

Notice of Request for Proposal**Academy Bilingual Community**

The proposed Academy Bilingual Community Charter School, in compliance with Section 22404 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits proposals for the following services for the school:

- I. **Auditing:** Services to conduct the audit in accordance with auditing standards generally accepted in the U.S and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements.
- II. **Printing Services:** For the 2005-2006 school years. (Copies per year 20,000)
- III. **Computer Support:** To provide superior computer services. Providing a wireless plan, internal server, remote capability, and an IT tech as well as other services.
- IV. **Cleaning Service:** Service to maintain a neat clean environment for the schools staff and students. Area needed to be cleaned is 15,000 sq ft.
- V. **Food Services:** Catering for breakfast (about 75 students) Catering for Lunch (about 150 students) Catering of snacks (about 150 students) and 60% free/reduced lunch. The meals must meet or exceed federal nutrition requirements and all compliance standards of the USDA. (All bid proposals must be submitted in the National School Lunch Program Format).
- VI. **Special Needs:** Services to provide: Multi-disciplinary Team to conduct evaluations/ re-evaluations as back-up to the in-house clinical team, Counseling for up to 16 students, Occupational Therapy for up to 16 students, Speech and Language for up to 16 students., and Support and Compliance level one.
- VII. **Computer Purchase:** Superior service for the purchase of laptops and desk computers.

Additional information can be obtained by calling 202-669-6345. Deadline for submissions is June 24, 2005 at 5PM

005987

NOTICE OF REQUEST FOR PROPOSALS**Aim Public Charter School**

The proposed Aim Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest for the following services and products for the school:

- I. Auditing:** Services to conduct the audit in accordance with auditing standards generally accepted in the U.S and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements.
- II. Copiers:** Needed for the 2005-2006 school year. (About 20,000 copies per year).
- III. Computer Support:** To supply superior computer support for the 2005-2006 school year. Service includes wireless plan, internal server, remote capability, IT representative and other services.
- IV. Cleaning Service:** To maintain a neat and clean environment for the students and staff. Area needed to be cleaned is about 27,000 sq ft, has three bathrooms, and three floors.
- V. Food Services:** Catering for breakfast (approx. 75 students) Catering for Lunch (approx. 75 students) Catering of Snacks (approx 85 students). The meals must meet or exceed federal nutrition requirements and all compliance standard of the USDA. School Breakfast Program and the National School Lunch Program. **(All bid proposals must be submitted in the National School Lunch Program Format).**
- VI. Special Needs:** Multi- disciplinary Team to conduct evaluations/re-evaluations as back-up to the in-house clinical team, Counseling, Occupational Therapy, Speech/Language Therapy (17%-20% students).
- VII. Computer Sales:** Superior service for the purchase of laptop and desktop computers.

Additional Information can be obtained by calling 202-669-6345. Deadline for Submissions is June 24, 2005 at 5PM

005988

NOTICE OF REQUEST FOR PROPOSALS**ALTA Public Charter School**

The proposed Alta Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act "), hereby solicits expressions of interest for the following services and products for the school:

I. Auditing Services Sought:

Services to conduct the audit in accordance with auditing standards generally accepted in the United States of America and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining on a test basis, and evidence supporting the amounts and disclosures in the financial statements.

II. Copiers:

Needed for the 2005-2006 school year. (copies per year 20,000)

III. Computer Support: Superior service to provide a wireless plan, IT tech, remote capability, hardware needs, and other computer services to the school.

IV. Cleaning Services: Service to maintain a neat environment for staff and students. The area needed to be serviced is 30,000 sq ft.

V. Food Services: Catering for breakfast (about 50-60) students Catering for Lunch (about 100-120 students) and (about 65% free/reduced lunch) for the 2005-2006 school year. The meals must meet or exceed all federal nutrition requirements and all compliance standards of the USDA School Breakfast Program. Vendors are required to deliver meals to schools. **(Bid proposals must be submitted in the National School Lunch Program Format).**

.VI. Computer Sales: Superior services for the purchase of laptop and desktop computers.

For additional information call: 202-669-6345. Deadline for submissions is June 24, 2005 at 5PM

005989

**The Arts & Technology Academy Public Charter School
Request for Proposals**

The Arts & Technology Academy Public Charter School located in the District of Columbia is seeking competitive proposals for Bond Counsel Services. The amount of new construction is currently estimated in the range of 40,000 square feet and construction cost is estimated at 7.75 million. The bidder must have prior experience in municipal bond structuring and closing, in the District of Columbia. A copy of the RFP can be obtained on or after June 20, 2005. All proposals must be submitted by noon July 1, 2005. The RFP can be obtained by contacting Ann Drummie of Brailsford & Dunlavey at (202) 289-4455 or adrummie@facilityplanners.com.

005990

NOTICE OF REQUEST FOR PROPOSALS:

Capitol City Charter School

The proposed Capitol City Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from Food Service and Special Needs for the following products and services for the school.

I. Food Services sought:

Catering of daily Breakfast (approx. 35 students)

Catering of daily Lunches (approx. 115 students)

(Bid proposals must be submitted in the National School Lunch Program Format)

II. Special Needs Services Sought:

Occupational Therapist (for 81 students)

Speech and Language Therapy (for 81 students)

Psyco- Educational Evaluations (for 81 students)

III. Computer Purchase : For the purchase of superior laptop and desktop computers.

IV. Auditing Service Sought: Service to conduct the audit in accordance with auditing standards generally accepted in the United States and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements.

For Additional Information Call 202-669-6345. Deadline for Submissions is June 24, 2005 at 5PM.

005991

Notice of Request for Proposal**City Lights**

The proposed Academy Bilingual Community Charter School, in compliance with Section 22404 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits proposals for the following services for the school:

- I. **Auditing:** Services to conduct the audit in accordance with auditing standards generally accepted in the U.S and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements.
- II. **Printing Services:** For the 2005-2006 school years. (Copies per year 20,000)
- III. **Computer Support:** To provide superior computer services. Providing a wireless plan, internal server, remote capability, and an IT tech as well as other services.
- IV. **Cleaning Service:** Service to maintain a neat clean environment for the schools staff and students. Area needed to be cleaned is 15,000 sq ft.
- V. **Food Services:** Catering for breakfast (about 75 students) Catering for Lunch (about 150 students) Catering of snacks (about 150 students) and 60% free/reduced lunch. The meals must meet or exceed federal nutrition requirements and all compliance standards of the USDA. (All bid proposals must be submitted in the National School Lunch Program Format).
- VI. **Special Needs:** Services to provide: Multi-disciplinary Team to conduct evaluations/ re-evaluations as back-up to the in-house clinical team, Counseling for up to 16 students, Occupational Therapy for up to 16 students, Speech and Language for up to 16 students., and Support and Compliance level one.
- VII. **Computer Purchase:** Superior service for the purchase of laptops and desk computers.

Additional information can be obtained by calling 202-669-6345. Deadline for submissions is June 24, 2005 at 5PM

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NOTICE OF REQUEST FOR PROPOSALS

E.L Haynes Public Charter School

The proposed E.L Haynes Public Charter school in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from the following services and products for the school.

- I. **Auditing:** Services to conduct the audit in accordance with auditing standards generally accepted in the United States of America and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements.
- II. **Accounting:** Needs superior service in creating of an organizational budget, periodic preparation of financial statements to school authorizer, and bookkeeping.
- III. **Computer support:** Superior Service to provide a wireless plan, internal server, remote capability, IT tech and other computer services.
- IV. **Custodial Support:** Cleaning services needed to keep the school neat and clean. The area needed to be serviced is 16,000 sq ft, has 1 floor and 3 bathrooms.
- V. **Food Service:** Catering of breakfast (approx. 41-49 students) Catering of Lunch (approx. 99-118 students) Catering of snacks (about 98-100 students). For the 2005-2006 school year. The meals must meet or exceed federal nutrition requirements and all compliance standards of the USDA School Breakfast program. Vendors will be required to deliver meals to the schools. **(All bid proposals must be submitted in the National School Lunch Program format).**
- VI. **Computer Sales:** Superior service for purchase of laptop and desktop computers.

For Additional Information call: 202-669-6345. Deadline for submissions is June 24, 2005 at 5pm

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the Environmental Health Administration located at 51 N Street, N.E., Washington, DC. Intends to issue a permit to construct and operate one (1) 80 KW backup generator at Building 46, Fort Lesley J McNair on 4th and P Street, SW., in the District of Columbia.

The application to construct and operate the generator is available for public inspection at AQD and copies may be made between the hours of 8:A. M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olaniyan Tajudeen, at (202) 535-2998.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington D.C. 2002. **No written comments postmarked after July 24, 2005 will be accepted.** The written comments must also include the person's name, telephone number, affiliation, if any mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Olaniyan Tajudeen at (202) 535- 2998.

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NOTICE OF REQUEST FOR PROPOSAL

Kipp Key Academy Charter School

The proposed Kipp Key Academy Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from the following services and products for the school.

I. Business Service: In the area of accounting for organizational budgeting, development of financial reporting statements, accounting, execution of payroll, and Monitoring of expenditures and accounts.

II. Cleaning Services: To maintain a neat and clean environment for our staff and students. Area needed to be cleaned is about 27,000 sq ft , has 1 floor and 4 bathrooms.

III. Special Needs: Services needed to provide school with Multi- Disciplinary Team to conduct evaluations/re-evaluations as back-up to the in-house clinical team, Counseling, Occupational or Physical Therapy for students, Speech and Language therapy and Support and Compliance Level one.

IV. Food Services: Catering of Breakfast, lunch, and snacks for about 320 students. The meals must meet or exceed all federal nutrition requirements and all compliance standards of the USDA School Breakfast Program. National Vendors are required to deliver meals to the school. **(All bid proposals must be submitted in the National School Lunch Program Format.)**

V. Computer Sales: Superior service for the purchase of laptop and desk top computers .

VI. Auditing: Services to conduct the audit in accordance with auditing standards generally accepted in the United States and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements.

For Additional Information Call: 202-669-6345. Deadline for submissions is June 24, 2005 at 5pm

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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF APPOINTMENT OF ACTING COMMISSION SECRETARY OF THE
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

June 15, 2005

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of the appointment of Freda A. James as Acting Commission Secretary, effective June 2, 2005. Ms. James has been employed at the Commission since May 1982. Her first position was as an Auditor in the Office of Accounting and Finance. In August 1992, Ms. James became Deputy Commission Secretary. In that position, her responsibilities have included a wide variety of administrative areas.

All parties of record shall address future filings and correspondence to Freda A. James, Acting Commission Secretary. Notice of this appointment has been submitted to the *D.C. Register* and has been served on the parties of record in those proceedings listed in the Appendix attached hereto.

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APPENDIX TO NOTICE OF APPOINTMENT

Formal Case No. 712, In The Matter of The Investigation Into the Commission's Rules of Practice And Procedures;

Formal Case No. 766, In Matter of The Commission's Fuel Adjustment Clause Audit And Review Program;

Formal Case No. 813, In The Matter of The Potomac Electric Power Company Filing of The 1991 Updated Schedule of The Cogeneration-Small Power Producer;

Formal Case No. 814, Phase IV, In The Matter of The Investigation Into the Impact of The AT&T Divestiture And Decisions of The Federal Communications Commission on Verizon Washington, DC Inc.'s Jurisdictional Rates;

Formal Case No. 828, In The Matter of The Application of The Chesapeake And Potomac Telephone Company For Authority To Amend The General Services Tariff, No. 203 To Implement Tariff Changes For New Centrex Offerings;

Formal Case No. 850, In The Matter of The Investigation Into The Reasonableness of The Authorized Return on Equity, Rate of Return, And Current Charges And Rates For Telecommunications Services Offered By The Chesapeake And Potomac Telephone Company;

Formal Case No. 874, In The Matter of Gas Acquisition Strategies of Washington Gas Light Company, District of Columbia Division;

Formal Case No. 892, In The Matter of The Approval of Competitive Local Exchange Carriers To Provide Telecommunications Services In The District of Columbia;

Formal Case No. 922, In The Matter of Washington Gas Light Company, District of Columbia Division, Authority To Increase Existing Rates And Charges For Gas Service;

Formal Case No. 945, In The Matter of The Investigation Into Electric Service Market Competition And Regulatory Practices;

Formal Case No. 950, In The Matter of The Investigation Into The Payment Center Operations of Verizon Washington, DC Inc.;

Formal Case No. 962, In The Matter of The Implementation of The District of Columbia Telecommunications Competition Act of 1996 And Implementation of The Telecommunications Act of 1996;

Formal Case No. 977, In The Matter of The Investigation Into The Quality of Service of Washington Gas Light Company, District of Columbia Division, In The District of Columbia;

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Formal Case No. 988, In The Matter of The Development of Universal Services Standards And The Universal Service Trust Fund For The District of Columbia;

Formal Case No. 989, In The Matter of The People's Counsel's Complaint For A Commission-Ordered Investigation Into The Reasonableness of Washington Gas Light Company's Existing Rates And In The Matter of The Application of Washington Gas Light Company, District of Columbia Division, For Authority To Increase Existing Rates And Charges For Gas Service;

Formal Case No. 990, In The Matter of Development of Local Exchange Carrier Quality of Service Standards For The District;

Formal Case No. 991, In The Matter of The Investigation Into Explosions Occurring In or Around The Underground Distribution System of The Potomac Electric Power Company;

Formal Case No. 993, In The Matter of Operations Support Systems Testing In The District;

Formal Case No. 996, In The Matter of The Application of Washington Gas Light Company, District of Columbia Division, For A Certificate of Authority Authorizing It To Issue Debt Securities, Preferred Stock, And Common Stock;

Formal Case No. 999, In The Matter of The Complaint of The Office of The People's Counsel Against Powertrust.Com, Inc., Powertrust Energy Services, Inc., Powertrust Communications, Inc., And Powerline Technologies, Inc. And Petition For Investigation Into The Solicitation Practices of Natural Gas Suppliers;

Formal Case No. 1000, In The Matter of The Application of Verizon Washington DC Inc. For A Certificate of Authority Authorizing It To Issue Debt Securities;

Formal Case No. 1002, In The Matter of The Joint Application of Pepco And New Rc, Inc. For Authorization And Approval of Merger Transaction;

Formal Case No. 1005, In The Matter of Verizon Washington, D.C., Inc. Price Cap Plan 2002 For The Provision of Local Telecommunications Services In The District of Columbia;

Formal Case No. 1007, Notice of Public Comment And Hearing In The Matter of A Proposed Public Utility Emergency Relief Plan;

Formal Case No. 1008, In The Matter of The Investigation of Washington Gas Light Company's Billing Systems, Practices And Procedures;

Formal Case No. 1009, In The Matter of The Investigation Into Affiliated Activities, Promotional Practices, and Codes of Conduct of Regulated Gas and Electric Companies;

Formal Case No. 1012, In the Matter of the Application of Washington Gas Light Company for A Certificate of Authority Authorizing it to Issue Debt Securities and Preferred Stock;

Formal Case No. 1013, In the Matter of the Petition for Waiver by the Public Service Commission of the District of Columbia of Verizon Washington, DC Inc.'s Compliance with the Requirements of 15 D.C.M.R. 609.2 (g);

Formal Case No. 1014, In the Matter of the Investigation into the Payment Center Operation of Washington Gas Light Company District of Columbia Division;

Formal Case No. 1015, In the Matter of the Complaint and Petition for Relief of Metromedia Energy, Inc. Regarding Washington Gas Light Company Plan to Return Customers to Sales Service Effective February 1, 2003;

Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia;

Formal Case No. 1018, In the Matter of the Application of Potomac Electric Power Company for a Certificate Authorizing it to Issue and Sell Debt Securities, Including, but not Limited to, One or More Series of First Mortgage Bonds and/or One or More Series of Debtors and/or One or More Series of Notes and/or One or More Series of Hybrid Securities, and /or One or More series of Serial Preferred of Preference Stock (including Newly Created Classes or Preferred or Preference Stock and Serial Preferred) in an Aggregate Amount not to Exceed \$1,100,000, 000.00;

Formal Case No. 1019, In the Matter of the Request of Potomac Electric Power Company for Authority to Use New Solid State Meters;

Formal Case No. 1020, In the Matter of the Complaint of the Office of the People's Counsel for a Commission-Ordered Investigation of Washington Gas Light Company's Failure to Hedge a Portion of its Natural Gas Supply Portfolio for 2003 - 2004;

Formal Case No. 1021, In the Matter of the Provision of Broadband Over Powerlines to Residential and Business Consumers in the District of Columbia;

Formal Case No. 1022, In the Matter of an Investigation into the Power Outages of August 2003;

Formal Case No. 1023, In the Matter of the Investigation into the Effect of the Bankruptcy of Mirant Corporation on Retail Electric Service in the District of Columbia;

Formal Case No. 1024, In the Matter of the Implementation of the Triennial Review Order in the District of Columbia;

Formal Case No. 1025, In the Matter of the Complaint and Petition for Relief of MetroMedia Energy Inc.;

Formal Case No. 1026, In the Matter of the Investigation of the Feasibility of Removing Pre-Existing Above Ground Utility Lines and Cables, and Relocating them Underground in the District of Columbia;

Formal Case No. 1027, In the Matter of the Emergency Petition of the Office of People's Counsel for an Expedited Investigation of the Distribution System of Washington Gas Light Company;

Formal Case No. 1028, In the Matter of the Petition of the Office of the People's Counsel for Amendments to Chapter 3 of Title 15 DCMR "Consumer Rights and Responsibilities";

Formal Case No. 1029, In the Matter of the Petition of the Competitive Carrier Coalition for Expedited Relief;

Formal Case No. 1031, In the Matter of the Complaint of AT&T Communications of Washington DC, LLC Against Verizon Washington DC, Inc. Regarding the "Four Line Carveout";

Formal Case No. 1033, In the Matter of the Petition of the Office of the People's Counsel Requesting a Declaratory Ruling Regarding the Washington Gas Light Company's Budget Payment Plan;

Formal Case No. 1034, In the Matter of the Application of Verizon Washington, DC Inc, for Authority to Issue \$250,000,000.00 Principal Amount of Long-Term Securities;

