GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17123 of Beech Center, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under section 410.3, to allow the construction of two new single-family detached dwellings in the R-1-B District at premises 3139 and 3143 Westover Drive, S.E. (Square 5664, Lots 70 and 71).

HEARING DATE: **March 9, 2004**
DECISION DATE(S): **April 6, 2004**

DECISION AND ORDER

On December 16, 2003, Deeohn Ferris filed an application before the Board of Zoning Adjustment ("Board") on behalf of Beech Center, Inc. ("Applicant"), for a variance to allow the construction of two new single-family dwellings on undersized lots. Although the Applicant sought relief from § 401.1, the Board determined that § 401.3, which sets forth lot dimensions, was the provision from which relief was needed.

On March 9, 2004, the Board held a public hearing on the application. After the hearing, the Board left the record open to receive a statement from the Applicant setting forth how its application meets the variance test and to receive a response from the affected ANC to the Applicant's explanation. On April 6, 2004, the Board held a public decision meeting and unanimously voted to deny the application.

PRELIMINARY MATTERS:

Notice of Application Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated December 17, 2003, notified the Councilmember for Ward 7, Advisory Neighborhood Commission (ANC) 7B, Single Member District /ANC 7B04, and the District of Columbia Office of Planning (OP) of the filing of the application. On December 30, 2003, OZ mailed notices of the public hearing to the ANC, the Applicant and all of the owners of property within 200 feet of the subject property, advising them of the date of hearing. The Applicant's affidavit of posting, filed on March 4, 2004, indicates that on March 21, 2004, it posted three zoning posters at 3139 and 3143 Westover Dr. S.E., in plain view of the public. The Applicant corrected the date of posting on the record at the March 9, 2004 hearing and stated that the property was posted on February 21, 2004.

Request for Party Status There were no requests for party status.

Applicant's Case The Applicant's case was presented at the hearing by Philip Johnson. Somba Ndeti, a geotechnical engineer, testified concerning the soil conditions of the subject properties. Daniel Coywood, a licensed land surveyor with Maddox Engineering, testified concerning the history of the property's subdivision. In filing a post-hearing statement and at the decision meeting, Steven Gell, Esquire represented the Applicant. Mr. Gell argued that the Applicant met the variance test, that the government's creation of the two substandard lots in 1985 estopped it

from denying the building permits sought, and that the Applicant had authority to maintain this action.

Government Reports The Office of Planning submitted a report to the Board dated March 2, 2004. OP stated that it could not recommend approval of the lot area variance because construction of two single family homes on the lots would be in direct contradiction of section 401.2 of the zoning code, and the economic hardship argument presented by the Applicant was insufficient to meet the practical difficulty requirement for the variance test. OP concluded that Applicant had failed to prove that there was a practical difficulty in conforming with the regulations by combining the lots and constructing one house on the combined lot.

ANC Report By letter dated February 20, 2004, ANC 7B indicated that at a regularly scheduled, properly noticed meeting on February 19, 2004, with all commissioners present, ANC 7B commissioners voted unanimously to oppose the application for variance relief. In a letter dated March 29, 2004, the ANC, continued its opposition to the application stating that it was not in the public good to grant the requested variance because soil conditions in the area posed a potential risk of damage to neighboring properties. The ANC also opposed the application because the Applicant is no longer in business and the ANC is concerned that it would be difficult to identify a responsible party if there are problems as a result of the construction.

Parties and Persons in Opposition During the hearing on April 6, 2004, Vincent Spaulding, ANC Commissioner 7B, and residents living on Westover Drive, Garet Bornstein, Thomas Kelly, and John Judge testified in opposition to the application. Their opposition was based upon the poor condition of the soil and the possible adverse impact of the construction upon neighboring properties because of destabilization of the soil, land slides, and erosion. Garet Bornstein also authored a letter dated March 27, 2004 in which he questioned the legal existence of the Applicant. A petition signed by neighborhood residents opposing the application was filed with the Board on March 9, 2004.

Hearing The public hearing on the application was held and completed on March 9, 2004. The Board left the record open to receive a statement from the Applicant as to how it meets the requirements for an area variance. The Board also permitted ANC 7B to file a response to the Applicant's post-hearing statement.

FINDINGS OF FACT

1. On December 16, 2003, Deeohn Ferris filed an application for an area variance on behalf of Beech Center, Inc. ("Applicant") concerning properties located at 3139 and 3143 Westover Dr. S.E., Square 5664, Lots 70 and 71 ("subject property").

2. The application indicated that the Applicant was the owner of the subject property.

3. The Applicant is now defunct. Prior to going out of business, it sold its interest in the subject property on or about August 19, 2002 to Suraj Corporation, to whom it gave full power and authority to act in its name.

4 Suraj Corporation entered a purchase contract with Deeohn Ferris for the sale of the subject property and authorized him to file the application for a variance before the BZA.

5. The property consists of two undeveloped lots located within the radius of the 180-degree curve on the south side of Westover Drive, approximately 200 feet south of Pennsylvania Avenue, S.E. and is zoned R-1-B.

6. In 1985, the property was subdivided from three lots into two lots of 4,356 square feet each.

7 At that time and at present, the minimum lot size for properties located in the R-1-B Zone District is 5,000 square feet.

8 There is no record of any variance being granted for the creation of these substandard lots.

9 The lots are situated on a hillside that slopes upward at a steep angle and rises more than twenty-feet from the street frontage to the rear. The lots are 85 feet deep, resulting in a 25% slope on the property.

10. The fronts of the two proposed houses would face north and the foundation of each house and retaining walls would maintain the existing hill to the south.

11. The lots are triangular in shape, with each lot being narrow at the rear.

12. The soil of the subject property is composed of 60% Chillum-Urban Land Complex and 40% Muirkirk Variant Complex. Muirkirk Variant Complex soils are considered to be problem soils and require specialized techniques for construction addressing foundation support, slope stability, erosion potential, and high shrink-swell clay. Because of the extreme topography of the lots and the nature of the soil, construction will require specialized techniques to ensure the structural integrity of the houses that would be constructed and that of homes on neighboring properties.

13. As a result of the soil conditions, many properties in the area have experienced structural problems and land shifts.

14. The Applicant has expended $45,000 to prepare developmental plans.

15. Phillip Johnson testified that the Applicant would construct one single family home if the variance was denied.

CONCLUSIONS OF LAW

As a preliminary matter, the Board will address whether this application was properly brought in the name of Beech Center Inc. Although that entity is no longer in existence, upon selling the

subject property to Suraj Corporation on or about August 19, 2002, it authorized Suraj to act in its name as the owner of the property "pending eventual recordation of the deed." There is no evidence in the record as to when or if the deed of sale was ever recorded. However, the Board finds that regardless of whether Beech Center or Surjai is the owner of the property, Surjai had the authority to act in the name of Beech Corporation. Therefore, the application was properly made.

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g) (3) (2001); 11 DCMR §3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." Id. An Applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the 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 be detrimental to the public good or impair the intent and integrity of the zone plan and regulations.

The Applicant meets the first prong of the test for an area variance in that the combination of the topography and shape of the subject property make it unique. The lots are pie-shaped and located on a steep hill, in the curve of a U shaped street. Additionally, the soil composition makes construction on these lots challenging because the clay is unstable and absorbs water. While the soil composition of the subject property is the same as that of surrounding properties, the subject property's location at the bend of the road and its shape make it distinct from other properties in the area.

Although the Applicant's property is unique, the Applicant failed to establish that it would have practical difficulties complying with the Zoning Regulations' lot area requirements as a result of this uniqueness. The Applicant argued that the practical difficulty it would incur by complying with the regulations would be economic hardship. In support of this contention, the Applicant submitted estimates of costs associated with building one house on the two lots in conformance with the zoning regulations compared with building two houses if variance relief were granted. While the Applicant showed that the margin of profit would be less for one house than for two, the inability to reap a greater profit does not constitute a practical difficulty under the variance test

Economic harm may be considered in the practical difficulty test. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment;* 579 A.2d 1164 (1990), *Barbour v. District of Columbia,* 358 A.2d 326 (D.C. 1976). However, the Board has "no authority to grant a variance in order to

assure ... a profit". *Taylor v. District of Columbia Board of Zoning Adjustment,* 308 A2d 230, 236 (D.C. 1973), *citing, Anderson's Law of Zoning* § 14.23; 3 § 14.48.

In addition, Mr. Johnson, on behalf of the Applicant, testified that, despite the lower margin of profit,.he would proceed with construction of a single home if the variance request were denied, thus belying the practical difficulty in complying with the regulations.

With respect to the third prong of the variance test, the Board concludes that granting the variance relief would be substantially detrimental to the public good and would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Office of Planning, ANC 7B and concerned neighbors raised serious issues regarding land shifting, soil disturbance and the risk to neighboring properties that may result from the permanent excavation and site placement of two homes. While construction of one home may also create some disturbance, the Office of Planning noted in its report that the disturbed area and the size of the retaining walls for one house would be smaller. In addition, as OP notes, 11 DCMR Section 401.2 appears to have been drafted specifically to prevent what the Applicant seeks to do here by variance. Section 401.2 provides that under certain circumstances a structure may be built on a substandard unimproved lot that was in single ownership on November 1, 1957, <u>but only if the owner does not own an adjoining unimproved lot. Accordingly, the intent of the regulations is for nonconforming lots to combine, if possible.</u> In light of the fact that the record shows that it is possible for Applicant to construct a house on the combined lot, granting the variance would be substantially detrimental to the intent and integrity of the zoning regulations.

The Applicant has argued that the government is estopped from denying the area variance because, in 1985, the District permitted the creation of the substandard lots. The Applicant stated that it purchased the property under the assumption that two houses could be built on the lots.

Estoppel is an equitable doctrine that is disfavored by the courts in zoning cases because of the important public interest in the integrity and enforcement of the zoning regulations. *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7 (D.C. 1978).

In order for the government to be estopped, the Applicant must establish that it acted in good faith on the affirmative actions of the government, that it made expensive and <u>permanent</u> improvements in reliance on the government action, and the equities are strongly in favor of the Applicant. *Id. at 11.*

Estoppel is not applicable in this case for several reasons. While the Applicant argues that he presumed he could develop a house on each substandard lot in reliance on the District's affirmative substandard subdivision of the lots, there is no evidence of any affirmative acts on the part of the District expressly authorizing such construction. In addition while the. Applicant has expended $45,000 in preparation costs, he has not made permanent improvements as required by the second prong of the estoppel test. Finally, the equities in this case are not in favor of the Applicant when weighed against the possible detriment to the neighboring properties

and to the zone plan that will result from permitting the construction of two houses, where there should only be one.

Finally, the Applicant's argument that the District is barred from enforcing the legal retrictions in this case under the theory of laches fails for similar reasons. "Laches is a species of estoppel, being defined as the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches. [A] claim of laches in the zoning context is not judicially favored and is rarely applied " except in the clearest and most compelling [circumstances]." *Wieck,* supra at .5 -6. In this case, there is no right that the District failed to assert, only a presumption on the part of the Applicant that was incorrect.

Based upon 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 its application for an area variance.

ANC and OP Great Weight

In denying this Application the Board, concurs with the recommendations, of the affected ANC and the Office of Planning, and in the above discussion of their issues and concerns, has afforded them the "great weight" to which they are entitled by virtue of DC Official Code §§ 1-309.10(d) and 6-623.04 (2001), respectively.

Therefore, it is **ORDERED** that the application be **DENIED** with respect to the variance from the lot area requirements.

VOTE:	**5-0-0**	(Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller , David A. Zaidain, and John G. Parsons (by absentee ballot) to deny the request for a variance from the lot area requirements).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board Member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 0 5 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17138 of James and Julie Edmonds, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under section 401.3, to allow a four story unit multi-family dwelling in the R-4 District at premises 1325 Fairmont Street, N.W. (Square 2860, Lot 819).

HEARING DATE: March 30, 2004
DECISION DATE: May 4, 2004

DECISION AND ORDER

This application was submitted by Mesfin Gebremichael, a real estate agent, on January 21, 2001, on behalf of James and Julie Edmonds, the owners of the property that is the subject of the application. In a memorandum dated August 14, 2003, the Zoning Review Branch of the Department of Consumer and Regulatory Affairs ("DCRA") advised the Applicants that they required a variance from the lot area provisions of section 401.3 of the Zoning Regulations to convert a two unit flat located at 1325 Fairmont Street, N.W. into a four unit apartment.

On March 30, 2004, the Board held a public hearing on the application. After the hearing, the Board left the record open to receive a statement from the Applicants setting forth how their application meets the variance test and to receive a response from the affected ANC to the Applicants' explanation. On May 4, 2004, the Board held a public decision meeting and denied the application by a vote of 4-0-1.

PRELIMINARY MATTERS:

Notice of Application Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated January 22, 2004, notified the Councilmember for Ward 1, Advisory Neighborhood Commission (ANC) 1B, Single Member District /ANC 1B-08, and the District of Columbia Office of Planning (OP) of the filing of the application. On January 29, 2004, OZ mailed notices of the public hearing to the ANC, the Applicants and all of the owners of property within 200 feet of the subject property, advising them of the date of hearing. The Applicants' affidavit of posting, filed in March 2004, indicates that on March 25, 2004, five days prior to the hearing, it posted a zoning poster at 1325 Fairmont Street, N.W., in plain view of the public. This was less than the 15 day notice that is required to be posted. On April 20, 2004, the Applicants again displayed a poster on the property. By the date of the decision meeting on May 4, 2004, the property had only been posted for 14 days. Consequently, the Board voted to waive the 15 day requirement.

Request for Party Status There were no requests for party status.

Applicants' Case The Applicants' case was presented by Mesfin Gebremichael, the real estate agent who sold the property to the Applicants. The Applicants' case is based upon an assertion that their agent received erroneous information from a staff member at the Office of the Zoning

Administrator at DCRA concerning the requirements for converting a flat into a four-unit dwelling. They maintain that they purchased the subject property, in reliance upon the oral information they received from DCRA and a statement in a listing service, which identified the property as being a four unit building. The Applicants claimed they will suffer an economic loss if they can not convert the building into a four unit apartment.

Government Reports In a report dated March 22, 2004, OP recommended that the Board deny the lot area variance because the Applicants failed to establish that the property is unique and did not demonstrate that there is a practical difficulty in complying with the Zoning Regulations. OP also stated that the intensified use would impair the intent of the zone plan and be detrimental to the public good.

ANC Report By letter dated March 6, 2004, ANC 1B indicated that at a regularly scheduled, properly noticed meeting on March 4, 2004, with a quorum of seven of its eleven members present, ANC 1B commissioners voted unanimously to support the application for variance relief. The ANC represented that the block in which the property is located is a mix of single family dwellings and apartment buildings, and that therefore, allowing four units, rather than three, would not greatly increase the density. The ANC also suggested that whatever increase in intensity of use and traffic would result from the conversion to a four-unit building would be counter-balanced by the rehabilitation of the property which is a vacant, nuisance property.

