work in one or more of these phases and propose to address issues that include: school violence, bullying, intolerance, natural disasters, severe weather, fires, chemical or hazardous spills, medical emergencies, student/staff deaths, school shootings, bomb threats or other acts of terror. Applicants must propose to implement service-learning projects that connect school and student safety to one or more core curriculum standards.

Criteria for eligible applicants: Eligible applicants are public middle/junior and high schools including public charter schools in partnership with at least one additional organization. Public school partners may include private/independent schools, for-profit businesses, institutions of higher education and other non-profits including faith-based organizations. The partnerships are responsible for implementation, replication, and/or expansion of service-learning activities in their school and local community. All projects must operate a program within the District of Columbia. Projects that operate in designated Hot Spots will receive extra points. For Hot Spot locations, please visit www.serve.dc.gov

An organization described in Section 501 (c) (4) of the Internal Revenue Code, 26 U.S.C. 501 (c) (4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.**

All eligible applicants must meet all of the applicable requirements contained in the application guidelines and instructions. The Request for Application (RFA) will be released on March 28, 2005 at 9:00 a.m. **The deadline for submission is May 4, 2005 at 5:00 pm.**

The schedule for technical assistance sessions is as follows: April 12, 2005 and April 20, 2005. All interested applicants must register and attend the technical assistance session in order to apply for funds. Please prepare by reading the RFA carefully. To RSVP for a training session, contact Christy Venable, National Service Program Officer at (202)-727-7925. Technical Assistance session date and times will be posted on our website at www.serve.dc.gov.

Serve DC anticipates awarding grants of up to \$50,000 for Safe Schools, Safe Students grants. Applicants must provide a total of 30% match in cash or in-kind Federal or non-Federal sources. The actual number and dollar amount of the awards will depend on the number of approved applications received.

Applications can be obtained starting at 9:00 AM on April 4, 2005 from 441 4th Street NW, Suite 1040S, Washington, DC 20001 or downloaded and printed from our website at www.serve.dc.gov. For additional information please call Rebecca Stewart, Learn and Serve Program Officer, at (202)-727-7925.

MaryAnn Miller

MaryAnn Miller, Interim Executive Director
Serve DC

*****CORRECTION*****

SERVE DC

*****GRANT REVIEW OPPORTUNITY*****

**We are Seeking Grant Reviewers
for the 2005-2006 Learn and Serve School Based Program Funding Competition**

Serve DC is seeking individuals to review grant proposals for the 2005-2006 Learn and Serve Community-Based Program and Homeland Security funding competition. This is an excellent opportunity to network with colleagues in the national service world, learn more about the grant-making process, develop your own grant-writing skills, learn about exciting things happening in national service programs, and contribute your knowledge and experience to our efforts to select high-quality programs for funding.

What does a grant reviewer do? Serve DC is recruiting panels of experienced professionals from the service learning world and other disciplines to help evaluate the applications we receive for funding in the 2005-2006 program year. Reviewers read, score and evaluate proposals, discuss their findings with a small group of fellow reviewers and a facilitator, and, as a panel, come to consensus to rank the proposals according to quality.

What qualifications should reviewers have? We are looking for a diverse group of reviewers--male and female of all ages, races and ethnicities--that have experience in the management of high quality service learning or youth-serving programs. For example, they may be community service practitioners, educators, students, youth participants, national service alumni, people working in foundations, or people working on youth policy issues.

We hope to recruit some reviewers with prior experience working with Learn and Serve programs. However, we are generally seeking people with a variety of experience who can review national service learning grant applications and determine quality.

Reviewers must be comfortable reading a large volume of material in a short period of time and providing analysis in a small group.

Can AmeriCorps members serve as reviewers? Alumni of the AmeriCorps programs are strongly encouraged to apply to serve as reviewers. You must have completed service before being selected as a reviewer. We are looking for AmeriCorps members who have completed service by March 15, 2004.

Can people who work for a Corporation for National Service-funded program serve as a reviewer? People cannot serve as a reviewer for the Learn and Serve programs if they work for an organization that is being considered for funding in this competition. However, people who work for organizations affiliated with other Learn and Serve, AmeriCorps or national service programs may serve as reviewers. For instance, an individual who works for an organization that hosts a Learn and Serve Higher Education program may review Learn and Serve School Based program applications.

What is the time commitment? Reviewers must be available from Thursday, May 5 – Friday, May 6, 2005. The review will be conducted at the Serve DC Office located at 441 4th Street NW, Suite 1040S, Washington, DC 20001. Reviewers will participate in a two- hour training at the beginning of day one; the remainder of the day will be comprised of grant review and analysis. Day two will involve a facilitated discussion of the grants and selection of finalists.

What are the benefits to reviewers? This is a volunteer opportunity. The grant review experience is an excellent opportunity to meet and network with colleagues, find out about exciting programming and trends in national service-learning and youth-serving programs, to develop a deeper understanding of the grant-writing and grant-making processes, and to contribute your experience to the selection of high-quality programs.

How does one apply to become a reviewer? To apply, please send your resume to: Cliffie Bailey, Staff Assistant, Serve DC, 441 4th Street, Suite 1040S, Washington, DC 20001. Email to cliffie.bailey@dc.gov or call 202-727-7925. Please share this announcement with others who are qualified to serve as a reviewer.

Is there a deadline to apply? We will begin reviewing resumes and contacting potential reviewers as the resumes arrive, so the earlier one applies, the more likely they are to be contacted and selected. Please submit resumes as soon as possible, but no later than April 20, 2005, for consideration.

What are the next steps after submitting a resume? Serve DC will review resumes and begin contacting qualified applicants. We will check for conflicts of interest and confirm scheduling at that time.

Thank you for your interest in serving as a reviewer and for sharing this announcement with others who may be interested. This is a very important part of our review process and our efforts to recommend high quality programs for funding.

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

FOR DESIGN BUILD SERVICES

HVAC UPGRADES TO THE BLOW PIERCE CAMPUS

Interested parties shall respond to this RFP by submitting sealed qualification statements and by addressing the specific proposal requirements, as requested in this RFP in an envelope clearly marked "RFP-HVAC UPGRADES TO FRIENDSHIP EDISON PUBLIC CHARTER SCHOOL – BLOW PIERCE CAMPUS" to:

Mr. Brad Russell (4 copies, 1 original inclusive)
Office of Friendship Public Charter School
900 Pennsylvania Avenue SE
Washington DC 20003

&

Mr. Thomas Gannon (1 copy)
Vice President Real Estate, Design & Construction
Edison Schools Inc.
98 Renee's Way
Guilford, CT 06437
212-419-1713 (w)

By no later than: 4:00 PM on April 15th, 2005.

A pre-bid walk through will be conducted at 7:00am on April 6th at:

Blow Pierce Campus
725 19th Street NE,
Washington DC

Please note that due to the extended school hours of this school, the 7:00am time has been set to minimize disruption to the school's operations.

Introduction

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

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

Project Scope

PROVIDE COMPREHENSIVE DESIGN / BUILD (FULL ENGINEERING AND CONSTRUCTION) SERVICES FOR THE HVAC UPGRADE TO FRIENDSHIP PUBLIC CHARTER SCHOOL – BLOW PIERCE CAMPUS, 725 19TH STREET NE, WASHINGTON D.C.

It is the intent of this RFP to select a design /builder utilizing the criteria set forth under the proposal requirements section of this RFP and then to develop a replacement and refurbishment phasing plan (i.e. what, when, and how for Phase I and Phase II scopes of work) via a collaborative effort with the selected design builder.

This project shall be a two phased project, with phase I physical work commencing on or about July 1st, 2005 and phase I completing on or about but no later than August 7th, 2005. Phase II work, which shall be of scope size to bring the project to completion, shall be completed during the summer of 2006.

All bidders shall understand that FPCS reserves the right to include Liquidated Damages in the Contract. Selection and award is anticipated to be on or before April 29th, 2005.

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

Description of Physical Plant

The Blow Pierce Campus is an existing 6-8 public charter school. The Blow Pierce Campus opened in September 1999 after a major renovation effort. The building consists of masonry construction with steel framing, there are four wings built around a rectangular courtyard. There is also a separate detached gymnasium building constructed out of a pre-engineered building system. Total building square footage exceeds 90,000 sf; however, due to the nature of the renovations during and after 1999, not all of the 90,000 sf will require new systems. For example, the gymnasium and the first floor administration areas have had new systems installed and will be excluded from future HVAC renovations.

The building is equipped with a central two-pipe water circulating system that supplies chilled water during cooling operation and hot water during heating operation. The piping system is divided into a heating-only portion, which operates during the heating season, and a dual temperature portion, which operates for both heating and cooling. The system control is provided by a pneumatic control system.

The majority of the occupied spaces are conditioned by a combination of wall-mounted unit ventilators, cabinet unit heaters, and heating and ventilation units. These units operate on hot and chilled water.

The central heating and cooling equipment is located in a basement room on the east end of the north wing of the building. The heating source for the building is two water-tube boilers with dual fuel gas and oil burners. The chilled water source is two 75-ton reciprocating water-cooled chillers.

Planned Scope of Work

The scope of work shall include the refurbishment of the existing system, which involves the replacement of all existing HVAC (excluding equipment installed during and after 1999) and the selective replacement of portions of the HVAC piping system. Consideration shall also be given to a system modification that would include the addition of air conditioning to the connecting corridors.

Contract Form

FPCS intends to enter into a modified AIA 191 Agreement, utilizing both Parts I and II, with the selected design builder. The project shall be "open book" with a GMP and FPCS reserves the right to convert the A191 contract to a modified A121 form. The final construction budget will be developed in collaboration with the selected design builder.

Compliance with OLBD LSDBE and First Source goals shall be required for all successful bidders. Safety considerations must also be taken into account as students may occupy the current facility while the HVAC upgrade is under construction.

Qualification Statement Requirements

Proposals shall include, at a minimum, the following information organized as follows in their qualification statement:

1. A brief discussion of the firm, its organization, and services offered;
2. Information that demonstrates a history of providing design-build mechanical, electrical, and plumbing services of a similar nature and scope as those required by this solicitation.
3. Owner/Client's name, contact person, telephone number, project description, project value, and prime contractor's name and address for at least three (3) similar construction projects completed by the design builder during the past three (3) years.
4. Proposed team and qualifications and experience of team members;
5. Information regarding proposed contractors, and major trade subcontractors to be included on the project team and a description of prior co-work experience;
6. Experience and history of the design builder in the particular disciplines covered by this solicitation;
7. A participation plan for Local and Small Disadvantaged Business Enterprises (LSDBE) shall be required for the successful bidder. For more information on LSDBE certified firms see <http://olbd.dc.gov/>.

Proposal Requirements

1. Fee in the form of %
2. Hourly rates for proposed staff
3. Design Fees
4. Proof of bonding and insurance.
5. Scope of Proposed Design Build Services and Exclusions

Attachments (TO BE RETURNED WITH PROPOSALS)

1. ISES Blow Pierce Campus Facility Condition Analysis

Should you have any questions with regard to this solicitation, please contact

Herman Morgan
Friendship Public Charter School
202-359-0138

Thomas Gannon
Edison Schools Inc.
Vice President Real Estate, Design, & Construction
212-419-1713 (w)
203-395-1918 (cell)
tgannon@edisonschools.com

DEPARTMENT OF HEALTHNOTICE OF CERTIFICATION

The Director of the Department of Health, pursuant to the authority set forth in Reorganization Plan No 4 of 1996, hereby gives notice of certification of a new drug to the formulary of the District of Columbia Acquired Immunodeficiency Syndrome Drug Assistance Program ("ADAP"). The new drug that has been approved by the U.S. Food and Drug Administration ("FDA") and is now certified for addition to the ADAP formulary is Invirase (saquinavir mesylate) [500-mg]. Invirase [200-mg] is already certified for the ADAP formulary in a capsule form. Invirase [500-mg] is available in a tablet form and reduces the pill burden compared to the capsule formulation. The FDA approved Invirase on December 17, 2004.

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

For further information, please contact Christy Pleze-Best, Public Health Analyst, AIDS Drug Assistance Program, HIV/AIDS Administration on (202) 671-4900.

Department of Housing and Community Development Notice of Funding Availability

Jalal Greene, Acting Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for \$35 million in funding under the Community Development Block Grant (CDBG), the Home Investment Partnerships (HOME), and the Housing Production Trust Fund (HPTF) programs, administered by DHCD. HPTF monies for this NOFA are being made available from FY 2005 DHCD budget funds. CDBG and HOME funds for this NOFA are being made available from anticipated FY 2006 budget funds. This NOFA is being conducted pursuant to the FY2006 (October 1, 2005 to September 30, 2006) Consolidated Action Plan prepared for submission to the U.S. Department of Housing and Urban Development (HUD).

The District is interested in financing projects that focus on the following categories:

1) Elderly Housing; 2) Special Needs Housing; 3) Preservation of Housing affected by Expiring Federal Subsidies; 4) New/Substantial Rehabilitation of Housing (5 or more units); 5) Homeownership; and 6) Community Facilities to serve low to Moderate Income Persons..

The competitive Request for Proposals (RFP) will be released on, April 14, 2005, and the deadline for submission is Friday, June 03, 2005 at 4:00 p.m. E.S.T. The RFP package, including all application materials and the reference guidebook, can be obtained from DHCD, Development Finance Division, 801 North Capitol Street, N.E., Washington, D.C. 20002, second floor reception desk. This material will also be available from the DHCD website, www.dhcd.dc.gov on or about Friday, April 29, 2005.