Formal Case No. 1035, In the Matter of the Joint Application of SBC Communications Inc., AT&T Corporation and Its Certificated District of Columbia Subsidiaries for Approval of a Merger;

Formal Case No. 1036, In the Matter of the Joint Application of Verizon Communications Inc.'s Proposed Acquisition of MCI, Inc.;

Formal Case No. 1037, In the Matter of the Investigation into the Omnibus utility Emergency Amendment Act of 2005, Specifically Regarding the Establishment of the Natural Gas Trust Fund Programs;

Formal Case No. 1038, In the Matter of the Petition of the District of Columbia Government for an Expedited Order Requiring Verizon Washington, DC Inc. to Continue Service;

Formal Case No. 1039, In the Matter of The Petition of the Office of the People's Counsel for An Investigation of the Potomac Electric Power Company's Billing System's Practices and Procedures;

Formal Case No. 1040, In the Matter of the Investigation into Verizon Washington, DC Inc.'s Universal Emergency Number 911 Services Rates in the District of Columbia;

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EA00-3, In The Matter of The Application of Pepco Energy Services, Inc. For An Electricity Supplier License;

EA00-4, In The Matter of The Application of FirstEnergy Services Corporation For An Electricity Supplier License;

EA00-5, In The Matter of The Application of Allegheny Energy Supply Company, LLC For An Electricity Supplier License;

EA00-6, In The Matter of The Application of Washington Gas Energy Services, Inc. For An Electricity Supplier License;

EA01-1, In The Matter of The Application of Apartment And Office Building Association For An Electricity Supplier License;

EA01-2, In the Matter of The Application of OnlineChoice.Com for An Electricity Supplier Broker License;

EA01-3, In the Matter of The Application of Enron Energy Services, Inc. for An Electric Supplier and Electric Generation Services License;

EA01-4, In The Matter of The Application of Dominion Retail, Inc. For An Electricity Supplier License;

EA01-5, In The Matter of The Application of AES Newenergy, Inc. For An Electricity Supplier License;

EA04-9, In the Matter of the Application of Tractebel Energy Services for Approval for a License to Offer, Render, Furnish or Supply Electric Generation Services as a Marketer of Electricity to the Public in the District of Columbia;

ET00-1, In the Matter of The Application of the Potomac Electric Power Company to Revise Rider "SL-TN" Telecommunications Network Charge;

ET00-2, In The Matter of The Investigation Into Potomac Electric Power Company's Public Space Occupancy Surcharge;

ET00-3, In the Matter of The Application of Potomac Electric Power Company for Authority to Establish the Excess Facilities Services ("EF Rider");

ET01-1, In the Matter of The Application of Potomac Electric Power Company for Authority to Revise Schedule "SSL-UG" Servicing Street Lights -Underground;

ET03-2, In the Matter of The Application of Potomac Electric Company for Authority to Revise Its General Terms and Conditions;

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GA03-2, In the Matter of the Application of Pepco Energy Services, Inc. to Supply Natural Gas to the Public in the District of Columbia;

GA03-3, In the Matter of the Application of Washington Gas Energy Services, Inc. for a License to Supply Natural Gas to the Public in the District of Columbia;

GA03-4, In the Matter of the Application of EconEnergy Energy Services, Inc. for Approval to Supply Natural Gas to the Public in the District of Columbia;

GA03-5, In the Matter of the Application of Constellation NewEnergy, Inc. for Approval to Offer, Render, Furnish or Supply Natural Gas Services to the Public in the District of Columbia;

GA03-6, In the Matter of the Application of BGE home Products and Services, Inc. for Approval to Offer, Render or Supply Natural Gas Services to the Public in the District of Columbia;

GA03-8, In the Matter of the Application of Amerda Hess Corporation for a License to Supply Natural Gas to the Public in the District of Columbia;

GA03-9, In the Matter of The Application of Metromedia Energy for a License to Supply Natural Gas Services to the Public in the District of Columbia;

GA04-1, In the Matter of the Application of UGI Energy Services, Inc. for a License to Supply Natural Gas Services to the Public in the District of Columbia;

GA04-6, In the Matter of Select Energy District of Columbia for a License to Supply Natural Gas to the Public in the District of Columbia;

GT96-3, In The Matter of The Application of The Washington Gas Light Company, District of Columbia Division, For Authority To Establish A New Rate Schedule No. 1a;

GT97-2, In The Matter of The Washington Gas Light Company, District of Columbia Division, For Authority To Amend Its Tariff;

GT00-1, In The Matter of The Application of The Washington Gas Light Company, District of Columbia Division, For Authority To Amend Its Tariff No.3;

GT00-2, In The Matter of The Washington Gas Light Company, District of Columbia Division, Public Occupancy Surcharge;

GT00-3, In the Matter of the Application of Washington Light Company District of Columbia Division for Authority to Amend its Tariff, Rate Schedule No. 5-Firm Agreement Service Gas Supplier Agreement;

GT00-4, In the Matter of the Application of Washington Gas Light Company District of Columbia Division for Authority to Amend Its Tariff, Rate Schedule No. 5 Firm Delivery Service Gas Supplier Agreement;

GT01-1; In the Matter of the Application of Washington Gas Light Company District of Columbia Division for Authority to Amend Its General Service Provisions No. 16-Purchase Gas Charge):PGC”) of P.S.C.-D.C. No. 3;

GT01-2, In the Matter of the Application of Washington Gas Light Company District of Columbia Division for Authority to Increase the Credit to Residential Essential Service Customers;

GT02-1, In the Matter of the Application of Washington Gas Light Company District of Columbia Division for Authority to Amend Its General Service Provisions, Rate Schedule No. 5, Firm Delivery Service Gas Supplier Agreement;

GT03-2, In the Matter of the Application of Washington Gas Light Company Requests Permission to Revise General service Provision No. 3 Firm Delivery Service Gas Supplier Agreement Rate Schedule;

GT04-1, In the Matter of the Application of Washington Gas Light Company Requests Permission to Revise General Service Provision No. 13 and Provision No. 14;

TAC-18, In the Matter of the Motion and Joint Petition of Verizon Washington Washing DC, Inc. for Consolidation of Its Petition for a Declaratory Order with TAC -16; and Petition of Verizon Washington DC, Inc. for a Declaratory Order Requiring the Amendment of the Parties Interconnection Agreement to Incorporate the FCC’s Interim Intercarrier Compensation Regime;

TAC-19, In the Matter of the Petition of Verizon Washington DC, Inc. for Arbitration of an Amendment to the Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobil Radio Service Providers in Washington, D.C. Pursuant to Section 252 of the Telecommunications Act of 1934, as Amended, and the Triennial Review Order;

TT94-10, In The Matter of The Application of The Chesapeake And Potomac Telephone Company For Authority To Amend The Miscellaneous Service Arrangements Tariff No. 211, Section 4;

TT00-4, In The Matter of The Application of Verizon Washington, D.C. Inc. For Authority To Amend The General Services Tariff P.S.C. No. 202;

TT00-5, In The Matter of Verizon-Washington, D.C. Inc. Compliance With Title VI, District of Columbia Budget Support Act, Rental of Public Structures In Public Space;

TT00-8, In The Matter of The Application of Verizon Washington, DC, Inc. For Authority To Amend The Network Interconnection Services Tariff, P.S.C. DC No. 218;

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TT00-17, In The Matter of The Application of Verizon Washington, DC Inc. For Authority To Amend The Miscellaneous Service Arrangements Tariff, P.S.C. -D.C. No. 211 (Universal Emergency Number 911 Services);

TT01-3, In The Matter of The Application of Verizon Washington DC, Inc. for Authority to Amend the General Regulations Tariff, P.S.C.-D.C. No. 201 (Revised Gross Receipts Tax Surcharge Tariff);

TT02-1, In the Matter of The Application of Verizon Washington DC, Inc. for Authority to Amend the Miscellaneous Service Arrangements Tariff, P.S.C. D.C., No. 211 (Universal Emergency Number 911 Service);

TT02-6, In the Matter of The Application of Verizon Washington DC, Inc. for Authority to Modify the Terms of Temporary Suspension Service (Local Exchange Services Tariff, P.S.C.-D.C. No. 203);

TT04-3, In the Matter of The Application of Verizon Washington DC, Inc. for Authority to Increase Residential and Business Message Unit Rates;

TT04-8, In the Matter of The Application of Verizon Washington DC, Inc. for Authority to Increase Monthly Recurring Rates for Business and Residential Directory Assistance and the Monthly Recurring Rate for Business Management Service;

TA01-3, TA01-7 Through TA01-16, TA01-18 Through TA01-20, and TA01-22 Through TA01-26, In The Matter of The Approval of Competitive Local Exchange Carriers To Provide Telecommunications Services In The District of Columbia;

TA02-1, TA02-2, TA02-4, TA02-6, TAO2-7, TA02-9 Through TA02-12, and TA02-14, In The Matter of The Approval of Competitive Local Exchange Carriers To Provide Telecommunications Services In The District of Columbia;

TA03-1, TA03-4, TA03-6, TA03-10, TA03-12, and TA03-13, In The Matter of The Approval of Competitive Local Exchange Carriers To Provide Telecommunications Services In The District of Columbia;

TA04-1, TA04-2, TA04-4 Through TA04-7, TA04-9 Through TA04-12, and TA04-14; and

TA05-2 Through TA05-8, In The Matter of The Approval of Competitive Local Exchange Carriers To Provide Telecommunications Services In The District of Columbia

NOTICE OF REQUEST FOR PROPOSAL**Thurgood Marshall Academy**

The proposed TMA Public charter School, in compliance with Section 2204 (c) of the District Of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest for the following services and products for the school:

- I. Auditing:** Services to conduct the audit in accordance with auditing standards generally accepted in the U.S and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements.
- II. Computer Support:** Superior service to provide a wireless plan, internal server, remote capability, IT tech and other computer support services.
- III. Food Services:** Catering of Breakfast (approx. 150 students) Catering of Lunch (approx. 240 students) Catering of snacks (approx. 300 students) and approx (75% free/reduced lunches). The meals must meet or exceed the all federal Nutrition requirements and all compliance standards of the USDA School Breakfast Program and the National Vendors will be required to deliver meals to the school. **(All bid proposals must be submitted in the National School Lunch Program Format).**
- IV. Computer Sales:** Superior service for the purchase of laptop and desktop computers for the school.

For Additional Information Call: 202-669-6345. Deadline for submissions is June 24, 2005 at 5pm

006005

NOTICE OF REQUEST FOR PROPOSALS

Two Rivers Public Charter School

The proposed Two Rivers Public Charter School, in compliance with Section 2204 (c) of the District Of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from the following food and janitorial services.

I. Food Services Sought:

Catering for Breakfast (approx. 15 students)

Catering for Lunch (approx. 98 students)

Catering for Snacks (approx. 55 students)

Approx. 40% Free/Reduced Lunch

The meals must meet or exceed federal nutrition requirements and all compliance Standards of the USDA. School Breakfast Program.

(All bid proposals must be submitted in the National School Lunch Program Format)

II. Cleaning Services Sought:

Superior janitorial services sought to maintain a neat and clean environment for staff and students. The Facility has about 13,000 sq ft, 3 floors, and 5 bathrooms.

(FBI fingerprint clearance and tuberculosis test required)

III. Computer Sales: Superior service for the purchase of laptop and desktop computers for the school.

IV. Auditing: Services to conduct the audit in accordance with auditing standards generally accepted in the United States and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements.

For Additional Information Call: 202-669-6345. Deadline for submissions is June 24, 2005 at 5pm

006006

NOTICE OF REQUEST FOR PROPOSALS**Youth Build Public Charter School**

The proposed Youth Build Public Charter School, in compliance with Section 2204 (c) of the District Of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from the following services for the school:

I. Accounting Services sought: In the area of accounting for organizational budgeting, development of financial reporting statements, accounting, execution of payroll, and Monitoring of expenditures and accounts

II. Auditing Service Sought: Services to conduct the audit in accordance with auditing standards generally accepted in the United States and "Government Auditing Standards" issued by the Comptroller General of the United States. Including examining, on a test basis, and evidence supporting the amounts and disclosures in the financial statements

III. Special Needs Services Sought: Services needed to provide school with Multi-Disciplinary Team to conduct evaluations/re-evaluations as back-up to the in-house clinical team, Counseling, Occupational or Physical Therapy for students, Speech and Language therapy and Support and Compliance Level one.

IV. Computer Sales: Superior Service to provide the school with excellent computer software.

For Additional Information Call: 202- 669-6345 Deadline for submissions is June 24, 2005 at 5PM

006007

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

Appeal No. 16679-A of Spring Valley Wesley Heights Citizen's Association, pursuant to 11 DCMR §§ 3100 and 3101 from the decision of the Zoning Administrator, DCRA, for the issuance of Building Permit No. B430091, dated October 11, 2000, to Charles A. Sisson for construction of a partial front porch, rear addition and accessory garage to an existing single family dwelling in a WHOD/R-1-A District at premises 3020 43rd Street, N.W. (Square 1621, Lot 70).

HEARING DATES: January 15, 2003, June 10, 2003

DECISION DATE: October 2, 2001, January 2, 2002, June 10, 2003

ORDER

BACKGROUND, PRELIMINARY AND PROCEDURAL MATTERS

This appeal was brought by the Spring Valley Wesley Heights Citizen's Association ("Spring Valley" or "Appellant") on November 28, 2000. The property that is the subject of the appeal ("subject property") belongs to the Intervenor, Charles A. Sisson, and is located in an R-1-A Zoning District within the Wesley Heights Overlay District ("Overlay District").

Background

The subject property was the focus of two earlier Board of Zoning Adjustment ("BZA") cases. The first of these earlier cases was BZA Case No. 16405, in which Mr. Sisson's neighbor, Mrs. Mildred Crary, appealed the issuance of five separate building permits to Mr. Sisson between January and October, 1998. The Board orally granted the appeal at its June 16, 1999 decision meeting, concluding that all five building permits had been issued in error. The written order reflecting the Board's June 16, 1999 decision was dated December 28, 1999 and Mr. Sisson appealed it to the Court of Appeals. On August 29, 2002, the Court upheld the Board's decision in its entirety.

On October 7, 1999, Mr. Sisson filed an application with the Board for special exception and variance relief necessitated by the Board's decision in Case No. 16405 that the five permits had been issued erroneously. This application, BZA Case No. 16521, if granted, would have permitted the retention of the roof over the front porch which two of the five building permits had ostensibly permitted. Mr. Sisson sought special exception relief under § 223.1 of Title 11 of the District of Columbia Municipal Regulations ("DCMR") and a variance from the front yard setback requirements of 11 DCMR § 1543.4 to allow, after-the-fact, the construction of the front porch roof. By written order dated December

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13, 2001, the Board denied the special exception and variance relief requested in Application No. 16521.

The instant appeal

Before the Board's denial of Application No. 16521, on November 28, 2000, the Appellant filed the instant appeal, alleging the erroneous issuance of a sixth building permit for the subject property, Permit No. B430091. DCRA issued this permit on October 11, 2000, retroactively approving the rear addition and garage on the subject property, but requiring removal of the front porch roof. Appellant alleges six grounds for appeal: (1) the permit application is unsigned and therefore void, (2) the permit approval is incomplete and inconsistent with the Board's decision in Appeal No. 16405,¹ (3) the permit violates the lot occupancy provisions of the Overlay District and the ZA does not have any flexibility regarding these provisions, (4) the permit violates side yard restrictions and the ZA misused his flexibility with regard to such restrictions, (5) the permit violates private driveway width and grade restrictions, and (6) the permit violates access and off-street parking restrictions.

The Office of Zoning ("OZ") notified interested parties of the filing of Appeal No. 16679 and informed them that a hearing would likely be scheduled for March or April, 2001. After some delay, on August 27, 2001, Intervenor² Sisson filed a Motion to Dismiss the appeal as moot because, he claimed, all the issues raised by the Appellant had already been decided by the Board in Case No. 16521. By letter dated September 7, 2001, Appellant opposed the Motion and claimed that the above six issues were still to be decided. Appellant, however, requested that further action on Appeal No. 16679 be deferred until after the written order was issued in Case No. 16521 and until after the Court of Appeals rendered a decision in the appeal of Case No. 16405.

At a public meeting on October 2, 2001, the Board laid out its approach to handling Appeal No. 16679 in light of the fact that extensive records on the same facts had already been created in Cases Nos. 16405 and 16521. The Board decided to include these two records in the record of Appeal No. 16679, with the parties designating which portions of these earlier records they felt were pertinent to Appeal No. 16679. This would prevent the Board from re-hearing the same matters. The Board also decided to permit the parties to brief each of the Appellant's six stated issues on appeal. In the briefs, the parties would have the opportunity to show the Board whether the issue had been previously decided. In this way, a decision on Intervenor's Motion to Dismiss the entire appeal was held in abeyance, while the parties were permitted to submit arguments concerning dismissal of specific issues. An issue-by-issue discussion of, and decision on, the Motion

¹Later expanded to include claimed inconsistency with Order No. 16521.

²Intervenor status was also granted to both of Mr. Sisson's adjacent neighbors, Mrs. Crary and Mr. Stein, as well as to the Wesley Heights Historical Society. These three intervenors, however, played a very limited role in these proceedings. Therefore, in this Order, the word "Intervenor" refers only to Mr. Sisson himself.

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to Dismiss was scheduled for January 2, 2002, and a hearing, if necessary, for January 15, 2002.

On November 9, 2001, the Court of Appeals heard oral argument on Mr. Sisson's appeal of Case No. 16405. Because of this, Intervenor moved again, on December 17, 2001, (four days after the issuance of the order in Case No. 16521 denying Mr. Sisson's special exception and variance relief) to dismiss Appeal No. 16679 as moot, or, in the alternative, to postpone hearing action on No. 16679 until after the Court rendered its decision in the appeal of Case No. 16405. Appellant Spring Valley countered that the Board should summarily grant Appeal No. 16679 based on the records established in the two predecessor Board cases, Nos. 16405 and 16521.