Parties and Persons in Opposition There were no parties in opposition to this application.

Hearing The public hearing on the application was held and completed on March 30, 2004. The Board left the record open so that the Applicants could provide a copy of the Metropolitan Regional Information System, Inc. listing for the subject property and a comprehensive, comparative, economic analysis demonstrating that there is a practical difficulty in complying with the zoning regulations. The Board also required the Applicant to post the property for 15 days and submit a new affidavit of posting showing that the property was posted for the requisite period of time.

FINDINGS OF FACT

1. The subject property is located in an R-4 Zone District, in Square 2860, lot 819, at the premises located at 1325 Fairmont Street, N.W.

2. The building, which was constructed as a row dwelling in 1910, is a three-story building with a basement. Currently, the building is a flat with the basement being one unit and the upper floors constituting the second unit.

3. The Applicants propose to convert the building into a four-unit apartment with each floor and the basement serving as a separate unit.

4. The subject property has a lot area of 2,853 square feet, which is 747 square feet less than the 3,600 square feet of land required for a four unit building.

5. The Applicants' building is located in the middle of the block with a 30 unit apartment building immediately adjacent to it on the east side and row dwellings on its west side.

6. When the Applicants purchased the subject property, the building was a vacant, nuisance property. There are several other vacant buildings on the same block as the subject property.

7. Prior to purchasing the subject property, the real estate agent for the Applicants informed the Applicants that the property could be converted into a four unit apartment based upon information he allegedly received during a telephone conversation with a zoning assistant in the Zoning Administrator's Office at DCRA. The zoning assistant purportedly said that the sole requirement for converting a flat into a four unit apartment house in an R-4 Zone District was that each unit must be 900 square feet.

8. The Applicants' real estate agent also caused the Applicants to believe that the building could be converted to four units based upon a statement in the Metropolitan Regional Information Systems, Inc. ("MRIS"), a real estate listing service, that described the building as containing four units.

9. The MIRS that the Applicants relied upon stated, in fine print, "[i]nformation is believed to be accurate, but should not be relied upon without verification."

10. The Applicants paid market price, $340,000, for the subject property, believing that they could convert the building into a four unit apartment. They claim they would not have purchased the subject property for that price had they known that they could not convert the building to a four unit apartment.

11. The Applicants represented that they would lose $29,274 if the property were converted to three units, but would make a profit of $215,716, if the building were converted to four units. Applicants did not submit documentation substantiating these projections despite the Board's invitation to do so.

12. The Applicants proffered that they would not be able to obtain financing for less than four units, but did not submit evidence in support of that assertion..

CONCLUSIONS OF LAW

The Applicants are seeking an area variance from the requirements of 11 DCMR § 401.3, which provides that the conversion of a flat into an apartment house requires a lot area of 900 square feet for each apartment unit. Because the Applicants are proposing to have four units in the apartment building, the minimum required lot area is 3,600 square feet. The Applicants' property is only 2,853 square feet, and requires a variance if the flat is to be converted into a four units apartment house.

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness,

shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g) (3) (2001); 11 DCMR §3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." Id. An Applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the 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 Applicants in this case, must demonstrate the uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance will not be detrimental to the public good or impair the intent and integrity of the zone plan and regulations.

There is nothing unique about the Applicants' property, and there is no exceptional situation or condition of the Applicants' property to warrant a variance from the lot area requirement. The property is rectangular shaped. The building is one in a row of similar buildings. There are several other vacant buildings on the block. Given no physical qualities of the property that render it unique, the Applicants tried to establish uniqueness by arguing that they received erroneous oral information from the Zoning Administrator's Office at DCRA, which led them to believe that they could convert the flat into a four unit apartment. Uniqueness may be established through zoning history where there is justifiable reliance on official actions by zoning officials. *De Azcarte v. Board of Zoning Adjustment,* 388 A.2d 1233 (D.C. 1978).

However, the Applicants' purchase of the subject property in reliance upon an oral conversation with someone in the Zoning Administrator's office was not justifiable reliance Nor was it reasonable for the Applicants to rely upon the MRSI, which is not an official District government zoning document and contains a disclaimer that cautions the user to verify the information. If the Applicants had reviewed the Zoning Regulations prior to purchasing the property, they would have been aware of the lot area requirement, and they would have known that the subject property did not comply with that requirement. [1]

Unlike the facts in *De Azcarte*, no building permit was issued or official approval given with respect to the subject property. The Applicants simply stated that they relied upon a single unsubstantiated conversation between their real estate agent and an unnamed DCRA employee. A self-serving representation of an oral conversation with an unidentified DCRA employee, without more, is insufficient to constitute a unique zoning history.

The Applicants claim that they will suffer an economic loss totaling almost $30,000 if they are not permitted to convert the flat into a four unit apartment house. Economic harm may be considered in the practical difficulty test. *Gilmartin v. District of Columbia Board of Zoning*

[1] The Applicants also assert that the D.C. Surveyor had "conflicting" records concerning the subject property that "reflect two different widths and area of lot at different dates probably because of realignments to create a public alley and street widening." However, the relevance of the Applicants' argument of this point is unclear. Although the subject property was created by the subdivision of a larger lot and the Applicants can-not expand the lot area, the Applicants can use the subject property in a manner that is consistent with the Zoning Regulations.

Adjustment, 579 A.2d 1164 (1990); and *Barbour v. District of Columbia*, 358 A.2d 326 (D.C. 1976). However, the Board has "no authority to grant a variance in order to assure ... a profit." *Taylor v. District of Columbia Board of Zoning Adjustment*, 308 A.2d 230, 236 (D.C. 1973), citing *Anderson's Law of Zoning 2* §14.23; 3 §14.48.

Although the Applicants maintain that rehabilitation of the property would not be financially feasible unless they are permitted to convert the building into four units, they have not provided information sufficient to sustain such a finding. The Applicants' economic analysis considers only the difference between the construction of three units and four units. The Applicants can renovate the property as a row dwelling or a flat, convert it into a three-unit building or sell the property without renovating it and recoup their money. They have presented scant evidence concerning the costs of restoring the build as a single family row dwelling or a flat which may prove to be profitable alternatives, if not immediately, in the future. Although no documents were submitted to support their estimates for the restoration of a single family dwelling, the Applicants' real estate agent did testify that a single family home comparable to the subject property had a market price of $340,000 and would require about $300,000 to renovate. According to the testimony of the Applicants' agent, such single-family property could be sold for approximately $500,000 to $640,000. The latter amount is sufficient to recoup their investment. There is also no evidence that lenders will not provide financing to a qualified borrower seeking to renovate the building with three or less units. Consequently, the Applicants have viable alternatives with respect to their disposition of the subject property. Since the Applicants can use the property in a manner that is consistent with the Zoning Regulations, they have failed to demonstrate that they will experience practical difficulties if denied a lot area variance.

The property is located in an R-4 District, which has as "its primary purpose the stabilization of remaining one-family dwellings" and which "shall not be an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement." 11 DCMR §§ 330.2 and 330.3. Consequently, an area variance should be granted in contravention of these zoning objectives only where the application clearly meets the requirements for the variance test. In the instant case, the Applicants cannot meet the uniqueness test and are unable to establish that they will encounter practical difficulties if they comply with the Zoning Regulations. Having found that the Applicants failed to satisfy two of the three tests for granting an area variance, the Board need not address the third prong of the area variance test.

The Board, as required, accorded "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. DC Official Code §§ 1-309.10(d) and 6-623.04 (2001). The Board concurs with OP's opinion that the Applicant failed to meet the test for the granting of a variance. ANC 1B voted to support the application because the property is currently a vacant, nuisance property, and in the ANC's view the proposed conversion was preferable to the current state of the property. Although the ANC's position may be significant in determining whether granting this application would be detrimental to the public good, it is does not address the requirements that the property be unique, that Applicants would experience practical difficulties if the variance is not granted, and that the granting of the

variance not impair the intent and integrity of the zoning plan. Accordingly, the Board may not grant variance relief based only on the ANC's argument regarding the public good.

Based upon the record before the Board and for the reasons stated above, the Board concludes that the Applicants have failed to satisfy the burden of proof with respect to its application for an area variance. Accordingly, it is therefore **ORDERED** that the application be **DENIED.**

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and John A. Mann, II to deny the request for a variance from the lot area requirements, the Zoning Commission member not present not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board Member approved the issuance of this order.

FINAL DATE OF ORDER: July 25, 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. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17251 of Paul and Frances O'Reilly, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a two-story rear addition to a single-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the rear yard requirements (§ 404), side yard requirements (§ 405), and the non-conforming structure provisions (§ 2001.3) in the R-1-B District at premises 3715 Albemarle Street, N.W. (Square 1888, Lot 48)

HEARING DATE: December 14, 2004
DECISION DATE: January 4, 2005

DECISION AND ORDER

Paul and Frances O'Reilly, the property owner (the owner or the applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on October 4, 2004 for a special exception under § 223 to construct an addition to their residence[1] where the addition would not conform to the minimum rear and side yard requirements, lot occupancy requirements,[2] or non-conforming structure provisions of the Zoning Regulations. Following a hearing on December 14, 2004 the Board voted to approve the special exception.

Preliminary Matters

Self-Certification David Kacar, a registered architect retained by the applicant, submitted a "self-certification" form with the Board which describes the zoning relief that is requested (Exhibit 6).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory neighborhood Commission (ANC) 3F and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

ANC Report In its report submitted December 6, 2004, ANC 3F indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the special exception (Exhibit 22). Its primary ground for opposition was the alleged

[1] As will be explained in the Findings of Fact, construction began prior to the public hearing.
[2] Although the application does not address the lot occupancy requirements, the Board has determined that this relief is necessary.

"adverse impact on the use and enjoyment of the adjacent home at 3713 Albemarle Street".

Request for Party Status The Board received a request for party status from Emilia Psillos (Exhibit 21). Ms. Psillos resides at the adjacent property located at 3713 Albemarle Street (the Psillos property). The request for party status was granted and Ms. Psillos opposed the application at the public hearing.[3] Most of her concerns pertained to problems that she claims to have experienced during the partial construction of the addition, or problems she expected during future maintenance of the subject property. However, Ms. Psillos also asserted that the new addition would adversely impact upon her privacy and light and air.

Other Persons in Support/Opposition No other persons appeared in support or in opposition to the application. However, letters from nearby property owners were received, both in support and opposition.

OP Report OP's report indicated that the application meets the test for a special exception. In addition, John Fondersmith, the OP representative who prepared the report, testified at the public hearing in support of the application.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a single-family semi-detached dwelling that was built prior to 1958 to 1958 and is located at 3715 Albemarle Street, NW in the R-1-B zone.

2. The property is located in the North Cleveland Park residential neighborhood, bordered on the east by Reno Road, on the south by Albemarle Street, on the west by 38th Street, and on the north by Appleton Street.

3. Most of the residential buildings in the area are single-family detached dwellings. However, there are 5 pairs of single-family semi-detached dwellings (10 dwellings in all), on the north side of Albemarle Street, including the subject dwelling. The semi-detached dwellings were all built in 1927.

4. The subject dwelling is on a relatively small lot, approximately 2,035 square feet in size, 28 feet wide and 72.68 feet in length. The lot size is below the minimum lot area of 5,000 square feet now required in the R-1-B zone and below the 3,000 square feet required for a single family semi-detached dwelling in the R-2 zone.

[3] Ms. Psillos' son, George Psillos, spoke on his mother's behalf at the public hearing.

5. The current front yard is 5 feet and the rear yard is 28.38 feet. Although the side yard on the west is 9.5 feet, the side yard on the east consists of a narrow space that is only one foot wide and approximately 8 feet in length, due to the existence of a "sleeping porch" between the lot line and the original two-story protrusion at the rear of the house.

6. Sometime during 2002, the applicant constructed the first floor of a two story rear addition that extends the full width of the existing house at the rear and an additional 12 feet in length.

7. After the addition was well under construction, the DC Building and Land Regulation Administration (BLRA) issued a stop work order to halt construction of the addition when it discovered that the work had commenced without a permit The applicant stopped work at that time and covered the partially built addition in plastic. The applicant also discharged the contractor who had performed the work without a permit and hired Mr. Kaacar (the architect who self-certified this application) to take appropriate steps to conclude the project.

8. When fully constructed with the second floor, the addition will reduce the rear yard from 28.38 feet to 16.38 feet (less than the 25 feet required), and increase the lot occupancy to 45 percent (more than the 40 percent allowed). It will also extend the non-conforming side yard to the east and the structure's non-conformity as a single-family semi-detached dwelling in an R-1-B zone. This application was filed for relief so the owner could complete the addition.

<u>The Impact of the Addition</u>

9. The applicant submitted elevation plans, construction plans, a foundation plan, and a plat of survey for the property. He also submitted photographs depicting rear views from 3717 Albemarle Street, 3715 Albemarle Street and 3713 Albemarle Street. OP submitted additional photographs illustrating the relationship of the addition to adjacent buildings and views from Albemarle Street.

10. The addition is not visible from the street due to its location at the rear of the dwelling. Nor is there a direct alley view where the addition would be seen.

11. There are 6 foot fences on both sides at the rear yard of the applicant's property. The Board credits OP's finding that no additional screening is needed at the rear of the property.

12. The addition would not have an adverse affect on the dwelling to the west at 3717 Albemarle Street. The applicant's property has a 9.5 foot side yard on the west

and the 3717 property has a similar side yard on its east, providing an overall space of 19 feet between the two dwellings.

13. The addition would not have adverse affects on the two single-family dwellings to the north, opposite the rear yard of the property. The dwellings to the north, 3722 and 3724 Appleton Street, have deep lots, creating a significant distance between the addition and the two dwellings. Also, the rear yard has significant trees, brushes and landscaping, which serves to screen the view of the proposed addition from the two dwellings.

14. The proposed addition, when completed, will be two stories high (approximately 21 feet high) and will extend 12 feet at the rear, next to the Psillos property . The subject property and the Psillos will be separated from the lot line by one foot.

15. There were some drainage and water flow problems associated with the addition that may have affected the Psillos property. However, the Board finds that these problems occurred during the partial construction of the addition, and were ultimately corrected by the applicant.

16. The addition will not impact on the privacy of the property owner at the Psillos property because there will not be any windows in the wall of the addition on that side, and because a fence separates the properties.

