

**CHILDREN'S STUDIO SCHOOL PUBLIC CHARTER SCHOOL
1301 V STREET NW
WASHINGTON DC 20009**

NOTICE

Children's Studio School Public Charter School, in compliance with Section 2204 © of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expression of interest from contractors in the following area:

Food Service: Provide quality-catered breakfast, lunch and snacks to be delivered fresh daily. Food service must be able to provide a combination of regular and strict vegetarian meals. Food Service Provider must also comply with ALL regulations set by The National Breakfast and Lunch Program.

Interested candidates shall state their credentials, how long they have been in business and provide references. Please e-mail proposals to tfuentes@studioschool.org. Send hardcopies to our mailing address above with a cover letter. Contact Tony Fuentes for clarifying information.

Deadline for submission is August 12th, 2004.

**DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
OFFICE OF EARLY CHILDHOOD DEVELOPMENT**

REQUEST FOR APPLICATIONS (RFA) #1101-05

**Unified Communication Center (UCC)
Child Development Center Operation**

REQUEST FOR APPLICATIONS (RFA) #1101-05

CANCELLED

**THE DEPARTMENT OF HUMAN SERVICES/ OFFICE OF EARLY CHILDHOOD
DEVELOPMENT HAS ELECTED TO CANCEL UNTIL FURTHER NOTICE THIS
INVITATION TO SUBMIT APPLICATIONS FOR FUNDING.**

THANK YOU FOR YOUR COOPERATION

**FOR FURTHER INFORMATION CONTACT MS. PRISCILLA BURNETT, PROGRAM
ASSISTANT, DHS OFFICE OF GRANTS MANAGEMENT @ (202) 671-4398.**

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

Appeal No. 17054-A of Henry P. Sailer, et. al., pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. B448548 dated January 29, 2003, Building Permit No. B451476 dated May 20, 2003, and Building Permit No. B452193 dated June 13, 2003, for the construction of a new single-family detached dwelling and pool, allegedly in violation of lot occupancy, rear yard, ground coverage, and tree removal requirements of the Zoning Regulations in the Chain Bridge Road/University Terrace Overlay (CBUT)/R-1-A zone, at premises 3101 Chain Bridge Road, N.W. (Square 1427, Lot 870).

HEARING DATES: October 21, 2003, January 27, 2004, February 3, 2004

DECISION DATES: November 4, 2003, November 18, 2003, November 25, 2003, March 2, 2004, October 5, 2004

CORRECTED DECISION AND ORDER

Note: The Board, on October 5, 2004, at a public meeting, approved the underlined corrections made to this order found on page 8.

This appeal was filed with the Board of Zoning Adjustment (the Board) on July 2, 2003 challenging DCRA's decisions to approve a building permit dated January 29, 2003 to construct a single family home at 3101 Chain Bridge Road, N.W., a related pool permit dated May 20, 2003, and a revised building permit dated June 13, 2003. Following a public hearing in this matter, the Board voted to dismiss the appeal of the January 29, 2003 building permit as untimely, to deny the appeal as to the May 20, 2003 pool permit, and to grant the appeal as to the revised June 13, 2003 building permit.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Public Hearing

The Office of Zoning scheduled a hearing on the appeal for October 21, 2003. In accordance with 11 DCMR § 3113.4, the Office of Zoning mailed notice of the hearing to the Appellants, the ANC 3D (the ANC for the area concerning the subject property), the property owner, and DCRA.

Parties

The Appellants in this case are Henry P. Sailer, Lisa S. Kelly, Steven S. Wolf, Arthur L. Levi, Veronica and Bruce Steinwald, Veronique LaGrange, and Benoit Blarel (the Appellants). Appellants initially represented themselves, but later retained Patton Boggs, LLP, as counsel. Brian Logan, the owner of the subject property (the Owner or Mr. Logan), was represented by

Shaw Pittman, LLP. As the property owner, Mr. Logan is automatically a party under 11 DCMR § 3106.2.¹ DCRA was represented by Lisa Bell, Esq., Senior Counsel.

Persons/Entities in Support of the Appeal

The ANC and the Palisades Citizens Association (the Association) wrote in support of the appeal, and the Association's representative, Judith Lanius, testified in support of the appeal.

Preliminary Matters

Prior to the public hearing, the Owner filed a motion to dismiss the appeal as untimely. Appellants and the ANC opposed this motion; however, the Association took no position on the timeliness issue. DCRA joined in the Owner's motion to dismiss, and the Board heard oral argument from the parties on October 21, 2003. A decision on the motion was set for November 4, 2003, then rescheduled, first for November 18, 2003, then for November 25, 2003. During a special public meeting on November 25, 2003, the Board voted to dismiss the appeal of all issues, except those relating to the May 20, 2003 pool permit and the June 20, 2003 revised building permit. A hearing on these remaining issues was set for January 27, 2004, then rescheduled and held on February 3, 2004.

The Positions of the Parties on the Remaining Issues

The Appellants maintain that the pool permit was issued in error because the catchment tank of proposed pool would unlawfully extend into the rear yard and its stairs would unlawfully extend into the side yard. The Owner and DCRA contend that the proposed pool and stairs are permitted encroachments because they are within the maximum allowable height under the Zoning Regulations.

The Appellants also maintain that the revised building permit was issued in error because it allowed a "pervious" driveway to an accessory garage, and that both the driveway and garage violate various requirements of the Zoning Regulations. For example, Appellants maintain that the driveway and drive courts associated with the garage must be paved with impervious surfacing; and that even were this flaw to be corrected, the impervious surfacing would exceed the maximum allowed under the Regulations. The Owner and DCRA contend that since the parking space in the garage is not required parking under the Regulations, the legal requirements related to the driveway and garage (and cited by Appellants) are not applicable.

FINDINGS OF FACT

The Property

1. The subject property is located at 3101 Chain Bridge Road, N.W., Square 1427 in a portion of the R-1-A zone that is subject to the Chain Bridge Road/University Terrace (CBUT) Overlay. The CBUT Overlay (provided for at 11DCMR § 1565 et. seq.) is designed to preserve and enhance the park-like setting of the Chain Bridge Road/University Terrace area by regulating alteration or disturbance of terrain, destruction of trees, and ground coverage of permitted buildings and other impervious surfaces, and by providing for widely spaced residences.

¹ Mr. Logan also moved to intervene in the proceeding; however, the Board found that such relief was not necessary in view of his automatic party status.

The Appellants

2. The Appellants are the Owner's neighbors. Arthur S. Levi owns a home at 3045 Chain Bridge Road, which is immediately to the west of the subject property. At the time of the public hearing Mr. Levi resided in France and rented his home to tenants. Henry P. Sailer resides at 3111 Chain Bridge Road, which is immediately to the east of the subject property. Veronica and Bruce Steinwald live next door to Mr. Sailer – one house removed from the subject property. Lisa Kelly and Steven Wolf live at 3117 Chain Bridge Road, immediately to the east of the Steinwalds, and two houses down from the subject property. Veronique LaGrange and Benoit Blarel live at 3106 Chain Bridge Road, directly across the street from the subject property

The Main Permit and Construction History at the Property

3. The Owner applied for a permit to remove some of the trees from his property on or about May 9, 2001. The application included a "Tree & Slope Information Form", an "Affidavit: Tree & Slope Protection (TSP) Overlay Districts", and a report from a certified arborist stating that certain trees were diseased (Exhibit 25). He received Building Permit No. B432497 dated August 8, 2001 (the tree permit) allowing him to remove the trees. These permits were renewed on August 6, 2002 and February 5, 2003.

4. On or about November 27, 2001, the Owner applied for a permit to construct a new single-family home with a swimming pool and two-story accessory building in the rear yard. The new house would replace an existing house at the property. DCRA issued building permit No. B448548 (the main building permit) on January 29, 2003 to build a "new single family house as per plat and plans".

5. The Owner demolished the existing house at the property on February 8, 2003, after receiving Building Permit No. B448687 for an emergency raze of the house. During that time, a certified diseased tree and other trees were also removed.

6. The Association, through Judith Lanius, complained to DCRA that the existing house had been demolished without a permit and that a healthy "protected tree" had been improperly removed. As a result, DCRA Inspector Stanley Neal visited the property on February 10, 2003 and issued a "stop work order" halting construction. DCRA lifted the stop work order on or about March 21, 2003 following a letter from the owner's counsel that the stop work order was groundless, and construction resumed on or about March 24, 2003.

7. The Owner obtained other permits related to the construction of the new home, including Building Permit Number B451476 issued May 20, 2003, authorizing the construction of an in-ground pool.

The Pool Permit

8. The proposed swimming pool is an infinity pool in which some of the water from the main pool structure is allowed to spill over the lip of the pool into a reservoir below. The function of the reservoir is to catch the overflow and re-circulate it into the main swimming pool.

9. The pool was first proposed when the Owner submitted a building plat dated November 14, 2001 (the initial plat) as part of the application for the main permit. This plat showed the proposed house, a "new 2 story accessory building garage/studio," a pool, and all of the proposed driveways, steps and walkways. The plat also depicted the measurements of the rear and side yards.

10. The Owner's pool contractor later submitted the initial plat and additional structural drawings as part of the application for the pool permit. There were no changes in the dimensions and location of the pool after DCRA approved and issued the main permit (Exhibit 38).

11. The plat and drawings show that the rear wall of the main swimming pool is 25 feet 3 inches measured from the mean horizontal distance from the rear line of the rear wall of the pool and the rear lot line (Exhibit 38).

12. The plat and drawings show that the rear wall of the main swimming pool is approximately 6 feet above grade, but the lower reservoir is only 4 feet above grade (Exhibit 38).

13. Leon Paul, the DCRA Zoning Technician, reviewed the location and size of the pool during the review of the main building permit and concluded that the pool and stairs did not exceed 4 feet above grade at any point and that the minimum rear yard and side yard requirements had been satisfied.

14. The Board credits the testimony of the Owner's zoning expert, Armando Lourenco, regarding the pool, rear yard and side yard measurements. Mr. Lourenco testified that based upon his review of the submitted plat and drawings, the proposed pool was no more than 4 feet above grade at any point.

The Revised Permit

15. The initial plat (upon which the main permit was based) showed a two story accessory building to be located on the property behind the main house and adjacent to the pool and the drive court. The accessory building, termed a "garage/studio" was to be surrounded by terraces and plantings. Although the initial plat did not depict the building as accessible by vehicle from the driveway or the drive court, it did show a parking space on the lower level.

16. On or about June 13, 2003, the Owner's architect submitted an application to revise the main building permit. The stated purpose was to "[r]evis[e] [p]ermit #B448548 [the main permit] to show pervious drive to the accessory garage structure." The permit was issued that same day.

17. As part of the application, the Owner submitted a revised building plat dated June 5, 2003 (the revised plat). In contrast to the initial plat, the revised plat showed that the accessory garage was accessible by a vehicle from the driveway and added a driveway ramp leading from the gravel drive court to a lower drive court adjacent to the accessory garage. It also depicted the surface of the driveway and lower drive court as being "pervious" and made other minor changes that are not relevant to this appeal. The term "pervious" is not used in the Zoning Regulations. However, the Board interprets it to mean the opposite of "impervious", a term that is used in the

Regulations and defined to describe a surface that impedes the percolation of water and plant growth.

18. The revised plat shows an impervious paved main drive entry leading from Chain Bridge Road to a driveway. At the point the driveway enters the side yard, it is paved with impervious drive tracks that measure 7 feet between the outside edges of the paved tracks. The driveway continues through the side yard of the house to a paved drive and pervious drive court behind the house. There is also a drive ramp leading from the drive court to the lower drive court adjacent to the accessory garage. The drive ramp is shown as 7 feet wide and 23 feet long and is shown as "pervious."

19. According to the Owner's calculations, there is 7,818 square feet of total impervious surface coverage on a lot of 15, 654 feet, slightly less than fifty percent of the lot. The impervious surface coverage is about 10 square feet shy of the fifty percent.

Appellants' Knowledge of the Conditions Complained Of

20. The Owner did not establish to the Board's satisfaction that Appellants knew or should have known about the main permit and approvals when the permit was issued on January 29, 2003.

21. The Owner did not establish to the Board's satisfaction that Appellants knew or should have known about the main permit and approvals on February 8, 2004, when the existing house was demolished.

22. Based upon the following facts, the Board is persuaded that the Appellants knew or should have known about the main permit approvals by March 24, 2004:

(a) One of the Appellants, Henry P. Sailer, testified that he knew about the construction activities as early as March 24, 2003.

(b) On or about March 5, 2003, an article appeared in a local newspaper (the Palisades News) describing the demolition activities of February 8, 2003. The article stated that the tree removal was a violation of the Overlay zone and that permits had been mistakenly issued. The newspaper also noted that a building permit had been issued for "3101 Chain Bridge Road, new home \$1,250,000, Brian Logan." (Exhibit 25).

In late March or early April, 2003 another appellant, Arthur S. Levi, while in France, contacted Leon Paul, a DCRA zoning technician by e-mail, seeking clarity from DCRA as to what had changed on the plans in order for them to be approved as in compliance with the Zoning Regulations. According to Mr. Paul, Mr. Levi's e-mail indicated that he had a copy of the original permit at that time because his comments referred to that permit.

23. Although it may have been difficult for the Appellants to obtain details from DCRA regarding the permits and plans, there is no evidence that DCRA's actions substantially impaired Appellants' ability to file the subject appeal.