At the January 2, 2002 decision meeting, the Board decided to defer action on Intervenor's Motion to Dismiss until the Court of Appeals had rendered a decision in the appeal of Case No. 16405. On January 15, 2002, the Board similarly decided to postpone hearing Appeal No. 16679 until the Court of Appeals' decision was received. Therefore, on February 8, 2002, the Board issued an "Order to Continue Proceedings," which continued both the decision meeting on Intervenor's Motion to Dismiss and the public hearing on Appeal No. 16679, pending receipt by OZ of the Court of Appeals' mandate in the appeal of Case No. 16405.

On August 29, 2002, the Court of Appeals issued its decision in the appeal of Case No. 16405. The Court upheld the Board's decision in its entirety. Mr. Sisson's petition to the Court of Appeals for rehearing or rehearing *en banc* was denied on February 13, 2003, and Appellant Spring Valley requested by letter dated February 19, 2003 that the Board schedule a hearing in Appeal No. 16679 at the earliest opportunity. The Board scheduled the hearing for June 10, 2003, at which time the Board resumed its simultaneous discussion of, and deliberation on, the Intervenor's Motion to Dismiss and the Appellant's Motion for Summary Granting of the Appeal.

At the June 10, 2003 hearing, the Board voted separately on each of the Appellant's six stated grounds for appeal. The first issue, whether the unsigned application for building permit No. B430091 was void on its face, the Board decided was outside its jurisdiction, and so, voted 4-0-1 to dismiss it. The second issue was whether the permit was "incomplete and inconsistent with" Orders Nos. 16405 and 16521. The Board determined that this language did not contain a definite statement of the issue, and thus the issue, as stated, was too vague to be decided. The third issue was that the permit violated the lot occupancy provisions of the Overlay. The Board concluded that this issue had already been decided in Mr. Sisson's favor in Case No. 16521 and dismissed it by a vote of 3-2-0. The fourth issue, whether the permit violated the side yard provisions of the Overlay was also dismissed, by a vote of 4-0-1, as having already been decided in Mr. Sisson's favor in Case No. 16521. The fifth and sixth issues, whether the permit violated restrictions as to driveway width and grade and as to access and off-street

parking, respectively, were both summarily granted based on the fact that they had already been decided against Mr. Sisson in Appeal No. 16405. Issues numbers five and six were voted on together and the vote was 5-0-0.

These resolutions of the issues presented in motion to dismiss and the motion to summarily grant the appeal disposed of all the issues in Appeal No. 16679. Therefore, no further hearing was required.

FINDINGS OF FACT

1. All findings of facts made in BZA Orders Nos 16405 and 16521 are incorporated herein.
2. The subject property is located at address 3020 43rd Street, N.W., in an R-1-A Zone District and is included within the Wesley Heights Overlay District.
3. Intervenor Sisson, the owner of the subject property, constructed a 2-story rear addition, a front porch addition, and an accessory private garage on the property, pursuant to five building permits issued to him by DCRA between January and October, 1998.
4. All five of these permits were the subject of BZA Appeal No. 16405, brought by Intervenor's neighbor, Mrs. Mildred Crary. On June 16, 1999, the Board orally decided that all five permits had been erroneously issued. The written order in Case No. 16405 was issued on December 28, 1999. Intervenor appealed this order to the District of Columbia Court of Appeals.³
5. On October 7, 1999, after the oral decision in Case No. 16405 invalidating all five permits, but before the written order, Intervenor filed Application No. 16521 with the Board for special exception and variance relief. If granted, Application No. 16521 would have permitted retention of the front porch roof.
6. On October 11, 2000, DCRA issued a "remedial" sixth permit (No. B430091) to Intervenor which purported to retroactively approve, as matter-of-right construction, the rear and garage additions to the subject property, but required the removal of the front porch roof.
7. On November 28, 2000, Appellant Spring Valley filed the instant appeal (No. 16679), claiming that the remedial permit had been issued erroneously, and alleging six specific points on appeal.

³In the Court of Appeals, Intervenor Sisson conceded that two of the five permits, those concerning the front porch roof, were issued erroneously, and he did not contest the validity of their rejection by the Board.

8. On August 27, 2001, Intervenor filed a Motion to Dismiss Appeal No. 16679 as moot because, he claimed, all the issues raised by the Appellant had already been decided by the Board in Case No. 16521.
9. Appellant opposed Intervenor's August 27, 2001 Motion to Dismiss and, on December 26, 2001, filed a Motion for Summary Granting of Appeal No. 16679. Appellant claimed that all issues on appeal could be summarily granted based on the records in the two predecessor cases – Nos. 16405 and 16521.
10. At a public meeting on October 2, 2001, the Board decided to include Orders Nos. 16405 and 16521, as well as the records created in those cases, in the record of this appeal. Therefore, this order is based on all the evidence in all three records and incorporates all the Findings of Fact in Orders Nos. 16405 and 16521, as well as the Conclusions of Law in those Orders which address the merits of each case.
11. By written order dated December 13, 2001, the Board denied the special exception and variance relief requested in Application No. 16521.
12. On August 29, 2002, the Court of Appeals affirmed the Board's decision in Case No. 16405 in its entirety, thereby upholding the Board's decision that the first 5 permits issued to the Intervenor were issued in error.
13. Pursuant to the Board's February 8, 2002 Order to Continue Proceedings until the Court of Appeals' decision was received, a decision meeting on the Intervenor's Motion to Dismiss and the Appellant's Motion for Summary Granting was held on June 10, 2003.
14. At the June 10, 2003 decision meeting, the Board agreed to expand the Appellant's Motion for Summary Granting to apply to all six issues on appeal, because as written, it could have been construed to have a narrower scope.

CONCLUSIONS OF LAW

An appeal may be taken by any person aggrieved by a decision of a District official based in whole or in part on the Zoning Regulations, including the granting of a building permit. D.C. Official Code § 6-641.07(f) (2001). Appellant has appealed the October 11, 2000 issuance by DCRA of Permit No. B430091, the sixth of a series of permits issued to the Intervenor for construction done at the subject property. In Case No. 16405, the Board held that the first five permits were issued erroneously. The sixth permit now challenged attempts to cure the defects of the first five. For the reasons stated below, it did not fully succeed.

This same construction had been the subject of Appeal No. 16405 and the retention of the front porch roof was at stake in Case No. 16521, an application for special exception and variance relief required in order to retain the roof. Both of these cases were fully briefed, argued, and litigated. Both had extensive records and Appeal No. 16405 was upheld on appeal to the Court of Appeals. It is therefore possible to resolve the validity of the sixth permit without additional fact finding.

Issues 1 and 2

The Board concludes that two of the six errors alleged in the appeal are not properly before it. The first, that the building permit application is unsigned, is not within the Board's jurisdiction. Section 8 of the Zoning Act of 1938 authorizes the Board to hear appeals where "it is alleged by ... that there is error in any order, requirement, decision, determination, or refusal ... in the carrying out or enforcement of any regulation adopted pursuant to" the Act. The Zoning Regulations do not specify the form of a building permit nor required that one be signed. These issues are addressed in the Building Code of the District of Columbia, D.C. Construction Codes Supplement, at Title 12A of the DCMR. *See, e.g.,* 12A DCMR §§ 103.1 and 105.3. Therefore, on its own motion, the Board hereby dismisses Issue No. 1 for lack of jurisdiction.

The Board is at a loss to decipher the precise meaning of the second issue as stated by the Appellant. The claimed "inconsistencies" between the remedial permit and the two Board Orders were never spelled out by the Appellant and therefore the Board can draw no conclusions as to whether or not they actually exist. Further, even after being afforded an opportunity to provide a more definite statement of the issue, the Appellant failed to do so. Therefore, the Board grants the Intervenor's Motion to Dismiss as to Issue No. 2 because it is too vague to be decided.

Issue No. 3 – The building permit approval violates the lot occupancy restrictions imposed by the Wesley Heights Overlay District . The Zoning Administrator is not authorized any flexibility regarding the strict application of the lot occupancy restrictions imposed by the Overlay.

This issue was fully litigated in Case No. 16521, the special exception and variance proceeding. In that case, the Board determined that the maximum lot occupancy permitted for the subject property was 2,000 square feet. *See, 11 DCMR § 1543.2(a).* Without the covered front porch, the dwelling and garage occupy 1,968.75 square feet. (*See, Board Order No. 16521, Findings of Fact Nos. 6 and 7; Conclusions of Law and Opinion, pages 10-12, 14.*) Without the roof, the front porch is effectively converted into a deck less than four feet above grade that would not be included in the lot occupancy calculation. Therefore, if the front porch roof were removed, there would be no change in the lot occupancy calculation and no violation of the 2000-square-foot maximum. Since the building permit challenged in this appeal provided for removal of the roof, the

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building permit did not violate the lot occupancy restrictions. The question of Zoning Administrator flexibility does not need to be reached as no flexibility was required. Because the building permit did not violate the lot occupancy restrictions of the Overlay, the Appellant's Motion to Summarily Grant the Appeal is denied.

Moreover, the Appellant herein is bound by the Board's decision in Case No 16521 under the doctrine of collateral estoppel or issue preclusion. This doctrine "prevents the same parties from relitigating an issue actually decided in a previous final adjudication whether on the same or a different claim." *Rhema Christian Center v. District of Columbia Board of Zoning Adjustment*, 515 A.2d 189, 193 (D.C. 1986). While the Appellant herein was not a party to Case No. 16521, strict mutuality is not necessary. See, *Ali Baba Co., Inc. v. Wilco*, 482 A.2d 418 (1984) (recognizing nonmutual collateral estoppel). See also, *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979) and *Blonder-Tongue Laboratories v. University of Illinois Foundation*, 402 U.S. 313 (1971). The Appellant is represented by the same attorney as the party opponent in Case No. 16521, with whom it is aligned. The Appellant could have sought party status or sought to participate as a person in opposition in Case No. 16521, but it did not do so. Most importantly, the precise issue of lot occupancy vis-à-vis the front porch with and without the roof was already resolved in Case No. 16521. There is no indication that this issue was not fully and fairly litigated and adjudicated in that case and the Board is precluded from re-examining it. Accordingly, the Intervenor's Motion to Dismiss is granted as to Issue No. 3.

One further point on this issue – the original permits allowing the construction of the front porch roof were invalidated in Case No. 16405 and DCRA itself, in the remedial permit, required the roof's removal. The front porch roof must be removed to bring the Intervenor's dwelling back into compliance with the lot occupancy restrictions of the Overlay. The Board expects DCRA, which has enforcement jurisdiction, to enforce Order No. 16405, as well as its own remedial permit, and require removal of the porch roof.

Issue No. 4 – The building permit approval violates the applicable side yard restrictions. The Zoning Administrator's flexibility regarding the applicable side yard restrictions was a misuse and/or abuse of his limited discretion and substantially impairs the purpose of the otherwise applicable regulations.

This issue was fully litigated and decided in Case No. 16521. In that case, the Board determined that the dwelling on the subject property, which predates the 1958 Zoning Regulations, has side yards of 5.69 and 4.89 feet in width. (Order No. 16521, Finding of Fact No. 8.) Under 11 DCMR § 405.8, an addition may be made to a dwelling that predates the regulations and has a side yard of less than eight feet in width, provided that side yard is at least five feet in width, and provided further that the addition does not decrease the width of the existing side yard. Intervenor's addition did not decrease the

width of either side yard. While the 5.69-foot side yard complies with the requirements of § 405.8, the 4.89-foot side yard does not. The Zoning Administrator, however, has authority, unaffected by the Overlay, to permit minor deviations in side yard width of up to 12 inches. See, 11 DCMR §§ 407 and 2522. Therefore, the building permit was not issued in error, because the Zoning Administrator had the authority to permit the necessary 0.11-foot (1.32 inch) deviation from the minimum five-foot side yard requirement of § 405.8. (See, Order No. 16521, Conclusions of Law and Opinion, page 11.) Accordingly, the Appellant's Motion to Summarily Grant the Appeal is denied and Intervenor's Motion to Dismiss is granted as to Issue No. 4.

Issue No. 5 – The building permit violates Order No. 16405 and the applicable private driveway width and grade restrictions.

This issue has also already been litigated and decided by the Board, and by the Court of Appeals. With respect to the driveway width and grade restrictions of 11 DCMR § 2117, the Board made factual findings in Order No. 16405 (Findings of Fact Nos. 13-16) and ruled, at page 7, that:

[T]he permits for the garage should not have been issued if the garage did not provide access in conformance with the zoning regulations. The two-car garage is accessible only through an easement that, at a width of eight feet, is narrower than the minimum width of 14 feet specified in the zoning regulations for a driveway with two-way circulation serving a parking space. 11 DCMR §2117.8.

The Intervenor's easement, at 8 feet wide, is not wide enough to provide two-way circulation to his two-car garage. The Zoning Regulations specify that a driveway or approach serving more than one parking space and designed for two-way circulation must be at least 14 feet in width. 11 DCMR § 2117.8(c)(2).⁴ In Order No. 16405, the Board has already concluded that the original garage permits were erroneously issued due to the too-narrow easement width, and nothing has changed with respect to the width of the easement since this conclusion was made. The Court of Appeals upheld the Board's conclusion with respect to driveway width. See, *Sisson v. D.C. Board of Zoning Adjustment*, 805 A.2d 964, 973-974 (D.C. 2002). However, DCRA has not revoked the permit. Bringing this Appeal is the only mechanism available to Appellant to void the offending aspects of the sixth permit and, as explained earlier, under the doctrine of issue preclusion, the Intervenor is bound by the Board's earlier conclusion and cannot re-litigate it. Therefore, the Appellant's Motion for Summary Granting is granted as to Issue No. 5 and the Intervenor's Motion to Dismiss is denied.

⁴Even if one agreed with the contention that the Intervenor's driveway provides only one-way circulation, the driveway still would not meet the Zoning Regulations' 12-foot width requirement for one-way circulation. See, 11 DCMR §2117.8(c)(2).

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Issue No. 6 – The building permit violates BZA Appeal No. 16405 and the applicable access and off-street parking restrictions.

In Issue No. 6, the Appellant focuses not on § 2117 of the Zoning Regulations, but on §§ 2101.1 and 2117.4. Section 2101.1 merely requires that the Intervenor provide one off-street parking space and § 2117.4 requires that such space be directly accessible from improved streets or alleys or accessible from improved streets or alleys via graded and unobstructed private driveways. One must then look to § 2117.8 to determine the width and location standards for driveways.

Regardless of which sections of the Zoning Regulations the Appellant cites in support of this sixth issue, the questions of applicable access and off-street parking restrictions were already litigated in Case No. 16405. In that case, the Board decided that the two garage permits were issued erroneously because of improper access to the Intervenor's off-street parking space located in the garage. Order No. 16405 references both § 2117.8 and § 2117.4. (*See*, Order No. 16405, Findings of Fact Nos. 13 and 14.) The fact that the access to Intervenor's garage is substandard invalidates the ability to have a garage and with no garage, the Intervenor cannot meet the off-street parking requirement of § 2101.1. All issues related to improper access and off-street parking restrictions are subsumed within the Board's conclusion that the garage permits were issued erroneously and the Intervenor may not contest them now. Therefore Appellant's Motion for Summary Granting is granted as to Issue No. 6.

In conclusion, after giving great weight to ANC 3D's unanimous support for Appeal No. 16679, the Board hereby **DISMISSES ON ITS OWN MOTION ISSUE NO 1, AS SET FORTH ABOVE, GRANTS THE INTERVENOR'S MOTION TO DISMISS AS TO ISSUES NOS. 2, 3, AND 4, AS SET FORTH ABOVE, AND GRANTS APPELLANT'S MOTION FOR SUMMARY GRANTING AS TO ISSUES 5 AND 6, AS SET FORTH ABOVE.**

VOTE ON ISSUE NO. 1:	4-0-1	(Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain, Carol J. Mitten, to dismiss, Ruthanne G. Miller, abstaining.)
VOTE ON ISSUE NO. 2:		BY CONSENSUS OF BOARD.
VOTE ON ISSUE NO. 3:	3-2-0	(Carol J. Mitten, Curtis L. Etherly, Jr., David A. Zaidain to dismiss, Geoffrey H. Griffis and Ruthanne G. Miller, opposed.)
VOTE ON ISSUE NO. 4:	4-0-1	(Carol J. Mitten, Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain,

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to dismiss, Ruthanne G. Miller,
abstaining.)

VOTE ON ISSUES

NOS. 5 AND 6: 5-0-0

(TAKEN TOGETHER)

(Carol J. Mitten, Geoffrey H. Griffis,
Curtis L. Etherly, Jr., David A. Zaidain,
and Ruthanne G. Miller, to summarily
grant.)

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

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

FINAL DATE OF ORDER: JUN 10 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." LM/rsn

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

Appeal No. 17214 of Advisory Neighborhood Commission 6A, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator of the Department of Consumer and Regulatory Affairs. Appellant alleges that the Zoning Administrator erred by issuing a certificate of occupancy permit (No. C76349, dated May 19, 2004) for a 30-seat deli/restaurant. Appellant argues that the actual use of the business is a fast food restaurant as defined by § 199, and regulated by § 733. The C-2-A-zoned premise is located at 721 H Street, N.E. (Square 890, Lot 69).

HEARING DATE: October 12, 2004
DECISION DATE: November 2, 2004

ORDER

PRELIMINARY MATTERS

Advisory Neighborhood Commission (“ANC”) 6A (“Appellant”) filed this appeal on July 9, 2004, alleging that the Zoning Administrator (“ZA”) of the Department of Consumer and Regulatory Affairs (“DCRA”) erred in issuing Certificate of Occupancy No. C76349. The certificate of occupancy was issued on May 9, 2004 to “Chans Food, Inc.” for a “restaurant.” Appellant contends that the establishment for which the certificate of occupancy was issued is, in reality, a “fast food restaurant,” as that use is defined by the Zoning Regulations, and not a “restaurant,” which is defined differently by the Regulations. If a restaurant, the establishment is a matter-of-right use in this C-2-A zone, but if a fast food restaurant, it requires a special exception.

The subject property is located across the street from the boundary of ANC 6A, the Appellant herein, but is located within ANC 6C, which filed a letter in support of the appeal, as did the Capitol Hill Restoration Society.

The Board heard the appeal on October 12, 2004. The Appellant and DCRA participated in the hearing, as well as a representative of Chans Foods and the lessee of the property.