17. The Board credits OP's assessment that the addition, when fully constructed, will not unduly restrict the amount of light and air at any of the neighboring properties. Even at the Psillos property, where the question is debatable, the amount of sunlight during the morning and afternoon hours has not been a problem in the past. The reduced sunlight, which does exist during the late afternoon, is attributable to the existence of a large tree. Ms. Psillos claims that the partially built addition has already reduced the light and air at her property, causing mold to form on her patio. The Board finds that the problem with mold, if any, was not caused by the addition. The Board accepts the applicant's testimony that there has always been a problem with mold at each of the semi-detached dwellings in the row, and that this problem is alleviated by frequent cleaning and maintenance.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § § 223 and 3104.1 to construct an addition to a single-family dwelling in an R-1-B zone, where the addition will not comply with the side yard requirements of section 405, the rear yard requirements of section 404, the lot

occupancy requirements of section 403, and the non-conforming structure provisions of section 2001.3.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. Since the second test is nearly identical to the criteria for the special conditions under section 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under section 223".

The "special conditions" for an addition under section 223 Under section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the side yard requirement, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property pursuant to section 223.2, in particular:

a. The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. , Neither the Psillos property nor any of the other neighboring properties will have their light and air significantly reduced. While light and air at the Psillos property may be affected by the addition, the Board does not conclude that it will be "unduly" affected. (Findings of Fact 12, 13, 17)

b. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The privacy of neighboring properties will not be affected by the addition. (Findings of Fact 9, 11, 12, 13, 16). The property to the west is separated by an ample side yard (Finding of Fact 12), and the properties to the rear are screened by fences (Finding of Fact 11). With respect to the Psillos property, there will not be any windows facing it, and there is also a fence separating it from the subject property (Finding of Fact 16).

c. The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The addition to the subject property does not deviate from the pattern of development in the area with respect to its scale or design. Due to its location at the rear of the

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dwelling, the addition is not visible from the street (Findings of Fact 9 and 10). Thus, the addition causes no visual intrusion as viewed from the street.

d. In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. This condition has been met.

The Board must also find that the proposed addition meets the conditions under sections 223.3, 223.4 and 223.5.

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-1 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. When fully constructed, the proposed addition will result in a lot occupancy of 45 percent (Finding of Fact 8).

223.4 The board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of nearby properties. This is not necessary. The addition will not be visible from the front and is adequately screened at the rear.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception. This section is inapplicable.

In reviewing a special exception application, the Board is 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 finds OP's advice to be persuasive.

The Board is also required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. The ANC concerns mirror those of Ms. Psillos, the party in opposition. The ANC asserts that: (1) The applicant commenced construction without a permit and damaged the Psillos property during construction; (2) the fence separating the subject property does not sit on the property line; (3) The addition will adversely affect the Psillos property because it is so close to it; and (4) The addition will disrupt the harmony of the line of semi-detached dwellings.

The Board finds that the first two concerns are not legally relevant to this proceeding. Neither construction issues nor survey issues are pertinent to this application for a special exception. Moreover, the Board found that any construction damage which may have occurred was remedied prior to this public hearing.

The second two "concerns" are legally relevant. However, the Board does not agree that they should preclude the granting of this application. As explained previously, the Board does not conclude that the addition will unduly affect the light and air at the Psillos property. While an addition (or any other structure) will always result in some impact on light and air, we agree with OP that the impact will not be substantial. As to harmony of the building line, this assertion lacks merit. Section 223.2(c) requires that the addition not intrude upon the character, scale and pattern of houses along the street frontage. Because this addition is proposed at the rear of the dwelling, not the along the street frontage, the Board believes this condition has been satisfied.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the side yard requirements an R-1-B zone.

Therefore, for the reasons stated above, the application for a special exception is granted.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John A. Mann. II in favor of the motion to grant, and no Zoning Commission member having participated in the application)

Vote taken on January 4, 2005

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 2 9 2005

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

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

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17270 of Thomas and Kathryn Toggas, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family detached dwelling under § 223 not meeting the side yard (§ 405) requirements in the R-1-B district at premises 3112 Legation Street, N.W. (Square 2293, Lot 835).

HEARING DATES: January 18, 2005

DECISION DATE: February 1, 2005, February 15, 2005

DECISION AND ORDER

Thomas and Kathryn Toggas ("Applicants"), owners of the property that is the subject of this application ("subject property"), filed an application with the Board of Zoning Adjustment (the "Board" or "BZA") on November 5, 2004. The Applicants sought a special exception under section 223 of the Zoning Regulations to construct an addition to their dwelling where the addition would not conform to the minimum side yard requirements of 11 DCMR § 405.

Following a hearing on January 18, 2005, the Board held a public decision meeting on February 1, 2005, at which it determined that more information was needed before a decision could be made. The decision meeting was postponed until February 15, 2005, when the Board voted 4-1-0 to approve the application.

Preliminary Matters

Notice of Application and Notice of Public Hearing. By memoranda dated November 9, 2004, 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") 3/4G, Single Member District/ANC 3G03, and the Council Member for Ward 3. Pursuant to 11 DCMR 3113.13, OZ published notice of the public hearing in the *District of Columbia Register* and on November 18, 2005, sent notice to the Applicant, all property owners within 200 feet of the subject property, ANC 3/4G, and OP. The Applicant posted the property 15 days prior to the hearing, thereby informing the public of the pending application and the January 18, 2005 hearing date. The Applicant filed a notarized Affidavit of Posting with the Board verifying that the property was posted in a timely manner.

Request for Party Status. ANC 3/4G was automatically a party to this proceeding. The Board granted requests for opposition party status to Mrs. Cecile B. Kelly, owner of 5442 31st Street, N.W., which is northeast of the subject property, and Joseph and Cynthia Dempsey, owners of 3114 Legation Street, N.W., which is immediately adjacent to the

southwest side of the subject property. The Board denied requests for opposition party status from Scott and Gayle Moseley and Reginald A. White and Brenda Scott-White, residents of the 3100 block of Legation Street, N.W., finding that they were not more uniquely affected by the application than the general public.

Government Reports. The Office of Planning, by report dated January 11, 2005, recommended approval of the special exception request, concluding that the addition would be in harmony with the general purpose and intent of the Zoning Regulations and Map, and that the proposed changes would not tend to adversely affect the use of neighboring properties. OP's recommendation was subject to two conditions: (1) that a 7-foot high sight-tight fence be provided around the rear and southwest side yards of the property, and (2) that the proposed third floor window on the southwest side of the addition be eliminated.

ANC Report. At a regularly scheduled meeting on December 13, 2004, with a quorum present, ANC 3/4G passed a resolution, by a vote of 6-0-1, recommending denial of the application. Included in the ANC's reasons for opposing the special exception application were (i) the size of the addition, (ii) the concern that Applicants might have been building without required permits, (iii) possible loss of privacy, and (iv) the property line erosion issue with the adjoining neighbor to the southwest. The ANC also recommended that the Applicants and their neighbors agree to a construction management plan and a landscape buffer plan.

Parties in Opposition. Mrs. Kelly stated that the addition would create a less pleasant view from the rear of her property and would limit the feeling of space that is currently enjoyed. She further indicated that without sufficient side yard space along the alley side of the addition, there was no possibility of landscaping which would soften the claimed impact of the addition. She expressed concern that, due to its length and massing, the addition would diminish the real estate value of her property.

Joseph and Cynthia Dempsey were represented at the public hearing by their counsel, George R. Keys, Jr., Esq. The Dempseys were concerned that the addition would be located too close to their property. They indicated that the addition would diminish their privacy, further obscure their view of the street from their northeast side and rear yards, and significantly reduce the amount of sunlight to their rear yard and their northeast side yard.

Persons in support or opposition. The Board heard testimony in support of the application from Mr. Martin Fuchs, a resident of the dwelling at 3101 Legation Street, N.W. The Board heard testimony in opposition from Mr. Moseley and Mr. White. The Applicants submitted a petition signed by 28 neighbors in support of the application.

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FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The subject property is located in an R-1-B zone in the Chevy Chase neighborhood of Ward 3 at 3112 Legation Street N.W. (Square 2293, Lot 835). The property is improved with a three-story one-family detached dwelling constructed in 1932. A one-story den addition was added on the west side of the dwelling shortly after its construction and before 1958. Also on the property is a one-story accessory building located within the rear yard.

2. The surrounding area is zoned R-1-B and is developed with single-family detached dwellings, some of which have three-story additions.

3. The subject property fronts on Legation Street and abuts a 15-foot public alley at its rear. Immediately to the northeast of the property is a 15-foot wide public alley and immediately to its southwest is the Dempsey property. The 15-foot wide public alley to the northeast abuts approximately the front half of the subject property, then the property line turns to the south and no longer abuts the alley. A 15-foot wide public alley also abuts approximately the rear half of the property on the southwestern side.

4. The Applicants propose to construct a rear addition which will wrap around the southwestern corner of the dwelling and continue along the southwestern side of the dwelling. They also propose to construct a front porch addition along the Legation Street frontage.[1]

5. The subject property is comprised of one large lot with a depth of approximately 195 feet and a lot area of 7,205 square feet, well above the 5,000 square-foot lot area required. *See,* 11 DCMR § 401.3.

6. The subject property has a lot width of 40 feet at the front and 36 feet at the rear.[2] The narrowest part of the property is in the center, at the point where it turns southward away from the alley bounding it to the northeast.

7. Section 223 permits a maximum lot occupancy of 50 percent in an R-1 zone. With the construction of the proposed additions to the subject property, the lot occupancy will be 34 percent.

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[1]There was some dispute whether this porch would cross the building restriction line, but as this is a public space issue, and not a zoning issue, the Board declined to address it.

[2]The R-1-B zone requires a minimum lot width of 50 feet for all structures. The Applicants' lot width is therefore substandard. Although this was not separately mentioned in the advertisement of the application, the relief required is subsumed within the relief requested pursuant to § 223. *See,* 11 DCMR § 223.1.

8. Eight foot side yards are required in the R-1-B zone district. 11 DCMR § 405.9. The currently existing side yard to the northeast of the subject dwelling measures 1.77 feet. The northeastern wall of the rear addition will continue the line of the northeastern side of the dwelling, extending this nonconforming side yard along the northeastern side of the addition.[3]

9. On the southwest side of the property, the depth of the existing side yard, between the den addition and the lot line, measures at least 5.01 feet. The Board finds that because the subject dwelling existed before May 12, 1958 and has a side yard of less than 8 feet, but more than 5 feet, which is not being decreased, an extension or addition may be made to the southwestern side of the dwelling with no zoning relief. *See,* 11 DCMR § 405.8.

10. Due to severe water and structural damage caused by Hurricane Isabel in September 2003, the den was deemed unsafe. As a result, the Applicants removed the den during the winter of 2003-04, with the intention of building a new structure on the same footprint as a part of the construction proposed here.

11. Section 2001.6 of the Zoning Regulations allows a nonconforming structure which is destroyed by an act of God to an extent of less than 75% of the cost of reconstructing the entire structure, to be restored or reconstructed to its previous condition, provided that the reconstruction or restoration shall be started within twenty-four months of the date of the destruction and continued diligently to completion. *See,* 11 DCMR § 2001.6.

12. On August 6, 2004, within the 24-month period stipulated in § 2001.6, the Department of Consumer and Regulatory Affairs ("DCRA") issued Permit No. B465160 to the Applicants for the subject property to "excavate and build foundation." Applicants began the excavation on the subject property and construction of the foundation. Therefore, the Board finds that the exception to the side yard requirement granted by § 405.8 for the southwestern non-conforming side yard was not lost with the emergency removal of the den as a result of the damage from Hurricane Isabel, which constitutes a casualty or an Act of God.

13. On September 16, 2004, the Applicants were notified by DCRA that they required a special exception pursuant to § 223 in order to permit the construction of the addition.

Section 223 Provisions re: Light, Air, and Privacy

14. The dwelling owned by opposition party Mrs. Kelly fronts on 31st Street, N.W. Its rear yard abuts the opposite side of the alley which abuts the northeast side of the

[3]This requires relief from § 2001.3, which prohibits extension of a nonconformity. This relief was not specifically advertised, but is again subsumed within the relief requested pursuant to § 223. *See,* 11 DCMR § 223.2.

subject property. Between the rear wall of the Kelly home and the alley is a distance of 56 feet, 9 inches. This, plus the 15-foot width of the alley and the 1.77-foot width of the Applicants'northeast side yard, creates a distance of approximately 72 feet from the dwelling of Mrs. Kelly to the subject addition.

15. In Mrs. Kelly's rear yard is a 22-foot wide 2-car garage and a continuous line of evergreen trees growing along the rear property line, both of which minimize the visibility of the Applicants' dwelling and the subject addition.

16. The three windows on the northeast side of the proposed addition are approximately 20 feet from Mrs. Kelly's garage. One is 7 feet from the floor, one is 61/2 feet from the floor, and the third is a basement window which will be obscured by plantings.

17. The proposed addition on the southwest side of the property will not be less than 5.01 feet from the lot line with the Dempsey property, the same depth that existed prior to the demolition of the den.

18. The Applicant plans to erect a 7-foot sight-tight privacy fence or wall along the entire 150-foot southwestern lot line, effectively shielding the first floor of the addition from the first floor of the Dempsey home, maintaining the privacy of the Dempsey property.

19. On the southwest side, the rear portion of the proposed addition immediately adjacent to the existing dwelling is three stories, but the top two stories are actually a sloped roof with skylights, not a vertical wall. The addition then continues further into the rear yard, but at a height of only one story and this one-story part of the addition is set back approximately 17 feet from the southwestern lot line with the Dempsey property.

20. The Board credits the Applicants' sun path study prepared by a licensed architect. Because the subject property is located northeast, and not due east, from the neighboring Dempsey property, potential impact or reduction of light is minimized. According to the sun path study, the worst case scenario is that on the shortest day of the year, the proposed addition will cast only minimal shade on the northeastern side of the Dempsey dwelling, equal to less than 10% of the square footage of the side of the dwelling, at maximum shade exposure at 8:00 a.m., and decreasing each minute thereafter. On all other days of the year, the shade cast will be less.

21. Three of the five windows on the southwest side of the addition are located in areas where the Applicants will not spend significant amounts of time – two of them are skylights on the sloped roof, two are staircase windows, and one is in a

spare room. The other two windows (on the first floor) will be shielded by the 7-foot privacy fence.

22. The design of the addition complements the existing dwelling and is not out of character with the other dwellings, or the other additions, in the neighborhood.

CONCLUSIONS OF LAW

The Board is authorized to grant special exceptions where, in its judgment, the special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring properties. 11 DCMR § 3104. Pursuant to § 223, the Board may permit, by special exception approval, an addition to a one-family dwelling that does not comply with requirements pertaining to minimum lot dimension, lot occupancy, rear and side yards, courts, and nonconforming structures, subject to the provisions enumerated in § 223. The provisions of § 223 relevant here are: that the proposed addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. 11 DCMR § 223.2.