The reference guidebook contains technical information on the CDBG, HOME, and HPTF, programs, as well as other information that may be useful in completing the application. **Proposals for the First Right Purchase Program and HOME-Community Housing Development Organization (CHDO) set-aside programs will also be accepted under this RFP; however, DHCD will continue to accept additional funding requests for these two programs until all of these program funds have been committed.** For additional information, contact the DHCD's Development Finance Division at (202) 442-7280.

Completed applications must be delivered on or before 4:00 p.m. E.S.T., Friday, June 03, 2005 to the DHCD, Development Finance Division, 801 North Capitol Street, N.E., Second Floor Reception Desk, Washington, D.C., 20002.

**NO APPLICATIONS WILL BE ACCEPTED AFTER THE FILING DEADLINE FOR
SUBMISSION**

A Pre-Proposal Conference will be held on, Thursday, April 21, 2005, from 9:30 a.m. to 12:30 p.m., at the D.C. Housing Finance Agency, 815 Florida Avenue, N. W., Washington, D. C. 20001

Anthony A. Williams, Mayor
Government of the District of Columbia
Stanley Jackson, Acting Deputy Mayor for Planning and Economic Development
Jalal Greene, Acting Director
Department of Housing and Community Development

**DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
INCOME MAINTENANCE ADMINISTRATION**

NOTICE OF FUNDS AVAILABILITY

**Community-based Partnership Initiative
RFA# 0349-05**

The District of Columbia Department of Human (DHS) intends to award grants to organizations that will provide direct targeted assistance to needy, low income and TANF eligible families and at-risk youth who reside in communities that are located in Wards 7 and 8, and/or have been designated as "hot-spot" neighborhoods within the District of Columbia. By partnering with community-based organizations that have strong ties to neighborhoods, it is the Agency's goal to provide immediate interventions to these families and at-risk youth and thus reduce and prevent the likelihood of these populations reaching a crisis status. To ensure that these families receive the optimum level of support for their specific areas of concern, DHS seeks to receive applications from all community-based organizations, including faith-based organizations, that have worked in a social service capacity with the residents of the neighborhoods in which they are located in order to implement model programs aimed at achieving a positive change in the lifestyles of the two target groups.

It is anticipated that DHS will make available some \$1,000,000 for this purpose. DHS further intends to award up to 10 applicants with maximum budgets that do not exceed \$100,000.

The Request for Proposal (RFP) will be posted on the District Register on Friday, April 1, 2005. Starting Monday, March 29, 2005, applications can be obtained from: <http://www.opgd.dc.gov/> go to the link, District Grants Clearinghouse. Also on the 29th, applications may be obtained from Ms. Priscilla Burnett, Program Assistant for the Office of Grants Management at 64 New York Avenue, NE, Washington, DC, 6th floor. Please call: (202) 671-4407.

A Pre-Application Conference will be held on Thursday, April 14, 2005 from 10:00am. to 12:00pm at the Department of Human Services Headquarters located at 64 New York Avenue, N.E., 6th Floor, Directors Conference room

The deadline for application submission is May 6, 2005 by 3:30 p.m.

REQUEST FOR PROPOSALS (RFP): #0349-05

**District of Columbia
Department of Human Services
Office of the Director**

Community-based Partnership Initiative

DHS invites the submission of Applications for Funding through the Temporary Assistance for Needy Families (TANF) Program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Announcement Date: March 28, 2005

RFA Release Date: April 1, 2005

Pre-Application Conference Date: April 14, 2005

Application Submission Deadline: May 6, 2005

LATE APPLICATIONS WILL NOT BE FORWARDED TO THE REVIEW PANEL

**NOTICE
PRE-APPLICATION CONFERENCE
Community-Based
Partnership Initiative**

WHEN: *Thursday April 14, 2005*

WHERE: *DC Department of Human Services
64 New York Avenue, N.E.
Director's Conference Room
6th Floor
Washington, DC 20002*

TIME: *10:00 a.m. – 12:00 noon*

CONTACT PERSON: *Priscilla Burnett
Program Assistant
Office of Grants Management
(202) 671-4407*

Please RSVP to OGM no later than April 12, 2005 as seating is limited. You may RSVP via telephone to Ms. Priscilla Burnett at (202) 671-4407, or via email to Ms. Burnett at the following email address: www.priscilla.burnett@dc.gov.

**District of Columbia
Department of Human Services
Office of the Director
Request for Proposals (RFP): #0349-05**

**Community-Based
Partnership Initiative**

SECTION I GENERAL INFORMATION

Introduction

The Department of Human Services (DHS) is the lead Agency in the District of Columbia that is responsible for the implementation of the Temporary Assistance for Needy Families (TANF) program. The TANF program, which replaced the former Aid to Families with Dependent Children (AFDC) program, provides cash assistance to eligible low-income families with children. In addition, the TANF program provides tremendous flexibility for funding a wide variety of activities, supportive services and benefits to assist and uplift needy families.

Through this RFP, DHS seeks to direct targeted assistance to needy, low income and TANF eligible families and at-risk youth who reside in communities that are located in Wards 7 and 8, and/or have been designated as "hot-spot" neighborhoods within the District of Columbia. By partnering with community-based organizations that have strong ties to neighborhoods, it is the Agency's goal to provide immediate interventions to these families and at-risk youth and thus reduce and prevent the likelihood of these populations reaching a crisis status. To ensure that these families receive the optimum level of support for their specific areas of concern, DHS seeks to receive applications from all community-based organizations, including faith-based organizations, to implement model programs aimed at achieving a positive change in the lifestyles of the two target groups.

Target Population

The target populations for this initiative are as follows:

- (1) Low income or TANF Eligible Families and/or at-risk youth ages 10-21 who reside within 10 city blocks (in any direction) from the community-based organizations. These families and at-risk youth are those who are experiencing high risk factors, such as high family instability and low functioning due to acute emotional/social distress.
- (2) Low income or TANF Eligible Families and/or at-risk youth who are referred to the organization from DHS.

Conditions facing these target populations could stem from housing issues, drug and/or alcohol abuse, unemployment, youth violence, mental health issues or other unstable conditions that cause families within our communities to function under extremely volatile circumstances. Ideally, and for continuity purposes, DHS would like to receive applications from community-based, including faith-based, organizations that are located in designated "hot-spot" neighborhoods or who collaborates with a community based organization located in a "hot-spot" neighborhood. A list of designated hot-spot neighborhoods is provided as Attachment F.

Pre-Application Conference

The Pre-Application Conference will be held on April 14, 2005 from 10:00 a.m. to 12:00 noon, at the DHS Headquarters location: 64 New York Avenue, N.E., 6th Floor Conference Room, Washington, DC, 20002. The contact person for this activity is Ms. Priscilla Burnett, Program Assistant for the Office of Grants Management (OGM). Please RSVP to OGM no later than April 12, 2005 as seating is limited. You may RSVP via telephone to Ms. Burnett at (202) 671-4407, or via the following email address: priscilla.burnett@dc.gov.

Explanations to Prospective Applicants

Applicants are encouraged to use email or the standard postal service to submit their questions on or before April 14, 2005. Questions and their answers submitted prior to the pre-application conference will be distributed at the conference. You may email your questions to Ms. Joi Yeldell, Grants Administrator at the following email address: joi.yeldell@dc.gov. Questions mailed through the postal service should be addressed as follows: DC Department of Human Services, Office of Grants Management, Attention: Ms. Joi Yeldell, Grants Administrator, 64 New York Avenue, N.E., Room 6157, Washington, D.C., 20002. Questions submitted after April 14, 2005 will not receive responses.

Eligible Organizations/Entities

Applications are requested from all community-based organizations, including faith-based organizations that have worked in a social service capacity with the residents of the neighborhoods in which they are located. **Entities under this category are encouraged to collaborate with other community-based organizations. Be advised that relationships such as this must provide Attachment G – Collaboration Commitment form as a part of their application.**

Source of Grant Funding

Funds are being made available through the Temporary Assistance for Needy Families (TANF) block grant administered by the Department of Human Services.

Award Period

The grant award will be for an initial period not to exceed one year from the date of the award. Based upon satisfactory performance and availability of funds, renewable options may be offered.

Grant Awards and Amounts

It is anticipated that DHS will make available approximately \$1,000,000 for this program. DHS further intends to award up to 10 applicants with maximum budgets not exceeding \$100,000.

Contact Persons:

For further information, please contact:

Ms. Joi Yeldell
Grants Administrator
DC Department of Human Services
64 New York Avenue, N.E.
6th Floor
Washington, DC 20002
Phone (202) 671-4407
Fax (202) 671-4381
Email: joi.yeldell@dc.gov

Internet

Applicants who obtained this RFP through the DC Office of Partnerships and Grants Development web-based Grants Clearinghouse at the following link: www.opgd.dc.gov , are asked to provide Ms. Burnett at the Office of Grants Management, with the following information via the following email, priscilla.burnett@dc.gov;

- Name of organization;
- Key contact;
- Mailing address; and
- Telephone and fax numbers.

This information shall be provided so that the applicant will receive updates and/or addenda to the application.

The District of Columbia Public Charter School Board, et al***Request for Proposals (RFP)***

The District of Columbia Public Charter School Board, the District of Columbia Board of Education Charter Schools Office, and the District of Columbia Office of the Chief Financial Officer seek proposals from independent certified public accountants or accounting firms to be selected for an Approved Auditor List. Individual District of Columbia public charter schools (public charter schools) will be required to select an auditor from the Approved Auditor List to fulfill their requirement of an annual financial audit.

Background and Statement of Work**I. Description of Relevant Parties*****Explanation of charter authorizers and charter schools***

The District of Columbia Public Charter School Board (PCSB) and the District of Columbia Board of Education (BOE) were authorized pursuant to the District of Columbia School Reform Act of 1995, Public Law 104-134, as amended to grant charters for the establishment of public charter schools in the District of Columbia. The PCSB and BOE are responsible for receiving and reviewing applications to develop public charter schools; awarding or denying requests for charters; monitoring the operations of public charter schools and the progress of their students; monitoring schools' compliance with applicable laws; and revoking charters of schools that fall short of their goals.

Public charter schools operate independently of the District of Columbia Public School System, except as otherwise provided by law. In exchange for significant operating autonomy, public charter schools are accountable for the performance of their students as measured by specific educational goals they set. Public charter schools are accountable for their use of public and private funding through an annual financial audit conducted in accordance with government auditing standards pursuant to the District of Columbia School Reform Act, Pub. L. No. 104-134, 110 Stat. 1321-121, §2204(c)(11)(B)(ix) (1996); D.C. Official Code §38-1802.04(11)(B)(ix)(2001), as amended.

Public charter schools are not-for-profit organizations established under section 501(c)3 of the Internal Revenue Code; they are not entities of the District of Columbia Government. Currently, there are 42 operating charter schools authorized by the PCSB and BOE, with an estimated 10-15 new schools expected to open in fall 2005.

Like D.C. Public Schools, D.C. Public Charter Schools receive public funds based on the number of students they enroll, according to the Uniform Per Student Funding Formula developed by the Mayor and the City Council. A standard per pupil allocation is supplemented with extra funds for students with special needs or limited English proficiency. Schools also receive a facilities allowance, since charter schools are not provided buildings or maintenance by the D.C. Government. They also may be eligible to receive certain federal categorical funds, such as those made available through Title I of the No Child Left Behind Act or Part B of the Individuals with Disabilities Education Act.

Explanation of the Role of the D.C. Office of the Chief Financial Officer

Charter schools have the right to exercise exclusive control over their expenditures, provided they act in compliance with the D.C. School Reform Act and other applicable laws. The D.C. Office of the Chief Financial Officer (OCFO) is responsible for oversight of local and Federal funds appropriated through the District of Columbia, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), Pub. L. No. 93-198, 87 Stat. 777, §424(c)(7) of (1973); D.C. Official Code §1-204.24c(7)(2001), as amended. Because the annual financial audit is the primary tool for charter schools' accountability for these funds, the OCFO has an interest in ensuring that the charter schools comply with appropriate audit standards.

II. Scope of Entity to be Audited: Charter School

- a. The funds to be audited are all funds for period of one fiscal year.
- b. Schools that are affiliated with other non-profit organizations must engage an audit that produces unconsolidated financial statements for the school.
- c. Audits should present comparative data from the previous fiscal year.
- d. Financial Audit:
 - i. The independent auditor will examine all funds in accordance with Generally Accepted Accounting Principles (GAAP); the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States; and with the auditing standards established pursuant to the District of Columbia School Reform Act, Pub. L. No. 104-134, 110 Stat. 1321-121, §2204(c)(11)(B)(ix) (1996); D.C. Official Code §38-1802.04(11)(B)(ix)(2001), as amended.
 - ii. The examination shall include all relevant financial statements and notes to the financial statements for the Public Charter School, with the auditor's opinion included therein. If the opinion is not unqualified, the auditor shall furnish its reasons for disclaiming an opinion, or issuing a qualified opinion or adverse opinion.
- e. Tests of Internal Control and Compliance: As required by GAGAS, the auditor shall conduct examinations and prepare reports in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.
- f. Management Letter: When applicable, the auditor shall issue to the school's Board of Trustees a report which includes recommendations related to the financial statements, internal control, accounting systems, and compliance issues.
- g. Additional or Unique Requirements:
 - i. The auditor must represent that he/she is independent and licensed to perform audit work in the District of Columbia.
 - ii. The individual public charter school shall select the Auditors pursuant to this contract.
 - iii. Auditors and reporting entities may contact the OCFO, Office of Integrity and Oversight, Audit Division if any questions arise regarding the financial reporting per GAGAS.
 - iv. The contracting auditors for financial and compliance audits shall provide the Committee access to audit working papers, upon written request.