At its November 2, 2004 decision meeting, the Board decided to grant the appeal by a vote of 5-0-0.

FINDINGS OF FACT

1. On May 19, 2004, DCRA issued Certificate of Occupancy No. C 76349 to “Chans Foods, Inc.” for a “restaurant” at the property which is the subject of this appeal (“subject property.”)

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2. The certificate of occupancy incorrectly noted the address of the subject property. It also incorrectly noted the zone district within which the subject property is located as C-4, in which a fast food restaurant is a matter-of-right use. *See*, 11 DCMR § 751.2¹.
3. Even after correcting the zone district reflected on the certificate of occupancy to C-2-A, DCRA re-issued the certificate of occupancy for a restaurant, which is also a matter-of-right use in a C-2-A zone. *See*, 11 DCMR § 721.1.
4. A fast food restaurant is not a matter-of-right use in a C-2-A zone, but requires a special exception. *See*, 11 DCMR § 733.
5. The Zoning Regulations deem any restaurant with a drive-through a fast food restaurant. *See*, 11 DCMR § 199.1 (definition of "Restaurant, fast food).
6. The establishment at the subject property does not have a drive-through.
7. The Zoning Regulations list three other characteristics, the existence of two of which denote an establishment as a "fast food restaurant," as opposed to a "restaurant." These are: (1) whether at least 10% of the total floor space on any one floor that is accessible to the public is allocated and used for customer queuing for self-service for carry out and on-premises consumption, (2) whether at least 60% of food items are already prepared or packaged before a customer places an order, and (3) whether or not the establishment primarily serves its food and beverages in disposable containers and provides disposable tableware. *Id.*
8. The Zoning Regulations' definition of "restaurant" specifically excludes a fast food restaurant from the definition.
9. The queuing area in the establishment at the subject property, when calculated against the publicly accessible floor space, is approximately 231.8 of 907 square feet, or 25.6%. If the queuing area is calculated against the total floor space, it encompasses approximately 231.8 of 1521.1 square feet, or 15.2%. Either way, the queuing area takes up more than 10% of the floor area within the establishment.
10. Approximately 10 – 15% of the food items offered by the establishment at the subject property are prepared or packaged before a customer places an order.

¹These errors led to some confusion early on, but they were subsequently corrected, and, at this point, have no bearing on the determination of this appeal.

11. The establishment at the subject property primarily serves its food and beverages in disposable containers and provides disposable tableware.

CONCLUSIONS OF LAW

An appeal to the Board may be taken by any person aggrieved by a decision of a District official in the administration and/or enforcement of the Zoning Regulations, including the issuance of a certificate of occupancy. 11 DCMR §§ 3100.2 and 3200.2. The Board's regulations arise out of the authority and jurisdiction conferred upon it by D.C. Official Code § 6-641.07(f) (2001), in accordance with § 8 of the Zoning Act of 1938 (52 Stat. 797, 799, as amended.) For purposes of the Board's regulations, an ANC is considered a "person" which can be "aggrieved" by, and appeal, a decision of a District official in the administration and/or enforcement of the Zoning Regulations.

This appeal turns entirely on the interpretation of the § 199 definition of "Restaurant, fast food," and particularly on the parsing of the meaning of one sentence therein. Therefore, the relevant portion of the definition is set forth in its entirety below, with the pivotal sentence highlighted in boldface type. A fast food restaurant is defined as:

[A] place of business devoted to the preparation and retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it has a drive-through. **A restaurant will be considered a fast-food restaurant if the floor space allocated and used for customer queuing for self-service for carry out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor that is accessible to the public, and it exhibits one (1) of the two (2) following characteristics:**

- (a) At least sixty percent (60%) of the food items are already prepared or packaged before the customer places an order; and/or
- (b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

(Emphasis added.) 11 DCMR § 199.1.

The other definition relevant to this appeal is that of "Restaurant" itself, which specifically states that the term "restaurant," when used in the Zoning Regulations, "shall not include a fast food restaurant." 11 DCMR § 199.1. Therefore, if something is a fast food restaurant, based on the three criteria in the definition of fast food restaurant above, it cannot also be a "restaurant." This is an important distinction because restaurants are matter-of-right uses in all commercial zone districts, whereas fast food restaurants are

matter-of-right uses beginning only in C-2-B zones and continuing into the less restrictive commercial zone districts. Fast food restaurants are special exception uses in C-2-A zone districts, and therefore, must come before this Board. 11 DCMR § 733.

It was clear in the record that the establishment at the subject property primarily serves its food and beverages in disposable containers and provides disposable tableware, thereby meeting the last criterion, set forth in subparagraph (b), in the definition of fast food restaurant. (See, Exhibit No. 23). The only real question in this appeal is whether the floor space allocated and used for customer queuing for self-service for carry out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor that is accessible to the public.

At the hearing, the Chief of the Zoning Division of the Building and Land Regulation Administration ("BLRA") of DCRA testified that, to determine the percentage of floor space used for queuing, DCRA calculated "10 percent of the total area, of the gross floor area dedicated to that use or the leased space." Hearing Transcript, at 254, lines 11-17. As the hearing progressed, it became clear that DCRA interpreted the first criterion in the definition of fast food restaurant by reading the clause "accessible to the public" to modify the phrase "any one (1) floor." Therefore, DCRA determined its 10 percent calculation by taking 10 percent of the total floor space of *that floor that is accessible to the public*. In the subject establishment, there is only one floor and parts of that floor are accessible to the public, therefore DCRA made its 10 percent calculation against the floor area of the entire floor, including all areas accessible to the public and all areas that are not.

The Board, however, disagrees with DCRA's interpretation of the first criterion. The Board agrees with the Appellant that the clause "accessible to the public" modifies the phrase "ten percent (10%) of the total floor space on any one (1) floor." Reading the definition this way means that the 10 percent calculation is made against only the amount of floor space that is accessible to the public on a particular floor. Indeed, this is precisely the interpretation that DCRA itself gives the definition in the "Affidavit Eating Establishment" which DCRA had the lessee complete.² According to DCRA, this affidavit is completed whenever there is a question as to whether a restaurant-type use is appropriate in a particular zone district. Under the correct interpretation of the first criterion, the calculation would be 10 percent of the floor space *to which the public has access, i.e.,* including queuing area, seating area, hallways to restrooms, restrooms themselves, and the area immediately inside the front door. The area not accessible to the public would include, for example, the food preparation and storage areas and the area behind the service counter.

²DCRA's "Affidavit Eating Establishment" asks four questions derived directly from the definition of fast food restaurant in § 199. The second question is: "What percentage of the floor space *that is accessible to the public on any one floor* will be used for queuing for self-service for carry-out or on-premises consumption?" (Emphasis added.) This rendition of the question is consistent with the Board's interpretation of the first criterion.

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DCRA also misinterpreted the first criterion to mean that only the customer queuing area must be more than 10 percent of a certain floor space. DCRA misread the phrase "queuing area" to mean both queuing area for carry out and queuing area for on-premise consumption. The Board disagrees and interprets the language to mean that the 10 percent calculation must be made including, as separate measurements, both the queuing area and the area for on-premise consumption. Simply put, if the total floor space for either customer queuing or on-premise consumption, or both, is more than ten percent of the total floor space that is accessible to the public on a particular floor, (and one of the other two criteria is met), then the establishment in question is a fast food restaurant.

As stated in Finding of Fact No. 9, when calculated against the publicly-accessible floor space within the establishment, the customer queuing area takes up approximately 25.6% of that space. As this is already well over 10 percent, the Board need not determine the separate measurement of percentage of floor space devoted to on-premise consumption. The establishment at the subject property meets the first and third criteria of the definition of fast food restaurant, and so falls within that definition. As it falls within that definition, it cannot be a "restaurant." Accordingly, DCRA erroneously issued C of O No. C76349 for a matter-of-right restaurant use.

For the reasons stated above, the Board concludes that the Appellant has met its burden of proof in demonstrating that DCRA erred in issuing Certificate of Occupancy No. C76349 for a matter-of-right restaurant use in a C-2-A zone district. Therefore, it is hereby **ORDERED** that this appeal be **GRANTED**.

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

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: JUN 13 2005

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

LM/twr

000021

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

Application No. 16566-F of the President and Directors of Georgetown College, pursuant to 11 DCMR § 3104.1, for a special exception for the review and approval of the University Campus Plan – years 2000-2010 under Section 210 in the R-3 and C-1 Districts at premises bounded by Glover Archbold Parkway to the west, the National Park Service property along the Chesapeake & Ohio Canal and Canal Road to the south, 35th Street, N Street to 36th Street, and 36th Street to P Street to the east and Reservoir Road to the north. (Square 1222, Lots 62, 801-810; Square 1223, Lots 85-86, 807-810, 812, 815, 826, 827, 831, 834, 846-847, 852-853, 855, and 857-858; Square 1226, Lots 91, 94-101, 104-105, 803-804, 806, and 811-815; Square 1248, Lots 122-125, 150-157, 800-802, 804-806, 829-831, and 834-835; Square 1321, Lots 815-817)

HEARING DATES: June 13, 2000 and July 18, 2000

DECISION DATES: September 5, November 8, and December 5, 2000; April 5, 2005

CORRECTED ORDER ON REMAND

Note: This order corrects Order No. 16566-E, by adding the underlined text to Conclusion section Condition No. 2.

PRELIMINARY MATTERS:

On January 31, 2000, the President and Directors of Georgetown College (hereinafter “University” or “Applicant”) filed an application for review and approval of the Georgetown University Campus Plan for Years 2000-2010. Following a public hearing, the Board voted to approve the campus plan subject to conditions. An order reflecting that decision was issued March 29, 2001 (“March 29 Order”). The Board subsequently revised some of the conditions of approval in an order on reconsideration issued August 6, 2001 (Order No. 16566-A). The Applicant requested an order staying the enforcement of certain conditions; that motion was denied by order issued January 10, 2002 (Order No. 16566-B). The Board certified the Applicant’s 2000 campus plan, as revised to reflect the conditions of approval, by order issued May 22, 2002 (Order No. 16566-C).

The Applicant appealed the March 29 Order and the order on reconsideration to the District of Columbia Court of Appeals. By order issued December 4, 2003, the Court of Appeals vacated the Board’s decision and remanded the case for further proceedings. See *President and Directors of Georgetown College v. District of Columbia Board of Zoning Adjustment*, 837 A.2d 58 (D.C. 2003).

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At a public meeting on June 22, 2004, the Board indicated its intent to conduct further proceedings on the application, and requested submissions from the parties recommending issues they believed should be addressed on remand. Submissions were received from the Applicant and two parties in opposition, Citizens Association of Georgetown and Hillandale Homeowners Association.

By order issued October 15, 2004, the Board directed any party that wished to do so to submit a proposed order either granting or denying the application in whole or in part, including findings of fact, conclusions of law, and any proposed conditions necessary to mitigate potential adverse impacts identified based on the existing record in this proceeding (Order No. 16566-D). Proposed orders were submitted by the Applicant, Citizens Association of Georgetown, and Hillandale Homeowners Association. At a public meeting on April 5, 2005, the Board voted to approve the application subject to conditions.

Other than the submissions filed by the Parties after remand, the Board's decision was based exclusively upon the record as it existed on March 29, 2001. References in this order to District agencies and officials are based upon their status at that time. Thus, although the transportation responsibilities of DPW were subsequently transferred to the District Department of Transportation, the views remain attributable to DPW. Similarly, the Board's decision to approve the Campus Plan and the requested enrollment increase are based upon the facts existing in 2001 and what would be reasonable to predict based upon those facts.

Application. The Applicant filed an application pursuant to 11 DCMR § 3104 for a special exception under 11 DCMR § 210 for approval of the University Campus Plan – years 2000-2010 for its campus in Georgetown, located in the R-3 and C-1 districts. The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated February 4, 2000, the Office of Zoning sent notice of the application to the Office of Planning; the Department of Public Works; the Zoning Administrator; and Advisory Neighborhood Commission (“ANC”) 2E, the ANC for the area within which the subject property is located.

The public hearing on the application was originally scheduled for May 16, 2000 and June 13, 2000. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on March 23, 2000 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2E. Notice was also published in the D.C. Register (47 D.C.R. 2169).

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By letter dated April 25, 2000, the Applicant agreed to a one-month postponement of the hearing sought by five community organizations representing residents of neighborhoods surrounding the University's campus for purposes of a mediation effort intended to resolve issues raised by the Applicant's proposed campus plan. The Applicant participated in a mediation process sponsored by the Office of Planning in May 2000. During the mediation process, the Applicant met with representatives of the community groups opposed to the proposed campus plan, and subsequently amended its proposed plan.

The public hearing was held June 13, 2000 and July 18, 2000. Notice of the continued hearing was published in the D.C. Register (47 D.C.R. 4387).

Requests for Party Status. ANC 2E was automatically a party in this proceeding. The Board received requests for party status from the Burleith Citizens Association, Citizens Association of Georgetown, Cloisters in Georgetown Homeowner's Association, Foxhall Community Citizens Association, Georgetown Residents Alliance, and Hillandale Homeowners Association. These requests were all granted. The Wormley Neighbors Association also requested to participate as a party, but failed to appear at the hearing. Its request for party status was denied.

Applicant's Case. The Applicant presented evidence and testimony from Leo J. O'Donovan, president of the University; Dorothy M. Brown, chief academic officer; Alan Brangman, the University's architect and director of facilities planning, who was recognized by the Board as an expert in architecture; Linda Greenan, assistant vice president for external relations; Jeanne Lord, the assistant dean of students, who heads the Applicant's off-campus student affairs program; John Green, senior vice president of MedStar Health, a nonprofit health-care organization that operates the University's hospital; Louis Slade, a principal with Gorove Slade Associates recognized by the Board as an expert in traffic and parking; Karen Frank, executive director of University Facilities and Student Housing; and Lewis Bolan, president of Bolan Smart Associates, a real estate and economic consulting firm and recognized by the Board as an expert real estate economics.

The Applicant described the proposed 2000 Campus Plan as an update of prior plans approved by the Board. Among other things, the proposed plan was designed to provide adequate space for existing and future university programs, and to reorient the campus to traditional design principles that would create a pedestrian-friendly campus with more open space for student activities and rational vehicular circulation. The Applicant's proposal initially projected an increase of 500 students in undergraduate enrollment (*i.e.* an increase in the cap on the number of undergraduate students from 5,627 to 6,127), construction of four new buildings and renovations or additions to six existing buildings, and design changes to improve pedestrian circulation on the campus.

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After the mediation process in May 2000, the Applicant amended its proposed plan by (1) reducing the requested increase in undergraduate enrollment to 389, for a new maximum of 6,016 undergraduate students;¹ (2) proposing to delay any increase in undergraduate enrollment above the existing current cap of 5,627 students until after the Southwest Quadrangle project (a planned 780-bed residence hall on campus)² was occupied or until Fall 2003; (3) strengthening the University's off-campus student affairs program; and (4) providing the Board with progress reports in every future application for further processing.

Government Reports. The Office of Planning ("OP") submitted reports dated June 12, 2000 and July 14, 2000. OP concluded that the Applicant's proposed 2000 campus plan "basically meets the test of the zoning regulations, except that additional measures are needed to address the issue of possible impacts resulting from additional undergraduate enrollment." OP expressed concern that the future increase in undergraduate enrollment, without any additional on-campus housing, "could mean continuing negative impacts on nearby neighborhoods."

OP recommended approval of the application with an increase in undergraduate enrollment of 389 students, subject to conditions related to housing and enrollment. OP suggested a "formula" approach to future increases in undergraduate enrollment that would require the University to take certain actions to address impacts if the number of students living off campus in ZIP Code 20007 (*i.e.* the residential neighborhoods in the vicinity of the campus) exceeded a specific percentage. According to OP, the impacts could be mitigated by measures possibly including (a) providing more student housing on-campus, (b) providing student housing elsewhere (*i.e.* outside ZIP Code 20007 as well as outside other areas affected by other universities), and (c) undertaking an increased off-campus student program.

In its supplemental report, the Office of Planning elaborated on its "formula" approach and proposed that the University should be required to take certain action if more than 700 undergraduate students were living within ZIP Code 20007 after the 2003-2004 academic year. According to OP, "[i]f undergraduate numbers began to approach [700], it would be an indication that a problem situation was developing." OP stated that if the

¹ The Applicant initially sought to increase the cap on undergraduate enrollment by 500 students, from 5,627 to a maximum of 6,127 undergraduates. The proposed increase was subsequently reduced by 111 students to 389, for a proposed new cap of 6,016. The revised request represented an increase of 500 students over the Applicant's then enrollment of 5,516.

² The Applicant's prior campus plan anticipated construction of a new dormitory to create 500 new beds. See BZA Application No. 15302, Order issued October 12, 1990, at 12. By order issued June 10, 1999 in Application No. 16427, the Board granted, subject to conditions, the University's application under the approved campus plan to construct the residence hall and related facilities.

assistance provided by the University to community organizations, and the advantages of living near the University, including the proximity to students whose foot traffic through the neighborhood created a sense of security for pedestrians.

Parties in Opposition. The neighborhood associations collectively testified and presented evidence in opposition to the Applicant's proposal. The parties in opposition indicated their general support for most of the goals of the Applicant's proposed 2000 campus plan but expressed concern about some current, and potentially future, operations of the University that are objectionable to neighboring property. Citing a "large number of unknowns" in the planning process, the community association parties suggested approval of a five-year campus plan instead of committing to the 10-year proposed plan.

The parties in opposition urged the Board to maintain the Applicant's existing cap on undergraduate enrollment, asserting that "large numbers of students in the community cause a negative impact, because of behavior, housing and other issues" and that the University's efforts to mitigate the impact have not solved the problem. According to the parties in opposition, increasing the cap on the number of students enrolled in the University without additional increases in on-campus housing would increase objectionable impacts in the community, in part because the University's assertion that completion of the Southwest Quadrangle project would diminish the number of students living in the community was a "fallacy" or a "matter of conjecture." The parties in opposition contended that the University's current level of enrollment created objectionable conditions in the surrounding neighborhoods associated with students living in group houses, including deleterious impacts on the housing stock and the historic character of the neighborhoods due to the transient nature of student residents; overcrowding of numerous students in relatively small single-family dwellings; accumulations of trash that contribute to infestations of rats; and behavior problems, particularly pertaining to noise and late-night parties.