24. Appellants filed this appeal on July 2, 2003, approximately 100 days after March 24, 2003, the date that they knew or should have known of the issuance of the original permit, but less than 60 days after the issuance of the revised permit and the pool permit.

CONCLUSIONS OF LAW

The Motion to Dismiss.

The District of Columbia Court of Appeals has held that “[t]he timely filing of an appeal with the Board is mandatory and jurisdictional.” *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994). The Board’s Rules of Practice and Procedure (11 DCMR, Chapter 31) require that all appeals be filed within 60 days of the date the person filing the appeal had notice or knew of the decision complained of, or reasonably should have had notice or known of the decision complained of, whichever is earlier. 11 DCMR § 3112.2(a). This 60-day time limit may be extended only if the appellant shows that: (1) “There are exceptional circumstances that are outside the appellant’s control and could not have been reasonably anticipated that substantially impaired the appellant’s ability to file an appeal to the Board; and (2) “The extension of time will not prejudice the parties to the appeal.” 11 DCMR 3112.2(d).

This appeal, filed July 2, 2003, was untimely filed as to the main permit and its related approvals. As stated in the Findings of Fact, Appellants knew or should have known about the permit approvals by March 24, 2003. Thus, under section 3112.2(a) of the Regulations, the appeal should have been filed within 60 days of that date, or by late May, 2003. Instead, it was filed in July, 2003, approximately 100 days after the Appellants are charged with notice of the conditions complained of. While the Appellants may have had difficulties in preparing their actual case, the Board does not find any exceptional circumstances outside of their control that impaired their ability to file a timely, good faith appeal with respect to the main permit approvals.

The appeals of the pool permit (issued on May 20, 2003) and the revised permit (issued on June 13, 2003) were timely filed within 60 days of the conditions complained of and are properly before the Board.

Therefore the Board grants the motion to dismiss that portion of the appeal related to the main permit, but denies the motion to dismiss with respect to pool permit and the revised permit.

The Merits of the Appeal

The Pool Permit

The Board concludes that DCRA had ample legal basis for issuing the pool permit, and that aspect of the appeal is therefore denied. The rear yard does not exceed the minimum size required under the Regulations, as claimed by the Appellants. In a residential district, a rear yard must be provided for each structure. The minimum rear yard for the property, which is located in the R-1-A District, is 25 feet. 11 DCMR § 404.1. As stated above, the plat shows that the rear

wall of the main swimming pool is 25 feet 3 inches measured from the mean horizontal distance from the rear line of the rear wall of the pool and the rear lot line (Finding of Fact 11).

Nor did the permit approve a pool that encroached into the rear yard or side yard, as claimed by the Appellants. Section 2503.2 of the Regulations permits structures less than 4 feet above grade to occupy a required yard. Under 11 DCMR § 199.1, a swimming pool is a structure (a structure is "anything constructed...the use of which required permanent location on the ground, or anything attached to something having a permanent location on the ground..."). As discussed above, the lower reservoir of the pool is only 4 feet above grade and the structure, including the stairs, is no more than 4 feet above grade at any point (Findings of Fact 12-14).

For these reasons, the Board denies that portion of the appeal that challenged DCRA's issuance of the pool permit.

The Revised Permit

The Board concludes that the revised permit was issued in error because the driveway's surface area should have been counted towards the Overlay's limitation on impervious surfaces, regardless of the Applicant's representation that the surface would be pervious. When so counted, the record indicates that the percentage of impervious surface on the site would exceed the amount allowed under the Overlay.

The Owner and DCRA both contend there is no requirement for the driveway to be impervious because it is a driveway to a parking space that is not required. They rely on sections 2101.1, 2117.3, 2117.4, 2117.8 and 2118.9 of the Regulations in support of their position that there are no specific access requirements for an "extra" parking space that is not required under the Regulations, and that the parking space within the garage is such an optional "extra" space. Section 2101.1 provides that only one off-street parking space is required for a single-family dwelling; and, according to the Owner, the "required space" at this property is located in the side yard², not within the accessory garage. They concede that sections 2117.3, 2117.4 and 2117.8 set forth standards for access driveways and parking spaces, and require impervious surfaces for both. However, the Owner and DCRA assert that these provisions apply only to "required spaces", not optional spaces.

However, the Board finds that even if this were a lawful pervious driveway, it should nevertheless have been treated as an impervious surface for the purpose of calculating impervious surfaces under the CBUT Overlay. Had the Zoning Administrator done so, he would have determined that the maximum impervious surface limitations of 11 DCMR § 1567.2 had been exceeded. In finding that pervious driveways should be deemed impervious surfaces for this calculation, the Board relies on three regulations and their underlying intent:

11 DCMR 199.1, the definitional section of the Zoning Regulations, defines an "impervious surface" as follows:

an area that impedes the percolation of water into the subsoil

² Parking spaces may be located in the side yard under 11 DCMR 2116.2.

and impedes plant growth. Impervious surfaces include the footprints of principal and accessory buildings, footprints of patios, **driveways**, other paved areas, tennis courts, and swimming pools, and any path or walkway that is covered by impervious material. (39 DCR 1904) (emphasis added).

The Board reads this provision as indicating that all footprints of driveways are to be deemed impervious surfaces, by definition, when read in connection with 2500.5, governing private garages in an R-1-A or R-1-B District and the CBUT Overlay regulations set forth at 1565 et seq.

2500.5 states as follows:

In an R-1-A or R-1-B District only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building..

Pursuant to this regulation the only two- story accessory buildings allowed in this District are accessory private garages. This regulation could be greatly abused if the features attendant to garages, such as access by a driveway, were not also required. Otherwise any two-story accessory building could be called a garage. Subsections 199.1 and 2500.5 should be strictly construed in the CBUT District where impervious surfaces are limited in order to preserve and enhance the park-like setting of the Chain Bridge Road/University Terrace District. This interpretation is consistent with the intent of the Zoning Commission in establishing this and other Tree and Slope Overlays. The CBUT Overlay states that among its purposes is to "[p]reserve the natural topography" and "[l]imit permitted ground coverage of new and expanded buildings and other construction, so as to encourage a general compatibility between the siting of new buildings or construction and the existing neighborhood" 11 DCMR § 1565.2 (a) and (c). It would be inconsistent with these purposes to permit an owner to use pervious paving to exceed the 50 percent limitation for impervious surfaces, since the point of the overlay is to retain 50 percent of the lot in a natural state, not encroached upon by pavement, whether impervious or not.

The Board thus concludes that the Zoning Administrator erred in approving the revised permit because the driveway to the accessory garage should have been treated as an "impervious" surface for lot coverage purposes. As a result, DCRA miscalculated the impervious surface coverage Section 1567.2 of the Regulations (within the CBUT Overlay provisions) which provides that the maximum impervious surface coverage on a lot is fifty percent. Because the Board interprets the Regulations to require that a driveway be treated as an impervious surface, the driveway square footage depicted on the plat must be added to the surface coverage calculations. This was not done. According to the Owner's own calculations, the impervious surface coverage was barely within the 50% maximum without including the driveway or drive ramp calculations. Accordingly, when the foot print of the driveway is added to the calculations, the record indicates that the lot coverage for impervious surfaces would exceed the 50% maximum allowed under Section 1567.2 of the Regulations. The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law

1-21, as amended; D.C. Official Code § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give great weight, the Board must articulate with particularity and precision 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. In this appeal, the ANC concurred with the views advanced by the Appellants. For the reasons stated above, the Board finds this advice unpersuasive with respect to the pool permit, but concurs with ANC's views with respect to the revised permit.

Therefore, for the reasons stated above, it is hereby **ORDERED** that:

- a. the motion to dismiss the appeal as untimely is **GRANTED** as to the building permit of January 29, 2003 and **DENIED** as to the building permit of May 20, 2003 and June 13, 2003.

Vote taken on November 25, 2003

VOTE: 4-1-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., and David A. Zaidain in favor of the motion, John G. Parsons, opposed)

- b. the appeal is **DENIED** with respect to the building permit of May 20, 2003
Vote taken on March 2, 2004

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., David A. Zaidain, and John Parsons)

- c. the appeal is **GRANTED** with respect to the building permit of June 13, 2003
Vote taken on March 2, 2004

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., David A. Zaidain, and John G. Parsons)

- d. corrections to Order No. 17054 **APPROVED**. Vote taken on October 5, 2004
VOTE: 5-0-0 (Ruthanne G. Miller, John G. Parsons, Geoffrey H. Griffis, Curtis L. Etherly, Jr. and David A. Zaidain to approve)

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: OCT 15 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.SG/rsn

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

Appeal No. 17054-B of Henry P. Sailer, et. al., pursuant to 11 DCMR § § 3100 and 3101, from the administrative decisions of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. B448548 dated January 29, 2003, Building Permit No. B451476 dated May 20, 2003, and Building Permit No. B452193 dated June 13, 2003, for the construction of a new single-family detached dwelling and pool, allegedly in violation of lot occupancy, rear yard, ground coverage, and tree removal requirements of the Zoning Regulations in the Chain Bridge Road/University Terrace Overlay (CBUT)/R-1-A zone, at premises 3101 Chain Bridge Road, N.W. (Square 1427, Lot 870)

HEARING DATES: October 21, 2003, January 27, 2004, February 3, 2004

DECISION DATE: November 4, 2003, November 18, 2003, November 25, 2003, March 2, 2004

**DATE OF DECISION OF
RECONSIDERATION:** October 5, 2004

ORDER DENYING RECONSIDERATION

On or about September 2, 2004, DCRA moved for reconsideration and clarification of the Board's Decision and Order of August 23, 2004. Specifically, DCRA requested the Board to reconsider and clarify that part of the Decision which granted the appeal with respect to Revised Permit B452193.

The Board concludes that DCRA fails to make a persuasive argument for reconsideration of the Board's decision. A motion for reconsideration must specifically state in what way the Board's decision is erroneous, the grounds for reconsideration, and the relief sought. 11 DCMR § 3126.4. DCRA alleges no specific errors and the Board finds no such errors that would require reconsideration.

DCRA also maintains that specific portions of the Board's Order should be revised for purposes of clarification. While the Board does not agree with each of these contentions, the separately issued Corrected Decision and Order should address DCRA's concerns.

For these reasons, it is hereby **ORDERED** that the Motion for Reconsideration is **DENIED**.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., David A. Zaidain and John G. Parson to deny the motion)

Vote taken on October 5, 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: OCT 15 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. SG

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

Appeal No. 17092 of Stephanie Mencimer, et. al., pursuant to 11 DCMR §§3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Certificate of Occupancy No. CO57903, dated July 23, 2003, to WagTime LLC, for 24-hour dog boarding and grooming with accessory retail sales of pet supplies at premises located at 1412 Q Street, N.W., in the C-3-A/Arts District.

HEARING DATES: January 20, 2004, March 30, 2004, and May 11, 2004
DECISION DATE: July 6, 2004

DECISION AND ORDER

This appeal was filed with the Board of Zoning Adjustment (the Board) on September 22, 2003 challenging DCRA's decision to issue a certificate of occupancy (C of O) authorizing WagTime, LLC (WagTime) to use its premises as at 1412 Q Street, N.W., to provide commercial dog boarding and grooming services as a principle use, with accessory retail sales of pet supplies. Following a public hearing in this matter, the Board voted to grant the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Public Hearing

The Office of Zoning scheduled a hearing on the appeal for January 24, 2004. In accordance with 11 DCMR §3113.4, the Office of Zoning mailed notice of the hearing to the Appellants, ANC 2F (the ANC within whose Commission the boundaries of the subject property is located), the property owner and DCRA.

Parties

Appellants

The original Appellants in this case, Stephanie Mencimer, Erik Wemple, John Weaver, and Forrest R. Smith, were later joined by Gary Ridley and Mark Rabbage. Each of these individuals authorized Andrea Doughty, Bonn Macy and Erik Wemple to represent them before the Board.

The Property Owner

The property owner, WagTime, (the Owner or WagTime), was represented by Edward Donohue, Esq., of Cole, Raywid & Braverman, LLP. As the property owner, WagTime is automatically a party under 11 DCMR §3106.2.

DCRA

DCRA was represented by Assistant Attorney General for the District of Columbia, Bennett Rushkoff, Esq.

Intervenor

Mid-City Development (Mid-City), also referred to as the "Intervenor", requested party status as a proponent of the appeal. The request was granted without objection from the other parties and Mid-City was represented by Andrea Ferster, Esq.

The affected ANC

ANC 2F, an automatic party to the Appeal, submitted a letter stating that it "[did] not take a position in favor of or opposing the above referenced appeal." (Exhibit 23). It did not submit any evidence or argument during the public hearing.

Persons in Support and in Opposition

The Board received numerous letters in support and in opposition to the appeal.

FINDINGS OF FACT**The Property**

1. The subject property is located at 1412 Q Street, NW (Square 1209, Lot 0878) in the C-3-A/Arts zone district, and borders the R-5-B zone district.

The Appellants

2. The Appellants and their authorized representatives are the Owner's neighbors. Stephanie Mencimer and Erik Wemple reside at 1414 Q Street. John Weaver and Forrest Smith reside at 1416 Q Street. Gary Ridley and Mark Rabbage reside at 1408 Q Street. Andrea Doughty resides at 1417 Q Street, and Bonn Macy resides at 1445 Q Street.