III. Objectives of the Audit

The general objectives of each audit are to determine whether:

1. The public charter schools' financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles;
2. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities;
3. District and Federal financial reports and claims for advances or reimbursements contain accurate and reliable financial data and are presented in accordance with the terms of applicable agreements; and
4. District and Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of law or regulations that could have a material effect on the financial Statements or on the major programs tested.

IV. Deliverables of the Annual Audit

- a. The audit should include financial statements with applicable reports.
- b. The audit report should conform to AICPA Audit Guides, Financial Accounting Standards Board reporting requirements, and the requirements of the Single Audit Act Amendments of 1996 and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, when applicable.

- c. The audit report should include a management letter, if appropriate, which includes recommendations related to the financial statements, internal controls, accounting systems, and compliance issues.

V. How the Approved Auditor List Functions

1. Auditors are being selected to be on an Approved Auditor List, from which individuals schools will select a firm. The specific terms of an audit engagement will be decided between a charter school's Board of Trustees and an approved audit firm, provided that those terms meet the minimum standards for audits of D.C. charter schools. The Board of Trustees of an individual Public Charter School shall negotiate the costs of the audit it engages a firm to conduct. These might include a retainer or a fixed fee for specific projects, depending on the nature of services required. Hourly rates should conform to those submitted in response to this RFP.
2. Proposal materials submitted under this RFP will be made available to charter schools to inform their auditor selection process.
3. Selection of a firm to be on the Approved Auditor List is valid for at least one year, with automatic renewal if audits performed meet the standards required.
4. Charter schools may engage an audit firm for multi-year contracts, provided each audit performed meets the standards required. Provisions will be made for multi-year contracts with schools which pre-date this RFP.
5. Auditors are required to discuss any findings or recommendations listed in a management letter with the Board of Trustees of the audited charter school.
6. Charter schools will be expected to provide the audit team with all records and documentation that may have an impact on the audits.

Explanation of the RFP Process

- a. A Selection Committee (the "Committee") comprised of two representatives from each of the following parties will review the proposals:
 - i. The D.C. Board of Education Charter Schools Office
 - ii. The D.C. Public Charter School Board
 - iii. The D.C. Office of the Chief Financial Officer
- b. The Approved Auditor List will be announced on or before May 15, 2005
- c. The Committee reserves the right to select and exclude any firm from the Approved Auditor List based on its evaluation of the firm's qualifications and proposal; firms that have been excluded from the list may re-apply in future years.

Standards for Firms on the Approved Auditor List:

1. Firms must have adequate experience auditing not-for-profit organizations
2. Firms must have adequate experience conducting audits under Government Auditing Standards
3. Firms will conduct audits which conform to Generally Accepted Government Auditing Standards (GAGAS) and Generally Accepted Accounting Principles (GAAP) for not-for-profit organizations, as required by law for D.C. public charter schools
4. Firms will provide experienced staff on charter school audit teams
5. Firms must represent that they are independent and licensed to perform audit work in the District of Columbia

Evaluation of Proposals

Criteria to be used to evaluate the firms are:

Experience and Qualifications of Firm (60 points)

The Committee will evaluate a firm's relevant experience in providing similar services to other corporations or government agencies. The evaluation of experience will be a subjective assessment based upon information supplied by the firm in its submission and via reference checks. The firm's explanation of its approach to conducting the audit will be considered within this criterion. The Committee may also use other sources, which may be available from a variety of other public and private resources.

The experience will be evaluated in terms of the similarity of the size, scope and complexity of the project defined in this RFP. Significant sub-factors, with possible points, include:

- Experience of the firm in auditing not-for-profit organizations 20 pts
- Experience of the firm in auditing according to GAGAS 20 pts
- The organization and management structure of the audit team, including the experience of the individuals in the firm who will have day-to-day responsibility for the management implementation and administration of the work to be performed for the audit 20 pts

Past Performance (30 points)

Past performance is defined as a measure of how well the firm has satisfied its customers, obeyed applicable laws and regulations, and conducted business in an ethical manner, especially in similar projects. The evaluation of experience will be a subjective assessment based upon information supplied by the firm in its proposal and via reference checks. The Committee may also use other sources, which may be available from a variety of other public and private resources.

This criterion will include, but is not necessarily limited to, factors such as:

- Quality of Service – Compliance with contract requirements, customer satisfaction, etc. 10 pts
- Cost Control – Billings current and accurate, cost efficiencies Implemented, etc. 10 pts
- Timeliness of Performance – Reliability, timeliness of contract administration 10 pts

Price (10 Points)

The Committee will review each firm's stated rates in light of local industry standards for this type of audit.

Note: The selection of audit firms to be included on the Approved Auditor List is a non-competitive process.

RFP Submission

1. Proposals to be on the Approved List of Auditors should be submitted to:
D.C. Public Charter School Board
Attn: Auditor Selection Committee
1436 U Street, NW
Suite 401
Washington, DC 20009
2. Deadline: proposals must be received by **April 30, 5:00 pm**. Late proposals will not be accepted.
3. Four (4) total copies of the proposal should be submitted, with the original manually signed by a partner of the firm submitting the proposal.
4. Questions may be directed to:
Bridget Gray, D.C. Public Charter School Board 328-2660
Steven Kapani, Board of Education Charter Schools Office 442-4289

5. The proposal submissions should include:
- a. an explanation of how the auditor would conduct the audit and, if it were a multiyear contract, how they would approach the work efforts of the subsequent year(s);
 - b. the firm's staff qualifications and those of the proposed audit staff, including their prior government auditing experience and non-profit auditing experience, and including relevant, recent continuing professional education;
 - c. a sample audit report from an audit that the firm has conducted in the last five (5) years in accordance with Government Auditing Standards;
 - d. three (3) references of recent clients, with contact information;
 - e. the firm's policies on notification of changes in key personnel;
 - f. confirmation that the firm has received a positive peer review within the last three (3) years;
 - g. a copy of the firm's peer review letter from within the past three (3) years; and disclosure of whether the firm has been the object of any disciplinary action from the American Institute of Certified Public Accountants Oversight Board, the District of Columbia Government, or any applicable Federal, City or State regulatory agency;
 - h. the auditor's fee structure for retainer fees and maximum hourly rates, by staff classification, for financial audits of not-for-profit organizations under Government Auditing Standards, and for the single audit required by OMB Circular A-133, where applicable. **NOTE:** Auditors' rates submitted in response to this RFP will be considered proprietary information and not subject to scrutiny by the general public.

Explanation of Contracting Authority and Procedures for this RFP

Contracting Authority

This RFP is issued on behalf of the Committee under the independent contracting authority of the D.C. Public Charter School Board, pursuant to DC Official Code §38-1802.14(h)(2001), as amended.

Protests

Protests in connection with this solicitation shall be handled pursuant to the *District of Columbia Procurement Practices Act of 1985, DC Law 6-85*; DC Official Code §§2-301.01 – 2-327.03, as amended (in particular §§2-308.01 - §2-308.06). The protest shall be filed in writing, within ten (10) working days after the basis of the protest is known or should have been known, to:

D.C. Public Charter School Board
1436 U Street, NW
Suite 401
Washington, DC 20009

Each individual D.C. public charter school has the right and responsibility to engage an auditor to conduct an annual audit as required by law. The contract implied in this RFP is for an audit firm to be selected for the Approved Auditor List; this list is established to ensure that charter schools select auditors that have demonstrated the experience and skills to perform these audits. Complaints associated with the audit engagements entered into with an individual charter school should be directed to the Board of Trustees of that school.

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

Appeal No. 04-0001 of the administrative determination of the District of Columbia Department of Consumer and Regulatory Affairs Office of Adjudication (Elizabeth Ayres Whitman, Administrative Law Judge) made on August 18, 2003 upholding a notice of civil infraction issued to William Robinson, based upon his failure to obtain a building permit for property located at 1610 H Street, SE.

HEARING DATE: September 28, 2004

DECISION DATE: September 28, 2004

DECISION AND ORDER

Background

William Robinson (the Appellant or Mr. Robinson) was served with a notice of infraction by the Department of Consumer and Regulatory Affairs (DCRA) pursuant to section 301 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.01 (2001)). The notice of infraction alleged that he had done construction work at his home without a demolition permit and stated that Mr. Robinson was required to respond to the DCRA Office of Adjudication (OAD) within 15 days of service. Although Mr. Robinson maintains that he responded to this notice, a second notice of infraction was served after 15 days had elapsed without an acknowledged response. Mr. Robinson appeared at OAD on the hearing date contained in the second notice of infraction, but OAD found that he was not entitled to a hearing on the merits due to his failure to respond to either the first or second notices of infraction.¹ The OAD Administrative Law Judge (ALJ) found that Mr. Robinson was subject to the maximum fine of \$500, plus a penalty equal to double the amount of the fine in the amount of \$1,000, and issued a written decision to this effect on or about August 18, 2003.

The present appeal is an appeal of the ALJ's decision and order. However, it follows a previous appeal to the Board of Appeals and Review (the BAR), which declined to hear the case. In a Decision and Order dated December 10, 2003, the BAR² stated that Mr. Robinson "chose the wrong forum" and found that the appeal properly lies before this Board, the Board of Zoning Adjustment (BZA). Following the BAR's decision, Mr. Robinson appealed to this Board only to find that DCRA now challenged the BZA's jurisdiction. Thus, Mr. Robinson is confronted with another jurisdictional hurdle, and this Board must determine whether it has subject matter jurisdiction over the appeal. For reasons explained in this Decision and Order, we find the BZA lacks subject matter jurisdiction over this appeal and that jurisdiction properly lies before the Office of Administrative Hearings.

¹ Under 16 DCMR 3103.13 & 3105.5(a), a merits hearing requires that good cause be shown for failing to respond to the notice of infraction. OAD found that Mr. Robinson made no such showing for his failure to respond.

² Since the time this appeal was filed, BAR's jurisdiction has been transferred to the newly established Office of Administrative Hearings.

FINDINGS OF FACT

On or about May 10, 2003, DCRA served a "Notice of Infraction" on Mr. Robinson alleging that he had engaged in construction without a building permit in violation of section 10 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat. 797; D.C. Official Code § 6-641.09). On its face, the notice provided for a \$500 fine.³

Although Mr. Robinson states to the contrary, OAD found that Mr. Robinson failed to respond to either this Notice of Infraction or a second Notice of Infraction that was issued by DCRA on or about June 19, 2003.

A Decision and Order was issued by OAD on or about August 18, 2003 that imposed the maximum fine of \$500, penalties totaling \$1,000, and a hearing fee of \$40.

The Decision and Order also provided Mr. Robinson with instructions advising him of his right to appeal. The instructions stated, in part:

"In general all civil infraction orders are appealable to the BOARD OF APPEALS AND REVIEW. There are a few exceptions . . .

. . . If your matter concerns a violation of D.C. Zoning Regulations or chapter 4 (Zoning and Height of Buildings) of Title 5 of the D.C. Code⁴, then your matter is appealable to the BOARD OF ZONING ADJUSTMENT."

CONCLUSIONS OF LAW

DCRA asserts that the appeal properly lies before the D.C. Office of Administrative Hearings (OAH), the forum that acquired jurisdiction from the Board of Appeals and Review (BAR). On the other hand, the BAR declined to hear the appeal, finding that the BZA has jurisdiction under the language of D.C. Official Code § 2-1803.01 (2001). The text of § 2-1803.01 appears to give the BZA authority over appeals, such as this one, that involve civil infractions of Chapter 6 of D.C. Code Title 6. However, as we explained in *Appeal of Peter Choharis*, BZA No. 03-0001, 51 DCR 8210 (2004), § 2-1803.01 of the D.C. Code is not controlling because it incorrectly codified the law that was actually passed by the D.C. Council

We explained in *Choharis* that under the original Civil Infractions Act, appeals of civil infractions must be heard by the BAR unless they stem from the Height Act or the Zoning

³ The civil infraction fine schedule makes violations of section 10 a class 2 civil infraction 16 DCMR § 3231.1. The fine for a class 2 infraction is \$500 for the first offense, 16 DCMR § 3201.1(b).

⁴ The reference is to the 1981 edition of the D.C. Code. The comparable reference to the 2001 edition would be Chapter 6 of Title 6.

Regulations. The appeal in *Choharis*, like this appeal, does not stem from Zoning Regulations but from the Zoning Act. While the codified version of the Civil Infractions Act references appeals stemming from Chapter 6 of Title 6 (within the Zoning Act), we explained that the original text of the Act is inconsistent with the codified version and that the original text must prevail. We stated:

As it appeared in the *D.C. Register* (32 DCR 4454-4455) and at page 549 of the 1985 volume of the District of Columbia Statutes-at-Large, section 303 of the Civil Infractions Act provided that all appeals under the Act would go to the Board of Appeals and Review:

except that appeals involving infractions of the Act to regulate the height of buildings in the District of Columbia, approved March 1, 1899 (30 Stat. 923; D.C. Code sec. 25-101 et. seq.) [the Height Act], or the District of Columbia Zoning Regulations shall be entertained and decided by the District of Columbia Board of Zoning Adjustment (Emphasis Added)

In other words, the codified text is inconsistent with the text of the same provision as it was originally published in the D.C. Statutes-at-Large...

the text of a provision contained in the D.C. Statutes at Large (or in the organic law) prevails over the text of the same provision as codified in the D.C. Code. Therefore, ... reliance on the text of D.C. Official Code § 2-1803.01 is misplaced...

