

**Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration**

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs pursuant to D.C. Law 2-144, effective March 3, 1979 – **The Historic Landmark and District Protection Act of 1978** hereby gives notice that the addresses listed below, has requested permission to alter, sub-divide or erect new structures at the following locations

Application Date	Address	Lot	Square	Use
11/10/04	3313 "O" Street, NW	0822 0823	1245	Concept
	1519 – 1521 32 nd Street, NW	0019 0020	1270	Concept
11/12/04	1315 31 st Street, NW	0091	1233	Fence Public Space
	1247 Wisconsin Ave., NW	0056	1208	Windows
	1329 – 1333 Wisc. Ave., NW	0068	1232	Concept
	1696 31 st Street, NW	0030	1281	Dormor Roof/SFD
	3106 "Q" Street, NW	0065	1270	Window
	3500 Windfield Ln, NW	0821	1292	New Const.
	3240 "P" Street, NW	0883	1244	Add
11/17/04	3023 Rodman Street, NW	0805	2060	Add & Deck/SFD
11/19/04	2908 "N" Street, NW	0019	1211	Concept
11/22/04	304 Maryland Avenue., NE	0037	1211	Concept
	625 Penn. Ave., SE	0044	0874	Add/SFD
11/23/04	1446 - 54 Church St., NW	0911- 0917	0209	Concept
11/24/04	1275 Penn. Ave., NW	0813	0292	Windows/retail
	3316 Newark St., NW	0852	2079	Concept
12/01/04	615 Eye Street, NW	0800/0817 0818/0819 0821	0452	Concept

**Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration**

NOTICE OF PUBLIC INTEREST

Forwarded for your information is the weekly listing of raze permit applications filed with the Permit Service Center of the Building and Land Regulation Administration, requesting a permit to raze the following listed structures:

Application Date	Address	Lot	Square	Use
11/18/04	800 3 rd St., NE	0013	0751	5 Story Museum
	3009 Dumbarton St., NW	0829	1242	1 Story Bldg.
	3018 Stanton Rd., SE	0845	5877	1 Story SFD
	4928 "A" Street, SE	0023	5331	2 Story SFD
	923-925 Fla. Ave., NW	0866	2873	2 Story Comm Bldg.
	929 Fla. Ave., NW	0866	2873	2 Story Comm Bldg.
11/22/04	3501 14 th Street, NW	0806	2827S	3 Story Ofc. Bldg.
11/30/04	933 "V" Street, NW	0005 0006	0358	2 Story Comm Bldg.
12/01/04	919 New Jersey Ave., SE	0016	0738	2 Story SFD

DEPARTMENT OF HEALTH

NOTICE OF PUBLIC INTEREST

**ADOPTION
OF THE
DISTRICT OF COLUMBIA
MEDICAL ASSISTANCE ADMINISTRATION
OFFICE OF MANAGED CARE
CONTINUOUS QUALITY IMPROVEMENT PLAN FOR OVERSIGHT AND
ASSESSMENT OF MEDICAID MANAGED CARE ORGANIZATIONS**

The Continuous Quality Improvement Plan for Oversight and Assessment of Medicaid Managed Care Organizations was developed in October 2003 with input from its beneficiaries and stakeholders according to the 42 CFR 438.202 quality strategy plan requirements. On September 24, 2004, the document was published in the *D.C. Register* for a 30-day period to solicit public comments. Based upon the reviews and comments from beneficiaries, stakeholders, and the public, the Medical Assistance Administration, Office of Managed Care is adopting the Continuous Quality Improvement Plan for Oversight and Assessment of Medicaid Managed Care Organizations as final without any changes.

DEPARTMENT OF HEALTHNOTICE OF CERTIFICATION

The Director of the Department of Health, pursuant to the authority set forth in Reorganization Plan No 4 of 1996, hereby gives notice of certification of two new drugs to the formulary of the District of Columbia Acquired Immunodeficiency Syndrome Drug Assistance Program ("ADAP"). The new drugs that have been approved by the U.S. Food and Drug Administration and are now certified for addition to the ADAP formulary are Epzicom (abacavir/lamivudine) and Truvada (tenofovir disoproxil/emtricitabine).

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

For further information, please contact Christy Pleze-Best, Public Health Analyst, AIDS Drug Assistance Program, HIV/AIDS Administration on (202) 727-2500.

D.C. POLICE TRAINING AND STANDARDS BOARD

NOTICE OF PUBLIC MEETING

The District of Columbia Police Training and Standards Board will hold an open meeting on Monday, February 7, 2004. The meeting will begin at 5:00 p.m. and end no later than 7:00 p.m. The meeting will be held at 441 4th Street, Northwest, Washington, D.C. Room #1117. You must present picture identification to enter the building.

Copies of the materials to be voted on by the Board at the meeting may be obtained in advance between 9 a.m., Monday, January 3, 2005 and 4 p.m., Wednesday, February 2, 2005. Typed written comments on the materials may be submitted to the Board in advance of the meeting up until 4 p.m., Monday, January 31, 2005. Comments received via e-mail or postmarked after January 31, 2005 will not be accepted.