The Intervenor

3. Mid-City Development is the record owner of Lot 98 in Square 0209, a parcel of land and buildings located across the public alley immediately to the rear (south) of WagTime's premises. Because Mid-City is developing 85 condominium units at its property, it is significantly more affected by the WagTime C of O than other persons in the general public.

The Certificate of Occupancy

4. WagTime filed an application for a C of O with DCRA on or about July 8, 2003. The application proposed the following use: "24 hour dog boarding and grooming with accessory retail sale of pet supplies," consisting of 1,248 square feet of occupied space.

5. After filing the C of O application, WagTime proffered to DCRA "the following commitments regarding the use of the outdoor space at the rear of the building": (a) there would be no more than 20 dogs outside at any one time; (b) the use of that area would occur only between the hours of 9:00 am and 5:00 pm; and (c) all use of the outdoor space would be supervised by employees of the business. Wagtime also noted that it was "continuing to investigate what [it] can do to put a temporary cover over part, or all, of the rear yard to protect and enclose the dogs and to help minimize the impact of any noise."

6. On July 23, 2003, DCRA issued WagTime a temporary C of O which was to expire on January 31, 2004. In a letter dated shortly thereafter, dated July 30, 2004, DCRA stated that it had "no legal basis" for withholding the C of O, and additionally stated that the temporary C of O was conditioned upon the above commitments proffered by WagTime, which DCRA would monitor over the six-month period. The Board credits DCRA's assertion that the conditions were imposed because they were proffered by WagTime during the C of O application process.

7. When DCRA issued the C of O, it recognized that the proposed use did not fall within any of the service or retail establishments listed in sections 721.2 or 721.3, of the Zoning Regulations, the matter of right use classifications expressly designated within the C-3 zone. As a result, DCRA went on to consider whether the proposed boarding use in the C-3 zone was a "service or retail use similar to" expressly allowed matter of right uses in the more restrictive C-2 zone, to wit: a "public bath, physical culture, or health service" (11 DCMR §721.2(s)), a "veterinary hospital" (11 DCMR §721.2(x)), and a "pet shop" (11 DCMR §721.3(p)). The evidence further indicates that, of the three uses analyzed for comparison, DCRA considered the veterinary hospital use the most "relevant" use, finding that "dogs stay overnight and get cared for" in both instances.

The Appeal

8. Appellants filed this appeal challenging the temporary C of O on September 22, 2003, focusing on DCRA's finding that a dog boarding use is similar to a veterinary hospital use and/or pet shop.

9. The case was first heard on January 20, 2004, at which time Mid-City Development was granted party status as an "Inteviewer" and proponent of the appeal. Following the presentation of the Appellants' case on January 20, 2004, the hearing on the appeal was continued to March 30, 2004.

10. On January 28, 2004, three days before the scheduled expiration of the temporary C of O, DCRA issued a second C of O to use the premises for "24 hr. dog boarding and grooming with accessory retail sale of pet supplies." The second C of O (the permanent C of O) was not accompanied by any conditions and did not have an expiration date.

11. On March 23, 2004, Appellants filed an appeal challenging DCRA's decision to issue the permanent C of O.

Preliminary Matters

12. Prior to the March 30 continuation date, the parties made written submissions and/or sought various types of relief from the Board, specifically:

- (a) The Appellants moved to amend the appeal to include the permanent C of O issued by DCRA on January 28, 2004 (Exhibit 74).
- (b) The Owner moved to dismiss the appeal on the ground that it was moot because the temporary C of O had expired on January 31, 2004 (Exhibit 77).

- (c) The Owner opposed Mid-City's proposed expert testimony by Armando Lourenco, and requested that Mid-City's testimony be limited in time (Exhibit 71).
- (d) Mid-City moved to strike letters submitted in support of WagTime because they had been submitted by various neighbors and customers of Wagtime rather than by WagTime directly (Exhibit 73).

13. At the start of the March 30 public hearing, the Board ruled on the preliminary matters as follows:

- (a) The Board granted the Appellants' motion to amend the appeal to include the permanent C of O.
- (b) The Board denied the Owner's motion to dismiss on the ground of mootness. Even with the expiration of the temporary C of O, the Board found there was a live case or controversy stemming from the permanent C of O as to whether dog boarding is a permitted use in the zone.
- (c) The Board originally deferred the questions regarding Mid-City's case presentation and expert testimony, but ultimately ruled that Mr. Lourenco could provide expert testimony. The Board also found that Mid-City was not limited to a "5 minute" presentation merely because that time limit had been discussed at a prior proceeding.
- (e) Mid-City's motion to strike the letters was denied, and WagTime was given leave to proffer the letters in support as direct evidence in support of its case.

The Dog Boarding Use

14. WagTime offers "cageless" boarding facilities and represents that it is the only "indoor/outdoor" dog boarding facility in the northwest Washington, D.C. area.

15. Appellants and Mid-City maintain that dog boarding facilities have operational characteristics that are different from those of veterinary hospitals and pet shops. They refer to such characteristics as: the age of the dogs, the frequency and duration of overnight and outdoor stays, and the different levels of noise and waste that are generated at the different facilities. Through testimony and argument, Appellants and Mid-City asserted that, as compared to veterinary hospitals and pet shops, the dogs at boarding facilities are older, require more overnight stays, and require more time outdoors. They also asserted that the operation of a dog boarding facility generates greater amounts of noise and waste than the operation of a veterinary hospital or pet shop.

16. The Board finds that dog boarding facilities and veterinary hospitals share certain common operational characteristics. The most obvious and significant of these characteristics is the fact that both uses involve the overnight stay of dogs.

17. The Board also finds that as compared to both a pet shop and a veterinary hospital, the operations of a dog boarding facility are characterized by greater amounts of noise and waste, and greater numbers of overnight and outdoor stays.

18. The Board credits the testimony of Ruth Berman, qualified by the Board as an expert in dog kennels. Ms. Berman testified that, as distinguished from veterinary hospitals and pet shops,

most jurisdictions do not permit dog kennels within 200 feet of neighboring properties due to the greater noise levels and outdoor use associated with them.

19. The Board credits the testimony of Karen McCabe, based upon her experience as a former veterinary hospital technician. Ms. McCabe testified that dog boarding facilities are not similar to veterinary hospitals because overnight stays are typical at boarding facilities and only occasional at veterinary hospitals.

20. The Board credits the testimony of David Baker, qualified by the Board as an expert in pet shops and dog kennels based upon his experience providing services and products to both. Mr. Baker testified that in his opinion WagTime's facility is not similar to pet shops where: (a) the dogs only occasionally stay overnight; (b) puppies rather than grown dogs are housed; (c) the animals are "caged" rather than "uncaged"; and (d) the animals do not generally go outdoors.

21. The Board credits the testimony of Armando Lourenco, a former D.C.R.A. Zoning Administrator, qualified by the Board as an expert in the interpretation of D.C. zoning regulations. Mr. Lourenco testified that, in determining whether a proposed use is "similar to" an established comparable use, DCRA's longstanding practice is to compare and assess the relative impacts of the established and non-established uses based on the relative external effects on the proposed location and surrounding premises.

22. The Board also accepts Mr. Lourenco's opinion that in this type of case, a difference in the intensity of use between a principal use and an accessory use would have a qualitative impact on the external effects on a neighboring community – i.e. dog boarding as an accessory use at a veterinary hospital or pet shop would have a much lesser external impact upon a neighboring community.

23. The Board finds that dog boarding facilities are dissimilar from veterinary hospitals and pet shops because of the difference in sanitary and operational standards that apply to boarding facilities and the other uses. Dog boarding facilities are not subject to any regulatory or licensing program in the District that imposes sanitary or other operational standards. In contrast, both pet shops and veterinary hospitals must satisfy detailed operational and sanitary standards in order to receive a required license. *See*, 22 DCMR Chapter 700, Exhibit 81 (DC Register 6630, Sept. 2, 1988), amending 17 DCMR Chapter 29.

24. The Board also finds that other jurisdictions have regulated dog boarding/kennel uses by restricting proximity to neighboring properties and controlling impacts from noise and odor. See Attachment 42 to Exhibit 86.

CONCLUSIONS OF LAW

Positions of the Parties

Appellants concede that the "dog grooming" and accessory "retail uses" authorized by the C of O are permitted uses under the Zoning Regulations (p. 4 Statement of Appeal). WagTime argues, therefore, that the only relevant question is whether DCRA correctly found that the proposed "boarding" operations were "similar" to those uses permitted in the zone, in

other words, whether a dog boarding facility is "similar" to a veterinary hospital or pet shop. WagTime further argues that this appeal must be denied unless DCRA abused its discretion when it answered this question in the affirmative.

DCRA defends its decision to issue the temporary and permanent C of O under the regulatory scheme. It argues that it properly considered the degree to which the uses are normally associated with one another, and that the external effects – dog barking and generation of dog waste - of a dog boarding facility are similar to the external effects of a veterinary hospital and pet shop when the boarding facility operates in compliance with animal control and noise regulations..

Appellants and Mid-City allege that DCRA erred when it determined that dog boarding is permitted as a matter of right in the C-3-A zone. They contend that dog boarding is neither expressly permitted nor "similar to" any other uses that are expressly permitted.

The Pertinent Regulations

"Dog boarding" is not a defined term in the Zoning Regulations and matter of right uses in the C-3 zone are not specifically enumerated. However, a use is permitted in the C-3 zone as a matter of right if it is a use that is permitted as a matter of right in the C-2 zone 11 DCMR §741.1.

The permitted uses in the C-2 zone include a "service or retail use" that is "similar to" one or more of the matter of right uses listed in §§ 721.2 and 721.3 (See, 11 DCMR §721.4). As noted by all of the parties, the matter of right uses listed in these sections include use as a "veterinary hospital" (§ 721.2(x)), and use as a "pet shop" (§ 721.3(p)). Thus, the Board finds as a matter of law that a "dog boarding" use would be permitted as of right in the C-3 zone if it were found to be "similar to" either a veterinary hospital or a pet shop.

The Zoning Administrator failed to apply an appropriate methodology to determine whether a dog boarding facility was a use that was similar to the matter of right uses enumerated in Section 721.

In assessing whether a dog boarding facility was similar to a veterinary hospital or pet shop, the Zoning Administrator reviewed the uses specifically allowed in Section 721 to determine if the proposed use shared relevant qualities with them. In essence, the Zoning Administrator concluded that because veterinary hospitals and pet shops care for dogs and allow them to stay overnight, that a dog boarding facility was "similar" to these uses, and therefore, allowed under the zoning regulations as a matter of right.

The Zoning Administrator failed to examine any differences in external impacts between a dog boarding facility and a veterinary hospital and a pet store, despite the fact that the Zoning Administrator initially issued a temporary C of O and stated in connection with that C of O that DCRA would monitor the facility during the temporary 6-month period. Not only did the Zoning Administrator fail to examine the actual external impacts of the dog boarding facility at issue in this case during the temporary 6-month period of time, he failed to undertake research

and analysis of any kind **to assess external impacts**. According to DCRA's testimony at the hearing, DCRA's research was limited to past BZA decisions and Court decisions.

The Board credits the testimony of Armando Lourenco, a former Administrator of DCRA's Building and Land Regulation Administration and Acting Zoning Administrator, qualified by the Board as an expert in the interpretation of the District's Zoning Regulations, that in determining whether a proposed use is "similar to" an established comparable use, DCRA's longstanding practice is to compare and assess the relative impacts of the established and non-established uses based on the relative external effects on the proposed location and surrounding premises. Mr. George Oberlander, qualified by the Board as an expert witness in zoning, also testified that in determining similarity of uses, DCRA must look at external impacts.

Accordingly, the Zoning Administrator failed to properly evaluate whether the proposed dog boarding facility use was similar to a veterinary hospital or pet store because he failed to determine its external impacts.

The dog boarding use is not "similar to" a veterinary hospital or pet shop

The Board heard extensive evidence in this case with respect to the similarities and dissimilarities between a dog boarding facility and a veterinary hospitals and pet store. Based on the evidence presented, the Board concludes that a dog boarding facility use is not similar to either a veterinary hospital or a pet shop use. The Board reaches this conclusion because it finds that the external effects generated from a dog boarding facility are more intense than those generated by either a veterinary hospital or a pet shop, especially the greater amount of noise and odor that is inherent to a dog boarding facility. Wagtime's proffering of conditions in connection with its application for a C of O and DCRA's imposition of such conditions in connection with its issuance of the temporary C of O support a conclusion that even Wagtime and DCRA perceived a need to mitigate potential external effects stemming from the dog boarding use. The issue for DCRA was whether the proposed use had similar external effects as a veterinary hospital, not whether proffered conditions could mitigate those effects. Adding conditions to a certificate of occupancy cannot convert an unauthorized use into one permitted as a matter of right. Only the Zoning Commission can accomplish that change in status.

In addition, the Board notes that the current regulatory scheme governing animal facilities in the District subjects pet shops and veterinary hospitals to sanitation and ventilation standards, but dog boarding facilities are neither (Findings of fact 23) currently regulated nor even defined. Accordingly, they are not subject to the same licensing standards and requirements that may mitigate potential adverse impacts associated with the care of dogs.

Finally, the Board is persuaded that the greater intensity of noise and management of waste associated with a dog boarding facility distinguishes its use from either a pet shop or a veterinary hospital use. The Board notes that in those jurisdictions identified in the record, boarding facilities are strictly regulated differently from veterinary hospitals and pet stores so as not to create a nuisance due to potential noise and odor (Findings of Fact 18, 24). Accordingly, the Board finds that the zoning regulations do not intend a dog boarding use to be authorized as a matter of right, without any restrictions, particularly if it is adjacent to a residential property.