Whenever the language of a codified statute differs from the language of the law enacted by the legislature, the language used by the legislature prevails. *See, Sutherland, Statutes and Statutory Construction*, 6th ed., vol. 1A, § 28:02 (2000). Section 207 of the District of Columbia Codification Act of 1975, effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code § 2-605), requires that “[a]ll courts within the District of Columbia shall take judicial notice of the acts and resolutions published in the District of Columbia Statutes-at-Large.” Thus “when the District of Columbia Statutes-at-Large are inconsistent with the Code ... the former must prevail”. *Burt, et al., v. District of Columbia*, 525 A.2d 616, 619 (D.C. 1987).

Id. at 8211-8212.

To reiterate our holding in *Choharis*, The Civil Infractions Act does not confer jurisdiction on the BZA over administrative appeals unless the appeals stem from violations of the Height Act or the Zoning Regulations. The present appeal does not result from either type of violation, but arises from a violation of the Zoning Act itself. Neither the Zoning Act nor the Civil Infractions Act gave the BZA jurisdiction with respect to such a violation. As a result, the BZA lacks subject matter jurisdiction and must dismiss the appeal. The fact that the D.C. Code and DCRA’s own notice may have led Mr. Robinson to believe otherwise cannot create jurisdiction over his appeal.

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A court by its own words cannot create or extinguish its own subject matter jurisdiction. Rather, the source of jurisdiction is "the constitutional and statutory provisions by which it is created".

Appeal of A.H., 590 A.2d 123, 129 (D.C.1991). *quoting Demar v. Open Space & Conservation Comm'n*, 211 Conn. 416, 423-27, 559 A.2d 1103, 1107-08 (1989).

Because BAR's jurisdiction has been transferred to the Office of Administrative Hearings (OAH), the Board agrees with DCRA that jurisdiction properly lies there. *See*, D.C. Official Code § 1831 (2004).

The Board appreciates the frustration Mr. Robinson must feel at having been denied a hearing by the BAR on the grounds that the BZA was the proper forum for hearing his appeal, only to be informed by this body that the BAR was wrong. However, this Board cannot confer jurisdiction upon itself where it has none. In light of the legal clarification set forth in *Choharis*, *supra*, and restated here, it is hoped that OAH will quickly hear and decide this appeal, so that Mr. Robinson will have the due process to which he is entitled.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **DISMISSED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John Mann II, and Curtis L. Etherly, Jr., in favor of the motion to dismiss, 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 Decision and Order.

FINAL DATE OF ORDER: MAR 18 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16970 of National Child Research Center, pursuant to 11 DCMR §§ 205 and 3104.1, for a special exception to increase the enrollment of an existing child development center from 120 to 185 children, ages 2½ to 5 years, to increase staff from 28 to 44, and to authorize the construction of an addition to an existing building and the construction of an accessory building in an R-1-B District at premises 3209 Highland Place, N.W. (Square 2072, Lot 30).¹

HEARING DATES: February 11 and 25, 2003; May 6, 2003; June 24, 2003; September 16, 2003; October 7 and 28, 2003; November 4 and 18, 2003

DECISION DATES: January 6, 2004; February 17, 2004; March 9, 2004; April 13, 2004; and July 27, 2004

DECISION AND ORDER

This application was submitted November 12, 2002 by the National Child Research Center, the owner of the property that is the subject of the application. Following a public hearing, the Board voted on January 6, 2004 and April 13, 2004 to grant the application with respect to the proposed new construction and to deny the application with respect to proposed increases in enrollment and staff.

Application. The National Child Research Center ("Applicant" or "NCRC") filed an application pursuant to 11 DCMR § 3104 for a special exception under 11 DCMR § 205 for continuation and expansion of a child development center with morning and afternoon programs for 120 children at any one time, ages 2½ to 5 years, in all floors of the existing buildings on the site and for construction of an addition to the main existing building as well as a new accessory building in an R-1-B district at 3209 Highland Place, N.W. (Square 2072, Lot 30 (855 and 866)). 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 November 13, 2002, the Office of Zoning sent notice of the application to the Office of Planning; the Department of Transportation; the Department of Health; 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 3C05.

The public hearing on the application was scheduled for February 11, 2003. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on December 10, 2002 mailed notice of the hearing to

¹ This caption reflects the actual relief requested and differs from the caption drafted by the Applicant and used previously for this case. That caption indicated that the relief sought was:

[T]o continue an existing child development center with morning and afternoon programs for 120 children, ages 2 ½ to 5 years, *at any one time* and 38 staff in all floors of the existing buildings on the site under section 205, and the construction of additions to the existing buildings in an R-1-B District at premises 3209 Highland Place, N.W. (Square 2072, Lot 30).

The italicized language appeared in no prior order of the Board with respect to this use and reflects only the Applicant's interpretation, which the Board rejects, as will be explained in this Order.

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 (49 *D.C.R.* 11227 and 49 *D.C.R.* 11384).

After the second hearing session, held February 25, 2003, the application was amended to request, in addition to the initially requested special exception, a variance from § 3202.3 to allow the construction and use of an additional principal structure such that more than one principal structure will exist on a record lot, and a variance from § 2100.6, concerning the provision of parking spaces for the proposed additional principal structure.² The hearing on the amended application was scheduled for May 6, 2003. Notice of the hearing was mailed March 6, 2003 to the Applicant, ANC 3C, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register (50 *D.C.R.* 2236).

Requests for Party Status. ANC 3C was automatically a party in this proceeding. The Board granted requests for party status in support of the application from Katharine Marshall, a resident of the 3200 block of Highland Place, N.W., and from the Friends of NCRC, a group including approximately seven households within 200 feet of the subject property, represented by Anne Large and Jon Thoren. The Board granted requests for party status in opposition to the application from a group of approximately 30 households in the immediate vicinity of NCRC (known as the "Cleveland Park Neighbors"); and from Bruce and Sallie Beckner, residents of the 3200 block of Highland Place, N.W.; Steven Hunsicker, a resident of the 3000 block of Ordway Street, N.W.; Henry Little, owner of a residence in the 3200 block of Ordway Street, N.W. adjoining the subject property to the west; and Gaylord Neely and Linda Badami, residents of a house in the 3200 block of Highland Place, N.W. abutting the subject property to the east.

Applicant's Case. The Applicant provided testimony and evidence from Alexa Halaby, a member of NCRC's board of trustees; Charles Anthony, principal of Charles E. Anthony Architects and an expert in architecture; Susan Piggott, executive director of NCRC; Osborne George of O.R. George & Associates, an expert in traffic; Pedro Alfonso, parent of an NCRC student and trustee-elect; Tiffany Williams, NCRC teacher and staff person assigned to monitor student drop-off activities; and Leo Wilson, a retired police officer who consults with NCRC with respect to implementation of its traffic management plan. The witnesses described school operations, including NCRC's need to expand its facilities and increase its enrollment, and discussed traffic conditions and the effectiveness of the Applicant's traffic management plan.

The Applicant proposed new construction projects on the subject property that would, among other things, increase the number of classrooms available for the child development center. The new classroom space was intended to enable NCRC to eliminate classrooms on the third floor of the main building and instead devote that area for use by school administrators, and to reduce the number of children currently in each classroom (*i.e.* the "group size").

According to the Applicant, previous Board orders did not limit NCRC's total enrollment or the number of children permitted on the subject property at any one time. While not recognizing any Board-adopted limit on enrollment, the Applicant nonetheless requested permission to increase the total enrollment at the child development center "by 10 children" to bring the group sizes in

² The Board subsequently determined that the additional variances were not necessary.

the new classrooms to their optimum level.³ The application proposed (a) to limit to 120 the number of children on-site at any one time, and (b) to limit the total enrollment to 185 children, representing a base enrollment of 181 and the flexibility to add 4 children if necessary given the uncertainty of the enrollment process. The Applicant also sought approval to increase the number of employees at the subject property to a total of 44.⁴

Government Reports. The Office of Planning ("OP") submitted reports dated February 6, 2003, February 24, 2003, and April 29, 2003, and testified at the public hearing. OP initially did not make a recommendation, pending its receipt of information from other government agencies. In its second report, OP recommended denial of the application, citing adverse impacts related to traffic and parking. In its final report, OP recommended postponing consideration of the application until the Applicant had an opportunity to implement its proposed transportation management plan and monitor compliance for at least four months from the beginning of the Fall 2003 school year. The Office of Planning questioned whether the existing Playhouse building on the subject property actually functions as a second principal building, rather than an accessory building, and whether zoning relief from 11 DCMR § 3202.3 would be required for the additional new building proposed in the application.

The Department of Transportation ("DDOT") submitted reports dated February 5, 2003 and April 14, 2003, and testified at the public hearing. DDOT did not support the Applicant's proposal due to concerns about transportation safety. According to DDOT, the proposed new construction and subsequent increase in staff and enrollment at the subject property would have an adverse impact on parking supply, would create dangerous and otherwise objectionable traffic conditions, and would increase vehicular volume on neighboring streets.

In its second report, DDOT described three options that could improve the safety of existing traffic conditions, while acknowledging that none would "provide a complete solution" to "a frustrating and unsafe traffic situation" that currently exists on Highland Place. The options were: (i) adjust NCRC's traffic generation – *i.e.*, require NCRC to reduce the traffic on Highland Place by decreasing enrollment or reducing vehicle trips; (ii) implement a regulatory solution, such as NCRC's proposed transportation management plan; and (iii) implement an engineering

³ As discussed in this Order, the Board previously approved a maximum total enrollment of 120 children at the child development center on the subject property. In essence, the Applicant sought in this application to have the Board ratify its current unsanctioned enrollment of 171 children and, at the same time, allow an increase of 10 children above that figure as its newly authorized base enrollment, with a potential maximum enrollment of 185 children. Because the Board finds *infra* that there is currently an enrollment cap of 120, the Board treats the application as a request to increase enrollment by 65 children.

⁴ As discussed in this Order, the Board previously approved a maximum of 28 employees at the child development center on the subject property. NCRC currently employs a total of 38 people (28 full-time and 10 part-time employees), which the Applicant considers 32 "full-time equivalent" employees. The Applicant requested to increase the staff of the child development center to 38 "full-time equivalent" employees by adding six full-time employees, bringing the total number of employees at the subject property to 44. As with enrollment, the Applicant in essence sought in this application to have the Board ratify its current unsanctioned number of employees at 38, and, at the same time, allow an increase of six employees above that figure as its newly authorized maximum number of employees at the site. Because the Board finds *infra* that there is currently a staff cap of 28, the Board treats the application as a request to increase the number of employees by 16.

solution, including the possible designation of Highland Place as a one-way westbound road from Newark Street to 33rd Place, so as to use the current westbound lane for the traffic queue at NCRC and the current eastbound lane as the through lane. DDOT noted that traffic enforcement issues raised in conjunction with NCRC-generated traffic, such as illegal parking, blocked driveways, and running stop signs, could not be easily addressed with additional regulatory or traffic engineering solutions.

By memorandum dated December 16, 2002, the Department of Health ("DOH") recommended approval of NCRC's application for continuation of a child development center with morning and afternoon programs. DOH recommended that NCRC be allowed to continue its programs for 108 children, ages 2.5 through 5 years of age, consistent with its current licensure capacity.

By letter dated February 5, 2003, the Department of Human Services, Office of Early Childhood Development indicated its support for the application, citing the important service provided by NCRC and the need for additional licensed child care centers.

By memorandum dated January 3, 2003, the Fire and Emergency Medical Services Department recommended approval of the application, provided that the new construction met building code requirements.

ANC Report. At a public meeting held January 27, 2003 with a quorum present, ANC 3C passed two resolutions concerning the application. In Resolution 2003-001, approved by a vote of 9-0, ANC 3C recommended denial of the application. According to the ANC, the Applicant's proposal to increase student enrollment and staffing would aggravate traffic problems associated with current operation of the child development center. In testimony at the public hearing, ANC 3C contended that the application should be denied because the Applicant was in violation of conditions of approval adopted by the Board in prior orders; because of objectionable traffic conditions in the vicinity of the subject property, exacerbated by unsafe practices by vehicles dropping off and picking up children from NCRC; because the size and location of the proposed new construction would create adverse noise impacts and obstruct light and air to neighboring properties; and because granting the application would impair the purpose and intent of the zone plan.

By letter submitted June 10, 2003, the ANC indicated that, at a regularly scheduled public meeting on April 28, 2003, with a quorum present, ANC 3C voted 8-0, with one abstention, to oppose any variance relief for the Applicant, because the Applicant had not satisfied the requirements for the variances. With regard to § 2100.5, ANC 3C argued that the proposed new Carriage House would trigger a new parking requirement as a principal building that had not been certified as contributing to the historic district.

Parties in Support. The parties in support of the application testified that the child development facility currently operates without causing adverse traffic impacts, and described the Applicant's need for additional space to carry out its purpose as a child development facility.