Anyone interested in the work of the District of Columbia Police Training and Standards Board may attend the meeting. Citizens may make oral comments during a thirty-minute comment period at the end of the meeting. The comments will be limited to three minutes. Anyone interested in making oral comments must sign up in advance. Slots will be allotted on a "first come-first served" basis.

Anyone interested in obtaining written materials or participating in the open comments portion of the meeting may contact:

Lieutenant G. Caldwell on (202) 727-1516 or George.Caldwell@dc.gov

Written comments may be mailed to:

District of Columbia Police Training and Standards Board
300 Indiana Avenue, Northwest
Washington, D.C. 20001 Room 5031
Attn: Lieutenant G. Caldwell

Or E-Mailed to:
George.Caldwell@dc.gov

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

Application No. 17100-A of Jesus Is The Way Church, pursuant to 11 DCMR § 3104.1 for a special exception for a change of nonconforming use under subsection 2003.1, or in the alternative, pursuant to 11 DCMR § 3103.2, a variance from the use provisions to allow a coffee/sandwich shop under subsection 330.5, in the R-4 District at premises 129-131 15th Street, N.E. (first floor only) (Square 1069, Lot 801).

HEARING DATE:	January 13, 2004
DECISION DATE:	February 3, 2004
MOTION TO RECONSIDER DATE:	February 18, 2004
DATE OF DECISION AFTER RECONSIDERATION:	June 22, 2004

ORDER ON RECONSIDERATION

On or about February 18, 2004, the Advisory Neighborhood Commission (ANC) 6A moved for reconsideration of the Board of Zoning Adjustment's (Board) February 3, 2004 Summary Order granting Jesus Is The Way Church (the applicant) a special exception under 11 DCMR 2003.1 to change an existing nonconforming use within the structure at the site. In its motion, the ANC alleges specific errors in the Board's Order pursuant to 11 DCMR § 3126.4. On April 6, 2004, the Board granted the ANC's request to reconsider the application and directed the applicant to submit any opposition to the request. On or about April 13, 2004, the applicant filed its opposition to the request for reconsideration. *See*, 11 DCMR § 3126.5. At a decision meeting on June 22, 2004, the Board reconsidered the application and voted to uphold its previous decision.

As a threshold issue, the ANC alleges that the Summary Order incorrectly states that "ANC 6A did not participate in the application" and none of ANC 6A issues were addressed. Upon a review of the record the Board confirms that the ANC did not appear at the public hearing on the application for the special exception, that the Board did not receive an ANC report prior to its deliberations on the application, and that the concerns of the ANC were identified in the Office of Planning Report and considered in the Board's initial deliberations in this case. While the ANC claims that it submitted a timely report, dated December 29, 2003, there is no evidence in the record that the ANC letter was transmitted to the Office of Zoning prior to February 17, 2004. Despite these findings, the Board will address the ANC's issues and concerns fully in this order.

The ANC alleges that the Board erred by finding that: (1) that the nonconforming retail use at the residentially zoned property had not been discontinued more than three years ago; (2) that, as a result, the previous retail use could be "changed to a use that is permitted as of right" or approved by the Board as a special exception under section 2003 of the Regulations; and, (3) that the proposed coffee/sandwich shop would not tend to adversely affect the neighborhood.

For reasons that will be explained below, the Board disagrees with the ANC and affirms its decision to grant the special exception following reconsideration.

1. The Board had ample basis to find that there had been an existing legal nonconforming use at the property.

In its Supplemental Report, dated January 20, 2004, the Office of Planning (OP) concluded that the property had a long history of non-residential use (Exhibit 31). There are certificates of occupancy (C of Os), which date back to the mid-1960s identifying the previous retail establishment uses; *See* C of Os dated 1965, 1970, and 2003 (Exhibits 9, and 10) authorizing a “variety, grocery and patent medicine store”. Also, during the mid-1980s the Board approved a change from the “variety, grocery and patent medicine store” use to a beauty parlor use, concluding that the beauty parlor use was a “neighborhood facility” (BZA Application No. 14264, March 20, 1985). While, the Zoning Regulations do not define the term “neighborhood facility”, the Board agrees with OP’s analysis that “due to the very small size of the building (500 square feet) and dimensions (12.5 feet by 40 feet), the lack of a second floor and no parking, the proposed [coffee/sandwich] shop could be deemed a neighborhood facility”.

The ANC claims that any nonconforming use that may have existed in the past was discontinued more than three years prior to this application being filed.¹ However, the Board is not persuaded that this is so. First, the Board credits the testimony of Bishop William S. Musgrove and the joint written statement of the Bishop and Sandra Douglas (the “Proprietor”), that the space has been in continuous retail use (Exhibit 39). Bishop Musgrove specifically stated that the space was currently used as a retail variety store and had previously been used as a beauty parlor/barber shop and a tee-shirt shop. Second, Applicant corroborated the testimony of Bishop Musgrove and Sandra Douglas with rent receipts dating back to 2001. (Exhibit 34).