With respect to traffic, the parties in opposition expressed concern about whether proposed development of the medical center portion of the campus would exacerbate existing flow problems on Reservoir Road, and about whether new facilities on the southern portion of the campus would also create adverse traffic impacts. The parties in opposition also questioned whether the on-campus supply of parking would be adequate after completion of the new construction and expansion of existing buildings projected in the Applicant's proposed 2000 campus plan. Hillandale Homeowners Association provided testimony from Joseph Cutro, P.E., who was recognized by the Board as a traffic expert. The witness questioned certain conclusions reached by the Applicant's traffic expert, and disputed the Applicant's assertion that the projected changes to the medical center operations in the north campus would have no impact on traffic or parking.

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Persons in Opposition. The Board received numerous letters or heard testimony in opposition to the application from approximately 45 persons and from the Federation of Citizens Associations. The persons in opposition, many residents of neighborhoods near the campus, generally opposed any increase in student enrollment without an increase in the supply of on-campus housing, asserting that the university use currently created adverse impacts on neighboring property through objectionable conditions associated with students living off-campus. The persons in opposition cited changes in the character of the neighborhood as students replaced the permanent resident population; overcrowding of students living in or visiting group houses; frequent loud noise, particularly late at night; disorderly behavior; objectionable traffic and parking conditions; litter, including improper disposal of bulk trash; and the lack of an effective response from the University to complaints from neighborhood residents.

FINDINGS OF FACT

The subject property

1. The Georgetown University campus, known as 3800 Reservoir Road, N.W., comprises 104 acres located in the Georgetown neighborhood of Ward 2. The campus is bordered on two sides by public parkland and Canal Road. The southern boundary extends east along Prospect Street to 35th Street, excluding the structure on the north side of Prospect Street between 36th and 37th Streets. The campus is bounded on the west by Glover Archbold Park and on the north by Reservoir Road. The eastern boundary runs from Reservoir Road at 37th Street south and east past the Cloisters residential development and the grounds of the Sisters of Visitation High School and Convent to a point just west of 36th and P Streets, then continues south, excluding a row of residences on the west side of 36th Street to O Street, south on 36th Street to N Street, east to 35th Street, and finally south to Prospect Street.
2. The campus is zoned primarily R-3 (with a small portion zoned C-1), and is located within the Georgetown Historic District.
3. The University has been located on its present campus since its founding in 1789. With certain exceptions, the campus boundaries include land owned by the University that has been actively devoted to university use for over 200 years. The proposed campus plan does not seek any change in the previously adopted campus boundaries, and does not propose to move any major new building off campus.
4. The University reached an agreement with MedStar to operate the clinical care enterprises of the Georgetown University Medical Center. Pursuant to the agreement, the facility will continue to be used as a university medical center with a university hospital, university medical school, and accessory buildings and uses.

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The University continues to own the land, and will exercise exclusive control over aspects of the medical center relating to its academic program as a learning facility for medical students and medical residents in furtherance of the academic mission of the University.

5. The Applicant testified that the licensed capacity of the hospital – 535 beds – would not change, but that the number of employees might increase consistent with an increase in in-patient admissions. The Applicant projected an increase in admissions to approximately 18,000 per year, up from 13,000. The hospital currently has a staff of 2,600 full-time equivalent employees.
6. The Applicant currently employs 6,727 faculty and staff on campus, but projects that the number will rise to 7,500 over the life of the proposed campus plan. The Applicant's traffic and parking calculations were based on the projected number.

Proposed 2000 Campus Plan

7. The Applicant submitted a plan for developing the campus as a whole, showing the location, height, and bulk of all present and proposed improvements, as required by 11 DCMR § 210.4.
8. The Applicant's 2000 campus plan proposes a total of approximately 1.3 million square feet of new construction: approximately 740,000 square feet devoted to academic/administrative space; 432,000 square feet devoted to medical/health care space; and 88,500 square feet devoted to residential/campus life/athletic space. The planned new developments on campus include a science building, a business school, an administrative/academic building, and a physicians' office building at the Medical Center. Other projects set forth in the proposed plan include additions or renovations to several existing buildings as well as the renovations of Harbin Field into a multi-sports facility and McDonough Gymnasium to allow its use as a convocation center.
9. Including the planned new construction, the total gross floor area of buildings on campus would be approximately 6.2 million square feet. The proposed additional gross footage and existing square footage would result in a floor area ratio (FAR) of 1.41, or 0.39 below the 1.8 FAR permitted by the Zoning Regulations. Lot occupancy would be 36 percent.

Noise

10. The Applicant's proposed campus plan will minimize any adverse noise impacts associated with the university use on the subject property through measures including the location of on-campus student residences away from residential neighborhoods abutting the campus, installation of landscape buffers and new

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construction that will mitigate noise from outdoor events on campus, and implementation of new policies by the University to regulate noise generated by campus activities and to address noise impacts associated with students living off-campus.

11. The University's medical center contains a helicopter pad. The Applicant testified that helicopters, used exclusively for medical purposes, made approximately eight trips per week to and from the campus, and projected that the number of trips would likely increase to no more than 12 flights per week with increased utilization of the hospital.
12. The Board credits the testimony of the Office of Planning that "the University has made sufficient proposals to address the noise issue."
13. The Board finds that approval of the Applicant's proposed campus plan is not likely to create conditions objectionable to neighboring property because of noise.

Traffic

14. The campus is served by streets including Reservoir Road, a minor arterial street adjacent to the campus on the north; Canal Road, a principal arterial on the south; and several local residential streets on the east side of campus, such as Prospect, 36th, 37th, O, and P Streets. Reservoir Road provides four points of access to the campus. Access control gates in the interior of the campus preclude the north-south movement of vehicles across the campus (except for service vehicles).
15. The campus is served by several Metrobus routes, some of which connect the campus to Metrorail stations, as well as by shuttle buses operated by the Georgetown University Transportation Shuttle ("GUTS"). The five GUTS shuttle bus routes connect the campus and locations in the District (Dupont Circle, Wisconsin Avenue, and the University's law school) and in northern Virginia (Rosslyn and North Arlington). The GUTS shuttle buses are free for the University's students, faculty, and staff, and currently serve more than 3,000 riders per day.
16. The Board credits the testimony of the Applicant's traffic expert that approximately 30 percent of the traffic on Reservoir Road during peak hours is related to the University, while the balance is commuter and neighborhood traffic, and that all intersections abutting the campus operate at acceptable levels of service.

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17. The Board credits DPW's testimony that university-related traffic flow along 38th and 39th Streets adjacent to the campus are nine and two percent, respectively, an amount of traffic not likely to cause adverse traffic impact in the residential area.
18. The Board credits the testimony of DPW that the provision of on-campus housing is an effective way to minimize traffic to and from the campus, and its conclusion that the Applicant's plans to house 84 percent of its undergraduate students on campus after completion of the Southwest Quadrangle project (up from 77 percent) would have an extremely beneficial improvement on local traffic.
19. The Board credits the testimony by DPW that the increases in students, faculty, and visitors to the campus projected in the Applicant's proposed 2000 campus plan would not generate adverse traffic impacts, in part because some of the additional trips to the campus would be made by mass transit or other non-vehicular modes of travel, and because most of the trips would likely occur during non-peak times.
20. As part of the 2000 campus plan, the Applicant proposed to implement a transportation management plan ("TMP") intended to ensure that traffic and parking generated by the University would not create any adverse impacts on neighboring communities. Elements of the TMP include:
 - (a) Continued operation and expansion of the GUTS shuttle bus system – the University doubled the fleet of GUTS vehicles to serve new and existing routes, using small buses that would be less intrusive on neighborhood streets, expanding hours of operation, and scheduling more frequent trips on each route, especially during rush hours;
 - (b) Enhanced alternative transportation programs – the University increased incentives provided to students, faculty, and staff to use carpools, and implemented the Metrochek program to encourage use of mass transit;
 - (c) Implementation of an off-site parking program – the University planned to create satellite parking options in Rosslyn (and possibly in Maryland, depending on demand) for use by University students, faculty, and staff, who would pay an off-campus parking rate half the cost of parking on campus and receive free shuttle bus service to and from campus.
21. The Board finds that approval of the Applicant's proposed campus plan is not likely to create conditions objectionable to neighboring property because of traffic.

Parking

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22. The campus provides parking for 4,029 vehicles. The existing campus parking supply is consistent with the cap of 4,080 spaces approved in the University's 1990 campus plan as a means to discourage people from driving to the campus. The Applicant proposed to maintain the cap of 4,080 parking spaces in the 2000 campus plan.
23. Campus parking is presently provided on a large surface lot in the southern portion, in three garages in the northern portion, and in numerous small surface lots. There are 1,535 marked parking spaces located on the southern portion of the campus, accessed from Canal Road and Prospect Street. An additional 2,494 spaces (a combination of marked and stacked parking spaces) are located on the northern portion of the campus accessed from Reservoir Road. The Applicant indicated an intent to provide additional parking spaces – initially a total of 2,545, and eventually 2,800 spaces – in the northern portion of the campus near the hospital and clinical center, and to maintain the supply of 1,535 spaces in the southern portion for use primarily by faculty, staff, students, and visitors. Two new parking facilities were proposed for the Medical Center campus to replace surface parking and a valet parking program that provides 400 parking spaces and handles approximately 560 cars per day. The large surface lot at the south end of campus would be replaced with a below-grade parking structure as part of the Southwest Quadrangle, with access directly from Canal Road.
24. Students living on-campus are not permitted to have cars on campus, and students living in areas of the District and Northern Virginia accessible to campus by Metro or the GUTS service may not use campus parking. Students living off-campus are required to register their vehicles with the Department of Motor Vehicles.
25. Most streets in the vicinity of campus restrict long-term parking through the use of parking meters or by requiring the applicable residential parking permit.
26. The Board credits the testimony of the Applicant's traffic expert that the peak parking demand on the campus is approximately 3,600 vehicles, occurring at approximately 2 p.m. on weekday afternoons.
27. The Board credits the testimony of DPW that the current supply of parking on-campus (*i.e.* 4,029 spaces) is adequate to meet peak demand requirements.
28. The Board finds that the Applicant's proposal to maintain the existing cap of 4,080 parking spaces within the campus boundaries is adequate to meet the demand for parking associated with the university use and is appropriate as a means to discourage people from driving to the campus. Approval of the Applicant's

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proposed campus plan is not likely to create conditions objectionable to neighboring property because of parking.

Number of Students

29. In the University's prior campus plan, the Board adopted an enrollment cap of 5,627 undergraduate students, excluding "non-traditional students such as women returning to school, English as a second language students, commuters, and other non-traditional students not requiring housing." (See BZA Application No. 15302, order dated October 12, 1990, at 9.)
30. The University's enrollment in 2000 included 6,166 undergraduate students (approximately 5,842 full-time and 325 part-times students), and 2,840 graduate students.
31. The Applicant proposed to increase its enrollment cap by 389, to a maximum of 6,016 traditional undergraduate students. The Applicant also proposed to increase graduate student enrollment by 1,284, of whom approximately 800 would be enrolled in programs on the campus.
32. The University testified that the number of traditional undergraduate students is measured as an average taken over the Fall and Spring semesters of the academic year.
33. Approximately 77 percent of the University's traditional undergraduate students presently live on campus. Freshman and sophomore students are required to live on-campus.
34. A new residence hall project, the Southwest Quadrangle, was scheduled to be completed by Fall 2003, providing 780 new beds on campus and raising the proportion of traditional undergraduates living on campus to 89 percent. After completion of the Southwest Quadrangle, the University would have available approximately 5,053 beds on campus for undergraduate students. The Applicant projected that at least 84 percent of undergraduates would live on campus by 2010, with the requested increase in enrollment 389 deferred until the Southwest Quadrangle was completed.
35. The Applicant operates an office of off-campus affairs intended, among other things, to assist students making the transition to off-campus living, to serve as a liaison between students and residents of neighborhoods near the campus, to establish standards of responsible conduct, and to investigate and adjudicate violations of the University's Code of Conduct that occur off-campus.

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Components of the off-campus program, including recent improvements by the Applicant, include:

- (a) Educational outreach to students, including distribution of a handbook to new students that articulates the University's expectations for students, an off-campus orientation for sophomores that provides information about local laws, safety, and neighborhood matters; and on-going programs concerning alcohol or substance abuse;
 - (b) An office of off-campus housing, which will provide information about housing available to students and publish materials providing information about off-campus living; and
 - (c) A telephone hotline operated during the school year from 9:00 p.m. to 3:00 a.m. on Thursday, Friday, and Saturday nights as well as certain holidays, allowing neighborhood residents to call to report concerns to an operator who contacts the appropriate students or dispatches an "on-site response person" to discuss the concern with the students.
36. Students may be disciplined for misconduct that occurs off-campus, primarily relating to noise and late-night parties. Sanctions for off-campus violations of the University's code of conduct may include suspension, and typically range from community service and fines to disciplinary probation.
37. The Applicant proposed to implement a new "off-campus student affairs program" with proactive measures intended to address adverse impacts from students living in the surrounding community. Elements of the program include:
- (a) An acknowledgement that the University will address adverse impacts from students living off campus, including noise, drinking, partying, parking, trash, and disrespectful behavior;
 - (b) A clear statement that the University will not tolerate behavior that adversely impacts the surrounding community and reflects poorly on the institution;
 - (c) Clear-cut procedures for educating students living off-campus as to their community responsibilities, enforcing the University's new Code of Conduct, and implementing stiffer sanctions and penalties for violations of the Code;

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- (d) The creation of a new neighborhood council, called the Alliance for Local Living (“ALL”), that will meet with the University to bring issues to the attention of the University and to identify problems and their solutions, inviting representatives of District government agencies as needed to work toward community-wide solutions;
 - (e) Increased coordination with the Metropolitan Police Department to assure an institutionalized and coordinated approach to issues concerning student conduct off campus;
 - (f) Increased and enhanced on-campus events, programs, and activities as well as comprehensive alcohol education programs; and
 - (g) An implementation plan that outlined immediate, short-term, and long-term actions that could be monitored, tracked, and evaluated, so that statistics could be shared with ALL and reported to the Office of Planning and the Zoning Administrator annually.
38. The Board finds that the Applicant’s proposal to increase its enrollment cap on the number of traditional undergraduate students to 6,016, calculated as an average over the Fall and Spring semesters of the academic year, is not likely to become objectionable to neighboring property or to adversely affect the use of neighboring property. After completion of the new Southwest Quadrangle project, the University will have more than 5,000 beds on campus, a number sufficient to house 84 percent of the traditional undergraduate population. The University has implemented new measures and enhanced existing programs that will help to prevent and mitigate the impacts of any student misconduct off-campus in the neighborhoods abutting the campus.
39. The Board credits the testimony of the Office of Planning and DPW that the Applicant’s proposed increase in graduate student enrollment would have only limited impacts and would not tend to create objectionable conditions.

Harmony with the Zone Plan

40. The Board finds that the Applicant’s proposed campus plan will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The new construction projected in the plan will result in a floor area ratio and lot occupancy for the campus consistent with requirements of the Zoning Regulations.
41. The Board finds that the Applicant’s proposed campus plan is consistent with provisions in the Comprehensive Plan germane to the University, including the statements in the Ward 2 element indicating that the University’s “development

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plans ... should not adversely impact surrounding adjacent residential areas" (§ 1340.3) and expressing concern about the conversion of residential property in Burleith and Hillandale to group houses (§ 1361.2).

CONCLUSIONS OF LAW AND OPINION:

The Applicant is seeking a special exception, pursuant to Sections 210 and 3104 of the Zoning Regulations, for approval of an updated campus plan for the years 2000 to 2010. The Board is authorized to grant a special exception where, in the judgment of the Board based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07 (2001), 11 DCMR § 3104.1.

The Zoning Regulations specify that use as a university in a residential zone shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. 11 DCMR § 210.2. The Board concludes that the Applicant has met its burden of showing that the university use will not be objectionable to neighboring property, subject to conditions adopted in this Order necessary to minimize any potential adverse impacts on neighboring property associated with the university use consistent with the new campus plan.

The Zoning Regulations specify that the number of students is one factor that the Board must take into account when assessing whether a university use in a residential zone is likely to become objectionable to neighboring property. *See* 11 DCMR § 210.2. The Board concludes that the Applicant's proposed increase in the cap on enrollment applicable to traditional undergraduate students will not tend to create conditions objectionable to neighboring property or otherwise adversely affect the use of neighboring property. The completion of the Southwest Quadrangle project will likely result in a decrease in the number of undergraduates living off-campus in surrounding neighborhoods, and the University's new off-campus student affairs program is likely to lessen the incidence of student misconduct in the surrounding neighborhoods.

The Board notes the ANC's support for a phased-in increase in the cap on undergraduate enrollment from 5,627 to 6,016 after completion of the Southwest Quadrangle project. According to ANC 2E, the impact of off-campus student housing will be significantly reduced through completion of the Southwest Quadrangle and by maintaining 85 percent of undergraduates in on-campus housing.

The Board gives great weight to the testimony of the Office of Planning concerning the relationship between enrollment and the percentage of students housed on-campus,

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describing problems created by some students living in rented houses off-campus, and concluding that the "potential effects of increased undergraduate and graduate enrollment ... raise questions of continuing though reduced adverse impacts on the surrounding communities in the future." However, the Board declines to adopt OP's suggested "formula" approach, which would require the University to take certain actions intended to mitigate the impact of a larger enrollment on the residential neighborhoods surrounding the campus if the number of undergraduate students living in Zip Code 20007 exceeded a certain number.

The Board is not persuaded that the "formula" approach is necessary. As OP itself noted, completion of the Southwest Quadrangle would likely lessen the impacts of undergraduate students on neighborhoods in the vicinity of the campus. It is unclear how the proposed "formula" approach would be implemented and enforced, other than through a reliance on "monitoring of the housing situation." The Board concludes that the increased supply of on-campus housing, sufficient to house more than 80 percent of the increased enrollment of traditional undergraduate students on campus, and the implementation of proactive measures by the University to address potential adverse impacts associated with students living in the neighborhoods near the campus are adequate to avoid creation of objectionable conditions in the neighborhoods bordering on the campus.