Persons in Support. The Board received numerous letters and heard testimony from nine persons in support of the application. Persons in support generally described the attributes of NCRC's educational programs, its need for additional space, the design of the proposed new building so as to be compatible with both character of the historic district and the surrounding residential neighborhood, and the Applicant's successful efforts to minimize adverse impacts related to traffic and parking.

Parties in Opposition. The parties in opposition presented evidence and testimony from several witnesses, including persons who live near the subject property; Stephen Petersen, an expert in traffic planning; and Robert Schwartz, an expert in architecture and planning. The parties in opposition generally argued that the application should not be granted because the Applicant has not complied with conditions of prior zoning approval, and because operation of the child development center currently generates adverse impacts that would be exacerbated by the proposed expansion, including objectionable conditions concerning traffic, parking, and noise. According to the parties in opposition, the Applicant's transportation management plan has not been effective in eliminating unsafe conditions or decreasing traffic congestion on neighborhood streets caused by student drop-offs and pick-ups, in part due to inadequate supervision and enforcement of the plan by the NCRC staff.

The parties in opposition also objected to the perceived institutional character of the proposed expansion, and contended that the new construction would be too large and too close to nearby houses, infringing on privacy, blocking views and sight lines, and diminishing light and air to the residences. Concerns were raised about storm water management and the destruction of trees, both during and after the construction of the proposed expansion.

Persons in Opposition. The Board received numerous letters or heard testimony in opposition to the application from 33 persons and from the Federation of Citizens Associations of the District of Columbia. Persons in opposition generally opposed the expansion of an institutional use in an area zoned for single-family detached dwellings and contended that NCRC had outgrown its current location; that the new construction was not needed but would create objectionable noise impacts, especially from air conditioning equipment; and that an increase in enrollment would exacerbate existing adverse traffic and parking conditions associated with the operation of the child development facility.

Deliberations. At a public meeting on January 6, 2004, the Board initially voted to deny the entire application. On February 17, 2004, the Board announced its intention to deliberate further on the application. At its public meeting on March 9, 2004, the Board voted on its own motion to consider the Applicant's proposed new construction separately from its proposal to increase enrollment and the number of employees at the subject property. The Board scheduled an additional public meeting to deliberate further on the proposed new construction, and voted to reopen the record to permit the parties to submit written information concerning the new construction proposed by the application, particularly with respect to its compliance with the requirements of 11 DCMR §§ 205.6 and 3104.1. At a public meeting held April 13, 2004, the Board voted to approve the application with respect to the new construction only.

Alleged Ex Parte Contacts. By letter dated April 2, 2004, the parties in opposition requested an evidentiary hearing on alleged *ex parte* communications between the Applicant and the Office of the Corporation Counsel with respect to the Board's decision to reopen its deliberations on the application.⁵ In a response submitted April 8, 2004, the Applicant opposed the motion, arguing that there had been no improper *ex parte* communications between the Applicant and members of the Board, and that communication with the Office of the Corporation Counsel is not prohibited *ex parte* communication.

Motion to Disqualify Chairman and Vacate Decisions. On July 8, 2004, a motion was filed by the parties in opposition seeking to disqualify the Board's Chairman on grounds of personal bias and to vacate certain decisions of the Board.⁶ The motion alleged a personal relationship between the Chairman and a person involved in the proceeding in support of the application, and asserted that decisions made by the Board by votes taken on March 9, 2004 and April 13, 2004 should be vacated in order to avoid tainting the proceeding. In its response, the Applicant urged the Board to deny the motion for failure to allege facts suggesting that any inappropriate relationship existed at the time the relevant decisions were made. On July 19, 2004, the parties in opposition filed a supplement to the motion to provide evidence in support of their allegations, including evidence that the Chairman and the other person – who had been a member of the Applicant's board of trustees until April 2004, and who had submitted letters in support of the application – had, *inter alia*, engaged in a conversation in January 2004 outside the school attended by their respective children.

At a public meeting on July 27, 2004, the Chairman recused himself prospectively from this proceeding on the grounds that there may be an appearance of bias, and the Board voted to deny the motion to disqualify the Chairman and to vacate its decisions.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 3209 Highland Place, N.W. (Square 2072, Lot 30), in the Cleveland Park neighborhood of Ward 3. The subject property is a large irregularly shaped lot on the north side of Highland Place between Ashley Terrace and 33rd Place.
2. The lot area of the subject property is 45,208 square feet. The subject property is a through lot with frontage on Highland Place and Ordway Street, and has a significant change in grade – approximately 20 feet – from Ordway Street up to Highland Place. The slope has been partially regraded and terraced to provide space for a playground.

⁵ On May 26, 2004, the Office of the Corporation Counsel was renamed the Office of the Attorney General for the District of Columbia. See Mayor's Order 2004-92, 51 D.C.R. 6052.

⁶ The motion was originally submitted June 16, 2004 but was returned by the Office of Zoning as untimely. On the advice of the Office of the Attorney General, the Office of Zoning accepted the motion for filing on July 8, 2004.

3. The subject property is improved with a large former residence built on the southeastern portion of the lot close to Highland Place (the "main building"), and a smaller outbuilding (known as the "Playhouse") located at the rear of the lot near the center of its Ordway Street frontage. A small maintenance shed is located at the rear of the lot near the eastern property line.
4. The main building has three stories and a basement, and houses a total of six classrooms on the three stories. The Playhouse, which has one story and a basement, is used for multiple purposes, including a library/reading room, optional programs (that is, early arrival, lunch, and afterschool programs), a motor skills room, teacher/parent meeting space, a music room, and occupational and speech therapy spaces.
5. The fenced portion of the subject property has several large trees, a terraced playground with play equipment, and a paved bicycle course. The playground is used continuously throughout the school day, and is open for neighborhood use when school is not in session. NCRC does not utilize any off-site play area.
6. The subject property is located in the Cleveland Park historic district, which is listed in the D.C. Inventory of Historic Sites and the National Register of Historic Places. The main building, a Colonial Revival-style house, was constructed in 1905, and the Playhouse was built in 1915. Both buildings have been designated as contributing to the historic district.
7. The subject property and areas to the east, west, and south are zoned R-1-B. Properties to the north across Ordway Street are zoned R-2. Development surrounding the subject property is primarily large single-family dwellings on wooded lots. Single-family detached dwellings abut the subject property on both its east and west sides.

Preschool operations

8. NCRC was founded in 1928 as a research center/school for children, and moved to its current location in 1930. In 1998, NCRC applied for a new certificate of occupancy to increase the number of children at the child development center from 90 to 120, and was directed to seek a special exception. The Board approved, subject to conditions, an application under 11 DCMR § 205 to establish a child development center for 120 students, ages 2½ to five years, and 28 staff.⁷

⁷ The 1998 proceeding, Application No. 16307, resulted in two summary orders. Following a hearing on January 21, 1998, the Board voted to approve, by bench decision, an application "to establish a child development center for 120 students ages 2½ to five years and 28 staff." The first summary order, issued June 17, 1998, indicated four conditions of approval, which specified: (i) a term of 15 years; (ii) that the "maximum number of children shall not exceed 120"; (iii) that the "maximum number of teachers and support staff shall not exceed 28"; and (iv) that the authorized hours and days of operation are 8:00 a.m. through 5:00 p.m., Monday through Friday.

Meanwhile, the Board granted rehearing of the application at a public meeting on February 4, 1998 upon the request of ANC 3C, which protested that "inadequate public notice" had been given for the January 21, 1998 hearing. Following a second hearing, held April 1, 1998, the Board voted May 6, 1998 to approve the same

9. NCRC's certificate of occupancy (B00182078; issued November 17, 1998) permits use of the basement, first, second, and third floors of the building located on lots 855 and 866 for purposes of a child development center for 120 children, ages 2½ to 5 years, and 28 staff.
10. The "License for Child Development Facility" issued to NCRC by the Department of Health gives permission to operate a child development center with a maximum capacity of 108 children. The maximum capacity is determined according to the quantity and size of NCRC's classrooms and the number of staff.
11. The Board finds that the Applicant's child development center is capable of meeting all applicable code and licensing requirements.
12. NCRC has a total of 38 employees at the subject property. Twenty-eight are full-time employees (12 teachers, one speech language pathologist, five assistant teachers, the executive director, a business manager, a receptionist, a development director, four administrative assistants, one maintenance person, and a counselor). The 10 part-time employees include teachers, a librarian, and an occupational therapist.
13. The Applicant proposes to employ an additional six full-time employees, adding four teachers, one resource teacher, and a maintenance person, for a total of 44 employees at the subject property.
14. The Applicant conducts morning, afternoon, and full-day programs for children ages 2½ to 5 years. Current enrollment is approximately 171 children, who may attend NCRC all day, in the morning or in the afternoon only, or fewer than five days per week.
15. After completion of the new construction proposed in the application, NCRC will have sufficient space to increase its licensed maximum capacity from 108 to 150 children.
16. Child development center operations are conducted between 8:00 a.m. and 5:00 p.m., Monday through Friday. School-related special events, such as an annual pumpkin party, are occasionally held on Saturdays. NCRC also holds an annual back-to-school night, which takes place during the evening.
17. The Applicant operates an eight-week summer camp program at the subject property that follows the operation hours and staff patterns of the child development center.

application. The Summary Order Upon Rehearing, issued March 3, 1999, indicated nine conditions of approval. Of the nine newly adopted conditions, two addressed the same subject matter as conditions contained in the first order (decreasing the term of approval from 15 to eight years, and maintaining the same hours and days of operation); the remaining seven newly adopted conditions addressed matters pertaining to traffic management, especially student drop-offs and pick-ups. Conditions adopted in the second order did not address the caps on numbers of children and employees that were set forth in the application and adopted by the Board in the first order.

Admission is open to NCRC students and to the community. Enrollment is approximately 130 children, or roughly 80 percent of the school-year enrollment.

18. In 2002 NCRC hosted a workshop, held in the Playhouse, intended to share best practices with other child-development facilities in the District of Columbia. NCRC closed the preschool for the day, notified neighbors in advance, hired three uniformed persons to assist with parking, and provided off-site parking with shuttle service for some visitors.
19. The Applicant indicated that future workshops would be held in the new Carriage House, and would be limited to no more than three in any 12-month period. Whenever a workshop is conducted, the Applicant will close the preschool for the day, hire three uniformed persons to assist with traffic management, provide off-site parking for 30 vehicles for use by persons attending the workshop, and provide shuttle service from the off-site parking to the subject property.
20. No other child development center operates in the same square or within 1,000 feet of NCRC.

The Proposed Expansion

21. The Applicant proposes several new construction projects on the subject property.
 - (a) In the main building, the Applicant will replace a rear porch area with a new addition (one story plus basement) providing approximately 1,700 square feet of space for classrooms and parent-teacher conferences as well as toilet facilities on the first floor and an equal amount of space on the ground level. The new addition will also provide a fire stair and elevator access in the main building.
 - (b) A new building, known as the Carriage House, will be constructed at the northwest corner of the subject property near the existing Playhouse. The Carriage House will provide approximately 4,080 square feet of space for classrooms, indoor play and motor space, and toilet facilities on the ground level, and almost 2,000 square feet of classroom space and an outdoor plaza on the upper level. The Carriage House will be one story with basement, but will appear as a two-story building on the Ordway Street elevation because of the sloping grade of the site.
 - (c) The maintenance shed will be replaced by a larger structure providing an enclosure of 448 square feet for storage of bicycles and equipment for yard maintenance and repairs. The new shed will replace an outdoor storage area displaced by construction of the addition at the rear of the main building.
22. The new constructions will almost double the existing building area on the subject property. Currently the total floor area is 9,500 square feet; after completion of the new projects the floor area will be 18,000 square feet. However, the density of development

and lot occupancy on the subject property will increase only slightly; density will increase from a floor area ratio of 0.21 to 0.40, and lot occupancy will increase from 10 to 20 percent.

23. After completion of the new construction, the rear yard at the subject property will decrease from 46 feet to 44 feet, where a minimum of 25 feet is required. The smallest side yard will decrease to 10 feet, where a minimum of 8 feet is required.
24. The Applicant submitted an application for conceptual design review by the Historic Preservation Review Board ("HPRB"). On January 23, 2003, HPRB adopted its staff report recommending approval. The staff report stated that the Carriage House would be "generally compatible in its height, orientation, rooflines, and materials' use with the residential character of Ordway Street and the historic district."
25. The Carriage House will be an accessory building on the subject property, incidental and subordinate to the main building. The Board credits the Applicant's testimony that the proposed use of the Carriage House is related to the education purpose of the child development center, of a sort customarily engaged in at child development centers.

Traffic Impacts

26. The intersection of Highland Place and Newark Street is one block west of Connecticut Avenue. Connecticut Avenue in the vicinity of the subject property is a primary arterial street that serves approximately 41,000 vehicles per day. Porter Street is also classified as a primary arterial, while Macomb Street is a collector roadway. 34th Street is a secondary arterial street that serves considerable commuter traffic. Other streets in the vicinity of the subject property are considered local streets.
27. Highland Place is two blocks long, running between Newark Street on the east and 34th Street on the west. The longer segment of Highland Place, between its intersections with Newark Street and 33rd Place, is not straight but angles twice – once near the intersection with Ashley Terrace and again just east of the subject property. Highland Place is one-way eastbound between 34th Street and 33rd Place; the remainder allows two-way traffic. Highland Place is a narrow street approximately 25 feet wide. The speed limit is 15 miles per hour.
28. Highland Place is estimated to carry between 700 and 800 vehicles per day. NCRC accounts for approximately 250 vehicle trips per day, or 30 to 35 percent of the daily traffic volume on Highland Place.
29. Highland Place has narrow sidewalks (approximately four feet wide) on the north side of the street. The south side does not have sidewalks. The south side of Ordway Street – at the northern edge of the subject property – also lacks sidewalks.