The Board concludes that the Applicants' proposed addition will not unduly affect the light and air available to neighboring properties. There was no evidence that the front of the Kelly home, indeed that any part of the home, would experience a reduction of light or air due to the proposed addition. The home itself fronts on 31st Street, N.W., and its 56-foot rear yard stretches toward the 15-foot public alley and the subject property. There is a substantial distance of approximately 72 feet between the rear of the Kelly home and the northeast side of the proposed addition. This distance is enough to maintain sufficient light and air to the Kelly home.

On the southwest side of the subject property, the addition will minimally, but not unduly, increase the shade to the Dempsey property. *See,* Finding of Fact No. 20. The part of the proposed addition immediately adjacent to the rear of the existing dwelling will be three stories, but not an unrelenting three-story vertical wall. The two top stories are not vertical to the ground, but actually present as a sloped roof, sloping gradually away from the southwestern side of the property. Due to the slope, any impact on light and air is mitigated. Moreover, although the addition will rise to three stories, the existing house is already three stories tall.

The Board also concludes that the privacy of use and enjoyment of neighboring properties will not be unduly compromised. The windows on both sides of the addition have been placed so as not to impact the privacy of the neighbors' properties. Because of the substantial distance from the rear of the Kelly home to the addition, the Board fails to see how the addition will have any compromising effect on the privacy of use and enjoyment of the Kelly property to the northeast. The view from the Dempsey property to Legation Street may be slightly impacted by the addition, but it was already impeded by the prior den addition, and any slight further impact is not undue. Nor will the addition compromise the Dempseys' privacy in their rear yard because of the sensitive placement of the windows on the addition and the construction of a 7-foot sight-tight fence running the length of the western lot line.

With the addition, the subject dwelling will be similar in height to other dwellings within the surrounding area, many of which have been added to and expanded. The side yards will continue their existing depth and are similar in character and depth to other side yards in the neighborhood. The addition has been designed to complement the dwelling and the neighborhood and its rooflines have been varied in order to break up its massing. The Board concludes that the addition, together with the existing dwelling, will not substantially visually intrude on the character, scale, and pattern of houses along Legation Street. There are always some impacts from a change such as the addition that the Applicant is proposing, but after considering the opposition to the application, the Board concludes that granting the special exception will be in harmony with the Zoning Regulations and Zoning Maps.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or not did not find their views persuasive. OP recommended approval of the application and the Board agrees with this recommendation. The ANC recommended denial of the application, citing objections concerning the size of the addition, possible loss of privacy, building without proper permits, and erosion issues. The latter two issues are not within the Board's jurisdiction under the Zoning Regulations. The first two issues are properly before the Board, but the Board does not find the ANC's views persuasive for the reasons set forth above.

For the reasons stated above, the Board concludes that the Applicants satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the side yard requirement in the R-1-B zone.

Accordingly, it is **ORDERED** that the application is **GRANTED**, subject to the following **CONDITION:**

1. Applicant will construct a 7-foot high sight-tight fence, barrier, wall or other enclosure around the rear yard and southwest side yard of the subject property.

VOTE: **4-1-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann II and Gregory Jeffries to approve, Ruthanne G. Miller to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this Decision and Order.

FINAL DATE OF ORDER: JUL 20 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.

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 IS VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT OT DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17276 of Phillips Park, LLC, pursuant to 11 DCMR 3104.1, for a special exception from section 2516 of the Zoning Regulations to allow the construction of a theoretical lot subdivision for thirty-five single-family homes in the R-1-A zone district at 2101 Foxhall Road, NW, Square 1346, Lot 822.

HEARING DATES: February 15, 2005, February 22, 2005, and March 8, 2005
DECISION DATE: April 5, 2005

DECISION AND ORDER

On November 18, 2004, Phillips Park, LLC (Phillips or the applicant), filed an application with the Board of Zoning Adjustment (Board) pursuant to 11 DCMR § 3104.1, for a special exception to permit the construction of thirty-three[1] single-family homes on a single subdivided lot. Following three sessions of public hearing, the Board voted to approve the application at a decision meeting held on April 5, 2005.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 5).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all entities owning property with 200 feet of the applicant's site, the Advisory Neighborhood Commission (ANC) 3D, and the Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 30).

ANC 3D The subject site is located within the area served by Advisory Neighborhood Commission 3D (the ANC), which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on February 2, 2005, with a quorum present, the ANC voted to support the application subject to various conditions (Exhibit 26). However, the ANC later submitted a letter asking for an opportunity to reconsider the matter, stating that the application had been substantially altered from what it had originally considered and voted on. The ANC also submitted a revised set of proposed conditions and provided testimony through its chairperson, Alma Gates. Among other

[1]The original application sought approval for thirty-five theoretical lots. However, the applicant modified its proposal after discussions with neighboring property owners.

things, Ms. Gates urged the Board to incorporate a construction management plan into any special exception approval.

Requests for Party Status

The Board granted three requests for party status: (a) Chandra Hardy, owner of 2001 Foxhall Road (the Hardy property) and the only adjacent residential property owner; (b) the Friends of Whitehaven (FOW), a District of Columbia non-profit association created for the protection of the Whitehaven National Parkland located to the south of the property, represented by William Snape; and (c) "Certain Residents of W Street" (Certain Residents), a group of nearby property owners located to the immediate north of the property on W Street and Foxboro Place, represented by Margaret Brady.

Although each of the entities was granted status as parties in opposition, they each indicated they were not necessarily opposed to the application, but had "concerns". Ms. Hardy's primary concerns pertained to construction activities and an alleged adverse impact on the mature trees at her property line. The concerns of the FOW pertained to alleged adverse impacts on the environment of the surrounding area as well as the property. The FOW also advocated for various measures to protect the wetlands located on and near the property. The concerns of the Certain Residents pertained to traffic safety and the character and density of the proposed development. However, the group also opposed the addition of a ninth matter-of-right house on W Street and advocated a different entrance point to the development.

Other Persons/Entities in Opposition/Support

The Colony Hill Neighborhood Association, comprised of 41 homeowners in a nearby neighborhood, submitted a letter into the record. The Association requested that the Board defer review of the application until such time as a "comprehensive traffic study" is done that takes into account future development of a nearby undeveloped parcel.

The National Park Service, through David Murphy, provided testimony regarding its concerns relating to storm water management, both on and off-site. Mr. Murphy also advocated use of a perimeter fence separating the property from adjacent federal parkland.

The District of Columbia Department of Health (Erosion and Sediment Control Section), through Tim Karikari, provided testimony that he agreed with the concept of the proposed storm water management plan.

Government Report Submissions

Office of Planning (OP) Report. OP filed an initial report stating that it generally supported the project, but needed additional information in order to make a final

recommendation (Exhibit 29). After reviewing the applicant's revised site plan, OP filed a supplemental report supporting the application with conditions (Exhibit 64). OP's representative, Jennifer Steingasser, testified at the public hearing in support of the application.

Department of Transportation The Department of Transportation (DDOT) reviewed the traffic study prepared by the applicant and submitted a report supporting the project and the creation of the entrance on Foxhall Road (Exhibit 24). DDOT concluded that the project would not affect the existing level of service of the surrounding street systems or adversely impact on the surrounding area from a transportation standpoint.

The Metropolitan Police Department The Metropolitan Police Department (MDP) submitted a letter into the record noting the heavy rush hour traffic and incidents of speeding near the proposed project on Foxhall Road.

Department of Housing and Community Development (DHCD) By memorandum dated January 6, 2005 to OP, DHCD indicated its support for the application.

Department of Parks and Recreation (DPR) Through its report to OP, DPR noted that it maintains a nearby neighborhood park with a playground, and also a recreation center with a multi-purpose room, soccer field, basketball court, tennis courts and a picnic area. DPR noted concerns regarding maintenance of the park space, maintenance of the interior boulevards and buffer spaces, access to interior spaces by the general public, and the use of native plants.

The Applicant's Case William Pryor, Managing Member of Phillips, LLC, testified for the applicant. The applicant also offered testimony from several expert witnesses during the public hearing: Anthony Barnes, Project Architect; Louis Slade, Traffic Operations Engineer; Stephen Petersen, Traffic Engineer; Keith Pitchford, Arborist; Cheng-Ho "Frank" Lin, Civil Engineer; Mary Sears, Civil Engineer and expert in storm water management; Roy Gauzza, Landscape Architect; and James Ingram, Environmental Scientist.

Disposition of Motions to Strike
Following the public hearing on March 8, 2005, the applicant moved to strike certain post-hearing submissions filed by FOW and by Ann Haas.

Motion to Strike Submissions of FOW (Exhibit 63) The applicant moved to strike an "Addendum Clarification" regarding the wetlands at the property (Exhibit 62), a "Declaration of Julie Moore" (Exhibit 57), a conservation biologist, and "references to extra-record materials" contained in FOW's proposed findings of fact and conclusions of law (Exhibit 59). The Board granted the motion to strike the "Addendum Clarification" and the "Declaration", finding that the hearing record had been closed except for the

limited purpose of allowing proposed findings of fact and conclusions of law, and proposed conditions of approval. The Board denied the motion to strike "extra-record materials" contained within the proposed order, finding that it would disregard any statements that were not germane or went beyond the scope of the administrative record.

Motion to Strike Submissions of Ann Haas (Exhibit 66) Following the public hearing, Ann Haas, the single member district ANC commissioner for the property, submitted the same "Declaration of Julie Moore" that had been submitted by FOW, and the applicant again moved to strike. The Board struck the Declaration submitted by Ms. Haas, also on the ground that the hearing record had been closed.

FINDINGS OF FACT

The Property

1. The subject property is located at 2101 Foxhall Road, NW (Square 1346, Lot 822) in an R-1-A zone in the Ward 3 neighborhood of Wesley Heights. It is bordered by W Street to the north, a portion of 44th Street to the east and a Federal park land, known as the Glover Archbold Park to the east, Whitehaven Park to the south, and Foxhall Road to the west.

2. The property is a large sloping site, containing 713,016 square feet, or just over 16 acres, with a mixture of open areas and some tree stands. It is irregularly shaped, with the Hardy property carved out of the southwest corner. There is 781.56 feet of frontage on W Street, 476.73 feet of frontage along Foxhall Road, and 566.09 feet along 44th Street. The portion of 44th Street to the east is a platted, dedicated street, which contains a District of Columbia Water and Sewer Authority maintained sanitary sewer main, but is unpaved.

3. The property has stood vacant[2] for some time and has grown fallow, overrun with many species of weed vegetation. Due to the overrun of non-native and weed-species, many of the native trees are either dead, dying, or in poor condition.

4. The property contains 36,541 square feet of natural wetland area (including a 25 foot buffer area), and is located in a natural stream system in the southern portion of the tract. These figures have been confirmed by a formal nontidal wetlands jurisdictional determination performed by the US Army Corps of Engineers (Exhibit 22, Tab 4).

5. The property also contains over three acres of non-natural or "artificial" wetlands that were formed as a result of a long-standing leaky municipal water line. These artificial wetlands are alleged to be entirely fed by the water main leaks.

[2] There were various proposals to develop the property during the 1980s that were abandoned.

The Surrounding Area

6. The area surrounding the property consists of residential and institutional uses, as well as the parkland described above. The nearby parkland provides a home for many species of wildlife, including the whitetail deer and several piebald deer.

7. Surrounding residential neighborhoods include approximately eleven houses to the immediate north of the property on the north side of W Street. To the northwest are the Foxhall Crescent, Wesley Heights and Spring Valley developments, on Foxboro Place.

8. Institutional uses surrounding the property include: the Mt. Vernon campus of George Washington University to the west of the property across Foxhall Road, the Belgium chancery just north of the intersection of Foxhall Road and W Street, St. Patrick's Episcopal Church and Day School to the south on Whitehaven Parkway, the Lab School of Washington to the west of St. Patrick's, the Field School to the north of the property, and the German Embassy further south along Foxhall Road. To the immediate south of the property across Whitehaven Park is the former "Casey" estate, recently purchased by the "Friends of St. Patrick's" for use as an expanded school.

The Proposed Project

9. The applicant is proposing a theoretical lot subdivision to divide those portions of the property that do not abut a street (the interior property) into thirty-three assessment and taxation lots. Additionally, though not subject to this application, the applicant will build thirteen matter-of-right homes along Foxhall Road and W Street. The matter-of-right homes will include nine homes along W Street and four homes along Foxhall Road. The development will consist of two-story single-family detached dwellings and will be named Dunmarlin at Phillips Park (Dunmarlin). [3]

10. **The Lots** In order to provide land set-asides for open space, parkland, and protected wetlands, and to ensure that the development is environmentally sensitive; the applicant has proposed larger lots with restricted development areas. The lots created will have an average lot size of 11,016 square feet, well above the 7,500 square feet required in the zone, and larger than the average lot in the surrounding residential neighborhoods.

11. **Access** There will be two roadway entrances onto the property, one onto W Street, and the second onto Foxhall Road. The entrance onto W Street will align with Foxboro Place to the north and will connect the development with the existing residential neighborhood to the north. The entrance onto Foxhall Road will be located towards the southern border of the property, with one of the matter-of-right lots to be located to the

[3] The development plans evolved during the course of these proceedings, partly in response to concerns from the various agencies and parties and the ANC. The Board approval is based upon the plans and documents contained in the applicant's submissions of March 2, 2005, Exhibit 50.

south of the road. This new road will have a left and right turn lane, and the applicant will pay for the cost to install a traffic light at the proposed entrance.

12. Each of the proposed thirty-three theoretical lots will have direct access from the proposed internal roads. Additionally, the matter-of-right lots will have driveway access onto the internal roads, rather than from Foxhall Road or W Street. The internal roads will follow the natural contours of the property, allowing the "stepping down" of the homes. The widths of the internal roads will be a minimum of thirty feet. All homes that do not front either W Street or Foxhall Road will front on the internal roads.

13. **Foxhall Road Improvements** The applicant also proposes to redesign and widen Foxhall Road. Using a portion of its own property, it proposes to create a merge lane for traffic turning out of the property north onto Foxhall Road, a left turn lane on Foxhall Road for traffic turning into the property from the north, and a right turn lane into the property for traffic entering from the south.

14. **Sidewalks** Sidewalks will be incorporated on at least one side of every street in the property. Additionally, the applicant will construct sidewalks along the perimeter of the property along W Street and Foxhall Road. Covenants will require that the roads within the property, as well as the sidewalks, remain open to the general public. The sidewalks will be maintained by the homeowners association that will be created by the applicant.

15. **Green Space** The proposed development will also include 97,132 square feet of open public green space. The green space will consist of (a) a 3,819 square foot park at the corner of W Street and Foxhall Road, including a path leading from it into the interior portion of the property, (b) two tear drop islands along the interior road of 2,560 and 7,940 square feet, respectively, (c) 29,752 square feet of open space surrounding the wetland, (d) the natural wetland and wetland buffer, and (e) an additional 29,752 square feet of open space above the storm water management facility located to the immediate north of the wetland (See, Exhibit 50, Tab 13).