2. The Board correctly concluded that the applicant may change the nonconforming retail use to a coffee/sandwich shop that qualifies as a neighborhood facility.

Under § 2003.1 of the Regulations, the Board may approve the conversion of a nonconforming use to a use that is permitted as a matter of right in the most restrictive zone in which the existing nonconforming use is permitted as a matter of right, subject to the remaining conditions in § 2003. The existing use is a “variety store”, which is first permitted as a matter of right in a C-1 (Commercial) zone district. 11 DCMR § 701.4 (z). The question, therefore, is whether the proposed use is also permitted as a matter of right in that same zone district. The Board agrees with OP that the proposed coffee/sandwich shop use would constitute a restaurant use. (A “restaurant” is defined generally as a “place of business where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises...”) *See*, 11 DCMR 199. A “restaurant” use is first permitted in the C-1 zone as a matter of right. *See*, 11 DCMR 701.4 (q). Therefore, under § 2003.1, the nonconforming use at the property within the existing structure may

¹ Section 2005.1 of the Regulations provides, in most circumstances, for the discontinuance of a nonconforming use after a three year period of non-use.

be changed to a "restaurant" use at the property so long as the other conditions within § 2003 are satisfied.

One such condition is contained in subsection 2003.5. This provision limits the proposed use where, as in this case, the subject property is located in a residence zone. Section 2003.5 states that "[i]n Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility." The proposed coffee/sandwich shop is obviously not a "dwelling", "flat", or "apartment house". However, the Board agrees with OP that the proposed coffee/sandwich shop could be deemed a "neighborhood facility" due to its small size within the existing structure (Exhibit 31). The Board notes too that it previously approved a change of nonconforming retail use to a "neighborhood facility" at the site when it approved the beauty parlor use. As a result, the Board finds that the condition within subsection 2003.5 has been met.

The other pertinent conditions under § 2003 relate to impact on the neighborhood. These conditions are contained within subsections 2003.2 and 2003.3. As the issue of neighborhood impact was also raised by the ANC, it will be addressed separately below.

3. The Board did not err in concluding that the proposed coffee/sandwich shop would not adversely affect the present character or future development of the surrounding area or create any deleterious external effects in accordance with subsections 2003.2 and 2003.3.

The ANC asserts in its motion for reconsideration that the proposed coffee/sandwich shop will have a "negative effect" on neighboring properties. The ANC cites the "saturation" of commercial establishments on the block and the lack of "need" of additional "commercial amenities". It also claims that "another commercial establishment" would detract from the "residential character" of the block, and that the proposed use "would provide no substantial benefit to the community". However, the Board addressed each of these issues and concerns during the hearing process. Although the ANC was not present at the public hearing (and the Board did not have the ANC's report at that time), these issues and concerns were raised by the OP, the Capitol Hill Restoration Society, and the applicant.

OP reported that neighbors had concerns relating to the proposed use, in particular, the potential for its attracting more crime to the neighborhood and increasing loitering in the area of the coffee/[sandwich] shop. However, the Board addressed these concerns by placing conditions on the special exception grant. The approval was limited to three years, as suggested by the Capitol Hill Restoration Society (Exhibit 24), and the applicant was required to install trash receptacles, remove litter and debris, and install specified lighting. Given the conditions upon which this special exception was granted, and its three-year term, the Board did not err in concluding as it did that the coffee/sandwich shop would not adversely impact on the neighborhood.

4. The Board complied with the "great weight" provisions applicable to both the OP and the ANC

Under D.C. Official Code § 6-623.04 the Board is required to give "great weight" to OP recommendations. The Board did so. OP recommended consideration of the application as a special exception rather than a variance. It also recommended approval of the special exception provided the Board found there was a continuous nonconforming retail use at the property. The Board's analysis and approval is consistent with each of these recommendations.

Under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, D.C. Official Code § 1-3-9.10(d)(3)(A)), the Board is also required to give "great weight" to the issues and concerns raised in the affected ANC's written recommendations. 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. Because the ANC did not file a timely report with the Board, there were no recommendations to which to afford great weight in the Board's decision on the application

Further, the ANC did not participate in the Board's public hearing. However, despite the ANC's absence from the hearing, the ANC's position was made known to the Board by OP, the Capitol Hill Restoration Society, and the applicant. For instance, the Board received information from all three that the continuous retail use was in question and that the ANC had concerns regarding potential crime and loitering at the property. In response, the applicant addressed these concerns through testimony and post hearing submissions. Specifically, the applicant provided testimony and evidence regarding the continuous retail use at the property and testified that there would be a police presence at the coffee/sandwich shop. Thus, even though the ANC did not participate at the public hearing, the Board did consider the ANC's issues and concerns.

Finally, the Board has reviewed the ANC report in consideration of the ANC's Motion for Reconsideration, and has responded in this order to each of the legally relevant issues and concerns² raised therein. Accordingly, the requirement of great weight has been fully satisfied.