The Board was not persuaded by the parties in opposition that the university use is currently creating adverse impact on neighboring property, or that the proposed increase in enrollment would create objectionable conditions not capable of mitigation through the University's enhanced programs addressing student conduct off-campus. Some students living off-campus – albeit a minority of students living off-campus and a small fraction of the University population – may create objectionable conditions in communities surrounding the campus through several causes, including student misconduct. The University's off-campus programs are a reasonable approach that will allow the University to monitor off-campus student activity in a proactive manner to prevent adverse impacts that off-campus student houses or vehicles may otherwise have on the community.

The Board accorded the issues and concerns of ANC 2E the great weight to which they are entitled. In doing so, the Board fully credited the unique vantage point that the ANC holds with respect to the impact of the University and its proposed campus plan on their constituents. The ANC adopted a resolution in support of the proposed campus plan that urged implementation of measures to strengthen the University's off-campus affairs program and thereby minimize the potential adverse impact of the University on surrounding residential neighborhoods.

CONCLUSION

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For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to the application seeking approval of a new campus plan effective through December 31, 2010, subject to the conditions adopted in this Order. Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT** to the following **CONDITIONS**:

1. The Applicant's proposed campus plan is approved until December 31, 2010, subject to the following conditions intended to mitigate any adverse impacts potentially arising from the location of a university use in a residentially zoned district.
2. The Applicant shall not increase undergraduate enrollment above the cap of 6,016. This cap shall apply to traditional full-time undergraduate students (that is, undergraduate students who require housing) and shall be calculated as an average of the total enrollment of traditional undergraduate students during the Fall and Spring semesters of the academic year.
3. The Applicant shall implement and enforce programs, as described in Findings of Fact No. 35-37 and set forth in Exhibit No. 191 of the record, designed to mitigate any adverse impacts associated with students living off-campus in the neighborhoods in the vicinity of the campus.
4. The Applicant shall avoid scheduling events that attract large numbers of visitors to the campus during the peak traffic times of 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. The Applicant shall employ campus personnel as necessary to direct visitors to campus parking areas and to facilitate smooth flow of traffic into and out of the campus.
 - a) All weekday evening performances at the Performing Arts Center expected to draw more than 100 visitors shall begin no earlier than 7:00 p.m.
 - b) Athletic events at Harbin Field expected to draw over 100 visitors shall begin before 4:00 p.m. or after 7:00 p.m.
5. The Applicant shall maintain a parking inventory of no more than 4,080 off-street parking spaces within the campus boundary.
6. The Applicant shall enhance its Transportation Management Program, described in Finding of Fact No. 20, so as to promote greater transit usage, including increased ridership of the GUTS bus service, and to work with the community, MedStar, and the Department of Public Works as part of a cooperative team effort to look at mitigation strategies for Reservoir Road.

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7. The Applicant shall prepare a revised campus plan that is consistent with this Order, accompanied by a table of changes that lists each change. In addition, the Applicant shall include in the revised Campus Plan its Code of Student Conduct; Guide to Off-Campus Living, description of its New Office of Campus Student Affairs Program, and any other documents reflecting the programs, policies and procedures it has or will institute, and to which it is required to implement and enforce, pursuant to condition no. 3 of this Order, including those described in Findings of Fact No. 35-37 and set forth in Exhibit No. 191 of the record. The Applicant shall submit an original and 10 copies of the revised plan to the Board no later than 30 days from the effective date of this Order, and shall, on the same day, serve a copy of the revised plan and table of changes on each party to this proceeding. Each party shall have 14 days in which to submit to the Board, and to serve on all other parties, its comments on the Applicant's proposed changes. Comments on the revisions shall be strictly limited to whether the revisions correctly and clearly reflect the Order. After review of the Applicant's proposed revised plan and the parties' comments, the Board shall determine whether further proceedings are warranted or shall certify the revised copy as the approved campus plan. The revised plan shall be deemed approved 60 days after submission, absent action by the Board before that date. Copies of the approved plan shall be maintained in the Office of Zoning and the Office of the Zoning Administrator.

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

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

Each concurring member has approved the issuance of this Order.

Final Date of Order: June 7, 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 10 DAYS AFTER IT BECOMES FINAL.

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.

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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

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

Application No. 17090 of Lee C. Bauer, pursuant to 11 DCMR § 3103.2, for variances from the following provisions of the Zoning Regulations: the nonconforming structure provisions of § 2001.3, the floor area ratio requirement of § 402.4, the lot occupancy requirement of § 403.2, the rear yard coverage maximum of § 2500.3, and the accessory garage alley set-back requirement of subsection 2300.2(b), to allow construction of a free-standing accessory garage with a roof deck in the DCOD/R-5-B District at premises 2116 O Street, N.W. (Square 69, Lot 146).

HEARING DATE: July 27, 2004, October 19, 2004

DECISION DATE: November 2, 2004

DECISION AND ORDER

This application was filed by Lee Bauer ("Applicant"), the owner of the property that is the subject of the application, ("subject property") on September 17, 2003. The application requested two variances¹ in order to construct a rear garage with a rooftop deck, but action on the application was deferred at the Applicant's request due to his travel schedule.

The Board scheduled a public hearing on the application for July 27, 2004, which was continued to, and completed on, October 19, 2004.

At its public meeting on November 2, 2004, the Board voted 2-3-0 to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memorandum dated September 23, 2003, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission 2B ("ANC"), the ANC within which the subject property is located, Single Member District /ANC 2B06, and the Councilmember for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *District of Columbia Register* and on May 25, 2004, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the hearing date.

Requests for Party Status. ANC 2B was automatically a party to this case. There were no other requests for party status, although the Board received two written submissions from neighbors opposed to the project.

Applicant's Case. The Applicant's architect, David Akopian, presented testimony and evidence at the public hearing. The Passoneaus, immediate neighbors of the Applicant, and another nearby neighbor testified in favor of the Applicant's project.

¹The application originally requested only two variances, from §§ 2001.3 and 2300.2, but during the hearing, the Board amended the application to add variance relief from §§ 402.2, 403.2, and 2500.3.

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Government Reports. The Office of Planning filed a report dated July 20, 2004 with the Board. OP listed the two regulations from which the Applicant requested variances, but listed three more variances which OP determined that the Applicant also needed, as well as a possible sixth. After analyzing in its report all the possibly necessary variances, OP opined that the Applicant had not met his burden of proof and recommended denial of all the variances.

There were no other government reports filed in this case.

ANC Report. There was no written ANC Report filed nor did a representative of the ANC testify at the hearing.

FINDINGS OF FACT

1. The subject property is located at 2116 O Street, N.W., in Square 69, Lot 146. It is located in a DC/R-5-B zone district.
2. The property is a regular rectangular lot 22 feet wide and 95 feet deep, giving it a lot area of 2,090 square feet. It is improved with a three-story row house with a basement used as a 4-unit multi-family dwelling and occupying approximately 61% of the lot.
3. The property is nonconforming as to lot occupancy as the R-5-B District allows only a 60% lot occupancy. *See*, 11 DCMR § 403.
4. The rear yard of the dwelling is approximately 33 feet long and abuts a narrow, 10-foot wide alley. The rear yard has a fence running through it parallel to the alley, and between the fence and the alley are two parking spaces.
5. The property is a contributing structure to the Dupont Circle Historic District.
6. The Applicant proposes to construct a 384-square-foot detached garage with a rooftop deck at the rear of the lot. The proposed garage would accommodate two vehicles and would open directly onto the alley.
7. For zoning purposes, the construction of the proposed garage would eliminate the Applicant's rear yard. *See*, 11 DCMR § 199.1 (definition of "Yard, rear" and "Yard, rear, depth of").
8. The construction of the garage would increase the nonconformity of the property by increasing the lot occupancy to 83.5%.
9. The proposed garage would increase the floor area ratio (FAR) of the property to 2.1, where a FAR of only 1.8 is permitted by the Zoning Regulations. *See*, 11 DCMR § 402.

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10. The garage is proposed to be constructed flush with the alley, leaving only a 5-foot setback from the center of the alley, 7 feet less than the required 12 feet. *See*, 11 DCMR § 2300.2. This would create a new nonconformity with respect to the setback from the centerline of the alley.
11. The lack of any setback of the garage from the alley puts the garage-top roof deck only 10 feet away from the rear yards of the properties across the alley. This increase of occupancy and activity to within 10 feet of these properties will negatively affect their privacy.
12. The construction of the proposed garage will decrease the access width to the two parking spaces from 22 feet to 19 feet, making it more difficult to turn from the alley into the proposed garage than it is to turn from the alley into the open parking spaces existing now.
13. The property is densely used as it accommodates four housing units and exceeds the maximum lot occupancy.
14. Drainage in the alley is poor and at least parts of the alley ice over in the winter. These problems may be exacerbated if the proposed garage is constructed.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, strict application of any Zoning Regulation "would result in particular and exceptional practical difficulties to or exceptional undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3), 11DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.* An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance will not impair the public good or the intent and integrity of the zone plan and regulations.

The Applicant herein has failed to meet any of the three prongs of the variance test. There was no evidence of any uniqueness of this property. The lot is not particularly small, with a lot area of 2,090 feet. Nor is it oddly-shaped or narrow, but is a regular rectangle with dimensions of 22 feet for width and 95 feet for depth. There is no significant grade change within the lot. Although the structure on the lot is above maximum lot occupancy, there is still a sizeable rear yard, providing open space, light, and air to the subject property and the surrounding properties.

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During the hearing on July 27, 2004, the Applicant's architect stated, with regard to the subject property, that "[i]t's not a unique property. You cannot say that it's a unique property." See, July 27, 2004 transcript at 107, lines 22-23.

Even after being permitted a continuance to better prepare his case, the Applicant still failed to meet the variance test. When discussing the variance from the 12-foot setback requirement, the Applicant's architect set forth three reasons why such a variance should be granted: the structure was built over 100 years ago and cannot necessarily conform to the Zoning Regulations, a small brick patio between the rear of the dwelling and the proposed garage will be retained, and the proposed garage footprint will be aligned with that of the neighbor's. These were essentially the only reasons put forth by the Applicant in arguing for all of his multiple variances. None of these reasons, however, support, or indeed are particularly relevant to, the granting of a variance, let alone several variances.

Although the Board is aware that many neighbors of the Applicant have already done what he is proposing, the Board concludes that it must deny his requested variance relief. If that were the test, this Board would be compelled to grant a slew of variances throughout the residential areas of the District.

In this conclusion, the Board, pursuant to D.C. Official Code § 6-623.04 (2001), gives great weight to, and agrees with, OP's recommendation of denial. The Applicant did not make any showing of an extraordinary or exceptional situation or condition of the property so that the first prong of the variance test has not been met. The Board need not address in any detail the second and third prongs of the test, but, suffice it to say that the Applicant also failed to demonstrate any practical difficulty in complying with the Zoning Regulations.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to the application for variances from the nonconforming structure provisions of § 2001, the floor area ratio requirement of § 402.4, the lot occupancy requirement of § 403.2, the rear yard coverage maximum of § 2500.3, and the accessory garage alley set-back provisions of subsection 2300.2(b). It is therefore **ORDERED** that the application be **DENIED**.

VOTE:

2-3-0

(Curtis L. Etherly, Jr., John A. Mann, II, and Zoning Commission member, Gregory Jeffries, to deny. Geoffrey H. Griffis and Ruthanne G. Miller to grant.)

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

A majority of the Board members has approved the issuance of this Order denying this application.

FINAL DATE OF ORDER: JUN 16 2005

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

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

Application No. 17232 of RLA Revitalization Corporation, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to permit a multi-use commercial establishment in the C-3-A District at premises 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W. (Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871, and 872).

HEARING DATES: November 16, 2004; December 21, 2004; January 25, 2005; February 1, 2005; February 8, 2005

DECISION DATE: March 1, 2005

DECISION AND ORDER

The owner of the subject property, RLA Revitalization Corporation (RLA or the applicant), filed an application with the Board of Zoning Adjustment (the Board) on August 13, 2004 for special exception relief and variance relief. It seeks to reduce the required number of on-site parking spaces under § 2101.1 from 1,592 to 1,000, stipulating that an additional 244 attendant assisted spaces will be provided as needed. It also seeks relief from § 411.3 of the Zoning Regulations, which requires that all rooftop mechanical equipment be placed in one enclosure. For the reasons stated below, the application is granted, subject to certain conditions.

Preliminary Matters

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

Notice of Public Hearing The Board scheduled a public hearing for November 16, 2004. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, owners of all property within 200 feet of the subject premises, Advisory Neighborhood Commission (ANC) 1A , and the District of Columbia Office of Planning (OP).

Government Reports

OP Report The Office of Planning (OP) filed an initial report recommending approval of the special exception relief and requesting additional information regarding the parking

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variance (Exhibit 27). OP specifically requested information regarding the uniqueness of the site, and also asked the applicant to submit revised plans that were consistent with the District Department of Transportation's (DDOT) comments regarding sidewalk widths. OP filed a supplemental report indicating that it was satisfied with the additional information submitted by the applicant and recommended approval of the parking variance (Exhibit 29).

Department of Transportation DDOT reviewed the variance application and recommended approval provided the applicant addressed certain sidewalk width and other public space concerns (Exhibit 31). DDOT also filed a supplemental report supporting proposed design changes that address these concerns (Exhibit (40)).

ANC 1A The subject site is located within the area served by Advisory Neighborhood Commission 1A, which is automatically a party to this application. In its report dated November 10, 2004, ANC 1A indicated that at a meeting with a quorum present, it voted to support the parking reduction (Exhibit 33). In a subsequent report, the ANC indicated that additional attendant-assisted spaces was a "reasonable and satisfactory way to ensure that sufficient parking spaces are available in the garage to serve peak demand from the businesses located on the site while still being able to accommodate parking demand from outside person[s]" (Exhibit 60).

Requests for Party Status The Board received untimely requests for party status from a nearby church, the Kelsey Temple Church of God in Christ, and a related entity, the Economic Development Corporation (Exhibit 25). Both requests were filed by Thomas Ruffin, Jr., Esq., in opposition to the application. Noting no objection from the applicant, the Board waived its regulations regarding the time for filing the party status applications and considered the requests. Party status was granted to the Kelsey Church and Corporation as a combined entity (Kelsey or the party in opposition), based upon Kelsey's proximity to the site and the parking impact of the proposed development.

Motion to Dismiss or Reschedule Kelsey moved to dismiss or reschedule the public hearing on the ground that it had not received proper notice. Although the property had not been posted for 15 days as required under section 3113.5 of the Regulations, the Board found that the notice requirements had otherwise been complied with and Kelsey had received actual notice of the proceedings. The Board did continue the public hearing to allow for proper posting of the property and to allow Kelsey additional time to prepare its case.

The Applicant's Case The applicant offered testimony from several witnesses during the five days of public hearing: Drew Greenwald, Project Developer; Michael Prifti, Project Architect; Lou Slade, Traffic Consultant, Steven Sher, Land Use Planner; and Jennifer Budoff, Development Manager for the National Capital Revitalization Corporation

(RLA's parent corporation). The Board qualified Mr. Slade and Mr. Sher as experts in their respective fields.

Disposition of Motions by Party in Opposition

Kelsey filed various motions following the public hearing on December 21, 2004: a motion to strike certain testimony and a letter pertaining to settlement discussions, a motion to "challenge or deny" the application based upon alleged false calculation of the parking space requirements, and a motion to dismiss based upon alleged *ex parte* communications.

Motion to Strike (Exhibit 52) Kelsey moved to strike a letter submitted by the applicant (Exhibit 44) that pertained, in part, to settlement discussions between the applicant and party in opposition. Kelsey also moved to strike the December 21, 2004 testimony of Jennifer Budoff which pertained, in part, to the letter. The Board granted the motion to strike the letter, finding that it was not relevant to the application. However, the Board denied the motion to strike Ms. Budoff's testimony, noting that it would disregard any testimony that was not germane to the application.

Motion to Challenge RLA Misrepresentations (Exhibit 49) Kelsey moved to "challenge" RLA's parking calculations and/or deny the application, based upon the applicant's alleged miscalculations of the parking requirements. Kelsey argues that RLA improperly excluded the garage and closed court area when calculating the base square footage at the project. The Board denied the motion, finding as a matter of law that these areas were properly excluded from the calculations.

Motion to Dismiss due to Ex Parte Communications (Exhibit 50) Kelsey moved to dismiss the application based upon alleged *ex parte* communications between DDOT, RLA and Chairman Griffis. The Board denied the motion, finding that the factual basis of the motion was in error and that the Chairman did not participate in any meetings or discussions with DDOT or RLA concerning the application.

FINDINGS OF FACT:

The Property

1. The site is located at 1400-1420 Park Road, NW and 1417-1437 Irving Street, NW in Square 2674 in the Columbia Heights neighborhood in the C-3-A zone. Square 2674 is bounded on the east by 14th Street, NW, on the north by Park Road, on the west by Hiatt Place, and on the south by Irving Street. The Columbia Heights metro station is located across from the Irving Street and 14th Street boundaries of the site.
2. The site is comprised of 4.96 acres (approximately 215,940 square feet), with its principal frontage along 14th Street, NW. It is primarily vacant with the exception of

various small retail uses in the northeast corner of the Square fronting on 14th Street and Park Road, and a building façade on Irving Street.

3. A portion of the site contains an existing parking lot that can accommodate approximately 150 parked cars. The lot is used by the Kelsey Church, particularly on Sundays when the lot is used by between forty-five and seventy-five parked automobiles of parishioners and other neighborhood vehicles. During the week days, approximately ten to twelve parking spaces are occupied at a time.

The Proposed Project

4. RLA has executed an exclusive rights agreement with Grid Properties, Inc. to develop a large retail complex at the site. The proposed complex will be approximately 486,789 square feet in size and will include a Target store as the anchor tenant. It will also include two to three medium-sized retailers fronting on an interior atrium and small-scale retail shops on the ground level fronting on 14th and Irving Streets.