30. Children are brought to and depart from the subject property at scheduled times throughout the school day, arriving as early as 8:00 a.m. and departing as late as 5:00 p.m. The majority are dropped off and picked up by car.
31. Arrivals are scheduled primarily between 8:00 a.m. and 9:00 a.m. or at 12:30 p.m. Most children arrive at the Highland Place entrance to the subject property, although children who participate in the before-school program are dropped off on Ordway Street and access the subject property via the staircase at the rear of the lot.
32. Most departures are scheduled at 11:30 a.m., 3:00 p.m., or 3:30 p.m. An after-school program, conducted from 3:00 until 5:00 p.m. in the Playhouse, was begun in 2001. Generally, between five and 12 children attend on any given day. Departure from the after-school program is via the stairs to Ordway Street.
33. After completion of the new Carriage House, children using classrooms in that building will be directed to use the Ordway Street entrance so as to reduce the number of student drop-offs and pick-ups on Highland Place.
34. Generally, about 10 staff members are posted in locations on Highland Place and on Newark, Ordway, and 33rd Streets in the mornings to assist with student drop-offs and traffic management. In the afternoons, six to eight staff members assist with student pick-ups at locations including Highland Place and 33rd and Newark Streets. Each vehicle displays a number; teachers with walkie-talkies communicate the number and walk the corresponding child to the vehicle.
35. NCRC's statement of transportation procedures, provided to parents of NCRC students, instructs persons dropping off or picking up children at the child development center to form a single line in a designated part of the street in front of the subject property or, if that area is full, to queue at a white line painted on westbound Highland Place east of the subject property. Drivers may avoid the queue by parking and using the rear entrance steps on Ordway Street to reach the child development center. Drivers are instructed not to turn around in driveways, perform U-turns, double-park, or park contrary to posted parking signs.
36. The Applicant has implemented a traffic management plan ("TMP") intended to facilitate student drop-off and pick-up activities. Provisions of the plan include that:
 - (a) At 8:00 a.m. NCRC staff place cones at a number of locations along Highland Place and Ordway Street to mark driveways and illegal parking spaces for the purpose of discouraging preschool-related traffic from parking there.
 - (b) At 8:30 a.m., some NCRC staff, wearing orange vests, take their places on Highland Place and on Newark, Ordway, and 33rd Streets, while other staff members take children from cars and accompany them to the classrooms. Drivers are not permitted to leave their vehicles.

- (c) A one-way traffic pattern is in effect, whereby vehicles coming to NCRC are required to travel only westbound on Highland Place and are not permitted to turn onto 33rd Place but must proceed down Newark Street to the east entrance of Highland, drop off their children, and exit at Newark and 33rd Place.
 - (d) NCRC staff members remain on the street assisting student drop-offs until at least 8:50.
37. The Applicant recently improved its TMP through measures that are intended to:
- (a) Reduce double standing associated with drop-offs by extending the morning arrival time to 8:50 a.m.;
 - (b) Increase NCRC's oversight of student drop-offs by hiring two uniformed persons to monitor vehicles on Highland Place between 8:15 and 9:15 a.m. and to direct traffic so as to avoid safety issues;
 - (c) Reduce the traffic volume during the morning peak period by scheduling tours for parents of prospective students during nonpeak traffic periods;
 - (d) Improve compliance with the TMP by incorporating a series of escalating sanctions, including a \$250 fine, suspension, and possible expulsion for noncompliance, and by adding a provision in the NCRC enrollment contract that would allow NCRC to expel families who do not agree to abide by the TMP;
 - (e) Assist enforcement of the TMP by requiring parents and staff to place identification stickers on their vehicles and to register their tag numbers with the Applicant; and
 - (f) Improve traffic management during special all-school events by hiring three uniformed persons.
38. The Applicant encourages carpooling but recognizes that carpools for preschoolers are difficult in light of the ages of the children and car seat requirements. Around 26 NCRC students participate in a carpool with at least two children per vehicle.
39. Despite its location near the Cleveland Park Metrorail station and the Applicant's offer of Metrochek benefits to encourage commuting by public transportation, most NCRC employees – approximately 70 percent of the staff – drive to the subject property.
40. Parents of NCRC students may hire consultants (such as speech pathologists or occupational therapists) to work with their children. Approximately four or five consultants visit the child development center regularly.

41. Between October and December, parents of prospective students may tour NCRC. The tours, which begin at 9:15 a.m. and last an hour, are conducted daily for approximately eight families at a time. Participants generally park on streets in the vicinity of the subject property.
42. Preadmission play sessions are held in January and February, in which groups of children who are prospective NCRC students and their parents visit the subject property. One group, usually involving eight children, is held per day, four days per week. Each session lasts approximately 45 minutes. Previously, play sessions began at 8:45 a.m., but the Applicant indicated that future play sessions would be held later in the day so as not to coincide with the peak traffic time. Approximately 300 applications are received each year, and approximately 90 percent of prospective students attend a play session.
43. ANC 3C's resolution of January 27, 2003 stated that "traffic generated by NCRC continues to be a serious problem to individuals residing on the neighboring streets," notwithstanding the Applicant's efforts to regulate the flow of traffic to and from the school.
44. The Board credits the testimony of DDOT that vehicles participating in student drop-offs and pick-ups at the child development center create congestion on a local street. Based on a traffic and parking assessment provided by the Applicant, DDOT determined that student drop-off and pick-up activities for NCRC's four programs (morning, afternoon, full-day, and lunch) overlap, with the majority of the children arriving and departing in vehicles. DDOT indicated that between 8:00 and 8:50 a.m., a total of 106 students are dropped off, using 82 vehicles. The 50 children participating in the morning program are picked up between 11:20 and 11:40 a.m., overlapping with the drop-off time for seven children enrolled in the lunch program (who arrive between 11:25 and 11:35 a.m.), so that 48 vehicles arrive at and depart from the subject property during a 35-minute period. An additional 53 children, using 35 vehicles, are dropped off between 12:30 and 12:50 p.m. for the afternoon program. A total of 102 students (participating in the full-day or afternoon programs) are picked up between 2:50 and 3:40 p.m., using 66 vehicles. DDOT's field observations showed that approximately 70 percent of NCRC students use the Highland Place entrance, while the remaining 30 percent use the Ordway Street access.
45. The Board credits DDOT's testimony that the existing configuration of the area designated by NCRC for student drop-offs (the white line painted in the street to indicate the start of the vehicle queue) creates dangerous conditions. The queue line is in the westbound lane of Highland Place, rather than along the curb, so that vehicles may double-park for as long as 10 minutes while waiting to reach the subject property. The queue line extends east toward Ashley Terrace, so that through traffic intending to avoid the queue line uses the eastbound lane while traveling west on Highland Place past the subject property. Sight distances are limited due to a substantial downhill grade change around a curve near the intersection of Highland Place and 33rd Place.

46. The Board credits the testimony of DDOT and parties in opposition that some vehicles coming to the subject property to drop off or pick up children from NCRC do not always comply with the Applicant's transportation procedures or applicable regulations. Violations include approaching the subject property traveling east on Highland Place, then making a U-turn at Ashley Terrace to join the queue line heading west; parking on streets where parking restrictions are in effect; parking so as to block private driveway entrances; double-parking; and failing to stop at stop signs.
47. Pursuant to the Applicant's TMP, drivers are not supposed to leave their vehicles, but to utilize NCRC staff to assist with student drop-offs and pick-ups by escorting children between the vehicles and the subject property. However, the Board credits the testimony of the parties in opposition that during student drop-off and pick-up activities, vehicles may be parked – sometimes illegally – while the driver walks the child to or from NCRC. Particularly in light of the narrow, obstructed, or absent sidewalks, pedestrians often walk in the street while approaching or leaving the subject property.
48. The Board credits DDOT's conclusion that student drop-offs and pick-ups at NCRC presently create "a frustrating and unsafe traffic situation" on Highland Place. The existing operation of the Applicant's child development center is creating adverse traffic impacts in the vicinity of the subject property due to the high volume of school-related traffic on narrow local streets during periods of student drop-offs and pick-ups. As a consequence, the Board finds that the child development center on the subject property, as a result of its present unauthorized level of enrollment, creates objectionable traffic conditions and unsafe conditions for picking up and dropping off children.

Sufficient Parking

49. No part of the subject property is used for parking. Pursuant to 11 DCMR § 2100.5, no additional parking spaces are required on the subject property because it contributes to the character of the Cleveland Park historic district.
50. Most on-street parking spaces near the subject property are located in zones where parking is restricted to a two-hour maximum for vehicles without the applicable zone sticker. There are some unrestricted on-street parking spaces in the vicinity of the subject property, including three on Highland Place, as well as on Ordway Street at the north edge of the subject property.
51. Many houses in the vicinity of the subject property lack space for off-street parking to accommodate the residents' vehicles.
52. Demand for parking on the streets in the vicinity of the subject property is also generated by nearby commercial uses on Connecticut Avenue and by commuters using the Cleveland Park Metrorail station.

53. NCRC staff park on streets in the vicinity of the subject property, including the unrestricted portion of Ordway Street abutting the subject property.
54. The child development center regularly attracts numerous visitors to the subject property, including consultants assisting current students and the families of prospective students. The majority arrive by vehicle and park on neighborhood streets in the vicinity of the subject property.
55. The Board finds that the child development center on the subject property, at its present levels of staffing and enrollment, does not provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.

Other Impacts

56. The Applicant does not use amplified sound as part of its daily operations but has used amplifiers at special events two times per year. The Applicant stated that in the future amplified sound will not be used outdoors on the subject property.
57. Mechanical equipment, currently located on one side of the main building, will be moved to the roof of the new addition at the rear of the main building, where a mansard roof will conceal the equipment and mitigate any noise impacts.
58. ANC 3C's resolution of January 27, 2003 stated that "neighbors have complained that NCRC events have generated unacceptable noise levels," specifically with respect to noise from "commercial air conditioning equipment, and ... the close proximity of students/staff in the proposed classroom space designated for music and gymnastics."
59. ANC 3C's resolution of January 27, 2003 also stated that "numerous surrounding neighbors, especially those living on Ordway Street next to and across from NCRC, have expressed objection to the proposed new building due to adverse impacts resulting from diminished sunlight...."
60. The Board finds that the proposed new construction at the child development center is located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. The Applicant has addressed potential adverse noise impacts by indicating its intent not to use amplified sound outdoors, and by relocating mechanical equipment away from neighboring residences and behind a roof enclosure to muffle the associated sound. The Board is not persuaded that other conditions described by the ANC or parties in opposition constitute objectionable conditions. The light and air impacts of the new construction will be minimal, given the large proportion of the lot that will remain open and considering the siting, height, and massing of the new construction projects, which will be smaller than development permitted as a matter of right on the subject property.

61. The Board finds that no special treatment in the way of design, screening of buildings, or planting, beyond that proposed by the Applicant, will be necessary to protect adjacent and nearby properties.

Harmony with Zoning

62. The subject property is zoned R-1-B. 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.
63. The new construction projects will conform to applicable zoning requirements with respect to lot occupancy, height, bulk, and side and rear yards.
64. The Board finds that, with respect to the proposed new construction only, the requested 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.
65. The Board does not find that the new construction will create an "institutional campus" inappropriate in an area zoned for single-family residences. The size of the subject property, while large, has not increased, but remains a single lot in a neighborhood of relatively large lots. The principal building on the lot will remain the large Colonial Revival former residence, with smaller accessory buildings located at the rear. The Applicant's proposed design - which was found generally compatible with the residential character of Ordway Street and the historic district by HPRB - ensures that the new construction will not overwhelm the site.

CONCLUSIONS OF LAW AND OPINION

Procedural Issues

Before reaching the merits of this application, the Board will address three procedural issues raised by the ANC party and the parties in opposition concerning: (1) the Board's decision to reopen the record to consider the Applicant's construction-related requests separately from the Board's decision to deny the increases in enrollment and employees; (2) alleged *ex parte* communications between the Office of the Attorney General and Applicant's counsel; and (3) motions to disqualify the Chairman and vacate prior votes in which he participated.

1. The Reopening of the Record

By letter dated March 22, 2004, ANC 3C protested the "extraordinary" action of the Board "to rescind in part and reconsider in part" the decision made January 6, 2004 to deny the application in its entirety. The ANC mischaracterized the Board's action as a reconsideration. This is not the case. A decision is not final until the written order is filed in the record and served on the

parties. 11 DCMR § 3125.6. Until the decision becomes final, the Board may deliberate as many times as it finds necessary; nothing in the Board's Rules of Practice and Procedure limits the number of decision meetings permitted to decide an application. The Board often conducts several decision meetings on complex applications, and may revisit a vote prior to issuing a final written decision.⁸

2. Alleged Ex Parte Contacts.

The Board finds no merit in the motion filed by the parties in opposition concerning alleged *ex parte* communications between the Applicant's counsel and the Office of the Corporation Counsel (now the Office of the Attorney General). As the Applicant correctly noted, there were no improper *ex parte* communications between the Applicant or its counsel and members of the Board, and communication with the Office of the Attorney General is not prohibited *ex parte* communication.