In conclusion, the Board finds that the ANC's motion largely repeats evidence and argument that the Board heard, assessed, and factored into its decision. Accordingly, the Board affirms its decision to grant the special exception for a change of nonconforming use.

² The ANC's concern that the property is not "unique" is not legally relevant. As stated, this application was decided as a special exception, not a variance. Therefore, this case was not decided upon variance criteria. See *Concerned Citizens of Brentwood v. BZA*, 634 A.2d 1234, 1241 (1993) (The "great weight requirement extends only to 'issues and concerns that are legally relevant.' *Bakers Local 118, supra*, 437 A.2d at 179 (citation omitted)"); (internal quotation marks omitted).

For all of these reasons, it is hereby **ORDERED** that the Motion of ANC 6A for Reconsideration of the Board's February 3, 2004 decision, granting applicant a special exception under DCMR 2003.1, is **DENIED**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and David A. Zaidain, by absentee ballot; the Zoning Commission member not present, not voting).

Vote taken on June 22, 2004

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

Each concurring member has approved the issuance of this Decision and Order.

FINAL DATE OF ORDER: NOV - 5 2004

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

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

Application No. 17124 of Howard Heu (Parkhill, Inc.), pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new flat (two-family dwelling) in the R-4 District at premises 601 Massachusetts Avenue, N.E. (Square 866, Lot 809).

HEARING DATE: March 16, 2004

DECISION DATE(S): May 4, 2004, June 8, 2004, and July 6, 2004

DECISION AND ORDER

Howard Heu, the property owner ("Applicant") filed an application with the Board of Zoning Adjustment ("Board") on December 8, 2003, for a variance from the lot occupancy provisions of § 403.2, and a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new two-family flat over and in the rear of an existing laundry.

Preliminary Matters

Self-Certification William J. Maiden, the Applicant's architect, self-certified the zoning relief requested (Exhibit No. 7).

Notice of Application and Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated December 18, 2003, notified the City Council member for Ward 6, Advisory Neighborhood Commission (ANC) 6C, the ANC member for Single Member District (SMD) 6C07 and the District of Columbia Office of Planning (OP) of the filing of the application. On January 12, 2004, 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. Furthermore, the Applicant's affidavit of posting indicates that on March 3, 2004, it posted on the subject property three zoning posters at 601 Massachusetts Avenue, N.E., in plain view of the public.

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

Applicant's Case The Applicant, testified with regard to the history of the property and how he acquired it. Further, he testified as to his proposal to maintain the existing one-story pick-up/drop-off laundry building and construct a flat over it and in the rear of the property. Mr. William J. Maiden, the Applicant's architect, testified with regard to the construction design and building dimensions of the project. Mr. Lindsley Williams, a

land use planning and zoning consultant to the Applicant, assisted the Applicant in the presentation of his case.

Government Reports The Office of Planning submitted a report to the Board dated March 5, 2004. OP recommended that the Board grant the parking variance relief if the lot area variance relief were granted, based on the fact that making a curb cut on both streets, as would otherwise be necessary, would be incompatible with the character of the neighborhood and contrary to the policies of the Historic Preservation Act. OP stated that it could not, however, recommend the granting of the lot occupancy area relief because the Applicant had not shown an exceptional situation or condition of his property, nor had he shown the required practical difficulty arising from such condition. OP stated that a proposal of less intensity might be approved if the Applicant revised his proposals.

After reviewing the Applicant's additional information, including revised plans, OP prepared a Supplemental Report dated June 28, 2004. OP noted that the revised plans reduced the impact of the proposed addition on the adjoining rear yard of 603 Massachusetts Avenue, N.E., but the lot occupancy relief sought was not changed. OP again recommended denial of the lot occupancy variance as the conditions had not changed substantially with the new design; and the Applicant had still not met the burden of proof for an area variance. By letter dated December 12, 2003, the Historic Preservation Review Board (HPRB) determined that the existing building did not contribute to the character of the Capitol Hill Historic District. In addition, HPRB would not approve a curb cut to accommodate on-site parking (Exhibit 5).

ANC Report By letter dated March 9, 2004, ANC 6C indicated that at a February 11, 2004 meeting, with a quorum present, ANC 6C voted to support the Applicant's request for a variance from the off-street parking requirements, but did not support the requested variance to the lot occupancy requirement (Exhibit 25). By letter dated March 11, 2004, ANC 6C indicated that at a Wednesday, March 10, 2004 meeting with a quorum present, it voted to reconsider its vote of February 11, 2004 on the case. ANC 6C supported the Applicant's request for an area variance from the provisions of subsection 2100.1 to allow zero parking spaces where one is required in the R-4 District. It also supported the Applicant's request for an area variance from the lot occupancy provisions of subsection 403.2 to allow lot occupancy of approximately 67%, on the conditions that: the lot occupancy not extend south of the northern most point where the two side yards are parallel (approximately at the outside edge of the neighboring back porch); the Applicant remove the existing concrete block shed at the rear of the premises; the Applicant replace the existing concrete block wall parallel to 6th Street with an appropriately designed fence; no windows are allowed on the east wall (adjoining 603 Massachusetts Avenue, N.E.) of the building; and that the ANC and HPRB approve the design of the addition. (Exhibit 28). In a letter dated June 1, 2004, the ANC reported the result of another vote taken at its meeting on May 12, 2004. Although the ANC stated that it reaffirms its

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position supporting the variances with conditions set forth in its March 11, 2004 letter, the ANC modified the position it had taken in its March 11, 2004 letter. The June 1, 2004 letter indicates that the ANC took the position that the Applicant has not met the standard for a lot occupancy variance to build two residential units along with the existing cleaners. The ANC's support appears to be limited to a plan for one residential unit and the existing cleaners. (Exhibit 39).