5. RLA plans to construct a two level underground parking garage at the site containing 1,000 self-park parking spaces. It also proposes to provide 244 attendant-assisted parking spaces during peak demand periods¹. Funding for the parking garage will be provided by a tax increment revenue bond authorized by DC Council legislation (See, Exhibits 23 and 59). Although the parking spaces will not be exclusively dedicated to Target or the other retail tenants, the garage owner will establish pricing and validation mechanisms to ensure that the primary users of the garage are customers of the proposed project.

6. The project was originally conceived as a larger project – 539,850 square feet in size – with a mix of retail and entertainment uses and three levels of underground parking. Based upon the original plans, the Board approved a special exception in 2002 for a 25% parking reduction in BZA Case No. 16858 to allow 1,364 parking spaces.² However, the 2002 special exception was never implemented and the square footage and number of parking spaces was scaled down in size to what is now before the Board.

The Zoning Relief Requested

7. RLA seeks a variance from the parking requirements contained in section 2101.1 of the Zoning Regulations. The parking schedule contained in that section provides that a retail or service establishment measuring more than 3,000 square feet in the C-3-A zone must provide one parking space for each additional 300 square feet of gross floor area and cellar floor area. Because the gross floor area and cellar floor area consists of

¹ At one point during the proceedings the attendant-assisted parking was proposed as a separate form of zoning relief under the Regulations. However, the applicant ultimately proffered it as a proposed condition to the requested parking reduction variance.

² Section 2108.2(b) of the Regulations authorizes the Board to grant special exceptions to reduce parking for non-residential uses by not more than twenty-five percent.

482,631 square feet, RLA is required to provide 1,599 parking spaces. Since it proposes to provide only 1,000 parking spaces, it requests a variance from the parking schedule requirements.

8. RLA also seeks relief from the roof structure requirements under section 411 of the Zoning Regulations. Since it proposes to construct multiple roof structures, RLA seeks relief from section 411.3 which requires that all mechanical equipment be placed in one roof top enclosure. Section 411.11 permits the Board to grant relief from this provision by special exception provided certain conditions are met.

The Parking Reduction

9. At 215,871 square feet of land area, the site is exceptionally large for an urban area. The average size of privately owned properties within 225 feet of the site is 7,440 square feet and the next largest property is only 53,495 square feet in area.

10. Because it is the only site in the Columbia Heights area and one of the few sites in the entire District of Columbia that is large enough to support a major retail development, the property has been designated for big box retail by District planning officials (See, Exhibit 35). Were the applicant to reduce the square footage of the project in order to comply with the parking requirements, it would not be able to produce the big box retail project.

11. The site also has an unusual shape, with multiple street frontages and angled lot lines. The site has frontage of approximately 510 feet on Irving Street, 510 feet on 14th Street, 225 feet on Park Road and 245 feet on Hiatt Place. The odd shape results in a loss of design efficiency enjoyed by more rectangular shaped sites.

12. The applicant would have to construct a third full sized level of parking and a fourth smaller level of parking in order to comply with the parking requirements.

13. The applicant is constrained from constructing the third and fourth levels of parking due to the groundwater conditions at the property. Investigation by the applicant's geotechnical engineer indicates that groundwater would be approximately six feet eight inches above the finished floor elevation of the third parking level. Measures to mitigate this condition would require an extensive drainage and waterproofing system.

14. The applicant is also constrained from building additional levels of parking due to the metro tunnel that is adjacent to the site. Proximity to the tunnel requires an additional support structure to avoid putting pressure on the tunnel, specifically, the pre-loading of sheeting and shoring during construction.

15. Funding for the parking lot is provided by tax increment revenue bonds approved by the Council of the District of Columbia in a resolution, dated July 13, 2004,

approving financing for the project on an emergency basis. The legislation limits the amount of money that may be expended for the development costs of the parking facility to \$40 million. The funding for the parking facility is tied to the description of the D.C.–U.S.A. Project as generally described in this Application. (See Exhibit 23, at Exhibit F)

16. Constructing the third and fourth levels of parking would result in additional costs of \$23.8 million. These costs would be prohibitive and would result in the abandonment of the project. The cost to build the garage with two levels of parking is approximately \$27,600 per space, while the total cost to build an additional third and fourth level would increase to approximately \$35,000 per parking space. Factors contributing to the cost increases include the groundwater levels and the WMATA tunnel, discussed above, substantially higher costs for sheeting/shoring /underpinnings for deeper excavation, additional design elements such as elevators, parking ramps, stairs that would not otherwise be required, increased construction schedule costs for the additional six months to construct the additional parking, and increased exposure to risks from unforeseen conditions . (See, Supplemental Statement of Applicant).

17.. The Board credits the testimony and report presented by the applicant's traffic expert, with which OP and DDOT concur, in particular the parking analysis based upon the Urban Land Institute study model, (See, Supplemental Statement of Applicant). The Board finds that 1,000 parking spaces will be sufficient to serve the proposed retail uses. The 1,000 spaces offered –approximately 2.2 spaces per 1,000 square feet – is similar to the amount of spaces provided in comparable retail developments in the area (See, OP report, p. 7). Except for approximately 19 hours out of the year, the 1,000 spaces will be more than adequate to satisfy the parking demand. For approximately 40% of the operational hours of the year, one-half of the spaces will remain empty. During the estimated 19 hours when needed, the attendant-assisted parking will satisfy the increased demand.

18. The Board credits OP's testimony and DDOT's report that the proposed parking reduction will have no detrimental impact on traffic in the area.

19. The project will draw heavily from the surrounding neighborhoods, which are well served by transit. The retail mix is designed to primarily serve Columbia Heights and the surrounding communities defined as the 200,000 people who live within two miles of the site. The site itself is across the street from the Columbia Heights Metro station and within one block of 6 north/south bus lines and 15 east/west bus lines. As a result, many customers of the proposed project will use metro or bus service or will walk to the site. Neither they nor the neighboring residents will be adversely affected by the reduction in parking.

20. The Board credits the testimony of Councilmember Jim Graham, in whose ward the property is located, that the project is vital to the provision of retail services to the residents of Ward One and to the District of Columbia as a whole, and is vital to the

economic vitality of the District by retaining tax dollars currently being lost to surrounding jurisdictions.

The Roof Structure Special Exception

21. Because of the large overall size and footprint of the building and roof areas and the needs of the various tenants, the project requires a significant number of mechanical units on the roof. As a result, RLA proposes to build several roof structures, including a stair tower and elevator enclosure on the northern portion of the roof, a larger penthouse/stair/mechanical enclosure near the center of the roof, and a stair tower and elevator on the lower roof portion of the project. It also proposes to provide a number of eight foot mechanical structures on the roof levels to serve the needs of the proposed tenants at the project.

22. Given the large size of the building, it cannot be served by one mechanical unit that would meet the needs of all of the proposed tenants. Each tenant requires a separate mechanical unit. Furthermore, Target requires separate mechanical units for separate interior zones of its store.

23.. Fresh air supply and exhaust vents from the parking garage must be located on the roof as well. The vents cannot exhaust onto the street without adversely impacting on pedestrians, and the multiple vents are too numerous to project from the building's walls.

24.. Because the building will include a three foot high parapet wall, the roof structures will be screened from the street level. The visual impact of the roof structures will be further minimized because the structures will be set back from the roof lines at a distance at least equal to their height.

25. The impact of three smaller roof enclosures will be less intrusive than one extremely large enclosure spread out over a 200,000 square foot roof.

26. The roof structures will be at least 100 feet from the nearest adjacent building.

CONCLUSIONS OF LAW

The Parking Variance

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief to reduce the number of required parking spaces from 1,599 to 1,000.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or

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

Applying this test to the requested relief, the Board concludes that a combination of factors necessitates the parking reduction: the size and shape of the property, its planning history and big box retail designation, the water table at the property, the site's proximity to the metro tunnel, and the limitations imposed by the legislation and financing of the project. The Board also finds that the proposed parking reduction will not result in substantial detriment to the zone plan or the public good.

Unique conditions at the property necessitate the variance

As explained above, the property is exceptionally large and has been designated for big box retail by District planning officials because of its large size and location within an area that lacks sufficient retail development. Because this type of big box retail requires a large floor plate and the property has an odd shape, the parking must be located underground. Due to the water table at the property and its proximity to the metro tunnel, it would be difficult and costly to construct more than two levels of parking below ground. In fact, the additional costs would threaten the viability of the project.

Kelsey argues that the property is not unique because its shape and size is similar to that of other properties in the area. It also disputes that the groundwater conditions at the property and its location near the metro are distinguishing characteristics. Kelsey claims that because these conditions are shared with other properties in the District, the property is inherently commonplace, neither unique nor exceptional. While other properties are close to metro and share similar groundwater conditions, the Board does not agree that these facts immediately disqualify the property from meeting the "uniqueness" test. As stated in the *Gilmartin* case, "a confluence of factors can establish uniqueness..." for purposes of approving a variance. As explained above, the uniqueness of this site derives not just from its proximity to metro and groundwater conditions, but from the confluence of other factors, i.e., the large size of the property, its planning history, and the financing limitations and legislative constraints imposed on the project. The property is the only site in Columbia Heights and one of only a few sites in the District of Columbia capable of supporting the major retail development specifically designated for this site by District planning officials. These factors converge to create a "unique" set of circumstances arising from both the topography of the land, and the planning and legislative history attendant to the project.

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Strict application of the Regulations would create practical difficulty

To comply with the Zoning Regulations, RLA would have to construct a third full size level of parking and a smaller fourth level of parking. As discussed above, the cost to do this would be prohibitive. The number of parking spaces is limited by the financing in place through Council legislation and the feasibility of the entire project is based upon this financing.

Granting the variance would not impair the public good

Based upon the testimony of Applicant's traffic expert, the concurrence of DDOT and OP and the underlying parking analysis provided by Applicant, the Board concludes that the 1,000 proposed spaces will be sufficient to meet the needs of the retail complex. Because of the unusual combination of the project's location within the community that it is designed to serve and an extensive transit network serving the area, the Board has confidence that the reduction in parking spaces correlates with a reduction in need for such spaces and will not create parking problems in the area. (See Findings of Fact 16-18)

Kelsey argues that approval of the parking reduction would impair the public good because it will displace local residential parking and eliminate the parking that it and other nearby property owners currently use at the site. The Board finds that even with the variance for the parking reduction, the new parking facility will add to the parking supply, not take from it. Estimates for use of the surface parking lot that will be displaced show a range from a mere 10-12 cars during the week day to 45-75 on an average Sunday . (Finding of Fact 3) While not concluding that the Applicant is obligated to replace this parking, the Board concludes that any adverse impact that may result from the loss of the parking lot is mitigated specifically by the Applicant's provision of parking spaces to the public. While the parking facility will be primarily available to users of the project, the parking facility will also be available to the public (Finding of Fact 5)

For most of the year, Applicant's parking facility will have a surplus of parking spaces. Applicant's traffic expert testified that 40% of the year as many as one half of the spaces (500) will be available for uses not serving the project. Only 19 hours out of the year is the parking facility projected to exceed demand and then an additional 244 attendant – assisted spaces will be added. (Finding of Fact 16).

Finally, the Board finds that granting the variance for the parking reduction will benefit the public interest. Without the variance not only would the Applicant abandon the parking facility, but the retail project, dependent on the parking facility, would be abandoned as well. As noted by Councilmember Jim Graham and reflected in the Council of the District of Columbia's emergency legislation providing funding for the parking through tax increment financing, this project will improve the quality of life for residents of Ward One and the District as a whole by bringing retail services where they are greatly

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needed and will improve the economic vitality of the City by retaining tax dollars currently being lost to other jurisdictions.

The Roof Structure Requirements Special Exception

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code §6-641.07(g)(2))(2001), to grant special exceptions as provided in the Zoning Regulations, in particular the standards contained in § 3104. This applicant seeks a special exception to have multiple roof structures with three enclosures and to be relieved of the requirements of § 411 of the Zoning Regulations. The application meets the standards in § 3104. The Board agrees with OP that the special exception use will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties.

In addition to meeting the general standards for special exception approval under § 3104, the applicant has demonstrated that it meets the criteria under § 411.11 for relief from the roof structure requirements; specifically, [w]here [compliance is] *impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area*" [and would be] *unduly restrictive, prohibitively costly or unreasonable*". As stated in the Findings of Fact, this large a building cannot be served by one mechanical unit that would meet the varying needs of the tenants, and the Target, in particular, requires separate mechanical units for separate zones within the store. Numerous mechanical units are required for the other tenants and multiple roof vents for the garage are necessary to keep the exhaust away from the street level and to avoid cluttering the building's façade. Section 411.11 also requires a showing that the granting of the requested relief not *materially impair* the intent and purpose of the Zoning Regulations or *adversely affect the light and air of adjacent buildings*. This showing has been made. The roof structures will be set back from the edge of the building at a distance at least equal to their height and will be screened from the ground by the parapet wall. Because the roof structures will be at least 100 feet from the nearest adjacent building, the light and air of these buildings will not be affected.

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

Therefore, for the reasons stated, the Board hereby **GRANTS** both the variance to reduce the number of required parking spaces and the special exception for relief from the rooftop enclosure requirements subject to the following conditions:

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1. The Applicant shall provide up to 244 attendant-assisted parking spaces on those days when the parking garage reaches or is expected to reach its capacity of 1,000 spaces.
2. The applicant shall establish pricing and validation mechanisms to insure that the primary users of the garage are customers of the retail project; and
3. The applicant shall seek further review from the Board if, upon final design and determination of the proposed uses for the subject property, the number of parking spaces required for the project exceeds 1,599.

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann, II, and Curtis L. Etherly, Jr., in support of the motion, no Zoning Commissioner member present)

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

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

Final Date of Order: June 10, 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.

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

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. SG/RSN

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

Application No. 17305 of Southeast DC Partners, pursuant to 11 DCMR § 3104.1, for a special exception to establish a community service center under section 334, in the R-5-A District at premises 2826 Q Street, S.E. (Square 5583, Lot 804).

HEARING DATE: April 19, 2005
DECISION DATE: June 7, 2005

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) 7B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7B, which is automatically a party to this application. ANC 7B submitted a report in support of the application. The Office of Planning (OP) also 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 334. 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 334, 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

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application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Renovation of the property shall be in accordance with the plans submitted and marked as Exhibit No. 10, as amended by Exhibit Nos. 32 and 35 of the record.
2. Lighting of the property shall be in accordance with the plans marked as Exhibit No. 35 of the record.
3. The Applicant shall allow the residential space designated for the Building Host to be used solely by the Building Host hired by SEDCP and the host's family. The residential space shall include the laundry facilities which shall be available strictly for use by the Building Host, his/her family, the visiting volunteers and the SEDCP for maintenance of the facility.
4. The dormitory rooms and accompanying bathroom facilities and common area will be used solely by visiting volunteer groups who have been scheduled to volunteer through the SEDCP at the Q Street facility and in the surrounding community. If no visiting volunteer groups are scheduled to volunteer at the Q Street facility or surrounding neighborhood, the dormitory rooms, accompanying bathroom facilities and common area will not be used.
5. The hours of operation of the building shall be from 8:00 a.m. to 8:30 p.m. After school programs are from 3:30 p.m. until 8:30 p.m., Monday through Friday. (There are no programs scheduled while school is in session.) Summer and school vacation programs and events are planned between 8:00 a.m. and 8:00 p.m. on weekdays and Saturdays.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUN 10 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME

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BZA APPLICATION NO. 17305

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FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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

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

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

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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17312 of Washington International School, pursuant to 11 DCMR § 3104.1, for a special exception under section 206 (Private Schools), to construct an addition of approximately 28,000 square feet to an existing building, consisting of a library, a theater and classroom space, and pursuant to 11 DCMR § 3103.2, for a variance under subsection 2117.4, from the requirement that each required parking space be accessible at all times directly from improved streets or alleyways via graded and unobstructed private driveways in the R-1-A District at premises 3100 Macomb Street, N.W. (Square 2084, Lot 837).

HEARING DATE: May 3, 2005

DECISION DATE: May 3, 2005

DECISION AND ORDER

This application was submitted on February 23, 2005, by the Washington International School, ("WIS" or "Applicant"), owner of the property that is the subject of the application ("subject property"). The Applicant seeks a special exception under section 206 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")) to construct an addition to an existing building which will consist of a library, a theater, and classroom space, and to expand an existing athletic field. The Applicant also seeks a variance from section 2117.4 to allow eight (8) stacked or tandem parking spaces within a structured parking area.

The Board held a public hearing on the application on May 3, 2005, and voted 4-0-1 to approve the variance and the special exception for the new construction. The Board did not approve the request to expand the athletic field because at the time of the hearing the Applicant did not own all the property into which the expansion is planned.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memorandum dated February 24, 2005, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3C, Single Member District member 3C09, and the Council Member for Ward 3. Pursuant to 11 DCMR 3113.13, notice of the hearing was published in the *D.C. Register* (52 DCR 2726) and sent to the Applicant, all owners of property within 200 feet of the subject property, Advisory Neighborhood Commission ("ANC") 3C, OP, and DDOT. The Applicant properly posted the subject property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

Requests for Party Status. ANC 3C, the ANC in which the property is located, was automatically a party to this case. There were no other requests for party status, but the Board received a letter in support on the application from the Friends of Tregaron Foundation, Inc. ("FOT"), a non-profit organization dedicated to preserving and protecting the Tregaron Estate, on which WIS is located.