For all of these reasons, the Board concludes that the Zoning Administrator erred in determining that dog boarding as a principal use is permitted as a matter of right in the C-3-A zone.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the appeal is **GRANTED**
Vote taken on July 6, 2004

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis A. Etherly, Jr., and David A. Zaidain, by absentee ballot to grant the appeal, the Zoning Commission member not participating, 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: OCT 15 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. SG

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

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

HEARING DATES: June 13, and July 18, 2000

DECISION DATES: September 5, November 8, and December 5, 2000

ORDER DATE: March 29, 2001

RECONSIDERATION DECISION DATE: June 5, 2001

STAY DECISION DATE: September 4, 2001

PROCEDURAL ORDER ON REMAND

By Order issued March 29, 2001, the Board approved the University Campus Plan until December 31, 2010, subject to conditions intended to mitigate any adverse impacts potentially arising from the location of a university use in a residentially zoned district. The Applicant appealed the Order to the District of Columbia Court of Appeals. On December 4, 2003, the Court of Appeals issued an opinion vacating the Board's decision because "a number of the conditions imposed by the BZA cannot be sustained." The case was remanded to the Board for further proceedings consistent with the Court's opinion.

In addition to the Applicant, parties to the proceeding are Advisory Neighborhood Commission 2E, the Burleith Citizens Association, Citizens Association of Georgetown ("CAG"), Cloisters in Georgetown Homeowner's Association, Foxhall Community Citizens Association, Georgetown Residents Alliance, and Hillandale Homeowners Association ("Hillandale").

At a public meeting on June 22, 2004, the Board indicated its intent to conduct further proceedings on the application, and requested submissions from the parties recommending issues they believe should be addressed on remand. Parties were also invited to comment on whether the Board should only receive written submissions on designated issues, or whether they believed that an additional hearing should be held on this matter.

By letter dated June 23, 2004, to the parties, the Office of Zoning indicated that submissions from parties were due on August 2, 2004. Submissions were received from the Applicant, CAG,

and Hillandale. All three parties requested an opportunity to file written submissions. CAG also requested a hearing to receive new evidence on certain issues. All parties concurred that the focus of future submissions should be the reformulation of conditions imposed in this case so that they are consistent with the legal principles set forth in the Court's opinion. The Board agrees with the Applicant and Hillandale that additional hearings are not needed for the Board to determine whether the application should be granted, and, if so, what conditions are required to mitigate the any potential adverse impacts or objectionable conditions arising from the university use.

The Board hereby directs any party that wishes to do so to submit to the Office of Zoning a proposed order, either granting or denying the application in whole or in part, including findings of facts and conclusions of law, no later than 3pm Friday, December 17, 2004. Pursuant to 11 DCMR § 3121.4, each party must serve any proposed findings of fact and conclusions of law on all other parties at the same time as they are filed with the Board. No responses to the proposed orders will be accepted.

Each finding of fact, other than those that relate to procedural matters, should include citations to the record evidence or testimony that support the statement made. Orders proposing to grant the application should include proposed conditions necessary to mitigate any potential adverse impacts identified, based on the existing record in this proceeding. The Applicant may also offer conditions intended to ameliorate the issues and concerns of the affected ANC or the other parties. Parties submitting orders proposing to deny the application may, without prejudice to their position, also attach proposed conditions. Each proposed condition should be followed by an explanation as to how it is consistent with the principles and concerns expressed in the Court of Appeal's decision and cite the specific finding(s) of fact or conclusion(s) of law that support its imposition.

Accordingly, it is **ORDERED** that the Board **APPROVES** the issuance of this Order.

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

Each concurring member (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II) has approved the issuance of this Order.

FINAL DATE OF ORDER: October 15, 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 10 DAYS AFTER IT BECOMES FINAL. MN/rsn

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

Application No. 17081 of St. Patrick's Episcopal Day School, pursuant to 11 DCMR § 3104.1, for modification of a condition to a special exception approval for a child development center and private school under sections 205 and 206, to permit an increase in faculty and staff from 60 to 93 in the R-1-B District at premises 4700 Whitehaven Parkway, N.W. (Square 1372, Lot 817, and Square 1374, Lot 5).

HEARING DATE: December 2, 2003

DECISION DATE: January 13, 2004

DECISION AND ORDER

St. Patrick's Episcopal Day School ("Applicant" or "School") was founded as a nursery school in 1956 and elementary grades were added in 1967. In 1973, Board Order No. 11307 granted the Applicant a special exception for a child development center and private elementary school. The School moved to the subject property in 1977. The special exception use has no term limit and continues to include a child development center and elementary school.

The School has grown since 1973 and has been the subject of several Board Orders, some of which have addressed the maximum number of faculty and staff, which is the issue in question in this proceeding. In 1983, a faculty and staff cap of 48 was imposed by Board Order 14009. In 1990, Board Order 15347 increased the cap on "staff" to 60. On September 10, 2003, the Applicant filed an application with the Board of Zoning Adjustment ("Board") for permission to modify the staff cap of 60 set in Board Order number 15374.¹ The Applicant requests permission for a new cap of 93 full time equivalent ("FTE") faculty and staff or, if the Board chooses not to use the FTE counting method, for a new staff and faculty cap of 105 actual persons.

Following a public hearing on December 2, 2003, and a public decision meeting on January 13, 2004, the Board voted 4-0-1 to grant the application to permit a total person count of faculty and staff employed by the School not to exceed 105.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing On September 11, 2003, the Office of Zoning ("OZ") sent notice of the filing of the application to the District of Columbia Office of Planning ("OP"), the District of Columbia Departments of Health ("DOH") and Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3D, the ANC in which the subject property is located, the 3D06 Single Member District Member, and the Council Member for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the District of

¹The latest Board Order concerning the School is number 16517, but that Order has only to do with the construction of a gymnasium and an addition and renovation of a classroom. It does not mention, let alone condition, the maximum number of faculty and/or staff. Therefore, although Order No. 16517 is last in time, this Order amends the maximum faculty/staff condition (Condition no. 2) in the 1990 Order, number 15374.

Columbia Register and mailed notices of the hearing, dated September 25, 2003, to the Applicant, ANC 3D, and all owners of property within 200 feet of the subject property. Further, the Applicant's Affidavit of Posting shows that the property was properly posted pursuant to 11 DCMR § 3113.

Request for Party Status. Mr. Michael Lovendusky applied for party status. At the hearing, Mr. Lovendusky indicated that he also represented his wife, and two other couples – Mr. and Mrs. D. Ormerod and Douglas Fenton and Nora Carbine – all of whom reside in close proximity to the separate campus of St. Patrick's Middle School, located on MacArthur Boulevard ("middle school"). Mr. Lovendusky argued that the middle school and elementary school campuses should be treated as one cohesive unit for purposes of determining party status.

The Board, by consensus, denied Mr. Lovendusky's request for party status. The Board ascertained that the request was untimely filed and that, although Mr. Lovendusky lives within 200 feet of the middle school campus, he does not live within 200 feet of the campus in question here, which is on Whitehaven Parkway. The Board determined that the two campuses should be treated separately and that the middle school campus is controlled by a separate Order, not in question here. Mr. Lovendusky lives at some distance from the subject property and would not be affected by the outcome of this case any more so than any other member of the general public. The Board therefore concluded that Mr. Lovendusky and the others he claimed to represent would be treated as persons in opposition to the application.

Applicant's Case. The Applicant seeks to update a condition of an earlier BZA order to increase the staff and faculty cap to accurately reflect the current number of employees at the school. The Applicant stated that the number of employees exceeded the cap imposed by the previous order as a result of the school's misinterpretation of that order. Ms. Katherine Bradley, Chairman of the Board of the Applicant and Mr. Peter Barrett, the School's headmaster, testified in its behalf. They indicated that the application to increase the faculty and staff cap to 93 was intended to mean 93 FTE's – full-time equivalents -- as opposed to 93 persons. They explained that the Applicant preferred use of the FTE counting method because the part-time positions allowed greater flexibility to their teachers and other employees. Ms Bradley testified that the breakdown of part-time and full-time employees at the School would not change significantly in the future, but that the School would annually share this breakdown with the ANC. She also represented that the School would accept a condition which capped its part-time employees at a certain percentage of its work force.

Government Reports. On November 24, 2003, OP filed a report recommending that the Board grant the application to increase the staff and faculty cap. OP generally supported the ANC's proposed conditions, but recommended that only one condition actually be adopted by the Board. OP's recommended condition would continue the current student cap of 440 and would permit a maximum number of staff and faculty of 93 FTE.

During the hearing, OP stated that it had mentioned the use of the FTE counting method to DDOT, which had no particular concerns with it. Neither OP nor DDOT, however, performed any independent analysis of its use or the potential consequences thereof.

DDOT submitted to the Board a memorandum in support of the application dated November 18, 2003. DDOT opined that granting this application would have no negative effect on the existing Traffic Management Plan employed by the School.

DOH submitted to the Board a memorandum, dated November 3, 2003, supporting the continuation of the operation of the Applicant's child development center.

ANC Report. The ANC submitted a report dated November 14, 2003, which reflected that, at a duly noticed meeting with a quorum present, the ANC voted 7-0-0 to approve, with conditions, the application to increase the cap to realistically reflect the current size of the faculty and staff at the school. The ANC proposed the following three conditions: (1) that the School hold quarterly meetings with the ANC and the community, (2) that the School not return to the Board for any increase of faculty, staff, or students, for five years, and (3) that the School provide the ANC and the Board with an annual report on faculty and staff with a break-down of full- and part-time employees. The ANC, both in its report and in its testimony, expressed serious concern over the inappropriateness of using the FTE counting method. The ANC stated in its written testimony that the FTE method cannot be applied to the St. Patrick's case because the cap is tied to zoning regulations governing parking requirements. The school has a limited number of parking spaces available and each school employee represents a "full" person when he or she parks at the school. The employee's car represents a "whole" vehicle, regardless of the employee's part-time or full-time status.

FINDINGS OF FACT

1. The subject property is located in an R-1-B zoning district at address 4700 Whitehaven Parkway, N.W. in the Palisades neighborhood of Ward 3. Whitehaven Parkway bisects the site, dividing it into two parcels (Square 1372, Lot 817 and Square 1374, Lot 5).
2. The south parcel is improved with a two-story, plus basement, elementary and nursery school building that was built in 1976. The School's gymnasium and parking facility are located on the north parcel.
3. The School was founded in 1956 as a nursery school and elementary grades were added in 1967.
4. In 1973, Board Order No. 11307 granted the Applicant a special exception for the pre-school and elementary school on property in the vicinity of the subject property. Order No. 11307 does not condition the special exception with a term of years and does not condition, or set a maximum number for, faculty and/or staff on the site. The Order merely states that there will be approximately 29 teachers and administrative personnel. Exhibit No. 26, Tab D.

5. In 1977, the School moved to the subject property and the special exception use continued thereon.
6. In 1983, Board Order No. 14009 granted the Applicant permission to expand the school and set the total number of faculty and staff for both facilities (*i.e.*, the child development center and the elementary school) at 48. Exhibit No. 26, Tab D.
7. In 1990,² the Applicant applied to the Board for permission to alter and repair its physical facility and to increase its student enrollment and staff. The Board, in Order No. 15374, dated October 30, 1990, granted the application and conditioned the use, in pertinent part, as follows: “[t]he number of staff shall not exceed sixty.” Exhibit No. 26, Tab D.
8. There has been only one Board Order concerning the School since 1990. In 1999, Board Order No. 16517 granted the Applicant permission to construct a gymnasium and to renovate and expand an existing building. The Order says nothing about a faculty/staff number or cap, therefore there has been no new faculty/staff cap established since Order No. 15374 in 1990.
9. Between 1990 and 2003, the School concluded erroneously that the cap of 60 “staff” established in 1990 pertained only to “staff” and not “faculty,” and that therefore there was no cap on “faculty.” Therefore, by 2003, the School employed 64 faculty and 29 staff.
10. The Board finds that the cap of 60 staff established in 1990 by Order No. 15374 applied to both “faculty” and “staff.”
11. The Applicant, acknowledging its erroneous interpretation of the 1990 cap, on September 10, 2003, applied for permission to have a 93 FTE faculty and staff cap in order to update the cap to reflect its real-life faculty and staff numbers.
12. The School currently employs a total of 103 persons, 77 of whom work full-time and 26 part-time. This translates into a total FTE count of 92.7 FTEs.
13. There are currently 20 employees of the child development center and 83 employees of the elementary school.
14. The School is proposing a cap of 93 FTEs with a maximum head count of 105 persons. This proposal reflects the School’s current faculty and staff levels (with a 2-person flexibility) and so, will not cause any change in existing conditions associated with the numbers of faculty and staff.
15. The School is not proposing any increase in the cap on student enrollment.

²There is one other pre-1990 Board Order, No. 11933, dealing with this School. It was issued in 1976, but addressed only changes to the site plan approved in Order No. 11307, and is not relevant here.