Parties and Persons in Opposition By letter dated March 12, 2004 (Exhibit No. 29), the Capitol Hill Restoration Society (CHRS) opposed the application for a variance from the lot occupancy requirements. Mr. Richard J. Muringer, a resident of 605 Massachusetts Avenue, N.E. in a letter dated March 3, 2004 (Exhibit 24), said that his concern was the blocking off of the alleyway running behind 603 and 605 Massachusetts Avenue, N.E. He said further that any obstruction to access the rear of his and other properties should be taken into consideration when granting off-street parking spaces.

Hearing The public hearing on the application was held and completed on March 16, 2004. The Board left the record open to receive additional information from the Applicant. The Board requested that the Applicant serve ANC 6C all post-hearing documents.

Decision Meetings The Board scheduled its first decision meeting on the application for May 4, 2004. By letter dated April 16, 2004 (Exhibit 35), the Applicant, supported by ANC 6C (Exhibit 36), requested a continuance, which the Board granted to June 8, 2004. The Applicant requested the continuance in order to allow ANC 6C to review and comment on additional documents it received from the Applicant. At the decision meeting on June 8, 2004, the Board requested that the Applicant provide additional information including the site plan with building footprint, revised building floor plans of the first and second floors, and new calculations. The Board also requested that the Office of Planning submit a supplemental report by July 6, 2004. On July 6, 2004, the Board granted the application in part and denied it in part by a vote of 4-0-1.

FINDINGS OF FACT

The Subject Property:

1. The subject property is located at 601 Massachusetts Avenue, N.E. (Square 866, Lot 809) in the Capitol Hill neighborhood of Ward 6. The site is improved with a one-story building that is used as a drop-off/pick-up laundry. The property is located in the Capitol Hill Restoration District; but it has not been deemed to be contributing to the character of the historic district nor has it been designated a historic landmark.

2. The subject property is located in the R-4 District. The primary purpose of the R-4 District is to stabilize remaining single-family dwellings. 11 DCMR subsection 330.2. The zone also allows flats, which are dwellings for two families, as a matter-of-right. Subject to density restrictions, the R-4 District also allows conversions of buildings and other structures built prior to May 1958 to an apartment house. Such conversions are permitted only if the lot area equals or exceeds 900 square feet per apartment unit.
3. The subject site is designated on the Comprehensive Plan's Generalized Land Use Map as Moderate Density Residential.
4. The lot is improved with a one-story building that was built prior to the May 12, 1958 effective date for the current Zoning Regulations in the District of Columbia. It has never been used for residential purposes. The record is uncertain as to the building's total area, and there is no exact information on the amount of it that protrudes past the property line along its Massachusetts Avenue frontage, but it is not more than two feet. The area of the building is in the range of 600 to 700 square feet. The building is currently used as a dry cleaning establishment. That use, which was authorized by the Board of Zoning Adjustment in 1996 in BZA Case No. 16125, replaced its prior use as a barber shop. In BZA Case No. 16125, the Board granted the Applicant's request for a variance from the use provisions (subsection 330.5) of the Zoning Regulations to allow a dry cleaning pick-up store in the one-story building.
5. The building occupies most of the Massachusetts Avenue frontage but less than one fourth of the frontage along Sixth Street. The building's face along Sixth Street turns within twenty-five feet of the Massachusetts Avenue property line and then runs perpendicular to Massachusetts Avenue, establishing a small triangular-shaped area open to the sky, either a court yard or a side yard. The entrance to the building is at the intersection of Massachusetts Avenue and Sixth Street, N.E., where it is recessed under a roof at an angle of 45 degrees to Massachusetts Avenue, NE. The only other existing doorway to the building is located along the building's southern face, and opens into the rear yard. The rear yard is contained behind an eight-foot high wall of concrete block construction with two gates, one near the rear of the existing building and one at the southern end of the Sixth Street property line. A wooden fence of equal height to the concrete wall separates lots 809 and 808. A storage shed occupies the full width of the rear yard but is removed from the southern "stub" of the property by approximately five feet; it does not encroach on the southern-most three feet of lot 809 that abuts either lots 46, 803 or 808.
6. The size of the lot, 1,540 square feet, is less than the minimum size for lots in the R-4 zone district for any use (§401.3), including conversions to apartments (three

or more dwelling units in a single building), which require 900 square feet of land per apartment. The width of the lot along its Massachusetts Avenue frontage, at 34.87 feet, exceeds the minimum width requirements for row dwellings and flats and for one-family dwellings, but is less than that for all structures other than buildings converted to apartments (for which there is no specified minimum width). As currently used, the lot contains fewer square feet than is required for any lot on which a building is to be allowed by right in the R-4 District and is not as wide as required for its present type of use. The lot is, thus, a non-conforming lot the configuration of which dates back continuously to a time prior to the establishment of the Zoning Regulations.