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Applicant's Case. The Applicant presented the testimony of three witnesses: David Cox, the architect for the project, Richard Hall, the headmaster of the Washington International School, and O.R. George, P.E., the Applicant's traffic consultant, who testified as an expert witness in traffic analysis. The Applicant also submitted an extensive and detailed private agreement between the Applicant, the FOT and the single member commissioner for ANC 3C -09 reflecting conditions the parties have agreed upon outside this case

Government Reports. The Office of Planning filed a report dated April 26, 2003 (sic, should be 2005) in support of the special exception and variance relief, subject to the following conditions: (1) an enrollment cap of 425 students and a faculty and staff cap of 102, (2) one-way on-site traffic, with access from Macomb St. and egress from Klinge Rd., (3) no simultaneous after-school events for more than 325 people unless non-neighborhood street parking and shuttle buses are provided, (4) no student or staff drop-off or pick-up on neighborhood streets, (5) lighting in parking areas should not adversely affect neighbors, (6) appropriate screening of parking areas, (7) after construction, no parking on lawns or planted areas, (8) non-athletic, non-WIS events restricted to the Mansion and limited to 45 per year, (9) non-athletic after 6:00 p.m. school events limited to 53 per year, (10) noise-producing events in the Arts & Athletic Building must conclude by 11:00 p.m., elsewhere on the property, such events shall be limited to 3 per year and they must end by 12:00 a.m. (with these 3 events included in the 53 non-athletic event limit), and (11) WIS must establish a liaison committee with the neighborhood to coordinate and enforce the private agreement between WIS, Friends of Tregaron, and the ANC 3C09 Commissioner.

DDOT submitted a report dated April 25, 2005 stating that the project will have no adverse traffic impacts on the area and accordingly, that it has no objection to the granting of the application.

On January 27, 2005, the Historic Preservation Review Board ("HPRB") adopted a staff report recommending conceptual approval of the project which is the subject matter of this application.

ANC Report. ANC 3C filed a report indicating that at a public meeting on April 18, 2005, with a quorum present, the ANC unanimously voted (8-0) to support the application for the special exception and variance, subject to the identical conditions set forth in the Office of Planning's Report, listed above.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. Washington International School is a private, co-educational day school that offers classes from nursery school through the twelfth grade. The school was founded in 1966 and has been located at the subject property since 1978, although currently only the middle and upper schools (grades six through twelve) are located at the subject property. The lower school is located on Reservoir Road, N.W.
2. The Applicant presently enrolls 425 students and proposes to retain the existing student cap of 425. (See Application No. 16189; Order dated February 24, 1997). Applicant

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presently employs 95 full-time equivalent faculty and staff at the subject property. Such number of FTE employees equates to no more than 102 total employees. The Applicant proposes no increase in the number of faculty or staff in conjunction with this project. (See Application No. 17082; Order dated February 13, 2004).

3. The subject property is located in an R-1-A zone district and has a premise address of 3100 Macomb Street, N.W. (Square 2084, Lot 837).
4. WIS covers a 6-acre portion of the 20.7-acre Tregaron Estate and is located in the area of highest elevation within the Estate.
5. The Tregaron Estate is bounded by Macomb Street on the north, Klingle Road to the east, Klingle and Woodley Roads to the south and private property to the west. The entrance to the subject property is on Macomb Street and egress is onto Klingle Road.
6. The subject property currently contains several buildings and facilities devoted to private school use, including the Tregaron Mansion, the Dacha, the Greenhouse, the Gardener's Cottage, the Middle School Building, the Carriage House, the Arts and Athletic Center and the Annex Building. The subject property also contains an athletic field and an outdoor basketball court.
7. The Tregaron Mansion and its grounds are a historic landmark and are listed on the National Register of Historic Places. Many features of the subject property, including the Greenhouse, the Gardener's Cottage, the Carriage House, the winding driveway, and its landscaped areas, contribute to defining the overall historic character of the Tregaron estate
8. The surrounding area is predominantly residential. To the north are single-family detached dwellings. To the southeast are multi-family dwellings. To the west are an embassy and another educational institution.

The Proposed Project.

9. The Applicant proposes to construct an addition of approximately 28,000 square feet to the Arts and Athletic Center and to expand the existing athletic field.¹ The addition will have two stories and one level below-grade. It will be built on the southern side of the Arts and Athletic Center, away from Macomb Street and toward the center of the subject property and will conform to the maximum height of 40 feet permitted under the Zoning Regulations.
10. The addition will house a library, an underground theater, 10 new classrooms, 6 offices and 2 student lounges. The library will be located along the main walk of the campus,

¹At the time of the public hearing, the Applicant did not own all the land into which it proposed expanding the athletic field, nor did it have permission from the owner either for the expansion or to bring this application on the owner's behalf. Therefore, the Board excluded this portion of the Applicant's request from its application and this Order does not apply to the expansion of the athletic field.

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the classroom space will front the northern end of the athletic field and the theater will be located entirely underground. The new theater will seat an audience of 325.

11. The north side of the theater will lead to a covered parking area which is created by a fifteen foot (15 ft.) drop in the elevation from the southern to the northern side of the addition. This parking area will be accessible by vehicles via the service drive located on the northern side of the Carriage House and Middle School Building.
12. Seventeen (17) parking spaces will be provided within this covered parking area. Eight of such spaces will be located directly behind another eight parking spaces, creating a stacked or tandem parking arrangement.
13. Additionally, between the Carriage House and Arts and Athletic Center, above the below grade theater and the covered parking area, will be a second new parking area -- a parking deck -- that will be accessible via the main walk of the campus.
14. The Applicant entered into an agreement with FOT and the Commissioner of the affected Single-Member District, ANC 3C09, dated April 28, 2005. ("Agreement"). The Agreement addresses a wide range of issues of particular concern to FOT and ANC 3C 09 , including construction, traffic, parking, and storm water management, event limits, landscaping and the formation of a liaison committee to facilitate the agreement's implementation. The purpose of this agreement is to assure the preservation of the Tregaron Estate, the continued operation of the school in a manner that is consistent with its location in a residential neighborhood, and the stabilization of the surrounding community

Impact on Neighboring Properties.

15. The proposed addition will be located within the center of the subject property, substantially out of view from, and separated by a minimum of four hundred feet from, neighboring properties. The addition, like the existing WIS buildings, will be buffered from neighboring properties by landscaping and substantial tree cover.
16. The addition will conform to the requirements of the R-1-A zone district with respect to lot occupancy, height, bulk, and side and rear yards. It will be compatible with the fabric of the historic site and the residential neighborhood, with classic elements such as brick veneer facades with masonry back-up, pre-cast copings, and sloping roofs covered in synthetic slate tile.
17. The footprint of the addition has been kept to a minimum by placing it in such a way that the core elements already existing within the Arts and Athletics Center, such as bathrooms and elevators, will be used to service the addition. Further, the theater -- potentially the most intrusive element of the addition, due to height and noise -- has been located entirely underground to minimize any impacts.

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18. The height of the addition steps down a story and a half toward the Gardener's Cottage, so as not to overshadow that historic building.
19. The Applicant intends to provide necessary tree replacement and additional landscaping to aid in the integration of the addition into the subject property. This will include a retaining wall along the northern side of the service drive and new landscaping in this area to help shield the structured parking and parking deck from the view of Macomb Street residents. The façade of the parking deck will also include a wood trellis with plantings along its top to add a green edge.
20. There are presently 72 parking spaces on the subject property. Due to the construction of the theatre, with its assembly space of 325 seats, the Zoning Regulations require the Applicant to provide another 10 parking spaces. The Applicant has located 13 new parking spaces on the property, for a total of 85 spaces.²
21. Lighting to illuminate the parking deck and other parking areas will be arranged so that all direct rays of lighting are confined to the surface of the parking spaces.
22. No increase in student enrollment or staff is being requested and the Board agrees with the Applicant's traffic expert that the addition will have "little or no impact on the overall vehicle trip generation patterns to/from the campus." The Board finds that the project will have no significant effect on the area road network.
23. The addition will have no effect on the existing vehicular circulation on the subject property, which is a one-way pattern with an entrance from Macomb Street and an exit onto Klinge Road. Nor will it have any effect on student pick-ups and drop-offs, which currently take place by the Tregaron Mansion within the center of the subject property, whose long entrance drive provides sufficient space for any necessary queuing.

Parking Variance.

24. Section 2117.4 requires that each required parking space be "accessible at all times directly from improved streets or alleys or ... from improved streets and alleys via graded and unobstructed private driveways."
25. The Applicant is providing ample parking and more than that required by Chapter 21 of the Zoning Regulations to accommodate students, teachers, and visitors. Eight of the spaces, however, 7 of which are required, are not directly accessible from the campus access drive.
26. The subject property is irregular in shape and experiences steep slopes on its northern, southern, and eastern edges, restricting the area available for the location of parking spaces.

²Two additional parking spaces are also required as a result of an increase of 3 staff members approved by the Board in Order No. 17082. Therefore, a total of 12 new spaces are required, and, at 13, the Applicant is providing one more space than is required.

27. The historic character of the Tregaron Estate and its significant tree cover also restricts the space available for parking. In particular, the open space surrounding the Mansion is protected from development due to its contribution to the mansion's historic vistas. The HPRB has requested that parking spaces located in front of the Mansion be removed so as to improve the views of the historic building when approaching from the driveway.
28. In order to maintain the historic relationship between the buildings and the landscape, the Applicant has avoided the protected areas and placed as many parking spaces as possible within the developed areas, thus creating the need for the stacked parking.
29. The stacked parking spaces are indirectly accessible from the access drive and will be used only by WIS employees. Although the Applicant anticipates that the stacked spaces will only be used during theatrical events, a system will be implemented to permit efficient movement of the vehicles if necessary.
30. The Board agrees with the Applicant's traffic expert that the variance to allow 8 stacked parking spaces will "not cause any adverse impacts to the adjacent on-street parking demand."

CONCLUSIONS OF LAW

Special Exception

The Board is authorized under Section 8 of the 1938 Zoning Act, (52 Stat. 797, 800; D.C. Official Code § 6-641.07(g)(2) (2001)) to grant special exceptions, as provided in the Zoning Regulations, where, in its judgment, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. See 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104.1 and § 206 of the Zoning Regulations.

The Applicant seeks a special exception to construct a new addition to an existing building for use by a private school in the R-1-A zone district at 3100 Macomb Street, N.W. (Square 2084, Lot 837). In accordance with Section 206, a private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. 11 DCMR § 206.2. Ample parking space must be provided "to accommodate the students, teachers, and visitors likely to come to the site by automobile." 11 DCMR § 206.3. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of the Zoning Regulations and Maps. 11 DCMR § 3104.1. Because the private school is an existing private school that has been the subject of prior Board approvals, the foregoing standards are applied in the subject proceeding only to the proposed addition.

There was no evidence presented of any "objectionable conditions" anticipated as a result of the addition proposed by the Applicant. The addition is to be constructed and located on the subject

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property in such a manner so as to assure compatibility with its residential neighborhood and to minimize any potentially adverse impacts, including noise. The Applicant has worked closely with the neighborhood and entered into an agreement to help ensure that no objectionable conditions arise. The Board agrees with the conclusion of the Applicant's traffic expert and DDOT that the proposed addition will have no adverse impacts on traffic and parking operations or levels of service within the area. Therefore, the Board concludes that the project is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property.

Variance

The Board is also authorized under Section 8 of the Zoning Act to grant variances from the strict application of the Zoning Regulations. Under the three-pronged test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the subject property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property ; (2) the applicant will encounter exceptional practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variance will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

The Applicant seeks relief from the requirement of § 2117.4 that all required parking spaces be directly accessible at all times from streets or alleys or from unobstructed private driveways.

. Applicant proposes to provide instead eight (8) stacked parking spaces, i.e., spaces requiring one vehicle to be removed before the vehicle in the "stacked" space can be moved. These eight (8) stacked parking spaces will be located within the covered parking area of the new addition.

The Tregaron Estate is unique in a combination of ways that give rise to the practical difficulty of providing the parking in accordance with the regulation. The steep topography of the subject property, its heavily wooded nature, and its protected historic character limit the area available for additional paving

The Board concludes that these factors result in an exceptional practical difficulty in meeting the requirements of § 2117.4 The stacked parking is a practical way of providing more on-site parking without disrupting the historic character of the subject property.

The requested variance will not result in detriment to the public good or the zone plan; to the contrary, the variance will result in the protection of the historic grounds. Further, as OP notes in its report, the impact of the variance is contained within the site and will have no adverse impact on the adjoining neighborhood.

Great Weight

The Board is required to give "great weight" to both the issues and concerns raised by the affected ANC and to the recommendation of the Office of Planning. *See*, D.C. Official Code §§ 1-309(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns

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of these two entities and an explanation of why the Board did or did not find their views persuasive. Both the ANC and OP recommended approval of the variance and special exception relief requested with conditions. After full deliberation of each and every recommended condition the Board declines to adopt the proposed conditions finding that each condition falls within one of the following categories: 1) The proposed conditions is unnecessary because it is already dictated by the Zoning Regulations or contained in previous orders relating to the Applicant ; 2) The proposed condition is beyond the Board's jurisdiction; or 3) the proposed condition relates to the use of the subject property, in general, but not necessarily to the proposed addition or the parking relief. With respect to the last category, the Board notes that these concerns are addressed in the private agreement between the Applicant, the Friends of Tregaron and the single member commissioner for ANC 3C 09.³

Conclusion

Based on the findings of fact, and having given great weight to the recommendations of OP and to the issues and concerns of the ANC, the Board concludes that the proposed addition and parking relief, as conditioned by the Board, can be located at the subject property so that it is not likely to become objectionable to adjoining and nearby property.

This Order pertains only to the construction of the new addition to the Arts and Athletic Center building and to the parking variance requested. All previous orders and conditions therein pertaining to the subject property remain in effect unless in conflict with this Order.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to the application for a special exception under § 206 and a variance from the requirements of § 2117.4. It is hereby **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall have flexibility to modify the design of elements of the proposed addition that do not impact zoning relief which are initiated by the Historic Preservation Review Board or the Mayor's Agent in compliance with D.C. Law 2-144, or by the Commission of Fine Arts.
2. Storm water collected from the new addition and parking areas shall be directed to, and contained in, the existing storm water retention system, which shall be expanded as necessary, and delivered to storm water facilities located under or near Macomb Street.

VOTE: 4-0-1

(Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and John G. Parsons voting to approve with conditions; Curtis L. Etherly, Jr., not participating, not voting)

³Neither the private agreement between the Applicant, FOT and the single member commissioner for ANC 3C 09., nor the conditions contained therein, are incorporated into this Order.

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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: JUN 06 2005

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

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

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

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

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

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

Application No. 17326 of Daniel Huck, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing single-family dwelling under section 223, not meeting the lot occupancy requirements (section 403), in the R-5-B District at premises 2027 13th Street, N.W. (Square 273, Lot 62).

HEARING DATE: June 7, 2005
DECISION DATE: June 7, 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) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B 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

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application be **GRANTED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr. 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 member approved the issuance of this order.

FINAL DATE OF ORDER: June 7, 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.

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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

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

Application No. 17330 of Alexander and Trenita Davis, pursuant to 11 DCMR § 3104.1, for a special exception to allow a one story rear addition to an existing single-family detached dwelling under section 223, not meeting the rear yard requirements (section 404), in the R-2 District at premises 7435 8th Street, N.W. (Square 3178, Lot 106).

HEARING DATE: June 14, 2005
DECISION DATE: June 14, 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) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B 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

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

VOTE: **3-0-2** (Ruthanne G. Miller, Curtis L. Etherly, Jr. and John A. Mann II, to approve, Geoffrey H. Griffis and the Zoning Commission member 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: June 14, 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

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

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

NOTICE OF FILING

APPLICATION NO. 17382

On June 14, 2005, the Board of Zoning Adjustment of the District of Columbia, received the above-numbered application from Christopher H. Collins, Esquire, on behalf of the Republic of the Sultanate of Oman to expand its chancery to house the Military Attache' and the Cultural Attache' in the D/R-1-B and R-1-B Districts at premises 2535 Belmont Road, N.W. (Square 2501, Lots 6-8, 15-19, and 805). The application will be considered by the Board in accordance with the requirements of the Foreign Missions Act, and the applicable provisions of the Zoning Regulations.

The property is located in Advisory Neighborhood Commission 2D.

This is not a notice of public hearing on the application. That notice will be published at least 40 days in advance of the hearing.

For additional information about this application, contact the Office of Zoning, 441 4th Street, N.W., Suite 210S, Washington, D.C. 20001, at (202) 727-63121.

rsn

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OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001).....	\$16.00
3	DCMR ELECTIONS & ETHICS (JUNE 1998).....	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995).....	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002).....	\$26.00
6A	DCMR POLICE PERSONNEL (MAY 1988).....	\$8.00
7	DCMR EMPLOYMENT BENEFITS (JANUARY 1986).....	\$8.00
8	DCMR UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988).....	\$8.00
9	DCMR TAXATION & ASSESSMENTS (APRIL 1998).....	\$20.00
10	DCMR DISTRICT'S COMPREHENSIVE PLAN (PART 1, FEBRUARY 1999).....	\$33.00
10	DCMR PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT*.....	\$26.00
11	DCMR ZONING (FEBRUARY 2003).....	\$35.00
12	DCMR CONSTRUCTION CODES SUPPLEMENT (2003).....	\$25.00
13B	DCMR BOILER & PRESSURE VESSEL CODE (MAY 1984).....	\$7.00
14	DCMR HOUSING (DECEMBER 2004).....	\$25.00
15	DCMR PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998).....	\$20.00
16	DCMR CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRACTIONS (JULY 1998) W/DECEMBER 1998 SUPPLEMENT.....	\$20.00
17	DCMR BUSINESS, OCCUPATIONS & PROFESSIONS (MAY 1990).....	\$26.00
18	DCMR VEHICLES & TRAFFIC (APRIL 1995) w/1997 SUPPLEMENT*.....	\$26.00
19	DCMR AMUSEMENTS, PARKS & RECREATION (JUNE 2001).....	\$26.00
20	DCMR ENVIRONMENT - CHAPTERS 1-39 (FEBRUARY 1997).....	\$20.00
20	DCMR ENVIRONMENT - CHAPTERS 40-70 (FEBRUARY 1997).....	\$26.00
21	DCMR WATER & SANITATION (FEBRUARY 1998).....	\$20.00
22	DCMR PUBLIC HEALTH & MEDICINE (AUGUST 1986).....	\$26.00
22	DCMR HEALTH CARE & COMMUNITY RESIDENCE FACILITIES SUPPLEMENT (AUGUST 1986 - FEBRUARY 1995).....	\$13.00
23	DCMR ALCOHOLIC BEVERAGES (AUGUST 2004).....	\$10.00
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