The Board is required to make its decision on an application on the exclusive record of the proceeding before the Board. 11 DCMR § 3127.2. The Board may seek and receive legal advice from the Office of the Attorney General at any time. 11 DCMR § 3102.4. The Zoning Commission Procedures, 11 DCMR § 3000 *et seq.*, which are also applicable to the Board, provide that in "any proceeding that is a contested case ... *all members of the Commission* shall be prohibited from receiving or participating in any *ex parte* communication relevant to the merits of the proceeding." 11 DCMR § 3023.1 (emphasis added).

Because the Office of the Attorney General ("OAG") is not a member of the Board – and is not a trier of fact or decision-maker in this proceeding – no communication with OAG can constitute an *ex parte* communication within the meaning of the Board's rules. The rules prescribe an advisory function for OAG, which does not, and cannot, substitute for the decision-making role of the Board. Thus, any materials provided by a party to OAG are not improper *ex parte* communications and do not compromise the fairness of a contested case so long as the decision issued by the Board is properly based on "consideration of [the] exclusive record" compiled during the administrative proceeding. D.C. Official Code § 2-509 (2001).

3. Motion to Disqualify the Chairman and to Vacate Decisions.

On July 27, 2004, immediately prior to the Board taking up the Motion to Disqualify, the Chairman of the Board of Zoning Adjustment prospectively disqualified himself from the case. The Chairman's decision mooted the Motion to the extent it sought prospective disqualification, but left to be decided its request to make the disqualification apply retroactively and vacate the Board's prior decisions in this case. Removing the Chairman's past votes would result in the reinstatement of the Board's January 6, 2004 decision to deny all aspects of the application, including the portion requesting permission to undertake new construction.

⁸ See, e.g., Application No. 16875 (March 1, 2004) and *Gage v. D.C. Board of Zoning Adjustment*, 738 A.2d 1219, 1221 (D.C. 1999).

The Board finds that the Motion and all materials offered in its support present no basis for disqualification or vacating the earlier votes.

The District of Columbia Court of Appeals has held that:

There is no controlling statute or board regulation governing the disqualification of board members. In order to insulate the administrative process and its decision makers from prejudice and bias, it has generally been recognized that the same rules requiring the recusal of judicial officers are applicable to administrative officers who act in an adjudicative or quasi-judicial capacity. . . . In the absence of a statute providing otherwise, a judge must recuse himself when his alleged bias arises from a source outside the "four corners of the court-room," and results "in an opinion on the merits on some basis other than what a judge learned from his participation in the case."

Morrison v. D.C. Board of Zoning Adjustment, 422 A.2d 347, 349 (D.C. 1980) (citations omitted). A legally sufficient claim of personal bias requires that: (i) the facts (alleged) must be material and stated with particularity; (ii) the facts must be such that, if true, would convince a reasonable person that a bias exists; and (iii) the facts must show the bias is personal, as opposed to judicial, in nature. *In re Bell*, 373 A.2d 232, 234 (D.C. 1977); *Vann v. D.C. Board of Funeral Directors and Embalmers*, 441 A.2d 246, 250 (D.C. 1982).

The Board is not persuaded that the parties in opposition have stated a legally sufficient claim of personal bias by the Chairman in this proceeding that would warrant his disqualification. The facts alleged by the parties in opposition indicate that the Chairman was acquainted with a person with an affiliation to the Applicant, but the only evidence of a relationship beyond a potential chance encounter of people active in their community occurred after the hearing was completed, the record was closed, and the Board had voted on the application. The Board does not find that the facts alleged by the parties in opposition, if true, would convince a reasonable person that a bias existed by the Chairman in support of the Applicant. The Chairman conducted all proceedings in a manner that was fair to all parties, consistent with the role of the presiding officer as set forth in § 3117.3 of the Zoning Regulations. The Chairman did not "advocate" on behalf of the Applicant during the Board's deliberations but stated his own findings and opinions based on the evidence in the record compiled by the Board.

Even if disqualification were warranted, there is no basis to vacate the prior votes. The United States Supreme Court has held, under analogous circumstances, that a determination of whether a vote should be vacated is based on three factors: (i) the risk of injustice to the parties in the case; (ii) the risk that denial of the relief will produce injustice in other cases; and (iii) the risk of undermining the public's confidence in the judicial process. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864; 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988). The Board finds no risk of injustice to the parties in this proceeding based on its conclusion that the public hearing and decision meetings were conducted properly and were not tainted by any alleged bias on the part of the Chairman. The Board compiled a voluminous record and conducted numerous public hearing sessions and decision meetings in consideration of this application, allowing full participation by all parties and ample discussion of the merits of the Applicant's requested

zoning relief by all participating members of the Board. Similarly, the Board finds no reason to conclude that a decision not to vacate certain votes in this case would risk producing injustice in any other case, or would undermine the public's confidence in the process implemented by the Board. Rather, the Board's adherence to its Rules of Practice and Procedure and the prospective recusal of the Chairman in this case demonstrate the Board's commitment to ensuring that the process is fair and impartial, avoiding even the appearance of impropriety.

The Board's vote to deny this motion was unanimous, with all three remaining Boardmembers voting in favor of denial. Included in that tally was the vote of Boardmember Etherly, who consistently opposed all aspects of this application throughout the Board's deliberations. Indeed it was Mr. Etherly who cast the lone dissenting vote at the Board's April 13, 2004 decision to approve the construction. If anyone would have been cognizant of bias in favor of the Applicant during the Board's deliberations it would have been Mr. Etherly. The fact that Mr. Etherly voted against retroactive disqualification, notwithstanding his opposition to approval of the construction, is indicative of the fairness and impartiality that characterized the Board's actions throughout this difficult and acrimonious case.

The Merits

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations. Pursuant to those § 3104.1 of those regulations, the Board must find that 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.

The specific conditions that apply to child development centers are found at 11 DCMR § 205, which provides that a child development center must be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children, and must provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. 11 DCMR §§ 205.3, 205.4. The center, including any outdoor play space, must be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. 11 DCMR § 205.5.

The Applicant seeks a modification of an approved special exception, under the conditions specified in 11 DCMR § 205, to (i) construct an addition to an existing building, a new accessory building, and a replacement maintenance shed, and (ii) to increase enrollment from 120⁹ to 185 children, ages 2½ to 5 years, and increase the number of employees from 28 to 44 in an expansion of an existing child development center use in the R-1-B district at 3209 Highland Place, N.W. (Square 2072, Lot 30).

⁹ As will be explained and rejected *infra*, the Applicant contends there no enrollment cap, but has offered to voluntarily adhere to a cap of 171 children, provided it can increase that amount by 15.

The Applicant is currently operating under a Board order that found all of these elements had been met. The question before the Board is whether the modifications sought would alter these findings. For the reasons stated below, the Board finds that the Applicant has failed to meet its burden with respect to the requested increases in enrollment and employees, but has met its burden with respect to the new construction proposed.

I. Increases in Children Enrolled and Employees

A. Is there an enrollment cap?

When an applicant seeks to increase a number of some kind (students, employees etc), the Board normally assumes that the applicant believes that such a numeric limitation actually exists. Not here. The application was originally phrased as a request for expansion of an existing child development center permitted to serve "120 children, ages 2½ to 5 years, *at any one time*" (emphasis added). The italicized language reflected the Applicant's contention that there is no limit on the total number of children who may be enrolled in NCRC, just on the number who may be at the subject property at any one time.

If, as the Applicant claims, there has never been an enrollment cap imposed, it would seem to follow that there is nothing to be increased. Yet, throughout these proceedings the Applicant has insisted it is seeking just such relief. Specifically, the Applicant characterizes its request as the addition of 10 children to achieve a base enrollment of 181. Subtracting the former from the latter results in an enrollment of 171, a figure not derived from any past decision of the Board, but identical to the Applicant's current enrollment. NCRC's contradictory positions can perhaps be reconciled as constituting an offer to establish an enrollment cap of 171, coupled with a request to increase that amount by 10 (actually 15)¹⁰ children. However, there is no need for the Applicant's offer, since an enrollment cap of 120 children has existed since 1998.

The Board is not persuaded by the Applicant's contentions that there is no limit on total enrollment at the child development center at the subject property, or that the reference to 120 children in Application No. 16307 applies to the number of preschoolers who may attend the child development center at any one time. Rather, the reference to 120 children must be read as the maximum number of children who may be enrolled at the child development center on the subject property, whether all are in attendance at the same time or not.

The initial order in Application No. 16307 (issued June 17, 1998) specifically adopted a condition stating that "[t]he maximum number of children shall not exceed 120." The second order in Application No. 16307 (issued upon rehearing on March 3, 1999) adopted nine conditions, none of which addressed the number of children permitted at the child development facility. The Applicant contends that the second order superseded the first, and that therefore no cap on enrollment was adopted as part of the Board's final order. However, even if the first

¹⁰ A request for the unbridled flexibility to add 5 children above the 10 to be initially enrolled is a convoluted way of asking for an enrollment increase of 15.

order was superseded, the decision reflected in the second order was premised on an application for a child development center with a maximum enrollment of 120 children. Although not expressly adopted as a condition in the second order in Application No. 16307, the fact that the application proposed a child development center limited to 120 children was central to the special exception that was requested and granted in Application No. 16307.

The Board rejects as without merit the Applicant's assertion that an application to establish a child development center for 120 children does not entail any limit or restriction on enrollment. Rather, approval of an application to establish a child development center for 120 children necessarily restricts the total number of children who may use the child development center *at all times* to a maximum of 120.

Nor is the Board persuaded by the Applicant's contention that the reference to 120 children in Application No. 16307 indicated a limit on on-site capacity rather than total enrollment. The Applicant requested approval of a child development center for 120 children but did not specify an intention to request approval for 120 children on-site *at any one time*. The Board's long-standing practice has been to adopt a cap on total enrollment¹¹ unless another measure is specified.¹² The maximum total enrollment, and not just the number on-site at any one time, is a

¹¹ In many instances, the Board adopts a condition specifying the maximum number of children who may use a given child development facility. An unqualified maximum – because its application or meaning is not specifically limited to, for example, the maximum number on-site at any one time – refers to the maximum total enrollment. *See, e.g.*, orders approving child development centers in Application No. 16446 (Jun. 23, 1999) (“the total number [of] children to be enrolled ... would be 50,” where current enrollment was 36); Application No. 16357 (Aug. 7, 1998) (“shall not exceed a maximum of 100 children”); Application No. 16344 (Aug. 9, 1998) (“[t]he number of children shall not exceed 30,” where “20 children would be enrolled in the center’s all day program and 10 would be enrolled in the before and after school program”); Application No. 15456 (Aug. 16, 1991) (“[t]he number of children at the facility shall not exceed 50,” where the applicant sought to “serve up to fifty children”); and Application No. 14272 (May 25, 1985) (“number of students shall not exceed seventy-five,” where current enrollment was 62).

In some instances, a cap on maximum enrollment, and not a limit on occupancy at any one time, is necessarily inferred from the circumstances of the particular child development center. The parameters specified in a request for approval – a relatively large number of children in a range of ages, a limited area devoted to child development center use, small staff, and long hours of operation – indicate that the Board contemplated that not all the authorized number of children would be at the facility at any given time, but that a maximum total number of children who could be enrolled in a facility should be specified for purposes of evaluating any potential adverse impacts associated with operation of the child development center. *See, e.g.*, orders approving child development centers in Application No. 16413 (Jan. 14, 1999) (100 children, ages from infancy to 12 years old, with 20 staff, operating from 7:00 a.m. until 6:00 p.m. in the basement and first floor of an apartment building housing a transitional living program); Application No. 16337 (Jul. 2, 1998) (80 children, ages infant to five years, with a maximum of eight staff, operating from 6:00 a.m. until 7:00 p.m.); Application No. 16183 (Feb. 21, 1997) (100 children, ages 33 months to 9 years, with 18 staff, operating from 6:00 a.m. until 7:00 p.m. in 10,300 square feet of space); Application No. 16147 (Oct. 11, 1996) (155 children, ages infant to 14 years, with 14 staff, operating from 6:00 a.m. until 6:30 p.m.); Application No. 14943 (Feb. 24, 1989) (77 children, ages 2 to 14, and 11 staff, operating from 7:00 a.m. until 6:00 p.m. on the ground floor of an apartment building); Application No. 14651 (Aug. 11, 1987) (40 children and 8 staff, open from 7:00 a.m. until 6:00 p.m., using 2,260 square feet on the ground floor of an apartment building); and Application No. 14641 (Sept. 17, 1987) (50 children, ages 2 to 15, and five staff, housed in a church basement).

¹² *See, e.g.*, orders approving child development centers in Application No. 16915 (Mar. 21, 2003) (“[e]nrollment shall be limited to a maximum of 23 children...on site at any one time”); Application No. 16657 (Jun. 15, 2001)

fact relevant to and necessary for findings the Board is required to make under the Zoning Regulations, especially when assessing all potential adverse impacts, such as those relating to traffic and parking, and when considering whether a given child development center will tend to affect adversely the use of neighboring property.

To accept the Applicant's argument in this regard would be tantamount to recognizing a distinction between total enrollment and on-site enrollment where none exists for the purposes of assessing adverse impacts. Both numbers can and do have consequences for the analysis of adverse impacts. For example, while an entity may have an on-site cap of 120 at any one time, an unlimited total enrollment number could mean that parents, faculty and other personnel associated with those students who may not be on-site at a given time might nevertheless still be on the property for various and sundry business and thereby contributing impacts that would require review.