16. **Setbacks/Buffers/Tree Preservation** Each lot will have a minimum side yard of eight feet and a minimum front yard of twenty-five feet. The maximum lot occupancy will be forty percent. The proposed design will go beyond the twenty-five feet rear yard setbacks that are required in the zone. For those lots that abut parkland and/or 44th Street, the applicant has proposed thirty to forty feet non-disturbance buffer areas within which there can be no construction (See, Exhibit 50, Tabs 1, 5 and 13). These buffer areas may only be planted with trees and shrubs listed on an "approved species" plant list that will continue to be refined in consultations between Applicant's arborist and the National Park Service; and, weed, insect and disease infestation species within these areas must be controlled using specified environmentally "friendly" products. Approximately sixty-four of the 107 healthy trees at the property (60%) will be preserved, and 356 new trees of significant caliper will be planted, resulting in a total of 400 healthy indigenous trees

on the property (See Exhibit 50, Tab 4). In addition, a certified arborist will be retained by the applicant to oversee the grading and the construction of the property to insure the health of the trees slated for preservation.

17. **Grading** Because the existing topography is fairly steep and rolling in nature, the proposed grading of the property is designed to preserve the existing "bowl" shape found on the site, but at gentler slopes than exist now. Grading at the property will be minimized and there will be no grading at all in the wetland area, wetland buffer, parkland buffer, or area adjacent to the Hardy property.

18. **Architectural Guidelines** The applicant submitted proposed architectural guidelines that govern, among other things, the maximum allowable floor area ration (FAR) for any improvements on individual lots, and the location and size of swimming pools and other accessory structures. Final guidelines will be filed with the land records prior to the sale of any individual lot.

19. **Storm water Management** The applicant submitted a comprehensive plan with the application that provides for on-site and off-site storm water management (See, Exhibit 50, Tabs 2, 3, 6-11). The on-site plan provides for water quantity control and water quality control, and includes the use of rain gardens where feasible. The off-site plan provides that storm water between W Street and the entrance into the development would be captured and diverted in underground pipes to the storm drain system at Whitehaven Parkway.

The Impact of the Proposed Development

20. The Board credits the testimony and report presented by the applicant's traffic expert, Louis Slade, which was subject to peer review analysis and with which DDOT also concurs (See, Exhibit 22, Tabs 5, 6, and 9). In particular, the Board adopts the findings that (a) entranceways at W Street and Foxhall Road create the best traffic situation for the proposed development and for the neighborhood, and is preferable to by-right development which would allow direct driveway access from the conforming lots to existing streets; (b) the proposed development will have a negligible impact on traffic on Foxhall Road.; (c) the proposed development will create a new and safer means of access to and from Foxhall Road for the Certain Residents on or near W Street by adding a left turn lane for traffic traveling south on Foxhall Road turning into the development, and by adding a merge lane for vehicles turning from the development north onto Foxhall Road.

21. The Board credits the testimony and report presented by the applicant's expert arborist, Keith Pitchford (See, Exhibit 22, Tab 10). In particular, the Board adopts his findings that (a) based upon his tree survey, 64 trees at the property were suitable for preservation; and (b) lot lines along the eastern portion of the property had been shifted in order to preserve the maximum number of trees.

22. The Board credits the testimony and report presented by the applicant's expert landscape architect, Ray Gauzza. In particular, the Board adopts his finding that the proposed grading plan will not adversely impact on tree preservation at the property.

23. The Board credits the expert testimony presented by civil engineers Frank Lin and Mary Sears. In particular, the Board adopts Mr. Lin's testimony that the combined storm water management features will allow the applicant to manage both water quality and water quantity and that water would be captured at a fifteen year post development rate and released at the two year predevelopment rate and no greater flow than 2 cubic feet per second into the stream situated on parkland, thus assuring that the stream will not be subject to erosive degradation. This water capture rate is well above the requirements imposed by the District of Columbia Department of Health requirements.

24. The Board adopts Ms. Sears' testimony that water quality will be controlled through "best management practices" using: (a) a "filteras", a stand-alone filtering device located in streets and planted with small trees and shrubs, (b) bioretention systems, stand-alone filtering devices and surface treatments located in flat areas, and (c) a "Baysaver" system, a hydrodynamic separator that separates out coarse sediment, solid debris, fine sediment, and oil. The Board also credits Ms. Sears' testimony that only clean water at controlled flow rates will be returned to the natural wetland and it will be enhanced as a result of the proposed storm water management system.

25. The Board credits the testimony presented by the applicant's expert in environmental science, James Ingram. In particular, the Board adopts his findings that: (a) the artificial wetland at the property will be improved by the development due to the planned clean-up at its location, the removal of invasive species, and the removal of the chlorinated water being released into the wetlands area; and (b) the proposed 25 foot buffer is sufficient to protect the wetlands and the adjacent parklands.

CONCLUSIONS OF LAW

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. The applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 2516 to allow the construction of a theoretical lot subdivision for thirty-three single family homes in the R-1-A zone at 2101 Foxhall Road, NW.

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

adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. The Board concurs with OP that the proposed theoretical lot subdivision will not be contrary to the purpose or intent of the Zoning Regulations, as each of the lots being created will provide greater than the minimum lot area and width required in this zone, and the form of the private streets and housing development is in keeping with both the zoning and the character of the neighborhood. The Board also concurs with OP that the proposed form of subdivision layout will not adversely affect the surrounding neighborhood. From the outside, the development will be consistent in form with other developments in the area. Road improvements may benefit access to some existing homes in the area.

Under section 2516 of the Zoning Regulations, the Board may permit a theoretical lot subdivision and two or more principal buildings or structures on a single subdivided lot, subject to the following provisions:

2516.2 This section applies to construction on a lot that is located in, or within twenty-five feet (25 ft.) of, a Residence District. The subject property is within a residential district.

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the new application, four (4) site plans for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with approximate building footprints; provided: (a) The applicant shall also submit, either with the original application or at a later time, final landscaping and grading plans and two (2) sets of typical floor plans and elevations; and (b) If the applicant elects to submit the plans referenced in § 2516.3(a) at a later date, the Board's original approval shall be conditional, subject to a later public hearing and final decision on the project as a whole.
The applicant submitted preliminary and revised plans and documents as part of its application: site plans depicting existing conditions, site plans showing the proposed development, landscape plans, typical house plans, lot planting schematics, landscape design guidelines, grading plans, storm water management plans, water and sewer connections, street cross sections and traffic studies.

2516.4 The number of principal buildings permitted by this section shall not be limited; provided, that the applicant for a permit to build submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to § 2507), and §§ 3202.2 and 3203.3 are met All of the theoretical lots provide the required site area and width, as well as a building envelope providing the required setbacks Thus, the development will easily meet the various area requirements. Because the proposed buildings are single-family dwellings, the

proposed use is permitted in the zone and the proposed development meets the use requirements of the Zoning Regulations as well.

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply: The 33 internal theoretical lots do not have frontage on a public street. As such, the following provisions are applicable to those lots.

(a) The front of the building shall be the side upon which the principal entrance is located: All buildings on the theoretical lots front onto private streets, with pedestrian and vehicular entrance on that façade.

(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the zone district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater; The required rear yard setback in the zone is a minimum of 25 feet. The front yards on all lots will be a minimum 25 feet and will comply with the requirement that they be "equivalent" to the required rear yard.

(c) (d) A rear yard shall be required; and [i]f any part of the boundary of a theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot. Each lot will have rear yards of at least 25 feet and will comply with this requirement (See site plan, Exhibit 50, Tab 5).

2516.6 In providing for net density pursuant to § 2516.11, the Board shall require at least the following:

(a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title; As depicted on the site plan, roadways are not included in the theoretical lots.

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five feet (25 ft.) in width, but need not be paved for its entire width; As stated above, all internal roadways will be 30 feet in width (Finding of Fact 12).

(c) If there are not at least two (2) entrances or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.); Because there will be two entrances to the proposed development, this requirement is inapplicable.

(d) The requirements of paragraphs (a) and (c) of this subsection may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided, that the Board shall give specific

consideration to the spacing of buildings and the availability of resident, guest, and service parking. The applicant has not requested any modifications of these requirements.

2516.7 Where not in conflict with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§5-401 to 5-409 (1994 Repl. & 1999 Supp.)), the height of a building governed by the provisions of this section, in all zone districts, shall be measured from the finished grade at the middle of the front of the building. All homes within the proposed development will conform to the height limit of 40 feet, as measured from the finished grade at the middle of the front of the building

2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of § 410, relating to a group of one-family dwellings, flats, or apartment houses, or a combination of such buildings. Because § 410 applies only to the R-4 and R-5 zones, and the subject property is within the R-1-A zone, this section is inapplicable.

2516.9 The proposed development shall comply with the substantive provisions of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood. The Board finds that the proposed development complies with all of the applicable provisions of the Zoning Regulations and that the proposed project will not have an adverse effect on the present character or future development of the neighborhood. The present character of the neighborhood will be maintained by creating a subdivision of single-family homes located on large lots, a subdivision that follows the natural contours of the property so as to allow for the stepping down of homes, and a subdivision that maintains open green space and preserves trees. As to the effect on future development, the Board finds that the project will not create significant additional demand for government services. Storm water management will be handled entirely within the property. Internal roadways will be designed and constructed to DDOT specifications; and, although the roadways will be maintained by the homeowners' association, they will be open to the public. Also, by providing a new, safer access from Foxhall Road (with a traffic light and turning lanes), and allowing public access through the site, the project will likely result in improved access to existing homes on the north side of W Street. In addition, the Board concludes that the installation of storm water management and the "clean-up" at the property will enhance both the natural and artificial wetland areas. Finally, the Board believes that any potential adverse impacts to the neighborhood will be mitigated by the conditions imposed by this Order.

2516.10 Before taking final action on an application under this section, the Board shall refer the application to the D.C. Office of Planning for coordination, review, and report.

The application was forwarded to OP. In addition, various aspects of the application were reviewed by DDOT, the Metropolitan Police Department, the Department of Housing and Community Development, and the DC Department of Recreation. Issues and concerns raised by OP and other agencies are addressed in this Decision and Order.

Other than the special exception to permit multiple principle structures on a single subdivided lot, no other relief from the Zoning Regulations is required. The Board agrees with OP that the proposed development conforms to the overall purpose and intent of the Regulations, and the Comprehensive Plan.

The Board is persuaded that the project has been designed to be environmentally sensitive. Internal roads will follow the natural contours of the property, allowing the least amount of grading possible, as well as the preservation of a large number of trees. In addition to preserving approximately sixty percent of the specimen trees on the property, the applicant will be planting a large number of significant caliper trees, resulting in a net gain of healthy trees at the site. Furthermore, the proposed storm water management has been designed to include an innovative system that far exceeds the District's requirements for both water quality control and water quantity control. As explained in the Findings of Fact, the wetlands located on the site will actually be enhanced as a result of the removal of invasive plant species and abatement of the infiltration of chlorinated water and road run-off.

The Board concludes there will be no significant adverse environmental impacts, notwithstanding the assertions to the contrary by Ms. Hardy and the Friends of Whitehaven.

Ms. Hardy contends that the development will adversely affect the mature trees on the property line between her property and the development, and disputes the location of these trees as depicted on the applicant's tree survey. However, Ms. Hardy presented no empirical evidence that refuted either the tree survey or the evidence presented by the applicant's landscape architect and arborist. As stated previously, a significant number of trees will be preserved at the property – including those trees at the Hardy property line -- and a certified arborist will oversee the grading and construction at the property in order to insure the health of those trees slated for preservation.

The Friends of Whitehaven (FOW) contends, among other things, that the development will damage or destroy the wetlands and the nearby parklands. The Board does not agree. With respect to the wetlands, FOW proposes that approximately one-half of the subject property be protected with a "wetlands easement", a designation that is much

larger than the formal designation that was made by the Federal government. First, the Board has no authority to impose such a restriction on private property; and, second, the Board does not agree that the wetlands will be adversely impacted by the proposed development. As stated in the Findings of Fact, the Board concludes that the natural wetlands and artificial wetlands areas will both be enhanced as a result of the proposed storm water management system. Likewise, the Board concludes that the adjacent parklands will be protected, provided this special exception is conditioned upon the creation of non-disturbance buffer areas next to the parklands.

The Board also concludes that the development will have a negligible impact on traffic. The Certain Residents group contends that the development will exacerbate dangerous traffic conditions at the nearby intersection of Foxhall Road and W Street, and that the entrance to the development should be relocated along Whitehaven Park. For reasons explained below, the Board does not agree.

The Board concurs with OP and DDOT that the proposed development will not adversely affect parking, loading or traffic conditions in the area, and that the proposed development has been designed to mitigate existing and potential traffic problems. The internal roads will be designed to District standards and will accommodate the low level of traffic anticipated for the relatively small number of homes. Deliveries will be minimal, and will be accommodated by the road and driveway system proposed. Although the Police Department noted the excess speed along Foxhall Road, the Board agrees with the applicant that this condition will not be exacerbated by the development. It appears, in fact, that the roadway improvements associated with the development, particularly the turning lanes at the proposed entrance, may result in improved traffic conditions to the surrounding area.

The Board concludes that the proposed development will be compatible with the surrounding area when considering factors relating to urban design and site planning. The Board concurs with OP that the form of development – detached dwellings on relatively large lots – is in character with the surrounding community. As also noted by OP, the development will contain considerable amounts of shared public space and on-site open space resulting from the generous setbacks. The density, at less than three units per acre, is low and in keeping with the neighborhood.

The Board also concludes that the proposed development is consistent with planning considerations relating to recreation. As mentioned earlier, the Department of Parks and Recreation maintains a park and recreation center near the site of the proposed development. In addition, the development will contain large amounts of open green space which will be open to the public and which will be maintained by the homeowners association.

The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations. The Board has considered numerous conditions proposed by the applicant, the ANC, and the parties in opposition. The grant of this special exception is subject to the specifically enumerated conditions set forth in this Decision and Order.

The ANC Issues and Concerns

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; now codified at D.C. Official Code § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's written recommendations.[4] To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

The ANC report states that it supports the project, subject to various conditions. The following conditions were proposed: (1) that the applicant relinquish all right/claims to 44th Street that abuts the property and remove the concrete slabs and other remnants of the old road bed along the paper road, and work with the NPS to have 44th Street transferred to it; (2) that the applicant agrees to place covenants on the deeds of sale of properties that border on federal parkland that prohibit the placement of structures within the rear yard setback; (3) that the applicant will require that all swimming pools are constructed within the allowable lot footprint; (4) that the applicant agrees the homeowners association will prohibit the use of harmful chemicals/pesticides on properties within the development; (5) that the applicant will work with DDOT to maintain or improve the natural earthen berm fronting on 2001 Foxhall Road and ensure its minimal disturbance during improvements to Foxhall Road; (6) that the applicant agrees not to recommend to DDOT a right turn only policy from the east side of W Street; (7) that the applicant agrees not to request that DDOT fully signalize the traffic light on Foxhall Road at the Field School; and (8) that the applicant agrees to work closely with DDOT and to assume all costs related to the installation of a new "on demand" traffic light at the proposed new entrance on Foxhall Road. The ANC also requests that any Board approval be contingent upon a construction management agreement which it proffered with Ms. Hardy and a representative of the Certain Residents group.