7. Owing to the configuration of the lot and its narrow depth along Sixth Street, the Applicant cannot provide a parking space.
8. The creation of a driveway and a curb cut to the lot, if a parking space were created, would remove at least one parking space along Sixth Street in an area where public parking is already at a premium.

The Proposed Development and the Lot Area Variance

9. The maximum matter-of-right lot occupancy for a row dwelling, a flat, a church or a public school in a R-4 District is 60% and 40% for all other structures, under section 403.
10. The Applicant proposes to develop the subject property by constructing two residential units above the existing one-story structure currently used as a pick-up and drop-off laundry. The addition would extend back to within 18.89 feet of the rear property line. The existing shed would be razed. The completed project would be three stories with several bay projections into public space and three sets of stairs projecting into public space, one on Massachusetts Avenue and two on 6th Street, N.E. Each of the two upper floors would have one dwelling unit. The completed mixed use structure would be approximately 3,700 square feet of lot area for a total lot occupancy of 80%.

Parking Variance

11. The Applicant is required to provide one off-street parking space for each three dwelling units. 11 DCMR § 2101.1.
12. The lot is unique in shape. Its size is small, with no alley access.

13. The shape, size and limited access, create a practical difficulty in providing an on-site parking space for any matter-of-right development of the property.
14. The matter-of-right use of this property is consistent with the intent of the zone plan, the character of the R-4 District, and the public good. The creation of a curb cut on 6th Street would be required to provide parking on the site, but would be incompatible with the character of the neighborhood.

CONCLUSIONS OF LAW

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 impair the public good or the intent and integrity of the zone plan and regulations.

The Lot Occupancy Variance

The Applicant requests an area variance from the lot occupancy requirements, which limit the matter-of-right lot occupancy for a row dwelling, a flat, a church or a public school in a R-4 District to 60% and to 40% for all other structures, under section 403. The Applicant also requests a variance from the off-street parking requirements under subsection 2101.1 to construct a new flat consisting of a two-family dwelling. Based on the record herein, the Board is constrained to conclude that the Applicant failed to show any extraordinary or exceptional situation or condition of the subject property with respect to the granting of a variance for the lot occupancy requirements.

Although the lot has a unique shape that narrows to an approximately 12-foot wide strip, a substantial portion of the property, the Applicant has failed to demonstrate the strict application of the zoning regulation would result in peculiar and exceptional practical difficulties that would prevent reasonable development of the property..

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Adequate space and lot width are available for less intensive matter-of-right development at the site. Indeed, by virtue of the prior use variance, the Applicant is already enjoying a more intensive use of the property than is otherwise permitted. In addition, The Applicant may accommodate residential use on the site by either replacing the commercial use with residential use or by adding a single residential unit (as opposed to two residential units) on top of the existing commercial building, without requiring the excessive extent of the relief sought.

Accordingly, the Board concludes that either the continuation or elimination of the nonconforming use would allow for full enjoyment of this residentially zoned property without the need for variance relief.

A variance can be granted only if this can be accomplished "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." D.C. Official Code § 6-641.07 (g) (3) (2001); 11 DCMR § 3103.2. The R-4 District is a residence zone that is not intended to "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 § 330.3.

The Board concurs with the Office of Planning that three units, including one devoted to commercial, should be deemed a multifamily dwelling, and not a flat. However, because this intensification is not consistent with lot occupancy controls, its establishment would be inconsistent with the intent of the R-4 Zone District.. Further, the Board agrees with OP that the increased intensity of the proposed use would generate additional parking, trips and loading problems, though minimally, in an area that is experiencing traffic congestion and parking shortages and therefore would be inconsistent with the objectives and policies of the Comprehensive Plan to stabilize and improve neighborhoods. For these reasons, the Board concludes that the project, as approved, could negatively affect the public good and would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the regulations

Parking Variance

Pursuant to 11 DCMR § 2101.1, the Applicant would have to provide one off-street parking space for each three dwelling units. The Board is persuaded that the lack of parking space at the site will not have a detrimental effect on the surrounding community, nor on the zone plan or regulations. The redevelopment of the property with an attractive structure compatible with the neighborhood character could not occur without the granting of a variance to subsection 2101.1. A curb cut on 6th Street to provide a parking space would be incompatible with the character of the neighborhood and would likely not meet HPRB approval. OP recommended approval of the parking variance.

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ANC-6C is also supportive of a parking variance to allow the attractive redevelopment of the property.