16. Pursuant to the Zoning Regulations, a private school must provide two off-street parking spaces for every three teachers and other employees. 11 DCMR §§ 206.3 and 2101.1.
17. Pursuant to the Zoning Regulations, a child development center must provide one off-street parking space for each 4 teachers and other employees. 11 DCMR §§ 205.4 and 2101.1.
18. For 105 employees, 62 spaces are required. Five spaces would be required for the 20 employees of the child development center and 57 spaces would be required for the 85 staff and faculty members of the elementary school. 11 DCMR §§ 205.4, 206.3 and 2101.1.
19. The School provides the required 62 parking spaces on the subject property. The School also provides 23 spaces on leased property adjacent to the subject property and 42 angled parking spaces in the public space along Whitehaven Parkway, which are leased from the District of Columbia. Therefore, the School provides a total of 127 off-street parking spaces.
20. One hundred and twenty-seven parking spaces are ample for this special exception use and are sufficient to accommodate the regular, day-to-day use of the subject property, even with a maximum faculty and staff head count of 105 persons.
21. The maximum number of faculty and staff on the subject property at any one time is 100 persons. This "peak" parking use occurs usually at approximately 11:00 a.m. on Tuesdays.
22. The School uses a Traffic Management Plan, instituted as part of an earlier special exception proceeding, including a carpool, which mitigates traffic impacts associated with the operation of the School.
23. The existing numbers of faculty and staff employed by the School operate within the framework of the School's Traffic Management Plan, therefore the proposed cap increase to reflect these numbers will cause no further negative traffic impacts.

CONCLUSIONS OF LAW

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, the Applicant had to meet both the requirements of § 3104.1 and those subsections of §§ 205 and 206 implicated by this modification to the already-existing special exception. Because this is a request to increase the staff and faculty cap, the requirements of subsections 205.4 and 206.3, regarding off-street parking, and §§ 205.3 and 206.2, regarding objectionable conditions, must be met. Once the necessary showings are made,

the Board ordinarily must grant the special exception, or modification thereof. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981).

Section 205.4 of the Zoning Regulations requires that a child development center provide "sufficient" parking to meet the reasonable needs of the center. Section 206.3 requires that a private school provide "ample" parking, but not less than that required by § 2101.1. Section 2101.1 requires one off-street parking space for each 4 teachers and other employees of a child development center and two spaces for every three teachers and other employees of a private school. 11 DCMR § 2101.1.

The School has 62 off-street parking spaces on the subject property. This number of spaces allows the School to have a staff and faculty maximum of 105 individuals using the head count method. Using this method, the 20 employees of the child development center require 5 spaces. After subtracting these 5 spaces, the school is left with 57 spaces, which is sufficient, under §§ 206.3 and 2101.1, for the current 83 employees of the elementary school and would be sufficient for a maximum of 85 employees. Therefore, the School, with a current staff and faculty of 103, has sufficient parking space, and if the head count cap of 105 were granted, the School would still have sufficient parking space under the Zoning Regulations.

The School is proposing use of an FTE counting method. An FTE is a "full-time equivalent," meaning that if three persons each work one-third time, together they are counted as one FTE. The School proposes that § 2101.1's more restrictive standard applicable to private schools (2 spaces for every 3 employees) be applied to both the child development center and the elementary school and that if this is done, its 62 spaces would allow for 93 FTEs. The School currently has an FTE count of 92.7, therefore it has sufficient parking space under the Zoning Regulations and if the FTE cap of 93 were granted, it would still have sufficient parking space under the Regulations.

The School also provides 23 off-street parking spaces on leased property adjacent to the subject property and 42 angled spaces in the public space along Whitehaven Parkway, which are leased from the District of Columbia. The School therefore provides a total of 127 parking spaces, which are available to meet the reasonable needs of faculty, staff, and visitors. This is ample parking space for the School's operations and is sufficient to mitigate any adverse effects on neighboring properties. The School also has a Traffic Management Plan ("TMP"), which was implemented recently and reflects a recognition of 103 employees. The provisions of the TMP also help mitigate traffic and parking impacts on neighboring properties.

At present, the number of faculty and staff may not exceed 60. The school currently employs 103. The discrepancy results from the Applicant's mistaken belief that the cap applied only to staff. Thus, the increase requested here will not result in an actual increase, but rather will modify the Board's condition to comport with reality. The fact that the Applicant is in non-compliance should not bar the Board's consideration of the request. It would be counterproductive for the Board to dissuade efforts to come into compliance. The Applicant has admitted its error, is not seeking to add more faculty or staff, and has demonstrated that the increase, although unauthorized, did not result in adverse impacts. In addition, a faculty and

staff cap of 60 is clearly out-dated and a new cap is necessary to bring the paper cap in line with reality. There are now 103 persons employed by the School and permitting a cap of 105 will not cause any significant change in existing conditions nor cause any objectionable conditions due to noise, traffic or the like. Therefore, based on the ample parking provided and the lack of any real change of conditions if the cap is increased, the Board concludes that a staff and faculty cap increase is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and can be granted without causing any adverse effects to neighboring properties.

The Board further concludes, however, that such an increase must be based on a head count of faculty and staff. The Zoning Regulations speak about individual persons; they do not use, define, or interpret the concept of FTEs in any context. Section 2118.3 of the Zoning Regulations is pertinent here. It is a rule of interpretation of the Zoning Regulations dealing with parking and states:

[t]he number of teachers or employees shall be computed on the basis of the greatest number of persons to be employed at any one period during the day or night, including persons having both full-time and part-time employment.

Section 2118.3 treats both part-time and full-time employees as whole "persons." It does not sanction the creating of one full-time position by amalgamating two or three part-time positions, as would occur if a FTE counting method were used.

Use of FTEs is particularly inappropriate where parking is in issue as even a part-time employee drives a whole vehicle and needs a whole parking space. Three part-time people may equal one FTE, but they would still be driving three vehicles. In fact, § 2101.1's requirement of 2 parking spaces for each 3 employees would trigger the need for 2 parking spaces for 3 part-time employees if they are treated as individual persons, but would trigger no parking requirement if the 3 part-timers were considered one FTE, *i.e.*, one person. This is counter to the intent of the Zoning Regulations to prevent or mitigate adverse impacts created by parking congestion.

The Board also notes that, although the Applicant preferred an FTE count, it was willing to accept an increase in staff and faculty cap based on head count. *See*, December 2, 2003 hearing transcript at 261, lines 15-17. Further, the person who testified in opposition to the application urged the Board to adopt "a real person count of 103 and 105." *Id.* at 310, lines 17-19.

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 did not find their views persuasive. The ANC voted to approve the special exception to increase the staff and faculty cap to reflect the status quo - 93-FTEs or 103 employees, with three conditions. The ANC, however, expressed serious reservations concerning the use of the FTE calculation method. As set forth above, the Board concurs with the views of the ANC with respect to the inappropriateness of employing the FTE calculation method in this regulatory context which ties the number of parking spaces to the number of employees. The Board agrees with two of the ANC's three proposed conditions,

which are included below. The third condition, to which the Board cannot agree, is that the School not return to the ANC or this Board to request any further expansion of faculty, staff, or students for 5 years. This proposed condition is beyond the jurisdiction of the Board to impose because neither the Zoning Act nor the Zoning Regulations place limitations on the ability to seek additional zoning relief. In addition such a condition would not mitigate the potential adverse impacts of this or any other use. OP also recommended approval of the 93-FTE cap, but beyond soliciting DDOT's opinion of the use of FTEs, did not prepare any independent analysis of their use. The Board agrees with OP that the cap should be increased, but not that an FTE counting method is appropriate.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a modification of an existing special exception for a faculty and staff cap increase from 60 to 105, pursuant to §§ 3104.1, 205 and 206. Accordingly, it is therefore **ORDERED** that the application is **GRANTED, subject to the following CONDITIONS:**

1. Condition number 2 of Order No. 15374 is amended to read as follows: "The number of students in the elementary school and the child development center shall not exceed four hundred and forty (440). The total number of staff and faculty shall not exceed one hundred and five (105) persons."
2. The Applicant shall file an annual report with this Board and ANC 3D indicating the total number of faculty and staff, with a breakdown showing how the number of employees is under 105.
3. The Applicant will hold quarterly meetings with ANC 3D and the community.

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and David Zaidain to grant. Zoning Commissioner member not participating, not voting.)

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

Each concurring Board member approved issuance of this Order.

FINAL DATE OF ORDER: OCT - 7 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 § 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.SG/RSN

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

Application No. 17125 of Krister and Carol Holladay pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirements under section 403, to allow the construction of a one story rear addition to a single-family row dwelling in the CAP/R-4 District at premises 507 Independence Avenue, S.E. (Square 843, Lot 20).

HEARING DATE: March 16, 2004
DECISION DATE: March 16, 2004

DECISION AND ORDER

This application was submitted on December 23, 2003 by Meghan Walsh, AIA agent on behalf of the owners of the property that is the subject of the application, Krister and Carol Holladay (collectively, "Applicants"). The self-certified application requested a variance to the lot occupancy requirements to allow the construction of a one-story rear addition to a single-family row dwelling at 507 Independence Avenue, S.E.

Following a hearing on March 16, 2004, the Board voted 4-1-0 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. The Office of Zoning mailed a notice of this application to the Councilmember for Ward 6, the Office of Planning ("OP"), the Department of Transportation, Advisory Neighborhood Commission ("ANC") 6B, and Single Member District ANC 6B 02, as evidenced in a memoranda dated December 24, 2004. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated January 12, 2004, to the Applicants, ANC 6B, and all owners of property within 200 feet of the subject property, providing notice of the hearing.

Requests for Party Status. ANC 6B was automatically a party in this proceeding. There were no requests for party status.

Applicants' Case. The Applicants and their architect, Meghan J. Walsh, stated that the variance was needed to allow construction of a one-story addition to the rear of a single-family row dwelling which would increase the living space in the house by enlarging the family room and the kitchen and creating circulation to the rear of the dwelling without requiring that one exit through the kitchen. The

planned addition would be similar in appearance to the existing house. The Board received letters in support of the application from neighbors on both sides of the Applicants, and one neighbor around the corner.

Government Reports. By memorandum dated March 1, 2004, OP recommended denial of the requested variance from the lot occupancy requirements of 11 DCMR §403. OP believed that the lot occupancy relief request was excessive in that it sought 15% more than what is permitted as a matter of right. OP indicated it would recommend approval of the application if the lot occupancy was reduced to 70%, which would be consistent with the maximum lot occupancy allowed for additions to single family dwelling through the special exception process permitted by 11 DCMR § 223.

ANC Report. The ANC did not submit a report.

FINDINGS OF FACT

1. The subject property is a row dwelling located at 507 Independence Avenue, S.E. (Square 843, Lot 20) in the Capital Hill Historic District and is zoned R-4. The site is improved with a three-story row dwelling that was built in 1886.
2. The structure sits on a rectangular lot measuring approximately 1,393 square feet. The lot size is smaller than many of the lots with row dwellings in the square.
3. The structure is the center dwelling of three similar houses. The three structures were built on one lot and operated as boarding houses.
4. The row dwellings' front two rooms were designed to be used for transient guests, and have large sleeping rooms located on the upper floor. The kitchen and servant rooms were more austere and located at the back of the dwelling. The front and the back of the house were intended to function separately. The boarding house design does not adequately accommodate a family with children.
5. The two row dwellings immediately adjacent to the Applicants' house are on lots that are approximately same size parcels as the Applicants' lot.
6. Each of the three-story row dwellings has a narrower two story extension into the rear yard and an open courtyard on the west-side of the property. The courtyard for the subject property is a non-conforming courtyard which is 5' - 3" wide. The courtyard is practically unusable.

7. There is no alley access to the rear of the property. The rear of all of the properties in the square abut other properties. The rear yard of the subject property is surrounded by wooden fences 6 to 7 feet in height.
8. The Applicants propose to build a one-story, addition to the first floor rear of the house to enlarge the family room and kitchen and create circulation to the rear of the house without going through the kitchen. The addition would occupy what is presently the nonconforming open courtyard, and extend to the party wall shared with the neighboring row dwelling on the west side of the property. The neighbor to the west does not have any windows in the party wall to which the addition would be extended.
9. Eliminating the court would resolve persistent basement flooding caused by an inadequately sized drain. The Applicants must continuously sand-bag the basement to keep it dry. In addition, the existence of the court results in poor heating and cooling.
10. A row dwelling in an R-4 zone district may not occupy more than 60% of its lot.
11. The existing structure occupies 64% of the lot.
12. The proposed addition would increase the lot occupancy to 75%.
13. Pursuant to 11 DCMR § 223, owners of single family dwellings may apply for special exception relief to increase the lot occupancy up to 70% in order to build additions.
14. Designing this addition so as to be eligible for special exception relief was not a realistic alternative. In order to accommodate 70% lot occupancy, the Applicants could not fully enclose the entire court area. This would entirely frustrated their desire to create circulation through that space. In addition, the proposed redesign of the kitchen was dependant upon moving the rear entrance from its present location to the proposed addition.

CONCLUSIONS OF LAW

The Applicants are seeking an area variance under 11 DCMR § 3103.2 to allow construction of a one-story addition on the rear of a row house in the R-4 zone. To make the desired renovations, the Applicants need a variance from the lot occupancy requirements under section 403.

The Board is authorized to grant a variance from the strict application of the Zoning regulations under section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat., 797, 799); D.C. Official Code § 6-641.07(g) (3) (2001). To qualify for an area variance the Applicants must establish that: (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the Applicants will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plane. See *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

In order to prove "practical difficulties," the Applicants must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 1170. The Applicants' property does not comply with requirements pertaining to maximum lot occupancy and open court dimensions. The proposed addition would eliminate the open court, but increase the lot occupancy beyond that which is allowable as a matter of right.