The Board concludes that as of June 17, 1998 (the effective date of BZA Order 16307) and ever since the maximum authorized enrollment at NCRC has been 120 children, ages 2½ to five years.

B. Ramifications of Applicant's Non-Compliance with Enrollment and Staffing Caps.

Contrary to the position taken by the ANC and the parties in opposition, the fact that the number of children enrolled and persons employed exceeds the limitations set by the Board does not, alone, furnish grounds to deny this application. The scope of the Board's authority is defined by section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07 (2001 ed.)) and the Zoning Regulations. See *Spring Valley Wesley Heights Citizens Ass'n. v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 434, (D.C. 1994). Courts are "reluctant to read into a statute powers for a regulatory agency which are not fairly implied from the statutory language, since the agency is statutorily created." *Chesapeake & Potomac Tel. Co. v. Public Service Comm'n of District of Columbia*, 378 A.2d 1085, 1089 (D.C.1977)". *Id.* at 436.

Pursuant to Section 8 of the Zoning Act of 1938, the Board may grant special exceptions when permitted by the Zoning Regulations "subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations." D.C. Official Code § 6-641.07(d) (emphasis added). There is no principle, standard, rule, condition, or safeguard set forth in the Zoning Regulations that makes noncompliance with a granted special exception grounds for denying a request for its modification. Although the Board can include in its orders a condition

("may enroll up to 30 children" provided that "[t]here shall be no more than 25 children present at the center at any one time"); Application No. 16501 (Oct. 22, 1999) ("the maximum number of children to be enrolled at the center at any one time shall be 100; however the maximum number of children to be at the premises at one time shall be 80"); Application No. 15670 (Mar. 7, 1994) ("number of students shall not exceed 65 children during a 24-hour period"); Application No. 15559 (Dec. 4, 1991) ("number of employees on-site shall not exceed three"); Application No. 14943 (Feb. 24, 1989) (rejecting proposed condition limiting "the number of children permitted to use the outdoor play area at any one time"); and Application No. 12239 (Mar. 15, 1977) ("[t]he average attendance is twenty (20) to twenty-five (25) students and the enrollment constitutes pre-schoolers, elementary school students and Junior High students").

making proof of compliance a prerequisite to the grant of further zoning relief (as the Board customarily did in campus plan orders), the Board did not do so in its order granting Application No. 16307.

This is not to say that the Applicant's noncompliance is irrelevant. With respect to both its enrollment and employees, the Applicant seeks increases above the current unauthorized levels. As a threshold matter, the Board cannot consider such requests unless the Applicant shows that its unauthorized level of operation is not resulting in adverse impacts. For the Board to focus solely on predicting the adverse impacts of increases above the unauthorized student and staffing levels, while ignoring the adverse impacts caused by the noncompliance, would skew its analysis, reward noncompliance, and make permanent any adverse conditions caused by the misconduct.

C. Are the Applicant's Current: Unauthorized Enrollment and Staffing Levels Causing Adverse Impacts?

Based on the findings of fact, the Board concludes that the current operation of the child development center at the subject property is generating adverse impacts on the use of neighboring property, particularly with respect to traffic congestion and unsafe driving and parking practices and that these conditions are the direct result of the Applicant's exceeding the limits on enrollment and employees established by the Board.

Traffic. The lack of a dedicated area for a queue of preschool-related traffic has become a significant problem as a result of the Applicant's noncompliance with the enrollment and staffing limitations previously adopted by the Board. While the unsafe traffic situation has been further exacerbated by poor compliance with provisions of the Applicant's traffic management plan, the Board cannot find that even total compliance with the improved TMP would mitigate the objectionable traffic conditions presently caused by NCRC, particularly in light of the narrow residential streets in question and the lack of safe pedestrian access in the vicinity of the subject property. The Board credits DDOT's conclusion that implementation of the Applicant's improved TMP (one of three options proposed by DDOT to lessen the adverse traffic impacts associated with current operation of the child development center at the subject property) would not "provide a complete solution" to the existing unsafe traffic conditions on Highland Place.

Parking. The subject property is not required to provide parking on-site by virtue of its status as a property contributing to the character of a historic district. However, as a use permitted only by special exception, this child development center could not have been approved unless the Board found that the proposed use did not tend to affect adversely the use of neighboring property, including with respect to parking impacts generated by the child development center. Specifically, the Board was required to find that this child development center "provide[d] sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors." 11 DCMR § 205.4.

The Board finds that the Applicant's child development center, operating at its unauthorized current levels of enrollment and staffing, is creating adverse impacts related to parking,

principally because NCRC is not providing sufficient off-street parking spaces to meet the reasonable needs of employees and visitors to the subject property. Besides the need for short-term parking associated with student drop-offs and pick-ups, the child development center generates significant parking demand through its current 38 employees, the vast majority of whom drive to work; through occasional special events that attract many visitors to the site at the same time; and through a relatively large number of regular visitors to the subject property, including the consultants hired to work with students and the families of prospective students, who may attend tours or play sessions four or five times per week for five months of the school year, as many as eight families at a time. The adverse impact arising from the large demand for parking created by the Applicant's child development center use is exacerbated by characteristics of the surrounding neighborhood, particularly the scarcity of off-street parking on residential properties in the vicinity of the subject property and the competing demand for on-street parking created by other nearby uses, especially commercial activities on Connecticut Avenue and the Cleveland Park Metrorail station.

D. The Requests to Increase Enrollment and Staffing over the Current Unauthorized Levels.

When the Board last reviewed this use in 1999, it approved a child development center with a maximum enrollment of 120 children and a maximum staff of 28, and found no likely adverse impact at that level. However, NCRC now has 171 enrolled students and 38 employees and the Board finds compelling evidence in the record that these higher levels exert considerable and unacceptable pressures upon the surrounding residential community. It would not be logical for this Board to accept the contention that no relationship exists between the Applicant's noncompliance and the adverse impacts evidenced in the record. To both ratify this non-compliance and allow further increases in enrollment and staffing would be irresponsible. Such increases would only aggravate the objectionable traffic and parking conditions that currently exist by generating additional traffic and creating more demand for on-street parking by vehicles associated with operation of the child development center at the subject property.

The Applicant's requests to increase enrollment from 120 to 185 children and to increase staffing from 28 to 44 are denied.

New construction. The Applicant proposes to construct a new addition at the rear of the main building, a new accessory building known as the Carriage House, and a new maintenance shed that will replace a smaller existing shed. Based on the findings of fact, in particular that the new construction will be in harmony with the zone plan and will not tend to affect adversely the use of neighboring property due to noise, activity, visual, or other objectionable conditions, the Board concludes that the requested special exception for new construction to expand the child development center use should be granted.

The new construction projects proposed by the Applicant would not have a significant effect on traffic or parking. After completion of the new Carriage House, students using that building will arrive at and depart from the subject property via the stairs at the rear of the lot on Ordway Street, thereby moving a portion of the daily drop-off and pick-up activities from Highland Place to Ordway Street. The Board concludes that the minimal changes in preschool-related traffic and

parking associated with the new construction will not create additional objectionable traffic impacts or tend to affect adversely the use of neighboring property.

The parties in opposition have argued that the new construction and the requested enrollment increases are economically codependent on each other, so that the Board should not deny one without denying the other. This argument seems driven by a concern that the Applicant may later claim that because the Board approved construction intended to support a higher enrollment and because the approval was granted so close to the expiration of the underlying special exception, the Board will be estopped from denying future requests to increase enrollment and staffing and/or to renew NCRC's special exception once the construction is completed.

Estoppel requires good faith reliance and there is no basis for such reliance to exist in this instance. The Board wishes to make it very clear that it is up to the Applicant to determine whether it should undertake the approved construction based upon an enrollment limit of 120 and whether it makes sense to do so this far into the special exception term. That a decision to go forward may later turn out to be a poor one will be of no relevance to the Board when considering in any future proceedings involving this use. What will matter is whether the Applicant succeeds in alleviating the adverse conditions it has caused.

Additional Relief. In light of the Board's finding that the proposed new Carriage House will be accessory to the main building 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.¹³ No variance or special exception relief was required from on-site parking requirements in light of the Board's finding that § 2100.5, concerning an exemption from parking for buildings certified as contributing to a historic district, applies to the subject property as a whole.

ANC Issues and Concerns. The Board accorded ANC 3C the "great weight" to which it is entitled. In doing so, the Board fully credited the unique vantage point that ANC 3C holds with

¹³ The Board finds that no special exception under § 2516 is required in this instance because the Applicant is proposing to construct an accessory building, rather than a new principal building on the same lot as the existing main building; the Board rejects the Applicant's argument that § 2516 is inapplicable to a child development center use. 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 child development centers (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.

The Board finds no merit in the Applicant's assertion that the Board did not apply § 2516 when deciding Application No. 16307. That application, unlike the present one, did not involve any new construction, but rather the continuation and expansion of an established use in the already-constructed main building and Playhouse.

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respect to the impact of the proposed expansion of the existing child development center use on the ANC's constituents. The Board credits the ANC's testimony that the Applicant's proposal to increase student enrollment and staffing would exacerbate existing traffic and parking problems. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the proposed new construction would create adverse impacts due to noise, traffic, or parking; would obstruct light and air to neighboring properties; or would impair the purpose and intent of the zone plan. The Board notes that the ANC itself did not assert that the proposed new construction would be objectionable, but indicated only that "neighbors" had complained or objected to certain aspects of the application.

CONCLUSION

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to that part of the application seeking approval of certain proposed new construction but not with respect to proposed increases in student enrollment or number of employees at the subject property. It is hereby **ORDERED** that the application is **GRANTED** in **PART** and **DENIED** in **PART**. Approval is granted subject to the conditions adopted by the Board in Application No. 16307 (March 9, 1999), which remain in effect.

VOTE: 3-1-1 (Curtis L. Etherly, Jr., David A. Zaidain, and Anthony J. Hood voting to deny the application; Geoffrey H. Griffis opposed; Ruthanne G. Miller, not voting, having recused herself)

VOTE: 3-1-1 (Geoffrey H. Griffis; David A. Zaidain, and Anthony J. Hood voting to approve the application with respect to proposed new construction only; Curtis L. Etherly, Jr., opposed; Ruthanne G. Miller, not voting, having recused herself)

VOTE: 3-0-2 (Curtis L. Etherly, Jr., Anthony J. Hood, and David A. Zaidain voting to deny the motion to disqualify the Chairman and vacate decisions; Geoffrey H. Griffis and Ruthanne G. Miller not voting, having recused themselves)

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

Board members Curtis L. Etherly, Jr., Anthony J. Hood, and David A. Zaidain have approved the issuance of this Order.

FINAL DATE OF ORDER: MAR 29 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.

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

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

Application No. 17291 of Mark Bailen and Jessica Rosenworcel, pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio requirements under section 402, and the nonconforming structure provisions under subsection 2001.3, to allow an addition to an existing row dwelling in the DC/R-5-B District at premises 1410 21st Street, N.W. (Square 68, Lot 848).

HEARING DATE: March 15, 2005
DECISION DATE: March 15, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2B, 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 2B. ANC 2B submitted a letter in support of the application. OP submitted a report noting that it cannot recommend approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 402 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party,

and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-0-1 (Curtis L. Etherly, Jr., Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann, II 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: March 15, 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

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

Application No. 17293 of Kevin and Dawn Mixon, pursuant to 11 DCMR § 3103.2, for a variance from the parking space location requirements under subsection 2116.2, to allow the construction of a new single-family dwelling (with two (2) parking spaces in the front yard) in the R-1-A District at premises 2846 Davenport Street, N.W. (Square 2258, Lot 81).

HEARING DATE: March 29, 2005
DECISION DATE: March 29, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F, 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 3F. The ANC submitted a report in support of the application. The OP submitted a report in support of the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2116.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

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

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

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

FINAL DATE OF ORDER: MAR 29 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

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

Application No. 17294 of Patrick J. Browne, Jr., pursuant to 11 DCMR § 3104.1, for a special exception to allow a two-story rear addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403), in the CAP/R-4 District at premises 326 2nd Street, S.E. (Square 763, Lot 30).

HEARING DATE: March 29, 2005
DECISION DATE: March 29, 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 Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

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

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

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: March 29, 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. 17296 of EVTIYON LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and a variance from the residential recreation space requirements under subsection 773.7, to allow the construction of a mix-use (commercial/residential) building in the C-2-A District at premises 1302 9th Street, N.W. (Square 367, Lot 835).

Note: The Board amended the application at the hearing to require a variance from the residential recreation space requirements under subsection 773.7.

HEARING DATE: March 29, 2005
DECISION DATE: March 29, 2005 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

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

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

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 2101.1 and 773.7, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

APR 8 - 2005

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

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

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

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

FINAL DATE OF ORDER: March 30, 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

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

ZONING COMMISSION NOTICE OF FILING

Case No. 05-12

(Text Amendment -- Hostelling International USA)

March 21, 2005

THIS CASE IS OF INTEREST TO ALL ANCs

On March 16, 2005, the Office of Zoning received an application from Hostelling International USA (the "petitioner") for approval of a text amendment to the Zoning Regulations.

The petitioner is proposing changes to sections 199, 512, 701.6(h), 801.6, 601.1(d), 901.1(d), and 1706.20

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

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