ANC and OP Great Weight

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 concern that the grant of the lot area variance would impair the intent, purpose, and integrity of the Zoning Regulations and Map. Although upon reconsideration, ANC-6C voted to support the grant of a variance to the lot occupancy provisions, that support was conditioned upon the proposed structure meeting several conditions, not all of which were agreed to by the Applicant. These conditions were aimed at minimizing the visual impact of the expanded structure and the parking impact of the additional residential use. The Board concurs with these concerns in denying the lot occupancy variance.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to the application for a variance from the lot occupancy requirements under section 403, but that the Applicant has met the burden of proof with respect to the application for a variance from the off-street parking requirements under subsection 2101.1 at the premises 601 Massachusetts Avenue, N.E.

Therefore, it is **ORDERED** that the application be partially **DENIED** with respect to the variance from the lot occupancy requirements, and be partially **GRANTED** with respect to the variance from the off-street parking requirements.

VOTE: 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, Carol J. Mitten (by absentee ballot), and John A. Mann II (by absentee ballot) to deny the lot occupancy variance request).

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller and Carol J. Mitten (by absentee ballot) to grant; John A. Mann II (by absentee ballot) to deny the off-street parking variance request).

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

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FINAL DATE OF ORDER: NOV 05 2004

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

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

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. JS/rsn

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

Application No. 17175-A of Douglas Development Corp./Jemal's Wheel LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and a special exception to increase the building height to 50 feet pursuant to section 1402, and pursuant to 11 DCMR § 3103.2, variances from the lot occupancy requirements under section 772, the residential recreation space requirements under subsection 773.3, the side yard requirements under subsections 775.5 and 2001.3, and the parking aisle width requirements under subsection 2117.5, to permit the development of a 4 story apartment house in the RC/C-2-B District at premises 1701 Kalorama Road, N.W. (Square 2566, Lot 90).

HEARING DATE: June 29, 2004

DECISION DATE(S): July 6, 2004, July 13, 2004, August 3, 2004

Note: The application as filed requested a variance from Section 773.7, the dimensional requirements for residential recreation space on a roof. Due to refinements in the plans and the Board's decision to require residential recreation space on the roof as set forth in the condition to this Order, the Board granted a variance from Section 773.3, the amount of residential recreation space provided, but not a variance from the dimensional requirements of Section 773.7. This further resulted in the Board granting roof structure relief to allow multiple roof structures, roof structures having walls of unequal height and one roof structure not meeting the setback requirement from a side wall of the building.

CORRECTED SUMMARY ORDER*

* Note - This order corrects a typographical error found in BZA Order No. 17175. The description of the application incorrectly stated the square number involved in the application. This order fixes the mistake by correctly stating the Square number as 2566 (underlined above).

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 1C, and to owners of all property within 200 feet

of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 1C. ANC 1C submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 411 and 1402, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 772, 773, 775, 2001.3, and 2117.5.

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

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under section 411 and 1402, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 772, 773, 775, 2001.3 and 2117.5, 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 requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board further concludes that the practical difficulty associated with providing residential recreation space on the roof of the building comes from the difference between the Building Code requirements for the width of the stairs required to serve the number of units in the building and the width required to provide egress from the roof for the number of people who could be accommodated in the amount of space required by Section 773.3. It is therefore **ORDERED** that the application is **GRANTED**, **SUBJECT** to the **CONDITION** that the roof deck shall contain residential recreation space on the maximum square footage permitted under the Building Code within the limit of the minimum width of the stairs meeting the occupancy load for the 48 unit residential use of the building.

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

VOTE: 3-0-2 (Geoffrey H. Griffis, John A. Mann II and Ruthanne G. Miller to approve, Curtis L. Etherly, Jr., and the Zoning Commission member not voting not having heard the case).

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: NOV - 5 2004

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

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

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

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

BZA APPLICATION NO. 17175-A

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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. 17192 of the National Capital Revitalization Corporation pursuant to 11 DCMR § 3104.1, for special exceptions pursuant to sections 353 (New Residential Development) and 2516 (Theoretical Lots), and pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio requirements under section 402, to construct two hundred nine (209) single-family row dwellings in an R-5-A District for property bounded by Fort Lincoln Drive, N.E., 31st Place, N.E., South Dakota Avenue, N.E. and 33rd Place, N.E. (Square 4325, Lots 38, 39, and 40).

HEARING DATES: July 20, 2004, October 19, 2004
DECISION DATE: November 2, 2004

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 5A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 5A. ANC 5A submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 2516 and 353, and a variance under 11 DCMR § 3103.2 from the strict application of the requirements of § 402.