The maximum permitted lot occupancy for a row dwelling in an R-4 zone is 60%. 11 DCMR § 403.2. The lot occupancy with the planned addition would be 75%.

The structure was built to be operated as a boarding house. The room layout was influenced by the intent to use the row houses as boarding houses. The front two rooms and the sleeping rooms above them were generously sized for the guests. The kitchen area on the first floor is small and is connected by a stairway to the little bedrooms on the second floor which were used by the servants. The front and back of the house were intended to function separately. As a result the structure functions poorly as a single family home. Based on the testimony of the Applicants and their architect, it appears that there are only two other row houses in this square with a similar design. In addition, the undersized court serves no purpose other than to flood the Applicants' basement and create an area where heat and cold seep through.

Constructing an addition in place of the court is the only practical solution to both problems. Yet, because subject property is also on a smaller lot than most of the row dwellings in the square, the full enclosure of the court would increase lot occupancy beyond that permitted even by special exception pursuant to 11 DCMR § 223. The Board does not agree with the Office of Planning that the circulation and heating/cooling issues could have been remedied by a design compatible with the 70% lot occupancy limitation of § 223. Any design that kept lot occupancy below 70% would have resulted in some portion of the court remaining, which

would mean there could be no full corridor and no new rear entrance to the dwelling. The problems with circulation, flooding, heating and cooling would remain.

The fact that the two adjoining townhouses may also be subject to the same characteristics as are present in the Applicant's case is not an impediment to a finding of uniqueness. The requirement that the property be unique does not mean that the property must be the only property that is affected in a particular way. It need only be established that "it seems unlikely that many properties would be affected in this particular way, so that these particular types of variances would be required for a large number of properties and, if granted, constitute a de facto amendment of the zone plan." *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (DC 1990).

The planned addition will not adversely affect the availability of light or air to neighboring properties. The enlargement, which is relatively small, will be located at the rear where there is no alley access, and will extend to a party wall where there are no windows. Since there are no windows on the neighboring north side property that face the addition, the addition will not compromise the privacy of use and enjoyment of neighboring properties. Moreover, since the addition is one that could be made by many of its neighbors without a variance, allowing a lot occupancy of 75% in this case will not impair the intent, purpose and integrity of the zone plan.

The addition will not visually intrude on the character, scale, or pattern of row dwelling along the street frontage. The one-story addition will be built at the rear of the property and will not be visible from the street. Additionally, since the rear of the property has a fence that is 6 to 7 feet tall, the rear addition will not be visible from ground level in the rear. Finally, the difference between a lot occupancy of 70% that would be permitted under a special exception pursuant to 11 DCMR § 223 and the 75% that is being requested as a variance is *de minimis*.

The Board believes that the Applicants seek to do not more than the owners of a somewhat larger lot customarily accomplish through section 223 relief. The design of this house cannot be adapted to make it compatible with modern family life without granting the relief sought. The variance granted is no more than necessary to resolve the problems identified and stems directly from the smallness of the lot, which the Board finds to be exceptional.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a variance to allow construction of a one-story addition to the rear of a row house in an R-4 zone.

Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: 4-1-0 (Geoffrey H. Griffis, John A. Mann II, Curtis L. Etherly, Jr., and Ruthann Miller voting to approve. Carol J. Mitten voting to deny).

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

Each concurring Board member approved the issuance of this order

FINAL DATE OF ORDER: OCT 19 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.

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. 17209 of Parkmont School, Inc., pursuant to DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception to operate a private secondary school (65 students and 8 staff) last approved under BZA Order No. 16473, in the R-1-B District at premises 4842 16th Street, N.W. (Square 2654, Lot 34).

HEARING DATE: September 28, 2004
DECISION DATE: September 28, 2004 (Bench Decision)

DECISION AND ORDER

On September 28, 2004, the Board of Zoning Adjustment voted to grant the above application subject to the revisions and for the reasons stated below.

REVIEW BY THE ZONING ADMINISTRATOR

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

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Public Hearing The Board of Zoning Adjustment (the Board) scheduled a hearing for September 28, 2004. Pursuant to 11 DCMR §3113.13, 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) 4C, 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 4C The subject site is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The Applicant appeared at a regularly scheduled ANC meeting on September 14, 2004 to discuss the application. Following that meeting, the ANC voted unanimously to support the application.

Parties No party appeared at the public hearing in opposition to this application.

OP Report OP's report recommended that the application be approved with the following conditions:

1. Approval shall be for five (5) years from the date of this Order. The applicant shall reapply to the Board prior to expiration of the approval granted herein for evaluation of the parking situation and for permission to provide parking as set forth in this Order.
2. Operation of the school shall be limited to the Parkmont School.

3. The number of students shall not exceed sixty-five (65) and the number of faculty shall not exceed twelve (12).
4. There shall be no non-school-related activities on the subject premises.
5. Landscaping on the premises shall be maintained as approved in BZA Order #13985 and in a healthy growing condition.
6. Three parking spaces shall be provided on the site.
7. There shall be no enlargement of the existing paved area on the site.

OP's recommended conditions are identical to those contained in the Applicant's most recent zoning approval, Order No. 16473 (1999), with the exceptions that condition 3 was changed to permit 12 faculty instead of 8, and condition 5 was changed to require that the landscaping be maintained in a "healthy growing condition" rather than in accord with documents referenced in Order No. 16473.

Materials Received in Support The Board received a unanimous Resolution Supporting Application Number 17209 from ANC 4C. The Board also received three letters in support of the application from neighbors of the Applicant: Frederick Boyd and Roberta Ujakovich; Sally Pfund; and Melvin and Toni Baker.

Closing of the Record

The record closed at the conclusion of the public hearing on September 28, 2004, with the exception of the Applicant's proposed findings of fact and conclusions of law.

FINDINGS OF FACT

The Subject Property and the Application

1. The Applicant holds a special exception to operate a private school at 4842 16th Street N.W., Square 2654 Lot 34, and a variance from the strict application of the minimum parking space requirements imposed by the zoning regulations. The special exception and variance were first granted by this Board to Somerset School, the Applicant's predecessor, in Order No. 13985 (1983). The Board granted continuances in Order No. 15176 (1991) and Order No. 16473 (1999).
2. The Applicant is located on a triangular shaped lot bounded by 16th Street and Blagden Avenue, N.W., which is zoned R-1-B. The lot is improved with a large four-story structure of 8,700 square feet and a paved area to the south and rear of the property, which provides 3 on-site parking spaces. The building was constructed as a private dwelling and was subsequently occupied by a church, which in turn sold the property to the Somerset School in 1983.
3. The Applicant's building contains 3 second floor classrooms, 2 first floor classrooms, and 2 basement classrooms. The school's main office is on the first floor and the director's office is in the basement. There are 5 bathrooms in the building.

4. As the Applicant's previous special exception and variance were to expire in July 2004, on June 25, 2004 it filed with the Board the instant application. The application included one change to the conditions contained in the Board's previous Orders: an increase from 8 faculty members to 12 staff members.. There was no requested change to the existing structure or for an increase in the student enrollment.

Special Exception and Variance Requirements

Sections 3104, 206 and 3103

5. Section 3104.1 permits the Board to grant a special exception where a proposed use will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."
6. Section 206.1 permits the use of property located in an R-1 district for a private school if the requirements of section 3104 are met.
7. Section 206.2 requires as a condition of a special exception under section 206.1 that the private school be "located so that it will not likely become objectionable to adjoining or nearby property because of noise, traffic, number of students, or otherwise objectionable conditions."
8. Section 206.3 requires as a condition of a special exception under section 206.1 that "[a]mple parking space, but not less than that required in chapter 21 of [Title 11] shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile."
9. Section 2101.1 requires that high schools provide "2 [parking spaces] for each 3 teachers and other employees, plus 1 for each 20 classroom seats"
10. The Board is authorized under 11 DCMR 3103.2 "where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reasons of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application to as to relieve the difficulties or hardship; provided, that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the plan as embodied in the Zoning Regulations and Map."

Impact on neighboring properties – Sections 3104.1 and 206.2
Applicant's use of the subject property

11. The Applicant currently accommodates a student enrollment of approximately 53 and a staff of 8. The school is in session from early September until mid-June each year. Regular school hours are weekdays from approximately 8 am until 4 pm. The Applicant generally has not offered after-school or evening programs.
12. In some years the school has provided a summer session to allow students to accumulate additional credits toward their diplomas. When summer school has been offered, it has been held during weekday mornings and has attracted fewer than 10 students.
13. The Applicant has not allowed the use of its facility to outside organizations for non-school activities. The Applicant's facility does not contain any large meeting rooms that could accommodate functions of any substantial size.
14. The Applicant occasionally holds school-related events, such as a poetry festival, in the evening or on a weekend, but less than 5 times annually.
15. The Applicant currently operates in conformance with the conditions of Order No. 16473, and has effectively anticipated and controlled student enrollment during its decade and more of operation.
16. Since its inception, the Applicant has agreed to work with the community to address any concerns with respect to parking and other issues in the neighborhood.
17. The school has not become objectionable to its immediate neighbors due to traffic or noise in the course of its existence.

Applicant's addition of four staff persons

18. The Applicant's requested increase in staff capacity reflects an intention to assign additional staff to administer similar courses and to improve the student staff ratio in support of the school's academic offerings.
19. The Board credits OP's opinion that, with the addition of 4 staff persons, traffic management in the immediate vicinity of the school, including parking, drop-off and pick up, and over-flow parking for special events, will not likely change from its current level.
20. Modification of the previous Order to allow an additional 4 staff persons will not change the material facts upon which the Board made its earlier decisions.
21. The Board finds that negative impacts are unlikely if the school is allowed the flexibility to increase its faculty from 8 to 12 within the stated hours of operation and in conformance with the other conditions in the previous Order No. 16473.

Parking requirements – Sections 206.3, 2101.1 and 3103.2

Applicant's parking situation

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22. The Applicant currently has 3 on-site parking spaces, which is less than the number required by section 2101.
23. The irregular shape and slope of the Applicant's site and the large size of the building on the lot restrict the number of parking spaces available on the site to three.
24. The Applicant has been restricted by prior Orders from expanding its on-site parking. This restriction was imposed because of neighbor concerns that additional paved space would change or be inconsistent with the character of the neighborhood.
25. Since 1989, staff and students who could not be accommodated by the Applicant's parking capacity have used the publicly available parking space at the Carter-Barron amphitheatre. The Carter-Barron lot, which is one block from the subject premises at the corner of 16th Street and Colorado Ave., contains 336 parking spaces. On an average day only approximately 25 of those spaces are used at all, and only approximately 6 are used by the Applicant's staff and students. Use of the Carter-Barron lot has been restricted only once per year, for a summer tennis tournament, when the Applicant is not in session.
26. The majority of the Applicant's students, who range in age from 12-18, travel to and from school via public transportation. The school's location is well served by public transportation (Metrobus).
27. Neither the Board nor OP is aware of any complaints of "spillover" or overflow parking into the residential neighborhood.
28. The parking needs of the Applicant's students and staff persons have been adequately accommodated by the existing 3 parking spots as well as the nearby parking lot for Carter-Barron Amphitheatre.

Applicant's addition of four staff persons

29. The Applicant's parking needs will not change significantly with the addition of 4 staff persons.
30. The Applicant's existing 3 parking spaces and the Carter-Barron parking spaces are more than sufficient to accommodate the parking needs of an additional 4 staff persons.
31. Modification of the previous Order to allow an additional 4 staff persons will not change the material facts upon which the Board made its earlier decisions.

Term of the Special Exception and Variance

32. The Applicant applied for, and the ANC, OP, and three neighbors supported, a special exception and a variance for a term of 5 years. At least one of the neighbors strongly

- preferred a 5-year term due in part to such neighbor's concern that the school might suffer a change in administration or ownership during the course of a longer term.
33. The Board's initial Order No. 13985 in 1983 was limited to a period of 5 years in order to assess the impact that the school would have on the neighborhood.
 34. The initial concerns supporting a limitation to 5 years have not been realized.
 35. A 10-year special exception and variance would reduce the burden on both the Board and the Applicant of more frequent applications for renewal.
 36. There was no evidence of adverse impacts caused by the Applicant in the past, and a 5-year term is not necessary to mitigate any potential future adverse impacts.

CONCLUSIONS OF LAW

The Applicant Qualifies for a 10-Year Special Exception

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet the requirements of both sections 3104 and 206 of the zoning regulations.

A 10-year special exception meets the requirements of section 3104. The Applicant has proven itself to be a positive addition to its neighborhood over the past 20 years. There was no opposition to the application and no evidence of adverse impacts on neighboring properties. Provided the Applicant complies with the conditions specified in this Order, a special exception providing for an additional 4 staff persons and a 10-year term should not result in any adverse impacts on neighboring properties and is in harmony with the general purpose and intent of the zoning regulations.

The Applicant Qualifies for a 10-Year Variance

The Board is authorized under 11 DCMR 3103.2 "where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reasons of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that relief can be granted without substantial detriment to the public good and without substantially impairing the intent,

purpose, and integrity of the plan as embodied in the Zoning Regulations and Map." A 10-year variance meets the requirements of section 3103.