With respect to the conditions proposed by the ANC, the Board finds that it has offered persuasive advice in some instances but not in others. The Board has addressed many of the ANC's concerns in the conditions of approval which are set forth below. For

[4] Alma Gates, the ANC chair, expressed additional "concerns" during her testimony and proposed further conditions during subsequent submissions. However, Ms. Gates acknowledged that the ANC majority did not necessarily share her views, and had not voted to support the additional proposed conditions. Thus, the Board does not give "great weight" to those additional concerns.

example, the applicant will work with the National Park Service regarding the closure of 44th Street. There will be non- disturbance buffer areas adjacent to the parklands. The buffer areas will be ensured by covenants that are recorded among the land records. Any swimming pools will be constructed within the setbacks. The applicant will assume the cost of the traffic light to be located at the proposed entrance of the development.

Other conditions requested by the ANC are beyond the Board's purview. For example, the ANC requests that the Board condition its approval on the applicant's working with DDOT to maintain the natural earthen berm at the Hardy property. However, the Hardy property is not the subject of this application and the Board cannot compel Ms. Hardy to comply with this condition. Nor can the Board compel DDOT to take specific actions regarding the planned improvements at Foxhall Road or direct a process whereby the applicant makes specific "recommendations" to DDOT. Finally, the Board has no authority to condition special exception approval on a construction management agreement. The Board is authorized by § 2516 to establish conditions "to protect the overall purpose and intent of the Zoning Regulations". Construction management plans do not control the impact of the operation of this development, but the impact of its construction, which is governed by the Construction Code. While the Board has encouraged the applicant and all parties to reach an agreement on construction related issues, it cannot require this.

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 OP.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under §2516 to allow the construction of thirty-three single-family homes on a single subdivided lot.

The Board further concludes that, as hereinafter conditioned, the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the granting of the requested relief will not tend to adversely affect the use of neighboring property in accordance with the regulations and map. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The property shall be subdivided as shown on the plans and documents contained in Exhibit No. 50 of the record. Minor adjustments shall be permitted to accommodate tree preservation and/or grading.

2. Sidewalks shall be constructed on at least one side of the internal streets, as well as along the perimeter of the property along Foxhall Road and

W Street, in accordance with the site plan contained in Exhibit 50, Tab 5 of the record.

3. A minimum of two off-street parking spaces for each home shall be maintained at all times.

4. The proposed dwellings shall be constructed behind the building setback lines shown on the Preliminary Grading Plan contained in Exhibit 50, Tab 1 of the record. Pools shall be constructed within building setback lines. With the exception of lots abutting parkland or the 44th Street right-of-way (lots A-10, A11, A29, A30, A12, A13, A34 and A35), patios at grade and decks at or below the main floor shall be permitted between the building setback line and the individual lot lines.

5. The applicant shall establish a tree preservation and screening area adjacent to the national parklands in accordance with Exhibit 50, Tabs 4 and 13 of the record. The following conditions shall apply:

    a. A six foot picket fence of black wrought iron or equivalent finish shall be installed on the eastern and southern borders of the property. This fence shall not cross the natural wetland area;

    b. As illustrated on the Preliminary Grading Plan in Exhibit 50, Tab 1, lots A-10, A11, A29 and A30 will have a thirty foot non-disturbance buffer area and lots A12, A13, A34 and A35 will have a forty foot non-disturbance buffer area. This buffer area may only be planted with trees and shrubs on the "approved species" plant list. Weeds or insects and disease infestations within these areas may only be controlled using environmentally "friendly" disease control products. Compliance with this provision will be monitored by the homeowners association on a bi-annual basis. The non-disturbance buffer areas will be protected by a covenant recorded in the land records. The approved species plant list is the list of plants that shall be consistent with similar plant lists developed for Rock Creek Park and Glover Archbold Parkway. The non-disturbance buffer area shall be maintained to present no visually identifiable or actual man-made objects or treatments, thus being a landscape indistinguishable from the majority of the original forested landscape conditions of Glover-Archbold Parkway.

c. In connection with the application of a building permit for any of the houses on the lots listed in 5 (b) above, the Applicant shall submit to the Zoning Administrator a plan showing the spacing of trees within the setback area of the lots, the buffer areas, and the open spaces in accordance with plans contained in Exhibit No. 50 in the record. The entire non-disturbance buffer shall be recorded with each lot identified and shall be recorded prior to the issuance of any clearing, construction, or other permits for any site on the property. The purpose, intent, and conditions of the non-disturbance buffer shall be clearly identified in all individual lot deeds as well as in the subdivision legal instruments.

6. Architectural Guidelines shall be established in accordance with the "Dunmarlin Architectural Standards Outline" dated February 14, 2005, appended to the Applicant's proposed Findings of Fact and Conclusions of Law contained in Exhibit No. 60, Tab B. The final Architectural Guidelines may be more, but not less restrictive than this Outline and shall be recorded in the land records prior to the subdivision of the property. The final Architectural Guidelines must require that a minimum of thirty percent of the front façade of every dwelling be on or within three feet of the front yard building restriction line. The Architectural Guidelines may not be amended so as to remove this or any other restriction approved by this Decision and Order. All construction shall be in accordance with the final Architectural Guidelines.

7. Landscape Guidelines consistent with the landscape guidelines submitted by the applicant as Exhibit 22, Tab 11 of the record shall be filed with the land records prior to the subdivision of the property. Final Landscape Guidelines may be more, but not less restrictive than the guidelines submitted in the record and may not be amended so as to remove restrictions approved by this Decision and Order.

8. Covenants, conditions and restrictions consistent with this Decision and Order shall be recorded with the land records prior to the subdivision of the property. In addition to the required provisions set forth in these conditions, these documents shall require that the homeowners association maintain the storm water management facility and all open spaces, sidewalks and roads.

9. The construction entrance to the property shall be located on Foxhall Road at the proposed new entrance to the property. Construction will be

done in five phases in accordance with Exhibit 60, Tab A in the record. The applicant shall retain the services of an ISA certified arborist to oversee all phases of grading and construction to ensure the protection of trees slated for preservation in accordance with the Tree Preservation Plan contained in Exhibit 50, Tab 4 of the record. The applicant shall share with adjacent neighbors any construction plans that may impact trees on their properties. In no case shall any construction fence extend past the tree preservation line.

10. Individual lot landscaping shall be as depicted on the typical plans and sections provided in Applicant's Pre-hearing Statement at Exhibit 22, Tab 3 of the record, and shall be in accordance with the Revised Landscape Guidelines set forth in Exhibit 22, Tab 11 of the record.

11. A storm water drainage system shall be constructed in accordance with Exhibit 50, Tabs 2, 3, 10, 11, and 12 of the record. Where possible, filteras and bioretention systems shall be installed as proposed, and water will be captured at the fifteen year post development rate and released at the two year predevelopment rate. The applicant shall enter into maintenance agreements for the annual maintenance and upkeep of all storm water management systems, including the filteras, bioretention and Baysaver with capacities of retention structures and surface water release rates onto park land being not greater than a flow rate of 2 cubic feet per second.

12. Storm water management along Foxhall Road for the property shall be constructed in accordance with Exhibit 50, Tabs 2, 3, 10, 11, and 12 of the record. The applicant shall coordinate these improvements with DDOT's planned improvements to Foxhall Road. Storm water collected on or from Foxhall Road shall be conveyed to the existing or modified storm sewers currently on Whitehaven Street.

13. The entry-ways (vehicular and pedestrian) to the property shall remain open to the public in perpetuity. The homeowners association documents shall provide that this provision may not be amended or deleted without prior approval of the Board with notice to all parties, their successors or assigns. If 44th Street right –of-way is closed, the applicant shall support the transfer of 44th Street Right of Way to NPS for park purposes, in particular, for inclusion of the unbuilt portions of 44th Street into Glover Archbold Parkway.

14. The applicant shall assume all costs related to the installation of a new on demand traffic light at the proposed new entrance to the property.

15. Street lighting shall be fixtures selected and oriented so as not to cause direct illumination or glare on adjacent properties.
16. The applicant shall take measures to control soil erosion to protect the natural drainage channel and the adjacent parklands, subject to the approval of the District of Columbia Department of Health.

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

Vote taken on April 5, 2005

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: JUL 2 6 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.

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.

AUG 5 2005

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17331 of JPI Apartment Development LP, on behalf of Larry D. and Carol K. Quillian, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to an existing single-family dwelling under section 223 not meeting the side yard (section 405), court (section 406) and nonconforming structure (subsection 2001.3) requirements to establish a flat (two-family dwelling in the R-4 District at premises 1229 E Street, S.E. (Square 1019, Lot 816).

HEARING DATE: June 14, 2005
DECISION DATE: July 5, 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) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. The Office of Planning (OP) also submitted a report on the application. OP's recommendation is summarized below.

PROCEDURAL ISSUE

In its report dated May 25, 2005, the Office of Planning ("OP") expressed concern about the Applicant's use of a trellis to connect the existing single-family dwelling with an addition at the rear of the property containing one residential unit (thus establishing a flat), in order to apply for relief under section 223. OP asserted that such an application does not meet the intent of section 233 and "will open the door for multiple buildings on a lot that should either not be approved, or when applicable should be considered under section 2516 as an exception to building lot control." Accordingly, OP recommended that the design be amended to remove the trellis and either (i) directly connect the two dwellings as one structure; or (ii) attach the two dwellings with a connection that meets the definition of building under section 199.1.

The Applicant argued that the Board had already determined that a trellis meets the definition of "building" under section 199.1 of the Zoning Regulations in BZA Application No. 16863-A, and that use of a trellis to connect two structures in the instant case is sufficient to establish one building for zoning purposes based on this and other past precedent.

The Board requested the Applicant and OP to brief this issue. The Applicant submitted its post-hearing submission and proposed order on June 27, 2005. The Board considered this issue at its July 5, 2005, and concluded that, based on past precedent, the trellis proposed by the Applicant meets the definition of building under section 199.1 because the trellis will have a roof that provides at least 51 percent coverage and is supported by columns for the shelter, enclosure or support of persons. As such, the trellis provides an adequate connection between the existing single-family house and the addition to the rear to constitute one building under the Zoning Regulations.

DECISION

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 section 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, 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 ANC and the OP report filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3104.1 and 223, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

VOTE: **4-1-0** (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, Geoffrey H. Griffis to approve; and Kevin Hildebrand to deny).

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: July 6, 2005

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

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17338 of Little Samaritan Child Development Center, pursuant to 11 DCMR § 3104.1, for a special exception to allow an expansion of an existing child development center from 15 children and 4 staff to 50 children and 16 staff under section 205, in the R-5-A District at premise 5100 E Street, S.E. (Square 5315, Lot 36).

HEARING DATE: June 28, 2005
DECISION DATE: June 28, 2005 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR
The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E 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 205. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

1. Approval shall be for a period of FIVE YEARS from the final date of this order.

2. Enrollment shall be limited to 50 children.

3. The maximum number of staff shall be 16.

4. The ages of the children shall range from 6 weeks to 12 years.

5. The days and hours of operation shall be Monday through Friday, 7:00 a.m. to 6:00 p.m.

6. One staff person (at minimum) shall be available at the front of the building to assist when the children are dropped off.

VOTE: **4-0-1** (Curtis L. Etherly, Jr., Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann II to approve; Carol J. Mitten 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: JUN 29 2005

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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, PERSONALAPPEARANCE, 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.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17343 of Peace Baptist Church, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to construct a new entrance lobby to an existing church in the R-4 District at premises 712 18th Street, N.E. (Square 4511, Lot 67).

HEARING DATE: July 12, 2005
DECISION DATE: July 12, 2005 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 6A. The ANC submitted a report in support of the application. The OP submitted a report in support to the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403, 404 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: JUL 13 2005

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

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17344 of Anne Luzzatto, as amended, pursuant to 11 DCMR § 3103.2, for a variance from the minimum side yard requirement (section 405) and a variance from the restriction on enlarging structures devoted to nonconforming uses (section 2002.5) to allow an addition to an existing accessory garage serving a flat in the R-1-B District at premises 3324 Highland Place, N.W. (Square 2075, Lot 37).

Note: The application was originally filed as a request for special exception relief under §223 to allow an addition to an existing accessory garage serving a single-family detached dwelling. However, based on the configuration of the property, the Board determined that the structure is a flat, not a single-family structure. Therefore, the application was amended to request variance relief from the minimum side yard requirements (§405.9) and the restriction on enlarging a nonconforming use (§2002.5). The application was further amended to reflect the correct square which is 2075, not 2095 as stated in the advertisement.

HEARING DATE: July 5, 2005
DECISION DATE: July 5, 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) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C submitted a report in support of the amended application. The Office of Planning (OP) also submitted a report in support of the amended application.

Based upon the record before the Board and having given great weight to the ANC and the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 405 and 2002.5 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without

substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 1 2 2005

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

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

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

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

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17345 of Dominic Puchalla, pursuant to 11 DCMR § 3104.1 for a special exception to allow a rear addition to an existing single-family row dwelling under section 223, not meeting the court width requirements (section 406), in the R-4 District at premises 1620 New Jersey Avenue, N.W. (Square 509, Lot 102).

HEARING DATE: July 5, 2005
DECISION DATE: July 5, 2005 (Bench Decision)

Note: The applicant submitted revised plans at the hearing.

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) 2C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. ANC 2C 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 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 as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED SUBJECT** to the **CONDITION** that construction shall be in accordance with revised plans marked as **Exhibit No. 27** of the record.

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 1 2 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.

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.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17346 of Gayle Berkley, pursuant to 11 DCMR § 3104.1, for ANC-5C a special exception to allow a rear deck addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy (section 403) and rear yard requirements (section 404), in the R-3 District at premises 228 Ascot Place, N.E. (Square 3557, Lot 65).

HEARING DATE: July 5, 2005
DECISION DATE: July 5, 2005 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C submitted a report in support of the application and requested a waiver of the seven day filing requirement. By consensus, the Board waived its rules and accepted the report into the record. 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 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 as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to

affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED SUBJECT** to the **CONDITION** that construction shall be in accordance with plans marked as **Exhibit No. 9** of the record.

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 1 2 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.

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.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17347 of 13th Street Lofts LLC, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under section 403, and the nonconforming structure provisions under subsection 2001.3, and pursuant to 11 DCMR § 3104.1, a special exception from the roof structure provisions under section 411, to allow the construction of a nine story residential building in the R-5-E District at premises 1209-11 13th Street, N.W. (Square 281, Lots 8 and 26).