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

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under

sections 2516 and 353, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2 and 402, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. Accordingly, it is therefore **ORDERED** that the application is **GRANTED**, subject to the following **CONDITIONS**:

1. A private covenant shall be included in the title for each lot in the townhome community prohibiting the construction of additions to the individual townhomes other than the optional ten by ten feet (10x10 ft.) deck and optional ten by ten feet (10x10 ft.) rear three-story extension as depicted on the typical floor plans on Exhibit 43.
2. A covenant shall be included in the home association documents of the townhome development which prohibits the construction of a gate at the entrance to the community.
3. The Applicant shall provide the landscape buffer and screening depicted on Exhibit 43, along South Dakota Avenue and include the obligation to maintain the landscape buffer and screening along South Dakota Avenue in the homeowner association documents.
4. The tree preservation areas shall be carefully protected during the construction phase of the townhome community to minimize potential damage.
5. A covenant shall be included in the homeowner association documents which provides for the preservation of the tree preservation areas within the property in perpetuity.
6. Retaining walls shall be no greater than eight feet (8 ft.) in height with no retaining wall along a site boundary line greater than four feet (4 ft.)

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in height. Any retaining wall greater than four feet (4 ft.) in height shall not be located any closer than eight feet (8 ft.) from another retaining wall. All retaining walls facing a public street and within forty feet (40 ft.) of the site boundary shall be faced in stone.

7. All areas between a retaining wall and a public street or sidewalk shall be landscaped to minimize visual impacts of the retaining walls and maintained by the homeowners association with funding initially provided as a reserve account prior to the sale of individual townhomes. The landscaped areas between retaining walls shall have underground automatic watering systems installed during construction of the retaining walls.

VOTE: 3-1-1 (Ruthanne G. Miller, John A. Mann II, and Curtis L. Etherly, Jr. to approve, Geoffrey H. Griffis opposed to the motion and Anthony J. Hood not hearing the entire case, not voting).

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: NOV 04 2004

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

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE 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 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. 17200 of Potomac Foods, pursuant to 11 DCMR § 3104.1, for a special exception to permit the continued use of an accessory parking lot (last approved by BZA Order No. 16541) serving an existing Burger King restaurant under section 214, in the R-1-B District at the rear of 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822).

HEARING DATE: October 5, 2004
DECISION DATE: November 2, 2004

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a resolution of conditional no objection to the application. The Office of Planning (OP) and Department of Transportation submitted reports in conditional support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 214. 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 OP reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1 and 214, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further

concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

1. The application shall be approved for a period of **FOUR (4) YEARS**.
2. Deliveries and trash pick-up shall be limited to the hours of 10:00 a.m. to 6:00 p.m. daily.
3. Trash pick-up shall occur at least three times per week. The number of pick-ups shall be increased if the dumpsters are overflowing on a regular basis between pick-ups. On each of the dumpsters, the side door facing the western property line shall be welded closed.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day or more often if they are overflowing with trash.
5. All parts of the lot shall be kept free of refuse and debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the Property shall be pruned at least once per year.
6. An exterminator shall perform monthly extermination services to control any rodents. In addition, the portion of the fence owned by the Applicant and located on the Property shall be reinforced underground to help prevent any rodents from entering the neighbors' properties.
7. A cable or chain shall be installed to close the entrance of the parking lot at times when the parking lot is not needed for operation of the restaurant.
8. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the Property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
9. The Applicant shall provide to the ANC and the residences within 200 feet an annual report summarizing its compliance with the conditions.
10. The Applicant shall replace non-existent or misplaced wheel stops.

11. The Applicant shall repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: November 5, 2004

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

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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.

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. 17226 of John R. Klein by tenant ZIPS Dry Cleaners, pursuant to 11 DCMR § 3104.1, for a special exception to expand an existing dry cleaning establishment by 1,159 square feet under subsection 729.1 and 743.2(c), in the C-3-A District at premises 4418-4420 Connecticut Avenue, N.W. (Square 1971, Lot 815).

HEARING DATE: October 26, 2004

DECISION DATE: November 2, 2004

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a letter of no objection to the application. The Office of Planning (OP) and Department of Transportation submitted reports 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 subsections 729.1 and 743.2(c). 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 OP reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 729.1 and 743.2(c), that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

The Applicant shall employ a traffic coordinator at the site on Mondays and Fridays from 7 a.m. to 10 a.m., and on Saturdays from 8 a.m. to 7 p.m. to promote lawful parking by customers. This condition shall expire on June 13, 2006, when the special exception granted under BZA Application No. 16659 (CORRECTED ORDER) for the use of the parking lot that is located behind the dry cleaning establishment expires.

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

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: NOV 04 2004

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

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

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

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

BZA APPLICATION NO. 17226

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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. 17230 of T. Michael Dompas and Howard R. Griffin, pursuant to 11 DCMR § 3104.1, for a special exception to allow a one-story rear addition to an existing single-family semi-detached dwelling under section 223, not meeting the rear yard (section 404), side yard (section 405) and nonconforming structure provisions (subsection 2001.3), in the R-1-B District at premises 3304 Cleveland Avenue, N.W. (Square 2100, Lot 4).

HEARING DATE: November 9, 2004
DECISION DATE: November 9, 2004 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 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 application. The ANC report did not meet all of the requirements under subsection 3115.1. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application 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 OP report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further

concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly Jr., Anthony J. Hood and John A. Mann II 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: November 9, 2004

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

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

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

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

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

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