The Applicant has met the three prongs of the variance test. It is located on an oddly-shaped triangular lot in an R-1-B zoning district. The size, irregular shape, and amount of land occupied by the building on the lot restrict the area available for parking. Three parking spaces are provided on the lot, but to retain and protect the residential quality of the neighborhood, the Applicant is precluded by its previous Board Order from enlarging the existing on-site paved area. These factors create an insurmountable practical difficulty for the Applicant in providing the requisite on-site parking. Instead, the Applicant's faculty and students use the nearby 336-space parking lot of the Carter Barron Amphitheatre.

The combination of the 3 on-site parking spaces and the additional parking spaces at the Carter-Barron amphitheatre amply accommodate the Applicant's modest parking needs. Provided the Applicant complies with the conditions specified in this Order, a variance from the number of parking spaces required by the zoning regulations to accommodate the Applicant's permitted capacity of 65 students and 12 staff for a 10-year term should not result in any substantial detriment to the public good and should not substantially impair the intent, purpose, and integrity of the plan as embodied in the zoning regulations and map.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledging the issues and concerns of these two entities and providing an explanation of why the Board did or did not find their views persuasive. In this case, ANC 4C and OP supported the application, which called for a term of 5 years. However, the Board concludes that a 5-year term would be unnecessary to mitigate any potential adverse impacts on neighboring properties. Nor can the Board hinge either its conditions, or its term limits, on whether there is a change of ownership or school administration during a special exception's term. *See, e.g., National Black Child Development Institute, Inc. v. D.C. Board of Zoning Adjustment*, 483 A.2d 687 (D.C. 1984). The Board further concludes that a 5-year term would place an additional and unnecessary burden on both the Board and the Applicant. In granting a 10-year term, the Board concludes that "a reasonable accommodation has been made between the Applicant and the neighbors, which does not interfere with the 'legitimate interests' of the latter." *Glenbrook Road Ass'n. v. D.C. Board of Zoning Adjustment*, 605 A.2d 22, 32 (D.C. 1992).

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to continue the operation of a private school pursuant to 11 DCMR §§ 3104 and 206, and for a variance from the strict enforcement of 11 DCMR §§ 206 and 2101 pursuant to 11 DCMR § 3103. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

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1. Approval of the special exception and variance shall be for **TEN (10)** years from the date of this Order.
2. Operation of the school shall be limited to the Parkmont School, and there shall be no non-school related activities on the subject premises.
3. The number of students shall not exceed sixty-five (65) and the number of faculty/staff shall not exceed twelve (12).
4. Landscaping on the premises shall be maintained as approved in BZA Order No. 13985 and in a healthy growing condition.
5. Three parking spaces shall be provided on the site and there shall be no enlargement of the existing paved area on the site.

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

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: OCT 15 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 § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

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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. 17217 of Doran Flowers, 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, a variance from the court requirements under section 406, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the construction of a screened porch at the rear of a two-family row dwelling in the R-4 District at premises 3360 18th Street, N.W. (Square 2615, Lot 46).

HEARING DATE: October 12, 2004
DECISION DATE: October 12, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1D, 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 1D. ANC 1D submitted a letter stating no objection to the application.

The OP submitted a report recommending denial of the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403, 404, 406 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: 4-1-0 (Ruthanne G. Miller, John A. Mann, II, Geoffrey H. Griffis and Kevin L. Hildebrand to approve, Curtis L. Etherly, Jr. opposed to the motion)

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: OCT 14 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, 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. 17220 of St. Paul's Parish, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the side yard requirements under section 405, a variance from the court requirements under section 406, a variance from the expansion provisions of the Foggy Bottom Overlay under subsection 1523.1, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the alteration and expansion of an existing church in the FB/R-3 District at premises 2422, 2424, and 2430 K Street, N.W. (Square 28, Lots 169 and 828).

HEARING DATE: October 26, 2004
DECISION DATE: October 26, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2A, 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 2A. ANC 2A submitted a letter in support of the application stating that it's support is based on an agreement between the Applicant and the ANC. The Board denied a party status request from Anna D. Gowans Miller. The OP submitted a report recommending approval of the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 403, 405, 406, 1523.1 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** with the following **CONDITION**:

1. The Applicant shall have flexibility to make minor changes (e.g., design, color) to the project, provided the modifications do not increase the relief that was approved, or create any new areas of relief.

VOTE (Request for Party Status from Anna D. Miller):

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

VOTE (Approval of Application):

4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., John A. Mann, II, and Ruthanne G. Miller to approve, Carol J. Mitten 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: October 28, 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. 17222 of Rocio Gonzalez and Facundo Fiorino, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to construct a single-family detached dwelling in the R-1-B District at premises 1250 Kearney Street, N.E. (Square 3930, Lot 4).

HEARING DATE: October 19, 2004
DECISION DATE: October 19, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5A, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 5A. ANC 5A did not participate in the application. The OP submitted a report recommending support of the application.

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

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

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

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

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

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

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

FINAL DATE OF ORDER: OCT 21 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.

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. 17224 of JPI Apartments Development LP on behalf of Father Flanagan's Boys Home, et al, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, and a variance from the residential recreation space requirements under section 773, to construct a five story mixed-use residential development including residential units, grocery store, and additional retail in the C-2-B District at premises Pennsylvania and Potomac Avenues, S.E. (Square 1045, Lots 132, 133, 134, 135, 136, 137, 834, 835, 838, and 839).

HEARING DATE: October 26, 2004
DECISION DATE: October 26, 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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B, 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 6B. ANC 6B submitted a letter in support of the application. The OP submitted a report recommending support of the application.

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

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 772 and 773, 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

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public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

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

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

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

FINAL DATE OF ORDER: OCT 28 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, 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. 17225 of Leila Joyner Smith, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear deck and bay window addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403) and nonconforming structure requirements (2001.3) in the R-4 District at premises 2214 Cathedral Avenue, N.W. (Square 2206, Lot 81).

HEARING DATE: October 26, 2004
DECISION DATE: October 26, 2004 (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) 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 letter in support of the application. The ANC letter did not meet all of the requirements of subsection 3115. 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 § 223. No parties appeared at the public hearing in opposition to this application. 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: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly Jr. and John A. Mann II to approve, the Zoning Commission member not present, not voting).

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: OCT 28 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

ZONING COMMISSION NOTICE OF FILING**Case No. 04-30****(Consolidated PUD – Square 2572, Lot 36)****October 22, 2004****THIS CASE IS OF INTEREST TO ANC 1C07**

On October 20, 2004, the Office of Zoning received an application from Faison Enterprises, Inc. on behalf of Jemal's Citadel, LLC, the owner of the property, (collectively, the "applicants"). The applicants are requesting from the Zoning Commission approval of a consolidated PUD for the above-referenced property.

The property that is the subject of this application consists of Lot 36 in Square 2572, in northwest Washington, D.C. (Ward 1), and is bounded by Euclid Street to the north, 16th Street to the east, Kalorama Road to the south, and 17th Street to the west. The property is currently zoned RC/C-2-B.

The applicants propose to convert the existing "Citadel" building into a multi-use establishment with retail, office, grocery store, and other permitted uses as permitted by the Commission. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

ZONING COMMISSION CORRECTED¹ ORDER NO. 04-01A
Z.C. CASE NO. 04-01
Consolidated Planned Unit Development and Map Amendment for
Property Located at 2215 Constitution Avenue, N.W.
(Site of the American Pharmacists Association)
Square 62, Lots 19, 810, Pt. 813, 814, and 815
July 12, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on June 3, 2004, to consider applications from the American Pharmacists Association, for consolidated review and approval of a planned unit development and related zoning map amendment from unzoned property to the SP-2 District. The Commission considered the applications pursuant to Chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). 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 applications.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On January 13, 2004, the American Pharmacists Association (the "Applicant"), with the consent of the U.S. General Services Administration ("GSA"), filed an application with the Zoning Commission to amend the Zoning Map from unzoned to SP-2 District for the property located at Lots 810, Pt. 813, 814, and 815 in Square 62, and an application for a planned unit development ("PUD") for Lots 19, 810, Pt. 813, 814, and 815 in Square 62 for premises address 2215 Constitution Avenue, N.W., Washington, D.C.
2. After proper notice, the Zoning Commission held a hearing on the applications on June 3, 2004. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2A, the ANC within which the property is located.
3. At the June 3, 2004, hearing, the Zoning Commission took proposed action by a vote of 4-1-0 to approve with conditions the applications and plans that were submitted to the record and presented at the June 3, 2004, hearing.

¹ Finding of Fact No. 8 corrected to reflect the project as a six-story building (as is reflected in the plans approved by the Zoning Commission).

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4. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by delegated action of the Executive Director dated July 8, 2004, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
5. The Zoning Commission took final action to approve the applications on July 12, 2004.

The PUD Project

6. The Subject Property is located at Lots 19, 810, Pt. 813, 814 and 815, comprising all of Square 62 with the exception of the excluded portion of Lot 813. The site is rectangular in shape and contains approximately 82,085 square feet of land area. Lot 19 is zoned SP-2, whereas the remaining Lots are unzoned.
7. The surrounding area is characterized by a mixture of Federal and institutional uses. To the north of the site are C Street and the United States Department of State; to the east of the site are 22nd Street and the National Academy of Sciences. The western boundary of the site is adjacent to the 17-foot strip along 23rd Street that has been dedicated for open space, and across the street from the future site of the Institute of Peace. The southern side of the site is adjacent to United States government open space, including a portion of the National Mall.
8. The proposed PUD consists of an addition to the existing American Pharmacists Association headquarters located at 2215 Constitution Avenue, N.W. The present three-story "annex," constructed in 1962 and located to the rear of the main building, will be replaced with a new ~~five~~-six-story addition. The existing building with the new addition will contain approximately 166,750 square feet of gross floor area and will have an aggregate density of approximately 2.14 floor area ratio ("FAR").
9. The annex that will be demolished was determined by the Historic Preservation Review Board ("HPRB") to be non-contributing to the landmark building. The project architects have taken great care to design the addition in a manner that is consistent and compatible with the original historic structure. The addition will be of similar height to surrounding buildings and will align with the existing building lines on both C Street and 23rd Street. The addition will be symmetrically situated on the northern side of the existing building, creating a uniform and rectangular backdrop to the historic structure.
10. Lot 19 of the PUD site is located in the SP-2 District. The SP-2 District is a medium-high density district that was designed to act as a buffer between adjoining commercial and residential areas and to ensure that new development is compatible in use, scale, and

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design with the transitional function of the zone district. The maximum height permitted in the SP-2 District is 90 feet with no limitation on the number of stories. The total density permitted in the SP-2 District is 6.0 FAR, with non-residential uses permitted up to a 3.5 FAR.

11. The Foggy Bottom/West End area is characterized by a mixture of land uses, including predominantly high-rise office buildings, hotels, and apartment houses and a broad range of institutional uses. Retail uses for the most part are contained within the first floor of high-rise buildings devoted to other uses.
12. The PUD regulations require a site in the SP-2 District to contain a minimum of 15,000 square feet of land area. The total land area of the entire PUD site is 82,085 square feet, and thus meets the minimum area requirements for a PUD.
13. The proposed development complies with the height standards under § 2405.1 of the Zoning Regulations. The maximum building height for the proposed development is 65.42 feet. The PUD project will be developed to a total aggregate density of 2.14 FAR, or 166,750 square feet of gross floor area. This density is significantly lower than the 4.5 FAR permitted for a PUD in the SP-2 District.
14. The following benefits and amenities will be created as a result of the PUD project:
 - a. *Urban Design, Architecture, Landscaping and Open Space.* The new addition has been sensitively designed to frame the original building designed by renowned American architect John Russell Pope, complement the monumental Beaux Art style of the original structure, and protect its free-standing qualities through adequate setbacks. At the same time, it will allow for the continued use and viability of the landmark building as originally intended well into the future. The proposed addition has undergone extensive review with regard to its design and architecture and has received favorable recommendations from HPRB, NCPC, and the Commission of Fine Arts. The resulting architecture is compatible with both the existing historical structure and surrounding buildings in terms of materials, scale, and massing. The urban design has been carefully articulated to create visual consistency with the existing building lines on both C Street and 23rd Street.
 - b. *Transportation Features.* The off-street parking provided, as discussed in the Traffic Report, far exceeds the requirements of the Zoning Regulations. Further, the parking will be provided in a below-grade garage, allowing much of the existing surface parking area to be replaced with additional landscaping. The PUD site is within several blocks of the Foggy Bottom Metrorail stop and has excellent access to I-66 and other major roadways. The development has also been designed with two entrances and exits to the parking garage, in order not to

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rely solely on access from 22nd Street. Since the State Department has closed off C Street to vehicular traffic, cars and taxis often form a queue on 22nd Street while dropping off or picking up. An additional point of access on 23rd Street will improve access to the Property and vehicular movement on the surrounding street system.