HEARING DATE: July 12, 2005
DECISION DATE: July 12, 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) 2F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. ANC 2F did not participate in the hearing. 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 a special exception under section 411, and variances pursuant to § 3103.2 from the requirements of section 403 and 2001.3. 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 411, 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.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403 and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 1 3 2005

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17348 of Elizabeth Prestridge, pursuant to 11 DCMR § 3104.1, for a special exception to construct a rear deck addition to an existing single-family detached dwelling under section 223, not meeting the side yard requirements under section 405, in the R-1-B District at premises 5469 31st Street, N.W. (Square 2295, Lot 6).

HEARING DATE: July 19, 2005
DECISION DATE: July 19, 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) 3/4G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3/4G, which is automatically a party to this application. ANC 3/4G submitted a 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 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 as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

AUG 5 2005

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 20 2005

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

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application 17350 of 54th Street Corporation, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of an eight (8) unit apartment building for handicapped persons under section 353, in the R-5-A District at premises 5355 and 5357 Queens Stroll Place, S.E. (Square 5299, Lots 14 and 15).

HEARING DATE: July 26, 2005
DECISION DATE: July 26, 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) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. The ANC 7E report, which was submitted to the Board by the applicant, was not filed in a timely fashion; however, by consensus, the Board waived its rules to accept the ANC report into the record. The ANC 7E report was in support of the application. The Office of Planning (OP) also submitted a report in support of this 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 353. 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 353, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 27 2005

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

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

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

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

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

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17351 of Little Angels Child Care Center, pursuant to 11 DCMR § 3104.1, for a special exception to establish a child development center (75 children and 15 staff) under section 205, in the R-2 District (The center was last approved under BZA Order No. 16540, dated March 21, 2000) at premises 2214 Naylor Road, S.E. (Little Rock Church of Deliverance) (Square 5576, Lot 39).

HEARING DATE: July 19, 2005
DECISION DATE: July 19, 2005 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to Advisory Neighborhood Commission (ANC) 8A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. ANC 8A did not participate in this application. However, the Office of Planning (OP) submitted a report in support of this 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 a special exception under section 205. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is **GRANTED SUBJECT** to the following **CONDITION(S):**

1. Approval shall be for **SEVEN (7) YEARS.**
2. The total enrollment shall not exceed 75 children, ages 2 to 12 years old.
3. The number of employees shall not exceed 15.
4. The days and hours of operation shall be Monday through Friday, 6:30 a.m. to 6:00 p.m.
5. Drop-off shall be between the hours of 6:30 a.m. and 9:00 a.m., and pick-up shall be between the hours of 4:00 p.m. and 6:00 p.m.
6. The children shall be escorted by staff to off-site play areas.
7. The parking lot surface shall be maintained in good order and pick up and drop off areas shall be maintained in a clean and orderly manner. Bumper stops shall be realigned and painted.
8. The trash dumpster area shall be properly maintained and clearly marked.
9. Six parking spaces shall be reserved for the center's use and identified with appropriate signage.
10. The pedestrian walkways shall be striped.

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 20 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

TWR

DISTRICT OF COLUMBIA REGISTER

AUG 5 2005

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17353 of Thomas Cutler, pursuant to 11 DCMR § 3104.1, for a special exception to construct a roof top addition (stairway penthouse and roof deck) on an existing flat (two family dwelling) under section 223, not meeting the lot occupancy requirements (section 403), court width requirements (section 406), and nonconforming structure provisions (subsection 2001.3), and a special exception from the roof structure set-back provisions under subsection 411.11, in the R-4 District at premises 440 Warner Street, N.W. (Square 509, Lot 170).

HEARING DATE: July 26, 2005
DECISION DATE: July 26, 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) 2C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. ANC 2C 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 sections 223 and 411.11. 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, 223 and 411.11, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: July 27, 2005

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

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

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

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

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

ZONING COMMISSION ORDER NO. 04-25
Z.C. Case No. 04-25
(Catholic University – Map Amendment)
June 20, 2005

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on April 14, 2005, to consider an application of Catholic University of America ("University" or "Applicant") for a Zoning Map amendment of property identified as Parcel No. 121/29 of Square 3663 from unzoned to the R-5-A District under 11 DCMR §§ 102 and 3021. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

Preliminary Matters

The University submitted an application on September 29, 2004, for a Zoning Map amendment for property identified as Parcel No. 121/29 of Square 3663 ("Property" or "West Campus") from unzoned to the R-5-A District in order to allow use of the Property and its addition to the University campus. Also on September 29, 2004, the Applicant submitted an application requesting an amendment to the 2002 Master Plan of The Catholic University of America ("Campus Plan"), which guides the development of the campus through May 12, 2012, and the further processing of the Campus Plan to allow for certain enumerated uses on the Property. On December 13, 2004, the Zoning Commission set down for a public hearing the application for a map amendment.

The parties in this case are the Applicant, Advisory Neighborhood Commission ("ANC") 5A, ANC 5C, and the Michigan Park Citizens Association. The Property is located within the boundaries of ANC 5C, while the University's North Campus is within the boundaries of ANC 5A.

The Notice of Public Hearing was published in the *D.C. Register* on February 25, 2005 (52 *D.C.Reg* 1906). The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject Property, as well as to the ANCs. Zoning placards were properly posted in a timely fashion.

At the public hearing, the Commission heard testimony from the Applicant and the Office of Planning as well as from two (2) persons in support. The Michigan Park Citizens Association testified in opposition to the application, citing a shortage of housing on the Main Campus and asserting that the Property was not appropriate for housing due to its distance from the Main

Campus. Both ANCs submitted letters in support of the application but did not testify at the hearing.

At a special public meeting held on May 16, 2005, the Zoning Commission took proposed action to approve the application for a map amendment from unzoned to the R-5-A District by a vote of 4-0-1. The Commission took final action to approve the application for the map amendment on June 20, 2005, by a vote of 3-0-2.

FINDINGS OF FACT

The Site and the Surrounding Area

1. The Property is a 49-acre parcel that lies immediately to the west of the University's Main Campus in Northeast Washington. The Property, which is unzoned, was acquired by the University from the U.S. Soldiers' and Airmen's Home in April 2004. The Property is improved with a few small structures, but the majority of the parcel is vacant.

2. The site is bounded by North Capitol Street to the west, Irving Street to the southwest, Michigan Avenue to the south, Harewood Road, N.E. to the east, and the Pope John Paul II Cultural Center to the north. In addition to Catholic University, also in the vicinity of the Property are the Veterans Administration Hospital and the McMillan Reservoir.

3. The University's campus is zoned R-5-A, except for certain areas located just south of Michigan Avenue.

4. The University is located in a primarily residential area of low- to medium-density development. Immediately surrounding the campus are many large institutional facilities, particularly houses of religious study, colleges, and hospitals, as well as some light industrial and commercial properties. The campus is divided into three (3) segments. The Main Campus, comprising 95.3 acres, contains the University's administrative, academic, and student life facilities. The South Campus, comprising 8.7 acres, is located south of Michigan Avenue and contains student housing and some support facilities. The North Campus contains 40.5 acres and is located north of Taylor Street. This area is used for recreation programs and includes an athletic center, stadium, and sports fields.

The Map Amendment

5. The Applicant seeks to establish R-5-A zoning on the Property. The R-5 Zone District is a general residence district designed to permit flexibility of design by permitting all types of urban residential development and the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. Pursuant to Section 210.3, the development parameters are prescribed by the 2002 Campus Plan approved by the Commission in Order 20-02. Accordingly, the maximum density for the campus is 1.8 FAR.

AUG 5 2005

6. Section 492 of the District of Columbia Home Rule Act (D.C. Official Code § 6-641.02 (2001)), provides that zoning shall be "not inconsistent" with the Comprehensive Plan for the National Capital. The mapping of the R-5-A District on the Property will help carry out the Comprehensive Plan as set forth below:

   a. *Land Use Element.* Objectives for public and institutional land use include to recognize the specialized land needs and unique economic and human development opportunities presented by colleges, universities, and other institutional users of large tracts, and to require the development of detailed master plans, if none exist, that incorporate all land and facilities concurrently in use or currently owned by the institution and anticipated for future use. 10 DCMR § 1115.1(j).

   b. *Ward 5 Element.* Objectives for land use/zoning in Ward 5 include (a) to "protect and enhance the stability of residential neighborhoods," 10 DCMR § 1629.1 (a), and (b) to "encourage and support an appropriate mix of uses in all economic development, where appropriate including uses such as housing, parks and open space." 10 DCMR § 1629.1 (c).

Report of the Office of Planning

7. In its report of March 28, 2005, OP recommended approval of the University's application for the zoning map amendment. OP noted that the R-5-A District is appropriate for university uses, noting that universities are a use permitted by special exception within the R-5-A District, subject to approval of a campus plan by the Zoning Commission. OP also noted that the requested map amendment would be consistent with the zoning in the surrounding areas since most of the other portions of the University campus are located within the R-5-A District and that other properties around the Property are zoned R-5-A or SP-1, or are unzoned due to institutional federal uses.

8. The Commission credits OP's testimony that the Property is designated as "institutional" and "federal" on the Generalized Land Use Map and it is, therefore, appropriate to use the entire parcel for the use proposed by the Applicant.

Reports of Other Agencies

9. The Fire and Emergency Medical Services Department had no objection to the application, provided that any proposed development had acceptable access for emergency vehicles.

10. The Department of Health had no objection but, "expects [the Applicant] to comply with the District's Environmental Laws as well as federal NPDES Regulations related to MS-4 Permits for construction activities involving an acre or more of land disturbance."

Report of the National Capital Planning Commission

11. The National Capital Planning Commission ("NCPC") concluded that the zoning map amendment to the R-5-A District would not negatively affect the federal interest.

CONCLUSIONS OF LAW

Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01 (2001)) establishes the authority of the Commission to, "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia" through regulation of the structures and uses on its land. Section 3 of the Zoning Act of 1938 (52 Stat. 797, 798, as amended, D.C. Official Code § 6-641.03 (2001)) establishes the authority of the Commission to amend the zoning maps of the District of Columbia.

The R-5-A District is specifically designed for low-density development of general residential uses. The Property's current unimproved state and the surrounding low-density residential and institutional uses, primarily of R-5-A and institutional federal uses, therefore, lends itself to R-5-A zoning. The Commission concludes that the R-5-A District is an appropriate zone district to be mapped over the Property.

The Commission further concludes that the requested map amendment from unzoned to R-5-A is not inconsistent with the Comprehensive Plan for the National Capital or with the purposes of the 1938 Zoning Act. The Commission also concludes that the proposed map amendment to R-5-A is consistent with the Generalized Land Use Map's designation of the subject property as "institutional" and "federal." The Commission cannot choose to retain an unzoned designation when zoning has been sought. Here, the Applicant has requested the most restrictive zoning category that is both suitable and not inconsistent with the Comprehensive Plan.

Based upon the above findings and conclusions, the Commission concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the communities near which the Property is located and the University.

The Commission notes the recommendations in support of the map amendment to R-5-A of ANC 5A, ANC 5C, and OP, and has accorded them the "great weight" to which they are entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission hereby orders **APPROVAL** of the application for an amendment of the zoning map to change the status of the Property from unzoned to the R-5-A District.

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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On May 16, 2005, the Zoning Commission approved the application by a vote of 4-0-1 (Anthony J. Hood, Kevin L. Hildebrand, John G. Parsons, and Gregory N. Jeffries to approve; Carol J. Mitten, having not participated, not voting).

This Order was adopted by the Zoning Commission at its public meeting on June 13, 2005, by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve; Carol J. Mitten, having not participated, not voting; Kevin L. Hildebrand, not present, not voting).

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register on _____.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., SEPTEMBER 16, 2004

Plat for Building Permit of PARCEL 121/29

Scale: 1 inch = 200 feet Recorded in A & T Book 3615-H THRU K

Receipt No. 14307

Furnished to: SHAW PITTMAN

Surveyor, D.C.

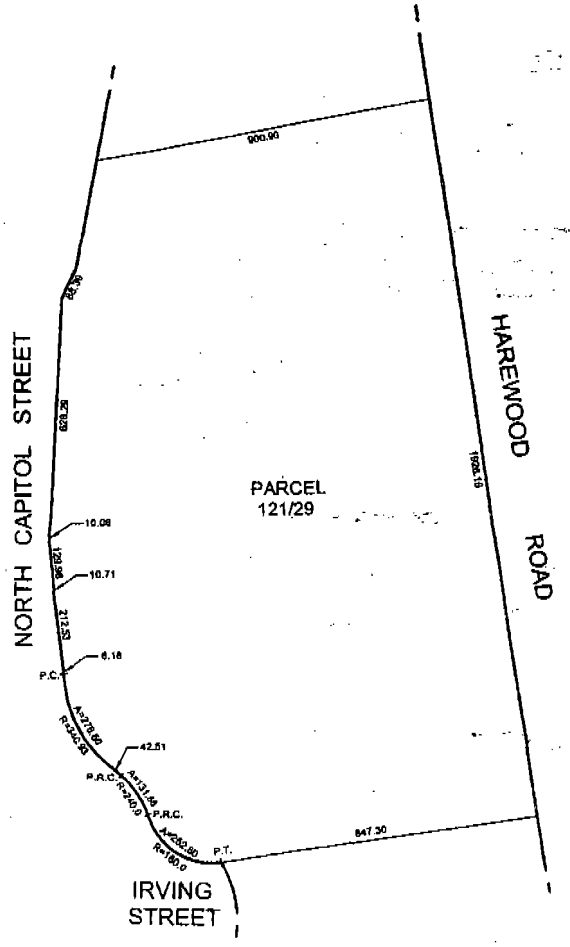
By: B.D.M.

I hereby certify that all existing improvements shown hereon, are correctly dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this proposed plat by reason of the proposed improvements to be erected on which beside the sign of any adjoining lot or premises is not encroached to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be (hereinafter) in accordance with the Zoning Regulations, and that the area has been correctly drawn and dimensioned thereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rise of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or less, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private dedicated property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



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Case No. 04-

ZONING COMMISSION ORDER NO. 04-25A
Z.C. Case No. 04-25
(Catholic University – Campus Plan Amendment and Further Processing)
June 20, 2005

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on April 14, 2005, to consider an application of the Catholic University ("University," or "Applicant") for an amendment to the 2002 Master Plan of The Catholic University of America ("Campus Plan"), which guides the development of the campus through May 12, 2012, to include the property identified as Parcel No. 121/29 of Square 3663, under 11 DCMR §§ 210 and 3014. The Applicant also seeks further processing under the amended plan to allow for the establishment of additional structures and uses as shown on the amended plan. In accordance with 11 DCMR § 210, this case was heard and decided by the Zoning Commission using the rules of the Board of Zoning Adjustment at 11 DCMR § 3100, et. seq. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3104.4. For the reasons stated below, the Zoning Commission hereby approves the application.