- c. *Historic Preservation.* The American Pharmacists Association building is an individually-designated landmark listed in the D.C. Inventory of Historic Sites and the National Register of Historic Places. The original American Pharmacists Association building design is based on Pope's rejected scheme for a memorial to Abraham Lincoln's birthplace in Kentucky. The American Pharmacists Association embraced the design and began construction in 1933; the original structure was completed in 1934. In 1962, the American Pharmacists Association needed to expand and an addition was constructed at the rear at the C Street side of the building. The addition is known today as the "annex." The new addition that will replace the annex will be considerably larger in scale and massing but will be separated from the historic structure by a "hyphen" that is compatibly scaled to the Pope building. The new addition will allow for the continued use and viability of the landmark building well into the future.
- d. *Environmental Benefits.* The proposed addition was designed with significant sensitivity to landscaping and tree preservation. There are several mature evergreen trees to the front of the existing building that will remain. There are also a number of other significant trees that will be preserved on the site. Development of the Federally-owned lots will also allow for important environmental remediation. Subsurface investigations of the soil on Lots 810, 813, 814, and 815 indicated that the soil is contaminated with volatile organic compounds as a result of a former dry cleaning establishment that operated in the 1940s. As all land-disturbing activities in the District of Columbia are regulated by law, the Federally-owned lots would be remediated in conjunction with the construction of the proposed addition.
15. The proposed PUD advances the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and furthers and complies with the major themes and elements for the District and Ward 1 in the Comprehensive Plan. The project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of quality institutional development that will enhance the built environment. The project will also achieve the community goal of adequate parking through an unobtrusive below-grade parking garage that provides substantially more parking than that required by the zoning ordinance.
16. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:

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- a. *Stabilizing and Improving the District's Neighborhood.* The proposed addition to the existing American Pharmacists Association headquarters will maintain the stable institutional/Federal character of the neighborhood.
 - b. *Respecting and Improving the Physical Character of the District.* The proposed PUD respects and improves the physical character of the District through the construction of a well-planned and carefully designed development.
 - c. *Preserving the Historic Character of the District.* The historic landmark building significantly contributes to the historic beauty and fabric of the District. It will be retained and remain a viable building for years to come by virtue of the sensitively designed addition.
 - d. *Reaffirming and Strengthening District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. The expansion of the American Pharmacists Association headquarters provides additional jobs to strengthen the economic health of this area while supporting a network of the Association's approximately 50,000 members.
17. The Project also furthers the specific objectives and policies of many of the Comprehensive Plan's major elements as follows:
- a. *Economic Development Element.* According to the Economic Development Element of the Comprehensive Plan, the District places a high priority on the generation of new and productive uses of currently underused commercially- and industrially-zoned land. 10 DCMR § 200.10. The proposed PUD will dramatically improve upon the vacant parcels along C Street. Another priority of the Economic Development Element is stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use element and ward plans, with sensitivity to the surrounding area. 10 DCMR § 204.2(m). This project provides commercial development outside of the Central Employment Area that will maintain a significant number of jobs. A portion of the new space will be leased to third parties, to include GSA, and will therefore contribute to the tax base of the District of Columbia.
 - b. *Urban Design Element.* The Urban Design Element expresses the District's goal to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. 10

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DCMR § 701.1. The Urban Design Element also has an objective of encouraging new construction or renovation/rehabilitation of older buildings in areas with vacant or underused land or structures in order to create a strong, positive physical identity. 10 DCMR § 712.1. The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development. 10 DCMR § 708.2. The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. 10 DCMR § 709.1.

- c. *Preservation and Historic Features Element.* The preservation and historic features goal for the District of Columbia, as set forth in the Comprehensive Plan, is to preserve the important historic features of the District while permitting new development that is compatible with those features. 10 DCMR § 801.1. The proposed PUD exemplifies this goal, in maintaining an important historic landmark while allowing for necessary but compatible expansion.

18. The Project also fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 2:

- a. *Ward 2 Transportation Element.* Ward 2 is located at the center of the District and at the focal point of the Metrorail system, buslines, and the city's freeway and arterial street system. Although its location provides great benefits to the residents and employees of Ward 2, it also creates some adverse impacts on quality of life. 10 DCMR § 1309.1. Parking within the ward is identified as a major problem due to evening visitors, student parking, and the lack of parking provisions for many residential dwellings. 10 DCMR § 1309.11 This element of the Comprehensive Plan encourages strict adherence to the current parking requirements of the zoning regulations. 10 DCMR § 1311.1(d)(3). The provision of a minimum of 143 parking spaces, well above the 91 spaces required, will ensure that the new addition will not contribute to parking shortages in the area. The parking will be provided in a below-grade garage, allowing portions of the existing surface parking area to be replaced with additional landscaping. The PUD site's proximity to both the Foggy Bottom Metrorail Station and I-66 provides ready access and mobility.
- b. *Ward 2 Urban Design Element.* A Ward 2 objective for urban design is to place special emphasis on the sensitive design of areas around Metrorail stations where new development is likely to occur, respecting the integrity of those areas adjacent to those sites. This element states that pedestrian amenities, ease of access, lighting, security and signage befitting a portal to the city should be provided, in addition to adequate buffering and integration of new development into the surrounding city. 10 DCMR § 1317.1(c). The proposed addition has

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been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the existing building.

- c. *Ward 2 Preservation and Historic Features Element.* Primary objectives of the Ward 2 Preservation and Historic Features Element include the preservation and reuse of historic landmarks and buildings in historic areas of Ward 2, and the preservation of the design quality of historic and special streets and places in Ward 2. 10 DCMR § 1319.1(a)(b). The proposed addition will be compatible with the existing historic landmark building, allowing the design quality to be preserved.
- d. *Ward 2 Major Institutional Complexes Element.* The Comprehensive Plan sets forth a single objective for major institutional complexes in Ward 2: to undertake coordinated planning for the continued, reasonable development of the major institutional complexes in Ward 2. 10 DCMR § 1341.1. The American Pharmacists Association has undertaken the PUD process in order to ensure coordinated planning and review of this important historical site. As detailed above, the proposed development conforms to the goals, objectives, and policies of the Comprehensive Plan, including those of the ward plan.

Office of Planning Report

19. By report dated May 24, 2004, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD application. OP found that the proposed PUD is not inconsistent with the Comprehensive Plan. OP further found that the proposal is consistent with the objectives and evaluations standards of a PUD. OP stated that the prominence of the existing historic structure was maintained by an appropriately designed addition and that the proposed SP-2 zone designation of the parcel is consistent with the surrounding properties.

District Department of Transportation Report

20. By report dated May 29, 2004, the District Department of Transportation ("DDOT") stated that it had no objection to the project as proposed. DDOT recommended that the Applicant coordinate with the State Department and the National Academy of Sciences to ensure that traffic circulation is improved on 22nd Street, N.W., near the C Street intersection.

Advisory Neighborhood Commission

21. By resolution dated May 19, 2004, and through letter dated May 24, 2004, Advisory Neighborhood Commission ("ANC") 2A unanimously supported the PUD project and zoning of the unzoned parcel to SP-2. ANC 2A noted that the proposed addition, as modified by supplemental drawings submitted by the Applicant, will create a superior

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backdrop for the Pope building better than is currently afforded by the State Department building. The ANC further commented that the PUD does not request any development flexibility beyond the limits allowed in the SP-2 District as a matter-of-right and is substantially below the height and FAR permitted in SP-2.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The project will, in fact, include less height and density on the site than is permitted as a matter-of-right either in the SP-2 District. The size, scale, design, and use of the building are appropriate for this site and the monumental nature of Constitution Avenue and will allow the American Pharmacists Association to continue its long association with this parcel. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the existing historic building in terms of height and mass and is complementary to adjacent buildings.
6. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

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7. The project benefits and amenities are reasonable for the development proposed on the site. The PUD responds to both the historic building and the surrounding institutional and governmental buildings.
8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area.
9. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The applications for a PUD and map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
12. The applications for a PUD and map amendment are subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

The Zoning Commission for the District of Columbia orders **APPROVAL** of the applications for consolidated review of a Planned Unit Development for Lots 19, 810, 814, 815, and part of 813 in Square 62 and for a Zoning Map amendment from unzoned to SP-2 for Lots 810, 814, 815, and part of 813 in Square 62, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Hartman Cox Architects, dated May 14, 2004, marked as Exhibit No. 20 of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be an office building addition to the existing historic landmark Pope Building. The addition shall contain a maximum of approximately 166,750 square feet of gross floor area. The total project shall have an overall density of approximately 2.14 FAR. The uses in the building shall be limited to:
 - a. Organizations and institutions serving American Pharmacists Association on a non-profit basis, including normal incidental and accessory uses;
 - b. Office space and ancillary support space for pharmaceutical-related uses or entities devoted to the field of public health, but excluding space to be used for the provision of professional services; or

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- c. Office space for local, federal, international, or quasi-governmental agencies.

Any other proposed use shall require the prior approval in writing by the Zoning Commission for the District of Columbia and the National Capital Planning Commission.

3. The maximum height of the building shall be 65.42 feet, as shown on the Plans. The building may include a roof structure with a height not to exceed 18.50 feet, as shown on the Plans.
4. The Project shall include a minimum of 143 parking spaces in the below-grade parking garage.
5. The Project shall include two twelve-foot by thirty-foot loading berths and one twelve-foot by twenty-foot service/delivery space as shown on the Plans.
6. The Applicant shall include landscaping for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping.
7. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT or by the National Park Service, whichever has jurisdiction. The Applicant or its successors shall maintain all landscaping in the public space.
8. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - c. To make minor modifications to the exterior design, materials, and landscaping in response to the final review by the D.C. Historic Preservation Review Board and the Mayor's Agent for Historic Preservation, the Commission of Fine Arts and the National Capital Planning Commission;
 - d. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and

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- e. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below a minimum of 143 spaces.
9. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
10. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
11. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
12. 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 that 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.
13. The approval of the PUD and the change of zoning shall become effective upon transfer of the property from the United States of America to the American Pharmacists Association.

On June 3, 2004, the Zoning Commission approved the applications by a vote of 4-1-0 (Carol J. Mitten, Anthony J. Hood, Gregory Jeffries, and Kevin Hildebrand to approve; John G. Parsons to deny).

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The Order was adopted by the Zoning Commission at its public meeting on July 12, 2004, by a vote of 4-1-0 (Anthony J. Hood, Carol J. Mitten, Gregory Jeffries and Kevin Hildebrand to adopt; John G. Parsons opposed).

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

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

ZONING CODES
District of Columbia
Case 04-14
Book 4

Washington, D.C., December 30, 2003

Plat for Building Permit of SQUARE 62 LOTS 19, 810, 813, 814, 815

Scale: 1 inch = 40 feet Recorded in Book 176 Page 200 (LOT 19),
Book A&T Page 3444-E (LOTS 810, 813-815)

Receipt No. 08629

Furnished to: HOLLAND & KNIGHT

I hereby certify that all existing improvements shown hereon, are completely 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 plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased 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 reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. 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 rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, 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 restricted property.)

[Signature]
Surveyor, D.C.

Date: _____

By: L.M.A. *[Signature]*

(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.

NEW YORK AVENUE

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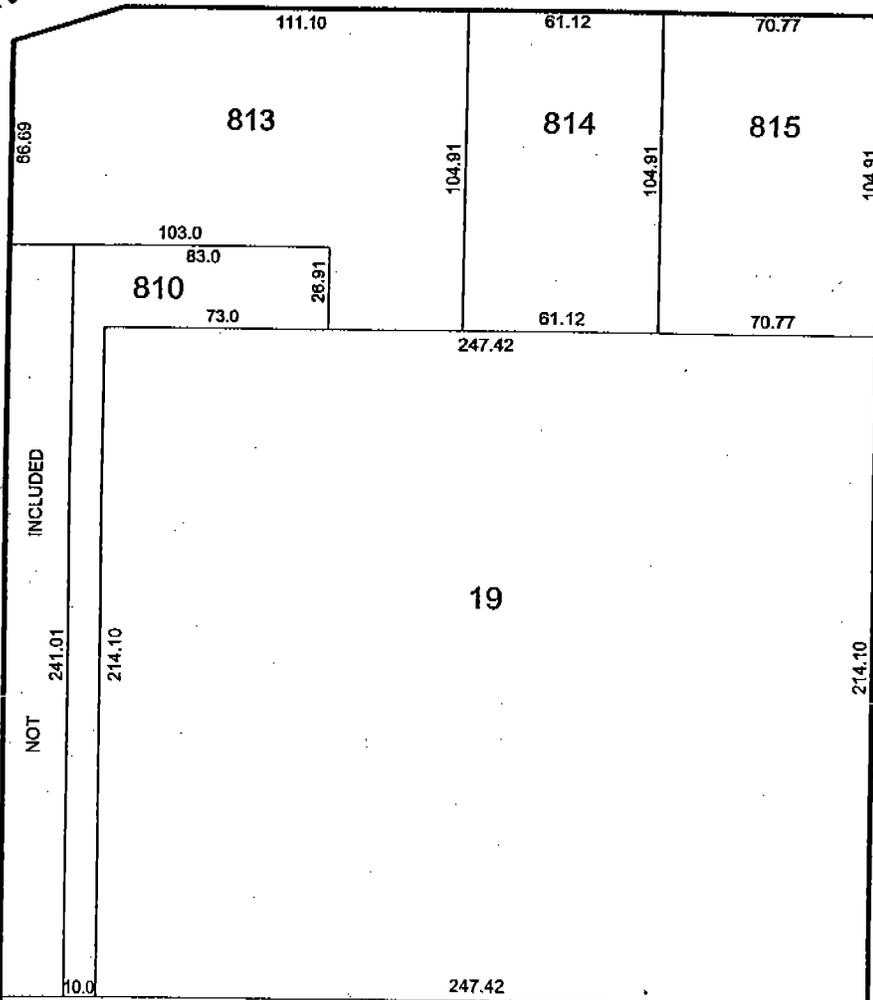
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23RD

STREET

22ND



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