Procedural History

On September 29, 2004, the Applicant submitted an application to the Zoning Commission for an amendment to Campus Plan to include the property identified as Parcel No. 121/29 of Square 3663 (the "Property" or "West Campus"), under 11 DCMR §§ 210 and 3014 and for further processing under the amended plan to allow for the establishment of additional structures and uses as shown on the amended plan.[1] On December 13, 2004, the Zoning Commission set down the application for a public hearing.

The parties in this case are the Applicant, Advisory Neighborhood Commission ("ANC") 5A, ANC 5C, and the Michigan Park Citizens Association. The Property is located within the boundaries of ANC 5c, while the University's Main Campus is located within ANC 5A.

A Notice of Public Hearing was published in the *D.C. Register* on February 25, 2005 (52 *D.C.Reg* 1906). The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject Property, as well as to the ANCs. Zoning placards were properly posted in a timely fashion.

[1] Simultaneously with this application, the Applicant applied for rezoning of the Property from unzoned to the R-5-A District in order to allow for the addition of the Property to the University campus. The Commission established R-5-A District on the Property in Z.C. Order No. 04-25A

At the public hearing, the Commission heard testimony from the Applicant and the Office of Planning as well as from two (2) persons in support. The Michigan Park Citizens Association testified in opposition to the application, citing a shortage of housing on the Main Campus and asserting that the Property was not appropriate for housing due to its distance from the Main Campus. Both ANCs submitted letters in support of the application but did not testify at the hearing.

At a special public meeting of June 20, 2005, the Zoning Commission approved the application for the campus plan amendment and further processing of the amended plan on by a vote of 3-0-2.

FINDINGS OF FACT

The Site and the Surrounding Area

1. The Property is a 49-acre parcel that lies immediately to the west of the University's Main Campus in Northeast Washington. The Property was acquired by the University from the U.S. Soldiers' and Airmen's Home in April 2004. The Property is improved with a few small structures, but the majority of the parcel is vacant.

2. The site is bounded by North Capitol Street to the west, Irving Street to the southwest, Michigan Avenue to the south, Harewood Road, N.E. to the east, and the Pope John Paul II Cultural Center to the north. In addition to Catholic University, also in the vicinity of the Property are the Veterans Administration Hospital and the McMillan Reservoir.

3. The University's campus, including the Property, is zoned R-5-A, except for certain areas located just south of Michigan Avenue.

4. The University is located in a primarily residential area of low- to medium-density development. Immediately surrounding the campus are many large institutional facilities, particularly houses of religious study, colleges, and hospitals, as well as some light industrial and commercial properties. The campus is divided into three (3) segments. The Main Campus, comprising 95.3 acres, contains the University's administrative, academic, and student life facilities. The South Campus, comprising 8.7 acres, is located south of Michigan Avenue and contains student housing and some support facilities. The North Campus contains 40.5 acres and is located north of Taylor Street. This area is used for recreation programs and includes an athletic center, stadium, and sports fields.

5. The architecture of the University's main campus exemplifies the historic evolution of the institution dating from before the turn of the century. A variety of architectural styles are present in a pattern of campus development that historically responded to the orientation of the perimeter streets and to the topographic high points of the campus. These include Caldwell Hall, Gibbons Hall, Maloney Hall, McMahon Hall, and Mullen Library. The historic character of select older structures is particularly impressive and helps establish a strong, pleasant University presence, especially along Michigan Avenue. The adjacent Basilica acts as a distinguished landmark for the neighborhood and campus.

Further, many original campus buildings remain prominent structures, with architectural features to be preserved and featured as strengths of the University environment.

6. The Property is designated as "institutional" and "federal" on the Generalized Land Use Map of the Land Use Element of the Comprehensive Plan.

Campus Plan

7. The Applicant secured approval for the Campus Plan in Zoning Commission Order No. 02-02 which became effective on May 23, 2003. This application is the first request for further processing under the approved 2003 - 2012 Campus Plan.

8. The Applicant proposes to add the Property to the boundaries of the campus governed by its Campus Plan and requests further processing of the amended campus plan to allow the University to construct a pavilion for outdoor performances by student groups and event field, an unpaved cross-country track, an environmental research area, two areas of spiritual repose, a maintenance, truck and material storage structure, and temporary housing units, and to renovate the existing gate house. The temporary housing units will be used during renovation of residence halls on campus. The maintenance and material storage facility will be used in part for a certified program run by the University's student government that collects and sorts glass, wood, plastic, and metal materials for recycling.

9. The proposed uses of the Property are consistent with the University's campus plan. All planned construction within the West Campus would be consistent with requirements for the Property with respect to floor area ratio, site coverage, and yard setbacks.

10. The proposed university use of the Property is not inconsistent with the Comprehensive Plan. The Property is designated as "institutional" and "federal" on the Generalized Land Use Map of the Land Use Element of the Comprehensive Plan. The Applicant's proposed further processing of the Campus Plan is consistent with the policies of the District Elements of the Comprehensive Plan, including: incorporating all land currently owned by the institution and anticipated for future use, supporting the subsequent review and further processing of university master plans, preserving and ensuring community input and the updating plans for university campuses, and promoting the continued contributions of private institutions toward the District's cultural and economic vitality.

11. The University does not seek any change to its enrollment cap or the allowable FAR, as prescribed in the 2002 Campus Plan. The approved campus plan permits a maximum density of 0.44 FAR. Prior to the acquisition of the West Campus, the University campus had a total FAR of approximately 0.36. As a result of the acquisition of the Property, a 49-acre parcel with few improvements and plans for only minimal construction, the campus density has decreased to 0.33 FAR.

12. The amendment to and further processing of the Campus Plan to allow for the development of the West Campus, as set forth in the amended Campus Plan, is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions.

a. The entire University, including the West Campus, has a unique location and low intensity of use. The generous open space and large wooded areas on the West Campus create a buffer from the surrounding properties.

b. While the University is located primarily within residential zone districts, it is surrounded by many other institutional uses, rather than single family homes. Additionally, the network of streets surrounding the campus act as a natural buffer between the entire campus and nearby property owners.

c. The Applicant does not propose any change to the current enrollment cap of 7,500 FTE students and 1,710 faculty and staff set forth in the 2002 Campus Plan. The current student enrollment for the 2004-2005 academic year is 4,710 full-time equivalent students and a headcount of 5,962 students, well below what is permitted. This number of students and faculty results in only a minimal impact on the surrounding community, and the addition of the West Campus will have no effect on the number of students enrolled at the University.

d. The traffic report conducted in preparation for the 2002 Campus Plan established that there were no adverse traffic impacts associated with the 2002 Campus Plan. As mentioned above, the addition of the West Campus will have no impact on enrollment or the number of faculty and staff. Therefore, it will not have an impact on traffic. Further, the University has no plans to build additional roads or parking lots in order to accommodate students and staff coming to and from the West Campus.

e. The University plans to use the Property for a pavilion for outdoor performances and event field, an unpaved cross-country track, an environmental research area, two (2) areas of spiritual repose, a maintenance, truck, and material storage structure, and temporary housing units. None of these uses will create objectionable noise or other conditions. The cross-county track, areas of spiritual repose, and environmental research area are inherently quiet and do not involve any buildings. The proposed temporary housing is located along Harewood Road, a significant arterial, and will be far removed from any property that is not owned by the Applicant. The maintenance, truck, and material storage structure is located in the northwestern corner of the site and adjacent to Scale Gate Road, a private street which will provide access. The pavilion is primarily an outdoor facility; however, the stage area will be a structure. The pavilion will be located along Harewood Road and will be far removed from any non-University property. Finally, the Applicant will renovate the existing gate house for administrative purposes.

13. The Commission finds that the amendment to and further processing of the Campus Plan will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not affect adversely the use of neighboring properties.

14. The Applicant has remained in substantial compliance with all conditions of approval of its Campus Plan.

AUG 5 2005

Report of the Office of Planning

15. By report dated March 28, 2005, and through testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application. The OP report supported the amendment to and further processing of the Campus Plan. The OP report noted that (i) the density for the University campus will drop from .36 to .33 FAR, less than the maximum permitted density of .44 FAR permitted by the 2002 Campus Plan; (ii) no parking or traffic circulation problems will be created by the application; and (iii) that the vast majority of the Property will remain open space.

16. Regarding the application's satisfaction of the 11 DCMR § 210 criteria, the OP report stated that: (i) the proposed use of the Property is consistent with the surrounding area; (ii) the use of the West Campus as part of the University's campus is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions; (iii) the application proposes no increase in FAR that would exceed the FAR limitations of the 2002 Campus Plan or the R-5-A District; (iv) the application contains a plan for all present and future improvements; (v) the application does not propose interim use of land located off-campus; (vi) no major new buildings are proposed to be moved off-campus as a result of the application; (vii) District Elements within the Comprehensive Plan relevant to the subject application are satisfied; and (viii) the application was referred to OP and DDOT, but no response was received by DDOT.

17. The OP report noted that the application will contribute to achieving many of the provisions of the Comprehensive Plan including: (i) stabilizing and improving the District's neighborhoods by improving temporary student housing; (ii) preserving and promoting cultural and natural amenities by providing new opportunities for the arts with the new pavilion and amphitheater and the addition of open space; and (iii) furthering the Ward 5 plan. OP also noted that the Property is listed as "institutional" and "federal" on the Generalized Land Use Map, and it is, therefore, appropriate to use the entire parcel for the use proposed by the Applicant.

18. OP recommended approval of the application subject to the following conditions:

    a. The Applicant shall incorporate an evaluation of the historic resources on the Property into its current historic resources inventory that was developed as part of the 2002 Campus Plan;

    b. The conditions of Z.C. Case 02-20, the approval of the 2002 Campus Plan remain in force, with the exception of Conditions No. 2 and 5;

    c. Condition No. 2 of the 2002 Campus Plan shall be amended as set forth by this application to include Parcel 121/29 in Square 3663;

    d. Condition No. 6 of the 2002 Campus Plan shall be amended to permit a maximum gross floor area of 2,748,265 square feet by the year 2012; and

e. The proposed 50 to 60 beds of temporary housing are removed at the conclusion of the 2005-2006 school year.

19. By supplemental report dated April 21, 2005, OP indicated that, in response to the Commission's request for additional information regarding times of outdoor performances at the pavilion, the Applicant suggested limiting the pavilion's hours of operation to 10:00 a.m. to 10:00 p.m. daily. OP agreed with the Applicant's suggestion, noting that the pavilion is located in an area bordered by woodland, one-third of a mile from the nearest residences. According to OP, the combination of distance and existing trees would minimize any impact of the pavilion on the surrounding community.

Reports of Other Agencies

20. By memorandum dated April 13, 2005, the District Department of Transportation indicated no objection to the University's proposal.

21. The Fire and Emergency Medical Services Department had no objection to the application, provided that the proposed development has acceptable access for emergency vehicles.

22. The Department of Health had no objection but "expects [the Applicant] to comply with the District's Environmental Laws as well as federal NPDES Regulations related to MS-4 Permits for construction activities involving an acre or more of land disturbance."

Additional Testimony

23. Dino Drudi testified on behalf of Michigan Park Citizens Association in opposition to the application. Mr. Drudi expressed concern about security and indicated a need for additional permanent residence halls – rather than temporary trailers – to house students on campus.

24. James Russell, a commissioner from ANC 5C who is also a student at the University, testified in support of the application. Mr. Russell commented favorably on the Applicant's proposed use of the Property and indicated a need for additional residence halls on campus.

25. Lloyd Levermore, a resident of the 200 block of Webster Street, N.E., testified in support of the application and urged the University to partner with the community to increase recreational opportunities for area residents, particularly children and the elderly.

26. Albrette Ransom, also a resident of the 200 block of Webster Street, N.E., testified in support of the application. Ms. Ransom commented favorably on the Applicant's proposed use of the Property but expressed concern about possible noise impacts associated with music performances and the pavilion and urged the University to increase its involvement in the community.

CONCLUSIONS OF LAW

The Applicant is seeking an amendment to and further processing of its 2002 Campus Plan, pursuant to §§ 210 and 3104 of the Zoning Regulations, to allow for the addition of the Property to the campus boundaries and to allow limited construction as shown in the portion of the application governing the Property and use of the Property. The Commission is authorized to grant such relief where, in the judgment of the Commission based on a showing through substantial evidence, such amendment and further processing will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to certain conditions specified in § 210. D.C. Official Code § 6-641.07(g)(2) (2001), 11 DCMR § 3104.1.

Based on the Findings of Fact above, the Commission approves the requested amendment to the 2002 Campus Plan to add the West Campus to the boundaries defined therein and the further processing of the 2002 Campus Plan to include the following uses on the West Campus, according to the plans submitted with the application: a pavilion for outdoor performances and event field, an unpaved cross-country track, an environmental research area, two areas of spiritual repose, a maintenance, truck and material storage structure, a renovated gate house, and temporary housing units.

The proposed uses of the Property are consistent with the Applicant's use of the Property for university purposes, and with the Zoning Regulations and Map, and will not tend to adversely affect the use of neighboring property. The Commission gives great weight to the recommendations of approval from the Office of Planning and the affected ANCs. The Commission adopts the conditions recommended by OP with the exception of allowing the temporary housing units to remain in place for a maximum of three years, rather than requiring their removal at the conclusion of the 2005-2006 academic year, so as to provide adequate time for the Applicant to renovate the residence halls on campus.

Accordingly, it is ordered that this application is **GRANTED** subject to the following conditions:

1. The Applicant shall incorporate an evaluation of the historic resources on the Property into its current historic resources inventory that was developed as part of the 2002 Campus Plan;

2. The conditions of Z.C. Case 02-20, the approval of the 2002 Campus Plan remain in force, with the exception of Conditions No. 2 and 5;

3. Condition No. 2 of the 2002 Campus Plan shall be amended as set forth by this application to include Parcel 121/29 in Square 3663;

4. Condition No. 6 of the 2002 Campus Plan shall be amended to permit a maximum gross floor area of 2,748,265 square feet by the year 2012;

5. The temporary housing units may be constructed for use in the Fall of 2006 and may remain in place for a total of three (3) academic years only; and

6. The hours of operation for performances at the pavilion shall be limited to 10:00 a.m. through 10:00 p.m. daily.

VOTE: 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve; Carol J. Mitten, having not participated, not voting; Kevin L. Hildebrand, not present, not voting).

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: _____

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

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER

BASIS FOR THE REVOCATION OF THIS ORDER. OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C.LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 04-28
Z.C. Case No. 04-28
(Text Amendment – 11 DCMR)
(Driver's License Test Facilities)

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

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